

**CITY OF TACOMA
DEPARTMENT OF PUBLIC UTILITIES
LIGHT DIVISION
REAL ESTATE PURCHASE AND SALE AGREEMENT
AGREEMENT NO. 3147**

Reference No.: P2016-035

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

Buyer: Key Peninsula Metropolitan Park District
Abbreviated

Legal Description: Portion NE Quarter S 21, T 22 N, R 1 E, W.M., and SE Quarter S 16, T 22
N, R 1 E, W.M., Pierce Co., WA

County: Pierce

Tax Parcel No.: 0122211071, 0122164001, and portion of 0122153058

This REAL ESTATE PURCHASE AND SALE AGREEMENT (this "Agreement") is entered into as of 8/28/2017 between the **CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, LIGHT DIVISION (d.b.a. Tacoma Power)** a first class municipal corporation ("Seller") and **Key Peninsula Metropolitan Park District, a Washington State metropolitan park district**, ("Buyer"), hereinafter referred to as "Key Pen Parks".

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 a portion of its real property that abuts the Property owned by Seller as part of its proposed Gateway Park and desires to purchase from Seller, and Seller desires to sell to Buyer the Property on the terms and conditions set forth herein.

WHEREAS, Seller owns, operates, and maintains an electrical transmission line on the Property. Buyer will grant an easement to Seller encumbering the Property allowing Seller to continue to operate and maintain its electrical transmission line.

WHEREAS, prior to conveyance of the Property, Buyer shall complete a Boundary Line Adjustment between tax parcel number 0122164001 and 0122153058 in order to maintain their status as legal lots of record and allow conveyance to Buyer of 0122164001 as revised by the BLA.

WHEREAS, prior to conveyance of the Property, Seller shall grant a license to Buyer to extend a water line across the Property (the "Permit", attached hereto as **Exhibit E**).

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 Pierce and State of Washington, more particularly described as follows, and to be amended by the BLA:

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

- 5.2 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, except for claims caused by Seller's sole negligence.
- 5.3 Buyer Feasibility Study. Buyer hereby waives the right to conduct inspections or feasibility studies related to the Property and will take title to the Property on an as-is basis.
- 5.4 Pierce County Fire District No. 16 Concurrence. Prior to and as a condition to Closing, Buyer shall provide to Seller a letter from Pierce County Fire District No. 16 stating that the Fire District does not object to the purchase by Key Pen Parks of TPN 0122211071.
- 5.5 Boundary Line Adjustment Review and Approval. Prior to and as a condition to Closing, Buyer, at its sole cost and expense, and subject to the review and approval of Seller, shall provide a completed Boundary Line Adjustment (BLA) between TPN 0122164001 and 0122153058.
6. Condition of the Property.
- 6.1 "As Is". Buyer acknowledges that the Property will be purchased under this Agreement in an "as is" condition. 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 between the date of acceptance of this Agreement and the date of 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 (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 Seller.
- 6.3 Evaluations. Buyer agrees that it will rely on its own 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. However, Buyer's determination of non-suitability of the Property for Buyer's intended use shall not be a bona fide reason for termination of this Agreement.
7. Closing. This transaction will be closed outside of escrow. The closing will be held at the office of the Seller on or before **October 31, 2017** (the "Closing Date"). If Closing does not occur on or before the Closing Date, or any later date mutually agreed to in writing by Seller and Buyer, Seller will immediately terminate the sale and forward the Deposit to Buyer, less any portion of the Deposit due Seller under Section 11 of this Agreement. When notified by the Seller, Buyer will deposit with Seller without delay all instruments and monies 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 sale proceeds are available for disbursement to the Seller, and legal title passes to the Buyer.

8. Closing Costs and Prorations. Seller shall pay state of Washington real estate excise taxes, if any, applicable to the sale. Seller shall pay the cost of recording the deed. 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, Seller may terminate the Permit and Buyer shall, as required by Section 15 of the Permit, remove the water line and all Permitted Uses allowed by the Permit and otherwise fully comply with Section 15. Should Buyer fail to promptly and satisfactorily comply with Section 15 of the Permit, Seller shall have the right, at its sole discretion, to remove the said water line and all other uses and apply any or all of the Deposit to the costs of said removal, returning to Buyer any unused portion of said Deposit.

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 via facsimile. 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:

Seller: Tacoma Public Utilities – Real Property Services
ABS – 2nd Floor
3628 S. 35th Street
Tacoma, WA 98409
Facsimile No.: (253) 502-8539

Buyer: Key Peninsula Metropolitan Park District
P.O. Box 70
Lakebay, WA 98349
scottg@keypenparks.com
Facsimile No.: N/A

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 facsimile, the same day as verified.

13. Counterparts; Faxed 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. Facsimile transmitted 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 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. Amendments. This Agreement may be amended or modified only by a written instrument executed by Seller and Buyer.

16. 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 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.

17. Governing Law. This Agreement will be governed and construed in accordance with the laws of the state of Washington.

18. 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.

19. 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.

20. FIRPTA. The Seller will 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 Seller will withhold and pay the required amount to the Internal Revenue Service.

21. 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.

22. 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.

23. Assignment. Buyer shall not assign this Agreement without Seller's prior written consent, which consent may not be unreasonably withheld or delayed.

24. 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.

25. 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.

26. 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 is attached to this Agreement as Exhibit "D" (the "Disclosure Statement").

27. 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.

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

SELLER:

BUYER:

TACOMA POWER

KEY PEN PARKS



William A. Gaines 8/28/17 Date
Director of Utilities / CEO

Edward Robison Date
President of the Board of
Commissioners



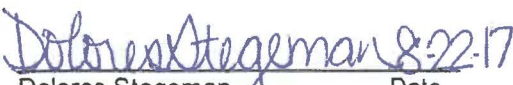
Chris Robinson 8/28/17 Date
Power Superintendent / COO

Approved as to form:




William Foster 8/16/17 Date
Office of City Attorney


City of Tacoma Review



Dolores Stegeman 8-22-17 Date
Transmission and Distribution Power Section Manager




Joseph A. Wilson Date
Transmission and Distribution Power Section Assistant Manager



Jeff Singleton 08/21/17 Date
Chief Surveyor

FINANCE:



Andrew Cherullo 8/25/17 Date
Director of Finance

②
P

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

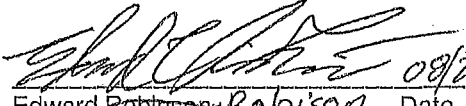
SELLER:

BUYER:

TACOMA POWER

KEY PEN PARKS

William A. Galnes Date
Director of Utilities / CEO

 08/23/2017

Edward Robinson Date
President of the Board of
Commissioners

Chris Robinson Date
Power Superintendent / COO

Approved as to form:

Office of City Attorney Date

City of Tacoma Review

Dolores Stegeman Date
Transmission and Distribution Power Section Manager

Joseph A. Wilson Date
Transmission and Distribution Power Section Assistant Manager

Jeff Singleton Date
Chief Surveyor

FINANCE:

Andrew Cherullo Date
Director of Finance

Exhibit "A"

Legal Description

That portion of the Tacoma Power Potlatch-Cushman transmission line corridor identified as Pierce County tax parcel number 0122164001 and a portion of Pierce County tax parcel number 0122153058 lying adjacent to and southerly of that real property identified as Pierce County tax parcel numbers 0122168001, 0122168002, 0122168003, 0122168004, 0122164701, 0122153701, and 0122153702;

Together with that portion of the Tacoma Power Potlatch-Cushman transmission line corridor identified as Pierce County tax parcel number 0122211071 lying adjacent to and northerly of that real property identified as Pierce County tax parcel number 0122215026;

all located in Pierce County, State of Washington.

EXHIBIT "B"

DEED

(Pro Forma)

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 UTILITES
QUIT CLAIM DEED NO. 6757**

Reference No. P2016-035
Grantor: City of Tacoma, Department of Public Utilities, Light
Division (d.b.a. Tacoma Power)
Grantee: Key Peninsula Metropolitan Park District
Abbr. Legal Description: Portion of the NE Quarter of Section 21, Township 22
North, Range 1 East, W.M., and of the SE Quarter of
Section 16, Township 22 North, Range 1 East, W.M., all
in Pierce County, WA.
Tax Parcel Nos: 0122211071 and 0122164001

The Grantor, CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES,
LIGHT DIVISION, a municipal corporation, for good and valuable consideration,
hereby conveys and quit claims to Key Peninsula Metropolitan Park District, a
Washington State metropolitan park district, as Grantee, all its interest in the
following described real property situate in Pierce County, State of Washington:

PARCEL A:

(INSERT LEGAL DESCRIPTION)

Also known as Pierce County Tax Parcel Number 0122164001.

PARCEL B:

(INSERT LEGAL DESCRIPTION)

Also known as Pierce County Tax Parcel Number 0122211071.

Authorized by City Council Resolution No. XXXXX adopted XXX. XX, 2017 at the request of Public Utility Board Resolution No. U-XXXXX adopted on XXX XX, 2017.

IN WITNESS WHEREOF, said corporation has caused this instrument to be executed by its proper officers this _____ day of _____, 2017.

CITY OF TACOMA

By: _____
Mayor

Attest:

City Clerk

Accepted by Grantee

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

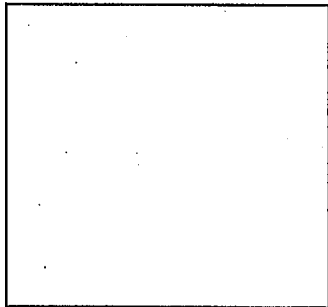
P2016-035/D6757

STATE OF WASHINGTON)
)
COUNTY OF PIERCE)

On this _____ day of _____, 2017, before me personally appeared Marilyn Strickland, to me known to be the Mayor of the City of Tacoma, 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 and that the seal affixed is the corporate seal of the City of Tacoma.

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 _____
My Commission Expires _____

P2016-035/D6757

**CITY OF TACOMA
DEPT. OF PUBLIC UTILITIES**

APPROVED:

William A. Gaines
Director of Utilities/CEO

AUTHORIZED:

Chris Robinson
Power Superintendent / COO

REVIEWED:

Dolores Stegeman
Transmission and Distribution Power Section Manager

Joseph A. Wilson
Transmission and Distribution Power Section Assistant Manager

REVIEWED:

Jeff Singleton
Chief Surveyor

APPROVED AS TO FORM:

Michael W. Smith
Deputy City Attorney

EXHIBIT "C"

EASEMENT

(Pro Forma)

WHEN RECORDED RETURN TO:
Tacoma Public Utilities
Real Property Services
PO Box 11007, Tacoma, WA 98411

CITY OF TACOMA
DEPARTMENT OF PUBLIC UTILITIES
EASEMENT NO. 13489

Reference No. P2016-035 GWM
Grantor: Key Peninsula Metropolitan Park District (d.b.a. Key Pen Parks)
Grantee: City of Tacoma, Department of Public Utilities, Light Division (d.b.a. Tacoma Power)
Legal Description: Portion of the NE Quarter of Section 21, Township 22 North, Range 1 East, W.M., and of the SE Quarter of Section 16, Township 22 North, Range 1 East, W.M., all in Pierce County, WA.
Complete Description: Exhibit A
Tax Parcel Nos.: 0122211071 and 0122164001

The undersigned Key Peninsula Metropolitan Park District, a Washington State metropolitan park district, organized and existing under the laws of the State of Washington, by and through (name of authorized signer), its (title), record owner of the premises hereinafter described, hereinafter referred to as "Key Pen Parks" and/or "Grantor", for good and valuable consideration from the City of Tacoma, Department of Public Utilities, Light Division (d.b.a. Tacoma Power), hereinafter referred to as "Tacoma Power" and/or "Grantee", the receipt of which is hereby acknowledged, does hereby grant unto said Tacoma Power, its successors and assigns, an easement for ingress and egress and for the construction, operation,

maintenance, alteration, repair, and replacement of existing and future overhead, aboveground, and underground utilities including, but not limited to, transmission, distribution, and communications/data lines and wires, guy wires, towers, poles, conduits and all associated appurtenant equipment in, upon, over, under, through, along and across the following real property situate and being in the County of Pierce, State of Washington, to-wit:

As described in Exhibit "A" and as depicted in Exhibit "B", both attached hereto and by this reference incorporated herein;

Together with the right to trim and keep trimmed all vegetation located upon the tracts of land above described.

It is agreed that the Grantor and its successors shall not construct any permanent structures within the easement area; provided that the easement area may be used for continued driveway ingress/egress to the extent such use does not interfere with Grantee's use of said area as provided for herein.

The Grantor shall at all times provide access to Tacoma Power staff and its contractors to change, repair, renew or remove said equipment or facilities. The Grantor herein further grants to Tacoma Power, its contractors and/or agents, the right to hereafter temporarily enter upon the Grantor's remaining lands where necessary to construct, replace, or maintain said facilities.

The Grantor, its successors and assigns, does hereby agree to indemnify, defend and save harmless Tacoma Power, its officers, employees, agents and volunteers from and against any and all claims, demands, lawsuits, damages, liabilities, losses and expenses (including reasonable attorneys' fees and costs) arising directly or indirectly out of any act or omission of the Grantor, its agents, contractors, licensees or guests and involving the subject matter of this Easement. The

foregoing shall expressly 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 Tacoma Power, its officers, employees, agents or volunteers. The term "fault" as used herein shall have the meaning set forth in RCW 4.22.015, as that statute may hereafter be amended.

{Remainder of page intentionally left blank}

P2016-035 GWM/E13489

IN WITNESS WHEREOF, I have executed this instrument at _____,
Washington on behalf of Key Peninsula Metropolitan Park District, said Washington
State metropolitan park district having caused its corporate name to be hereunto
subscribed and affixed and these presents to be executed by its (Title) thereunto
duly authorized, this _____ day of _____, 2017.

Key Peninsula Metropolitan Park District

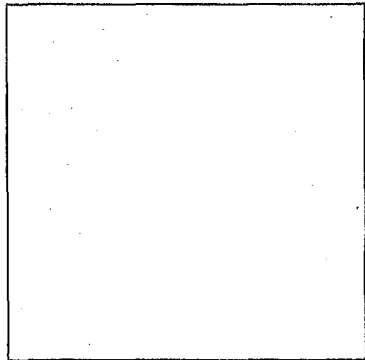
Authorized Signer, Title

STATE OF WASHINGTON)
) SS
COUNTY OF _____)

I certify that I know or have satisfactory evidence that Authorized Signer is the
person who appeared before me, and said person acknowledged that he/she
signed this instrument, and on oath stated that he/she was authorized to execute
the instrument and acknowledged it as the Title of Key Peninsula Metropolitan Park
District to be the free and voluntary act and deed of such Washington State
metropolitan park district for the uses and purposes mentioned in the instrument.

Dated this _____ day of _____, 2017.

Place Notary Seal in Box



Notary Public in and for the State
of _____
Residing in _____
My Commission Expires _____

P2016-035 GWM / E13489

Dated this _____ day of _____, 2017

Accepted:

Chris Robinson
Power Superintendent / COO

Reviewed:

Dolores Stegeman
Transmission and Distribution Power Section Manager

Joseph A. Wilson
Transmission and Distribution Power Section Assistant Manager

Form Approved:

Michael W. Smith
Deputy City Attorney

**City of Tacoma - Department of Public Utilities
Light Division Easement No. 13489**

Northeast Quarter (NE ¼) of Section 21 and Southeast Quarter (SE ¼) of Section 16,
Township 22 North, Range 1 East, W.M., In Pierce County, Washington

Parcel A: (Insert Legal Description)

Also known as Pierce County Tax Parcel Number 0122164001.

Parcel B: (Insert Legal Description)

Also known as Pierce County Tax Parcel Number 0122211071.

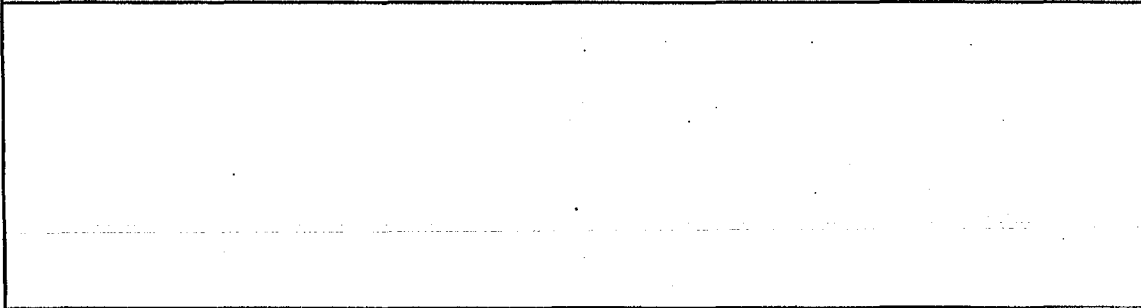
Reference No.
P2016-035 GWM

Legal Description reviewed for Tacoma Power by
Chief Surveyor, _____,
Date: _____

Exhibit A

**City of Tacoma - Department of Public Utilities
Light Division Easement No. 13489**

Northeast Quarter (NE ¼) of Section 21 and Southeast Quarter (SE ¼) of Section 16,
Township 22 North, Range 1 East, W.M., In Pierce County, Washington



REAL PROPERTY SERVICES ILLUSTRATION

Reference No. 2016-035 GWM

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 as a result of reliance hereon.



Exhibit B

9th Ave. E.



Easement Area

97TH Street E.

Scale - 1" = 100'

REAL PROPERTY DISCLOSURE STATEMENT

(ENVIRONMENTAL ONLY)

INSTRUCTIONS TO THE SELLER

Please complete the following form. Do not leave any spaces blank. If the question clearly does not apply to the property write "NA." If the answer is "yes" to any * items, please explain on attached sheets. Please refer to the line number(s) of the question(s) when you provide your explanation(s). For your protection you must date and sign each page of this disclosure statement and each attachment. Delivery of the disclosure statement must occur **not later than five business days**, unless otherwise agreed, after mutual acceptance of a written contract to purchase between a buyer and a seller.

NOTICE TO THE BUYER

THE FOLLOWING DISCLOSURES ARE MADE BY SELLER ABOUT THE CONDITION OF THE PROPERTY LOCATED AT (*) - See below ("THE PROPERTY"), OR AS LEGALLY DESCRIBED ON ATTACHED EXHIBIT

(*) Piele Co. TPN's 01222 11071, 0122153058, and 0122164001

SELLER MAKES THE FOLLOWING DISCLOSURES OF EXISTING MATERIAL FACTS OR MATERIAL DEFECTS TO BUYER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS YOU AND SELLER OTHERWISE AGREE IN WRITING, YOU HAVE THREE BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO YOU TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. IF THE SELLER DOES NOT GIVE YOU A COMPLETED DISCLOSURE STATEMENT, THEN YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

THE FOLLOWING ARE DISCLOSURES MADE BY SELLER AND ARE NOT THE REPRESENTATIONS OF ANY REAL ESTATE LICENSEE OR OTHER PARTY. THIS INFORMATION IS FOR DISCLOSURE ONLY AND IS NOT INTENDED TO BE A PART OF ANY WRITTEN AGREEMENT BETWEEN BUYER AND SELLER.

FOR A MORE COMPREHENSIVE EXAMINATION OF THE SPECIFIC CONDITION OF THIS PROPERTY YOU ARE ADVISED TO OBTAIN AND PAY FOR THE SERVICES OF QUALIFIED EXPERTS TO INSPECT THE PROPERTY, WHICH MAY INCLUDE, WITHOUT LIMITATION, ARCHITECTS, ENGINEERS, LAND SURVEYORS, PLUMBERS, ELECTRICIANS, ROOFERS, BUILDING INSPECTORS, ON-SITE WASTEWATER TREATMENT INSPECTORS, OR STRUCTURAL PEST INSPECTORS. THE PROSPECTIVE BUYER AND SELLER MAY WISH TO OBTAIN PROFESSIONAL ADVICE OR INSPECTIONS OF THE PROPERTY OR TO PROVIDE APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN THEM WITH RESPECT TO ANY ADVICE, INSPECTION, DEFECTS, OR WARRANTIES.

Seller is/ is not occupying the property.

I. SELLER'S DISCLOSURES:

If you answer "Yes" to a question with an asterisk (), please explain your answer and attach documents, if available and not otherwise publicly recorded. If necessary, use an attached sheet.

ENVIRONMENTAL	YES	NO	DON'T KNOW
*A. Has there been any flooding, standing water, or drainage problems on the property that affect the property or access to the property?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
*B. Is there any material damage to the property from fire, wind, floods, beach movements, earthquake, expansive soils, or landslides?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
*C. Are there any shorelines, wetlands, floodplains, or critical areas on the property?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
*D. Are there any substances, materials, or products in or on the property that may be environmental concerns, such as asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, or contaminated soil or water?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
*E. Is there any soil or groundwater contamination?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
*F. Has the property been used as a legal or illegal dumping site?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
*G. Has the property been used as an illegal drug manufacturing site?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
*H. Does any part of the property contain fill dirt, waste, or other fill material?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
*I. Has the property been used for commercial or industrial purposes? <i>Electric Transmission Lines</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
*J. Are there any radio towers that cause interference with cellular telephone reception?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

The foregoing answers and attached explanations (if any) are complete and correct to the best of my/our knowledge and I/we have received a copy hereof. I/we authorize all of my/our real estate licensees, if any, to deliver a copy of this disclosure statement to other real estate licensees and all prospective buyers of the property.

DATE: 7-28-17 SELLER: 

DATE: _____ SELLER: _____

NOTICE TO BUYER

INFORMATION REGARDING REGISTERED SEX OFFENDERS MAY BE OBTAINED FROM LOCAL LAW ENFORCEMENT AGENCIES. THIS NOTICE IS INTENDED ONLY TO INFORM YOU OF WHERE TO OBTAIN THIS INFORMATION AND IS NOT AN INDICATION OF THE PRESENCE OF REGISTERED SEX OFFENDERS.

BUYER'S ACKNOWLEDGMENT

- A. Buyer hereby acknowledges that: Buyer has a duty to pay diligent attention to any material defects that are known to Buyer or can be known to Buyer by utilizing diligent attention and observation.
- B. The disclosures set forth in this statement and in any amendments to this statement are made only by the Seller and not by any real estate licensee or other party.
- C. Buyer acknowledges that, pursuant to RCW 64.06.050(2), real estate licensees are not liable for inaccurate information provided by Seller, except to the extent that real estate licensees know of such inaccurate information.
- D. This information is for disclosure only and is not intended to be a part of the written agreement between the Buyer and Seller.
- E. Buyer (which term includes all persons signing the "Buyer's acceptance" portion of this disclosure statement below) has received a copy of this Disclosure Statement (including attachments, if any) bearing Seller's signature.

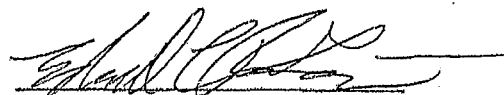
DISCLOSURES CONTAINED IN THIS DISCLOSURE STATEMENT ARE PROVIDED BY SELLER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS BUYER AND SELLER OTHERWISE AGREE IN WRITING, BUYER SHALL HAVE THREE BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

BUYER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS DISCLOSURE STATEMENT AND ACKNOWLEDGES THAT THE DISCLOSURES MADE HEREIN ARE THOSE OF THE SELLER ONLY, AND NOT OF ANY REAL ESTATE LICENSEE OR OTHER PARTY.

Date:

08/23/2017

BUYER



Date:

BUYER

EXHIBIT "E"

PERMIT

**CITY OF TACOMA
DEPARTMENT OF PUBLIC UTILITIES
PERMIT NO. P2407**

Reference No.:	P2016-035/P2407
Licensor:	City of Tacoma, Department of Public Utilities, Light Division (d.b.a. Tacoma Power)
Licensee:	Key Peninsula Metropolitan Park District (d.b.a. Key Pen Parks), a Washington State metropolitan park district
Legal Description:	Northeast Quarter (NE ¼) of Section 21, Township 22 North, Range 01 East, W.M. and Southeast Quarter (SE ¼) of Section 16, Township 22 North, Range 01 East, W.M.
Licensor's Tax Parcel No.(s):	0122211071 and 0122164001
County:	Pierce
Permit Expiration Date:	October 31, 2017

CONTACT INFORMATION

LICENSEE:

Key Pen Parks
Scott Gallacher, Executive Director
P.O. Box 70
Lakebay, WA 98349
(253) 884-9240

LICENSOR:

Tacoma Public Utilities
Real Property Services
3628 South 35th Street
Tacoma, Washington 98409
(253) 396-3060

This Permit ("Permit") made and entered into this 28th day of August, 2017 ("Effective Date"), by and between the CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES LIGHT DIVISION (d.b.a. Tacoma Power), a municipal corporation, hereinafter referred to as "Licensor" and Key Peninsula Metropolitan Park District (d.b.a. Key Pen Parks), a Washington State metropolitan park district, hereinafter referred to as "Licensee."

RECITALS

- A. Licensor owns, operates, and maintains the Premises defined below as part of and in relation to its utility operations.
- B. Licensee is developing a portion of its real property that abuts the Premises as part of its proposed Gateway Park and desires to purchase the Premises from Licensor.
- C. Prior to the conveyance of the Premises, Licensee must complete a Boundary Line Adjustment ("BLA") between tax parcel number 0122164001 and 0122153058 in order to maintain their status as legal lots of record and allow conveyance to Buyer of 0122164001 as revised by the BLA.

D. As part of the Gateway Park development, Licensee must extend a water line, provided by Washington Water Service, across the Premises to the proposed park.

E. In order to proceed expeditiously with construction of the proposed park, Licensee desires to begin initial installation and operation of the water line before the BLA can be completed and the Premises conveyed to Licensee.

F. Licensor is willing to grant permission to Licensee to access and use the Premises strictly for the use specified in this Permit and issue Licensee a license to use said Premises per the terms and conditions specified in this Permit.

NOW THEREFORE, in consideration of the mutual promises contained in this Permit, the parties agree as follows:

1. LICENSE.

A. Grant of License / Description of Premises. Licensor grants to the Licensee limited, non-exclusive, revocable permission to use the following described Premises for the Permitted Use stated below subject to all the terms and conditions of this Permit:

Portion of Pierce County Tax Parcels 0122211071 situated in the NE Quarter of Section 21, Township 22 North, Range 1 East, W.M., and 0122164001 situated in the SE Quarter of Section 16, Township 22 North, Range 1 East, W.M, all in Pierce County, WA, and as depicted on Exhibit A, hereinafter "Premises".

B. Purpose.

i. Permitted Use. Licensor permits the Premises to be used by the Licensee, and Licensee's agents, contractors, employees, customers, guests, and invitees, only for the following express purpose:

Construct a water line over approximately 40 feet of the Premises to connect to Licensee's proposed Gateway Park property, as depicted in Exhibit A, attached hereto and by this reference incorporated herein, hereinafter "Permitted Use".

Licensee shall design and construct the permitted facilities or improvements in accordance with the construction requirements in Exhibit B, "Construction Requirements" attached hereto and incorporated herein.

ii. No Other Use Is Permitted. Licensee may only use the Premises in strict accordance with this Permit. Licensee shall make no other use of the Premises or change or enlarge Licensee's use thereof without prior written approval of Licensor.

C. No Property Rights Are Granted. This Permit does not convey any right, title, or interest in real property or in the above described Premises. The permission granted by this Permit is a license to use real property only.

D. CONDITION OF PREMISES. LICENSEE HAS INSPECTED THE PREMISES AND ACCEPTS IT IN ITS PRESENT CONDITION "AS-IS." LICENSOR EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY THAT THE PREMISES ARE SUITABLE FOR THE PERMITTED USE.

E. Third-Party Obligations. Licensee shall ensure that its agents, contractors, employees, customers, guests, and invitees shall comply with all the requirements, obligations, limitations, and restrictions of this Permit. The Permit and permissions granted herein are contingent upon Licensee and Licensee's agents, contractors, employees, customers, guests, and invitees complying with all the terms and conditions of this Permit.

F. Special Conditions.

Special Conditions are attached to this Permit as Exhibit C, "Special Conditions".

2. PERMIT PERIOD

A. Term. The term of this Permit and the permission and license granted herein shall be effective beginning on the Effective Date and terminating as of October 31, 2017.

B. Permit Extension. Licensee may submit a term extension request and applicable fee to Licensor no later than sixty (60) days before the Permit terminates per Section 2.A. A mandatory site inspection will be required for all Permit term extensions. After receipt of the request and site inspection, Licensor may, in its sole discretion, increase the term of this Permit. Permit extensions will not be granted if any conditions have changed since the original Permit was granted and/or any permitted structures or improvements are not in compliance with the terms and conditions of this Permit.

C. Permit Re-Issuance. In the event this Permit is terminated and Licensor thereafter grants a new Permit to Licensee, Licensee shall pay all fees owing to process a new permit.

3. FEES AND COSTS

A. Fees. In contemplation of the sale of the property to the Licensee, no Land Use Permit Fee shall apply to the initial grant of license. However, the Consideration for the proposed sale of the Property as detailed in the Real Estate Purchase and Sale Agreement (the "Agreement") between Key Pen Parks and Tacoma Power, pursuant to which this Permit is issued, shall be tendered to Tacoma Power prior to issuance of this Permit.

B. Licensee Assumes all Costs. Licensee hereby expressly assumes liability and responsibility for all expenses and costs associated with this Permit and the Permitted Use.

C. Licensee to Pay Costs to Enforce Conditions of Permit. Licensee agrees to reimburse Licensor for any costs (including reasonable attorney's fees) that Licensor may incur in enforcing the terms and conditions of this Permit.

D. Licensee Liable for Damages. Licensee shall pay or reimburse Licensor for all damages to Licensor's property or the Premises resulting from the actions of Licensee or any of Licensee's agents, guests, or invitees.

E. Leasehold Excise Tax. In addition to the Land Use Permit Fees, Licensee shall pay Licensor:

- i. all leasehold excise tax (as required by RCW 82.29A in lieu of real property taxes) to the extent that any is determined to be due as a result of this Permit,

- ii. any surface water and other governmental charges and assessments (special and general) of every kind and nature levied or assessed against the Premises, and
- iii. any taxes levied or assessed in lieu of the foregoing, in whole or in part.

Leasehold excise tax is calculated by the State, and assessed against a variety of interests in real property, including, without limitation, permits, licenses and facility use agreements (none of which are leases) using a percentage multiplier of either the rent/use fee/permit fee/license fee required hereunder or an imputed fair market value of the same, and as a result, Licensee shall be responsible for any increases in leasehold excise tax that result from an increase in rent/use fee/permit fee/license fee for the Premises over the term hereof, or for increases due to an increase in the statutory rate during the term of this Permit. If Licensee provides Licensor with a proof of exemption from payment of leasehold excise tax issued by the Washington State Department of Revenue, then Licensee shall not be required to pay leasehold excise tax for the period that such exemption is effective. If the exemption is of limited duration, Licensee shall be required to obtain documented renewal of such exemption and provide such to Licensor in order to claim continued exemption under this Permit.

4. MAINTENANCE OF PREMISES AND IMPROVEMENTS

- A. Maintenance Requirements.** The Premises, including any improvements, structures, facilities, and/or equipment will be maintained at the Licensee's sole cost, in a safe condition, in a clean and neat manner, and in accordance with the specifications of the Permit and attached Exhibits.
- B. Assumption of Risk.** Any improvements, facilities, or equipment allowed per this Permit on the Premises shall be subject to being damaged by Licensor's use or operations. Licensee assumes the risk of these limited use rights and will be responsible for the costs and expenses in restoring the Premises.
- C. Maintenance Notice.** Licensee shall notify Licensor four (4) weeks prior to scheduled maintenance of the Premises or improvements permitted by this Permit that could potentially interfere with Licensor's use of the Premises. The parties agree that if maintenance schedules result in a construction or use conflict, Licensor's schedule shall prevail. If emergency maintenance is required on Licensee's facilities, Licensee shall notify Licensor as soon as reasonably practical.

5. NO WARRANTY

Licensor does not warrant its authority to permit the above described Permitted Use, and Licensee shall secure any other rights or permissions that are needed for Licensee's lawful use of the Premises.

6. PURPOSE AND CONTROL OF PREMISES

Licensor owns the Premises as part of its utility system, and the Premises are necessary for the operation, maintenance, and improvement of its utility system facilities. Licensee therefore acknowledges that the primary purpose of the Premises is Licensor's operations. Thus, the permission granted by this Permit is subject and subordinate to Licensor's paramount rights and operations. Licensee shall not in any way interfere with Licensor's use of or operations on the Premises. Licensee shall not prohibit or in any way limit access to the Premises by any

city, state, or federal regulatory agency, Licensor, or other party granted permission by Licensor to access and use the Premises. Licensor may, in its sole discretion, require Licensee to move or modify its use, operations, facilities, or structures at Licensee's expense. Further, Licensee, its agents, employees, or property is subject to the hazards of Licensor's utility operations, which Licensee hereby expressly assumes.

7. TEMPORARY EXCLUSIVE CONTROL

A. **Exclusive Control.** Licensor, in its sole discretion, may assert temporary exclusive control over the Premises, including temporarily excluding Licensee from the Premises, when exclusive control is needed for Licensor's operations.

B. **Hold Harmless.** Licensee agrees to hold Licensor harmless against any claims, demands or damages related to denial of access and use of the Premises.

8. PERMIT NON-EXCLUSIVE / SUBJECT TO REGULATION AND CITY OF TACOMA POLICY

A. **Other Permits.** This Permit is nonexclusive and shall not prohibit Licensor from granting permits or licenses to the same Premises to others.

B. **Other Agreements.** The rights granted by this Permit shall be subject to any prior, concurrent, or subsequent agreements or contracts entered into or that may be entered into by Licensor or the City of Tacoma.

C. **Regulation.** Licensee shall obtain all applicable permits or approvals from federal, state, or local agencies prior to use of or construction on the Premises as allowed by this Permit. The Licensee shall give full cooperation to any federal, state, county, or local agencies having jurisdiction over the Premises or use of the Premises.

D. **City of Tacoma Policy.** Licensor and the City of Tacoma reserve the right to prescribe additional rules, policies, and regulations relating to the rights, use, and permission granted under this Permit. Licensor will endeavor to give sixty (60) days' notice to Licensee of any such additional rules, policies, and regulations.

9. SUPERVISION

Licensee shall give the conduct, operation, and maintenance of the Premises and Permitted Use its personal supervision and direction.

10. NUISANCES PROHIBITED

The Licensee will maintain the Premises in a clean, neat, and orderly manner and will not create or permit any nuisance to exist or allow the Premises to be used for any immoral or unlawful purposes.

11. NONLIABILITY

Licensor shall not be liable to the Licensee or to any third parties entering upon the Premises related to or in furtherance of any act or thing done in connection with the Permitted Use or other use of the Premises. Licensee, on behalf of itself and its employees, personnel,

contractors, agents, invitees, or licensees expressly assumes all risks associated with the Permitted Use or other use of the Premises.

12. INDEMNIFICATION

Licensor shall in no way be liable or responsible for any injury or damage done or occasioned by the actions or operations of Licensee or Licensee's contractors, agents, employees, customers, guests, and invitees under this Permit, and Licensee binds and obligates itself to pay and satisfy any and all claims arising on account of its operations under this Permit. To the fullest extent allowed by law, the Licensee agrees to indemnify, defend and hold harmless the Licensor and the City of Tacoma, its officers and employees, from and against any and all claims for damages or loss to the Licensor's or the City of Tacoma's operations or property and from any and all claims or litigation arising in connection with this Permit and/or Licensee's use of the Premises. This includes damages to or loss of property and personal injury, including injury to or death of Licensee or Licensee's agents, contractors, employees, customers, guests, and invitees, which may be caused or occasioned by the existence, operation, use or maintenance of any and all of the property subject of this Permit or associated with the license granted hereunder, or caused or occasioned by any act, deed or omission of the Licensee, Licensee's contractors, agents, employees, guests, customers or invitees.

In this regard, Licensee hereby waives immunity under Title 51 RCW, Industrial Insurance Laws, and acknowledges that this provision has been mutually negotiated. The Licensor and the City of Tacoma agree to be responsible for its sole negligence or the sole negligence of its employees and officers occurring within the scope of their employment.

13. HAZARDOUS SUBSTANCES AND/OR CONDITIONS

A. No goods, merchandise or material shall be kept, stored or sold on the Premises which are in any way explosive or hazardous; and no offensive or dangerous trade, business or occupation shall be conducted therein, thereon or therefrom other than as provided for in this Permit. No machinery or apparatus shall be used or operated on the Premises which will in any way injure the Premises; provided, however, that nothing in this paragraph shall preclude Licensee from bringing, keeping or using on or about the Premises such materials, supplies, equipment and machinery as are necessary or customary in carrying out the authorized uses under this Permit.

B. In the event such uses include keeping or storing inflammable or explosive substances, such substances shall be stored in closed containers and shall be stored, used or dispensed in the manner prescribed by the regulations of Licensor or other public body having authority in the matter and, in any event, in the safest manner reasonably possible. Licensee shall be solely liable for the remediation of any Hazardous Substance and/or conditions on the Premises resulting from Licensee's use of Premises. "Hazardous Substance" means any substance which 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.

14. INSPECTION

This Permit is a Real Property license and conveys no possessory interests whatsoever. Licensor may, therefore, enter the Premises at any time for any reason.

15. TERMINATION

A. Notice of Termination. This Permit may be terminated by the Licensee or Licensor upon thirty (30) days' written notice, for any reason stated in said notice, mailed by certified mail to the Licensee at P.O. Box 70 Lakebay, Washington 98349, OR to Licensor at Real Property Services, P.O. Box 11007, Tacoma, Washington 98411.

B. Operational Necessity. In the event it should become necessary, as determined by Licensor in its sole discretion, for Licensor to make use of the Premises to such an extent as to necessitate discontinuance of the use thereof by the Licensee, Licensor may terminate this Permit by giving Licensee written notice of such termination at any time. Said notice to be given by certified mail addressed to Licensee at P.O. Box 70 Lakebay, Washington 98349, and termination shall be effective IMMEDIATELY upon delivery thereof.

C. Insolvency/Bankruptcy. It is hereby agreed that if the Licensee becomes either insolvent or files a proceeding in bankruptcy, or if a receiver is appointed, Licensor may, upon giving ten (10) days' notice to the Licensee, cancel this Permit and Licensee shall cease the Permitted Use and vacate the Premises.

D. Vacation of Premises. Upon the termination of this Permit for any reason, the Licensee agrees to promptly and peaceably vacate the subject Premises and to return said Premises and any structures and/or improvements located on the Premises prior to the beginning date of this Permit to Licensor in as good condition as the same existed prior to the execution of this Permit, reasonable wear and tear excepted. If the Licensee's structures and/or improvements existed prior to this Permit, the Licensee shall return the Premises to the Licensor in a condition that is satisfactory to the Licensor. Satisfactory condition of the returned Premises shall be determined at the Licensor's sole discretion. Any damages to the subject Premises or to cultural resources on the Premises shall be repaired at Licensee's expense.

16. ASSIGNMENT

This Permit is non-assignable and non-transferable.

17. MISCELLANEOUS

A. Entire Agreement. This Permit constitutes the entire agreement and understanding of the Parties and supersedes all discussions and other agreements between the parties. There are no representations or understandings of any kind not set forth herein. Notwithstanding anything to the contrary in this section, Licensor policies, regulations, and procedures will apply to and govern the terms and conditions and the permission granted by this Permit.

B. Amendments. Any amendments to this Permit must be in writing and executed by both Parties.

C. Governing Law. This Permit shall be construed in accordance with the laws of the State of Washington.

D. Enforceability. Parties agree that if any provisions are deemed not enforceable, they shall be deemed modified to the extent necessary to make them enforceable.

E. **Exhibits.** All Exhibits referred to herein or attached hereto are incorporated herein for all purposes.

F. **Mutual Negotiation.** Licensee acknowledges that this Permit has been mutually negotiated and any ambiguity regarding the terms and conditions herein shall not be construed or interpreted against Licensor as the drafter of this Permit.

G. **Recording.** This Permit or a memorandum hereof may, at the Licensor's sole discretion, be recorded in any public office.

H. **No Waiver.** Failure of Licensor to insist on the performance of any of the terms and conditions of this Permit, or the waiver of any breach of any of the terms and conditions of this Permit, shall not be construed as waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

I. **Section Headings.** The titles to the sections and paragraphs of this Permit are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Permit.

J. **Counterparts; Faxed 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. Facsimile transmitted signatures shall be fully binding and effective for all purposes.

K. Survival

The following sections will survive the termination of this Permit and remain enforceable against Licensee after termination:

Sections 2.C (Permit Re-Issuance), 7. (Temporary Exclusive Control), 12. (Indemnification), 13. (Hazardous Substances and/or Conditions), 15. (Termination), 17.C (Governing Law), and 17.D (Enforceability).

IN WITNESS WHEREOF, I have executed this instrument at Pierce County, Washington on behalf of the Key Peninsula Metropolitan Park District, said entity having caused its name to be hereunto subscribed and affixed and these presents to be executed by its President of the Board of Commissioners thereunto duly authorized this 23 day of August, 2017.



Edward Robinson **ROBISON**
President of the Board of Commissioners

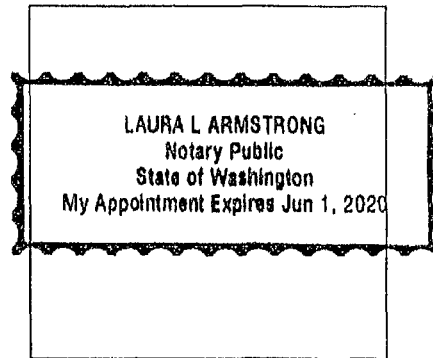
STATE OF WASHINGTON)
) SS
COUNTY OF Pierce)

I certify that I know or have satisfactory evidence that Edward Robinson is the person who appeared before me, and said person acknowledged that he signed this instrument, and acknowledged it as the President of the Board of Commissioners of the Key Peninsula Metropolitan Park District to be the free and voluntary act of such parties for the uses and purposes mentioned in the instrument.

Dated this 23 day of August, 2017.

Place Notary Seal in Box

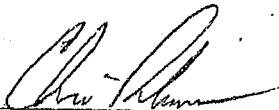

Notary Public in and for the State
of Washington
Residing in Pierce County
My Commission Expires 6, 1, 2020




Dated this 28th day of August, 2017.

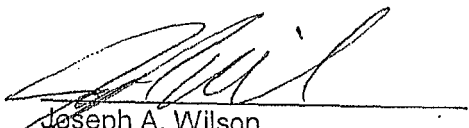
Approved:

City of Tacoma
Department of Public Utilities

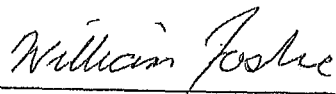

Chris Robinson
Power Superintendent / COO

Reviewed:


Dolores Stegeman
Transmission & Distribution Power Section Manager


Joseph A. Wilson
Transmission & Distribution Power Section Assistant Manager

Form Approved:


for Michael W. Smith
Deputy City Attorney

Reviewed:


Real Property Services


Approved
Finance Director

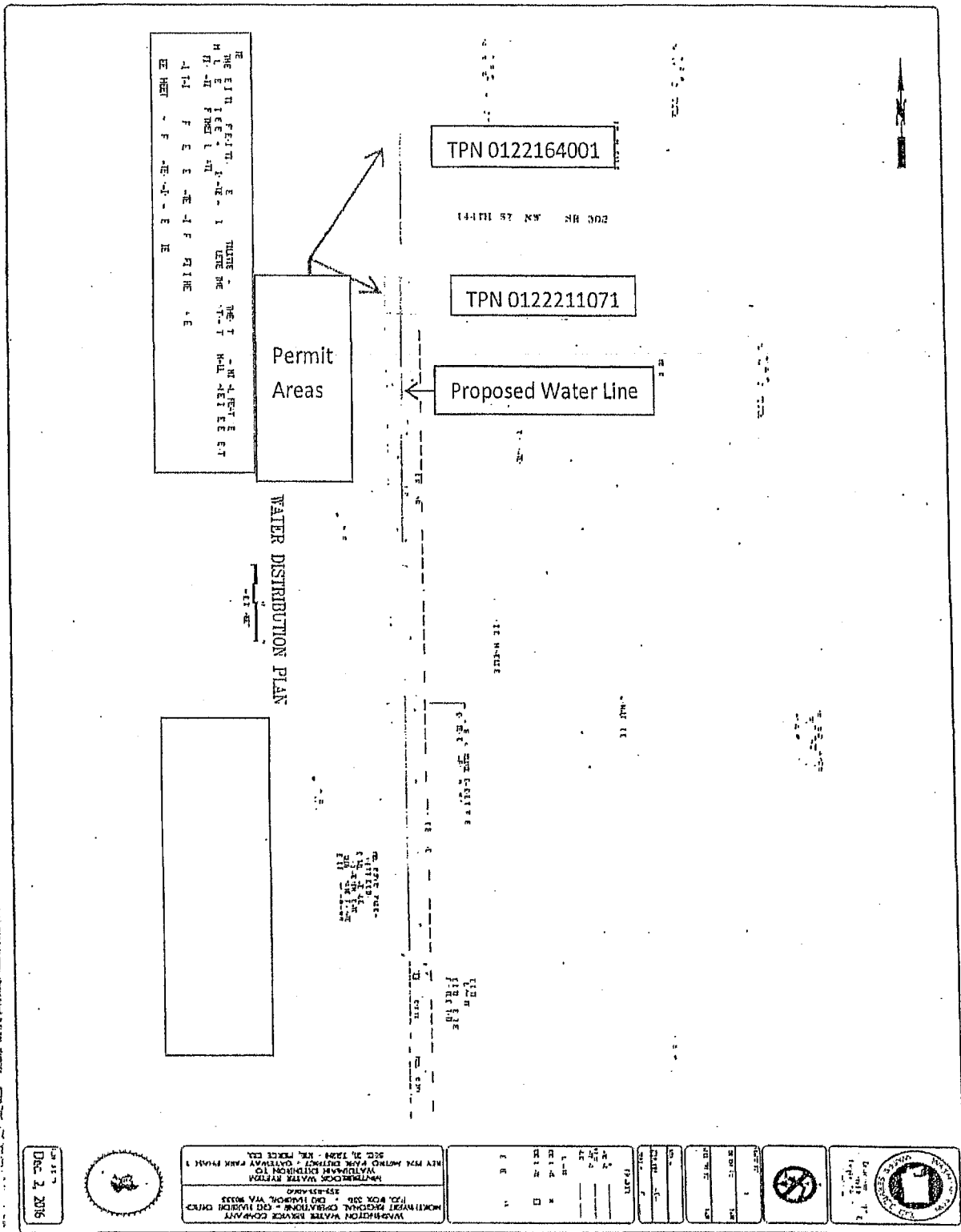
Key Pen Parks – Temporary Construction Permit

Exhibit "A"

Key Pen Parks requests a temporary permit in a 15-foot wide section of the two Tacoma Public Utilities parcels, Pierce Co. TPNs 0122211071 and 0122164001. The proposed permitted area is on either side of SR 302 (as shown on Page 2 of Exhibit A) and congruent with the easement shown across the west side of Lot 4 of Short Plat 8303150349 described in document filed with Pierce County Auditor under A.F.N. 8303150349.

Washington Water Service Co. (WWSC) will bore a 2-inch HDPE water service line from the north side of Tax Parcel 0122164001 to the south end of Lot 4 within the easement shown in Short Plat 8303150349 and connect to the existing WWSC water line. The new HDPE water line will be pulled from the proposed connection to the existing water line onto the proposed Gateway Park parcel north of SR 302. The water line depth will be a minimum of 36 inches throughout the installation.

On either side of the SR 302 right-of-way an excavation will be opened to allow for the installation of a 4-inch casing for the water line where it runs under the SR 302 road right-of-way.



**EXHIBIT B
CONSTRUCTION REQUIREMENTS**

1. RESPONSIBILITY FOR CONSTRUCTION COSTS

Licensee is solely responsible for all costs, expenses, and responsibilities for the construction, installation, operation and maintenance of any permitted structure(s) and/or improvement(s), including the expense of obtaining all necessary federal, state and local permits or approvals. Licensor shall not be responsible for any such costs, whether or not presently known or contemplated.

2. CONSTRUCTION REQUIREMENTS

- A.** Licensee shall design and construct facilities to minimize use of the Premises and ensure safe conditions.
- B.** Licensee shall maintain a safe distance between construction equipment and Licensor's towers and/or conductors in accordance with National Electric Safety Code, Washington Administrative Code, and Licensor's standards.
- C.** Licensee shall submit construction plans and drawings to Licensor for review and approval at least four (4) weeks prior to planned construction. Licensee shall not begin construction until all plans and drawings are approved by Licensor and written notice has been delivered to Licensee.
- D.** Upon request, Licensee shall submit a cathodic protection plan to Licensor for initial approval. The plan will show the proposed method to ensure stray currents do not affect Licensor's facilities and/or structures. In addition, the plan will include test stations and a testing plan for Licensor to ensure the system is operating as intended. The cost of all bonding, test stations, and other construction required to ensure protection of Licensor's facilities and/or structures shall be borne by Licensee. A final construction report from Licensee indicating "as built" construction conditions, photographs of cathodic protection and Licensor installations, and final electrical readings to ensure the system is operating as intended, shall be forwarded to Licensor upon project completion. Report and inspection shall be conducted by an approved testing or consulting firm knowledgeable in cathodic protection and construction management. Licensee shall ensure that the cathodic protection system operates effectively at all times and shall bear all costs associated with necessary repairs and modifications.
- E.** Inspection of the Premises may be performed by the Licensor before, during and after construction to ensure that Permit/License requirements, including restoration of the Licensor's property are met. If such inspections are required, Licensor will provide an inspection schedule and estimated fees. Licensee agrees to pay for all required inspections.
- F.** No blasting shall be done during construction.
- G.** The limits of any underground utilities shall be marked with four (4) inch diameter white PVC pipe extending two (2) feet above and below grade so they can be recognized. The four (4) inch diameter marks should be clearly labeled with the specific utility type and shall be placed every 100 feet along the utility route. Alternate marker types must be approved, in writing, by Licensor.
- H.** Licensee shall notify Licensor, P.O. Box 11007, Tacoma, Washington 98411 at 253-396-3060 at least four (4) weeks prior to the commencement of construction activities, and the parties agree that if construction or use conflicts exist, Licensor's schedule shall prevail.
- I.** All road crossing and all utility construction, including compaction and backfill, shall be done in accordance with the current edition of the standard specifications for Road, Bridge, and Municipal Construction as published by the Washington State Department of Transportation. All crossings of

existing utility line roadways shall be compacted to 95 percent of maximum density using approved backfill materials in accordance with these specifications. All roadways must be left passable overnight for Licensor's vehicular access.

J. Licensee warrants that no hazardous substances, toxic waste, or other toxic substance will be produced, disposed of or kept on the Premises which, if found on the property, would subject Licensor to any damages, penalty or liability under any applicable local, state or federal law or regulation. Licensee shall indemnify and hold harmless Licensor with respect to any and all damages, costs, attorneys' fees, and penalties arising from the presence of such substances on the Premises, except for such substances as may be placed on the Premises by Licensor.

K. Upon completion of construction activities, Licensee will mulch and seed the Premises disturbed by Licensee's activities in a manner consistent with and approved by Licensor. If required at the discretion of Licensor, vegetation will be monitored for a two (2) year period to insure successful establishment. All costs associated with the seeding, fertilizing, monitoring and re-establishment shall be the responsibility of Licensee.

3. OWNERSHIP OF IMPROVEMENTS

The Licensee agrees and covenants that any improvements and/or structures that the Licensor permits to be installed by said Licensee or its agents on the Premises shall NOT belong to the Licensor upon the termination (or expiration) of this Permit/License. Said improvements shall be owned by and be the sole responsibility of the Licensee and/or Licensee's successors and assigns.

**EXHIBIT C
SPECIAL CONDITIONS**

1. INSPECTIONS AND APPROVALS

- A. Upon termination of the Permit/License, the Licensee agrees to meet with Licensor's point of contact at the Premises to allow inspection of the property and ensure that all conditions of the Permit/Licensee have been fulfilled. Licensor can be contacted at Real Property Services at (253) 396-3060.
- B. The Licensee shall allow access to Licensor, its officers, employees and agents to enter the Licensee's property adjacent to the Premises for inspection and assessment of the Premises and that of the Licensor's use and operation of the Premises.
- C. Licensor's review, approval, or consent to any proposals, drawings, and/or plans shall not be deemed to be consent, authorization, acknowledgment, certification, warranty, or representation that Licensee has obtained all required authorizations or that said proposals, drawings, or plans are in any way sufficient or appropriate for the intended purpose, or that said proposals, drawings, or plans comply with regulatory, design, or engineering standards.
- D. Any inspections performed by Licensor, or Licensor's failure to conduct an inspection, shall not operate to or in any manner impose any legal duty or liability on Licensor or relieve Licensee of any responsibility, obligation, duty or liability under this License or imposed by any applicable law, rule or regulation.

2. ENVIRONMENTAL

- A. Licensee shall not adversely impact any wetlands on the Premises. All wetland inspection and mitigation shall be satisfied before construction can begin.
- B. Runoff from Licensee's Permitted Use shall not be directed onto Licensor's property. Licensee shall prevent pooling of water on the Premises and adjacent Licensor's lands, creation of wetlands in previously dry areas, and any and all actions which could impact the water quality of existing wetlands.
- C. Licensee shall not use herbicides on the Premises, and shall prevent use on adjoining lands, which could contaminate or injure Licensor's land or facilities.
- D. No blasting shall be done on the Premises.
- E. Licensor may revoke this Permit/License if, in its sole opinion, cultural resources may be threatened.

3. TIMBER REMOVAL AND/OR HAULING

- A. The Licensee agrees not to cut or remove any standing timber located on the permitted Premises unless the removal has first been approved in writing by Licensor.
- B. Licensor owns the timber within the Premises and is entitled to the proceeds of any trees harvested within said Premises as required to facilitate Licensee's allowed use of the Premises.
- C. At least (4) weeks prior to any planned timber removal within the Premises, Licensee shall provide to Licensor the expected timber harvest volume and value for review and approval by Licensor.

D. Licensee further agrees that all trees harvested within the Premises cannot be exported.

4. RISK ASSESSMENT

A Phase 1 Environmental Risk Assessment, identifying potential exposures and hazards, may be required at the commencement of the Permit/License period and upon termination of said Permit/License period.

Licensee agrees to pay ONE HUNDRED DOLLARS (\$100.00), as hereafter may be amended, for each such assessment.

5. INSURANCE

A. During the term of this Permit/License, Licensee and its contractors, shall obtain and maintain at its sole expense the following liability insurance coverage:

- i. A policy of Commercial General Liability insurance coverage, providing coverage for claims of bodily injury, death, personal injury, and property damage arising from operations on the Licensor's property. Coverage shall include, but not be limited to: products hazard and completed operations coverage, contractual liability coverage, and employer stop gap coverage. The policy shall name the Licensor as an additional insured.
- ii. The Licensee and its contractor(s) shall obtain and have in place prior to entering upon the Licensor's property, a policy of Commercial Automobile Liability coverage, with the Licensor named as an additional insured.

B. For all insurance policies required by this section:

- i. Coverage shall be written on a policy form published by the Insurance Service Office (ISO) or its functional equivalent. The Licensor reserves the right to determine if a proposed policy is in fact a functional equivalent and its decision shall be conclusive on the issue.
- ii. Coverage shall be underwritten by insurance carriers licensed to do business in the State of Washington and of adequate financial strength (an A.M. Best Company rating of no less than A-V) subject to review and approval by the Licensor.
- iii. Coverage shall be primary over and non-contributing to the Licensor's own insurance coverage or program.
- iv. No coverage required by this section shall be subject to a deductible or self-insured retained limit in excess of \$10,000 without the Licensor's prior written approval. To assure that the Licensor receives the full benefit of coverage, the Licensee shall pay any deductible or self-insured retained limit on behalf of the Licensor, notwithstanding any negligence or liability on the part of the Licensor.
- v. All coverage required by this section shall be written on a per "occurrence" basis and not on a "claims-made" policy form.
- vi. All policies required by this section shall provide policy limits of no less than \$1,000,000 combined single limit of liability per occurrence with a general aggregate limit of \$2,000,000. The aggregate limit shall be dedicated or limited to the location or work reflected by the contract, permit or right of entry or industry track agreement by policy endorsement.
- vii. The Licensee and the Licensor shall mutually and reciprocally waive claims of subrogation against each other for claims of damage to their property or injury to their employees, and shall obligate their insurance carriers to do the same. This provision is not intended to waive contractual indemnification obligations or claims under any additional insured policy provision.

C. Subcontractors. If any portion of Licensee's operation or work permitted by the Licensor is to be contracted by Licensee, Licensee must require that the contractor provide and maintain insurance and coverages set forth herein and require that its contractor release, defend, hold harmless, and indemnify the Licensor to the same extent and under the same terms and conditions as Licensee.

D. Certificate of Insurance. Certificates of Insurance, reflecting evidence of the required insurance and coverage as described in A. above, shall be sent to the following address prior to the use of any rights provided by the Permit/License:

Tacoma Public Utilities
Real Property Services
3628 South 35th Street
Tacoma, WA 98409

The certificate shall be filed with the acceptance of the Permit/License and annually thereafter. All coverage shall be listed on one certificate with the same expiration dates.

In the event that the insurance certificate provided indicates that the insurance shall terminate or lapse during the period of the Permit/License, then, in that event, the Licensee shall furnish, at least 30 days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage has been or will be obtained prior to any such lapse or termination.

Failure to obtain or provide adequate evidence of the required insurance and coverage will entitle, but not require, the Licensor to terminate this Permit/License.

E. Modification / Adjustment of Insurance Requirements. The Licensor reserves the right to modify the insurance requirements of this Permit/License, require any other insurance coverage, or adjust the policy limits as it deems reasonably necessary to reflect then-current risk management practices. Licensee shall have thirty (30) days from receipt of written notice of the change, modification, or adjustment to provide the Licensor with a Certificate of Insurance evidencing that Licensee has obtained the required insurance as described in the notice.

F. Self-Insurance Provision.

An entity that is wholly or partially self-insured may, with the approval of the City of Tacoma, provide evidence of such self-insurance funding and, by letter, commit its self-insurance program to the minimum amounts required herein. By executing this License, Licensee agrees that it will pay any deductible or self-insured portions of the insurance or self-insurance provided.

6. TRANSMISSION LINE SAFETY

A. Clearances. Licensee shall use good and reasonable judgment with regard to type and height of vehicles allowed to access the Premises, and in allowing any use of tools or activities which could endanger Licensee's employees, licensees, agents, patrons, invitees, or any other person(s). Licensee expressly acknowledges the high voltage transmission lines over the licensed Premises and the extreme danger and hazard to life and property associated with such high voltage power lines.

B. Work under Power Lines. Licensee, for itself and on behalf of its agents and contractors and personnel, agrees to adhere to all applicable safety codes and laws, including but not limited to, National Electric Safety Code, Washington Administrative Codes, WAC 296-24-960, "Working on or Near Energized Parts" and WAC 296-155-53408, "Power Line Safety", and Tacoma's standards.

C. Grading, Digging. No filling and/or grading within said Premises shall be accomplished in such manner as to reduce vertical distance between the ground surface and Licensor's wires or jeopardize the lateral support of any of Licensor's poles or anchors. Licensee shall not excavate deeper than twenty-four inches (24") within twenty-five feet (25') of poles or anchors, nor shall Licensee excavate more than six inches (6") within four feet (4') of existing poles or anchors, with a transition to other grades not to exceed 6:1 to allow for vehicular travel, without obtaining Licensor's prior written approval. No excavation on the Premises is allowed which impedes Licensor's access to its facilities. Licensee shall fill any ditches or holes it digs on the licensed Premises each day before sunset. Prior to commencing any such approved digging, Licensee agrees to comply with RCW Chapter 19.122.

D. Electromagnetic Fields. Electric devices, including power lines, emit electromagnetic fields (EMF). Some studies have shown that EMF may affect human and/or animal biological systems. Although a National Academy of Sciences Committee has concluded that the findings to-date do not support claims that EMF fields are harmful to a person's health, the Licensee is hereby notified that potential causal connections between EMF and human diseases may exist. Licensor does not warrant that use of this Licensor's real property (the Premises) is without risk of exposure to EMF. In spite of this concern, the Licensee has decided to enter into this Permit/License with Licensor and expressly assumes all risk of harm as set forth herein.

E. Static Electrical Charge. Metallic structures (fences, metal buildings, etc.) installed near high voltage power lines may, under some conditions, become energized with a "static" electrical charge. Licensee shall take necessary measures to eliminate the possibility of static electrical shock to persons coming in contact with such structures.