

**CITY OF TACOMA
DEPARTMENT OF PUBLIC UTILITIES
POWER DIVISION
REAL ESTATE PURCHASE and SALE AGREEMENT
AGREEMENT NO. 3032**

Reference No.: P2014-046
Seller: City of Tacoma, Department of Public Utilities, Light Division, (d.b.a. Tacoma Power)
Buyer: WGW, Inc.
Legal Description(s): See Exhibit A
County: Pierce County
Tax Parcel No: Portion of 0419302002

This Real Estate Purchase and Sale Agreement, ("Agreement"), entered into on this _____ day of _____, 2015 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 WGW, Inc., a _____, 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 ("Tacoma Power Parcel" or "Property"); and,

WHEREAS, Buyer is the sole owner of the fee title to the real property located adjacent to a portion of the southerly boundary of the Tacoma Power Parcel ("Buyer's Parcel"); and,

WHEREAS, the Tacoma Power Parcel and the Buyer's Parcel are located in alignment with a traffic signal light that was installed by Pierce County in anticipation of a future road alignment that would encumber both parcels ("Road"); and

WHEREAS, Buyer intends to proceed with construction of the Road in order to facilitate development of Buyer's Parcel; and

WHEREAS, Tacoma Power does not currently intend to proceed with construction of the Road but desires to retain an easement for ingress and egress to the Tacoma Power Parcel; 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 for the purposes of developing the Road; and

WHEREAS, the Tacoma Power Parcel is not a separate legal lot and a Boundary Line Adjustment is required to legally separate it from the remainder of Tacoma Power's property.

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:

A portion of tax parcel number 041302002 located at 163rd Street East, near the intersection of Canyon Road and Military Road East, Pierce County, Washington.

As further described in Exhibit A and visually depicted in Exhibit B attached hereto and made a part hereof, together with all improvements and appurtenances, if any, and all right, title and interest in and to any rights, licenses, privileges, reversions and easements pertinent to the real property, subject to an easement reservation for Tacoma Power, its successors and assigns, for ingress and egress and those certain conditions as set forth herein. The easement reservation shall not relieve Tacoma Power from any reimbursement obligations it may have under any future cost recovery contract for Road improvements entered pursuant to Chapter 35.72 RCW and Pierce County ordinances.

The real property together with the rights and interests described above are collectively referred to herein as the "Property."

2. **Earnest Money.** As Earnest Money, Buyer will deposit Four Thousand Dollars (\$4,000.00) 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.**
3. **Purchase Price.** The total purchase price for the Property ("Purchase Price") shall be based on the square footage of the property, which the parties agree to be 15,798 square feet, and valued at \$4.00 per square foot, for a total Purchase Price of \$63,192.99. The parties agree that the square footage will be confirmed at closing and that, if necessary, the Purchase Price will be adjusted accordingly. The Purchase Price 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 "Conditions to Closing" being met, and under no circumstances later than March 1, 2016 (the "Closing Date"). "Closing," for the purpose of this Agreement, is defined as the date that all documents are executed, the Title Company has irrevocably committed to issue the Title Policy (including all endorsements required by the Buyer), the sale proceeds are available for disbursement to Tacoma Power, and legal title passes to the Buyer. Tacoma

Power is responsible for paying excise tax and one-half of the Closing Agent's fee.. The Buyer shall be responsible for the recording fees, and one-half of the Closing Agent's fee and escrow fees. Property taxes for the current year and water and other utilities constituting liens, if any, shall be prorated as of the date of Closing.

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. The parties acknowledge and agree 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. Feasibility Study, Survey, and Boundary Line Adjustment. Buyer acknowledges that, prior to Closing and at its sole cost and expense, Buyer shall have thirty (30) days from date of both parties signing this Agreement to inspect the Property and conduct any feasibility studies it deems necessary ("Feasibility Period"). Buyer shall prepare documents to achieve the Boundary Line Adjustment referred to herein. Buyer shall submit the Boundary Line Adjustment to the appropriate department within Pierce County in a timely manner to permit Closing by the Closing Date. Buyer shall provide Tacoma Power with copies of all documents comprising the application for the Boundary Line Adjustment and copies of any decisions made by Pierce County concerning the Boundary Line Adjustment. Buyer shall bear all costs and expenses related to the Boundary Line Adjustment process. Tacoma Power will assist as needed with any submittals necessary to complete this work. Tacoma Power herein grants Buyer, its employees, agents, representatives,

and surveyors a right of entry to conduct survey work. Any ground disturbing activities must receive prior written approval from and be coordinated with from Tacoma Power.

Unless Buyer provides Tacoma Power with a written notice prior to 5:00 p.m. Seattle local time on the last day of the Feasibility Period that the Buyer has determined, in Buyer's sole and absolute discretion, that the Property is suitable for Buyer's intended use or that Buyer waives this condition (an "Approval Notice"), then this Agreement shall terminate and the Earnest Money shall be returned to Buyer. 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, INCLUDING, WITHOUT LIMITATIONS, THE CONDITION OR STABILITY OF THE SOILS OR GROUND POWERS, THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS ON OR UNDER THE PROPERTY, SUITABILITY FOR ANY CONSTRUCTION OR DEVELOPMENT, ZONING AND SIMILAR MATTERS, SOLELY IN RELIANCE ON BUYER'S OWN INVESTIGATION, EXAMINATION, INSPECTION, ANALYSIS, AND EVALUATION OF THE PROPERTY. As of the date this Agreement is signed by both parties, Tacoma Power has made no representations or warranties, express or implied, regarding the Property, excluding those representations and warranties expressly provided in this Agreement.

- 6.3 Title Review. Buyer shall obtain a commitment for title insurance ("Title Commitment") no later than five (5) days after mutual execution of this Agreement, setting forth the status of title to the Property and all exceptions which would appear in an owner's policy of title insurance. Buyer shall, on or before 5:00 p.m. (Pacific Time) on the last day of the Feasibility Period, deliver to Tacoma Power, in writing, any objections to matters shown in the Title Commitment. If Buyer timely objects to any item set forth in the Title Commitment ("Title Objection Notice"), then Tacoma Power shall have the right, but not the obligation (except as provided in Section 6.3.1 of this Agreement), to attempt to cure or cause to be cured before Closing such disapproved item. Tacoma Power shall have until 5:00 p.m. (Pacific Time) on the date no later than five (5) days after receipt of Title Objection Notice ("Cure Date") to agree in writing to cure before Closing such disapproved item. If Tacoma Power elects not to cure, or fails to timely respond to Buyer's objections, Tacoma Power shall be deemed to have elected not to cure, in which event Buyer shall, either (i) terminate this Agreement, whereupon the Earnest Money shall be returned to Buyer, or (ii) waive by delivering to Tacoma Power a written waiver of its objection to the disapproved items, which shall then become permitted exceptions. Buyer's failure to timely deliver to Tacoma Power and Title Company a written notice of termination or waiver of its objection to the disapproved items shall be deemed to constitute Buyer's termination of this Agreement. Buyer shall have five (5) days after receipt of any updates to the Title Commitment to object to any new matters disclosed therein which were not disclosed in the original Title Commitment, and the procedure for objecting to such matters shall be as set forth in this Section 6.3.

6.3.1 Notwithstanding anything herein to the contrary, Tacoma Power shall be obligated to remove or discharge the following (collectively "**Seller's Encumbrance**"): (i) any monetary encumbrance; (ii) the rights and interests of any third parties; and (iii) any other title matter which is added as an exception to the Title Commitment after the initial Title Commitment that is intentionally or voluntarily placed on the Property by Tacoma Power unless approved in writing by Buyer. Should Tacoma Power fail to remove any such Seller's Encumbrance at or prior to Closing, Buyer will be entitled to cure and remove such title matter, at Buyer's sole cost and expense.

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: Gloria Fletcher
Real Property Services
3628 South 35th Street
Tacoma, WA 98409

Buyer: WGW, Inc.
13127 Houston Road E.
Sumner, WA 98390

- 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. **Waiver of RCW 64.06 Disclosure.** Buyer and Tacoma Power acknowledge that the Property constitutes "Commercial Real Estate" 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 commercial real estate.

Property declared surplus to the needs of the Utility by City Council Resolution No. _____ adopted _____ at the request of Public Utility Board Resolution No. _____ adopted _____.

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

[SIGNATURE PAGES ON FOLLOWING PAGES]

DRAFT

I

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

Accepted,

Buyer:

Seller:

Date
WGW

Date
William A. Gaines,
Utilities Director/CEO

Chris Robinson
Power Superintendent

APPROVED AS TO FORM:

Michael W. Smith
Deputy City Attorney

DRAFT

City of Tacoma Review

Dated this _____ day of _____, 2015.

TACOMA POWER REVIEWED:

Dolores Stegeman
Transmission and Distribution Manager

Jeff Singleton
Surveyor

FINANCE REVIEWED:

Andrew Cherullo
Director of Finance

DRAFT

EXHIBIT A
Legal Description

Real Estate Purchase and Sale Agreement
Agreement Number 3032
City of Tacoma to WGW



THE NORTH 30.00 FEET OF THE FOLLOWING DESCRIBED PARCELS:

PARCEL "A"

COMMENCING AT A POINT 4488.00 FEET EAST OF THE NORTHWEST CORNER OF THE
FREDERICK MEYER DONATION LAND CLAIM IN SECTION 25, TOWNSHIP 19 NORTH, RANGE 3
~~EAST OF THE WILLAMETTE MERIDIAN, IN PIERCE COUNTY, WASHINGTON, SAID POINT~~
BEING POINT "A"; THENCE EAST ALONG THE NORTH LINE OF SAID DONATION LAND CLAIM
250.48 FEET TO INTERSECT THE WEST LINE OF SECTION 30, TOWNSHIP 19 NORTH, RANGE
4 EAST OF THE WILLAMETTE MERIDIAN AND THE POINT OF BEGINNING; THENCE
CONTINUING EAST ALONG SAID NORTH LINE TO A POINT IN THE NORTHWEST QUARTER OF
SAID SECTION 30, WHICH POINT LIES 48 RODS EAST OF THE ABOVE SAID POINT "A";
THENCE SOUTH 80 RODS; THENCE WEST TO THE WEST LINE OF SAID SECTION 30; THENCE
NORTH ALONG SAID WEST LINE 80 RODS TO THE POINT OF BEGINNING.

EXCEPT THE SOUTH 770 FEET THEREOF.

ALSO EXCEPT THAT PORTION THEREOF CONVEYED TO PIERCE COUNTY BY DEEDS
RECORDED UNDER RECORDING NUMBERS 2483249 AND 8601140194.

PARCEL "B"

THE WEST 32.14 FEET OF THE EAST 62.14 FEET OF THE NORTH 549.40 FEET OF THE
FREDERICK MEYER DONATION LAND CLAIM IN SECTION 30, TOWNSHIP 19 NORTH, RANGE 4
EAST OF THE WILLAMETTE MERIDIAN, IN PIERCE COUNTY, WASHINGTON.

