

**CITY OF TACOMA  
DEPARTMENT OF PUBLIC UTILITIES  
LIGHT DIVISION  
REAL ESTATE PURCHASE AND SALE AGREEMENT**

**AGREEMENT NO. A3304**

**Reference No.: P2021-152**

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

**Buyer: Tacoma/Pierce County Habitat For Humanity  
Abbreviated**

**Legal Description: Portion of SW Qtr of NW QTR of S36, T21N, R2E, W.M., in Pierce Co.,  
WA**

**County: Pierce**

**Tax Parcel No.: Pierce County Assessor TPN 7475022110**

This REAL ESTATE PURCHASE AND SALE AGREEMENT (the "Agreement") is entered into as of 02/20/2024 (the Agreement Date) between the **CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, LIGHT DIVISION (d.b.a. Tacoma Power)**, a first class municipal corporation ("Seller") and Tacoma/Pierce County Habitat For Humanity, a Washington Non-Profit Corporation, ("Buyer").

**RECITALS**

WHEREAS, Seller is the owner of certain real property known as the former Tacoma Power Downing substation property, identified herein as the Property as more particularly described in Section 1. below.

WHEREAS, Buyer desires to purchase from Seller, and Seller desires to sell to Buyer, the Property on the terms and conditions set forth herein for public benefit as defined by RCW 39.33.015 ("Affordable Housing").

WHEREAS, prior to Closing, the Seller and Buyer will negotiate and execute a Development Agreement for the future development of the Property consistent with the City of Tacoma's goals under the Affordable Housing Action Strategy.

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:

The west 100 feet of the south 130 feet in Block 106 of Amended Map of Second School Land Addition to the City of Tacoma, as per map thereof recorded in Book 7 of Plats at page 79, records of the Pierce County Auditor.

Situate in the City of Tacoma, County of Pierce, State of Washington.

Also known as Pierce County Assessor Tax Parcel No. 7475022110 (the "Property").

2. Deposit. Buyer has deposited with Seller the amount of **TEN THOUSAND and No/100 U.S. Dollars (\$10,000.00)**, which shall be held by Seller in a non-interest bearing account pending execution of this Agreement as the earnest money deposit (the "Deposit"). Upon execution of this Agreement by both Seller and Buyer (the "Agreement Date"), Seller shall deliver the Deposit to Chicago Title Company in Tacoma, Washington (the "Escrow Agent"), as escrow agent for the Closing of this transaction. The Deposit will be held in an interest-bearing account by the Escrow Agent for the benefit of the parties pursuant to the terms of this Agreement. Any interest that accrues on the Deposit will be for the benefit of Buyer; provided, however, that if Buyer forfeits the Deposit to Seller pursuant to the terms of this Agreement, then all interest accrued on the Deposit will be paid to Seller. Unless otherwise provided in this Agreement, the Deposit and any accrued interest shall be applied to the closing costs and proration outlined in Section 8 herein, and any remaining funds will be distributed to the Buyer.

3. Consideration. Consideration for this purchase (the "Consideration") shall consist of the public benefit purposes and Buyer's obligations specified in RCW 39.33.015 and the Buyer's obligations pursuant to the Covenant specified in the Deed.

4. Title to Property.

4.1 Conveyance. At Closing, Seller shall convey to Buyer fee simple title to the Property by a duly executed and acknowledged quit claim deed (the "Deed"), subject to a 50-year covenant that the property shall be used for public benefit as defined by RCW 39.33.015, with a minimum of twenty-five percent (25%) of proposed units at or below fifty percent (50%) Area Median Income (AMI), with remedies should any or all of the above terms be violated by the Grantee during said 50-year period (the "Covenant") substantially in the form of **Exhibit "A"** attached hereto and by this reference incorporated herein, subject only to those encumbrances that Buyer approves pursuant to Section 4.3. below (the "Permitted Encumbrances").

4.2 Preliminary Commitment. Upon the Agreement Date, Seller authorizes Buyer to order a preliminary commitment, at Buyer's option and expense, for an owner's standard coverage policy of title insurance to be issued by Chicago Title Company in Tacoma, Washington (the "Title Company") and accompanied by copies of all documents referred to in the commitment (the "Preliminary Commitment").

4.3 Condition of Title. If Buyer receives a Preliminary Commitment pursuant to Section 4.2, Buyer shall advise Seller by written notice what encumbrances to title, if any, are disapproved by Buyer ("Disapproved Encumbrances") within ten (10) business days of receipt of the Preliminary Commitment. All monetary encumbrances other than non-delinquent ad valorem property taxes will be deemed to be disapproved. Seller will have ten (10) business days after receipt of Buyer's notice to give Buyer notice that (i) Seller will remove Disapproved Encumbrances, or (ii) Seller elects not to remove Disapproved Encumbrances. If Seller fails to give Buyer notice before the expiration of the ten (10) day period, Seller will be deemed to have elected not to remove Disapproved Encumbrances. Notwithstanding anything to the contrary in this Agreement, Seller shall remove from title on or before the Closing Date all monetary encumbrances other than those approved by Buyer. If Seller elects not to remove any Disapproved Encumbrances, Buyer will have fifteen (15) business days to notify Seller of Buyer's election either to proceed with the purchase and take the Property subject to those encumbrances, or to terminate this Agreement. If Buyer elects to terminate this Agreement pursuant to this section, the escrow will be terminated, the Deposit will be returned immediately to Buyer, all documents and other funds will be returned to the party who deposited them, and neither party will have any further rights or obligations under this Agreement, except as otherwise provided for in this Agreement. If this Agreement is terminated, Buyer solely shall bear any costs of terminating the escrow and any cancellation fee for the Preliminary Commitment.

4.4 Title Policy. At Closing, at Buyer's option and expense, Buyer shall cause the Title Company to issue to Buyer a standard coverage owner's policy of title insurance insuring Buyer's title to the Property, subject only to the Permitted Encumbrances (the "Title Policy"). The Title Policy must be dated as of the Closing Date.

5. Conditions to Closing. The satisfaction of each of the following at or before Closing shall be a condition of Closing:

5.1 Tacoma Public Utility Board and Tacoma City Council Approval. This Agreement, and the transaction contemplated hereby, must be duly approved by the Tacoma Public Utility Board and the Tacoma City Council prior to Closing. If said approvals are not obtained, this Agreement will terminate, and the Deposit, less any costs advanced or committed for Buyer as authorized herein or other costs subsequently agreed to in writing, will be returned immediately to Buyer, all documents and other funds will be returned to the party who deposited them, and neither party will have any further rights or obligations under this Agreement, except as otherwise provided for in this Agreement. Nothing in this Paragraph 5.1 will obligate Seller to obtain Tacoma Public Utility Board or City Council approval beyond the ordinary course of City of Tacoma and Department of Public Utilities procedures.

5.2 Buyer's Indemnification. Buyer agrees to assume all liability for and to defend, indemnify and save Seller harmless from all liability and 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 Non-Suitability. Buyer hereby waives the right to terminate this Agreement if, in Buyer's good faith judgment, the Property is not suitable for Buyer's intended use. However, in the event Buyer does not complete the purchase, Buyer shall promptly repair any damage to the Property caused by or resulting from the activities of Buyer or its agents or employees, returning the Property as near as is practicable to its original condition.

5.5 Development Agreement. Prior to Closing, Buyer and Seller shall enter into a Development Agreement (the "Development Agreement") specifying the terms and conditions of future development of the Property for public benefit as defined by RCW 39.33.015 and consistent with the goals established by the City of Tacoma.

6. Condition of the Property.

6.1 "As Is". Buyer acknowledges that Buyer is purchasing and shall acquire the Property under this Agreement in its physical condition existing at Closing, "AS-IS, "WHERE IS" AND WITH ALL FAULTS. THIS ACKNOWLEDGEMENT INCLUDES, WITHOUT LIMITATIONS, THAT THE BUYER ACCEPTS THE PROPERTY REGARDLESS OF (1) THE CONDITION OR STABILITY OF THE SOILS OR GROUND WATERS, (2) THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS ON OR UNDER THE PROPERTY, (3) SUITABILITY FOR ANY CONSTRUCTION OR DEVELOPMENT, AND (4) ZONING AND/OR SIMILAR MATTERS. As of the Agreement

Date, Seller has made no representations or warranties, express or implied, regarding the Property, excluding those representations and warranties expressly provided in this Agreement. Seller shall surrender the Property in as good condition, except for normal wear and tear, as exists on the Agreement Date. Seller agrees that it will not damage nor commit waste on the Property between the Agreement Date and Closing.

6.2 Release. Except with respect to Seller's representations and warranties expressly provided in this Agreement, Buyer releases Seller and its directors, officers, employees, and agents from any and all statutory, common law, and other claims, obligations, causes of action, losses, damages, liabilities, costs and expenses (including without limitation attorney fees), unknown to Seller, that Buyer may have against Seller arising from, in whole or in part, or related in any way to the physical condition of the Property (including conditions not readily apparent and the presence of any material classified under state or federal law or regulations as hazardous). Buyer assumes all liability and responsibility for any hazardous materials on or under the property and all costs for remediation of same, and shall not seek reimbursement from Seller therefore.

6.3 Inspections. Buyer agrees that it will rely on its own inspections and evaluations of the Property, with the exception of written documentation, including, but not limited to any disclosures required by law, provided to it by Seller, to determine the suitability of the Property for Buyer's intended use.

7. Closing. This transaction will be closed in escrow by the Escrow Agent. The closing will occur not later than thirty (30) business (excluding weekends and City of Tacoma observed holidays) days following satisfaction of all conditions set forth under Section 5. Conditions to Closing herein (the "Closing Date"). "Closing", for the purpose of this Agreement, is defined as the date that all documents are executed and legal title of the Property passes to Buyer. If Closing does not occur on or before the Closing Date, or any later date mutually agreed to in writing by Seller and Buyer, the Escrow Agent will immediately terminate the sale and forward the Deposit to Buyer, less the Deposit due Seller under Section 11. Events of Default of this Agreement. When notified by the Escrow Agent, Buyer will deposit with the Escrow Agent without delay all instruments and monies required to complete the transaction in accordance with this Agreement.

8. Closing Costs and Proration. If Buyer elects to purchase title insurance, Buyer shall pay the premium for a standard coverage owner's policy of title insurance. Buyer shall pay the additional premium, if any, attributable to an extended coverage owner's policy of title insurance (if elected by Buyer) and any endorsements required by Buyer. Buyer shall also pay state of Washington real estate excise taxes applicable to the sale, if any, the cost of recording the deed, and the Escrow Agent's escrow fee. 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 Purchase Price (including the Deposit) will be returned to Buyer.

10. Possession. Seller shall deliver possession of the Property to Buyer upon Closing. Seller shall remove any and all personal property belonging to Seller from the Property on or before Closing, unless any items are specifically authorized to remain in writing by Buyer.

11. Events of Default. In the event Buyer fails, without legal excuse to complete the purchase of the Property, then the Deposit shall be forfeited to Seller as the sole and exclusive remedy available to Seller for such failure. In the event Seller fails, without legal excuse, to complete the sale of the Property, Buyer shall be entitled to immediate return of the Deposit), and may pursue any remedies available to it in law or equity, including specific performance.

12. Notices. Any notice under this Agreement must be in writing and be personally delivered, delivered by recognized overnight courier service, given by mail or e-mail. 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 – 2<sup>nd</sup> Floor  
3628 S. 35<sup>th</sup> Street  
Tacoma, WA 98409  
e-mail: [gmuller@cityoftacoma.org](mailto:gmuller@cityoftacoma.org)

Buyer: Tacoma/Pierce County Habitat For Humanity  
4824 South Tacoma Way  
Tacoma, WA 98409  
e-mail: [mfife@tpc-habitat.org](mailto:mfife@tpc-habitat.org)

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 e-mail, the same day as verified by electronic "Delivery Receipt".

13. Counterparts; Electronic Signatures. This Agreement may be executed in any number of counterparts and by different parties hereto, each of which counterpart when so executed shall have the same force and effect as if that party had signed all other counterparts. Electronically 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. Professional Advice. Seller and Buyer hereby acknowledge that it may be advisable for either or both parties to obtain independent legal, tax or other professional advice in connection with this transaction, as the terms and conditions of this Agreement affect the parties' rights and obligations. The parties agree that they have satisfied themselves that they understand the terms and conditions of this sale and have accepted full responsibility to seek such professional advice as they deem necessary.

16. Amendments. This Agreement may be amended or modified only by a written instrument executed by Seller and Buyer.

17. Continuation and Survival of Representations and Warranties. All representations and warranties by the respective parties contained in this Agreement or made in writing pursuant to this Agreement are intended to and will remain true and correct as of Closing, will be deemed to be material, and will survive the 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.

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

19. Attorney Fees. If either party fails to perform any of its obligations under this Agreement or if a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the party not prevailing in the dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights under this Agreement, including without limitation, court costs and reasonable attorney fees incurred in connection with any federal, state or bankruptcy proceeding.

20. Time of the Essence. Time is of the essence of this Agreement and of all acts required to be done and performed by the parties hereto.

21. FIRPTA. If required, 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, Seller will withhold and pay the required amount to the Internal Revenue Service.

22. Waiver. Neither Seller's nor Buyer's waiver of the breach of any covenant under this Agreement will be construed as a waiver of the breach of any other covenants or as a waiver of a subsequent breach of the same covenant.

23. Nonmerger. The terms and provisions of this Agreement, including without limitation, all indemnification obligations, will not merge in, but will survive the Closing of the transaction contemplated under this Agreement.

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

25. 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.

26. 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.

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

28. Waiver of RCW 64.06 Disclosure. Buyer and Seller acknowledge that the Property may constitute "Commercial Real Estate" or "Residential Real Property" as defined in RCW 64.06.005. Buyer waives receipt of the seller disclosure statement required under RCW 64.06 for transactions involving the sale of such real property, except for the section entitled "Environmental." The Environmental section of the seller disclosure statement (the "Disclosure Statement") shall be provided to Buyer within five business days after acceptance of this Agreement. Buyer shall within three business days thereafter either deliver written notice to Seller to rescind the Agreement, else the Disclosure Statement will be deemed approved and accepted by Buyer. If Buyer rescinds this Agreement, the Purchase Price (including the Deposit, but less any costs advanced or committed for Buyer as authorized herein, or other costs subsequently agreed to in writing) will be returned immediately to Buyer, all documents and other funds will be returned to the party who deposited

them, and neither party will have any further rights or obligations under this Agreement, except as otherwise provided for in this Agreement.

29. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the purchase and sale of the Property, and supersedes all prior agreements and understandings, oral or written, between the parties relating to the subject matter of this Agreement.

**{Remainder of Page Intentionally Left Blank}**

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

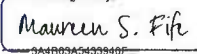
SELLER:


BUYER:

TACOMA POWER

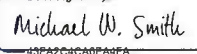
TACOMA/PIERCE COUNTY HABITAT  
FOR HUMANITY

DocuSigned by:  
 01/02/2024  
BDBD15F08A447B  
Jackie Flowers, Date  
Director of Utilities


DocuSigned by:  
 02/20/2024  
3A4B03A5433940F  
Maureen S. Fife, Date  
Chief Executive Officer

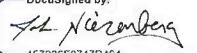
DocuSigned by:  
 12/28/2023  
FBDAAZCA4EC84B0  
Chris Robinson,  
Power Superintendent

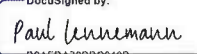
Approved as to form:

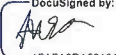
DocuSigned by:  
 12/27/2023  
43FA2C4C80E8AFA  
Michael W. Smith,  
Deputy City Attorney

City of Tacoma Review

DocuSigned by:  
 12/22/2023  
37A0F23CF3C831  
Joseph A. Wilson,  
Power Section Manager

DocuSigned by:  
 12/21/2023  
45722BE9747D4B4  
John Nierenberg,  
Power Section Assistant Manager

DocuSigned by:  
 12/21/2023  
BB4F0A739BC040B  
Paul Lennemann,  
Tacoma Power Surveying Manager

DocuSigned by:  
 12/27/2023  
1FAE63D650164E0  
Andrew Cherullo,  
Director of Finance

DS  
ES

DS  
SL



**EXHIBIT "A"**

**After Recording Mail To:**

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

**CITY OF TACOMA  
DEPARTMENT OF PUBLIC UTILITIES  
QUIT CLAIM DEED NO. 6779**

Reference No.	P2021-152
Grantor:	City of Tacoma, Department of Public Utilities, Light Division (d.b.a. Tacoma Power)
Grantee:	Tacoma/Pierce County Habitat For Humanity
Abbr. Legal Description:	Portion of SW Qtr of NW Qtr of S36, T21N, R2E, W.M., Pierce Co., WA
Tax Parcel No.:	Pierce County Assessor TPN 7475022110

The Grantor, CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, LIGHT DIVISION (d.b.a. Tacoma Power), a first class municipal corporation, for and in consideration of the public benefit purposes and Buyer's obligations specified in RCW 39.33.015, conveys and quit claims to Tacoma/Pierce County Habitat For Humanity, a Washington Non-Profit Corporation, as Grantee, all interest in the following described real property (the "Property") situate in Pierce County, State of Washington, to-wit:

The west 100 feet of the south 130 feet in Block 106 of Amended Map of Second School Land Addition to the City of Tacoma, as per map thereof recorded in Book 7 of Plats at page 79, records of the Pierce County Auditor.

Situate in the City of Tacoma, County of Pierce, State of Washington.

Also known as Pierce County Assessor Tax Parcel No. 7475022110.

### **CONDITION SUBSEQUENT**

For a period of 50 years from the date of conveyance, this deed and all rights of Grantee are subject to a condition subsequent upon the occurrence of which Grantor or its successors or assigns shall have the absolute right to terminate, by notice to Grantee or by re-entering and taking possession of the Property, the estate conveyed under this deed and all rights and/or encumbrances of all persons claiming any by or through Grantee, whereupon fee simple title to the Property shall re-vest entirely in Grantor or its governmental successors or assigns. The condition subsequent shall have occurred if Grantee shall fail to use the Property for public benefit as defined by RCW 39.33.015 and/or if Grantee shall fail to sell or lease a minimum of 25% percent of the proposed housing units to be built on the Property to buyers or tenants whose income is at or below fifty percent (50%) Area Median Income (AMI).

Further, Grantor may, in its absolute and sole discretion and election, forever revoke its herein-described rights upon condition subsequent upon payment by Grantee of the fair market value of the Property at the time of said election.

### **COVENANT REGARDING PUBLIC BENEFIT**

The Property herein shall be used for public benefit as defined by RCW 39.33.015, and if Grantee shall sell or lease the Property or any housing units to be built on the Property, a minimum of 25% percent of said housing units must be sold or leased to buyers or tenants whose income is at or below fifty percent (50%) Area Median Income (AMI), which shall be a covenant running with the land for 50 years following recordation of this Quit Claim Deed.

### **COVENANT REGARDING ENVIRONMENTAL CONDITIONS**

The Property herein is conveyed AS-IS, WHERE-IS, WITH-ALL-FAULTS, AND WITHOUT ANY REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, AS TO ITS CONDITION, ENVIRONMENTAL OR OTHERWISE, OR ITS SUITABILITY OR SUFFICIENCY FOR THE GRANTEE'S INTENDED USES AND PURPOSES. Grantee acknowledges that adverse physical, economic or other conditions (including without limitation, adverse environmental soils and ground-water conditions), either latent or patent, may exist on the Property and assumes Grantor's responsibility for all environmental conditions of the Property, known or unknown, including but not limited to responsibility, if any, for investigation, removal or remediation actions relating to the presence, release or threatened release of any Hazardous Substance or other environmental contamination relating to the Property. Grantee also releases and shall indemnify, defend, and hold Grantor and its past, present and future officials, employees, and agents, harmless from and against any and all claims, demands, penalties, fees, damages, losses, expenses (including but not limited to regulatory

agencies, attorneys, contractors and consultants' fees and costs), and liabilities arising out of the condition of the Property including but not limited to any alleged or actual past, present or future presence, release or threatened release of any Hazardous Substance in, on, under or emanating from the Property, or any portion thereof or improvement thereon, from any cause whatsoever; it being intended that Grantee shall so indemnify Grantor and such personnel without regard to any fault or responsibility of Grantor or Grantee; provided, however, that Grantee shall not release or indemnify, defend, and hold Grantor harmless for claims, demands, penalties, fees, damages, losses, expenses, and liabilities to the extent arising out of Grantor's post-Closing activities on the Property, if any. The obligation to complete all environmental investigation, removal or remediation of the Property and the acknowledgement, release and indemnification touch and concern the Property, restrict the use of the Property, constitute an assessment against the Property and are intended to run with the land and bind Grantee and Grantee's heirs, successors and assigns, and inure to the benefit of Grantor and its successors and assigns.

For purposes of this COVENANT, the term "Hazardous Substance" shall mean any hazardous or dangerous substance, waste or pollutant, including but not limited to petroleum products and compounds containing them, polychlorinated biphenyls ("PCBs") and compounds containing them; asbestos or asbestos-containing materials in any friable form; or any substance or material that is now or hereafter becomes regulated under any federal, state, or local statute, ordinance, rule, regulation, or other law relating to environmental protection, contamination or cleanup, including the Washington Model Toxics Control Act ("MTCA"), the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the Superfund Amendment and Reauthorization Act ("SARA"), and Community Right to Know Act, the Toxic Substances Control Act ("TSCA"), Federal Water Pollution Control Act ("CWA"), the Clean Air Act ("CAA"), the Resource Conservation and Recovery Act ("RCRA"), the Oil Pollution Act of 1990, the Washington Water Pollution Control Act, the Clean Air Washington Act, the Washington Hazardous Waste Management Act ("HWMA"), and the Washington Oil and Hazardous Substance Spill Prevention and Response Act..

Grantee's release shall include both claims by Grantee against Grantor and cross-claims against Grantor by Grantee based upon claims made against Grantee by any and all third parties. The obligation to indemnify and defend shall include, but not be limited to, any liability of Grantor to any and all federal, state or local regulatory agencies or other persons or entities for remedial action costs and natural resources damages claims. The obligation to complete all environmental investigation, removal or remediation of the Property and the acknowledgement, release and indemnification touch and concern the Property, restrict the use of the Property, constitute an assessment against the Property and are intended to run with the land and bind Grantee and Grantee's heirs, successors and assigns, and inure to the benefit of Grantor and its successors and assigns. This release means that Grantee accepts the Property "as-is, where-is and with-all-faults," and that

Grantee assumes all responsibility of Grantor to investigate, remove and remediate any environmental conditions on the Property and has no recourse against Grantor or any of its officers, employees or agents for any claim or liability with respect to the condition of the Property at Closing.

Grantor shall have the right to defend itself and seek from Grantee recovery of any damages, liabilities, settlement awards and defense costs and expenses incurred by Grantor if Grantee does not accept unconditionally Grantor's tender to Grantee of the duty to investigate, remove and/or remediate environmental conditions on the Property and/or defend and indemnify Grantor against any such claim, suit, demand, penalty, fee, damages, losses, cost or expense. This Covenant shall apply regardless of whether or not Grantee is culpable, negligent or in violation of any law, ordinance, rule or regulation, but shall not apply to the extent that such damages, liabilities, settlement awards and defense costs and expenses arise out of Grantor's post-Closing activities on the Property. This Covenant is not intended, nor shall it, release, discharge or affect any rights or causes of action that Grantor or Grantee may have against any other person or entity, except as otherwise expressly stated herein, and each of the parties reserves all such rights including, but not limited to, claims for contribution or cost recovery relating to any Hazardous Substance in, on, under or emanating from the Property.

Authorized by City Council Resolution No. \_\_\_\_\_ adopted on \_\_\_\_\_  
at the request of Public Utility Board Resolution No. U-\_\_\_\_\_ adopted on \_\_\_\_\_.

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

CITY OF TACOMA

By: \_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

**Accepted by Grantee**

TACOMA/PIERCE COUNTY HABITAT  
FOR HUMANITY

By: \_\_\_\_\_  
Printed Name: Maureen S. Fife, CEO  
Date: \_\_\_\_\_

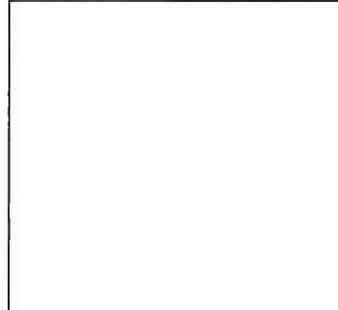
P2021-152/D6779

STATE OF WASHINGTON    )  
  )  
COUNTY OF PIERCE                    )

On \_\_\_\_\_, before me personally appeared Victoria Woodards, 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 \_\_\_\_\_

P2021-152/D6779

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

APPROVED:

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Jackie Flowers,  
Director of Utilities

AUTHORIZED:

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Chris Robinson,  
Power Superintendent

REVIEWED:

---

Joseph A. Wilson,  
Power Section Manager

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John Nierenberg,  
Power Section Assistant Manager

REVIEWED:

---

Paul Lennemann,  
Tacoma Power Surveying Manager

APPROVED AS TO FORM:

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Michael W. Smith,  
Deputy City Attorney

When Recorded Return To:  
City of Tacoma, Community & Economic Development  
Attn: Felicia Medlen  
747 Market St, Room 737  
Tacoma, WA 98402

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<b>Document Title:</b>	DEVELOPMENT AGREEMENT
<b>Grantor:</b>	CITY OF TACOMA, a first class municipal corporation
<b>Grantee:</b>	TACOMA/PIERCE COUNTY HABITAT FOR HUMANITY, a Washington Public Benefit Corporation
<b>Legal Description:</b>	SEE EXHIBIT A
<b>Assessor's Tax Parcel Number:</b>	7475022110

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**DEVELOPMENT AGREEMENT  
FOR THE DEVELOPMENT OF REAL PROPERTY  
FOR AFFORDABLE HOUSING PURPOSES**

**This Development Agreement** is entered into as of \_\_\_\_\_, between the City of Tacoma, a first class municipal corporation ("City"), and Tacoma/Pierce County Habitat for Humanity, a Washington Non-Profit Corporation, and its successors and assigns ("Developer") (City and Developer, together, "Parties").

**RECITALS**

WHEREAS the Parties have entered into that certain Purchase and Sale Agreement dated \_\_\_\_\_ ("PSA"), for the disposition and development of certain City owned real property known as Pierce County Tax Parcel No. 7475022110, and as legally described in Exhibit A ("Property") attached hereto and by this reference incorporated herein.

WHEREAS the Property will be conveyed to Developer by a Quit Claim Deed in the form attached to the PSA as Exhibit A ("Deed"), which includes a Condition Subsequent and a Covenant Regarding Public Benefit (together, the "Affordable Housing Encumbrance"). Conveyance and recording of the Quit Claim Deed is conditioned upon Developer executing this Development Agreement ("DA").

WHEREAS the City's primary purpose in conveying the Property to the Developer is to see it developed into affordable housing within a commercially reasonable time. To that end, this DA is an integral part of the consideration for the conveyance of the Property.

WHEREAS by this DA, Developer agrees to use the Property for the purpose of developing the Property as further set forth in Section I below, to be constructed in conformance with Developer's Development Proposal dated August 3<sup>rd</sup>, 2021.

In light of the foregoing, and as consideration for the conveyance of the Property, the City and the Developer hereby covenant and agree as follows:

**I. Developer Covenants.**

**A. Designated Purpose.** Developer covenants to use and develop the Property in conformance with the Developer's Proposal dated August 3<sup>rd</sup>, 2021 ("Proposal"). To the extent that any development plans submitted by the Developer and approved by the City deviate from the Proposal, said development plans shall control and Developer shall



develop the Property in conformance with said development plans. In the absence of any such deviations, Developer shall develop the Property to include, at a minimum, the following:

1. Housing:

- (i) Cottage Style Housing with a minimum of three (3) units
- (ii) A resale restricted land trust, whereby Developer shall maintain ownership of the land and the homeowner(s) shall lease the land through a ground lease for a nominal fee.
  - a. The ground lease shall define a pre-agreed upon resale formula that will ensure the accrual of modest equity for the homeowner while keeping the homes affordable for a minimum of 50 years from the execution of the Deed.
- (iii) A minimum of twenty-five percent (25%) of constructed units shall sell, lease or rent at or below fifty percent (50%) Area Median Income

2. Additional required features:

- (i) Homes shall meet or exceed requirements set forth by the International Building Code and International Residential Code as adopted and amended by the Washington State Building Code Council under the State Building Code and adopted as the official Building Code of the City of Tacoma. Homes will achieve a HERS (Home Energy Rating System) score of 55 or better.
- (ii) The property shall be landscaped and aesthetically complementary to the surrounding neighborhood

The foregoing are minimum requirements only. Developer may add square footage to the project where feasible, and is encouraged to do so. The above development requirements are referred to herein as the "Designated Development Use."

**B. Construction Commencement/Completion.**

1. Developer shall begin pre-construction of its project on the Property ***within 90 days of closing***, in accordance with the construction schedule as shown on Exhibit C. That construction schedule is restated here as follows:

- (a) Developer shall commence construction by October 1<sup>st</sup>, 2026 pending full funding, and
- (b) Developer shall complete construction no later than December 31<sup>st</sup>, 2028.

2. Once home construction is commenced, Developer must diligently pursue construction to completion. If at any time during construction of the project, Developer ceases construction for six (6) months or more, Developer shall be in violation of this Covenant.

**C. Construction Completion.** Developer covenants to complete all construction ***no later than December 31<sup>st</sup>, 2028.***

**D. LEAP and Equity in Contracting Participation.** Developer agrees to use its best efforts to participate in the City of Tacoma's LEAP and EIC program as outlined in Exhibit B hereto.

**E. Local Improvement District.** Developer hereby covenants to not oppose the formation of any Local Improvement District ("LID") in which Developer, as the owner of the Property, is considered a benefitted owner.

**F. Development Team.** Developer has agreed to employ architects, engineers and construction firms, contractors and subcontractors that have a minimum of five (5) years' experience in constructing affordable housing in its project on the Property, and shall identify a project manager to oversee all aspects of the project and coordinate with City planning, permitting and housing staff;

**G. Covenant for Affordability.** Upon completion of construction, Developer agrees to comply with the Affordable Housing Encumbrance.

## **II. City Covenants.**

The City covenants to work cooperatively with Developer to meet the construction commencement deadline and subsequent construction completion deadlines set forth herein and in the PSA and to assist Developer in order to achieve the following:

1. Compliance with development requirements and standards,
2. Design approval,
3. Building permit issuance, and
4. Issuance of certificate of occupancy upon project completion.

## **III. Remedies**

If Developer fails to meet any of the milestones in the construction schedule, the City shall have the right to reacquire, at no cost to the City, the Property, including any and all improvements thereon or therein. Further, City may, in its absolute and sole discretion and election, forever revoke this Covenant upon payment by Grantee to Grantor of the fair market value of the Property at the time of said election.

## **IV. Indemnification of the City and Developer.**

**A.** Developer covenants to indemnify, defend, and hold the City harmless from and against all claim, liability, loss, damage, cost, or expense (including reasonable attorneys' fees, court costs, and amounts paid in settlements and judgment) incurred in connection with Developer's development activity, construction activity, or other liability arising in any manner out of its activities on the Property, including the construction of improvements on the Property, as well as any act or omission of Developer or its members, agents, employees, representatives, contractors, subcontractors, successors, assigns or invitees, on or with respect to the Property. The City shall not be entitled to such indemnification to the extent that such claim, liability, loss, damage, cost or expense is caused by the negligence or willful misconduct of the City.

**B.** Promptly following receipt of notice, the City shall give Developer written notice of any claim for which Developer has indemnified the City hereunder, and the relevant party shall thereafter vigorously defend such claim on behalf of the City. Failure to give prompt notice to Developer shall not constitute a bar to the indemnification hereunder unless such delay has prejudiced Developer in the defense of such claim. If Developer is required to defend any action or proceeding pursuant to this Section to which action or proceeding the City is made a party, the City shall be entitled to appear, defend or otherwise take part in the matter involved, at its election, by counsel of its own choosing, and to the extent the City is indemnified under this section, Developer shall bear the cost of the City's defense, including reasonable attorneys' fees and costs. No settlement of any non-monetary claim shall be made without the City's written approval, not to be unreasonably withheld.

**C.** Developer agrees to include in each construction contract for construction of its project or other work on the Property that if there is liability for damage or injury during construction, each contractor waives immunity under the Workers' Compensation Laws of the State of Washington, Title 51 RCW, for claims brought by its employees against the City. Further, each contractor shall agree to indemnify and hold the City harmless for damages attributable to the contractor's negligence.

**D.** The City shall indemnify, defend, and hold Developer harmless from and against all claim, liability, loss, damage, cost, or expense (including reasonable attorneys' fees, court costs, and amounts paid in settlements and judgment) incurred in connection with the City's negligence or other legally culpable conduct in performing its obligations under this DA.

## **V. Miscellaneous Provisions.**

**A. No Joint Venture.** It is not intended by this DA to, and nothing contained in this DA shall, create any partnership or joint venture or create the relationship of principal and agent between Developer and the City, or any of their successors in interest.

**B. Enforcement and Remedies.** In the event of any violation of any of the provisions of this DA by the parties, the non-violating party shall have the right to enforce the violated covenant by any appropriate proceedings at law or in equity, including the right to apply to a court of competent jurisdiction for an injunction against such violation, or for specific performance. Any remedies specifically provided herein are non-exclusive and are in addition to all other remedies available to the non-violating party at law or in equity.

**C. Covenants to Run With the Land.** The City and Developer hereby declare their express intent that the covenants and conditions set forth in this DA shall run with the land, and shall bind all successors in title to the Property.

**D. Governing Law and Choice of Venue.** This DA shall be governed by the laws of the State of Washington without regard to any principles of Conflicts of Laws. Any action brought regarding this DA shall be brought in the Superior Court for the State of Washington in Pierce County.

**E. Amendments.** This DA may be amended only by a written instrument executed by all the parties hereto or their successors in title, and duly recorded in the Official Records of Pierce County, Washington.

**F. Severability.** If any provision of this DA shall be found invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions of this DA shall not in any way be affected or impaired thereby.

**G. Electronic Signatures.** This document may be signed electronically. Electronic signatures on this document are legally binding and enforceable.

**H. Recording.** This DA shall be recorded in the real property records of Pierce County, Washington.

IN WITNESS WHEREOF, the City and Developer have caused this Development Agreement to be executed as of the day and year written above and warrant by signing below that they have the authority to enter into this Development Agreement.

**CITY OF TACOMA**

**DEVELOPER**

\_\_\_\_\_  
Elizabeth A. Pauli  
City Manager

\_\_\_\_\_  
By:  
Its:

\_\_\_\_\_  
Jackie Flowers,  
Director of Utilities

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy City Attorney

APPROVED:

\_\_\_\_\_  
Community and Economic Development Director

\_\_\_\_\_  
Power Superintendent

**EXHIBIT A**  
**Legal Description**

The west 100 feet of the south 130 feet in Block 106 of Amended Map of Second School Land Addition to the City of Tacoma, as per map thereof recorded in Book 7 of Plats at page 79, records of the Pierce County Auditor.

Situate in the City of Tacoma, County of Pierce, State of Washington.

Also known as Pierce County Assessor Tax Parcel No. 7475022110.

**EXHIBIT B**  
**LEAP and Equity In Contracting**

**CITY OF TACOMA LEAP & EQUITY IN CONTRACTING (f/k/a SBE) PARTICIPATION**

Developer agrees to comply with the City of Tacoma's Local Employment and Apprenticeship Training Program (LEAP) and Equity in Contracting ("EIC"; f/k/a Small Business Enterprise) program by attempting to ensure that all contractors performing work on the Project make their best efforts to comply with the program requirements. In an effort to develop relationships with the local community and promote the local work force and subcontracting businesses, Developer will notify each contractor and Bidders of the LEAP and EIC requirements and strongly encourage participation in the programs.

- I. LEAP Utilization Goal: The City of Tacoma's LEAP program has established two requirements that may be satisfied concurrently:
  - a. Local Employment Requirement: 15% of total labor hours must be provided by:
    - i. Residents of the City of Tacoma
    - ii. Residents of the Economically Distressed Areas of the Tacoma Public Utilities Service Area
  - b. Apprentice Utilization Requirement: 15% of total labor hours must be provided by Apprentices affiliated with Washington State Apprenticeship and Training Council approved programs who are:
    - i. Residents of any county of the Tacoma Public Utilities Service Area
- II. EIC Annual Goal: The City of Tacoma's EIC program has established annual subcontracting goals of:
  - a. 10% Minority Business Enterprise (MBE)
  - b. 8% Women Business Enterprise (WBE)
  - c. 7% Small/Disadvantaged Business Enterprise (SBE/DBE)

Contractors that agree to comply with the City of Tacoma LEAP and EIC programs must track the local hire and apprentice hours worked, and EIC contracts awarded under Developer's Project. It shall be the responsibility of the contractors that qualify for and are participating in each respective program to supply the City of Tacoma with data, in such form as prescribed by the City, that shows reasonable evidence of compliance with LEAP and EIC. A final participation tracking report shall be prepared by the City of Tacoma upon completion of the Project.

LEAP and EIC can assist contractors in identifying qualified workers and subcontractors in meeting their business and workforce needs as identified in their respective bid submittals and scopes of work.

**Program Contacts:**

**LEAP** <http://www.cityoftacoma.org/leap>

Carol Wolfe

[cwolfe@cityoftacoma.org](mailto:cwolfe@cityoftacoma.org)

253-591-5384

**EIC** <https://www.cityoftacoma.org/cms/One.aspx?portalid=169&pageid=26616>

Carol Wolfe

[cwolfe@cityoftacoma.org](mailto:cwolfe@cityoftacoma.org)

253-591-5384

## **EXHIBIT C**

### **Development Plan/Construction Schedule**

- (a) Developer shall commence construction by October 1<sup>st</sup>, 2026, and
- (b) Developer shall complete construction no later than December 31<sup>st</sup>, 2028.