

**CITY OF TACOMA
DEPARTMENT OF PUBLIC UTILITIES
WATER DIVISION
REAL ESTATE PURCHASE and SALE AGREEMENT
AGREEMENT NO. 3114**

Seller: City of Tacoma, Department of Public Utilities, Water Division, (d.b.a. Tacoma Water)
Buyer: Tacoma School District #10
Abbreviated Legal Description: Portion of SW Quarter of Sec 30 T 30 R 3E
County: Pierce County
Tax Parcel No: Adjacent to 786500-042-0 and 786500-043-0

This Real Estate Purchase and Sale Agreement, ("Agreement"), entered into on this _____ day of _____, 2016 between the CITY OF TACOMA, through its DEPARTMENT OF PUBLIC UTILITIES, WATER DIVISION (d.b.a. Tacoma Water), a municipal corporation, hereinafter referred to as the "City" or "Tacoma Water" and TACOMA SCHOOL DISTRICT No. 10, a quasi-municipal corporation, hereinafter referred to as "Buyer."

Whereas, Tacoma Water is the owner of certain real property situate in the Northeast Quarter of the Southwest Quarter of Section 30, Township 20 North, Range 3 East. W.M., Pierce County, Washington, commonly known as the "Flume Line Right of Way"; and,

Whereas, Buyer has used a portion of the Flume Line for various activities related to its operation of Arlington Elementary School, which occupies the adjacent property, under the terms and conditions set forth in a use permit between the parties since 1953; and

Whereas, Buyer has received permission to remodel Arlington Elementary School, and the remodel is designed to include a reconfiguration of the existing site plan and the installation of permanent improvements to the Flume Line Right of Way; and

Whereas, the water pipeline running within the affected portion of the Flume Line Right of Way has been abandoned; and

Whereas, Tacoma Water has authorized the construction of a public trail, ("Water Flume Line Trail") on a portion of the Flume Line Right of Way; and

Whereas, Buyer desires to purchase that portion of the Flume Line Right of Way that is located within the Arlington Elementary School site (the "Property"); and

Whereas, upon approval by the Public Utility Board and City Council, Tacoma Water has agreed to convey the Property to Buyer pursuant to the terms and conditions herein enumerated.

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 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, the City and Buyer AGREE AS FOLLOWS:

1. **Incorporation of Recitals:** The above recitals are hereby incorporated into this Agreement as if fully set forth herein
2. **Purchase.** The City agrees to sell and convey the Property to Buyer and Buyer agrees to purchase from the City, subject to the terms and conditions set forth in this Agreement, . The Property is legally described as follows:

A PORTION OF THE CITY OF TACOMA, WATER DIVISION'S 66-FOOT WIDE, FLUME LINE RIGHT-OF-WAY AS CONVEYED TO THE CITY OF TACOMA, BY DEED DATED JUNE 22, 1893 AND RECORDED IN VOLUME 106 OF DEEDS, PAGE 524, UNDER AUDITOR'S FILE NUMBER 94565, RECORDS OF PIERCE COUNTY, AND LOCATED IN THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 30, TOWNSHIP 20 NORTH, RANGE 3 EAST, W.M., BEING THAT SECTION OF SAID FLUME LINE LYING BETWEEN PIERCE COUNTY TAX PARCELS 786500-042-0 AND 786500-043-0, BOUNDED ON THE NORTH BY SOUTH 72ND STREET AND ON THE SOUTH BY SOUTH 74TH STREET,

SUBJECT TO: RESERVATION BY THE CITY OF A PERPETUAL, EXCLUSIVE EASEMENT FOR CONSTRUCTION, INSTALLATION, OPERATION, AND MAINTENANCE OF A 14-FOOT WIDE PUBLIC NON-MOTORIZED RECREATIONAL TRAIL IMPROVEMENT KNOWN AS THE "WATER FLUME LINE TRAIL" AS DEPICTED ON EXHIBIT "A" HERETO

The Property is depicted in Exhibit A attached hereto and made a part hereof.

3. **Consideration.** The purchase price for the Property ("Purchase Price") shall be Five Thousand Dollars (**\$5,000.00**) which shall be paid to the closing agent of Buyer's choice or to Tacoma Water in the form of a Cashier's Check or electronic funds transfer at the option of Tacoma Water at Closing as defined in section 4. below. In addition to the Purchase Price the School District agrees to install those certain improvements noted on the "Community Benefit Summary" which is attached hereto and incorporated herein as Exhibit B. The Parties agrees that the Purchase Price and Community Benefit Summary reflect the total consideration due to Tacoma Water from Buyer.
4. **Closing, Title Insurance.** The closing will occur not later than thirty (30) days following the conditions of Section 5 "Conditions to Closing" being met, and under no circumstances later than _____ (the "Closing Date"). "Closing," for

purposes of this Agreement, is defined as the date that all documents are executed, the sale proceeds are available for disbursement to Tacoma Water, and legal title passes to the Buyer. Closing shall occur through cooperation of the Buyer and Seller outside of any private escrow, with the parties coordinating recording of the Deed and other steps necessary to Close. Buyer may order at the City's expense a preliminary commitment for a standard owner's policy of title insurance prepared by Chicago Title Insurance (the "Title Company"). Buyer shall have until August 31, 2016 to review and accept title as identified in the preliminary commitment.

5. **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:

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 such approval is not obtained, this Agreement will terminate, and neither party will have any further rights or obligations under this Agreement, except as otherwise provided for in this Agreement.

5.2 Feasibility Study. 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"). The City herein grants Buyer, its employees, agents, representatives, and surveyors a right of entry to conduct feasibility studies, except that any ground disturbing activities must receive prior written approval from and be coordinated with Tacoma Water.

After the Feasibility Period, Buyer acknowledges that it 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 LIMITATION, THE CONDITION OR STABILITY OF THE SOILS OR GROUND WATERS, 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, the City has made no representations or warranties, express or implied, regarding the Property.

5.3 Title Insurance The Title Company shall be irrevocably committed to issuing its standard owner's policy of title insurance vesting title in Buyer, subject only to such exceptions to title in Schedule B thereof as are acceptable to Buyer.

6. **Title to Property**

6.1 Conveyance At Closing, the City shall convey to Buyer all City interest in the Property by a duly executed and acknowledged quitclaim deed ("Deed").

6.2 Condition of Title Tacoma Water hereby agrees from and after the date hereof, until the Closing or the termination of 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.

7. **Condition of the Property** The City 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, the City assumes all risks for damage to or destruction of the Property.
8. **Release of the City/Tacoma Water** Buyer releases the City/Tacoma Water 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), known or unknown, that Buyer may have against the City/Tacoma Water 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).
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 demand specific performance, as well as 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 the City 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. **General Provisions**
 - 11.1 **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 Water: Tacoma Water
Attn: Gloria Fletcher
Real Property Services
3628 South 35th Street
Tacoma, WA 98409
gfletcher@cityoftacoma.org

Buyer: Tacoma School District #10
P O Box 1357
Tacoma, WA 98401

11.2. Integration Except as expressly stated otherwise herein, this Agreement constitutes the full understanding between the City/Tacoma Water 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.

11.3. Amendments This Agreement shall not be modified in any manner except in written instrument mutually executed by the City/Tacoma Water and the Buyer.

11.4. Counterparts This Agreement may be signed in counterparts and assembled to form a complete Agreement.

11.5. Time is of the Essence Time is of the essence as to all terms and conditions of this Agreement.

11.6. Survival The following sections shall survive the Closing of this Agreement: Section 8 "Release of the City/Tacoma Water; Section 9 Default, Remedies, Specific Performance;" Section 10, "Litigation / Attorney Fees; Section 11.11 "Governing Law;" Section 11.12 "Construction;" and Section 11.13 "Brokers and Finders".

11.7. Waiver Neither the City'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.

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

11.9. 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.

11.10. 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 which may reasonably be required to effect the Agreement contemplated herein.

11.11. 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.

11.13. Brokers and Finders Fees Buyer shall hold the City harmless against all claims by brokers and agents for any real estate commission due in this transaction.

11.14 Closing Costs Buyer shall pay the cost of recording the Deed and Seller shall pay the cost of the standard coverage owner's policy of title insurance. Each party shall pay its own attorney fees and expenses incurred prior to Closing.

12. Waiver of RCW 64.06 Disclosure Buyer and the City/Tacoma Water 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.

13. Indemnification and Hold Harmless Regarding the reservation of easement by the City for the Water Flume Line Trail, as a condition of Buyer accepting the Deed the Seller shall agree and covenant in the Deed (i) to indemnify, defend and hold Buyer harmless from and against any claims arising out of or related to the Water Flume Line Trail, including claims for attorney fees, except to the extent that any such claim arises from the negligence of the Buyer, and (ii) that the District has no obligation to maintain the easement reserved by Seller.

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

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

[SIGNATURE PAGES ON FOLLOWING PAGES]

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

Accepted,

Buyer:

Seller:

Date

William A. Gaines,
Utilities Director/CEO
Date

Linda A. McCrea
Water Superintendent

APPROVED AS TO FORM:

Michael W. Smith
Deputy City Attorney

DRAFT

City of Tacoma Review

Dated this _____ day of _____, 2016.

TACOMA WATER REVIEWED:

Greg Volkhardt
Environmental Services Manager

Jodi Collins
Financial Manager

John Haase
Surveyor

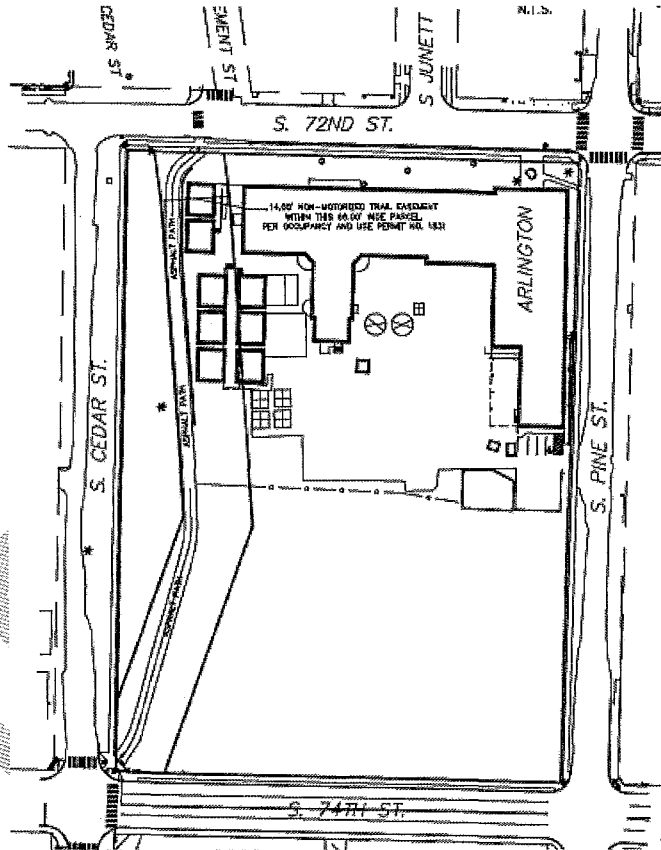
FINANCE REVIEWED:

Andrew Cherullo
Director of Finance

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City of Tacoma – Tacoma Water – Real Property Services

Tacoma Water - Real Estate
Purchase & Sale Agreement No. 3114
Tacoma, WA



TACOMA WATER REAL PROPERTY SERVICES ILLUSTRATION

This illustration is not to scale. It is provided as a customer convenience to assist in identifying significant characteristics of the installation. No liability is assumed by reason of reliance hereon.

Exhibit A