



## RESOLUTION NO. U-11026

1 A RESOLUTION relating to Tacoma Power; declaring utility-owned real  
2 property surplus and authorizing the sale to Todd and Zana  
Layland.

3 WHEREAS the City of Tacoma, Department of Public Utilities, Light  
4 Division (d.b.a. "Tacoma Power"), requests the Board declare surplus and  
5 approve the negotiated sale of approximately 1.65 acres ("Property"), identified  
6 as Pierce County Assessor Tax Parcel No. 0317271011 - located southerly of  
7 SR 702 at Kinsman Road E in the Graham – Eatonville vicinity of  
8 unincorporated Pierce County, WA, to Todd and Zana Layland ("the Laylands"),  
9 and  
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11 WHEREAS the Property is a small portion of Tacoma Power's right-of-  
12 way currently used for electrical distribution, and  
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14 WHEREAS, as the Laylands develop property adjacent to the Property, a  
15 portion of the Property necessary to maintain a public roadway will be dedicated  
16 to Pierce County for continued use of the public road, and Tacoma Power will  
17 retain an easement therein, and  
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19 WHEREAS Tacoma Power does not need to own the property rights as  
20 ownership entails additional management time and expense, and operational  
21 needs can be met through permanent easement rights alone, as proposed by  
22 this transaction, and

23 WHEREAS Tacoma Power has negotiated the sale price of \$12,000, and  
24 Tacoma Power will be granted an easement for continued operations, and  
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26 WHEREAS, due to the retained easement rights, Tacoma Power has  
determined that the Property sought by the Laylands is not essential for



1 continued effective utility service and has deemed the Property surplus to  
2 Tacoma Power's needs pursuant to RCW 35.94.040 and TMC 1.06.280f; Now,  
3 Therefore,

4  
5 BE IT RESOLVED BY THE PUBLIC UTILITY BOARD OF THE CITY OF TACOMA:

6       Sec. 1. That it is in the best interests of the City of Tacoma to approve  
7 the negotiated sale in fee of approximately 1.65 acres, identified as a portion of  
8 Pierce County Assessor Tax Parcel No. 0317271011 - located southerly of SR  
9 702 at Kinsman Road E in the Graham – Eatonville vicinity of unincorporated  
10 Pierce County, WA, and as more fully described in the documents on file with  
11 the Clerk of the Board, to Todd and Zana Layland.

12       Sec. 2. That the Property is not essential for continued effective utility  
13 service by Tacoma Power and is properly declared surplus property and excess  
14 to Tacoma Power's needs.

15       Sec. 3. Tacoma Power has negotiated the sale price of \$12,000, with  
16 consideration of an easement to Tacoma Power for current and future  
17 operations.

18       Sec. 4. Tacoma Power will seek Council approval for a declaration of  
19 surplus property and approval of sale by November 30, 2018.

20       Sec. 4. That the City Council is requested to hold a public hearing on this  
21 matter pursuant to RCW 35.04.040, and thereafter approve this recommended  
22 sale and authorize the proper officers of the City of Tacoma to execute all  
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necessary documents, substantially in the same form as on file with the Clerk  
and approved by the City Attorney.

Approved as to form and legality:

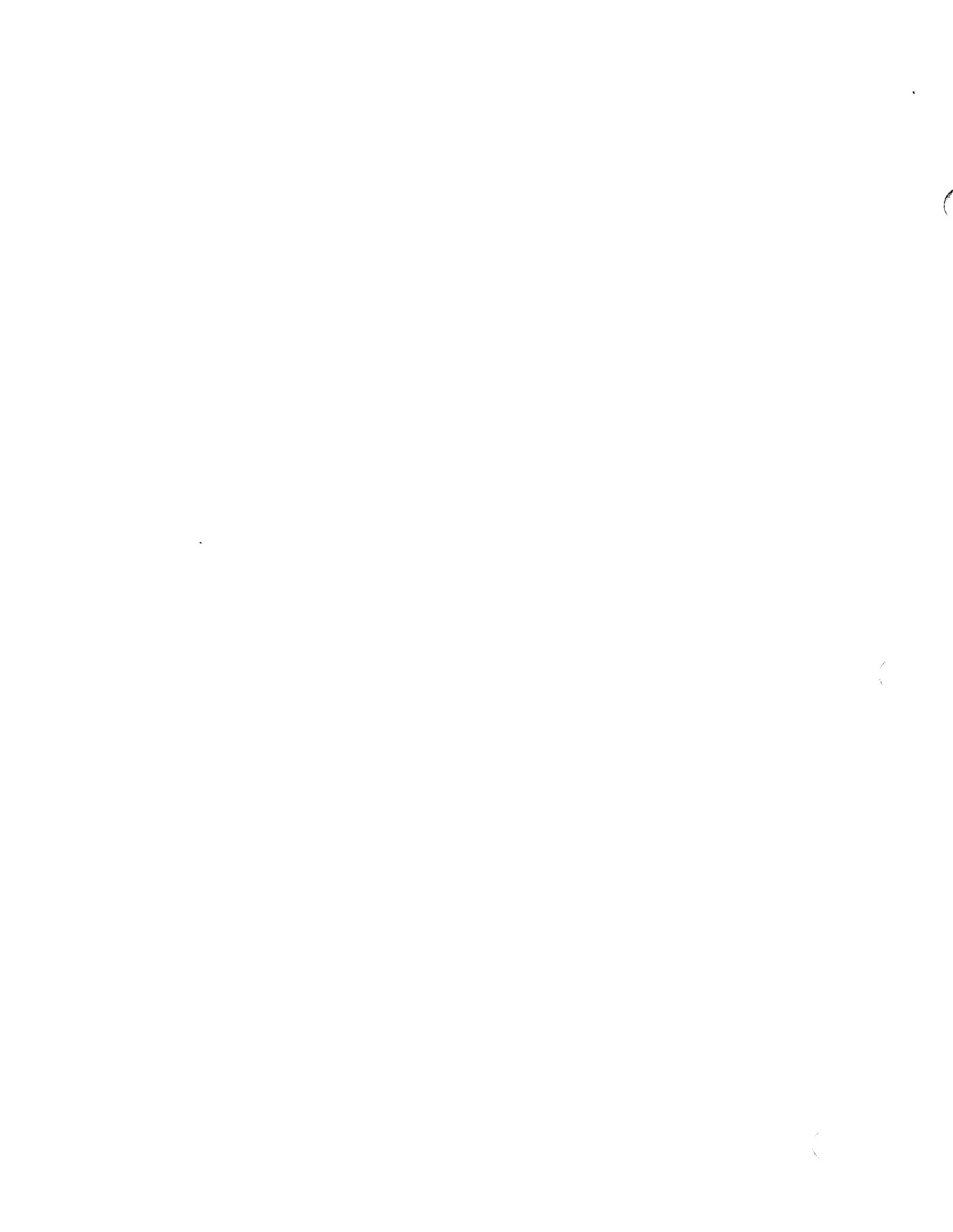
*E. C. Powell*  
Chief Deputy City Attorney

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Clerk

Adopted \_\_\_\_\_



**REQUEST FOR RESOLUTION**

**INSTRUCTIONS:** File request in the Office of the Director of Utilities as soon as possible but not later than nine working days prior to the Board meeting at which it is to be introduced. Completion instructions are contained in Administrative Policy POL-104.

1. Summary title for Utility Board agenda: (not to exceed twenty-five words)

Declare surplus and authorize the sale of approximately 1.65 acres of Tacoma Power property to Todd and Zana Layland for \$12,000.00.

2. A resolution is requested to: (brief description of action to be taken, by whom, where, cost, etc.)

Declare surplus and authorize the sale of approximately 1.65 acres of Tacoma Power property - identified as a portion of Pierce County Assessor Tax Parcel No. 0317271011 - located southerly of SR 702 at Kinsman Road E in the Graham – Eatonville vicinity of unincorporated Pierce County, WA, to Todd and Zana Layland for \$12,000.00. The Laylands own property abutting to the east. An easement to Tacoma Power will be retained over the property for current and future operations.

3. Summarized reason for resolution:

The sale property is a small portion of Tacoma Power right-of-way currently used for electrical distribution. However, it is encumbered by a County road. This transaction will allow legal access to the Layland property for development of a two-lot residential short plat. As the Laylands develop the property, the sale property will be dedicated to Pierce County for continued use of the public road while Tacoma Power retains its easement therein. Tacoma Power does not need to own the property as ownership entails additional management time and expense. Operational needs can be met through permanent easement rights alone as included in this transaction. Additionally, the sale will generate one-time revenue for Tacoma Power. Tacoma Power has negotiated the sale price to the Laylands for \$12,000.00; this figure takes into consideration the reservation of an easement to Tacoma Power for continued operations.

The sale is subject to both Public Utility Board and City Council approval. The terms and conditions of the purchase and sale agreement have been approved by Real Property Services and reviewed by the City's Legal Department. If approved, the transaction is expected to close by no later than November 30, 2018.

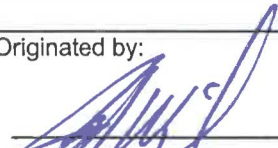
4. Attachments:

- a. Director's Memo
- b. Aerial Photo
- c. Purchase and Sale Agreement
- d. Declaration of Surplus Property
- e. CAM Request to set Public Hearing

5.  Funds available       Proposed action has no budgetary impact

6. Deviations requiring special waivers: None.

Originated by:

  
\_\_\_\_\_  
Joseph A. Wilson, T&D Power Section  
Manager

Requested by:

\_\_\_\_\_  
Chris Robinson, Power  
Superintendent/COO

Approved:

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



**TO:** Mayor and City Council  
**FROM:** Jackie Flowers, Director of Utilities  
**COPY:** Elizabeth Pauli, City Manager, and City Clerk  
**SUBJECT:** Resolution – Declaration of Surplus and Sale of Tacoma Public Utilities, Light Division Real Property – October 9, 2018  
**DATE:** August 23, 2018

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**SUMMARY:** To set Tuesday, October 23, 2018 as the date for a Public Hearing regarding the declaration of surplus and sale of approximately 1.65 acres of Tacoma Power property for \$12,000.00 to Todd and Zana Layland.

**STRATEGIC POLICY PRIORITY:**

- Foster a vibrant and diverse economy with good jobs for all Tacoma residents.
- Encourage and promote an efficient and effective government, which is fiscally sustainable and guided by engaged residents.

This request supports the above policy priorities by allowing economic development, and offering the opportunity for public input on this real estate transaction.

**BACKGROUND:** The sale property – identified as a portion of Pierce County Assessor Tax Parcel No. 0317271011, located southerly of SR 702 at Kinsman Road E in the Graham – Eatonville vicinity of unincorporated Pierce County, WA - is currently used for electrical distribution. However, it is encumbered by a County road. This transaction will allow legal access to the Layland property for development of a two-lot residential short plat. As the Laylands develop the property, the sale property will be dedicated to Pierce County for continued use of the public road while Tacoma Power retains its easement therein. Operational needs can be met through permanent easement rights alone as included in this transaction. Additionally, the sale will generate one-time revenue for Tacoma Power. The parties have agreed to a consideration to Tacoma Power of \$12,000.00; this figure takes into consideration the reservation of an easement to Tacoma Power for continued operations. The sale is subject to both Public Utility Board and City Council approval. The terms and conditions of the purchase and sale agreement have been reviewed by the City Attorney's Office and approved by Tacoma Power and Real Property Services.

**ALTERNATIVES:** The alternatives to disposing of the property through a negotiated disposition, as allowed under TMC 1.06.280f, are to either retain ownership or sell via a bid/sale process. Tacoma Power does not have a need for continued fee ownership of the property, and if it were to retain ownership there would be continued management and administrative costs. A negotiated disposition has been determined to be the most efficient and effective disposition method as the most likely purchaser is the abutter and the property would likely not appeal to most other market participants, thus the bid/sale process would not likely be successful.

**RECOMMENDATION:** Tacoma Power and Real Property Services recommend that the City Council set a Public Hearing in accordance with RCW 35.94.40, to be held October 23, 2018 to receive public comment regarding the proposed declaration of surplus and sale of approximately 1.65 acres of Tacoma Power property to Todd and Zana Layland for \$12,000.00. Once the Public Hearing has been held, a separate request will be presented to the City Council for the declaration of surplus and approval of the sale and conveyance of the real property.

**FISCAL IMPACT:** There is no fiscal impact to setting this Public Hearing.



3628 South 35<sup>th</sup> Street  
Tacoma, Washington 98409-3192

TACOMA PUBLIC UTILITIES

Date: August 23, 2018  
To: Jackie Flowers, Director of Utilities  
From: Chris Robinson, Power Superintendent/COO  
Subject: Surplus and Sale of a Portion of Tacoma Power Right-of-Way

**Recommendation:**

Tacoma Power requests that you declare surplus and approve the sale of a small portion of its right-of-way corridor to an abutting property owned by Todd and Zana Layland. The property is identified as a portion of Pierce County Assessor Tax Parcel No. 0317271011, consisting of approximately 1.65 acres of land, located southerly of SR 702 at Kinsman Road E in the Graham – Eatonville vicinity of unincorporated Pierce County, WA. Consideration received is \$12,000.00. An easement to Tacoma Power will be retained over the property for current and future operations.

**Background:**

The Tacoma Power property proposed for sale was acquired from the Weyerhaeuser Co. in 1911 for a transmission line; however, the line was subsequently relocated and the property is currently used for electrical distribution only. At some undetermined point, Pierce County built a road (commonly referred to as Kinsman Road) on the Tacoma Power property, with no record of its legal establishment. This transaction will allow legal access to the Layland property for development of a two-lot residential short plat. As the Laylands develop the property, the sale property will be dedicated to Pierce County for continued use of the public road while Tacoma Power retains its easement therein. Tacoma Power does not need to own the property as ownership entails additional management time and expense. Operational needs can be met through permanent easement rights alone as included in this transaction. Additionally, the sale will generate one-time revenue for Tacoma Power.

Tacoma Power has negotiated the sale price to the Laylands for \$12,000.00; this figure takes into consideration the reservation of an easement to Tacoma Power for continued operations.

Your approval is requested to submit this matter to the Public Utility Board for consideration and approval. Upon approval from the Public Utility Board, Real Property Services will hold a Public Hearing and seek final approval of the sale from the Tacoma City Council. If approved, the sale is expected to close by November 30, 2018.

**APPROVED:**



Jackie Flowers, Director of Utilities



## Tacoma Power Surplus Property Sale to Layland



- Approximately 1.65 Acres
  - Portion of Pierce County TPN 0317271011
- Portion of Tacoma Power Right-of-Way in Graham – Eatonville vicinity
  - Encumbered by County Road
- Retain Easement to Tacoma Power for current and future operations



**CITY OF TACOMA  
DEPARTMENT OF PUBLIC UTILITIES  
LIGHT DIVISION  
REAL ESTATE PURCHASE AND SALE AGREEMENT  
AGREEMENT NO. A3163**

Reference No.: P2017-239

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

Buyer: Todd and Zana Layland  
Abbreviated

Legal Description: Portion of the NE Quarter S27, T17N, R3E, W.M., Pierce Co., WA

County: Pierce

Tax Parcel No.: Portion of Pierce County Assessor TPN 0317271011

This REAL ESTATE PURCHASE AND SALE AGREEMENT (this "Agreement") is entered into as of \_\_\_\_\_, 20\_\_ between the **CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, LIGHT DIVISION (d.b.a. Tacoma Power)** a first class municipal corporation ("Seller") and Todd Layland and Zana Layland, husband and wife, ("Buyer").

**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 real property that abuts the Property 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 lines and appurtenances for electrical transmission and/or distribution on the Property, Buyer will grant an easement to Seller encumbering the Property allowing Seller to continue to operate, maintain, and replace its current and future electrical lines and appurtenances.

WHEREAS, Seller owns, operates, and maintains lines and appurtenances for electrical transmission and/or distribution on the Property, which infrastructure must be safeguarded and protected against damage by falling trees, Seller will retain all rights granted by that certain easement from Weyerhaeuser Timber Company to the City of Tacoma recorded February 28, 1912, in Volume 367 of Deeds, at Page 196, under Auditor's File No. 356235, records of Pierce County, WA, (attached hereto as **Exhibit "A"**).

WHEREAS, prior to conveyance of the Property to Buyer, Buyer plans to obtain all approvals necessary to subdivide the Property and establish the Property as a legal lot suitable for conveyance to Buyer.

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. Said description may be amended, as required, due to the planned subdivision pursuant to Section 5.5 below.

A strip of land 50 feet in width, extending across the Northeast Quarter of the Northeast Quarter and the Southeast Quarter of the Northeast Quarter of Section 27, Township 17 North, Range 3 East, W.M., in Pierce County, Washington, the Southwesterly line of said strip described as follows:

Beginning at a point 1,344.2 feet North of the Quarter corner of said Section 27; thence North 30°30' West 1,577.00 feet, more or less, to a point on the North line of said Section 27, 787.2 feet West of the Northeast corner of said Section 27.

Excepting therefrom that portion, if any, lying within 352<sup>nd</sup> St E (aka SR 702).

Also known as a portion of Pierce County Assessor Tax Parcel 0317271011 (the "Property").

2. Deposit. Upon execution of this Agreement by both Seller and Buyer, Buyer shall deliver to Seller an earnest money deposit in the amount of **Twelve Thousand and No/100 U.S. Dollars (\$12,000.00)** (the "Deposit") which is the full purchase price of the Property. The Deposit will be held by Seller pursuant to the terms of this Agreement. Any interest that accrues on the Deposit will be for the benefit of Seller, and 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.

3. Purchase Price. The total purchase price for the Property (the "Purchase Price") will be **Twelve Thousand and No/100 U.S. Dollars (\$12,000.00)**, to which the Deposit shall be a fully applicable part. The Purchase Price, the Deposit amount, will be paid to Seller in cash at Closing.

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") as substantially shown in **Exhibit "B"** attached hereto and by this reference incorporated herein. Further, at Closing, Buyer shall convey to Seller permanent easement rights in the Property for continued operation, maintenance, and replacement of lines and appurtenances for electrical transmission and/or distribution (the "Easement") and as substantially shown in **Exhibit "C"** attached hereto and by this reference incorporated herein.

4.2 Preliminary Commitment and Title Policy. Buyer hereby waives receipt of a preliminary title commitment and will not seek to have issued an owner's policy of title insurance insuring Buyer's title to the Property.

4.3 Condition of Title. Buyer hereby accepts the condition of title to be conveyed via the Deed and hereby waives the right to advise Seller by written notice what encumbrances to title, if any, are disapproved by Buyer.

5. Conditions 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 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 City Council approval beyond the ordinary course of City of Tacoma procedure.

- 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 return the Property as near as is practicable to its original condition.
- 5.5 Boundary Line Adjustment Review and Approval. Prior to and as a condition to Closing, Buyer, at his sole cost and expense, and subject to the review and approval of Seller, shall obtain all approvals necessary to subdivide the Property and establish the Property as a legal lot suitable for conveyance to Buyer, documentation of which shall be provided to Seller.

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, INCLUDING, WITHOUT LIMITATIONS, 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 the parties, 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 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 Closing.

6.2 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 outside of escrow. Closing will be held at the office of the Seller on or before **November 30, 2018** (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 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 Seller, and legal title passes to 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 upon Closing. Seller shall remove any and all personal property 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 that portion of the Deposit which does not exceed fifty percent (50%) of the Purchase Price 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 its 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 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 – 2<sup>nd</sup> Floor  
3628 S. 35<sup>th</sup> Street  
Tacoma, WA 98409  
Facsimile No.: (253) 502-8539

Buyer: Todd and Zana Layland  
13516 Meridian Avenue East, Suite 73802  
Puyallup, WA 98373  
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. Professional Advice. Seller 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.
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 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.
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. 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, which by their nature should and 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 execution of this Agreement. The Disclosure Statement shall be deemed approved and accepted by Buyer if Buyer fails to deliver written notice to rescind this Agreement within three business days thereafter. If Buyer rescinds this Agreement, 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.

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

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

\_\_\_\_\_  
Todd Layland Date

\_\_\_\_\_  
Chris Robinson, Date  
Power Superintendent / COO

\_\_\_\_\_  
Zana Layland Date

Approved as to form:

\_\_\_\_\_  
Michael W. Smith, Date  
Deputy City Attorney

City of Tacoma Review

\_\_\_\_\_  
Joseph A. Wilson, Date  
Transmission and Distribution Power Section Manager

\_\_\_\_\_  
John Nierenberg, Date  
Transmission and Distribution Power Section Assistant Manager

\_\_\_\_\_  
Jeff Singleton, Date  
Chief Surveyor

FINANCE:

\_\_\_\_\_  
Andrew Cherullo, Date  
Director of Finance



**EXHIBIT "A"**



1911-032



E846

Section Fifteen (15); the Southwest quarter of the Northwest quarter (SW $\frac{1}{4}$  of NW $\frac{1}{4}$ ) of Section Fifteen (15); the East half of the East half (E $\frac{1}{2}$  of E $\frac{1}{2}$ ) of Section Nine (9); and the West half of the Northwest quarter (W $\frac{1}{2}$  of NW $\frac{1}{4}$ ) of Section Three (3) in Township Seventeen (17) North, Range Three (3) East of W. M.

AND WHEREAS, the party of the first part has agreed to sell and convey to the party of the second part, certain rights-of-way and easements to cut timber, as will be required by the said party of the second part in the construction, operation and maintenance of the transmission line of said power plant, for a consideration in money upon the basis and equal to the sum of the following amounts, that is to say: Total acreage of land conveyed at Twenty-five (\$25.00) Dollars per acre; total amount of timber at Two Dollars and Fifty cents (\$2.50) per thousand feet; total amount of piling and poles at one cent (1¢) per lineal foot, and for the further consideration of certain grants, conditions, agreements and reservations for the use and benefit of the party of the first part, and its successors and assigns, to be more specifically set forth hereafter in this agreement.

NOW THEREFORE, in consideration of the sum of Twenty-one Thousand and Seventy-seven Dollars and Seventy-eight cents (\$21,077.78) in money, in hand paid to the party of the first part by the party of the second part, the receipt of which is hereby acknowledged, and of the grants, covenants, conditions and reservations hereinafter set forth, said party of the first part does hereby Bargain, Sell, Grant and Convey unto the said party of the second part, and to its successors and assigns, the lands and easements hereinafter set forth and described, situated and being in the County of Pierce, in the State of Washington, as and for a right-of-way for the construction, operation and maintenance of a transmission line for the conveyance of electric current, which said lands are more particularly described as follows:

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within 200 feet of the right-of-way of the said transmission line or lines of the party of the second part, which said tree or trees is or are, in the judgment of the party of the second part, liable to fall upon or damage said transmission line or lines, provided however, that no tree shall be cut down or removed from the lands of the party of the first part above described before the same shall have been first designated and plainly marked by the party of the second part as a danger tree and estimated by the party of the first part, and paid for by the party of the second part on the basis hereinbefore set out, that is to say:

Timber at \$2.50 per thousand Ft., board measure.

Piling and Poles 1 cent per lineal foot.

And it is hereby mutually understood and agreed that all the trees which are now, at the date of this instrument, considered by the party of the second part as danger trees have been plainly marked, estimated and paid for by the party of the second part on the basis above set out and included in the consideration in money above recited.

This conveyance is subject to certain rights, privileges, easements, conditions and reservations, granted to and reserved by the party of the first part, and without which this conveyance would not have been given, which are hereby agreed to by the parties of the first and second parts herein, as covenants running with the land, to be kept, observed and recognized by the party of the second part, its successors and assigns forever, that is to say:

1.

The party of the first part and its successors and assigns shall have, and is hereby given and granted, the right to cross and re-cross the strips of land heretofore

1310

E 846

the party of the first part, or its successors or assigns, provided however, such operations shall in no manner interfere with the operation or maintenance of the transmission line of the party of the second part.

4.

There is also hereby reserved from the operation and effect of this conveyance, all easements or rights-of-way existing in the public for any public highway upon, over or across said premises, or any part thereof. \* \* \*

\* \* \* \* \*

IN WITNESS WHEREOF, the party of the first part, by authority of its Board of Trustees, has caused this instrument to be executed in the corporate name by its officers duly authorized, and its corporate seal to be hereto affixed, the day and year first above written.

In the Presence of: WEYERHAEUSER TIMBER COMPANY  
R. M. Weyerhaeuser By F. Weyerhaeuser  
E. C. Kishbaugh Attest: Geo. S. Long  
President Secretary

1310

Duly acknowledged by the Company and its officers before L. C. Kishbaugh, a Notary Public at Los Angeles, California, on January 22nd, A.D. 1912.

Recorded in office of County Auditor of Pierce County, Washington, on February 28, 1912, in Volume 367 of Deeds, at Page 198, under Fee No. 256236

E-896

NOTE: D-781 is a combination Deed and Easement. The grant in the instrument covering the property herein described was an easement, hence it has been copied from that instrument and included in the easement file so that it might be included in the easement division of the instrument abstract in order to facilitate its location in the abstract and card index thereto.

**EXHIBIT "B"**

**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. D6763**

Reference No. P2017-239  
Grantor: City of Tacoma, Department of Public Utilities, Light  
Division (d.b.a. Tacoma Power)  
Grantee: Todd and Zana Layland  
Abbr. Legal Description: Portion of the NE Quarter of Section 27, Township 17  
North, Range 3 East, W.M., in Pierce County, WA.  
Tax Parcel No: Portion of 0317271011

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 Twelve Thousand and No/100 U.S. Dollars (\$12,000.00), hereby conveys and quit claims to Todd Layland and Zana Layland, husband and wife, as Grantee, all its interest in the following described real property situate in Pierce County, State of Washington, to-wit:

A strip of land 50 feet in width, extending across the Northeast Quarter of the Northeast Quarter and the Southeast Quarter of the Northeast Quarter of Section

27, Township 17 North, Range 3 East, W.M., in Pierce County, Washington, the Southwesterly line of said strip described as follows:

Beginning at a point 1,344.2 feet North of the Quarter corner of said Section 27; thence North 30°30' West 1,577.00 feet, more or less, to a point on the North line of said Section 27, 787.2 feet West of the Northeast corner of said Section 27.

Excepting therefrom that portion, if any, lying within 352nd St E (aka SR 702).

Also known as a portion of Pierce County Assessor Tax Parcel 0317271011.

Authorized by City Council Resolution No. \_\_\_\_\_ adopted \_\_\_\_\_, 20\_\_, at the request of Public Utility Board Resolution No. U-\_\_\_\_\_ adopted \_\_\_\_\_, 20\_\_.

IN WITNESS WHEREOF, said corporation has caused this instrument to be executed by its proper officers this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

CITY OF TACOMA

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

Attest:

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

**Accepted by Grantee**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_







## EXHIBIT "C"

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

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**CITY OF TACOMA**  
**DEPARTMENT OF PUBLIC UTILITIES**  
**EASEMENT NO. 13584**

Reference No. P2017-239 GWM  
Grantors: Todd and Zana Layland  
Grantee: City of Tacoma, Department of Public Utilities, Light  
Division (d.b.a. Tacoma Power)  
Legal Description: Portion of the NE Quarter of Section 27, Township 17  
North, Range 3 East, W.M., in Pierce County, WA.  
Complete Description: Exhibit A  
Tax Parcel No.: Portion of 0317271011

WE, the undersigned Todd Layland and Zana Layland, husband and wife, record owner of the premises hereinafter described, hereinafter referred to as "Grantors", 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, do 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 Grantors and their successors shall not construct any permanent structures within the easement area without Tacoma Power's prior written approval; any such permanent structures must meet all applicable safety standards, regulations and codes in effect at time such approval is requested. Approval or denial of any request shall be at the sole discretion of Tacoma Power; provided that the easement area may be used for public road purposes and private driveway ingress/egress to the extent such use does not interfere with Grantee's use of the property or the operation and maintenance of the facilities for which the easement was granted. The Grantors shall at all times provide access to Tacoma Power staff and its contractors to change, repair, renew or remove said equipment or facilities. The Grantors herein further grant to Tacoma Power, its contractors and/or agents, the right to hereafter temporarily enter upon the Grantors' remaining lands where necessary to construct, replace, or maintain said facilities.

The Grantors, their successors and assigns, do 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]**

P2017-239 GWM/E13584

IN WITNESS WHEREOF, We have executed this Instrument at \_\_\_\_\_  
County, Washington, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Todd Layland

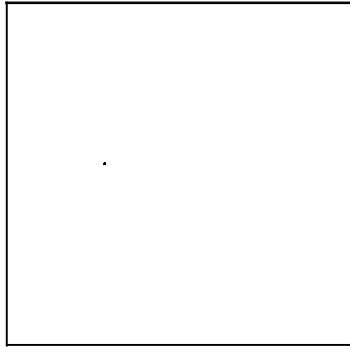
\_\_\_\_\_  
Zana Layland

STATE OF WASHINGTON     )  
  ) §  
COUNTY OF \_\_\_\_\_ )

On this day personally appeared before me Todd Layland and Zana Layland, to me known to be the individuals described in and who executed the within and foregoing instrument, and acknowledged that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Place Notary Seal In Box



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

P2017-239 GWM / E13584

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Accepted:

\_\_\_\_\_  
Chris Robinson                      Date  
Power Superintendent / COO

Reviewed:

\_\_\_\_\_  
Joseph A. Wilson,                      Date  
Transmission and Distribution Power Section Manager

\_\_\_\_\_  
John Nierenberg,                      Date  
Transmission and Distribution Power Section Assistant Manager

\_\_\_\_\_  
Jeff Singleton,                      Date  
Chief Surveyor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael W. Smith,                      Date  
Deputy City Attorney



**City of Tacoma - Department of Public Utilities  
Light Division Easement No. 13584**

**Northeast Quarter (NE ¼) of Section 27, Township 17 North, Range 3 East, W.M.,  
in Pierce County, Washington.**

A strip of land 50 feet in width, extending across the Northeast Quarter of the Northeast Quarter and the Southeast Quarter of the Northeast Quarter of Section 27, Township 17 North, Range 3 East, W.M., in Pierce County, Washington, the Southwesterly line of said strip described as follows:

Beginning at a point 1,344.2 feet North of the Quarter corner of said Section 27; thence North 30°30' West 1,577.00 feet, more or less, to a point on the North line of said Section 27, 787.2 feet West of the Northeast corner of said Section 27.

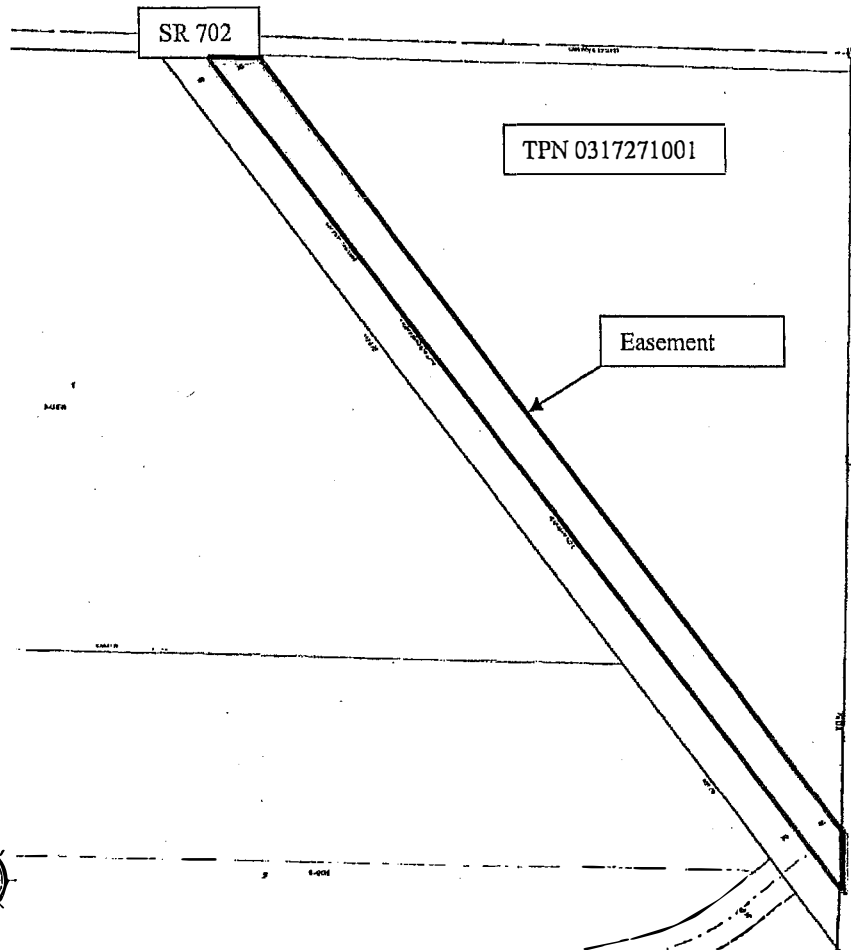
Excepting therefrom that portion, if any, lying within 352<sup>nd</sup> St. E (aka SR 702).

Also known as a portion of Pierce County Assessor Tax Parcel 0317271011.

Reference No. P2017-239 GWM	Legal Description reviewed for Tacoma Power by Chief Surveyor, _____, Date: _____	<b>Exhibit A</b>
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**City of Tacoma - Department of Public Utilities  
Light Division Easement No. 13584**

Northeast Quarter (NE ¼) of Section 27, Township 17 North, Range 3 East, W.M.,  
in Pierce County, Washington.



**REAL PROPERTY SERVICES ILLUSTRATION**

Reference No.  
P2017-239 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 by reason of reliance hereon.

**Exhibit B**



# City of Tacoma

## Declaration of Surplus Property (DSP)

**To:** Purchasing Division **Date:** 08.22.18  
**From:** TPU - Tacoma Power  
**Contact Name:** Greg Muller, R.E. Officer **Phone:** 253.502.8256

- Declaration of Surplus Personal Property  
 Declaration of Surplus Real Property  
 Declaration of Unusable Personal Property<sup>1</sup>

<sup>1</sup> Items that are broken, unusable, have no commercial, salvage, or donation value, and have no special disposal requirements (e.g., hazardous metals), may be disposed by the owning department. Do not submit DSP Form to Purchasing for these items.

### Description of Surplus Property

Describe Item or Attach List: 1.65 Acres of Tacoma Power Transmission Line Corridor Fixed Asset # N/A  
 Address/Location of Items: Portion of Pierce Co. TPN 0317271011 Accounting (for costs/proceeds):  
 Estimated Commercial or Resale Value: \$ 12,000.00 Cost Center: 56 100  
 Minimum Acceptable Bid: \$ N/A General Ledger Acct: 6411030

I hereby certify the asset(s) listed have no further public use or the sale thereof is in the best interests of the City and declare these items as surplus according to sections 1.06.272 through 1.06.278 of the Tacoma Municipal Code. Items may be sold, transferred, donated or otherwise disposed of in accordance with the City's surplus property policies and the Tacoma Municipal Code.

Department/Division Head Signature \_\_\_\_\_ Date 9/6/18  
 City Manager or Director of Utilities (if over \$200,000) \_\_\_\_\_ Date \_\_\_\_\_

### DISPOSAL REQUEST

(to be completed by department)

Requested Disposal Method(s):

- Intra City Transfer  
 Name of Department \_\_\_\_\_  
 Bid Solicitation (Formal / Informal)  
 Vehicle Auction (attach vehicle surplus form)  
 Specify Contract \_\_\_\_\_  
 Online Auction Service  
 (attach online auction surplus form)  
 Special Advertisement (attach advertisement)  
 Specify Newspaper \_\_\_\_\_  
 Supplemental Mailing List (attach)  
 Website Posting  
 Special Disposal Requirements (e.g., environmental, regulatory)  
 Salvage Services  
 Specify Contract \_\_\_\_\_  
 Donation  
 2-Good-2 Toss  
 Other: Negotiated Sale  
 Okay for Disposal: \_\_\_\_\_

### DISPOSAL ACTION

Internal Use Only – Purchasing Division

- Formal Bid No. \_\_\_\_\_  
 Resolution/Ordinance No. \_\_\_\_\_  
 Informal Bid No. \_\_\_\_\_  
 Online Auction  Website Posting  
 Special Advertisement  Supplemental Mailings  
 Contract Services  Intra-City Transfer  
 Salvage Services  Donation  
 Okay for Disposal  2-Good-2 Toss  
 Date Advertised/Posted: \_\_\_\_\_  
 Sale Amount: \$ \_\_\_\_\_  
 Sold To: Name \_\_\_\_\_  
 Address \_\_\_\_\_  
 Donated To: Name \_\_\_\_\_  
 Address \_\_\_\_\_  
 Hold Harmless Release Received  
 Recipient is:  Public Agency  Non-Profit serving  
 General Public  Employee  
 Accounting, if different from above: \_\_\_\_\_

**APPROVED:**

Procurement and Payables Manager \_\_\_\_\_ Date \_\_\_\_\_