

**CITY OF TACOMA  
DEPARTMENT OF PUBLIC UTILITIES  
WATER DIVISION  
REAL ESTATE PURCHASE and SALE AGREEMENT  
AGREEMENT NO. 2954**

**Reference No.:** 2012-092  
**Seller:** City of Tacoma, Department of Public Utilities, Water Division  
**Buyer:** City of Buckley  
**Legal Description(s):** Portion of SE1/4 SE ¼ 04-19-06  
**County:** Pierce County  
**Tax Parcel No(s):** Portion of 061909-102-08

This Real Estate Purchase and Sale Agreement, ("Agreement"), entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ between the CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, WATER DIVISION, a municipal corporation, hereinafter referred to as "Tacoma Water" and CITY OF BUCKLEY, a municipal corporation, hereinafter referred to as "Buyer."

**WHEREAS**, Tacoma Water is the sole owner of the fee title to the real property more particularly described in Section 1 below; and,

**WHEREAS**, Buyer has been occupying said real property pursuant to a Right of Entry Agreement entered into by the parties on December 20<sup>th</sup>, 2011 to facilitate a road realignment project for the Buyer; and,

**WHEREAS**, Said Right of Entry included a provision that Tacoma Water's real property would be conveyed to the Buyer; and,

**WHEREAS**, During Buyer's road realignment project, additional costs were incurred and the parties agreed to address those costs as outlined in the Settlement Agreement and Release dated \_\_\_\_\_ ("Settlement Agreement"); and

**WHEREAS**, in settlement of any claims Tacoma Water agreed to pay \$28,488.00 towards the additional costs of Buyer's road realignment project which amount will be deducted from the Purchase Price; and

**WHEREAS**, the Settlement Agreement provides for the conveyance of Tacoma Water's real property to the Buyer pursuant to a Purchase and Sale Agreement; and,

**WHEREAS**, Buyer now desires to purchase from Tacoma Water and Tacoma Water desires to sell to Buyer the real property subject to the terms and conditions set forth herein; and

**WHEREAS**, the Parties hereto mutually desire to enter into this Real Estate Purchase and Sale Agreement defining their rights, duties and liabilities relating to the subject property.

**WITNESSETH:**

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Tacoma Water and Buyer AGREE AS FOLLOWS:

- 1. Purchase.** Tacoma Water agrees to sell and convey to Buyer and Buyer agrees to purchase from Tacoma Water, subject to the terms and conditions set forth in this Agreement, in fee simple the following real property:

That portion of the hereinafter described Parcel "A", lying within Section 4, Township 19 North, Range 6 East, Willamette Meridian

As further described and depicted in Exhibit A attached hereto and made a part hereof, together with all right, title and interest in and to any rights, licenses, privileges, reversions and easements pertinent to the real property, including without limitation, all minerals, oil, gas and other hydrocarbon substances on and under the real property as well as all development rights, air rights, water rights, water and water stock relating to the real property and any other easements, rights of way, or appurtenances used in connection with the beneficial use and enjoyment of the real property subject to those certain conditions as set forth herein.

- 2. Purchase Price.** The total purchase price for the Property ("Purchase Price") shall be Forty Three Thousand Dollars (**\$43,000.00**). The parties acknowledge that per the Settlement Agreement Tacoma Water has agreed to pay to Buyer Twenty Eight Thousand Four Hundred and Eighty-eight Dollars (**\$28,488.00**) to reimburse Buyer for Buyer's additional road construction costs arising from a differing site / utility location issue, and that said amount will be deducted from the Purchase price at Closing as defined herein in Section 6. The remainder of the Purchase Price is Fourteen Thousand Five Hundred and Twelve Dollars (**\$14,512.00**), which shall be paid 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 6 below.

- 3. Title to Property**

- 3.1. Conveyance.** At closing, Tacoma Water shall convey to Buyer fee simple title to the Property by a duly executed and acknowledged quitclaim warranty deed ("Deed").

3.2. 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.

4. **Conditions to Closing.** Buyer acknowledges and agrees that this Agreement is conditioned upon the following additional reviews, terms, and conditions all of which are to be satisfied prior to Closing:

4.1. Tacoma Public Utility Board, Tacoma City Council and City of Buckley Approval. This Agreement, and the transaction contemplated hereby, must be duly approved by the Tacoma Public Utility Board, the Tacoma City Council, and the City of Buckley 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. **Condition of the Property**

Tacoma Water agrees that it shall not sell, convey, assign, transfer or encumber any or all of the said Property during the term of this Agreement up to and including the Closing Date, nor construct capital improvements to the Property, nor waste, sell or otherwise transfer any timber or minerals thereon prior to Closing. Other than as provided for in any Right of Entry or other written agreements between the parties relating to the Property, prior to Closing, Tacoma Water assumes all risks for damage to or destruction of the Property.

Buyer specifically acknowledges and agrees that (1) Tacoma Water does not make any representations or warranties of any kind whatsoever, either express or implied, with respect to the Property except as specifically stated herein, and (2) the Property is conveyed to Buyer in an "As-Is" and "WITH ALL FAULTS" condition as of the date of closing, except as specifically stated herein, 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.

6. **Closing.** The closing will occur not later than thirty (30) days following the conditions of section 4.1 being met, and under no circumstances later than April 30,

2014 (the "Closing Date"). "Closing," for the purpose of this Agreement, is defined as the date that all documents are executed, the sale proceeds are available for disbursement to the Tacoma Water, and legal title passes to the Buyer.

7. **Possession.** Tacoma Water shall deliver exclusive possession and control of the Property to Buyer on the Closing Date. Tacoma Water shall remove any and all personal property or debris from the Property on or before the Closing Date, unless specifically authorized otherwise in writing by Buyer or placed on the Property by Buyer.
8. **Default; Remedies; Specific Performance.** In the event of material breach or default in or of this Agreement or any of the representations, warranties, terms, covenants, conditions, or provisions hereof by either party, the non-breaching or non-defaulting party shall have, in addition to a claim for damages from such breach or default, the right to terminate this Agreement upon written notice to other party without any additional liability to the other party.
9. **Litigation / Attorney Fees.** In the event Tacoma Water 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.
10. **Professional Advice.** Tacoma Water and the Tacoma Water 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.
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: City of Tacoma, Department of Public Utilities, Water  
Division

Attn: Gloria Fletcher  
Real Property Services, ABS 2<sup>nd</sup> Floor

3628 S. 35<sup>th</sup> Street  
Tacoma, WA 98409

Buyer:

Attn: Dave Schmidt  
City Administrator  
PO Box 1960  
933 Main Street  
Buckley, WA 98321  
Email: [dschmidt@cityofbuckley.com](mailto:dschmidt@cityofbuckley.com)

- 11.2. Integration. Except as expressly stated otherwise herein and as stated in the Settlement Agreement or Right of Entry Agreement, this Agreement constitutes the full understanding between the 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 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 "Default, Remedies, Specific Performance;" Section 9, "Litigation / Attorney Fees;" Section 11.11 "Governing Law;" Section 11.12 "Construction;" Section 11.13 "Brokers and Finders;" and Section 11.14 "Continuation and Survival of Representations and Warranties.
- 11.7. Waiver. Neither Tacoma Water'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 Tacoma Water'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, deeds and assurances, 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.
- 11.12. Construction: This Agreement and each of its terms and provisions are deemed to have been explicitly negotiated between the parties, and the language in all parts of this Agreement will, in all cases be construed according to its fair meaning and not strictly for or against either party.
- 11.13. Brokers and Finders. Each party represents and warrants to the other that, to such party's knowledge, no broker, agent or finder is involved in this transaction. 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.
- 11.14. Continuation and Survival of Representations and Warranties. All representations and warranties by the respective parties contained in this Agreement or made in writing pursuant to this Agreement are intended to and will remain true and correct as of the Closing Date, will be deemed to be material and will survive the execution and delivery of this Agreement, and the delivery of the Deed and transfer of title. Such representations and warranties, however, are not assignable and do not run with the land, except as may be expressly provided herein or contained in a written instrument signed by the party to be charged.

**12. Disclosure. IF APPLICABLE, TACOMA WATER SHALL PROVIDE THE DISCLOSURE STATEMENT REQUIRED BY RCW 64.06.015, AS HEREAFTER AMENDED, WITHIN THE TIME FRAME REQUIRED BY RCW 64.06.030, AS HEREAFTER AMENDED.**

Authorized by Public Utility Board Resolution No. \_\_\_\_\_ adopted \_\_\_\_\_.

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

Accepted,

Buyer:

Tacoma Public Utilities:

\_\_\_\_\_  
City of Buckley

\_\_\_\_\_  
William A. Gaines  
Director of Utilities/CEO

Tacoma Water:

\_\_\_\_\_  
Linda A. McCrea  
Water Superintendent

Tacoma Water Review

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

REVIEWED:

APPROVED AS TO FORM:

\_\_\_\_\_  
Chris McMeen  
Deputy Superintendent

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

\_\_\_\_\_  
Glen George  
Water Supply Manager

REVIEWED:

\_\_\_\_\_  
Chief Surveyor

FINANCE REVIEWED:

\_\_\_\_\_  
Director of Finance

Dated: \_\_\_\_\_

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DEPARTMENT OF PUBLIC UTILITIES  
WATER DIVISION  
REAL ESTATE PURCHASE and SALE AGREEMENT  
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**WHEREAS**, Buyer has been occupying said real property pursuant to a Right of Entry Agreement entered into by the parties on December 20<sup>th</sup>, 2011 to facilitate a road realignment project for the Buyer; and,

**WHEREAS**, Said Right of Entry included a provision that Tacoma Water's real property would be conveyed to the Buyer; and,

**WHEREAS**, During Buyer's road realignment project, additional costs were incurred and the parties agreed to address those costs as outlined in the Settlement Agreement and Release dated \_\_\_\_\_ ("Settlement Agreement"); and

**WHEREAS**, in settlement of any claims Tacoma Water agreed to pay \$28,488.00 towards the additional costs of Buyer's road realignment project which amount will be deducted from the Purchase Price; and

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**WHEREAS**, Buyer now desires to purchase from Tacoma Water and Tacoma Water desires to sell to Buyer the real property subject to the terms and conditions set forth herein; and

**WHEREAS**, the Parties hereto mutually desire to enter into this Real Estate Purchase and Sale Agreement defining their rights, duties and liabilities relating to the subject property.

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- 1. Purchase.** Tacoma Water agrees to sell and convey to Buyer and Buyer agrees to purchase from Tacoma Water, subject to the terms and conditions set forth in this Agreement, in fee simple the following real property:

That portion of the hereinafter described Parcel "A", lying within Section 4, Township 19 North, Range 6 East, Willamette Meridian

As further described and depicted in Exhibit A attached hereto and made a part hereof, together with all right, title and interest in and to any rights, licenses, privileges, reversions and easements pertinent to the real property, including without limitation, all minerals, oil, gas and other hydrocarbon substances on and under the real property as well as all development rights, air rights, water rights, water and water stock relating to the real property and any other easements, rights of way, or appurtenances used in connection with the beneficial use and enjoyment of the real property subject to those certain conditions as set forth herein.

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- 3.1. Conveyance.** At closing, Tacoma Water shall convey to Buyer fee simple title to the Property by a duly executed and acknowledged quitclaim warranty deed ("Deed").

- 3.2. **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.
4. **Conditions to Closing.** Buyer acknowledges and agrees that this Agreement is conditioned upon the following additional reviews, terms, and conditions all of which are to be satisfied prior to Closing:
- 4.1. **Tacoma Public Utility Board, Tacoma City Council and City of Buckley Approval.** This Agreement, and the transaction contemplated hereby, must be duly approved by the Tacoma Public Utility Board, the Tacoma City Council, and the City of Buckley 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. **Condition of the Property**
- Tacoma Water agrees that it shall not sell, convey, assign, transfer or encumber any or all of the said Property during the term of this Agreement up to and including the Closing Date, nor construct capital improvements to the Property, nor waste, sell or otherwise transfer any timber or minerals thereon prior to Closing. Other than as provided for in any Right of Entry or other written agreements between the parties relating to the Property, prior to Closing, Tacoma Water assumes all risks for damage to or destruction of the Property.
6. **Closing.** The closing will occur not later than thirty (30) days following the conditions of section 4.1 being met, and under no circumstances later than April 30, 2014 (the "Closing Date"). "Closing," for the purpose of this Agreement, is defined as the date that all documents are executed, the sale proceeds are available for disbursement to the Tacoma Water, and legal title passes to the Buyer.
7. **Possession.** Tacoma Water shall deliver exclusive possession and control of the Property to Buyer on the Closing Date. Tacoma Water shall remove any and all personal property or debris from the Property on or before the Closing Date, unless specifically authorized otherwise in writing by Buyer or placed on the Property by Buyer.
8. **Default; Remedies; Specific Performance.** In the event of material breach or default in or of this Agreement or any of the representations, warranties, terms,

covenants, conditions, or provisions hereof by either party, the non-breaching or non-defaulting party shall have, in addition to a claim for damages from such breach or default, the right to terminate this Agreement upon written notice to other party without any additional liability to the other party.

**9. Litigation / Attorney Fees.** In the event Tacoma Water 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.

**10. Professional Advice.** Tacoma Water and the Tacoma Water 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.

**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: City of Tacoma, Department of Public Utilities, Water Division

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

Buyer:

Attn: Dave Schmidt  
City Administrator  
PO Box 1960  
933 Main Street  
Buckley, WA 98321  
Email: [dschmidt@cityofbuckley.com](mailto:dschmidt@cityofbuckley.com)

- 11.2. Integration. Except as expressly stated otherwise herein and as stated in the Settlement Agreement or Right of Entry Agreement, this Agreement constitutes the full understanding between the 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 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 "Default, Remedies, Specific Performance;" Section 9, "Litigation / Attorney Fees;" Section 11.11 "Governing Law;" Section 11.12 "Construction;" Section 11.13 "Brokers and Finders;" and Section 11.14 "Continuation and Survival of Representations and Warranties.
- 11.7. Waiver. Neither Tacoma Water'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 Tacoma Water'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, deeds and assurances, 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.

- 11.12. Construction: This Agreement and each of its terms and provisions are deemed to have been explicitly negotiated between the parties, and the language in all parts of this Agreement will, in all cases be construed according to its fair meaning and not strictly for or against either party.
- 11.13. Brokers and Finders. Each party represents and warrants to the other that, to such party's knowledge, no broker, agent or finder is involved in this transaction. 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.
- 11.14. Continuation and Survival of Representations and Warranties. All representations and warranties by the respective parties contained in this Agreement or made in writing pursuant to this Agreement are intended to and will remain true and correct as of the Closing Date, will be deemed to be material and will survive the execution and delivery of this Agreement, and the delivery of the Deed and transfer of title. Such representations and warranties, however, are not assignable and do not run with the land, except as may be expressly provided herein or contained in a written instrument signed by the party to be charged.

**12. Disclosure. IF APPLICABLE, TACOMA WATER SHALL PROVIDE THE DISCLOSURE STATEMENT REQUIRED BY RCW 64.06.015, AS HEREAFTER AMENDED, WITHIN THE TIME FRAME REQUIRED BY RCW 64.06.030, AS HEREAFTER AMENDED.**

Authorized by Public Utility Board Resolution No. \_\_\_\_\_ adopted \_\_\_\_\_.

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

Accepted,  
Buyer:

Tacoma Public Utilities:

\_\_\_\_\_  
City of Buckley

\_\_\_\_\_  
William A. Gaines  
Director of Utilities/CEO

Tacoma Water:

\_\_\_\_\_  
Linda A. McCrea  
Water Superintendent

Tacoma Water Review

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

REVIEWED:

APPROVED AS TO FORM:

\_\_\_\_\_  
Chris McMeen  
Deputy Superintendent

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

\_\_\_\_\_  
Glen George  
Water Supply Manager

REVIEWED:

\_\_\_\_\_  
Chief Surveyor

FINANCE REVIEWED:

\_\_\_\_\_  
Director of Finance

Dated: \_\_\_\_\_