

REAL ESTATE EXCHANGE AGREEMENT
Agreement No. 3124

This REAL ESTATE EXCHANGE AGREEMENT (this "Agreement") is entered into as of _____, 2017 between the CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, WATER DIVISION, a first class municipal corporation ("Tacoma Water") and TED W. COUTTS ("Coutts").

RECITALS

WHEREAS, Coutts is the owner of that certain parcel commonly known as 35206 Veazie Cumberland Road SE, King County Parcel Number 1871400005, legally described on Exhibit "A" attached hereto and incorporated herein by reference (the "Coutts Property"), that includes a portion of unimproved real property comprised of approximately 4,157 square feet ("Parcel A"), and

WHEREAS, Tacoma Water is the owner of that certain parcel located on Veazie Cumberland Road directly adjacent to the south boundary Coutts Property, King County Parcel Number 1871400015, legally described on Exhibit "B" attached hereto and incorporated herein by reference ("Water Property"), that includes a portion of unimproved real property comprised of approximately 4,157 square feet ("Parcel B"), and

WHEREAS, The Coutts Property and Tacoma Water Property abut property to the East that contains Deep Creek, as depicted on Exhibit "C", attached hereto and incorporated herein. Exhibit C also includes a depiction of Parcels A and B, and

WHEREAS, Tacoma Water intends to complete a project as part of its water utility operation that involves relocating Deep Creek. This project will permanently encumber Parcel A, and

WHEREAS, Coutts has agreed to convey Parcel A to Tacoma Water in exchange for Parcel B and other good and valuable consideration as set forth herein below, and

AGREEMENT

NOW, THEREFORE, In furtherance of the Recitals set forth above, which are incorporated herein by reference, and in consideration of the mutual promises and covenants set forth below, and for other good and valuable consideration, the parties acknowledge and agree to the following:

1. Coutts's Property. Coutts agrees to convey to Tacoma Water, subject to the terms and conditions set forth in this Agreement, Parcel A together with all of Coutts's 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.
2. Tacoma Water's Property. Tacoma Water agrees to convey to Coutts, subject to the terms and conditions set forth in this Agreement, Parcel B, together with all of Tacoma Water's 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.

3. Consideration. The parties have agreed that the relative "as is" fair market values of Parcel A and Parcel B are reasonably equivalent and each parcel is deemed to be fair and reasonable consideration for the other. However Parcel A includes some improvements that are appurtenant to the Coutts Property and therefore Tacoma Water will pay Ten Thousand U.S. Dollars (\$10,000), to Coutts at closing as consideration for the costs of removal or, at Coutts's sole discretion, relocation of said improvements from Parcel A. Tacoma Water also agrees to replace fencing along the revised south property line of Parcel A concurrent with construction of the Deep Creek relocation project.

4. Boundary Line Adjustment. Tacoma Water shall prepare documents to achieve a boundary line adjustment. Tacoma Water shall submit the boundary line adjustment to the appropriate department within King County in a timely manner to permit Closing by the Closing Date. Tacoma Water shall bear all costs and expenses related to the boundary line adjustment process. Coutts will assist as needed with any submittals necessary to complete this work. Each party grants the other, its employees, agents, representatives, and surveyors a right of entry to conduct survey work. Any ground disturbing activities must receive prior written approval from and be coordinated with the party on whose property the said activities are to be conducted.

5. Title to Properties.

5.1 Conveyance. At closing Coutts shall convey to Tacoma Water marketable fee simple title to Parcel A by a duly executed and acknowledged quit claim deed subject only to those encumbrances that Tacoma Water approves pursuant to Section 5.3 below. At closing Tacoma Water shall convey to Coutts marketable fee simple title to Parcel B by duly executed and acknowledged quit claim deed (the deeds collectively shall be referred to herein as "Deeds"), subject only to those encumbrances that each party approves pursuant to Section 5.3 below (these encumbrances are referred to herein as "Permitted Encumbrances").

5.2 Preliminary Commitment. Upon execution of this Agreement, both parties may, at their sole cost and expense, order a preliminary commitment for an owner's standard coverage policy of title insurance to be issued by the title company of their choice and accompanied by copies of all documents referred to in the commitment (the "Preliminary Commitment").

5.3 Condition of Title. Each Party shall inform the other party, by written notice, what encumbrances to title, if any, are disapproved by the party ("Disapproved Encumbrances") within 10 (ten) business days of receipt of the Preliminary Commitment. All monetary encumbrances other than non-delinquent ad valorem property taxes will be deemed to be disapproved. Each party will then have ten (10) business days after receipt of the other party's notice regarding Disapproved Encumbrances to give notice that (i) the party will remove Disapproved Encumbrances or (ii) the party elects not to remove Disapproved Encumbrances. If either party fails to give the other party notice before the expiration of the ten (10) day period, that that party will be deemed to have elected not to remove Disapproved Encumbrances. Notwithstanding anything to the contrary in this Agreement, each party shall remove from title on or before the Closing Date all monetary encumbrances other than those approved in writing by the other party. If a party elects not to remove any Disapproved Encumbrances, the other party will have fifteen (15) business days to provide notice of its election either to proceed with the purchase and take the property subject to those encumbrances, or to terminate this

Agreement. If either party elects to terminate this Agreement pursuant to this section, all documents and any deposited funds will be returned to the party who deposited them, and neither party will have any further rights or obligations under this Agreement, except as otherwise provided for in this Agreement. If this Agreement is terminated through no fault of either party, then both parties shall share equally any costs of terminating the Agreement and any cancellation fee for the Preliminary Commitment.

5.4 Title Policy. If desired, each party shall, at its own cost and expense, cause the title company of their choice to issue at closing a standard coverage owner's policy of title insurance insuring that party's title to its acquired property in the full amount of the Purchase Price subject only to the Permitted Encumbrances (the "Title Policy"). The Title Policy must be dated as of the Closing Date.

6. Conditions to Closing.

6.1 Tacoma Public Utility Board and Tacoma City Council Approval. This Agreement, and the transaction contemplated hereby, must be duly approved by the Tacoma Public Utilities Board and the Tacoma City Council prior to closing. If such approval is not obtained, this Agreement will terminate, all documents and any 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.

6.2 Feasibility Study. Each party will have until March 30, 2017 (the "Feasibility Study Period") to conduct a review of the property it is to receive and to satisfy itself with respect to the condition of and other matters related to the property and its suitability for the party's intended use (the "Feasibility Study"). The Feasibility Study may include all inspections and studies deemed reasonably necessary or desirable. Each party and each party's agents, representatives, consultants, architects and engineers will have the right, from time to time, from and after the date of this Agreement to enter onto the other party's property and make borings, drive test piles and conduct any other reasonable tests and studies that may be necessary or desirable to ascertain the condition and suitability of the property for the intended use. Such tests and inspections are to be performed in a manner not disruptive to the operation of the property. Each party shall protect, defend and indemnify the other from and against any construction or other liens or encumbrances arising out of or in connection with its exercise of this right of entry and shall cause any such liens or encumbrances to be promptly released. However, neither party shall be liable for any claims or diminution in value arising or resulting from (i) a party's discovery of any pre-existing condition (including, without limitation, the existence of previously unknown or undocumented Hazardous Materials as defined in section 7.4) in, on, under or about the other party's property, or (ii) any exacerbation of a pre-existing condition in, on, under or about the other party's property, except to the extent, if any, said exacerbation results from the willful or negligent act or omission of party, its agents, contractors or employees.

6.3 Non-Suitability. Each party will have the right to terminate this Agreement if, in the party's good faith judgment, the property is not suitable for the party's intended use. The party's right to terminate must be exercised by delivering written notice of its election to the other party on or before the expiration of the Feasibility Study Period. In the event either party does not complete the purchase, the properties shall be returned to the respective parties in as near as is practicable to its condition as of the execution date of this Agreement. If either party terminates this Agreement pursuant to this section, this Agreement will terminate, and both parties will be released from all further obligation or liability hereunder, except as otherwise specified by this Agreement and except for a party's obligations to indemnify the other party under this section. Failure by either party to notify the other party in writing of any matters affecting the suitability of the property,

whether or not an inspection has been carried out, shall deem that party to have waived this contingency.

7. Condition of the Property.

7.1 Covenant to Operate and Maintain. Each party shall maintain, repair, manage and operate its property in a businesslike manner in accordance with its prior practices. Each party agrees to not damage, dissipate, or commit waste on any portion of its property between the date of acceptance of this Agreement and the date of closing.

7.2 Inspections. The parties will rely on their own inspections and evaluations of the properties, with the exception of any representations and warranties listed in Section 8, below, and of written documentation, including, but not limited to, any disclosures required by law, provided to by the other party, to determine the suitability of each property for each party's intended use.

8. Representations and Warranties. Each party represents and warrants to the other as follows, to the best of its knowledge:

8.1 Claims or Litigation. That there is no litigation pending or threatened against it (or any basis for any claim) that arises out of the ownership of the property and that might materially and detrimentally affect (i) the use or operation of the property for the intended use, or (ii) the ability of either party to perform its obligations under this Agreement, or (iii) the value of its property.

8.2 Defaults. It has not received any notice of any default or breach under any covenants, conditions, restrictions, rights of way or easements that may affect the other party in respect to the property or may affect the property or any portion thereof and no such default or breach now exists.

8.3 Hazardous Substances. Neither party has any actual knowledge of any release of or presence of any hazardous materials on, in, from or onto its property ("Hazardous Materials" meaning any hazardous or toxic substance, petroleum product or wastes that are regulated or subject to cleanup authority under any state, federal or local statute, regulation or ordinance).

9. Closing. Closing shall occur through cooperation of both parties outside of any private escrow, with the parties coordinating recording of the Deeds, transferring funds, and other steps necessary to Close. The closing shall be on or before that date which is thirty (30) days after the end of the Feasibility Study Period, but in no event later than June 30, 2017 (the "Closing Date"). If closing does not occur on or before the Closing Date, or any later date mutually agreed to in writing by the parties, this Agreement shall terminate and all documents and any funds shall be returned to the party that deposited them. "Closing," for the purpose of this Agreement, is defined as the date that all documents are executed, the payment funds specified in Section 3 are available for disbursement to Coutts, and legal title for Parcel A and Parcel B transfers to the intended party.

10. Closing Costs and Prorations. Each party shall pay the premium on an owner's policy of title insurance, if desired, in the full amount of that party's estimate of fair market value, and any state of Washington real estate excise taxes applicable to the sale. Tacoma Water shall pay for the cost of recording the deeds and boundary line adjustment. 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.

11. Casualty Loss. Each party shall promptly notify the other party of any event prior to the Closing Date which causes damage to or destruction of any portion of its property. If the parties

cannot come to an agreement regarding any such damage to, or destruction of the property, including the settlement of any insurance claims, then each party will 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.

12. Possession. Each party shall deliver possession of its property to the other on the Closing Date. Each party shall remove any and all personal property or debris from its property on or before the Closing Date, unless specifically authorized otherwise in writing by the other party.

13. Events of Default. In the event either party fails, without legal excuse to complete the purchase of the other's property, then the other party may pursue any remedies available to it in law or equity, including specific performance. **The parties hereto state and agree that the foregoing provision has been expressly negotiated and is in conformance with each party's intent in entering into this Agreement.**

14. Notices. Any notice under this Agreement must be in writing and be personally delivered, delivered by recognized overnight courier service, or given by 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 Public Utilities
Real Property Services – ABS 2nd Floor
3628 S. 35th Street
Tacoma, WA 98409

Coutts: Ted Coutts
35206 Veazie Cumberland Road SE
Enumclaw, WA 98022-9633

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.

15. Counterparts. 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.

16. 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.

17. Amendments. This Agreement may be amended or modified only by a written instrument executed by both parties.

18. 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 time of closing, will be deemed to be material and will survive the execution and delivery of this Agreement and the delivery of the Deeds and transfer of titles. 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.

19. 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.

20. 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.

21. 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.

22. FIRPTA. Each party shall prepare a certification or equivalent that it is not a "foreign person" within the meaning of the Foreign Investment in Real Property Tax Act ("FIRPTA"), and the party agrees to sign this certification. If a party is a "foreign person" as the same is defined by FIRPTA, and this transaction is not otherwise exempt from FIRPTA, said party shall pay the required amount to the Internal Revenue Service.

23. Waiver. Neither Coutts' nor Tacoma Water'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.

24. 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 the Agreement.

25. Assignment. Neither party shall assign this Agreement without the other party's prior written consent, which consent may not be unreasonably withheld or delayed.

26. 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.

27. 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 effect the Agreement contemplated herein.

28. 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.

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

THEODORE W. COUTTS

TACOMA WATER

Signature and Date

Linda McCrea, Superintendent

Approved as to form:

Office of City Attorney

Tacoma Water Review

Glen George, Water Supply Manager

Greg Volkhardt, Environmental Programs Manager

Jodi Collins, Finance Manager

John Haase, Surveyor

Reference: 2013-010
Section 28, T 21N, R04E,
W.M.

Real Estate Exchange Agreement
Coutts / Tacoma Water

Agreement No.
3124

Veazie Cumberland Road

Lot(s) 1 and 2, Block 1, Cumberland, according to the plat thereof recorded in Volume 19 of Plats, Page(s) 52, records of King County, Washington;

Together with those portions of vacated Southeast 352nd Street and 314th Way Southeast vacated by Ordinance No. 10512, recorded under Recording Number 20020301001074, which, upon vacation, attached to said property by operation of law;

Situate in the County of King, State of Washington

REAL PROPERTY SERVICES

LEGAL DESCRIPTION Parcel Number 1871400005

EXHIBIT A

Reference: 2013-010	Real Estate Exchange Agreement Coutts / Tacoma Water	Agreement No. 3124
Section 28, T 21 N, R 04 E W.M. .	Veazie Cumberland Road	

Lot(s) 3, 4, and 5, Block 1, Townsite of Cumberland, according to the plat thereof recorded in Volume 19 of Plats, Page(s) 52, records of King County, Washington.

Together with that portion of vacated 314th Way Southeast as vacated by Ordinance No. 10512 recorded under Recording No. 20020301001074, in King County, Washington which, upon vacation, attached to said property by operation of law.

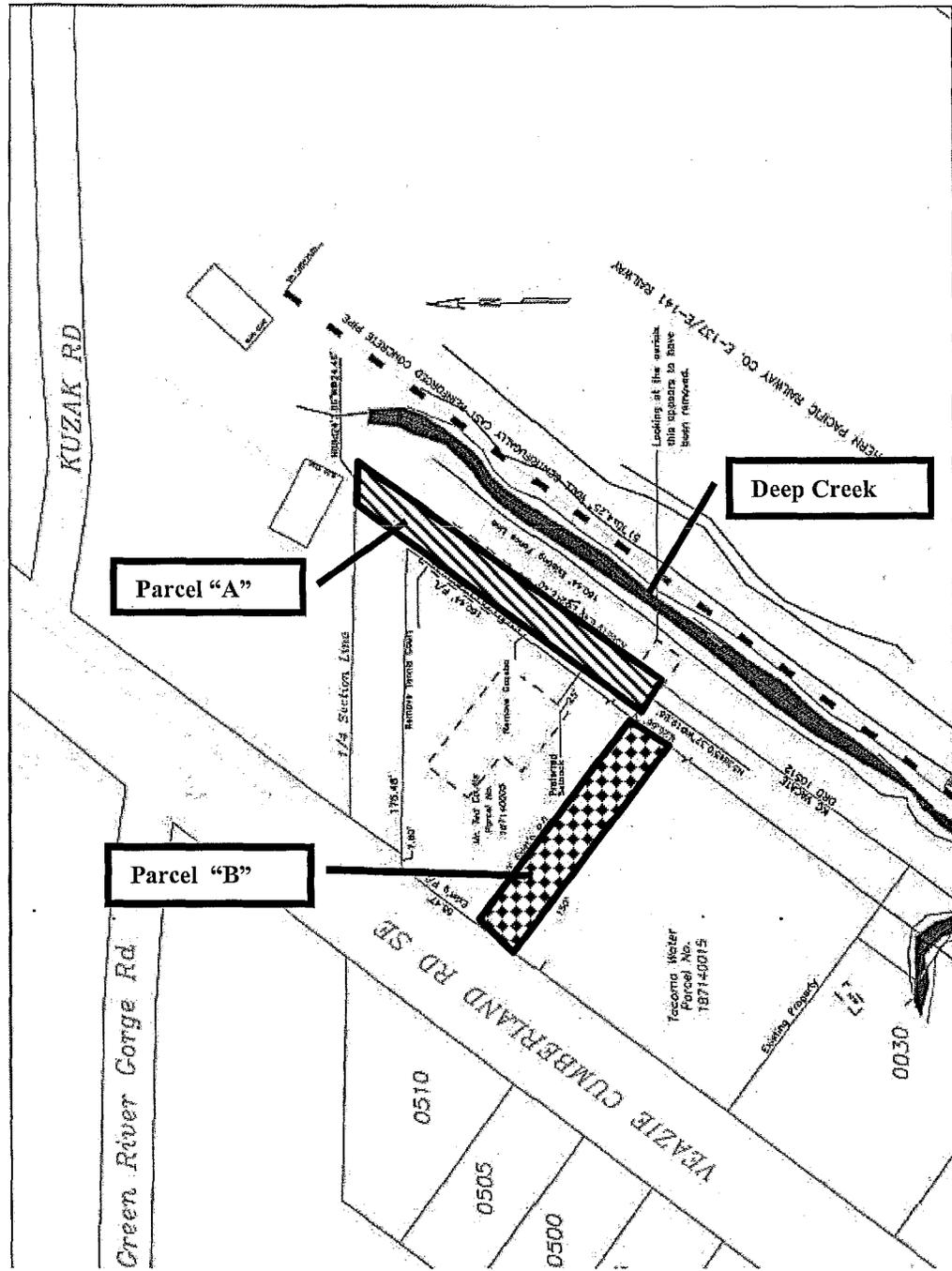
REAL PROPERTY SERVICES	
LEGAL DESCRIPTION Parcel Number 1871400015	EXHIBIT B

Reference: 2013-010

Real Estate Exchange Agreement
Coutts / Tacoma Water
Veazie Cumberland Road

Agreement No.
3124

Section 28, T 21N, R04E,
W. M.



REAL PROPERTY SERVICES MAP ILLUSTRATION

Deep Creek Boundary and Parcel Depictions This illustration is not a Plat or Survey. It is provided as a customer convenience for reference and liability is assumed by reason of reliance hereon.

EXHIBIT C