

## **PIERCE COUNTY CONSERVATION FUTURES PURCHASE AND SALE AGREEMENT**

THIS PIERCE COUNTY CONSERVATION FUTURES PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into as of the Effective Date (defined in Section 32 below) by and between CITY OF TACOMA, a municipal corporation and Washington First Class Charter City acting by and through its Department of Public Utilities, Water Division (d.b.a. Tacoma Water) ("Seller") and PIERCE COUNTY, a municipal corporation and political subdivision of the state of Washington ("Purchaser"). Seller and Purchaser may hereinafter be collectively referred to as "Parties" or individually as a "Party."

### **RECITALS**

WHEREAS Seller is sole owner in fee simple of the real property located in Pierce County, Washington, consisting of Pierce County Tax Parcel Nos. 0419133001, 0419132006 and 0419141000, the full legal description of which is set forth in attached **Exhibit A** ("Seller's Property"); and

WHEREAS Seller's Property contains features consistent with the purposes and values described in chapter 84.34 of the Revised Code of Washington (hereinafter "RCW") and chapters 2.96 and 2.97 of the Pierce County Code (hereinafter "PCC") including, without limitation: (a) wildlife habitat areas; (b) streams; (c) wetlands; (d) wooded spaces; (e) open spaces; and (f) aquifer recharge and flood control areas ("Conservation Characteristics"); and

WHEREAS on September 22, 2015, the Pierce County Council passed Resolution No. R-2015-95 authorizing the Pierce County Executive to acquire through an expenditure from Purchaser's Conservation Futures Fund an approximately ONE HUNDRED SIX (106) acre portion of Seller's Property consisting of Pierce County Tax Parcel Nos. 0419133001, 0419132006 and a portion of Tax Parcel No. 0419141000, together with a perpetual easement for ingress, egress and utilities ("Access Easement") over and across the unsold portion of Seller's Property ("Seller's Remainder Property"), all as graphically depicted for reference purposes only in attached **Exhibit B** (collectively "Subject Property"); and

WHEREAS Seller desires to sell and convey the Subject Property to Purchaser and Purchaser desires to purchase and accept the same from said Seller upon the terms, covenants and conditions set forth in this Agreement; and

NOW, THEREFORE, for and in consideration of the mutual promises set forth herein, and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, Seller and Purchaser agree as follows:

## A G R E E M E N T

**1. Recitals.** The above recitals are true and correct and are incorporated herein by this reference as if fully set forth.

**2. Purchase and Sale.** Seller agrees to sell and convey the Subject Property to Purchaser, in fee simple absolute, and Purchaser agrees to purchase and accept the same from Seller, upon the terms, covenants and conditions set forth in this Agreement.

**3. Purchase Price and Payment.** The total purchase price for the Subject Property ("Purchase Price") shall be TWO MILLION SEVEN HUNDRED SEVENTY-FIVE THOUSAND ONE HUNDRED AND NO/100 DOLLARS (\$2,775,100.00) and shall be paid by Purchaser to Seller by cashier's check, certified check, or wire transfer of immediately available funds to Closing Agent (defined in Section 6 below), as follows: (a) TWO MILLION TWO HUNDRED TWENTY THOUSAND ONE HUNDRED AND NO/100 DOLLARS (\$2,220,100.00) at Closing (defined in Section 16 below; and (b) FIVE HUNDRED FIFTY-FIVE THOUSAND AND NO/100 DOLLARS (\$555,000.00) on or before February 18, 2018.

**4. Due Diligence.**

**4.1 Due Diligence Review.** Purchaser's obligation to complete the transaction contemplated by this Agreement is subject to and conditioned upon Purchaser determining in its sole and absolute judgment and discretion it is satisfied with its due diligence review (hereinafter "Due Diligence Review") of the Subject Property including, without limitation, the fair market value of the Subject Property and the environmental, geotechnical, land use and physical aspects thereof.

**4.2 Due Diligence Period.** Purchaser shall have THIRTY (30) calendar days from the Effective Date (hereinafter "Due Diligence Period") within which to conduct its Due Diligence Review of the Subject Property and to notify Seller in writing of its satisfaction with or waiver of the Due Diligence Review. If Purchaser fails to timely deliver to Seller written notice of its satisfaction with or waiver of the Due Diligence Review, this Agreement shall automatically terminate and neither Party shall have any further rights or remedies hereunder except those that expressly survive termination of this Agreement.

**4.3 Due Diligence Materials.** Seller shall use best efforts to provide to Purchaser, or make available to Purchaser for inspection, as soon as possible (but in any event no later than TEN (10) business days after the Effective Date) all materials specified below that are in Seller's possession or control (hereinafter "Due Diligence Materials"). If Seller thereafter discovers any additional items that should have been included among the Due Diligence Materials, Seller shall promptly deliver them to Purchaser. The Due Diligence materials shall include: (a) copies of any existing easements, covenants, restrictions, agreements, or other documents that affect title to, or

Seller's possession and/or use of, the Subject Property that are not disclosed in the Preliminary Commitment; (b) all reports, surveys, plats or plans that affect or relate to the Subject Property; (c) notice of any existing or threatened litigation that affect or relate to the Subject Property and copies of any pleadings with respect to that litigation; (d) all environmental assessment reports with respect to the Subject Property performed during the FIVE (5) years preceding the Effective Date or that are currently being performed by or for Seller; (e) any governmental correspondence, orders, requests for information or action and other legal documents that relate to the presence of hazardous materials (as defined under state and/or federal law) in, on, under or about the Subject Property and any other written information relating to the environmental condition or potential contamination thereof; and (f) any preliminary title insurance reports that affect or relate to the Subject Property.

**4.4 Right of Access; Indemnification.** During the Due Diligence Period, Purchaser and its agents, employees, appraisers, contractors and consultants shall be afforded reasonable access and entry onto the Subject Property to conduct such studies, tests, appraisals, investigations and inspections as are reasonably necessary to complete the Due Diligence Review. All such studies, tests, appraisals, investigations and inspections shall occur at Purchaser's sole cost and expense and shall be performed in a manner not unreasonably disruptive to Seller's possession, use or occupancy of the Subject Property. Purchaser shall, upon completion of any such study, test, appraisal, investigation or inspection, repair any and all damage to the Subject Property caused thereby to as good or better condition than existed prior to said activities, and shall indemnify and hold Seller harmless from any claim, liability, loss or expense of any kind, type or nature whatsoever including, without limitation, reasonable costs and attorney fees, asserted against Seller or the Subject Property arising out of or relating in any way to Purchaser's entry thereon; provided, however, that such repair and indemnification shall not cover any claims, demands, liabilities, liens, judgments, costs or expenses, including, without limitation, reasonable costs and attorney fees, attributable to pre-existing adverse conditions affecting the Subject Property or to Seller's sole conduct. Purchaser shall keep confidential all matters it may discover during its investigation and inspection of the Subject Property and, except as required by law, shall not disclose such matters to any third party, other than those assisting Purchaser in its Due Diligence Review, without Seller's prior written consent (and with written notice to Seller prior to any legally compelled disclosure). Unless expressly provided to the contrary elsewhere in this Agreement, Seller shall be under no obligation to correct any deficiency in the Subject Property identified by Purchaser during the Due Diligence Review.

**5. Approval Resolutions; Termination.** The Parties' obligations to complete the transaction contemplated by this Agreement are subject to and conditioned upon passage of resolutions by the Tacoma City Council and the Tacoma Public Utility Board in the ordinary course of business on or before expiration of the Due Diligence Period, or any extension thereof, approving and ratifying this Agreement and the transaction as contemplated hereby and authorizing such other, further or different action(s) as may be required or desired by Seller in its sole and absolute judgment and discretion to complete the transaction contemplated by this Agreement (collectively "City

of Tacoma Approval Resolutions”). Seller shall, as soon as practicable after the Effective Date, submit the City of Tacoma Approval Resolutions to the Tacoma City Council and the Tacoma Public Utility Board and shall, within FIVE (5) business days after passage by the Tacoma City Council, notify Seller thereof in writing (“Notice of Passage of City of Tacoma Approval Resolutions”), such notice being conclusive for purposes of this Agreement that Seller has satisfied this condition. If Seller fails to timely deliver to Purchaser its Notice of Passage of Tacoma Approval Resolutions, this Agreement shall automatically terminate and neither Party shall have any further rights or remedies hereunder except those that have already accrued or that expressly survive termination hereof.

**6. Preliminary Commitment for Title Insurance.** The Parties have received from Attorney's Title of Washington, 3906 South 74th Street, Tacoma, WA 98409 ("Closing Agent") a preliminary commitment for an owner's standard coverage policy of title insurance covering the Subject Property under Commitment No. TC1-43262-PC ("Preliminary Commitment"). Within FIVE (5) business days after the Effective Date, Seller shall order from Closing Agent an update to the Preliminary Commitment, together with complete and legible copies (to the extent they are available) of any recorded exceptions identified in Schedule B thereof. Seller shall request of Closing Agent that the updated Preliminary Commitment be completed and delivered to Purchaser within FIVE (5) business days after Seller's request.

**7. Approval of Title.** Seller and Purchaser shall conduct their review and approval of title to the Subject Property in accordance with the procedures set forth in Sections 7.1 through 7.4 below.

**7.1 Purchaser's Title Cure Notice.** Purchaser shall have TEN (10) business days after receipt of the update to the Preliminary Commitment as set forth in Section 6 above within which to notify Seller in writing whether, in its sole and absolute judgment and discretion, Purchaser disapproves of any exception in Schedule B thereof ("Purchaser's Title Cure Notice"). All monetary liens and encumbrances, if any, shall automatically be deemed disapproved. Purchaser's failure to deliver Purchaser's Title Cure Notice shall, subject to Section 7.4 below, constitute its unconditional approval of all exceptions in Schedule B except monetary liens and encumbrances. Exceptions not disapproved by Purchaser shall become “Permitted Exceptions.”

**7.2 Seller's Title Cure Notice.** Seller shall have TEN (10) business days after receipt of Purchaser's Title Cure Notice within which to notify Purchaser in writing whether, in its sole and absolute judgment and discretion, Seller will cure or remove any exceptions disapproved by Purchaser pursuant to Section 7.1 above ("Seller's Title Cure Notice"). Notwithstanding Seller's discretion in the foregoing sentence, Seller shall remove on or before Closing any and all monetary liens or encumbrances affecting the Subject Property. Except for monetary liens or encumbrances, Seller's failure to deliver Seller's Title Cure Notice shall constitute Seller's election not to remove any such exceptions. Seller shall remove all exceptions it elects to remove on or before Closing.

**7.3 Purchaser's Title Termination Notice.** If Seller elects not to remove all exceptions disapproved by Purchaser pursuant to Section 7.1 above, Purchaser may, in its sole and absolute judgment and discretion, and not later than the expiration of the Due Diligence Period, elect to terminate this Agreement by written notice to Seller ("Purchaser's Title Termination Notice"), in which case neither Party shall have any further rights or remedies against the other, except those that expressly survive the termination hereof. If Purchaser fails to timely deliver Purchaser's Title Termination Notice, disapproved exceptions (except monetary liens and encumbrances) that Seller has elected not to remove shall become Permitted Exceptions.

**7.4 Supplemental Commitments.** If any supplement to the Preliminary Commitment issued after the date of Purchaser's Title Cure Notice contains a lien or encumbrance affecting the Subject Property other than liens or encumbrances in the initial Preliminary Commitment or any previous update or supplement thereto, or materially modifies a lien or encumbrance contained in the Preliminary Commitment or any previous update or supplement thereto, Purchaser shall be entitled to disapprove any such matter by written notice to Seller delivered within FIVE (5) business days after Purchaser's receipt of any such update or supplement. If Purchaser timely disapproves, the provisions of Sections 7.2 and 7.3 above shall apply, except Seller shall have only TWO (2) business days to deliver its notice to Purchaser and Purchaser shall have only TWO (2) business days following receipt of Seller's notice to make its election.

**8. Conveyance of Title.** Seller shall convey fee simple title to the Subject Property to Purchaser at Closing by bargain and sale deed (hereinafter "Bargain and Sale Deed") substantially in the form set forth in attached **Exhibit C**, subject only to the Permitted Exceptions.

**9. Title Insurance Policy.** At Closing, or as soon as practicable thereafter, Seller shall cause Closing Agent to issue to Purchaser an owner's standard coverage policy of title insurance covering the Subject Property ("Title Policy") in the full amount of the Purchase Price insuring, as of Closing, fee simple absolute title to the Subject Property in Purchaser free and clear of all liens and, encumbrances and defects except the Permitted Exceptions.

**10. Pending Matters; Pending Matters Addenda.**

**10.1 Pending Matters.** The matters described in Sections 10.1.1 through 10.1.3 below have not been fully resolved by the Parties and shall be the subject to further negotiations (collectively "Pending Matters"). If any Pending Matter is not resolved by the Parties in writing to their mutual satisfaction on or before expiration of the Due Diligence Period, either Party may, acting in its sole and absolute judgment and discretion, elect to terminate this Agreement upon written notice to the other, in which event neither Party shall have any further rights or remedies hereunder except those that have already accrued or that expressly survive termination hereof.

**10.1.1 Legal Description.** Mutual agreement as to the precise legal description of the Subject Property as established by survey;

**10.1.2 Access Easement.** Mutual agreement as to the precise legal description, terms, covenants and conditions of the Access Easement;

**10.1.3 Reservation; Segregation.** Mutual agreement as to the size and location of the area of the Subject Property to be reserved by Seller for pipeline purposes and the formal survey and segregation of that area and Seller's Remainder Property from the Subject Property at Purchaser's sole cost and expense.

**10.2 Pending Matters Addenda.** Upon resolution of the Pending Matters, the Parties shall execute one or more written addenda ("Pending Matters Addenda"), which shall be attached to and become part of this Agreement as **Exhibit D**, describing the terms, covenants and conditions under which each Pending Matter has been resolved.

**11. Conduct of Business.** From the Effective Date until Closing or earlier termination of this Agreement, Seller shall: (a) operate and maintain the Subject Property in the ordinary course of their business; (b) not materially violate or breach any applicable current and future zoning or land use laws, ordinances, rules or regulations applicable to the Subject Properties, nor commit any waste or nuisance thereupon; and (c) not enter into any leases, operating contracts, easements or other agreements relating to the Subject Properties that have terms extending beyond Closing without Purchaser's prior written consent, which consent may be granted, withheld, conditioned or delayed by Purchaser in its sole and absolute judgment and discretion.

**12. Representations and Warranties.**

**12.1 By Seller.** Seller represents and warrants to Purchaser as follows:

**12.1.1 Authority.** Subject to Section 5 above, Seller has full right, title, authority and capacity to execute and perform this Agreement and to consummate the transaction contemplated hereby;

**12.1.2 Litigation.** There are no actions, suits or proceedings pending or threatened against Seller in any court or before any administrative agency that might result in Seller being unable to consummate the transaction contemplated by this Agreement;

**12.1.3 Condemnation.** This Agreement is not made or entered into under the imminent threat of condemnation of the Subject Property;

**12.1.4 Hazardous Materials.** Other than as expressly set forth in Section 13.2 below, Seller has not received notification from any governmental agency or

any other source that the Subject Property is, or may be, in violation of any environmental law or is, or may be, targeted for a Superfund cleanup site.

**12.1.5 Real Estate Brokers.** Seller has not had any contact or dealing regarding the Subject Property, or any communication in connection with the subject matter of this Agreement, through any licensed real estate broker or other person who can claim a right to a commission or finder's fee as a procuring cause of the purchase and sale contemplated by this Agreement. If Seller has had any dealing or communication with a broker or finder through which a claim for a commission or finder's fee is perfected, Seller shall be solely liable for payment of that commission or fee and shall indemnify, defend and hold Purchaser harmless from and against any liability, cost or damage (including costs and attorney fees), arising out of or in any way relating to that claim.

**12.1.6 Change in Circumstances.** If, prior to Closing, Seller becomes aware of any fact or circumstance that would change a representation or warranty made in this Agreement by Seller, then Seller shall promptly give written notice thereof to Purchaser. If Seller gives written notice of any such change, or if Purchaser otherwise has actual notice of any such change, Purchaser shall have the option to terminate this Agreement within TEN (10) business days from the date Purchaser receives written notice of the changed fact or circumstance (or the end of the Due Diligence Period, if later) and all of Seller's and Purchaser's obligations under Agreement shall terminate, except those that expressly survive a termination hereof.

**12.2 By Purchaser.** Purchaser represents and warrants to Seller as follows:

**12.2.1 Authority.** Subject to Section 12.2.4 below, Purchaser has full right, title, authority and capacity to execute and perform this Agreement and to consummate the transaction contemplated hereby and the individual(s) who on Purchaser's behalf execute and deliver this Agreement and all documents to be delivered to Seller hereunder are and shall be authorized to do so;

**12.2.2 Litigation.** There is no litigation pending or, to Purchaser's knowledge, threatened, against Purchaser before any court or administrative agency which might result in Purchaser being unable to consummate the transactions contemplated by this Agreement;

**12.2.3 Condemnation.** This Agreement is not made or entered into under the threat of condemnation of the Subject Property;

**12.2.4 Council Approval.** Purchaser has received all necessary governmental approvals and funding authorizations to purchase the Subject Property. The foregoing notwithstanding, Seller acknowledges Purchaser may, in its sole and absolute judgment and discretion, terminate this Agreement if the Pierce County Council

withdraws its approval and/or funding authorization for the purchase of the Subject Property.

**12.2.5 Conservation Purposes.** Purchaser is acquiring the Subject Property solely for conservation and open space purposes consistent with chapter 84.34 of the Revised Code of Washington and chapters 2.96 and 2.97 of the Pierce County Code.

**12.2.6 Real Estate Brokers.** Purchaser has not had any contact or dealing regarding the Subject Property, or any communication in connection with the subject matter of this Agreement, through any licensed real estate broker or other person who can claim a right to a commission or finder's fee as a procuring cause of the purchase and sale contemplated by this Agreement. If Purchaser has had any dealing or communication with a broker or finder through which a claim for a commission or finder's fee is perfected, Purchaser shall be solely liable for payment of that commission or fee and shall indemnify, defend and hold Seller harmless from and against any liability, cost or damage (including costs and attorney fees), arising out of or in any way relating to that claim.

**12.2.7 Change in Circumstances.** If, prior to Closing, Purchaser becomes aware of any fact or circumstance that would change a representation or warranty made in this Agreement by Purchaser, then Purchaser shall promptly give written notice thereof to Seller. If Purchaser gives written notice of any such change, or if Seller otherwise has actual notice of any such change, Seller shall have the option to terminate this Agreement within TEN (10) business days from the date Seller receives written notice of the changed fact or circumstance (or the end of the Due Diligence Period, if later) and all of Seller's and Purchaser's obligations under this Agreement shall terminate, except those that expressly survive a termination hereof.

**12.3 Condition of Property.** Purchaser acknowledges it is purchasing and shall acquire the Subject Property in the physical condition existing as of Closing, "AS-IS," "WHERE IS" AND WITH ALL FAULTS, INCLUDING, WITHOUT LIMITATIONS, THE CONDITION OR STABILITY OF THE SOILS OR GROUND, THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS ON OR UNDER THE SUBJECT PROPERTY, THE SUITABILITY OF THE SUBJECT PROPERTY FOR ANY CONSTRUCTION OR DEVELOPMENT, ZONING AND SIMILAR MATTERS, SOLELY IN RELIANCE ON PURCHASER'S OWN INVESTIGATION, EXAMINATION, INSPECTION, ANALYSIS, AND EVALUATION OF THE SUBJECT PROPERTY. As of the Effective Date, Seller has made no representations or warranties, express or implied, regarding the Subject Property except for those representations and warranties expressly provided elsewhere in this Agreement.

**12.4 Other Representations and Warranties.** Seller and Purchaser acknowledge and agree, except as may be expressly provided to the contrary elsewhere in this Agreement, neither Party has made any statement, representation, warranty or agreement as to any matter concerning the Subject Property or the suitability thereof for

Purchaser's intended uses and that Purchaser has made or will make its own independent inspection and investigation of the Subject Property.

### **13. Hazardous Materials**

**13.1 Hazardous Materials Defined.** As used in this Agreement, the term “Hazardous Materials” shall mean any hazardous or toxic substances, materials, wastes, pollutants or contaminants that are now or hereafter defined, listed, or regulated by any federal, state, or local Environmental Law. As used in this Agreement, the term “Environmental Law” includes any federal, state or local law, regulation or ordinance that requires the removal of Hazardous Materials, regulates the existence or management of Hazardous Materials to address and/or protect against an actual or threat of harm to human health or to the environment. Federal and state Environmental Laws include CERCLA (42 U.S.C. §9601 et seq.), MTCA (Chapter 10.105D RCW), the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.), the Hazardous Waste Management Act (Chapter 70.105 RCW), the Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.), and the Water Pollution Control Act (Chapter 90.48 RCW).

**13.2 Environmental Inspection and Disclosure.** Seller has previously disclosed to Purchaser the location of a historic dump site on the Subject Property which was closed in 1999 in accordance with WAC 173-304. The dump site closure proposal, plans, monitoring schedule, and past inspection reports made by Tacoma-Pierce County Health Department have also been previously disclosed to Purchaser. Purchaser acknowledges its awareness and willingness to assume, from and after Closing, responsibility for operations, management, and monitoring of the dump site and will comply with Tacoma-Pierce County Health Department directives relative to the Subject Property. Further, during the Due Diligence Period, Purchaser may, in accordance with Section 4 above, conduct such environmental inspections and tests of the Subject Property as it deems appropriate to determine the presence of Hazardous Materials in, on, under or about the Subject Property. If, based upon the results of those inspections and tests, Purchaser determines the condition of the Subject Property is unsatisfactory, or if Purchaser believes ownership of the Subject Property would result in undue risk of government intervention or third-party liability, Purchaser may, in its sole and absolute judgment and discretion, terminate this Agreement, in which event the Parties shall have no further rights or remedies against one another under this Agreement except those that expressly survive termination hereof.

**13.3 Environmental Release and Indemnity.** If, however, based upon the results of any environmental inspections or tests of the Subject Property during the Due Diligence Period, Purchaser determines the condition thereof is acceptable and notwithstanding the disclosure and results of the inspections and tests determines to move forward with the purchase then Purchaser, for itself and its successors and assigns, shall, as of Closing, release, defend, indemnify and hold Seller harmless from any and all known environmental claims and liabilities, of whatever nature arising out of Seller's ownership and operation of the Subject Property that Purchaser may have against Seller

including, without limitation, sums paid responding to, defending against and in settlement of environmental claims and liabilities, including claims for response or remedial action costs, attorney fees, consultant fees and expert fees, by reason or on account of, or in connection with, or arising out of or in any way relating to: (a) the presence or suspected presence of Hazardous Materials in, on, under or about the Subject Property; (b) the migration of Hazardous Materials from or onto the Subject Property; or (c) the violation of any Environmental Law; provided however, that said release and indemnity shall not apply to claims arising out of a release of Hazardous Materials in, on, under or about the Subject Property by Seller that was not disclosed and could not have reasonably become known to Purchaser through the Due Diligence Review process set forth in Section 4 above.

**14. Foreign Investment in Real Property Tax Act.** If requested by Closing Agent, the Parties agree to comply in all respects with the Foreign Investment in Real Property Tax Act (hereinafter "FIRPTA"), as set forth in Section 1445 of the Internal Revenue Code and the regulations issued thereunder.

**15. Conditions Precedent to Closing.**

**15.1 Seller's Conditions.** Seller's obligation to complete the transaction contemplated by this Agreement is subject and conditioned upon satisfaction or waiver of each of the following conditions precedent:

**15.1.1 Closing Deliveries.** Purchaser's delivery to Closing Agent, on or before Closing, of the instruments, documents and monies described in Section 17.2 below;

**15.1.2 Resolution of Pending Matters.** Resolution of the Pending Matters upon terms, covenants and conditions acceptable to Seller in its sole and absolute judgment and discretion; and

**15.1.3 Other Conditions.** Satisfaction or waiver, on or before the Closing, of all other conditions to Closing for the benefit of Seller as set forth in this Agreement.

**15.2 Purchaser's Conditions.** Purchaser's obligation to complete the transaction contemplated by this Agreement is subject to and conditioned upon satisfaction or waiver of each of the following conditions precedent:

**15.2.1 Due Diligence Review.** Purchaser's acceptance of the Subject Property as a result of its Due Diligence Review;

**15.2.2 Title Policy.** Closing Agent's commitment to issue the Title Policy described in Section 9 above;

**15.2.3. Resolution of Pending Matters.** Resolution of the Pending Matters upon terms, covenants and conditions acceptable to Purchaser in its sole and absolute judgment and discretion;

**15.2.4 Closing Deliveries.** Seller's delivery to Closing Agent, on or before Closing, of the instruments, documents and monies described in Section 17.1 below; and

**15.2.5 Other Conditions.** Satisfaction or waiver, on or before Closing of all other conditions to Closing for the benefit of Purchaser as set forth in this Agreement.

**15.3 Failure or Waiver of Conditions Precedent.** If any of the conditions precedent set forth in this Section 15 are not satisfied or waived by the Party intended to be benefited thereby, this Agreement shall terminate and neither Party shall have any further rights or remedies against the other, except those that expressly survive termination hereof. The foregoing notwithstanding, either Party may, in its or their sole and absolute judgment and discretion, at any time or times on or before the date (and, if indicated, the time) specified for the satisfaction of the condition, waive in writing the benefit of any condition precedent.

**16. Closing; Possession.** "Closing" means the date upon which the Bargain and Sale Deed is recorded by Closing Agent and the proceeds of sale are legally available for disbursement to Seller. Closing shall take place at the offices of Closing Agent, or at such other place as Seller and Purchaser may mutually agree in writing, within THIRTY (30) calendar days after Purchaser's waiver or satisfaction of the Due Diligence Review, but in no event later than December 29, 2017 (hereinafter "Outside Closing Date"). Seller and Purchaser agree to execute and deliver to Closing Agent such closing escrow instructions as may be necessary to implement and coordinate Closing. Purchaser shall be entitled to possession of the Subject Property at Closing. If this transaction fails to close by the Outside Closing Date, the non-defaulting Party (or in the event the failure to close is not due to the default of a Party, then either Party) may terminate this Agreement by giving written notice of the same to the other Party, and no Party shall have any further rights or remedies against another, except those that expressly survive termination hereof.

**17. Closing Deliveries.** On or before Closing the following shall be delivered to Closing Agent:

**17.1 By Seller.** The following, duly executed and acknowledged by Seller: (a) the Bargain and Sale Deed; (b) a Real Estate Excise Tax Affidavit relating to the Bargain and Sale Deed; (c) a FIRPTA nonforeign affidavit (if required by Closing Agent); (d) the Pending Matters Addenda, as applicable; and (e) any and all other instruments, documents and monies required by Closing Agent and/or the Parties before, on or following Closing to consummate the transaction contemplated by this Agreement.

**17.2 By Purchaser.** The following, duly executed and acknowledged by Purchaser: (a) a Real Estate Excise Tax Affidavit relating to the Bargain and Sale Deed; (b) the Purchase Price and any other funds as may be required in order to close hereunder; (c) the Pending Matters Addenda, as applicable; and (d) any and all other instruments, documents and monies required by Closing Agent and/or the Parties before, on or following Closing to complete the transaction contemplated by this Agreement.

**18. Closing Costs; Prorations.**

**18.1 Seller's Closing Costs.** Seller shall pay: (a) Real Estate Excise Taxes due at Closing; (b) one-half of the Closing Agent's escrow fee; (c) its own attorney fees; and (d) all other costs and expenses allocated to Seller under this Agreement.

**18.2 Purchaser's Closing Costs.** Purchaser shall pay: (a) the cost of recording the Bargain and Sale Deed; (b) one-half of the Closing Agent's escrow fee; (c) the cost to survey and record the segregation of the Subject Property from Seller's Property; (d) the premium for the Title Policy (d) its own attorney fees; and (e) all other costs and expenses allocated to Purchaser under this Agreement.

**18.3 Prorations; Adjustments.** Any liens, assessments or charges imposed by law upon the Subject Property shall be prorated as of Closing, with such prorations to be a final settlement between the Parties. Seller and Purchaser agree, to the extent items are prorated or adjusted at Closing on the basis of estimates, or are not prorated or adjusted at Closing pending actual receipt of funds or a compilation of information upon which such prorations or adjustments are to be based, each of them will, upon a proper accounting, pay to the other such amounts as may be necessary such that Seller shall receive the benefit of all income and shall pay all expenses of the Subject Property prior to Closing and Purchaser shall receive all income and shall pay all expenses of the Subject Property after Closing. If Purchaser receives any bill or invoice which relates to periods prior to Closing, Purchaser shall refer such bill to Seller and Seller shall pay, promptly upon receipt, such portion of the bill or invoice as relates to the period prior to Closing for which that Seller is responsible. If Seller does not pay such bill in a timely manner, Purchaser may, at its option, pay such bill or invoice and Seller shall become and remain liable to Purchaser for the full amount thereof until paid.

**19. Risk of Loss; Change in Condition.** Risk of loss of or damage to the Subject Property shall be borne by Seller until Closing and risk of loss of or damage to the Subject Property shall be borne by Purchaser thereafter. In the event of a material loss of or damage to the Subject Property prior to Closing, or in the event of a material adverse change in the condition thereof prior to Closing, Seller shall promptly notify Purchaser in writing. Purchaser may elect in its sole and absolute judgment and discretion, by notice in writing to Seller within TEN (10) calendar days after receipt of Seller's notice or, if Seller does not notify Purchaser, within TEN (10) calendar days after the time Purchaser otherwise has actual notice of the material loss or damage or material adverse change, either to terminate this Agreement or to purchase the Subject Property in

the condition existing at Closing. If Purchaser does not give such notice, Purchaser shall be deemed to have elected to proceed with the purchase.

**20. Condemnation.** If, prior to Closing, all or any portion of the Subject Property is taken by, or made subject to, condemnation, eminent domain or other governmental acquisition, then Purchaser, in its sole and absolute judgment and discretion, may elect either to: (a) terminate this Agreement by written notice to Seller within FIVE (5) calendar days after Seller's receipt of written notice of such action, whereupon neither Party shall have any further rights or duties under this Agreement except those which expressly survive termination hereof; or (b) agree to close and deduct from the Purchase Price an amount equal to any sum paid to Seller for such governmental acquisition.

**21. Notices.** Notices shall be in writing and sent by either: (a) United States mail, return receipt requested; (b) recognized overnight courier; or (c) facsimile. Notices shall be deemed delivered on the earlier of: (a) three (3) business days after deposit in the United States mail; (b) the delivery date as shown in the delivery records of the overnight courier; or (c) the date of confirmed receipt by the recipient's fax:

To Seller: Tacoma Public Utilities, Real Property Services  
Attn: Real Estate Officer  
ABS - 2nd Floor  
3628 South 35th Street  
Tacoma, WA 98402  
Telephone: 253-502-8256  
Facsimile: 253-502-8539  
Email: gmuller@cityoftacoma.org

To Purchaser: Pierce County Parks & Recreation Services  
Attn: Nicole Hill  
9112 Lakewood Drive SW, Suite 114  
Lakewood, WA 98499  
Telephone: 253-798-4252  
Facsimile: 253-582-7461

Copy to: Pierce County Prosecuting Attorney/Civil Division  
Attn: David H. Prather, Deputy Prosecuting Attorney  
955 Tacoma Avenue South, Suite 301  
Tacoma, WA 98402-2160  
Telephone: 253-798-4168  
Facsimile: 253-798-6713

To Closing Agent: Attorney's Title of Washington  
(Title & Escrow) Attn: Ellesia Barradale  
3906 South 74th Street  
Tacoma, WA 98409

Telephone: (253) 284-3848  
Facsimile: \_\_\_\_\_

Any Party, by written notice to the other in the manner herein provided, may designate an address different from that set forth above. Any notices sent by a Party's attorney on behalf of such Party shall be deemed delivered by such Party.

**22. Default; Remedies.** If Seller or Purchaser do not perform the covenants and obligations contained in this Agreement in good faith or if the representations and warranties contained herein are not all true and accurate, either Party may seek: (a) specific performance of this Agreement and/or damages; or (b) rescission of this Agreement; or (c) all other remedies available at law and equity.

**23. Attorney Fees; Venue.** The substantially prevailing Party in any action or proceeding between the Parties for the enforcement of this Agreement shall be entitled to recover reasonable costs and attorney fees (including, without limitation, reasonable costs and attorney fees incurred in appellate proceedings, or in any action or participation in, or in connection with, any case or proceeding under the Bankruptcy Code, and expenses for witnesses, including expert witnesses), in addition to all other relief to which it may be entitled. The venue of any action arising out of or relating to this Agreement shall be in the Superior Court of Pierce County, Washington.

**24. Negotiation and Construction.** This Agreement was negotiated by the Parties with the assistance of their own legal counsel and shall be construed according to its fair meaning and not strictly for or against either Party. This Agreement shall be construed and interpreted in accordance with the laws of the state of Washington.

**25. Time.** Time is of the essence of this Agreement and of every term and provision hereof.

**26. Entire Agreement.** This Agreement constitutes the entire agreement of the Parties with respect to the Subject Property and supersedes all written or oral agreements or understandings, if any. This Agreement may be modified only in writing signed by all Parties.

**27. Date of Performance.** If the date for any performance under this Agreement falls on a weekend or holiday, the time shall be extended to the next business day.

**28. Cost of Performance.** Except as otherwise expressly provided in this Agreement, all covenants, agreements and undertakings of a Party shall be performed at sole cost and expense of that Party without a right of reimbursement or contribution from the other Party.

**29. Survival of Provisions; Binding Effect.** The covenants, representations, agreements, terms and provisions contained herein shall survive the Closing and shall not be deemed to have merged with or into the Bargain and Sale Deed. This Agreement shall be binding upon and shall inure to the benefit of the Parties and upon their heirs, successors and assigns.

**30. Invalid Provision.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such illegal, invalid or unenforceable provision or by its severance from this Agreement.

**31. Exhibits.** The following exhibits are attached to this Agreement and by this reference incorporated herein as if fully set forth:

- Exhibit A** -- Legal Description of Seller's Property
- Exhibit B** -- Graphic Depiction of Subject Property
- Exhibit C** -- Bargain and Sale Deed
- Exhibit D** -- Pending Matters Addenda

**32. Effective Date.** The "Effective Date" of this Agreement shall be the date upon which Purchaser's County Executive (who shall be the last person to sign) shall have affixed his signature to this Agreement as indicated opposite his name below.

***[SIGNATURES & ACKNOWLEDGEMENTS APPEAR ON FOLLOWING PAGES]***





**EXHIBIT A**  
**(Legal Description of Seller's Property)**

Insert legal for Pierce County Parcels 0419133001, 0419132006 and 0419141000

**EXHIBIT B**  
**Graphic Depiction of Subject Property**

**EXHIBIT C**  
**Bargain and Sale Deed**  
**(FORM ONLY -- DO NOT SIGN)**

WHEN RECORDED RETURN TO:  
Pierce County Parks & Recreation Services  
Attn: Nicole Hill  
9112 Lakewood Drive SW, Suite 114  
Lakewood, WA 98499

**WASHINGTON COUNTY AUDITOR/RECORDER**  
**INDEXING FORM**

**Document Title:** BARGAIN AND SALE DEED

**Grantors:** CITY OF TACOMA, a municipal corporation  
and Washington First Class Charter City:

**Grantee:** PIERCE COUNTY, a municipal corporation and  
political subdivision of the state of Washington

**Abbreviated Legal:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Parcel Number(s):** 0419133001, 0419132006 and a portion of 0419141000



**EXHIBIT A**  
**(Legal Description)**

**EXHIBIT B**  
**(Permitted Exceptions)**

**EXHIBIT D**  
**(Pending Matters Addenda)**