

ORDINANCE NO. 852

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, GRANTING TO CITY OF TACOMA, DEPARTMENT OF UTILITIES, LIGHT DIVISION (D. B. A. TACOMA POWER), A WASHINGTON MUNICIPAL CORPORATION PROVIDING POWER SERVICE WITHIN THE STATE OF WASHINGTON BUT OUTSIDE THE CITY LIMITS, THE RIGHT AND NON-EXCLUSIVE FRANCHISE TO USE AND OCCUPY CERTAIN STREETS, AVENUES, ROADS, ALLEYS, LANES AND OTHER PUBLIC RIGHTS-OF-WAY IN THE CITY OF GIG HARBOR, WASHINGTON, FOR A PERIOD OF FIFTY YEARS, FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING, REPAIRING, AND RENEWING POWER LINES AND APPURTENANCES WITHIN AND THROUGH THE CITY OF GIG HARBOR, WASHINGTON.

WHEREAS, RCW 35A.47.040 authorizes code cities to issue non-exclusive franchises for use of public street and rights-of-way, and

WHEREAS, RCW 35.21.860 does not allow the City of Gig Harbor to impose franchise fees on the light and power business; and

WHEREAS, City of Tacoma, Department of Utilities, Light Division (d. b. a. Tacoma Power) has agreed to grant certain easements to the City in exchange for the City's grant of this franchise without a fee of any kind; and

WHEREAS, this ordinance has been introduced more than five (5) days prior to its passage by the City Council, and

WHEREAS, this ordinance has been submitted to the City Attorney and has received at least a majority vote of the entire City Council at a regular meeting, now, therefore

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON,
DO ORDAIN AS FOLLOWS:

Section 1. Rights Granted. The right is hereby granted to TACOMA POWER (hereinafter referred to as the "Grantee") to lay, construct, extend, maintain, repair, renew, operate and replace power transmission and communications lines and appurtenances under, over, along and/or across the following streets within the incorporated limits, or as they may hereafter be changed, of the City of Gig Harbor:

Soundview Drive; Olympic Drive; Hollycroft Street; 28th Avenue; Rosedale Street; and the intersection of Pioneer Way/Stinson Avenue,

for the purpose of therein installing, hanging, laying, constructing, extending, maintaining, renewing, replacing, operate and repairing power transmission and communications lines and all appurtenances thereto and accessories used and/or useful for the transmission of power within and through the present or future territorial limits of the City of Gig Harbor, Washington (hereinafter referred to as the "City"), for the term of fifty (50)-years from and after the effective date of this ordinance, except as hereinafter provided. At the end of the fifty (50)-year period this franchise shall be reviewed by both parties and considered for renewal. The City of Gig Harbor agrees to not unreasonably withhold such franchise renewal provided the purpose of the franchise has not substantially changed. If the City of Gig Harbor does not grant another fifty (50)-year franchise to Tacoma Power within one (1)-year from the end of the fifty (50)-year term then both parties acknowledge and agree that the subject easements granted to the City of Gig Harbor pursuant hereto shall automatically terminate.

Section 2. City's Reservation of Rights. Nothing herein shall be deemed to direct or restrict the City's ability to adopt and enforce all necessary and appropriate ordinances, and permit requirements regulating the performance of the conditions of this franchise, including any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to control by appropriate regulations the location, elevation, manner of construction and maintenance of any power facilities of the Grantee, and the Grantee shall promptly conform with all such regulations, and permit requirements, unless compliance would cause the Grantee to violate other requirements of law.

Section 3. Approval of Plans. Prior to construction of any of the electrical transmission and communications lines, poles, conduits, and appurtenant electrical equipment in the area described in Section 1 herein, the Grantee shall submit to the Public Works Director, in triplicate, plans drawn to an accurate scale, showing the exact location, character, position, dimensions, depth and height of the work to be done. The plans shall accurately depict the relative position and location of all lines, facilities and appurtenances to be constructed, hung, laid, re-laid, installed, replaced, repaired, connected or disconnected, in the existing street, or public right-of-way. All streets and public right-of-way denoted thereon shall be designated by their name and number and the local improvements therein such as roadway pavement, shoulders, sidewalks, curbs, gutters, ditches, driveways, parking strips, telephone or electric distribution poles, conduits, storm, gas or water pipes as may exist on the ground or area above sought to be occupied shall be outlined.

In the construction proposed by the Grantee, all materials and equipment shall be of the first class type and kind. The exact class and type to be used shall be shown on the plans, as will the equipment to be used and the mode of safeguarding and facilitating the

public traffic during construction. The manner of excavation, construction installation, backfill and temporary structures (such as traffic turnouts, road obstructions, etc.) shall meet with the approval of, pass all requirements of, and be constructed under the supervision of the Director. Prior to approval of any work under this franchise, the Director may require such modifications or changes, as he deems necessary to properly protect the public in the use of the public places, and may fix the time or times within and during which such work shall be done.

The Grantee shall submit an encroachment permit to the City prior to work within the City's right-of-way.

Section 4. Requirement for Work in Public Rights-of-Way. Whenever the Grantee shall excavate in any public right-of-way for the purpose of installation, construction, repair, maintenance or relocation of its power facilities, it shall apply to the City for a permit to do so and, in addition, shall give written notice to the City at least ten (10) working days notice of intent to commence work on main lines in the right-of-way, unless such notice is waived by the Public Works Director. In no case shall any work commence within any public right-of-way without a permit, except as otherwise provided in this franchise ordinance.

During any period of relocation, installation, construction or maintenance, all surface structures, if any, shall be erected and used in such places and positions within said public right-of-ways and other public properties so as to interfere as little as possible with the free passage of traffic and the free use of adjoining property, and the Grantee shall at all times post and maintain proper barricades and comply with all applicable regulations during such period of construction as required by the ordinances of the City or the laws of the State of Washington, including RCW 39.04.180 for the construction of trench safety systems.

If the Grantee shall at any time plan to make excavations in any area covered by this franchise and as described in this Section, the Grantee shall afford the City, upon receipt of a written request to do so, an opportunity to share such excavation, PROVIDED THAT:

- A. Installation of any lines is compatible with all federal, state and local regulations and Grantee's construction standards;
- B. Such joint use shall not unreasonably delay the Grantee's work;
- C. Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties;
- D. The Grantee may deny such request for safety reasons.

Section 5. Protection of the Public Health, Safety and Property. Whenever an accident, faulty operation, excavation, fill or other condition associated with the construction,

installation, maintenance or repair of the facilities authorized under this franchise has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining street or public place, or endangers the public, an adjoining public place or street utilities or City property, the Director may direct the Grantee, at its own expense, to take actions to protect the public, adjacent public places, City property and street utilities, and may require compliance within a prescribed time.

In the event that the Grantee fails or refuses to take the actions directed promptly, or fails to fully comply with such directions given by the Director, or if emergency conditions exist which require immediate action, the City may enter upon the property and take such actions as are necessary to protect the public, the adjacent streets, or street utilities, or to maintain the lateral support thereof, including placing of temporary shoring, backfilling, alteration of drainage patterns and any other actions reasonable necessary to decrease the possibility of earth movement, or actions regarded as necessary safety precautions; and the Grantee shall be liable to the City for the costs thereof.

Section 6. Records. The Grantee shall at all times keep complete records showing the relative location and size of all power lines heretofore installed in the City, and showing the relative location of all gates, gauges, and other service construction. Such records shall be kept current by the Grantee, who shall provide as-builts to the City after this franchise is granted, and if the City permits additional installations, then immediately after construction is complete.

Upon the City's request for information on the location of Grantee's power lines or other facilities prior to the designing of rights-of-way improvements or other City improvements, the Grantee shall respond with the information on the Grantee's facilities no later than two (2) business days after the receipt of the request, unless otherwise agreed by the parties in writing. The City, as excavator, shall have the right to receive compensation for all costs damages or other expenses incurred by the City if the Grantee does not accurately locate its facilities as required by this section and in accordance with RCW 19.122.030. In addition, nothing in this section limits the City's ability to obtain damages from the Grantee under the circumstances described in chapter 19.122 RCW, and the City may also otherwise obtain recovery for its damages, costs, fees and expenses as provided by law.

Section 7. Recovery of Costs. The Grantee shall be responsible for all permit fees associated with activities undertaken through the authority granted in this franchise ordinance or under the laws of the City. When the City incurs costs and expenses for review, inspection or supervision of activities undertaken through the authority granted in this franchise or any ordinances relating to the subject for which a fee is not established, the Grantee shall pay such costs and expenses directly to the City.

Section 8. Restoration. The Grantee shall, after installation, construction, relocation, maintenance or repair of its facilities within the franchise area, restore the surface of the right-of-way to at least the same condition the property was in immediately prior to any such installation, construction, relocation, maintenance or repair. The Public Works Director shall have final approval of the condition of such streets after restoration or repair. All concrete encased monuments, which have been disturbed or displaced by such work, shall be restored pursuant to all federal, state and local standards and specifications. The Grantee agrees to promptly complete all restoration work and to promptly repair any damage caused by such work to the affected area at its sole cost and expense.

Section 9. Indemnification. The Grantee hereby releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its officers, officials, employees, agents and representatives from any and all claims, costs, judgments, awards or liability to any person, including claims by the Grantee's own employees to which the Grantee might otherwise be immune under Title 51 RCW, arising from injury or death of any person or damage to property of which the acts or omissions of the Grantee, its officers or employees in performing this franchise are the proximate cause.

The Grantee further releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its officers, officials, employees, agents and representatives from any and all claims, costs, judgments, awards or liability to any person including claims by the Grantee's own employees, including those claims to which the Grantee might otherwise be immune under Title 51 RCW, arising against the City (1) solely by virtue of the City's ownership or control of the rights-of-way; (2) by virtue of the Grantee's exercise of the rights granted herein; or (3) by virtue of the City's permitting the Grantee's use of the City's rights-of-way; which claims are based upon the City's inspection or lack of inspection of work performed by the Grantee, its employees, agents officers or representatives, in connection with the work authorized on the City's property or property over which the City has control, pursuant to this franchise or pursuant to any other permit or approval issued in connection with this franchise.

This covenant of indemnification shall include, but not be limited by this reference, claims against the City arising as a result of negligent acts or omissions of the Grantee, its employees, officers, representatives or agents in barricading, instituting trench safety systems or providing other adequate warnings of any excavation, construction or work in any public right-of-way in the performance of the work or services permitted under this franchise.

Inspection or acceptance by the City of any work performed by the Grantee at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification. Said indemnification obligations shall extend to claims, which

are not reduced to a suit, and any claims which may be compromised prior to the culmination of any litigation or the institution of any litigation.

In the event that the Grantee refuses the tender of defense in any suit or claim, said tender having been made pursuant to the indemnification clauses contained herein, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter) to have been a wrongful refusal on the part of the Grantee, then the Grantee shall pay all of the City's costs of defense of the action, including all reasonable expert witness fees and reasonable attorneys' fees and the reasonable costs of the City, including reasonable attorneys' fee for recovering under this indemnification clause.

In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Grantee and the City, its officers, employees and agents, the Grantee's liability hereunder shall be only to the extent of the Grantee's negligence. It is further specifically and expressly understood that the indemnification provided herein covers claims by the Grantee's own employees from which the Grantee might otherwise be immune under Title 51 RCW, and this waiver has been mutually negotiated by the parties.

Section 10. Bond. The City will not require that Grantee post a bond for the faithful performance of the terms and conditions of this franchise because all of the Grantees facilities are constructed and in place at this time and no new improvements are to be constructed under this franchise which would require bonding.

Section 11. Relocation. Since this franchise is for a major electrical transmission line, the typical relocation requirements are not applicable. Anytime the Grantor desires a relocation for its own governmental needs, the Grantee shall be notified of this request. The Grantee will only relocated its facilities covered by this franchise if a mutually agreeable reimbursement arrangement is made for all costs.

The Grantee may, after receipt of written notice requesting a relocation of its facilities, submit to the City written alternatives to such relocation. The City shall evaluate such alternatives and advise the Grantee in writing if one or more of the alternatives is suitable to accommodate the work, which would otherwise necessitate relocation of the facilities. If so requested by the City, the Grantee shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by the Grantee full and fair consideration. In the event, the City ultimately determines that there is no other reasonable alternative, the Grantee shall relocate its facilities as otherwise provided in this section, provided that mutually agreeable cost reimbursement commitment is made.

The provisions of this section shall in no manner preclude or restrict the Grantee from making any arrangements it may deem appropriate when responding to a request

for relocation of its facilities by any person or entity other than the City, where the facilities to be constructed by said person or entity are not or will not become City-owned, operated or maintained facilities, provided that such arrangements do not unduly delay a City construction project.

Section 12. Non-Exclusive Franchise Grant. This franchise is granted upon the express condition that it shall not in any manner prevent the City from granting other or further franchises in, along, over, through, under, below or across any of said streets, avenues, alleys or public rights-of-way of every type and description. Such franchise shall in no way prevent or prohibit the City from using any of said roads, streets or public rights-of-way, or affect the City's jurisdiction over them or any part of them, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, dedication of same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new rights-of-way of every type and description.

Section 13. Forfeiture and Revocation. If the Grantee willfully violates or fails to comply with any of the provisions of this franchise, or through willful misconduct or gross negligence fails to heed or comply with any notice given the Grantee by the City under the provisions of this franchise, then the Grantee shall, at the election of the City Council, forfeit all rights conferred hereunder and this franchise may be revoked or annulled by the Council after a hearing held upon at least thirty (30) days notice to the Grantee. Prior to or at the hearing, the Grantee may request a reasonable time within which to remedy the default.

The City may elect, in lieu of the above and without any prejudice to any of its other legal rights and remedies, to obtain an order from the superior court having jurisdiction compelling the Grantee to comply with the provisions of this ordinance, and to recover damages, costs and attorney's fees incurred by the City by reason of the Grantee's failure to comply.

In addition to any other remedy provided herein, the City reserves the right to pursue any legal remedy to compel or force the Grantee to comply with the terms of this franchise, and the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a forfeiture or revocation for breach of the conditions herein.

Section 14. Insurance. The Grantee shall procure and maintain for the duration of this franchise, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges and authority granted hereunder to the Grantee, its officials, employees and representatives. The Grantee shall provide a copy of such insurance policy to the City for its inspection prior to the adoption of this franchise ordinance.

Before beginning work on the project described in this Agreement, the Grantee shall provide evidence, in the form of a Certificate of Insurance, of the following insurance coverage and limits (at a minimum):

1. Business auto coverage for any auto no less than a \$1,000,000 each accident limit.
2. Commercial general liability insurance no less than \$1,000,000 per occurrence with a \$2,000,000 aggregate. Coverage shall include, but is not limited to, contractual liability, products and completed operations, property damage, and employer's liability.

Any deductibles or self-insured retention's must be declared to and approved by the City. Payment of deductible or self-insured retention's shall be the sole responsibility of the Grantee.

The insurance policy obtained by the Grantee shall name the City, its officers, officials, employees, and volunteers, as additional insureds with regard to activities performed by or on behalf of the Grantee. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, or volunteers. In addition, the insurance policy shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. The Grantee's insurance shall be primary insurance as respects the City, its officers, officials, employees or volunteers. Any insurance maintained by the City, its officers, officials, employees and volunteers shall be in excess of the Grantee's insurance and shall not contribute with it. The insurance policy or policies required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice, by certified mail, return receipt requested, has been given to the City. Any failure to comply with the reporting provisions of the policies required herein shall not affect coverage provided to the City, its officers, officials, employees or volunteers.

Section 15. Assignment. This agreement may not be assigned or transferred without the prior, written approval of the City. The Grantee shall provide prompt, written notice to the City of any such proposed assignment. All of the provisions, conditions, regulations and requirements contained in this franchise ordinance shall be binding upon the successors and assigns of the Grantee, and all privileges of the Grantee shall inure to the successors and assigns as if they were mentioned herein.

Section 16. Abandonment of Facilities. Any plan for abandonment of any of Grantee's power lines or facilities installed under this franchise or any of its predecessors must be submitted to the City for its written consent. The City Public Works Director shall review the plan for abandonment prior to commencement of any work, and all necessary permits must

be obtained prior to such work. The provisions of this Section shall survive the expiration, revocation or termination of this franchise ordinance.

Section 17. Modification. The City and the Grantee hereby reserve the right to alter, amend or modify the terms and conditions of this franchise upon written agreement of both parties to such alteration, amendment or modification.

Section 18. Integration. The written provisions and terms of this franchise ordinance shall supersede all prior verbal statements of either party, and any prior franchise ordinance between the parties. Such statements or prior franchise ordinances shall not be effective or be construed as entering into, forming a part of, or altering in any manner whatsoever, this Agreement.

Section 19. Street Vacations. This section will only become operative in those instances where the street vacation is subject to the City's street vacation ordinance, and not in those situations where the street has been vacated by lapse of time and operation of law. The City may have occasion to vacate certain streets, public ways or areas that have Grantee's lines and facilities located thereon. City agrees to exert reasonable good faith efforts to reserve an easement for Grantee's lines and facilities when a street, public way or area is vacated. If it is not feasible for City to reserve an easement for Grantee's line(s) and facilities, the proponents of the vacation shall be required (by City) as part of land use or other permitting approvals, to reimburse Grantee all costs to relocated said line(s) and facilities, as allowed by law.

Section 20. Notice. Any notice or information required or permitted to be given to the parties under this franchise agreement may be sent to the following addresses unless otherwise specified:

City of Gig Harbor
3105 Judson Street
Gig Harbor, WA 98335
Attn: City Administrator

Tacoma Power
3628 South 35th Street
Tacoma, WA 98409
Attn: Real Estate Mgr.

Section 21. Binding Effect. All of the provisions, conditions, regulations and requirements contained in this franchise ordinance shall further be binding upon the heirs, successors, executors, administrators, legal representatives and assigns of the Grantee and all privileges, as well as all obligations and liabilities of the Grantee shall inure to its heirs, successors and assigns equally as if they were specifically mentioned wherever the Grantee is mentioned herein.

Section 22. Compliance with Law. The Grantee, its subcontractors, employees and any person acting on behalf of the Grantee shall keep him/herself fully informed of all federal and state laws, and all municipal ordinances and regulations which in any manner affect the work or performance of the work authorized under this franchise ordinance, and regulations, whether or not such laws, ordinances or regulations are mentioned herein, and shall indemnify the city, its officers, officials, agents employees or representatives against any claim or liability arising from or based upon the violation of any such laws and regulations.

Section 23. Survival. All of the provisions, conditions, and requirements of Sections 5, 6, 8, 9, 16, shall survive the City's franchise to the Grantee for the use of the areas mentioned in Section 1 herein, and any renewals or extensions thereof.

Section 24. Severability. If any section, sentence, clause or phrase of this franchise ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this franchise ordinance. In the event that any of the provisions of this franchise are held to be invalid by a court of competent jurisdiction, the parties reserve the right to renegotiate the grant of franchise and may amend, repeal, add, replace or modify any other provision of this franchise, or may terminate this franchise.

Section 25. Acceptance. This franchise is granted upon the express condition that the Grantee, within thirty (30) days after the adoption of this ordinance, shall file with the Clerk of the City a written acceptance of the same, and when so accepted by the Grantee shall constitute a contract between the City and Grantee for all of the uses, services and purposes herein set forth.

Section 26. Early Termination. Notwithstanding anything to the contrary herein, in the event that the Grantee obtains sufficient superior property rights to the real estate that is subject of this franchise (for its transmission facilities), all provisions of this franchise shall automatically terminate as of the date such property rights are received. Thereafter the Grantee agrees to cooperate in good faith with the City, to negotiate (if necessary), mutually agreeable use rights for the City's streets and Grantee's transmission line facilities.

Section 27. Effective Date. This Ordinance shall take effect after at least one publication in the City's official newspaper, and after the 13th of December, 2000, a period consisting of thirty days after the Franchise Agreement is approved by City Council, as long as the Grantee has submitted an acceptance as required by Section 24 above.

PASSED BY THE COUNCIL OF THE CITY OF GIG HARBOR,
WASHINGTON, AND APPROVED BY ITS MAYOR AT A REGULAR MEETING OF
SAID COUNCIL HELD ON THIS 13th OF NOVEMBER, 2000.

APPROVED:



GRETCHEN WILBERT, MAYOR

ATTEST/AUTHENTICATED:



MOLLY TOWSLEE, CITY CLERK

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

BY _____
CAROL A. MORRIS

FILED WITH THE CITY CLERK: 10/18/00
PASSED BY THE CITY COUNCIL: 11/13/00
PUBLISHED: 11/22/00
EFFECTIVE DATE: 12/13/00
ORDINANCE NO. 852

COPY

ACKNOWLEDGEMENT

[Signature] Date 10/11/00
Tacoma Power

[Signature] Date 10/10/00
City of Gig Harbor, Public Works

DRAFT

WHEN RECORDED RETURN TO:

Tacoma Public Utilities
Real Estate Management
P.O. Box 11007 • Tacoma, WA 98411

DO NOT MARK OUTSIDE THE BORDER LINES OF THIS DOCUMENT

CITY OF TACOMA
DEPARTMENT OF PUBLIC UTILITIES
EASEMENT NO. 11178

Reference No.	P1999-426THL
Grantor:	City of Tacoma, Department of Public Utilities, Light Division (d.b.a. Tacoma Power)
Grantee:	City of Gig Harbor, Department of Public Works
Legal Description(s):	A portion of the Northwest Quarter (NW¼) of Section 31, Township 22 North, Range 2 East, W. M., lying within the City of Tacoma's Transmission Line Property
Tax Parcel No(s):	Portion of 0222312004

The Grantor, CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, LIGHT DIVISION (d.b.a. TACOMA POWER), a municipal corporation, organized and existing under the laws of the State of Washington, record owner of the premises hereinafter described, and hereinafter referred to as "Tacoma Power", for and in good and valuable consideration, conveys and grants to the City of Gig Harbor, Department of Public Works, herein referred to as the "Grantee", its successors and assigns, the right and privilege to construct, install, reconstruct and maintain a four/five lane road (commonly known as East-West Road) and all appurtenant

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

equipment and underground utilities, in, under, and along the following real property owned in fee by Tacoma Power, situate and being in the County of Pierce, State of Washington, described as follows, to-wit:

AN EASEMENT FOR ROAD PURPOSES OVER, UNDER AND ACROSS A 100 FOOT STRIP OF LAND, 50 FEET OF EVEN WIDTH EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

COMMENCING AT THE NORTHWEST CORNER OF SECTION 31, TOWNSHIP 22 NORTH, RANGE 2 EAST, W.M., IN PIERCE COUNTY, WASHINGTON; THENCE, SOUTH 01°52'39" WEST 558.56 FEET ALONG THE WEST LINE OF SAID SECTION 31 TO THE ARC OF A NON-TANGENT CURVE TO THE LEFT WHOSE RADIUS BEARS NORTH 07°29'42" WEST 1600.00 FEET AND THE TRUE POINT OF BEGINNING OF THIS DESCRIBED CENTERLINE; THENCE, NORTHEASTERLY 202.49 FEET, MORE OR LESS, ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 07°15' 04" TO THE EASTERLY LINE OF THAT CERTAIN TRACT CONVEYED TO THE CITY OF TACOMA BY WARRANTY DEED DATED JULY 3, 1923 AND RECORDED JULY 14, 1923 UNDER AUDITOR'S FILE NO. 675775, RECORDS OF PIERCE COUNTY, WASHINGTON AND THE TERMINUS OF THIS DESCRIBED CENTERLINE; THE WEST END OF SAID STRIP BEING THE WEST LINE OF SAID SECTION 31 AND THE EAST END OF SAID STRIP BEING THE EASTERLY LINE OF SAID CITY OF TACOMA TRACT (COMMONLY KNOWN AS THE POTLATCH TRANSMISSION LINE RIGHT-OF-WAY).

ALL LYING WITHIN A PORTION OF THAT CERTAIN TRACT OF LAND CONVEYED TO THE CITY OF TACOMA BY WARRANTY DEED DATED JULY 3, 1923, UNDER AUDITOR'S FILE NO. 675775 (COMMONLY KNOWN AS THE POTLATCH TRANSMISSION LINE RIGHT OF WAY), RECORDS OF PIERCE COUNTY, WASHINGTON (EXHIBITS A & B) AND

LYING WITHIN THE NORTHWEST QUARTER (NW¼) OF SECTION 31,
TOWNSHIP 22 NORTH, RANGE 2 EAST, W. M

TERMS AND CONDITIONS

This easement is further granted to the Grantee under the following terms and conditions:

1. The Grantee shall at all times provide access to Tacoma Power's staff and their contractors, to change, reconstruct, repair, renew, or remove Tacoma Power's electrical equipment or facilities. This easement shall at all times be subject to Tacoma Power's paramount right to operate and maintain utility facilities within and upon the above described property.
2. Tacoma Power herein further grant(s) to Grantee its contractors, or agents, the temporary right to enter upon the Tacoma Power's remaining lands where necessary to construct or maintain said facilities; insofar as said access/activities do not interfere with Tacoma Power's facilities, maintenance or operations. Grantee shall be responsible for any and all restoration of that area used for construction to its condition immediately prior to the Grantee's construction work. Said restoration shall be completed within 30 days of project final acceptance by the Grantee's City Council.
3. INDEMNIFICATION. Tacoma Power's power transmission line facilities pre-existed the granting of this easement; therefore, Grantee understands and agrees, that Tacoma Power cannot be held legally liable for the placement of the power line facilities near any roadway, nor for not providing barricades to protect against striking Tacoma Power's facilities, which responsibility, if any, is Grantee's responsibility. The Grantee hereby releases, covenants not to bring suit, and agrees to indemnify, defend and hold harmless Tacoma Power, its officers, officials, employees, agents and representatives from any and all claims, costs, judgments, awards for damages or liability to any person, including claims by the Grantee's own employees to which the Grantee might otherwise be immune under Title 51 RCW, arising from injury or death of any person or damage to property of which the acts or omissions of the Grantee, its officers or employees related to or arising out of the rights granted under this easement are the proximate cause.

The Grantee further releases, covenants not to bring suit, and agrees to indemnify, defend and hold harmless Tacoma Power, its officers, officials, employees, agents and representatives from any and all claims, costs, judgments, awards or liability to any person including claims by the Grantee's own employees, including those claims to which the Grantee

might otherwise be immune under Title 51 RCW, arising against Tacoma Power (1) solely by virtue of Tacoma Power's ownership of the above described property; (2) by virtue of the Grantee's exercise of the rights granted herein; (3) by virtue of Tacoma Power's permitting the Grantee's use of Tacoma Power's above described property, and (4) resulting from or related to any persons constructing, maintaining or using the street or roadway that Grantee has within the easement area; which claims are based upon any act or omission by Tacoma Power with respect to Grantee's placement, location or protection from striking or hitting Tacoma Power's facilities or work performed by the Grantee, its employees, agents, officers, contractors or representatives, in connection with the work or uses authorized on Tacoma Power's said property, pursuant to this easement or pursuant to any other permit or approval issued by Grantee in connection with this easement.

This covenant of indemnification shall include, but not be limited by this reference, claims against Tacoma Power arising as a result of negligent acts or omissions of the Grantee, its employees, officers, representatives or agents in barricading, instituting trench safety systems or providing other adequate warnings of any excavation, construction or work in any public right-of-way in the performance of the work or services permitted under this easement. Inspection by Tacoma Power of any work performed upon the above described property by the Grantee at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification.

Said indemnification obligations shall extend to claims, which are not reduced to a suit, and any claims which may be compromised prior to the culmination of any litigation or the institution of any litigation.

In the event that the Grantee refuses the tender of defense in any suit or claim, said tender having been made pursuant to the indemnification clauses contained herein, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter) to have been a wrongful refusal on the part of the Grantee, then the Grantee shall pay all of Tacoma Power's costs of defense of the action, including all reasonable expert witness fees and reasonable attorneys' fees and the reasonable costs of Tacoma Power, including reasonable attorneys' fee for recovering under this indemnification clause.

In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Grantee and Tacoma Power, its officers, employees and agents, the Grantee's liability hereunder shall be only to the extent of the Grantee's negligence. It is further specifically and expressly understood that the indemnification provided herein covers claims by the Grantee's own

employees from which the Grantee might otherwise be immune under Title 51 RCW, and this waiver has been mutually negotiated by the parties.

4. The Grantee shall not assign this easement or any rights or franchise over the lands described herein without prior written permission by Tacoma Power.
5. This easement shall terminate and all rights granted herein shall automatically revert to Tacoma Power upon abandonment of those stated intended uses herein by the Grantee. In such case, the Grantee shall be responsible for restoration of said property to its condition immediately prior to the Grantee's construction work.
6. The Grantee shall be liable for any and all costs incurred for the installation, maintenance, relocation, change, repair, renew, or removal of the Grantee's said equipment or facilities to be located within the said real property.
7. The Grantee shall be solely liable for any and all costs necessary to adjust or relocate Tacoma Power transmission line facilities located upon the above described Property to the extent such adjustment or relocation is mandated, by applicable Federal, State or local regulations pertaining to road and/or electrical safety, as the direct result of Grantee's construction, maintenance and/or use of the proposed East-West road. This provision shall not apply to local regulations hereafter created by Tacoma Power.
8. The Grantee shall construct and maintain restricted access areas on both sides of said road (aka East West Road). Said access shall be for Tacoma Power's maintenance equipment and vehicles to access the Transmission Line Corridor. Access areas shall consist of two (2) sixteen-foot wide aprons including driveways and/or combination sidewalk/driveways which are both reinforced sufficiently to withstand a 60,000 lb. vehicles; and, two (2) 12-foot gates. Both access aprons (one on each side of said road) shall have adequate slopes/grades for vehicles to operate; and gates adequately setback to allow vehicles to stop prior to opening gate and clear East-West Road. Access points shall be barricaded to restrict public access onto the Transmission Line R/W. All said access ramp plans including the driveways, gate design, access ramp grade, and installation shall be designated and approved by Tacoma Power, Transmission and Distribution Department to ensure compatibility of use of the right of way.
9. The Grantee shall maintain a 25-foot minimum vertical clearance and a 50-foot horizontal clearance from any of Tacoma Power's facilities. This includes those activities during the construction, installation, relocation, or maintenance said Grantee's facilities.

10. The Grantee acknowledges and agrees that the easement granted herein is condition upon the Grantee authorizing and issuing a franchise to Tacoma Power for the purpose of constructing, reconstructing, maintaining and operating an electrical transmission line within the limits of the City of Gig Harbor. Should the Grantee unreasonably withhold issuance or re-issuance of said franchise for more than one year, the herein easement may be terminated at the sole option of Tacoma Power.

P1999-426THL/E11178

IN WITNESS WHEREOF, said corporation has caused this instrument to be executed by its proper officers and its corporate seal to be hereunto affixed this _____ day of _____, 2000.

CITY OF TACOMA

By _____
Mayor

Attest:

City Clerk

P1999-426/E11178

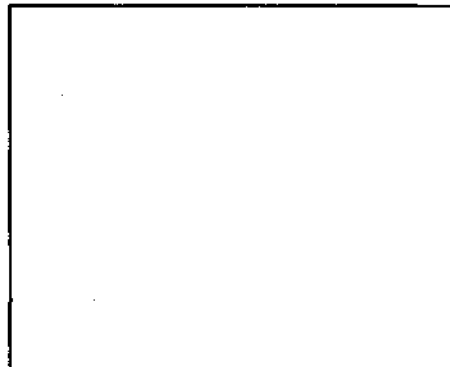
STATE OF WASHINGTON)
) SS
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that _____
_____ is/are the person(s) who appeared before me,
and said person(s) acknowledged that he/she/they signed this instrument, on oath
stated that he/she/they was/were authorized to execute the instrument and
acknowledged it as the (Title) _____ of
(Company) _____ to be the free and voluntary act of
such party for the uses and purposes mentioned in the instrument.

Dated this _____ day of _____, 2000

Notary Public in and for the State
of Washington
Residing in _____
My Commission Expires _____

Place Notary Seal in Box



P1999-426THL/E11178

Dated this _____ day of _____, 2000

Authorized:

Form Approved:

Director of Utilities

Mike Blank

Assistant City Attorney

Accepted:

Light Division Superintendent

Reviewed:

Gary Amfield

Transmission & Distribution Manager

Reviewed:

[Signature]

Chief Surveyor

City of Tacoma - Department of Public Utilities - Real Estate Management

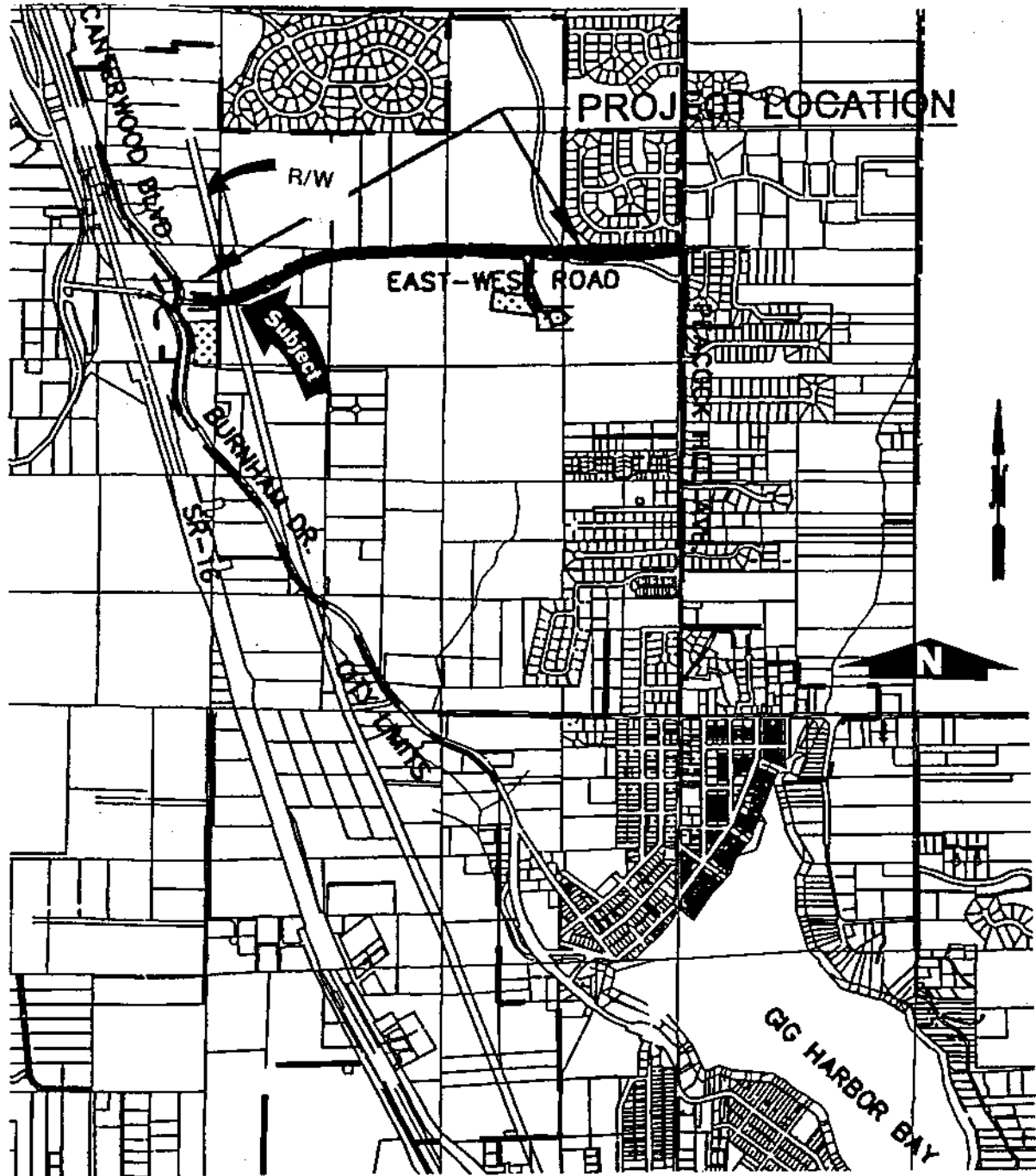
Date 4/25/00

Tacoma Power Easement No. 11178

Project No.
1999-426

Ted Lyons
Sr Real Estate Specialist

City of Gig Harbor
East-West Road.
NW¼ S31, T22N, R2E, W. M.



REAL ESTATE MANAGEMENT ILLUSTRATION

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

Exhibit A

City of Tacoma - Department of Public Utilities - Real Estate Management

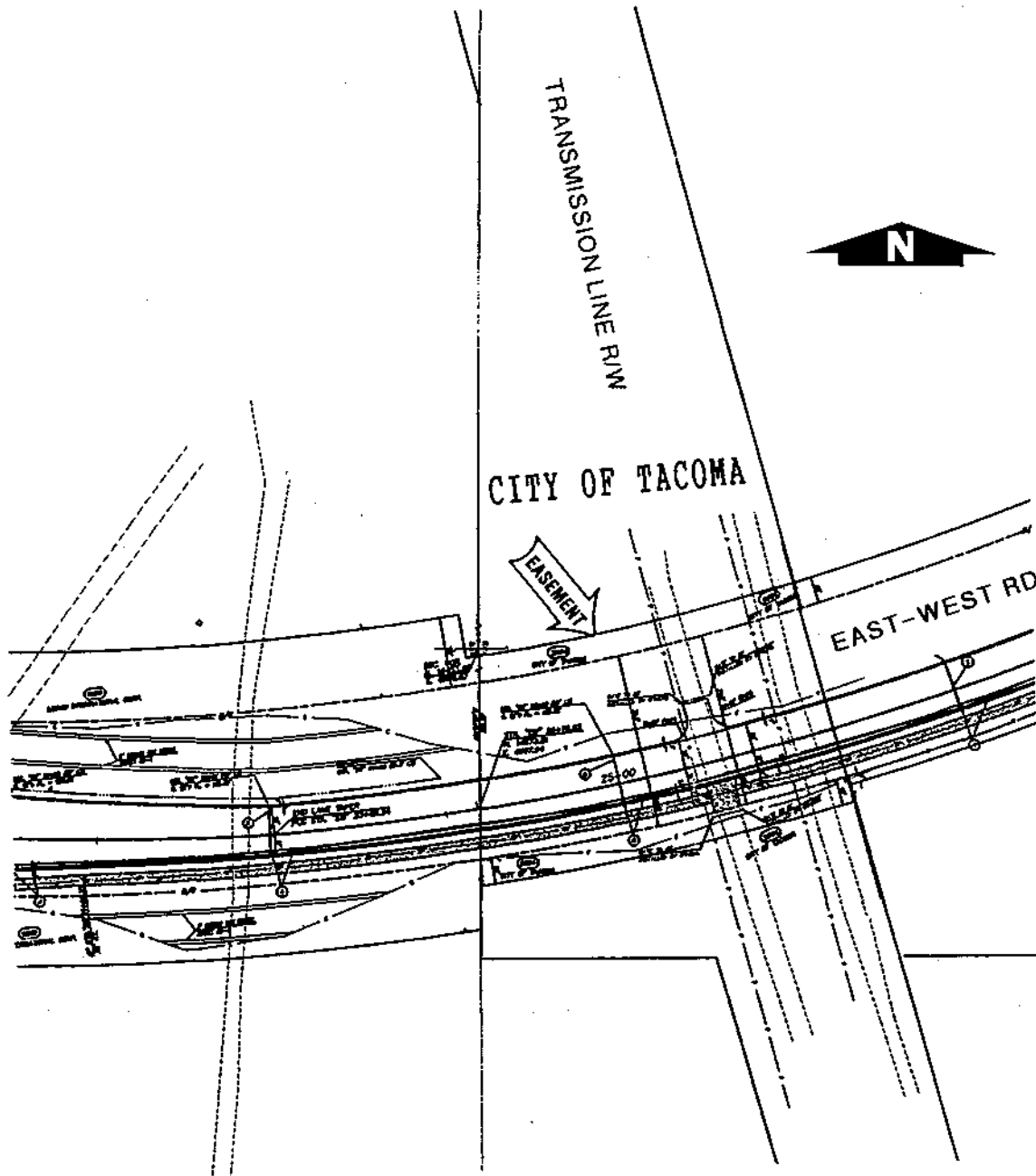
Date 4/25/00

Tacoma Power Easement No. 11178

Project No.
1999-426

Ted Lyons
Sr Real Estate Specialist

City of Gig Harbor
East-West Road.
NW¼ S31, T22N, R2E, W. M.



REAL ESTATE MANAGEMENT ILLUSTRATION


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Exhibit B

COPY

DRAFT

ACKNOWLEDGEMENT


 Tacoma Power Date 10-11-08


 City of Gig Harbor, Public Works Date 10/19/08

WHEN RECORDED RETURN TO:

Tacoma Public Utilities
 Real Estate Management
 P.O. Box 11007 • Tacoma, WA 98411

DO NOT MARK OUTSIDE THE BORDER LINES OF THIS DOCUMENT

CITY OF TACOMA
 DEPARTMENT OF PUBLIC UTILITIES
 EASEMENT NO. 11179

Reference No.	P2000-006THL
Grantor:	City of Tacoma, Department of Public Utilities, Light Division (d.b.a. Tacoma Power)
Grantee:	City of Gig Harbor, Department of Public Works
Legal Description(s):	A portion of Southeast Quarter (SE¼) of Southwest Quarter (SW¼) of Section 31, Township 22 North, Range 2 East, W. M., lying within the City of Tacoma's Transmission Line Property.
Tax Parcel No(s):	Portion of 02223103081

The Grantor, CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, LIGHT DIVISION (d.b.a. TACOMA POWER), a municipal corporation, organized and existing under the laws of the State of Washington, record owner of the premises hereinafter described, and hereinafter referred to as "Tacoma Power", for and in consideration of mutual benefits, conveys and grants to the City of Gig Harbor, herein referred to as the "Grantee", its successors and assigns, the right and privilege to construct, reconstruct, repair, operate and maintain an underground sixteen inch (16") diameter water main and all appurtenant equipment in, under, and along

Authorized by City Council Resolution No. _____, adopted _____, at the request of

Public Utility Board Resolution No. U- _____, adopted _____.

the following real property owned in fee by Tacoma Power, situate and being in the County of Pierce, State of Washington, described as follows, to-wit:

The Southerly 60 feet of that portion of the Southeast Quarter (SE¼) of the Southwest Quarter (SW¼) of Section 31, Township 22 North, Range 2 East, W. M.; all lying within that tract of land conveyed to City of Tacoma pursuant to Superior Court of the State of Washington in and for Pierce County under Judgement No. 4, Cause No. 51234 on January 29, 1924 records of Pierce County, Washington (Said real property is commonly known as the Potlatch Transmission Line Right-of-Way). (See Attached Exhibit A and B)

TERMS AND CONDITIONS

This easement is further granted to the Grantee under the following terms and conditions:

1. This easement shall at all times be subject to Tacoma Power's paramount right to operate and maintain utility facilities within and upon the above described property.
2. The Grantee shall at all times provide access to Tacoma Power's staff, agents and their contractors, to change, repair, renew, or remove electrical equipment or facilities. The Grantee shall construct its water main facilities to a sufficient standard to withstand 60,000 lb. vehicles and ensure access for said vehicles to cross the said property for accessing the transmission line corridor. Said water main facilities shall not block or impede Tacoma Power vehicle access to the Transmission Line R/W. All said water main facility plans shall be approved by Tacoma Power, Transmission and Distribution Department to ensure compatibility of use of the right of way.
3. Tacoma Power herein grant(s) to Grantee its contractors, or agents, the temporary right to enter upon Tacoma Power's remaining lands where necessary to construct or maintain said facilities; insofar as said access/activities do not interfere with Tacoma Power's facilities, maintenance or operations. The Grantee shall be responsible for any and all restoration of that area used for construction to its condition immediately prior to the Grantee's construction work. Said restorations shall be completed within 30 days of project final acceptance by the Grantee's City Council.

4. **INDEMNIFICATION.** Tacoma Power's power transmission line facilities pre-existed the granting of this easement, therefore, Grantee understands and agrees, that Tacoma Power cannot be held legally liable for damages to the proposed water main and/or existing power line facilities caused by conflicts between the same which liability, if any, shall be the Grantee's sole responsibility. The Grantee hereby releases, covenants not to bring suit, and agrees to indemnify, defend and hold harmless Tacoma Power, its officers, officials, employees, agents and representatives from any and all claims, costs, judgments, awards for damages or liability to any person, including claims by the Grantee's own employees to which the Grantee might otherwise be immune under Title 51 RCW, arising from injury or death of any person or damage to property of which the acts or omissions of the Grantee, its officers or employees related to or arising out of the rights granted under this easement are the proximate cause.

The Grantee further releases, covenants not to bring suit, and agrees to indemnify, defend and hold harmless Tacoma Power, its officers, officials, employees, agents and representatives from any and all claims, costs, judgments, awards or liability to any person including claims by the Grantee's own employees, including those claims to which the Grantee might otherwise be immune under Title 51 RCW, arising against Tacoma Power (1) solely by virtue of Tacoma Power's ownership of the above described property ; (2) by virtue of the Grantee's exercise of the rights granted herein; (3) by virtue of Tacoma Power's permitting the Grantee's use of Tacoma Power's above described property, and (4) resulting from or related to any persons constructing, maintaining or repairing the water main that Grantee has within the easement area; which claims are based upon any act or omission by Tacoma Power with respect to Grantee's placement, location or protection from striking or hitting Tacoma Power's facilities or work performed by the Grantee, its employees, agents, officers, contractors or representatives, in connection with the work or uses authorized on Tacoma Power's property, pursuant to this easement or pursuant to any other permit or approval issued by Gig Harbor in connection with this easement.

This covenant of indemnification shall include, but not be limited by this reference, claims against Tacoma Power arising as a result of negligent acts or omissions of the Grantee, its employees, officers, representatives or agents in barricading, instituting trench safety systems or providing other adequate warnings of any excavation, construction or work in any public right-of-way in the performance of the work or services permitted under this easement.

Inspection by Tacoma Power of any work performed upon the above described property by the Grantee at the time of completion of construction

shall not be grounds for avoidance of any of these covenants of indemnification.

Said indemnification obligations shall extend to claims, which are not reduced to a suit, and any claims which may be compromised prior to the culmination of any litigation or the institution of any litigation.

In the event that the Grantee refuses the tender of defense in any suit or claim, said tender having been made pursuant to the indemnification clauses contained herein, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter) to have been a wrongful refusal on the part of the Grantee, then the Grantee shall pay all of Tacoma Power's costs of defense of the action, including all reasonable expert witness fees and reasonable attorneys' fees and the reasonable costs of Tacoma Power, including reasonable attorneys' fee for recovering under this indemnification clause.

In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Grantee and Tacoma Power, its officers, employees and agents, the Grantee's liability hereunder shall be only to the extent of the Grantee's negligence. It is further specifically and expressly understood that the indemnification provided herein covers claims by the Grantee's own employees from which the Grantee might otherwise be immune under Title 51 RCW, and this waiver has been mutually negotiated by the parties.

5. The Grantee shall not assign this easement or any rights or franchise over the lands described herein without prior written permission by Tacoma Power.
6. This easement shall terminate and all rights granted herein shall automatically revert to Tacoma Power upon abandonment of those stated intended uses herein by the Grantee. In such case the Grantee shall be responsible for restoration of said property to its condition immediately prior to the Grantee's construction work.
7. The Grantee shall maintain a 25-foot minimum vertical clearance and a 50-foot horizontal clearance from any of Tacoma Power's facilities. This includes during the construction, installation, relocation, or maintenance of said Grantee's facilities.
8. A non-exclusive easement for the installation of a sanitary sewer line and county road was granted to Pierce County under Pierce County Auditor's File No. 2709866 dated June 26, 1976, for the Women's Treatment Center. The Grantee shall coordinate with Pierce County prior to installation and

construction to ensure no conflict of use exists. Tacoma Power will not grant any future easements or permits which are inconsistent with the Grantee's rights hereunder.

9. The Grantee acknowledges and agrees that the easement granted herein is condition upon the Grantee authorizing and issuing a franchise to Tacoma Power for the purpose of constructing, reconstructing, maintaining and operating an electrical transmission line within the limits of the City of Gig Harbor. Should the Grantee unreasonably withhold issuance or re-issuance of said franchise for more than one year the herein easement may be terminated at the option of Tacoma Power.

P2000-006THL/E11179

IN WITNESS WHEREOF, said corporation has caused this instrument to be executed by its proper officers and its corporate seal to be hereunto affixed this _____ day of _____, 2000.

CITY OF TACOMA

By _____
Mayor

Attest:

City Clerk

P2000-006THL/E11179

Dated this _____ day of _____, 2000

Authorized:

Approved as to Form:

Director of Utilities



Assistant City Attorney

Accepted:

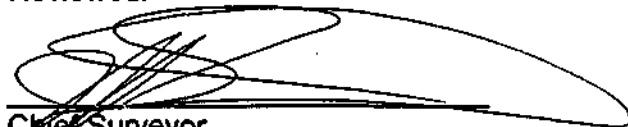
Light Division Superintendent

Reviewed:



Transmission and Distribution Manager

Reviewed:



Chief Surveyor

City of Tacoma - Department of Public Utilities - Real Estate Management

Date 4/25/00

Tacoma Power Easement No. 11179

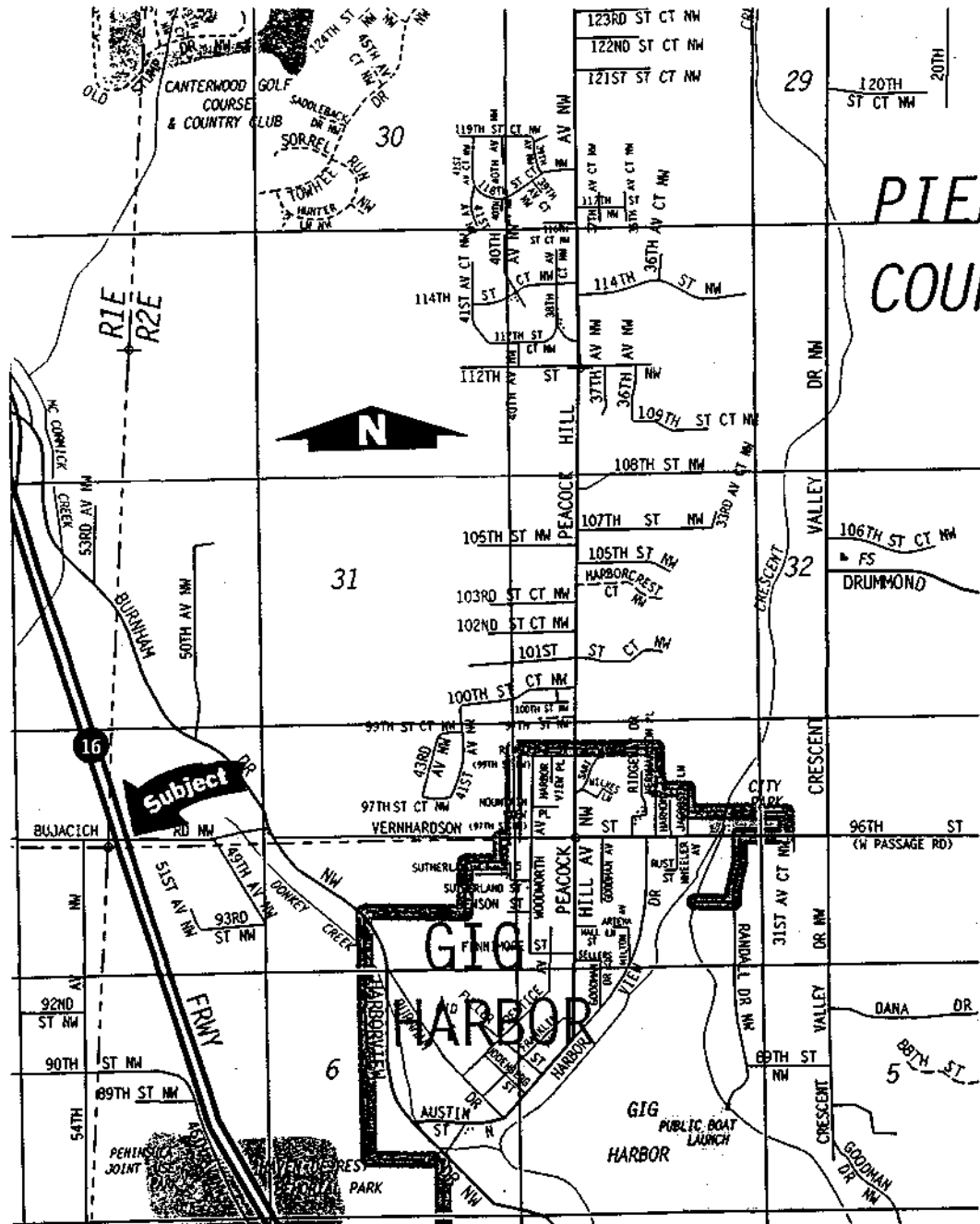
Project No.

Ted Lyons
Sr Real Estate Specialist

City of Gig Harbor
96th Street N. W.

2000-006

SW¼ S31, T22N, R2E, W. M.



REAL ESTATE MANAGEMENT ILLUSTRATION

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Exhibit A

City of Tacoma - Department of Public Utilities - Real Estate Management

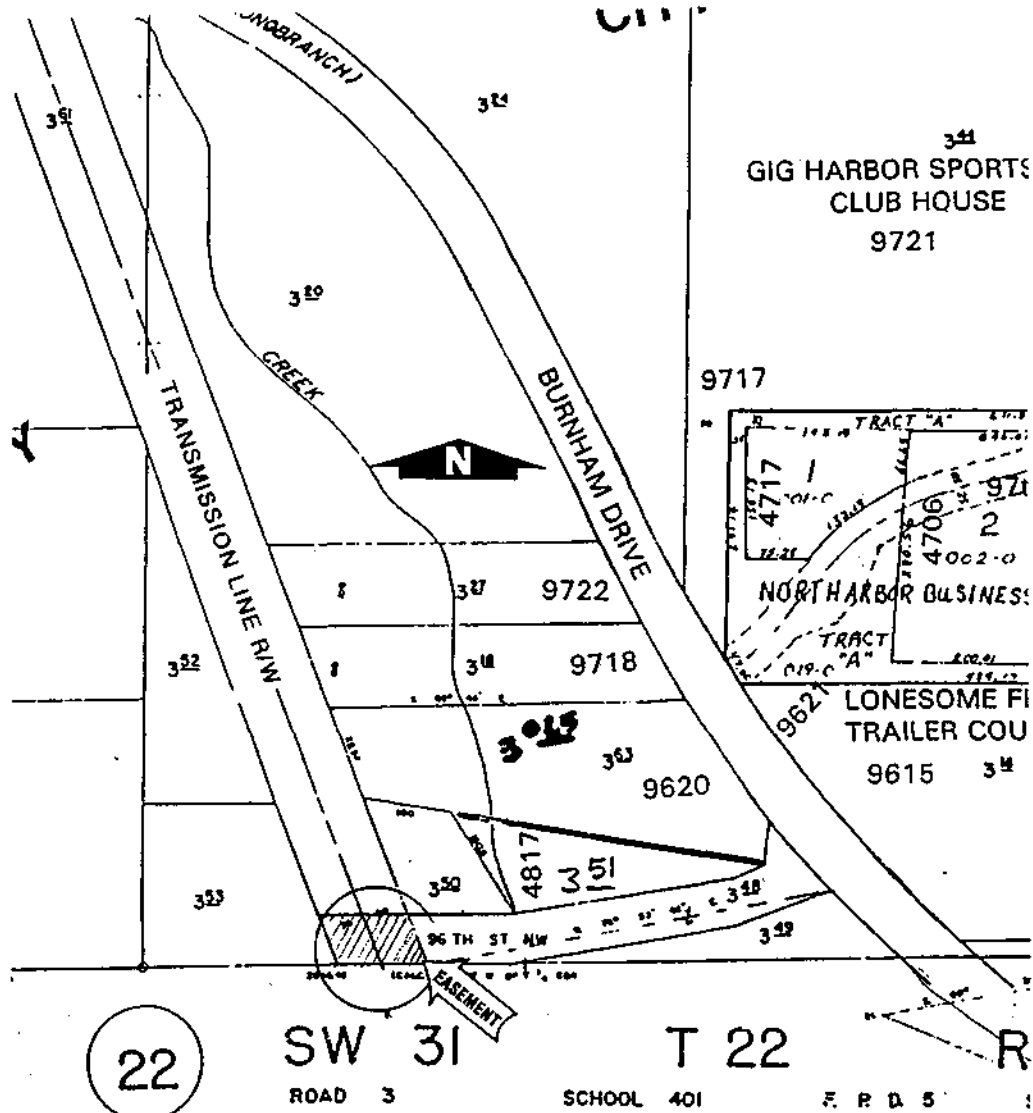
Date 4/25/00

Tacoma Power Easement No. 11179

Project No.
2000-006

Ted Lyons
Sr Real Estate Specialist

City of Gig Harbor
96th Street N. W.
SW 1/4 S31, T22N, R2E, W. M.



REAL ESTATE MANAGEMENT ILLUSTRATION

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Exhibit B