

**AMENDED AND RESTATED AGREEMENT FOR
THE SALE OF WHOLESALE WATER**

THIS AMENDED AND RESTATED AGREEMENT FOR THE SALE OF WHOLESALE WATER ("Agreement") is made and entered into as of this 31st day of December, 2012 ("Effective Date"), by and between the City of Tacoma, Department of Public Utilities, Water Division ("Tacoma"), and Cascade Water Alliance, a joint municipal utilities services authority ("Cascade"). Tacoma and Cascade are sometimes referred to collectively as the "Parties" and individually as a "Party." This Agreement is made with reference to the following facts:

RECITALS

WHEREAS, in October of 2005, in order to meet Cascade's immediate and long-term water supply needs, Cascade purchased from Tacoma a supply of water both permanently and for a finite period of years pursuant to an "Agreement for the Sale of Wholesale Water," dated October 13, 2005 (the "2005 Water Supply Agreement");

WHEREAS, Tacoma has fulfilled certain obligations under the 2005 Water Supply Agreement by making investments in regional water supply infrastructure in order to stand ready, and has stood ready, to commence deliveries of wholesale water to Cascade pursuant to the 2005 Water Supply Agreement;

WHEREAS, Cascade has fulfilled certain obligations under the 2005 Water Supply Agreement by making significant capital payments for regional water supply capacity pursuant to the 2005 Water Supply Agreement;

WHEREAS, subsequent to entering into the 2005 Water Supply Agreement, regional municipal water supply conditions have changed such that Cascade now projects that it has sufficient water for at least the next 50 years without taking deliveries of wholesale water from Tacoma pursuant to the 2005 Water Supply Agreement;

WHEREAS, in 2012 Cascade converted to a municipal corporation under the Joint Municipal Utility Services Act, Chapter 39.106 RCW, from a non-profit formed under the Interlocal Cooperation Act;

WHEREAS, Cascade and Tacoma now desire for Tacoma to offer to sell a water supply directly to certain municipalities so as to establish certain regional wholesale supply roles and to provide Cascade a means of satisfying obligations that Cascade owes to such municipalities arising out of the Four Cities Agreement;

WHEREAS, Tacoma desires to be fairly compensated for regional investments made by Tacoma in reliance on Cascade's full and satisfactory performance of its obligations arising under the 2005 Water Supply Agreement;

WHEREAS, Cascade desires to be fairly compensated for significant capital payments for regional water supply capacity in reliance on Tacoma's full and satisfactory performance of its obligations arising under the 2005 Water Supply Agreement; and

WHEREAS, due to such changed circumstances and the foregoing considerations and other good and valuable consideration, and in furtherance of the mutual desire of the Parties to clarify certain ambiguities arising under the 2005 Water Supply Agreement, the Parties now desire to amend, replace, supersede and fully restate the 2005 Water Supply Agreement.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and conditions herein contained, the Parties agree as follows:

AGREEMENT

1. **Restatement**

From and after the Effective Date, this Agreement fully restates, replaces and supersedes the 2005 Water Supply Agreement and shall govern and control the rights and obligations of the Parties with respect to the subject matter of the 2005 Water Supply Agreement, as amended and restated in its entirety by this Agreement. Except as amended and restated by this Agreement, the 2005 Water Supply Agreement is of no further force or effect.

2. **Definition of Terms**

For purposes of this Agreement, the following terms defined herein shall have the following meanings, whether singular or plural:

"4 MGD Wholesale Water Supply" means an average annual 4 MGD wholesale water supply, with a Peaking Factor of 1.33, and a maximum peak day of 5.32 MGD.

"6 MGD Wholesale Water Supply" means an average annual of 6 MGD wholesale water supply, with a Peaking Factor of 1.33, and a maximum peak day of 7.98 MGD.

"8 MGD Wholesale Water Supply" means all or any portion of the 8 MGD Wholesale Water Supply as may, from time to time during the Term, be purchased by Cascade from Tacoma, and sold by Tacoma to Cascade, pursuant to Section 10 (Sale of 8 MGD Wholesale Water Supply).

"2005 Water Supply Agreement" shall have the meaning set forth in the Recitals.

"Agreement" means this Amended and Restated Agreement for the Sale of Wholesale Water.

"Annual Restructuring Payment" means the annual Restructuring Payment due Tacoma from Cascade, in a given year during the Term, in the amount set forth in the Payment Schedule.

"Applicable Law" means any applicable and binding statute, law, rule, regulation, code, ordinance, judgment, decree, writ, legal requirement or order, and the written interpretations

thereof, of any national, federal, state or local Governmental Authority having jurisdiction over the Parties or the performance of this Agreement.

"Capacity Reservation Fee" shall have the meaning set forth in Section 9.6 of the 2005 Water Supply Agreement.

"Cascade" shall have the meaning set forth in the preamble of this Agreement.

"Cascade Claims" shall have the meaning set forth in Subsection 14.1.

"Cascade Indemnitees" means Cascade and Cascade's board of directors and alternates, officers, employees, agents, servants and representatives, and the respective successors and assigns of each and all of the foregoing.

"Conversion Period" means a period of time that shall commence as of the Effective Date and that applies to a City's purchase of the 6 MGD Wholesale Water Supply. The Conversion Period shall end on March 1, 2018.

"Dispute" shall have the meaning set forth in Section 16 (Dispute Resolution).

"Effective Date" shall have the meaning set forth in the preamble of this Agreement.

"Extension Period" means a period of time that shall commence as of the Effective Date and shall end on December 31, 2026.

"Four Cities" means each and all of the following municipal corporations of the State of Washington:

- (a) the City of Auburn;
- (b) the City of Bonney Lake;
- (c) the City of Sumner; and
- (d) the City of Buckley.

Each and any of the Four Cities are sometimes individually referred to in this Agreement by name or as a "City".

"Four Cities Agreement" means the "2010 Lake Tapps Area Water Resources Agreement Among the Cities of Auburn, Bonney Lake, Buckley and Sumner, and Cascade Water Alliance," dated February 5, 2010.

"Governmental Authority" means any (a) federal, national, state, tribal, county, municipal or local government (whether domestic or foreign), any political subdivision thereof; (b) any court or administrative tribunal; (c) any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity of competent jurisdiction; or (d) any nongovernmental agency, tribunal or entity that is vested by a governmental agency with applicable jurisdiction.

"Interest Rate" means the interest rate that is the lesser of, for each day that it is applied, the rate that is equal to (a) one three hundred and sixty-fifth (1/365) of the prime interest rate for preferred customers established from time to time by the Bank of America, or such other bank as may be designated by the Parties, plus two (2) percentage points; or (b) the highest rate permitted by Applicable Law.

"Joint Services Agreement" means the "Cascade Water Alliance Joint Municipal Utility Services Agreement," dated as of March 28, 2012, entered into by Cascade and its Members.

"Member" means a member agency of Cascade, as of March 28, 2012, and any other one or more member agencies of Cascade.

"Notice of Confirmation of System Development Charge Credit" means a notice, given by Cascade to Tacoma at the request of a City, confirming the amount of the System Development Charge Credit (if any) to be applied to the System Development Charge otherwise due and payable by a City to Tacoma in connection with a Wholesale Water Supply Agreement.

"Party" or **"Parties"** shall have the meaning set forth in the preamble to this Agreement.

"Payment Schedule" means the schedule of Annual Restructuring Payments due Tacoma for Cascade, during the Term, set forth in Section 9 (Restructuring Payment).

"Peaking Factor" means a peak day delivery limitation, which such limitation is a not to exceed quantity of water (expressed in million gallons of water per day or "MGD") that is determined by multiplying the uniform daily delivery rate established by a Wholesale Water Supply Agreement by 1.33 (i.e., Peaking Factor = 1.33 x uniform daily delivery rate). The Peaking Factor shall apply to all peak day wholesale water deliveries made by Tacoma to a City pursuant to a Wholesale Water Supply Agreement. By way of example, as applied to a uniform daily delivery rate of 4 MGD, the Peaking Factor limits a maximum peak day delivery to 5.32 MGD.

"Peak Season" means the period starting June 1 and ending September 31 each year during the Term.

"Person" means any individual, corporation, municipal corporation, company, voluntary association, partnership, incorporated organization, trust, limited liability company, or any other entity or organization, including any Governmental Authority.

"Restructuring Payment" means a payment in an amount equal to the sum and total of all Annual Restructuring Payments due Tacoma from Cascade in accordance with Section 9 (Restructuring Payment), which such amount is, as of the Effective Date, the amount due and owing Tacoma from Cascade to fairly and reasonably compensate Tacoma ratepayers for regional investments made in reliance on Cascade's full and satisfactory performance of its obligations arising under the 2005 Water Supply Agreement. The Restructuring Payment is an amount determined by the Parties to be reasonably related to, and is in lieu of, the performance of obligations heretofore required of Cascade under Subsection 9.2 of the 2005 Water Supply Agreement. The Restructuring Payment is not a payment made pursuant to a wholesale "rate" or derived from any such rate, charge or fee for the sale of water to Cascade or to any other Person.

The Restructuring Payment is not due or made pursuant to a sale of water, nor is such payment made in consideration of, dependent or contingent upon, or in any way connected with, the sale of water to Cascade or to any other Person.

"Residual Wholesale Water Supply" means that portion (if any) of the 4 MGD Wholesale Water Supply or the 6 MGD Wholesale Water Supply that is not fully subscribed and sold to the Four Cities pursuant to Section 6 (Sale of 4 MGD Wholesale Water Supply to Four Cities) and Section 7 (Sale of 6 MGD Water Supply to Four Cities).

"Subscription Period" means a period of time that shall commence as of the Effective Date and that applies to a City's purchase of the 4 MGD Wholesale Water Supply. The Subscription Period shall end on the date that is the earlier of the following dates to occur: (a) the date upon which the 4 MGD Wholesale Water Supply has been fully subscribed and sold to any one or more of the Four Cities in accordance with Section 6 (Sale of 4 MGD Wholesale Water Supply to Four Cities), or (b) March 1, 2018.

"System Development Charge" means the system development charge imposed upon wholesale customers by the Wholesale Water Regulations.

"System Development Charge Credit" means a credit, in an amount determined by Cascade, to be applied in a Wholesale Water Supply Agreement against the System Development Charge otherwise due and payable by a City to Tacoma. The System Development Charge Credit will be expressed in MGD (or portion thereof) and in dollars as to the 4 MGD Wholesale Water Supply and the 6 MGD Wholesale Water Supply. The System Development Charge Credit shall not, in the aggregate, exceed the cumulative amount of:

(a) Sixteen Million Four Hundred Eighty Four Thousand Dollars (\$16,484,000.00), for any one or more purchases by a City of the 4 MGD Wholesale Water Supply; and

(b) Nine Million Four Hundred Twenty Thousand Four Hundred Forty-Two Dollars (\$9,420,442.00), for any one or more purchases by a City of the 6 MGD Wholesale Water Supply.

"Tacoma" shall have the meaning set forth in the preamble to this Agreement.

"Tacoma Claims" shall have the meaning set forth in Subsection 14.2.

"Tacoma Indemnitees" means each and all of the City of Tacoma and Tacoma, their respective elected officials, directors, officers, employees, agents, servants and representatives, and the respective successors and assigns of each and all of the foregoing.

"Term" shall have the meaning set forth in Section 4 (Term).

"Uncontrollable Force" means any event or circumstance (or combination thereof) and the continuing effects of any such event or circumstance (whether or not such event or circumstance was foreseeable or foreseen by the Parties) that delays or prevents performance by

a Party of any of its obligations under this Agreement, but only to the extent that and for so long as:

- (a) the event or circumstance is beyond the reasonable control of the affected Party;
- (b) despite the exercise of reasonable diligence, the event or circumstance cannot be prevented, avoided or stopped by the affected Party; and
- (c) the affected Party has taken all commercially reasonable measures to avoid the effect of the event or circumstance on the affected Party's ability to perform its obligations hereunder and to mitigate the consequences of the event.

An Uncontrollable Force shall include the following, to the extent also satisfying the criteria specified above:

- (i) flood, earthquake, drought, climate change, storm, fire, lightning and other natural catastrophes;
- (ii) acts of public enemies, armed conflicts, acts of foreign enemies, acts of terrorism (whether domestic or foreign, state-sponsored or otherwise), war (whether declared or undeclared), blockade, insurrection, riot, civil disturbance, revolution or sabotage;
- (iii) any form of compulsory government acquisition or condemnation or change in Applicable Law that affect the performance of the Parties' obligations under this Agreement;
- (iv) accidents or other casualty, damage, loss or delay during transportation, explosions, fire, epidemics, quarantines or criminal acts that affect the performance of the Parties' obligations under this Agreement;
- (v) labor disturbances, stoppages, strikes, lock-outs or other industrial actions affecting the Parties or any of their contractors, subcontractors (of any tier), agents or employees;
- (vi) inability, after the use of commercially reasonable efforts, to obtain any consent or approval from any Governmental Authority that affects the performance of the Parties' obligations under this Agreement;
- (vii) inability, after the use of commercially reasonable efforts, to obtain any consent or approval from any Person required by a Party in connection with this Agreement; and
- (viii) third-party litigation contesting all or any portion of the right, title and interest of a Party in any service, property or other item to be provided to the other Party in connection with this Agreement.

Notwithstanding the foregoing, the insufficiency of funds, the financial inability to perform or changes in such Party's cost of performing its obligations hereunder shall not constitute an Uncontrollable Force, and neither Party may raise a claim for relief hereunder, in whole or in part, in connection with such event or circumstance. For purposes of this definition of an "Uncontrollable Force," Tacoma, Cascade, nor any one or more of the Four Cities is a Governmental Authority.

"Wholesale Water Supply Agreement" means the wholesale water supply agreement attached hereto as Exhibit A (Wholesale Water Supply Agreement).

"Wholesale Water Regulations" means all applicable terms and conditions of the Tacoma Municipal Code, including Chapters 12.01 and 12.10 thereof, as such terms and conditions may now exist or may hereafter be changed, deleted, supplemented, modified, or amended. The Wholesale Water Regulations include Tacoma's "Customer Service Policies" and such other rules, regulations, policies and guidelines as Tacoma shall, from time to time, adopt and apply on a uniform basis to Tacoma's wholesale customers.

3. Construction

3.1 Terms defined in a given number, tense, or form shall have the corresponding meaning when used in this Agreement with initial capitals in another number, tense, or form. References containing terms such as "hereof," "herein," "hereto," "hereinafter" and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Agreement taken as a whole. "Includes" or "including" shall not be deemed limited by the specific enumeration of items, but shall be deemed without limitation. The term "or" is not exclusive. The headings contained in this Agreement are included solely for the convenience of the Parties. Accounting terms used but not defined herein have the meanings given to them under generally accepted accounting principles in the United States consistently applied throughout the specified period and in the immediately prior comparable period.

3.2 This Agreement includes the Exhibits listed below, which are incorporated herein by this reference as if fully set forth herein, and any reference in this Agreement to an "Exhibit" by letter designation or title shall mean one of the Exhibits identified below. If there is an express conflict between the provisions contained within the body of this Agreement and the provisions of any Exhibit hereto, then the body of this Agreement shall take precedence with respect to the conflicting Exhibit. The Exhibits to this Agreement are:

- (a) Exhibit A: WHOLESALE WATER SUPPLY AGREEMENT
- (b) Exhibit B: JOINT LETTER TO FOUR CITIES
- (c) Exhibit C: DISPUTE RESOLUTION PROCEDURES

4. Term

The term of the Agreement ("Term") will commence on the Effective Date and will end as of December 31, 2042.

5. Sales of Water to the Four Cities

5.1 Tacoma and Cascade shall each employ commercially reasonable efforts to facilitate the sale of wholesale water to the Four Cities pursuant to the Wholesale Water Supply Agreement in accordance with Section 6 (Sale of 4 MGD Wholesale Water Supply to Four Cities) and Section 7 (Sale of 6 MGD Wholesale Water Supply to Four Cities) and Section 8 (Sale of Residual Wholesale Water Supply to Four Cities).

5.2 As soon as practical (but not more than 20 days) after the Effective Date, Tacoma and Cascade shall send a joint letter to the Four Cities, in the form attached hereto as Exhibit B (Joint Letter to Four Cities).

5.3 The wholesale water supply and service (if any) provided to a City pursuant to a Wholesale Water Supply Agreement shall be provided subject to and in compliance with the Wholesale Water Regulations.

6. Sale of 4 MGD Wholesale Water Supply to Four Cities

6.1 If and as requested by a City during the Subscription Period, Tacoma will sell, on a first come first served basis, such City all or a portion of the 4 MGD Wholesale Water Supply (less any amount of such 4 MGD Wholesale Water Supply as may have previously been sold to a City in accordance with this Section 6 (Sale of 4 MGD Wholesale Water Supply to Four Cities)). Tacoma will sell such wholesale water supply to such City on terms and conditions substantially in the form of the Wholesale Water Supply Agreement.

6.2 The System Development Charge for the 4 MGD Wholesale Water Supply has been paid by Cascade to Tacoma pursuant to Subsection 9.5 of the 2005 Water Supply Agreement. Any sale to a City of all or a portion of the 4 MGD Wholesale Water Supply in accordance with this Section 6 (Sale of 4 MGD Wholesale Water Supply to Four Cities) shall be deemed, as between Tacoma and Cascade, to effect an allocation of the System Development Charge previously paid by Cascade pursuant to Subsection 9.5 of the 2005 Water Supply Agreement. Therefore, any Wholesale Water Supply Agreement providing for the sale of all or any portion of the 4 MGD Wholesale Water Supply to a City shall include a System Development Charge Credit.

6.3 Any sale of all or any portion of the 4 MGD Wholesale Water Supply to a City pursuant this Section 6 (Sale of 4 MGD Wholesale Water Supply to Four Cities) shall be subject to the following requirements:

(a) any such offer shall include a Notice of Confirmation of System Development Charge Credit from Cascade;

(b) prior to submitting its offer to purchase, the City shall have obtained Tacoma's review and written approval, which approval shall not be unreasonably withheld or delayed, of the Wholesale Water Supply Agreement (including any proposed modifications thereof) pursuant to which such offer is to be made by the City to Tacoma;

(c) any such offer shall have been hand-delivered before the close of the Subscription Period to Tacoma, Attention: Water Superintendent, Tacoma Water, 3628 South 35th Street, Tacoma, WA 98409, and the City shall have obtained Tacoma's acknowledgment of the time and date of Tacoma's receipt of such offer; and

(d) any such offer shall have been submitted to Tacoma as duplicate executed originals of the Wholesale Water Supply Agreement, in strict conformity with the form of the Wholesale Water Supply Agreement approved by Tacoma in accordance with 6.3(b).

Tacoma may, in its sole discretion, reject any or all offers that do not fully comply with the requirements of this Subsection 6.3. Alternatively, Tacoma may, in its sole discretion, waive any and all defects in any offer and accept such offer on the terms and conditions submitted by a City.

6.4 Tacoma shall accept an offer from a City to purchase all or any portion of the 4 MGD Wholesale Water Supply that complies with the requirements of Subsection 6.3, subject to the following, as determined by Tacoma, in its sole discretion:

(a) the priority (determined by the date of receipt by Tacoma of fully compliant offers) of any other offer or offers submitted by a City that comply with the requirements of Subsection 6.3; and

(b) the availability (if any) of a portion of the 4 MGD Wholesale Water Supply for sale to a City, such available portion (if any) being net of prior sales of the 4 MGD Wholesale Water Supply to a City.

6.5 A City may, in accordance with Subsection 6.3, purchase all or a portion of the 4 MGD Wholesale Water Supply pursuant to a Wholesale Water Supply Agreement as a Peak Season wholesale water supply; provided, however, that any such sale:

(a) is subject to any peak day delivery limitation as Tacoma shall apply to such sales, from time to time, in accordance with the Wholesale Water Regulations; and

(b) is eligible for a prorated System Development Charge Credit of one-third (1/3) of the System Development Charge Credit otherwise available pursuant to Subsection 6.2 (i.e., \$1,373,667.00 per MGD).

For each Peak Season wholesale water supply sold to a City pursuant to this Subsection 6.5, Tacoma shall reduce the amount of the 4 MGD Wholesale Water Supply as shall thereafter be available for sale to a City pursuant to Subsection 6.1 by determining the average annual demand value (assigning zero (0) demand October through May) and the peak day demand for such sale, and subtracting such calculated average annual demand and such the peak day demand from the remaining available 4 MGD Wholesale Water Supply average annual and peak day capacities.

6.6 The City of Bonney Lake shall be deemed to have priority, as between and among the Cities, to purchase in accordance with this Section 6 up to, but not in excess of, a 0.7 MGD average annual and 2.0 MGD peak day supply, calculated as an equivalent average annual supply by assigning zero (0) demand October through May and a peak demand from June through

September of 2.0 MGD. Such priority shall take effect as of the Effective Date and shall end on the date that is the earlier of:

(a) the date on which Tacoma and the City of Bonney Lake shall have entered into a Wholesale Water Supply Agreement wherein the City of Bonney Lake has agreed to purchase any portion of the 4 MGD Wholesale Water Supply; or

(b) December 31, 2017.

7. Sale of 6 MGD Water Supply to Four Cities

7.1 If the 4 MGD Wholesale Water Supply made available to the Four Cities pursuant to Section 6 (Sale of 4 MGD Wholesale Water Supply to Four Cities) shall be fully subscribed and sold to the Four Cities, then in such event and upon the request of a City during the Conversion Period, Tacoma will sell, on a first come first served basis, to such City all or a portion of the 6 MGD Wholesale Water Supply (less any amount of such 6 MGD Wholesale Water Supply as may have previously been sold to a City in accordance with this Section 7 (Sale of 6 MGD Water Supply to Four Cities)). Tacoma will sell such wholesale water supply to such City on terms and conditions substantially in the form of the Wholesale Water Supply Agreement.

7.2 Pursuant to Subsection 9.6 of the 2005 Water Supply Agreement, a Capacity Reservation Fee for the 6 MGD Wholesale Water Supply has been paid by Cascade to Tacoma in the amount of \$9,420,442 (i.e., \$1,570,074.00 per MGD). Any sale to a City of all or a portion of the 6 MGD Wholesale Water Supply in accordance with this Section 7 (Sale of 6 MGD Water Supply to Four Cities) shall be deemed, as between Tacoma and Cascade, to effect an allocation of the Capacity Reservation Fee so paid by Cascade to a System Development Charge Credit. Such System Development Charge Credit shall be determined in an amount that is proportional to the capacity sold (e.g., if a City purchases 0.5 MGD of the 6 MGD Wholesale Water Supply for uniform daily delivery throughout the year, the System Development Charge Credit for such sale shall be \$785,037.00). Such System Development Charge Credit (as determined for each such sale) shall be applied to the System Development Charge otherwise due and payable by a City to Tacoma pursuant to a Wholesale Water Supply Agreement. The remaining balance of the System Development Charge due Tacoma from a City for the wholesale water supply shall be paid by the City to Tacoma pursuant to the terms and conditions of the Wholesale Water Supply Agreement.

7.3 Any sale of all or any portion of the 6 MGD Wholesale Water Supply to a City pursuant this Section 7 (Sale of 6 MGD Water Supply to Four Cities) shall be subject to the following requirements:

(a) any such offer shall include a Notice of Confirmation of System Development Charge Credit from Cascade;

(b) prior to submitting its offer to purchase, the City shall have obtained Tacoma's review and written approval, which approval shall not be unreasonably withheld or delayed, of the Wholesale Water Supply Agreement (including any proposed modifications thereof) pursuant to which such offer is to be made by the City to Tacoma;

(c) any such offer shall have been hand-delivered before the close of the Conversion Period to Tacoma, Attention: Water Superintendent, Tacoma Water, 3628 South 35th Street, Tacoma, WA 98409, and the City shall have obtained Tacoma's acknowledgment of the time and date of Tacoma's receipt of such offer; and

(d) any such offer shall have been submitted to Tacoma as duplicate executed originals of the Wholesale Water Supply Agreement, in strict conformity with the form of the Wholesale Water Supply Agreement approved by Tacoma in accordance with Subsection 7.3(b).

Tacoma may, in its sole discretion, reject any or all offers that do not fully comply with the requirements of this Subsection 7.3. Alternatively, Tacoma may, in its sole discretion, waive any and all defects in any offer and accept such offer on the terms and conditions submitted by a City.

7.4 Tacoma shall accept an offer from a City to purchase all or any portion of the 6 MGD Wholesale Water Supply that complies with the requirements of Subsection 7.3, subject to the following, as determined by Tacoma, in its sole discretion:

(a) the priority (determined by the date of receipt by Tacoma of fully compliant offers) of any other offer or offers submitted by a City that comply with the requirements of Subsection 7.3; and

(b) the availability (if any) of a portion of the 6 MGD Wholesale Water Supply for sale to a City, such available portion (if any) being net of any prior sales of the 6 MGD Wholesale Water Supply to a City.

7.5 A City may, in accordance with Subsection 7.3, purchase all or a portion of the 6 MGD Wholesale Water Supply pursuant to a Wholesale Water Supply Agreement as a Peak Season wholesale water supply; provided, however, that any such sale:

(a) is subject to any peak day delivery limitation as Tacoma shall apply to such sales, from time to time, in accordance with the Wholesale Water Regulations;

(b) shall be for a limited term of years, which term shall in no event extend beyond December 31, 2026; and

(c) is eligible for a prorated System Development Charge Credit of one-third (1/3) of the amount of the System Development Charge Credit otherwise available pursuant to Section 7.2 (i.e., \$523,358.00 per MGD).

For each Peak Season wholesale water supply sold to a City pursuant to this Subsection 7.5, Tacoma shall reduce the amount of the 6 MGD Wholesale Water Supply as shall thereafter be available for sale to a City pursuant to Subsection 7.1 by determining the average annual demand value (assigning zero (0) demand October through May) and the peak day demand for such sale, and subtracting such calculated average annual demand and such the peak day demand from the remaining available 6 MGD Wholesale Water Supply average annual and peak day capacities.

8. Sale of Residual Wholesale Water Supply to Four Cities

If and as requested by a City during the Extension Period, Tacoma will sell, on a first come first served basis, such City all or a portion of the Residual Wholesale Water Supply (less any amount of such Residual Wholesale Water Supply as may have previously been sold to a City in accordance with this Section 8 (Sale of Residual Wholesale Water Supply to Four Cities)). Tacoma will sell such wholesale water supply to such City on terms and conditions substantially in the form of the Wholesale Water Supply Agreement. Any such sale may occur subject to and in strict accordance with the requirements and procedures set forth in Subsections 7.3(b), (c) and (d), Subsection 7.4, and Subsections 7.5(a) and (b). In no event shall a City be entitled to:

(a) any System Development Charge Credit for any sale of the Residual Wholesale Water Supply made pursuant to this Section 8 (Sale of Residual Wholesale Water Supply to Four Cities), or.

(b) a Peak Season wholesale water supply from and after December 31, 2026 for any sale of the Residual Wholesale Water Supply made pursuant to this Section 8 (Sale of Residual Wholesale Water Supply to Four Cities).

9. Restructuring Payment

9.1 The Restructuring Payment shall be paid by Cascade to Tacoma, in annual installments each year during the Term, as an Annual Restructuring Payment in the amount set forth on the following payment schedule ("Payment Schedule").

Payment Schedule

Payment Year	Annual Restructuring Payment Amount	Payment Year	Annual Restructuring Payment Amount
2012	\$5,000,000	2027	\$6,597,394
2013	\$5,000,000	2028	\$6,729,342
2014	\$5,100,000	2029	\$6,863,929
2015	\$5,202,000	2030	\$1,000,000
2016	\$5,306,040	2031	\$1,020,000
2017	\$5,412,161	2032	\$1,040,400
2018	\$5,520,404	2033	\$1,061,208
2019	\$5,630,812	2034	\$1,082,432

Payment Year	Annual Restructuring Payment Amount	Payment Year	Annual Restructuring Payment Amount
2020	\$5,743,428	2035	\$1,104,081
2021	\$5,858,297	2036	\$1,126,162
2022	\$5,975,463	2037	\$1,148,686
2023	\$6,094,972	2038	\$1,171,659
2024	\$6,216,872	2039	\$1,195,093
2025	\$6,341,209	2040	\$1,218,994
2026	\$6,468,033	2041	\$1,243,374
		2042	\$1,268,242

9.2 The Annual Restructuring Payment for 2012 and 2013 shall be due and payable by Cascade on or before January 15, 2013. Thereafter, each year of the Term, an Annual Restructuring Payment shall be due and payable by Cascade to Tacoma on or before January 15th of the year in which such payment is due. Upon not less than fifteen (15) days' advance notice to Tacoma, Cascade may in any given year during the Term prepay without penalty any one or more of the next successive Annual Restructuring Payments to become due pursuant to the Payment Schedule, and any amounts so prepaid shall be applied by Tacoma to the next successive Annual Restructuring Payment to become due and payable pursuant to the Payment Schedule.

9.3 If full payment of any Annual Restructuring Payment is not received by Tacoma on or before the date due, such payment shall be considered past due, and the unpaid amount shall accrue interest, from the date due until the date paid, at a rate per day equal to the Interest Rate.

9.4 Cascade irrevocably waives any and all defenses available to it at law or in equity relating to the determination, collection and enforcement of the Restructuring Payment, excepting only claims (if any) that may subsequently arise from Tacoma's failure to perform or comply with its obligations arising under the Agreement.

9.5 Cascade hereby covenants and agrees that it shall establish, maintain, and collect rates and charges for water and other services, facilities, and commodities sold, furnished, or supplied by it to its Members which shall be adequate to provide revenues sufficient to enable Cascade to make the payments required to be made pursuant to the terms of this Agreement, and to pay all other charges and obligations payable from or constituting a charge or lien upon such revenues. Furthermore, Cascade covenants that it shall require its Members to establish, maintain, and collect rates and charges for water and other services, facilities, and commodities

sold, furnished, or supplied by it to its Members which shall be adequate to provide revenues sufficient to enable Cascade to make the payments required to be made pursuant to the terms of this Agreement, and to pay all other charges and obligations payable from or constituting a charge or lien upon such revenues.

10. Sale of 8 MGD Wholesale Water Supply

10.1 During the Term, Cascade may request that Tacoma supply Cascade all or a portion of the 8 MGD Wholesale Water Supply as a water supply available to Cascade to serve Cascade's members' retail customers or for another direct use by Cascade or its members. Such water supply may not be resold or wheeled by Cascade (or by any one or more of Cascade's Members) for use by an entity that is not a Member, without Tacoma's prior written consent.

10.2 The availability of the 8 MGD Wholesale Water Supply for sale by Tacoma to Cascade at any time, or from time to time, during the Term shall be determined by Tacoma in its sole discretion. If Tacoma shall determine that some or all of the 8 MGD Wholesale Water Supply is available for sale to Cascade, it may be sold, scheduled, priced and delivered to Cascade on such terms and conditions as may then be acceptable to the Parties; provided, however, that no Capacity Reservation Fee or System Development Charge shall apply. Without limiting the generality of the foregoing, any such sales shall be subject to the Wholesale Water Regulations (as applicable), the availability of resources, and the disruption, interruption, suspension and curtailment of the 8 MGD Wholesale Water Supply by Tacoma at any time.

10.3 Cascade shall, at its expense, be responsible for the design, engineering, permitting and construction of any and all infrastructure necessary to interconnect and take delivery of the 8 MGD Wholesale Water Supply (or any portion thereof). Any interconnection with Tacoma's system shall be subject to Tacoma's review, approval and such reasonable conditions and requirements as Tacoma may impose in order to provide and maintain the safe and efficient function, capacity, quality, integrity and reliability of its system. If the interconnection requires a regional interconnection between the Tacoma system and the Seattle system, then:

- (a) Cascade shall be responsible for making any necessary wheeling arrangement with Seattle to deliver water through the Seattle system; and
- (b) any such regional interconnection shall be provided on such terms and conditions as Tacoma and Seattle may determine to be necessary to provide and maintain the safe and efficient function, capacity, quality, integrity and reliability of the regional water supply system.

11. Planning and Coordination

The Parties will seek to coordinate regional supply, planning, scheduling and operational programs that promote efficient use of water supplies, facilities, finances and staff resources. Tacoma will include Cascade in its water service area in planning documents. Cascade covenants that it will perform no act under this Agreement in such manner that will adversely impact Tacoma's place of use or water rights associated with the water to be supplied to Cascade under this Agreement.

12. Mutual Release

Except and only as otherwise specifically provided by the Agreement, as of the Effective Date, each Party fully, unconditionally and irrevocably quits, releases, surrenders and discharges the other Party from any and all claims, liens, demands, actions, costs, losses, expenses, harm, damages and liability (including, but not limited to, attorneys' fees) of any kind or character now or hereafter asserted or arising directly or indirectly from, on account of, or in connection with the 2005 Water Supply Agreement.

13. Representations of the Parties

13.1 Each Party is duly authorized and validly existing under the laws of, and is authorized to exercise its powers, rights and privileges and is in good standing in the State of Washington, and has full power and authority to carry on its business as presently conducted and execute this Agreement and perform the transactions on its part as contemplated by this Agreement.

13.2 The execution, delivery and performance of this Agreement, and the consummation of the transactions contemplated hereby have been duly authorized by the appropriate board or council, and no other act or proceeding on the part of any Party is necessary to authorize this Agreement, or the transactions contemplated hereby.

13.3 The execution, delivery and performance by each of the Parties of this Agreement does not: (a) contravene Applicable Law; or (b) conflict with or result in a breach of or default under any material agreement or instrument to which any Party is a party or by which it is bound.

13.4 There are no actions, suits, claims or proceedings pending or, to the best of each Party's knowledge, threatened against either Party that is likely to impair the consummation or the transactions contemplated hereby.

14. Indemnities

14.1 Cascade shall defend, indemnify and hold each and all of the Tacoma Indemnitees harmless from and against any and all claims, liens, demands, actions, losses, damages, costs, expenses and liabilities (including attorneys' fees) (collectively, "Cascade Claims") arising from or in connection with:

- (a) breach or default under the Four Cities Agreement;
- (b) any material breach, failure of, inconsistency, inaccuracy or default in any one or more representations made to Tacoma by Cascade in Section 13 (Representations of the Parties);
- (c) any failure of Cascade to perform or comply with any one or more obligations, made or arising under the Agreement; or
- (d) the negligent, reckless, or otherwise tortious acts or omissions of Cascade, or anyone retained or employed by Cascade, in performance of the Agreement.


Nothing herein shall obligate Cascade to indemnify and hold the Tacoma Indemnitees harmless from and against any Cascade Claim that is wholly attributable to the sole negligence of any or all of the Tacoma Indemnitees. As between the Parties and solely for the purpose of the indemnities contained in this Subsection 14.1, Cascade expressly waives any immunity, defense or protection that may be granted to it under the Washington State Industrial Insurance Act, RCW Title 51 or any other industrial insurance, workers' compensation or similar laws of the State of Washington to the fullest extent permitted by Applicable Law. This Subsection 14.1 shall not be interpreted or construed as a waiver of Cascade's right to assert such immunity, defense or protection directly against any of its own employees, or such employee's estate or other representatives. This Subsection 14.1 has been mutually negotiated by the Parties and shall survive the expiration or termination of this Agreement.


Cascade's Initials

14.2 Tacoma shall defend, indemnify and hold each and all of the Cascade Indemnitees harmless from and against any and all claims, liens, demands, actions, losses, damages, costs, expenses and liabilities (including attorneys' fees) (collectively, "Tacoma Claims"), to the extent any such Tacoma Claims arising from or in connection with:

- (a) any material breach, failure of, inconsistency, inaccuracy or default in any one or more representations made to Cascade by Tacoma in Section 13 (Representations of the Parties);
- (b) any failure of Tacoma to perform or comply with any one or more obligations, made or arising under the Agreement; or
- (c) the negligent, reckless, or otherwise tortious acts or omissions of Tacoma, or anyone retained or employed by Tacoma, in performance of the Agreement.

Nothing herein shall obligate Tacoma to indemnify and hold the Cascade Indemnitees harmless from and against any Tacoma Claim that is wholly attributable to the sole negligence of any or all of the Cascade Indemnitees. As between the Parties and solely for the purpose of the indemnities contained in this Subsection 14.2, Tacoma expressly waives any immunity, defense or protection that may be granted to it under the Washington State Industrial Insurance Act, RCW Title 51 or any other industrial insurance, workers' compensation or similar laws of the State of Washington to the fullest extent permitted by Applicable Law. This Subsection 14.2 shall not be interpreted or construed as a waiver of Tacoma's right to assert such immunity, defense or protection directly against any of its own employees, or such employee's estate or other representatives. This Subsection 14.2 has been mutually negotiated by the Parties and shall survive the expiration or termination of this Agreement.


Tacoma's Initials

Nothing herein shall obligate Cascade to indemnify and hold the Tacoma Indemnitees harmless from and against any Cascade Claim that is wholly attributable to the sole negligence of any or all of the Tacoma Indemnitees. As between the Parties and solely for the purpose of the indemnities contained in this Subsection 14.1, Cascade expressly waives any immunity, defense or protection that may be granted to it under the Washington State Industrial Insurance Act, RCW Title 51 or any other industrial insurance, workers' compensation or similar laws of the State of Washington to the fullest extent permitted by Applicable Law. This Subsection 14.1 shall not be interpreted or construed as a waiver of Cascade's right to assert such immunity, defense or protection directly against any of its own employees, or such employee's estate or other representatives. This Subsection 14.1 has been mutually negotiated by the Parties and shall survive the expiration or termination of this Agreement.

Cascade's Initials

14.2 Tacoma shall defend, indemnify and hold each and all of the Cascade Indemnitees harmless from and against any and all claims, liens, demands, actions, losses, damages, costs, expenses and liabilities (including attorneys' fees) (collectively, "Tacoma Claims"), to the extent any such Tacoma Claims arising from or in connection with:

- (a) any material breach, failure of, inconsistency, inaccuracy or default in any one or more representations made to Cascade by Tacoma in Section 13 (Representations of the Parties);
- (b) any failure of Tacoma to perform or comply with any one or more obligations, made or arising under the Agreement; or
- (c) the negligent, reckless, or otherwise tortious acts or omissions of Tacoma, or anyone retained or employed by Tacoma, in performance of the Agreement.

Nothing herein shall obligate Tacoma to indemnify and hold the Cascade Indemnitees harmless from and against any Tacoma Claim that is wholly attributable to the sole negligence of any or all of the Cascade Indemnitees. As between the Parties and solely for the purpose of the indemnities contained in this Subsection 14.2, Tacoma expressly waives any immunity, defense or protection that may be granted to it under the Washington State Industrial Insurance Act, RCW Title 51 or any other industrial insurance, workers' compensation or similar laws of the State of Washington to the fullest extent permitted by Applicable Law. This Subsection 14.2 shall not be interpreted or construed as a waiver of Tacoma's right to assert such immunity, defense or protection directly against any of its own employees, or such employee's estate or other representatives. This Subsection 14.2 has been mutually negotiated by the Parties and shall survive the expiration or termination of this Agreement.


Tacoma's Initials

15. Waiver of Consequential Damages:

EXCEPT WITH RESPECT TO THIRD-PARTY CLAIMS AS TO WHICH THE PARTIES HAVE ASSUMED OBLIGATIONS ARISING UNDER SECTION 14 (INDEMNITIES) AND NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE AS A RESULT OF ANY ACTION OR INACTION UNDER THIS AGREEMENT OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, NEGLIGENCE OR OTHER FAULT, STRICT LIABILITY WITHOUT REGARD TO FAULT, BREACH OF CONTRACT OR WARRANTY, FOR ANY LOSS OF PROFITS OR LOSS OF REVENUE OR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR INDIRECT LOSSES OR SIMILAR DAMAGES OF ANY NATURE WHATSOEVER, WHETHER ARISING UNDER THE LAW OF CONTRACTS, TORTS (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE OF EVERY KIND AND STRICT LIABILITY, WITHOUT FAULT) OR PROPERTY, OR AT COMMON LAW OR IN EQUITY, OR OTHERWISE, IRRESPECTIVE OF WHETHER SUCH LOSSES OR SIMILAR DAMAGES ARE REASONABLY FORESEEABLE AND IRRESPECTIVE OF WHETHER SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OR EXISTENCE OF SUCH DAMAGES. THIS SECTION 15 (WAIVER OF CONSEQUENTIAL DAMAGES) HAS BEEN MUTUALLY NEGOTIATED BY THE PARTIES AND SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.



Tacoma's Initials

Cascade's Initials

16. Dispute Resolution

16.1 Any and all claims, controversies or disputes arising out of or relating to or in connection with this Agreement (a "Dispute") as between the Parties shall be resolved in accordance with the Dispute resolution procedures set forth in this Section 16 (Dispute Resolution).

16.2 The Parties shall inform one another promptly following the occurrence or discovery of any item or event that would reasonably be expected to result in a Dispute required to be resolved in accordance with this Dispute resolution procedure. The initial mechanism to resolve Disputes will involve negotiations between the Parties' representatives, so designated by the Parties by notice given pursuant to Section 19 (Notices).

16.3 If the Parties cannot resolve a Dispute satisfactorily within ten (10) days after receipt of the initial notice in accordance with Subsection 16.2, either Party may deliver to the other Party notice of the Dispute with a detailed description of the underlying circumstances of such Dispute. The Dispute notice shall include a schedule of the availability of the notifying Party's senior officers (having a title of Superintendent or Chief Executive Officer or higher) duly authorized to settle the Dispute during the thirty (30) day period following the delivery of the Dispute notice. The recipient Party shall, within three (3) business days following receipt of the Dispute notice, provide to the notifying Party a parallel schedule of availability of the recipient Party's senior officers duly authorized to settle the Dispute. Following delivery of the

15. Waiver of Consequential Damages:

EXCEPT WITH RESPECT TO THIRD-PARTY CLAIMS AS TO WHICH THE PARTIES HAVE ASSUMED OBLIGATIONS ARISING UNDER SECTION 14 (INDEMNITIES) AND NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE AS A RESULT OF ANY ACTION OR INACTION UNDER THIS AGREEMENT OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, NEGLIGENCE OR OTHER FAULT, STRICT LIABILITY WITHOUT REGARD TO FAULT, BREACH OF CONTRACT OR WARRANTY, FOR ANY LOSS OF PROFITS OR LOSS OF REVENUE OR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR INDIRECT LOSSES OR SIMILAR DAMAGES OF ANY NATURE WHATSOEVER, WHETHER ARISING UNDER THE LAW OF CONTRACTS, TORTS (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE OF EVERY KIND AND STRICT LIABILITY, WITHOUT FAULT) OR PROPERTY, OR AT COMMON LAW OR IN EQUITY, OR OTHERWISE, IRRESPECTIVE OF WHETHER SUCH LOSSES OR SIMILAR DAMAGES ARE REASONABLY FORESEEABLE AND IRRESPECTIVE OF WHETHER SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OR EXISTENCE OF SUCH DAMAGES. THIS SECTION 15 (WAIVER OF CONSEQUENTIAL DAMAGES) HAS BEEN MUTUALLY NEGOTIATED BY THE PARTIES AND SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

Tacoma's Initials

CC

Cascade's Initials

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16.1 Any and all claims, controversies or disputes arising out of or relating to or in connection with this Agreement (a "Dispute") as between the Parties shall be resolved in accordance with the Dispute resolution procedures set forth in this Section 16 (Dispute Resolution).

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respective senior officers' schedules of availability, the senior officers of the notifying Party and the recipient Party shall meet and confer as often as they deem reasonably necessary during the remainder of the thirty (30) day period in good faith negotiations to resolve the Dispute to the satisfaction of both Parties.

16.4 If at any time during the good-faith efforts to resolve any Dispute arising under this Agreement either of the Parties determines that such informal discussions will not result in a resolution of the issue(s) in Dispute, such Party may initiate the Dispute resolution process in accordance with Exhibit C (Dispute Resolution). Any such Dispute resolution process shall be conducted pursuant to the provisions of Exhibit C (Dispute Resolution).

16.5 Pending resolution of any Dispute, the Parties shall continue to fulfill their respective duties under this Agreement.

17. Default and Remedies

17.1 If a Party fails to perform its obligations hereunder, then it shall be in default hereunder unless the defaulting Party cures:

(a) a monetary event of default within thirty (30) days after receiving written notice from the other Party of such monetary default; and

(b) a non-monetary event of default within sixty (60) days after receiving a notice of default from the non-defaulting Party; provided, however, that if the nature or extent of the obligation or obligations is such that more than sixty (60) days are required, in the exercise of commercially reasonable diligence, to cure such non-monetary default, then the defaulting Party shall not be in default if it commences such performance within such sixty (60) day period and thereafter pursues the same to completion with commercially reasonable diligence.

17.2 Except as otherwise provided by Section 15 (Waiver of Consequential Damages) and subject to the procedures set forth in Section 16 (Dispute Resolution), if a Party is in breach or default of its obligations arising under this Agreement, the other Party shall have and shall be entitled to exercise any and all remedies available to it at law or in equity (including the right to specifically enforce this Agreement), all of which remedies shall be cumulative. If either Party elects to pursue singularly any remedy available to it under this Section 17 (Default and Remedies), then such Party may at any time thereafter continue to pursue or cease pursuing that remedy and simultaneously elect to pursue any other remedy available to it under this Section 17 (Default and Remedies).

18. Uncontrollable Forces

A Party shall not be in breach of this Agreement as a result of such Party's failure to perform its obligations under this Agreement, other than the obligation to pay the Restructuring Payment or any other money when due and owing, when such failure is due to an Uncontrollable Force, to the extent that such Party, despite the exercise of reasonable due diligence, is unable to remove such Uncontrollable Force. Any Party subject to an Uncontrollable Force that may impair its performance under this Agreement shall notify the other Party as soon as practicable.

Any Party subject to an Uncontrollable Force shall be excused from performance under this Agreement only for the duration of and to the extent of the Uncontrollable Force. Any Party subject to an Uncontrollable Force shall exercise reasonable due diligence to remove the Uncontrollable Force.

19. Notices

All notices or other communications required or permitted by this Agreement must be in writing and be personally delivered, delivered by recognized overnight courier service or given by mail or via facsimile. Any notice given by mail must be sent, postage prepaid, by certified or registered mail, return receipt requested. All notices must be addressed to the parties at the following addresses or at such other addresses as the parties may from time to time direct in writing:

Tacoma: Water Superintendent
PO Box 11007
Tacoma, WA 98411
Phone: (253) 502-8245
Fax: (253) 502-8694

Cascade: Chief Executive Officer
520 112th Avenue NE
Suite 400
Bellevue, WA 98004
Fax No. 206-682-7126

with a copy to: Planning Director
520 112th Avenue NE
Suite 400
Bellevue, WA 98004
Fax No. 206-682-7126

Any notice will be deemed to have been given, if personally delivered, when delivered, and if delivered by courier service, one (1) business day after deposit with the courier service, and if mailed, two (2) business days after deposit at any post office in the United States of America, and if delivered via facsimile, the same day as verified; provided that any verification that occurs after 5 p.m. on a business day, or at any time on a Saturday, Sunday or holiday, will be deemed to have occurred as of 9 a.m. on the following business day.

20. Access to Books and Records; Audit

Upon not less than thirty (30) days' prior notice to the other Party, a Party shall be given access, during normal business hours, to inspect any books, records and accounts maintained by the other Party that are specifically kept and related to this Agreement. Such inspection shall occur at the location where such books, records and accounts are located. A Party shall not be obligated to collate, organize or analyze the information to be inspected by the other Party. A Party requesting such access shall pay the other Party its established rate for any documents reproduced for the requesting Party.

21. Miscellaneous

21.1 (a) This Agreement is a "Water Supply Asset" and an "asset" for purposes of Article 9 of the Joint Services Agreement, and as such, Cascade shall remain in existence until such time as all obligations under this Agreement have been fully and satisfactorily performed by Cascade. In the event a Member notifies Cascade of its intent to withdrawal from Cascade by delivering to Cascade a resolution of its legislative authority expressing such intent, Cascade shall determine pursuant to Section 9.2 of the Joint Services Agreement the amount of the withdrawing Member's allocable share of the Restructuring Payment. Following the determination of the amount of the withdrawing Member's allocable share of the Restructuring Payment, Cascade shall cause such amount to be paid in full to Cascade prior to allowing the Member to withdrawal from Cascade. Cascade shall thereafter remit the withdrawing Member's allocable share of the Restructuring Payment to Tacoma within 30 days of the Member's withdrawal from Cascade. Tacoma shall apply such amount so paid to Tacoma by Cascade to subsequent Annual Restructuring Payments as a prepayment made by Cascade in accordance with Subsection 9.2.

(b) If during the Term Cascade shall disincorporate pursuant to Section 9.3 of the Joint Services Agreement, Cascade's liabilities and obligations under this Agreement be shall be distributed to and binding upon its Members in accordance with said Section 9.3, which states in relevant part: "Cascade's liabilities (including Bonds and other contractual obligations) initially shall be distributed based on Members Demand Shares as of the time of the disincorporation." During the Term, Cascade shall not amend the Joint Services Agreement in any way so as to limit, impair, diminish, or materially change Tacoma's rights arising under this Agreement without Tacoma's prior written approval, which shall not be unreasonably withheld or delayed.

(c) Cascade's Board of Directors approved by Dual Majority Vote of all Members this Agreement pursuant to Section 4.3 of the Joint Services Agreement at an open public meeting on November 28, 2012, by Resolution No. 2012-20, and thereby makes this Agreement a binding contractual obligation of Cascade and its Members under the terms of the Joint Services Agreement.

21.2 The rights and obligations of the Parties arising under the Agreement may not be sold, assigned or otherwise transferred in whole or in part by a Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Subject

to the foregoing, the Agreement shall be binding upon the Parties' respective successors and permitted assigns.

21.3 The Parties agree that in taking actions or making determinations required or provided for under this Agreement, each Party shall act in fairness and in good faith. The Parties will cooperate and use commercially reasonable efforts to facilitate the implementation of all aspects of this Agreement. During the Term, each Party, upon the request of the other Party, shall, without further consideration, execute, deliver and acknowledge all such further documents and do and perform all such other acts and things as either Party may reasonably request to effectively carry out the intent of this Agreement. The Superintendent of Tacoma Water and the Chief Executive Officer of Cascade may, at their discretion, execute implementation agreements regarding the implementation or administration of the Agreement in a manner that does not affect the substantive rights of the Parties under the Agreement.

21.4 A Party shall not have the right to offset any amounts owed to the other Party pursuant to this Agreement against any amounts due from the other Party pursuant to this Agreement, nor may a Party offset any amounts due to the other Party pursuant to this Agreement against any amounts owned to the other Party pursuant to this Agreement. A Party may not withhold any payment due the other Party by reason of a Dispute; such payment shall be paid "under protest" and any and all Disputes with respect to such payment shall be resolved pursuant to Section 16 (Dispute Resolution).

21.5 Any of the terms or conditions of this Agreement may be waived at any time and from time to time, in a signed writing, by the Party or Parties entitled to the benefit of such terms or conditions. Any waiver given by a Party shall be narrowly construed to specifically waive in time and subject only the express matter contained in such waiver. The failure of either Party to insist on or enforce strict performance of any provision of this Agreement or to exercise any right or remedy under this Agreement or Applicable Law will not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such provision, right or remedy in that or any other instance; rather, the same will be and remain in full force and effect. Tacoma's review, revision, approval of or comment upon any matter arising under this Agreement, or Tacoma's failure to review, revise, approve or comment upon any matter arising under this Agreement, shall not in any way (i) relieve or release Cascade from any of its obligations arising under this Agreement, or (ii) subject Tacoma to any liability with respect to such matter.

21.6 This Agreement shall be governed by and construed in accordance with the laws of the State of Washington (regardless of the laws that might otherwise govern under applicable principles of conflict of laws of such state). Except with respect to a lawsuit or judicial action or proceeding commenced by a third party in another jurisdiction and subject to Exhibit C (Dispute Resolution Procedures), the Parties will (i) agree that any lawsuit, judicial action or proceeding arising out of or relating to the Agreement must be heard in the Superior Court of the State of Washington, in and for the County of Pierce, or the United States District Court for the Western District of Washington in Tacoma; (ii) waive any objection to the laying of venue of any such suit, action or proceeding; and (iii) irrevocably submit to the jurisdiction of any such court in any such lawsuit, judicial action or proceeding.

21.7 Any provisions of this Agreement prohibited or rendered unenforceable by Applicable Law shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement. In such event, the remainder of this Agreement will remain valid and enforceable. Upon such determination that any term or other provision is prohibited or rendered unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to affect the original intent of the Parties as closely as possible in an acceptable manner to the end that transactions contemplated under this Agreement are fulfilled to the greatest extent possible.

21.8 This Agreement may be amended only by an instrument in writing executed by the Parties that expressly refers to this Agreement and states that it is an amendment hereto. This Agreement constitutes the entire agreement between the Parties, and supersedes all other prior agreements and understandings, oral and written, between the Parties, with respect to the subject matter hereof. No amendment, modification or waiver of any provision of this Agreement will be valid unless set forth in a written instrument signed by both Parties. If a Party becomes aware of a conflict between this Agreement and any other agreement in place between such Party or its Affiliates and another Person, it will promptly notify such other Party, and the Parties will work in good faith to resolve the conflict.

21.9 Nothing contained in this Agreement shall be deemed or construed by the Parties, or by any third party, as creating the relationship of principal and agent, or of partnership or of joint venture between the Parties. Neither Party shall enter into any contract, agreement or other commitment, or incur any obligation or liability, in the name of or otherwise on behalf of the other Party. This Agreement shall create no rights, benefits, or obligations in, to or from any Persons other than Tacoma and Cascade.

21.10 Sections 9.4, 12, 14, 15, 16, 20, 21.1 and 21.6 and all other terms and conditions of this Agreement that must be reasonably construed to survive the expiration or termination of this Agreement in order to give full force and effect to the intent of the Parties as set forth herein shall survive the expiration or termination of this Agreement, regardless of whether such survival is expressly specified herein.

21.11 This Agreement may be executed in several counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

21.12 This Agreement has been negotiated on an arm's-length basis by the Parties and their respective counsel and shall be interpreted fairly in accordance with its terms and without any strict construction in favor of or against either Party.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the Effective Date.

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

Linda McCrea

By: Linda A. McCrea

Title: Superintendent

Approved as form:

William Ashe

Cascade Water Alliance:

By: Chuck Clarke

Title: Chief Executive Officer

Approved as form:

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the Effective Date.

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

Cascade Water Alliance:

By: Linda A. McCrea



By: Chuck Clarke

Title: Superintendent

Title: Chief Executive Officer

Approved as form:

Approved as form:



Exhibit A

WHOLESALE WATER SUPPLY AGREEMENT

WHOLESALE WATER SUPPLY AGREEMENT

This WHOLESALE WATER SUPPLY AGREEMENT ("Agreement"), by and between the City of Tacoma, Department of Public Utilities, Water Division ("Tacoma"), and the City of _____ ("City") is made and entered into as of this ____ day of ____, (201__) ("Effective Date"). Tacoma and City are sometimes referred to collectively as the "Parties" and individually as a "Party." This Agreement is made with reference to the following facts:

RECITALS

WHEREAS, Tacoma is a municipality organized and operating under the laws of the State of Washington and is a public water purveyor selling water to customers in accordance with the laws of the State of Washington;

WHEREAS, _____ is a [[charter/noncharter]] code city organized and operating as a municipal corporation under the laws of the State of Washington;

WHEREAS, Tacoma and Cascade Water Alliance, a joint municipal utilities services authority ("Cascade"), have heretofore entered into an "Amended and Restated Agreement for the Sale of Wholesale Water" dated ____ (the "Cascade/Tacoma Agreement");

[WHEREAS, pursuant to Section 6 of the Cascade/Tacoma Agreement, Tacoma is willing to sell to City all or a portion of a 4 MGD wholesale water supply (less any portion of such wholesale water supply as may have previously been sold in accordance with Section 6 of the Cascade/Tacoma Agreement);]

[WHEREAS, pursuant to Section 7 of the Cascade/Tacoma Agreement, Tacoma is willing to sell to City all or a portion of a 6 MGD wholesale water supply (less any portion of such wholesale water supply as may have previously been sold in accordance with Section 7 of the Cascade/Tacoma Agreement);]

[WHEREAS, pursuant to Section 8 of the Cascade/Tacoma Agreement, Tacoma is willing to sell, on a first-come, first-served basis, to City all or a portion of a wholesale water supply (less any portion of such wholesale water supply as may have previously been sold in accordance with Section 8 of the Cascade/Tacoma Agreement);]

WHEREAS, Tacoma is willing to make such wholesale water supply available to City as a direct wholesale customer of Tacoma in accordance with the terms and conditions of this Agreement; and

WHEREAS, City is willing to purchase and accept delivery of such wholesale water supply from Tacoma as a direct wholesale customer of Tacoma in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and conditions herein contained, the Parties agree as follows:

AGREEMENT

1. DEFINITIONS

For purposes of this Agreement, the following terms defined herein shall have the following meanings, whether singular or plural:

"Affiliate" means, with respect to any Person, another Person that is controlled by, controls, or is under common control with, such Person. For purposes of this definition, "control" with respect to any Person shall mean the ability to effectively control, directly or indirectly, the operations and business decisions of such Person.

"Applicable Law" means any applicable and binding statute, law, rule, regulation, code, ordinance, judgment, decree, writ, legal requirement or order, and the written interpretations thereof, of any national, federal, state or local Governmental Authority having jurisdiction over the Parties or the performance of this Agreement.

"Cascade" shall have the meaning set forth in the Recitals.

"Cascade/Tacoma Agreement" shall have the meaning set forth in the Recitals.

"City" shall have the meaning set forth in the preamble of this Agreement.

"City Hazardous Substances" means any Hazardous Substances generated, transported, kept, handled, stored, placed, discharged or released by City, or by anyone directly or indirectly retained or employed by City, in connection with the performance of this Agreement.

"City Isolation Valve" means a positive shut-off valve owned and operated by City as part of the Interconnection Facilities.

"Delivery Date" shall have the meaning set forth in Section 6.2.

"Dispute" shall have the meaning set forth in Section 15.

"Diversion Rights" means, collectively, the second diversion right or permit and the first diversion claim that authorize Tacoma to divert and use water from the Green River.

"Draft Operating Plan" means a non-binding informational plan intended to advise Tacoma of the amount of the Wholesale Water Supply that City anticipates it will use during the Peak Season.

"Effective Date" shall have the meaning set forth in the preamble of this Agreement.

"Interconnection Facilities" means all facilities, other than the Wholesale Service Connection, that are necessary for City to take delivery of the Wholesale Water Supply at the Wholesale Service Connection and convey such water to the City's transmission and distribution systems. Interconnection Facilities include the City Isolation Valve and such other pressure-reducing valves, controllers, pedestals, and boxes operated by City as part of the Interconnection Facilities. For avoidance of doubt, Interconnection Facilities do not include the Wholesale Service Connection or any other facilities owned and operated by Tacoma that are necessary to deliver the Wholesale Water Supply to the Wholesale Service Connection.

"Interest Rate" means the interest rate that is the lesser of, for each day that it is applied, the rate that is equal to (a) one three hundred and sixty-fifth (1/365) of the prime interest rate for preferred customers established from time to time by the Bank of America, or such other bank as may be designated by the Parties, plus two (2) percentage points; or (b) the highest rate permitted by Applicable Law.

"Flow Control Valve" means the valve that controls the volume of water that is delivered to City and is more particularly described in Exhibit A.

"Governmental Authority" means (a) any federal, national, state, tribal, county, municipal or local government (whether domestic or foreign), or any political subdivision thereof; (b) any court or administrative tribunal; (c) any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity of competent jurisdiction; or (d) any nongovernmental agency, tribunal or entity that is vested by a governmental agency with applicable jurisdiction.

"Hazardous Substances" means any substance or material regulated or governed by Applicable Law; any substance, emission or material now or hereafter deemed by any Governmental Authority or Applicable Law to be a "regulated substance," "hazardous material," "hazardous waste," "hazardous constituent," "hazardous substance," "dangerous material," "dangerous waste," "dangerous substance," "toxic substance," "radioactive substance," or a "pesticide"; and any other substance with properties that are harmful or deleterious to human health or to the environment.

"Meter" means the delivery metering equipment determined by Tacoma to be necessary for the implementation of this Agreement.

"Notice of Confirmation of System Development Charge Credit" means a notice, given by Cascade to Tacoma at the request of City, confirming the amount of the System Development Charge Credit (if any) to be applied to the System Development Charge otherwise due and payable by City to Tacoma in connection with the Wholesale Water Service provided pursuant to this Agreement.

"Operating Protocols" shall have the meaning set forth in Section 9.3.

"Party" and "Parties" shall have the meaning set forth in the preamble of this Agreement.

"Peak Season" means the period starting June 1 and ending September 31 each year during the Term.

"Peaking Factor" means a peak day delivery limitation, which such limitation is a not to exceed quantity of water (expressed in million gallons of water per day or "MGD") and that is determined by multiplying the uniform daily delivery rate by 1.33 (i.e., Peaking Factor = 1.33 x uniform daily delivery rate). The uniform daily delivery rate established by this Agreement for the Wholesale Water Supply is __ MGD. The Peaking Factor applies to all peak day wholesale water deliveries made by Tacoma to City pursuant to this Agreement and limits a maximum peak day delivery to ___ MGD.

"Person" means any individual, corporation, municipal corporation, company, voluntary association, partnership, incorporated organization, trust, limited liability company, or any other entity or organization, including any Governmental Authority.

"Project" means that certain water supply project commonly referred to as the Second Supply Project, which is owned and operated by Tacoma in order to meet Tacoma's future water supply requirements and to increase regional supply, with the participation of the City of Kent, the Covington Water District and the Lakehaven Utility District in accordance with the terms and conditions of the 2002 Second Supply Project Partnership Agreement.

"Prudent Utility Practices" means, at any particular time, any of the practices, methods, decisions and acts that, in the exercise of a Party's reasonable judgment in light of the facts known at the time, would have been expected to accomplish the desired result consistent with Applicable Law, reliability, efficiency, economy, safety and expedition commonly engaged in or approved by the water supply industry in the United States prior thereto, and in the case of Tacoma, includes all practices and methods needed to comply with the Wholesale Water Regulations. It is recognized that the term Prudent Utility Practices is not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather refers to a spectrum of possible practices, methods or acts that could have been expected to accomplish the desired result consistent with Applicable Law, reliability, efficiency, economy, safety and expedition.

"Schedule" shall have the meaning set forth in Section 9.2.

"System Development Charge" means the system development charge imposed upon wholesale customers by the Wholesale Water Regulations.

"System Development Charge Credit" means a credit, in an amount determined in accordance with the applicable terms and conditions of the Cascade/Tacoma Agreement and confirmed by Cascade in a Notice of Confirmation of System Development Charge Credit, against the System Development Charge otherwise due and payable by City to Tacoma pursuant to the Wholesale Water Regulations.

"Tacoma" shall have the meaning set forth in the preamble of this Agreement.

"Tacoma Indemnitees" means Tacoma and Tacoma's Affiliates, directors, officers, employees, agents, servants and representatives, and the respective successors and assigns of each and all of the foregoing.

"Tacoma Isolation Valve" means a positive shut-off valve installed at the Wholesale Service Connection and is more particularly described in Exhibit A.

"Telemetry Equipment" means a data acquisition system owned and operated by Tacoma that is used to send signals from the Meter in support of operations and all appurtenances thereto.

"Temporary Wholesale Water Supply" shall have the meaning set forth in Section 17.1.

"Term" shall have the meaning set forth in Section 19.1.

"Uncontrollable Force" means any event or circumstance (or combination thereof) and the continuing effects of any such event or circumstance (whether or not such event or circumstance was foreseeable or foreseen by the Parties) that delays or prevents performance by a Party of any of its obligations under this Agreement. An Uncontrollable Force shall include the following:

(i) flood, earthquake, drought, climate change, storm, fire, lightning and other natural catastrophes;

(ii) acts of public enemies, armed conflicts, acts of foreign enemies, acts of terrorism (whether domestic or foreign, state-sponsored or otherwise), war (whether declared or undeclared), blockade, insurrection, riot, civil disturbance, revolution or sabotage;

(iii) any form of compulsory government acquisition or condemnation or change in Applicable Law (other than such acquisition, condemnation or change by City) that affect the performance of the Parties' obligations under this Agreement;

(iv) accidents or other casualty, damage, loss or delay during transportation, explosions, fire, epidemics, quarantines or criminal acts that affect the performance of the Parties' obligations under this Agreement;

(v) labor disturbances, stoppages, strikes, lock-outs or other industrial actions affecting the Parties or any of their contractors, subcontractors (of any tier), agents or employees;

(vi) inability, after the use of commercially reasonable efforts, to obtain any consent or approval from any Governmental Authority (other than

City) that affects the performance of the Parties' obligations under this Agreement;

(vii) inability, after the use of commercially reasonable efforts, to obtain any consent or approval from any Person required by a Party in connection with this Agreement; and

(viii) third-party litigation contesting all or any portion of the right, title and interest of a Party in any service, property or other item to be provided to the other Party in connection with this Agreement.

Notwithstanding the foregoing, the insufficiency of funds, the financial inability to perform or changes in such Party's cost of performing its obligations hereunder shall not constitute an Uncontrollable Force, and neither Party may raise a claim for relief hereunder, in whole or in part, in connection with such event or circumstance.

"Wholesale Service Connection" means a physical connection between water mains of the Parties and is the point of delivery of the Wholesale Water Supply. The Wholesale Service Connection is more particularly described in Exhibit A, and includes the Tacoma Isolation Valve and the Flow Control Valve.

"Wholesale Water Regulations" means all applicable terms and conditions of the Tacoma Municipal Code, including Chapters 12.01 and 12.10 thereof, as such terms and conditions may now exist or may hereafter be changed, deleted, supplemented, modified, or amended. The Wholesale Water Regulations include Tacoma's "Customer Service Policies" and such other rules, regulations, policies and guidelines as Tacoma shall, from time to time, adopt and apply on a uniform basis to Tacoma's wholesale customers.

"Wholesale Water Service" shall have the meaning set forth in Section 3.2.

"Wholesale Water Supply" means an average annual ___ MGD wholesale water supply, subject to the Peaking Factor.

2. EXHIBITS TO THIS AGREEMENT

2.1 This Agreement includes the Exhibits listed below, and any reference in this Agreement to an "Exhibit" by letter designation or title shall mean one of the Exhibits identified below. If there is an express conflict between the provisions contained within the body of this Agreement and the provisions of any Exhibit hereto, then the body of this Agreement shall take precedence, except that with respect to technical specifications and requirements pertaining to the design, engineering, operation or testing of the Wholesale Service Connection, the conflicting Exhibit shall take precedence.

Exhibit A ("Wholesale Service Connection")

Exhibit B ("Dispute Resolution Procedures")

3. WHOLESALE WATER SERVICE

3.1 Subject to the terms and conditions of this Agreement, during the Term, Tacoma agrees to sell and deliver the Wholesale Water Supply to City, and City agrees to purchase and take delivery of the Wholesale Water Supply from Tacoma. The Wholesale Water Supply may be resold by City to another water purveyor, subject to the terms and conditions of this Agreement. [The Wholesale Water Supply must be used by City on a year-round basis where the average summer day use divided by the average winter day use results in a summer/winter ratio of 2.5 or less.] *[Alternative language for Peak Season only sales: The Wholesale Water Supply shall be made available to City during any Peak Season occurring during the Term, may be used by City only during the Peak Season and at no other time of the year, and is subject to any peak day delivery limitations that Tacoma may apply, from time to time, in accordance with the Wholesale Water Regulations.]*

3.2 The Wholesale Water Supply shall be provided to City as wholesale water service subject to and in compliance with the Wholesale Water Regulations, Applicable Law, Prudent Utility Practices and the terms and conditions of this Agreement ("Wholesale Water Service"). The Wholesale Water Service shall be provided to City with the same degree of reliability and certainty of supply as water provided by Tacoma to its existing wholesale customers (including limitations thereof, such as provisions of the Wholesale Water Regulations pertaining to interruption of service). The Parties acknowledge that Wholesale Water Service is inherently subject to disruption, interruption, suspension, curtailment and fluctuation. Tacoma shall not have any liability to City or any other Person for any disruption, interruption, suspension, curtailment or fluctuation in the Wholesale Water Service.

3.3 The water sold by Tacoma to City pursuant to this Agreement is water available from the Diversion Rights. City's use of such water is subject to the restrictions on the place of use set forth in the Diversion Rights, copies of which have been provided to the City by Tacoma. City assumes sole and exclusive responsibility for ensuring that City's use of the Wholesale Water Supply pursuant to this Agreement is consistent with the place of use and any other applicable restrictions set forth in the Diversion Rights.

4. WHOLESALE WATER SERVICE CHARGES AND FEES

4.1 Except as otherwise provided by Section 4.2, City shall pay Tacoma all charges, fees and other amounts for the Wholesale Water Service as shall be due and payable, from time to time, pursuant to the Wholesale Water Regulations. Amounts due shall include a monthly ready-to-serve charge based on Meter size and consumption charges based on water used. All rates, charges, fees and other amounts due Tacoma for the Wholesale Water Service pursuant to the Wholesale Water Regulations are subject to periodic adjustment by the Public Utility Board and Tacoma City Council. At any time during the Term, the applicable rate, charge, fee or other amount due Tacoma from City for the Wholesale Water Service shall be the rate, charge, fee or amount as shall then be in effect.

4.2 *[For sales of 4 MGD Wholesale Water Supply pursuant to Section 6.4 of the Cascade/Tacoma Agreement]* Subject to Tacoma's receipt of a Notice of Confirmation of System Development Charge Credit from Cascade that confirms City's eligibility for a full System Development Charge Credit pursuant to Section 6.3(a) of the Cascade/Tacoma Agreement, the System Development Charge otherwise due and payable for the Wholesale Water Service is hereby deemed to have been fully paid by Cascade pursuant to the terms and conditions of the Cascade/Tacoma Agreement. *(Note: For this provision to apply, the System Development Charge Credit received by the City must be calculated at a rate of \$4,121,000/MGD. City shall otherwise pay the full System Development Charge due Tacoma for the Wholesale Water Supply pursuant to the terms and conditions of the Wholesale Water Regulations.)*

[For Peak Season only sales of 4 MGD Wholesale Water Supply pursuant to Section 6.5 of the Cascade/Tacoma Agreement] Subject to Tacoma's receipt of a Notice of Confirmation of System Development Charge Credit from Cascade that confirms City's eligibility for a System Development Charge Credit pursuant to Section 6.3(a) of the Cascade/Tacoma Agreement, City shall receive a System Development Charge Credit in the amount of \$1,373,667.00 per MGD. *(Note: For this provision to apply, the System Development Charge Credit received by the City must be calculated at a rate of \$1,373,667.00 /MGD. City shall otherwise pay the full System Development Charge due Tacoma for the Wholesale Water Supply pursuant to the terms and conditions of the Wholesale Water Regulations.)*

[For sales of 6 MGD Wholesale Water Supply pursuant to Section 7.4 of the Cascade/Tacoma Agreement] Subject to Tacoma's receipt of a Notice of Confirmation of System Development Charge Credit from Cascade that confirms City's eligibility for a System Development Charge Credit pursuant to Section 7.3(a) of the Cascade/Tacoma Agreement, City shall receive a System Development Charge Credit of \$_____. Such System Development Charge Credit shall be applied to the System Development Charge otherwise due and payable by City to Tacoma pursuant to the Wholesale Water Regulations. *(Note: For this provision to apply, the System Development Charge Credit received by the City must be calculated at a rate of \$1,570,074.00 per MGD. City shall otherwise pay the full System Development Charge due Tacoma for the Wholesale Water Supply pursuant to the terms and conditions of the Wholesale Water Regulations.)*

[For sales of 6 MGD Wholesale Water Supply pursuant to Section 7.5 of the Cascade/Tacoma Agreement] Subject to Tacoma's receipt of a Notice of Confirmation of System Development Charge Credit from Cascade that confirms City's eligibility for a System Development Charge Credit pursuant to Section 7.3(a) of the Cascade/Tacoma Agreement, City shall receive a System Development Charge Credit of \$_____. Such System Development Charge Credit shall be applied to the System Development Charge otherwise due and payable by City to Tacoma pursuant to the Wholesale Water Regulations. *(Note: For this provision to apply, the System Development Charge Credit received by the City must be calculated at a rate of one-third (1/3) of the amount of the System Development Charge Credit otherwise available (i.e., \$523,358.00 per MGD). Peak only sales shall not to extend beyond 2026, such that the "Term" in Section 19.1 ends on December 31, 2026.)*

[For sales of the Residual Wholesale Water Supply pursuant to Section 8 of the Cascade/Tacoma Agreement] Within ____ () days of the Effective Date, City shall pay Tacoma in full a System Development Charge of _____ Dollars (\$ _____), which such System Development Charge shall be calculated at a rate of \$4,121,000/MGD. (Note: Peak only sales shall not to extend beyond 2026, such that the "Term" in Section 19.1 ends on December 31, 2026.)

5. PAYMENTS

5.1 Amounts due Tacoma from City pursuant to Section 4 shall be billed by Tacoma and paid by City in accordance with the procedures for billings and payments set forth in the Wholesale Water Regulations. Payment of any and all other amounts due Tacoma from City pursuant to this Agreement shall be due and payable to Tacoma within thirty (30) days from and after the date of Tacoma's invoice for such payment. If full payment of any invoice is not received by Tacoma on or before the date due, such payment shall be considered past due, and the unpaid amount of such invoice shall accrue interest, from the date due until the date paid, at a rate per day equal to the Interest Rate.

5.2 City hereby covenants and agrees that it has established and shall maintain and collect rates or charges for water and other services, facilities and commodities sold, furnished or supplied to its customers that are adequate to provide revenues sufficient to enable City to make the payments required to be made pursuant to the terms of this Agreement, and to pay all other charges and obligations payable from or constituting a charge or lien upon such revenues.

6. WHOLESALE WATER DELIVERIES

6.1 From and after the Delivery Date, the Wholesale Water Supply shall be made available to City at the Wholesale Service Connection. The delivery and receipt of water, and the transfer of title to and custody and control of such water, shall occur at the Wholesale Service Connection. The quality of water made available to City at the Wholesale Service Connection shall be in compliance with Applicable Law. Upon City's acceptance of such water at the Wholesale Service Connection, City assumes full responsibility for such water, its quality, and the means, methods and facilities necessary to connect, receive, transport, deliver and use such water as a source of water for resale by City to City's retail customers.

6.2 The "Delivery Date" shall be the date, during the Term, upon which each and all of the following events have occurred:

(a) Tacoma shall have notified City that the Wholesale Service Connection is available for normal and reliable commercial operations;

(b) City shall have notified Tacoma that Interconnection Facilities are available for normal and reliable commercial operations; and

(c) Tacoma shall have notified City that the Meter has been tested and calibrated and that Tacoma is ready to commence Wholesale Water Service pursuant to this Agreement.

7. WHOLESALE WATER CONNECTION AND INTERCONNECTION FACILITIES

7.1 Tacoma shall provide, at City's expense, for the design, engineering, construction, testing and permitting of the Wholesale Service Connection, including the water main, service pipe, automated remote valve shut-off, Meter, appurtenances and vaults, and Telemetry Equipment. From and after the Delivery Date, Tacoma shall be responsible for the maintenance and operation of the Wholesale Service Connection in a manner that is consistent with Applicable Law and Prudent Utility Practices. If at any time during the Term Tacoma shall determine a need to upgrade, replace or modify the Wholesale Service Connection, in whole or in part, Tacoma shall so notify City, and cause such upgrade, replacement or modification to occur at such time, place and manner and with such labor, design, materials and equipment as Tacoma shall determine, in its sole discretion. No wholesale service connections other than the Wholesale Service Connection are authorized by this Agreement, and no other such connections shall be allowed without a subsequent and separate written agreement between the Parties. Neither Party shall be obligated to agree to or execute any agreement or permit with the other Party to construct or use any additional wholesale service connection.

7.2 City shall, at its expense, cause the Interconnection Facilities to be constructed, tested and available for normal and reliable commercial operations on or before the Delivery Date. City shall submit to Tacoma for review and approval the designs, specifications and construction schedule for the Interconnection Facilities. Tacoma will not unreasonably delay its review of the designs, specifications and construction schedule submitted to it by City and will not unreasonably withhold its approval of such designs, specifications and construction schedule. City will not commence construction of the Interconnection Facilities unless and until Cascade has received from Tacoma approved designs, specifications, and construction schedule (as such documents may be revised by Tacoma). City shall construct and operate the Interconnection Facilities in a manner that is consistent with Applicable Law; the approved designs, specifications and construction schedule; the provisions of all permits, regulatory approvals and agreements governing the construction and operation of the Interconnection Facilities; and Prudent Utility Practices. City shall own and operate the Interconnection Facilities and shall be responsible for the repair and maintenance thereof.

7.3 Without limiting the generality of the foregoing, City shall be responsible for the operation and control of the City Isolation Valve and any pressure-reducing valves, controllers, pedestals, and boxes operated by City as part of the Interconnection Facilities.

7.4 If, at any time or from time to time during the Term, Tacoma determines a need to repair, maintain, replace, renew, expand or improve any of Tacoma's infrastructure, facilities or systems and such work requires the relocation of all or any portion of the Interconnection Facilities, Tacoma shall, within a reasonable time prior to the commencement

of such work, request by written notice to City that City relocate such Interconnection Facilities so as to accommodate the time, place and manner of Tacoma's work. Upon receipt of such notice from Tacoma, City shall promptly so relocate such Interconnection Facilities at City's sole cost and expense.

8. METER AND TELEMETRY EQUIPMENT

8.1 Tacoma shall, at City's expense, provide for the procurement, installation, repair, replacement, calibration and testing of the Meter and the Telemetry Equipment. City shall provide, at its expense, a sufficient and reliable source of power to the Meter and the Telemetry Equipment. Tacoma shall determine the size of the Meter and the flow range within which the Meter must operate.

8.2 Tacoma shall perform the calibration and testing of the Meter. During the Term, Tacoma shall periodically test the Meter for accuracy, and the results of such testing shall be made available to City. City may also test the Meter at any reasonable time and at City's expense. The results of any Meter test conducted by the City shall be made available to Tacoma at no charge.

8.3 City hereby grants Tacoma the right of access, upon reasonable notice and at reasonable times and in a reasonable manner, to any area under the care, custody or control of City for purposes of this Section 8.

9. WATER MANAGEMENT AND SCHEDULING

9.1 On or before May 1 of each year during the Term, City shall provide Tacoma with a Draft Operating Plan.

9.2 Prior to 10:00 a.m. on any Thursday during the Term, City may submit to Tacoma, in the manner and in the form established by Tacoma, a schedule for wholesale water deliveries for the following seven (7) days ("Schedule"). The Schedule shall contain at a minimum a uniform rate of water deliveries for each day of the Schedule, and shall take effect on the day following the Thursday the Schedule is submitted. Schedules so submitted shall remain in effect until replaced by a subsequent Schedule submitted in accordance with this Section 9.2

9.3 The Parties agree to jointly develop and maintain operating protocols for items including the scheduling of water demand to assure consistent flow control and treatment, routine operational communication, emergency shutdown, emergency contacts, and other items the Parties determine appropriate ("Operating Protocols"). The Operating Protocols shall be subject to Tacoma's approval.

9.4 Tacoma reserves the right to modify, suspend, change or amend Schedules and Operating Protocols as necessary to comply or conform with this Agreement, the Wholesale Water Regulations, Applicable Law, or Prudent Utility Practices, or to respond to

Uncontrollable Forces. Tacoma will provide City with as much notice as is practicable under the circumstances of any such modifications, suspensions, changes or amendments.

10. CONSERVATION AND PLANNING

10.1 The Parties will seek to coordinate regional supply, planning, scheduling and operational programs that promote efficient use of water supplies, facilities, finances and staff resources. If requested by Tacoma, City shall participate in the planning and implementation process for conservation programs as they are developed and will share available conservation resources where beneficial to both Parties. The Parties agree to meet every two years to review and evaluate operational experience with regards to water use and conservation. In the event there is a water shortage or drought that requires Tacoma to institute water rationing or water use restrictions, Tacoma may institute reductions to deliveries of the Wholesale Water Supply consistent with the Wholesale Water Regulations and Prudent Utility Practices.

10.2 During the Term, City shall implement and maintain a water conservation and water curtailment program substantially equivalent to Tacoma's program. Tacoma reserves the right to reduce or discontinue Wholesale Water Service in the event City fails to adopt and conform its use of the Wholesale Water Supply to Tacoma's Water Shortage Response Plan.

11. RISK OF LOSS

11.1 Title to and risk of loss of water delivered by Tacoma to City pursuant to Section 6 shall pass from Tacoma to City at the Wholesale Service Connection.

11.2 Title to the Wholesale Service Connection, the Meter, and the Telemetry Equipment shall be vested in Tacoma. Except as otherwise provided by Section 8.2, City shall have no right to operate, suspend, curtail, design, construct, test, maintain, repair, improve, replace and use the Wholesale Service Connection, the Meter and the Telemetry Equipment. Title to the Interconnection Facilities shall be vested in City. Tacoma shall have no right or responsibility to operate, suspend, curtail, design, construct, test, maintain, repair, improve, replace or use the Interconnection Facilities.

12. INDEMNIFICATION AND WAIVER

12.1 City shall defend, indemnify and hold each and all of the Tacoma Indemnitees harmless from and against any and all claims, liens, demands, actions, losses, damages, costs, expenses and liabilities (including attorneys' fees) arising directly or indirectly from or in connection with:

(a) the transportation, storage, sale, delivery and use of any water delivered to City in accordance with this Agreement;

(b) the negligent, reckless, or otherwise tortious acts or omissions of City, or of anyone directly or indirectly retained or employed by City, in performance of this Agreement;

- (c) any failure of City to perform or comply with any one or more obligations made or arising under this Agreement;
- (d) any material breach, failure, inconsistency, inaccuracy or default of any one or more representations made to Tacoma in Section 18;
- (e) the use or resale of the Wholesale Water Supply for fire suppression purposes, or
- (f) City Hazardous Substances.

To the fullest extent permitted by Applicable Law, City's obligation to so release, defend, indemnify and hold harmless shall apply regardless of the negligence or strict liability of any one or more of the Tacoma Indemnitees. As between the Parties and solely for the purpose of the indemnities contained in this Section 12.1, City expressly waives any immunity, defense or protection that may be granted to it under the Washington State Industrial Insurance Act, Title 51 RCW, or any other industrial insurance, workers' compensation or similar laws of the State of Washington to the fullest extent permitted by Applicable Law. This Section 12.1 shall not be interpreted or construed as a waiver of City's right to assert such immunity, defense or protection directly against any of its own employees or any such employee's estate or other representatives. This Section 12.1 has been mutually negotiated by the Parties and shall survive the expiration or termination of this Agreement.

City's Initials

12.2 Neither Party shall be monetarily liable to the other Party or its respective customers for failure to supply and deliver the Wholesale Water Supply at any time or for any reason.

12.3 EXCEPT WITH RESPECT TO THIRD-PARTY CLAIMS AS TO WHICH CITY HAS ASSUMED OBLIGATIONS ARISING UNDER SECTION 12.1 AND NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE AS A RESULT OF ANY ACTION OR INACTION UNDER THIS AGREEMENT OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, NEGLIGENCE OR OTHER FAULT, STRICT LIABILITY WITHOUT REGARD TO FAULT, BREACH OF CONTRACT OR WARRANTY, FOR ANY LOSS OF PROFITS OR LOSS OF REVENUE OR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR INDIRECT LOSSES OR SIMILAR DAMAGES OF ANY NATURE WHATSOEVER, WHETHER ARISING UNDER THE LAW OF CONTRACTS, TORTS (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE OF EVERY KIND AND STRICT LIABILITY, WITHOUT FAULT) OR PROPERTY, OR AT COMMON LAW OR IN EQUITY, OR OTHERWISE, IRRESPECTIVE OF WHETHER SUCH LOSSES OR SIMILAR DAMAGES ARE REASONABLY FORESEEABLE AND IRRESPECTIVE OF WHETHER SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OR EXISTENCE OF SUCH DAMAGES.

THIS SECTION 12.3 HAS BEEN MUTUALLY NEGOTIATED BY THE PARTIES AND SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

Tacoma's Initials

City's Initials

13. REGULATORY COMPLIANCE

13.1 The Wholesale Water Service is provided subject to Applicable Law (including permits, authorization and the jurisdiction of a Governmental Authority to issue orders and regulations regarding the Wholesale Water Service, the Wholesale Water Supply, the Project and the Diversion Rights). City understands and agrees that Tacoma must comply with all such Applicable Laws, permits, authorizations, orders and regulations, and that such laws, permits, authorizations, orders and regulations are an Uncontrollable Force to the extent that they affect the ability of Tacoma to fulfill its obligations under this Agreement.

14. NO RIGHT OR CLAIM TO WATER RIGHTS

14.1 By this Agreement, City secures a contractual right to receive Wholesale Water Service and to accept delivery from Tacoma of the Wholesale Water Supply as a wholesale customer. By this Agreement, City acquires no right, title or interest in or to (a) the Project, the Wholesale Service Connection, the Meter, or the Telemetry Equipment; or (b) any water rights, water claims, water permits or water certificates (including the Diversion Rights).

15. DISPUTE RESOLUTION

15.1 Any and all claims, controversies or disputes arising out of or relating to or in connection with this Agreement (each, a "Dispute") as between the Parties shall be resolved in accordance with the Dispute resolution procedures set forth in this Section 15.

15.2 The Parties shall inform one another promptly following the occurrence or discovery of any item or event that would reasonably be expected to result in a Dispute required to be resolved in accordance with this Dispute resolution procedure. The initial mechanism to resolve Disputes will involve negotiations between the Parties' representatives, so designated by the Parties by notice given pursuant to Section 21.

15.3 If the Parties cannot resolve a Dispute satisfactorily within ten (10) days after receipt of the initial notice in accordance with Section 15.2, either Party may deliver to the other Party notice of the Dispute with a detailed description of the underlying circumstances of such Dispute. The Dispute notice shall include a schedule of the availability of the notifying Party's senior officers duly authorized to settle the Dispute during the thirty (30) day period following the delivery of the Dispute notice. The recipient Party shall, within three (3) business days following receipt of the Dispute notice, provide to the notifying Party a parallel schedule of availability of the recipient Party's senior officers duly authorized to settle the Dispute. Following delivery of the respective senior officers' schedules of availability, the senior officers of the notifying Party and the recipient Party shall meet and confer as often as

they deem reasonably necessary during the remainder of the thirty (30) day period in good-faith negotiations to resolve the Dispute to the satisfaction of both Parties.

15.4 If at any time during the good-faith efforts to resolve any Dispute arising under this Agreement either of the Parties determines that such informal discussions will not result in a resolution of the issue or issues in Dispute, such Party may initiate the Dispute resolution process in accordance with the provisions of Exhibit B.

15.5 Pending resolution of any Dispute, the Parties shall continue to fulfill their respective duties under this Agreement.

16. DEFAULT AND REMEDIES

16.1 If a Party fails to perform its obligations hereunder, then it shall be in default hereunder unless the defaulting Party cures:

(a) a monetary event of default within thirty (30) days after receiving written notice from the other Party of such monetary default; and

(b) a non-monetary event of default within sixty (60) days after receiving a notice of default from the non-defaulting Party; provided, however, that if the nature or extent of the obligation or obligations is such that more than sixty (60) days are required, in the exercise of commercially reasonable diligence, to cure such non-monetary default, then the defaulting Party shall not be in default if it commences such performance within such sixty (60) day period and thereafter pursues the same to completion with commercially reasonable diligence.

16.2 Except as otherwise provided by Section 12.3 and subject to the procedures set forth in Section 15, if a Party is in breach or default of its obligations arising under this Agreement, the other Party shall have and shall be entitled to exercise any and all remedies available to it at law or in equity (including the right to specifically enforce this Agreement), all of which remedies shall be cumulative. If either Party elects to pursue singularly any remedy available to it under this Section 16, then such Party may at any time thereafter continue to pursue or cease pursuing that remedy and simultaneously elect to pursue any other remedy available to it under this Section 16.

17. ADDITIONAL WATER

17.1 During the Term, City may request that Tacoma supply City wholesale water on a temporary basis in addition to the Wholesale Water Supply ("Temporary Wholesale Water Supply"). The availability of the Temporary Wholesale Water Supply for sale by Tacoma to City at any time, or from time to time, during the Term shall be determined by Tacoma in its sole discretion. If Tacoma shall determine that some or all of the Temporary Wholesale Water Supply is available for sale to City, it may be sold, scheduled, priced and delivered to City on such terms and conditions as may then be acceptable to the Parties. Without limiting

the generality of the foregoing, any such sales shall be subject to the Wholesale Water Regulations (as applicable), the availability of resources, and the disruption, interruption, suspension and curtailment of the Temporary Wholesale Water Supply by Tacoma at any time.

18. REPRESENTATIONS OF THE PARTIES

18.1 Each Party is duly authorized and validly existing under the laws of, is authorized to exercise its powers, rights and privileges under the laws of, and is in good standing in the State of Washington, and has full power and authority to carry on its business as presently conducted, to execute this Agreement and to perform the transactions on its part contemplated by this Agreement.

18.2 The execution, delivery and performance of this Agreement, and the consummation of the transactions contemplated hereby, have been duly authorized by the appropriate board or council, and no other act or proceeding on the part of any Party is necessary to authorize this Agreement, or the transactions contemplated hereby.

18.3 The execution, delivery and performance by each of the Parties of this Agreement does not (a) contravene Applicable Law; or (b) conflict with or result in a breach of or default under any material agreement or instrument to which any Party is a party or by which it is bound.

18.4 There are no actions, suits, claims or proceedings pending or, to the best of each Party's knowledge, threatened against either Party that is likely to impair the consummation or the transactions contemplated hereby.

19. TERM

19.1 The term of this (the "Term") Agreement shall commence as of the Effective Date and shall remain in full force and effect until the date that Tacoma ceases making wholesale water sales in accordance with the Wholesale Water Regulations. (*Note: See "Term" limitations referenced in 4.2 for certain Peak Season only sales.*)

20. UNCONTROLLABLE FORCES

20.1 If performance of this Agreement or of any obligation hereunder (other than the insufficiency of funds, the financial inability to perform or changes in a Party's cost of performing its obligations) is prevented or substantially restricted or interfered with by reason of an Uncontrollable Force, the affected Party, upon giving notice to the other Party, shall be excused from such performance to the extent of and for the duration of such prevention, restriction or interference. The affected Party shall use its reasonable efforts to avoid or remove such causes of nonperformance and shall continue performance hereunder whenever such causes are removed.

21. NOTICES

21.1 All notices or other communications required or permitted by this Agreement must be in writing and be personally delivered, delivered by recognized overnight courier service or given by mail or via facsimile. Any notice given by mail must be sent, postage prepaid, by certified or registered mail, return receipt requested. All notices must be addressed to the Parties at the following addresses or at such other addresses as the Parties may from time to time direct in writing:

Tacoma: Water Superintendent
P.O. Box 11007
Tacoma, WA 98411
Phone: (253) 502-8245
Fax: (253) 502-8694

City: _____

Fax No. _____

with a copy to: _____

Fax No. _____

21.2 Any notice will be deemed to have been given, if personally delivered, when delivered, and if delivered by courier service, one (1) business day after deposit with the courier service, and if mailed, two (2) business days after deposit at any post office in the United States of America, and if delivered via facsimile, the same day as verified; provided that any verification that occurs after 5 p.m. on a business day, or at any time on a Saturday, Sunday or holiday, will be deemed to have occurred as of 9 a.m. on the following business day.

22. MISCELLANEOUS

22.1 The rights and obligations of the Parties arising under this Agreement may not be sold, assigned or otherwise transferred in whole or in part by a Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Subject to the foregoing, this Agreement shall be binding upon the Parties' respective successors and permitted assigns.

22.2 The Parties agree that in taking actions or making determinations required or provided for under this Agreement, each Party shall act in fairness and in good faith. The Parties will cooperate and use commercially reasonable efforts to facilitate the

implementation of all aspects of this Agreement. During the Term, each Party, upon the request of the other Party, shall, without further consideration, execute, deliver and acknowledge all such further documents and do and perform all such other acts and things as either Party may reasonably request to effectively carry out the intent of this Agreement.

22.3 A Party shall not have the right to offset any amounts owed to the other Party pursuant to this Agreement against any amounts due from the other Party pursuant to this Agreement, nor may a Party offset any amounts due to the other Party pursuant to this Agreement against any amounts owed by the other Party pursuant to this Agreement. A Party may not withhold any payment due the other Party by reason of a Dispute; such payment shall be paid "under protest" and any and all Disputes with respect to such payment shall be resolved pursuant to Section 15.

22.4 Any of the terms or conditions of this Agreement may be waived at any time and from time to time, in a signed writing, by the Party or Parties entitled to the benefit of such terms or conditions. Any waiver given by a Party shall be narrowly construed to specifically waive, in time and subject, only the express matter contained in such waiver. The failure of either Party to insist on or enforce strict performance of any provision of this Agreement or to exercise any right or remedy under this Agreement or Applicable Law will not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such provision, right or remedy in that or any other instance; rather, the same will be and remain in full force and effect. Tacoma's review, revision or approval of or comment upon any matter arising under this Agreement, or Tacoma's failure to review, revise, approve or comment upon any matter arising under this Agreement, shall not in any way (i) relieve or release City from any of its obligations arising under this Agreement, or (ii) subject Tacoma to any liability with respect to such matter.

22.5 This Agreement shall be governed by and construed in accordance with the laws of the State of Washington (regardless of the laws that might otherwise govern under applicable principles of conflict of laws of such state). Except with respect to a lawsuit or judicial action or proceeding commenced by a third party in another jurisdiction and subject to Exhibit B, the Parties will (i) agree that any lawsuit, judicial action or proceeding arising out of or relating to this Agreement must be heard in the Superior Court of the State of Washington, in and for the County of Pierce, or the United States District Court for the Western District of Washington in Tacoma; (ii) waive any objection to the laying of venue of any such suit, action or proceeding; and (iii) irrevocably submit to the jurisdiction of any such court in any such lawsuit, judicial action or proceeding.

22.6 Terms defined in a given number, tense, or form shall have the corresponding meaning when used in this Agreement with initial capitals in another number, tense, or form. References containing terms such as "hereof," "herein," "hereto," "hereinafter" and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Agreement taken as a whole. "Includes" or "including" shall not be deemed limited by the specific enumeration of items, but shall be deemed without limitation. The term "or" is not exclusive. The headings contained in this Agreement are included solely for the convenience of the Parties. Accounting terms used but

not defined herein have the meanings given to them under generally accepted accounting principles in the United States consistently applied throughout the specified period and in the immediately prior comparable period.

22.7 Any provisions of this Agreement prohibited or rendered unenforceable by Applicable Law shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement. In such event, the remainder of this Agreement will remain valid and enforceable. Upon such determination that any term or other provision is prohibited or rendered unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that transactions contemplated under this Agreement are fulfilled to the greatest extent possible.

22.8 This Agreement may be amended only by an instrument in writing executed by the Parties that expressly refers to this Agreement and states that it is an amendment hereto. This Agreement constitutes the entire agreement between the Parties and supersedes all other prior agreements and understandings, oral and written, between the Parties, with respect to the subject matter hereof. No amendment, modification or waiver of any provision of this Agreement will be valid unless set forth in a written instrument signed by both Parties. If a Party becomes aware of a conflict between this Agreement and any other agreement in place between such Party or its Affiliates and another Person, it will promptly notify such other Party, and the Parties will work in good faith to resolve the conflict.

22.9 Nothing contained in this Agreement shall be deemed or construed by the Parties, or by any third party, as creating the relationship of principal and agent, or of partnership or of joint venture, between the Parties. Neither Party shall enter into any contract, agreement or other commitment, or incur any obligation or liability, in the name of or otherwise on behalf of the other Party. This Agreement shall create no rights, responsibilities and/or obligations in, to or from any Persons other than Tacoma and City.

22.10 Sections _____ and all other terms and conditions of this Agreement that must be reasonably construed to survive the expiration or termination of this Agreement in order to give full force and effect to the intent of the Parties as set forth herein shall survive the expiration or termination of this Agreement, regardless of whether such survival is expressly specified herein.

22.11 This Agreement may be executed in several counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

22.12 This Agreement has been negotiated on an arm's-length basis by the Parties and their respective counsel and shall be interpreted fairly in accordance with its terms and without any strict construction in favor of or against either Party.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the Effective Date.

Dated this _____ day of _____, 20__.

City of Tacoma:

City of _____:

Department of Public Utilities
Water Division

Linda A. McCrea
Water Superintendent

Approved as to form:

Approved as to form:

Exhibit A

Wholesale Service Connection

(To be added upon establishment of the physical point of connection)

Exhibit B

Dispute Resolution Procedures

The following procedures shall govern the resolution of any dispute arising under the Wholesale Water Supply Agreement dated _____ (the "Agreement") between the Parties that cannot be resolved by good-faith negotiations between the Parties, unless the Parties mutually agree to use different procedures to resolve a specific dispute by executing a document setting forth such different procedures. The Parties agree that these dispute resolution procedures are intended to be used in conjunction with and governed by Chapter 4.48 RCW, and both Parties hereby waive their right to a trial by jury for any dispute arising under the Agreement.

1. The Party that believes that continued good-faith negotiations will not produce a resolution of the issue or issues that are the subject of such negotiations will notify the other Party in writing that it is invoking the dispute resolution procedures of this Exhibit B.
2. Within twenty (20) days of the date of such notice invoking the dispute resolution procedures of this Exhibit B, the Parties shall meet and select an individual to recommend to the court as referee of the dispute resolution process in accordance with RCW 4.48.020. The Parties shall select an individual who is qualified as a juror as provided by statute, is competent as a juror between the Parties, is a duly admitted and practicing attorney, and has experience presiding over civil litigation of contract disputes. The Parties will use the following procedure to select the recommended referee:
 - 2.1 Each Party will make a list of three individuals that are qualified pursuant to Paragraph 2 to serve as referee and exchange such list with the other Party. If the Parties agree upon a person from either list, or if both Parties list the same person, that person will be the recommended referee.
 - 2.2 If the Parties are unable to agree upon a referee after exchanging their respective lists, they will make a joint list setting forth all six candidates from the two lists.
3. Upon the selection of the recommended referee, or the creation of the joint list pursuant to Subparagraph 2.2 of this Exhibit B, the Party that invoked the dispute resolution procedures shall file a complaint, in the superior court of the appropriate county as set forth in Section 22.5 of the Agreement, setting forth the issue or issues in dispute, and the other Party shall file an answer to such complaint. Not later than twenty (20) days after the filing of the answer, the Parties shall jointly file a motion, with the Agreement (including this Exhibit B) attached, with the court requesting an order of reference that:

- 3.1 Directs that the issue or issues raised by the complaint and answer be resolved pursuant to Chapter 4.48 RCW by reference to a referee;
 - 3.2 Appoints, pursuant to RCW 4.48.020, either the recommended referee selected by the Parties pursuant to Subparagraph 2.1 of this Exhibit B, or a single referee from the joint list prepared pursuant to Subparagraph 2.2 of this Exhibit B; and
 - 3.3 Directs the referee to conduct the proceeding in accordance with the procedures set out in Paragraphs 4-10 of this Exhibit B.
4. In accordance with RCW 4.48.060, the Parties hereby waive their rights to discovery and cross-examination, and direct that the proceeding be conducted in the same manner as a motion for summary judgment as follows:
 - 4.1 The Parties shall present their respective positions by written briefs and affidavits, and without testimonial evidence or cross-examination;
 - 4.2 Oral argument will be conducted before the referee; and
 - 4.3 The burdens of proof and persuasion that pertain in a civil trial shall apply, rather than those that apply to motions for summary judgment.
5. After appointment of the referee, the Parties shall endeavor in good faith to prepare for the referee a joint statement of facts and the questions to be decided in the proceeding. In the absence of an agreed-to joint statement of facts and questions to be decided, each Party may include its own statement of facts and questions to be decided in its initial brief.
6. Within ninety (90) days after the submission of the joint statement of facts and questions to be decided, or within ninety (90) days after the appointment of the referee if the Parties cannot agree to a joint submission of facts and questions to be decided, each Party shall submit to the referee a one-page statement of the proposed resolution and/or award it seeks for each issue in dispute, and its initial brief. The statement and initial brief (excluding any attached affidavits or evidentiary documents) shall not exceed fifty (50) 8½" x 11" double-spaced pages with ½-inch margins and 12-point typeface. The statement and initial brief shall be filed simultaneously by e-mail and regular mail with the referee and opposing Party.
7. Within thirty (30) days after the date the Parties filed their initial briefs, the Parties shall file their respective reply briefs with the referee and the opposing Party. The reply briefs (excluding any attached affidavits or evidentiary documents) shall not exceed twenty-five (25) 8½" x 11" double-spaced pages with ½-inch margins and 12-point typeface. The reply briefs shall be filed simultaneously by e-mail and regular mail with the referee and opposing Party.

8. After the reply briefs have been filed, if the referee deems that additional responses are needed, then the referee may request that the Parties file a supplemental brief only as to those specific matters or questions raised by the referee. Such supplemental briefs shall be limited to fifteen (15) 8½" x 11" double-spaced pages with 1½-inch margins and 12-point typeface, and shall be filed at such time requested by the referee. Any such supplemental briefs shall be filed simultaneously by e-mail and regular mail upon the referee and opposing Party.
9. When all briefs have been filed, the referee will schedule oral argument on the issue or issues in dispute.
10. After the completion of oral argument, the referee will prepare his or her proposed report in accordance with RCW 4.48.70 and shall provide a copy of the proposed report to the Parties, who shall have the right to suggest changes and modifications to the proposed report, all in accordance with RCW 4.48.110. The referee will file the final report with the court within twenty (20) days of the completion of the process under RCW 4.48.110.
11. Either Party may move the court to modify or set aside, in whole or in part, the final report of the referee. If the court modifies or sets aside, in whole or in part, the final report of the referee and makes another reference, then this Exhibit B shall also apply to such reference.
12. Each Party shall be responsible for its own costs of the dispute resolution process (including any judicial proceedings), and the Parties shall each pay one-half of the other costs of the dispute resolution proceeding, including the fees of the referee. The fees of the referee shall be established in accordance with RCW 4.48.100.

Exhibit B
JOINT LETTER TO FOUR CITIES

Exhibit C

DISPUTE RESOLUTION PROCEDURES

DISPUTE RESOLUTION PROCEDURES

The following procedures shall govern the resolution of any dispute arising under the Agreement between the Parties that cannot be resolved by good-faith negotiations between the Parties, unless the Parties mutually agree to use different procedures to resolve a specific dispute by executing a document setting forth such different procedures. The Parties agree that these dispute resolution procedures are intended to be used in conjunction with and governed by Chapter 4.48, RCW and both Parties hereby waive their right to a trial by jury for any dispute arising under this Agreement.

1. The Party that believes that continued good-faith negotiations will not produce a resolution of the issue(s) that is the subject of such negotiations will notify the other Party in writing that it is invoking the dispute resolution procedures of this Exhibit C.
2. Within twenty (20) days of the date of such notice invoking the dispute resolution procedures of this Exhibit C, the Parties shall meet and select an individual to recommend to the court as referee of the dispute resolution process in accordance with RCW 4.48.020. The Parties shall select an individual who is qualified as a juror as provided by statute, is competent as a juror between the Parties, is a duly admitted and practicing attorney, and has experience presiding over civil litigation of contract disputes. The Parties will use the following procedure to select the recommended referee:
 - 2.1 Each Party will make a list of three individuals that are qualified pursuant to Paragraph 2 to serve as referee and exchange such list with the other Party. If the Parties agree upon a person from either list, or if both Parties list the same person, that person will be the recommended referee.
 - 2.2 If the Parties are unable to agree upon a referee after exchanging their respective lists, they will make a joint list setting forth all six candidates from the two lists.
3. Upon the selection of the recommended referee, or the creation of the joint list pursuant to Subparagraph 2.2 of this Exhibit C, the Party that invoked the dispute resolution procedures shall file a complaint, in the superior court of the appropriate county as set forth in Section 21.6 of the Agreement, setting forth the issues(s) in dispute, and the other Party shall file an answer to such complaint. Not later than twenty (20) days after the filing of the answer, the Parties shall jointly file a motion, with the Agreement (including this Exhibit C) attached, with the court requesting an order of reference that:
 - 3.1 Directs that the issue(s) raised by the complaint and answer be resolved pursuant to Chapter 4.48, RCW by reference to a referee;
 - 3.2 Appoints, pursuant to RCW 4.48.020, either the recommended referee selected by the Parties pursuant to Subparagraph 2.1 of this Exhibit B, or a single referee from the joint list prepared pursuant to Subparagraph 2.2 of this Exhibit C; and
 - 3.3 Directs the referee to conduct the proceeding in accordance with the procedures set out in Paragraphs 4-10 of this Exhibit C.

4. In accordance with RCW 4.48.060, the Parties hereby waive their rights to discovery and cross-examination, and direct that the proceeding be conducted in the same manner as a motion for summary judgment as follows:
 - 4.1 The Parties shall present their respective positions by written briefs and affidavits, and without testimonial evidence or cross-examination;
 - 4.2 Oral argument will be conducted before the referee; and
 - 4.3 The burdens of proof and persuasion that pertain in a civil trial shall apply, rather than those that apply to motions for summary judgment.
5. After appointment of the referee, the Parties shall endeavor in good faith to prepare for the referee a joint statement of facts and the questions to be decided in the proceeding. In the absence of an agreed-to joint statement of facts and questions to be decided, each Party may include its own statement of facts and questions to be decided in its initial brief.
6. Within ninety (90) days after the submission of the joint statement of facts and questions to be decided, or within ninety (90) days after the appointment of the referee if the Parties cannot agree to a joint submission of facts and questions to be decided, each Party shall submit to the referee a one-page statement of the proposed resolution and/or award it seeks for each issue in dispute, and its initial brief. The statement and initial brief (excluding any attached affidavits or evidentiary documents) shall not exceed fifty (50) 8½" x 11" double-spaced pages with ½-inch margins, number 12-point typeface. The statement and initial brief shall be filed simultaneously by e-mail and regular mail with the referee and opposing Party.
7. Within thirty (30) days after the date the Parties filed their initial briefs, the Parties shall file their respective reply briefs with the referee and the opposing Party. The reply briefs (excluding any attached affidavits or evidentiary documents) shall not exceed twenty-five (25) 8½" x 11" double-spaced pages with ½-inch margins, number 12-point typeface. The reply briefs shall be filed simultaneously by e-mail and regular mail with the referee and opposing Party.
8. After the reply briefs have been filed, if the referee deems that additional responses are needed, then the referee may request that the Parties file a supplemental brief only as to those specific matters or questions raised by the referee. Such supplemental briefs shall be limited to fifteen (15) 8½" x 11" double-spaced pages with ½-inch margins, number 12-point typeface, and filed at such time requested by the referee. Any such supplemental briefs shall be filed simultaneously by e-mail and regular mail upon the referee and opposing Party.
9. When all briefs have been filed, the referee will schedule oral argument on the issue(s) in dispute.
10. After the completion of oral argument, the referee will prepare his/her proposed report in accordance with RCW 4.48.70 and shall provide a copy of the proposed report to the

Parties, who shall have the right to suggest changes and modifications to the proposed report, all in accordance with RCW 4.48.110. The referee will file the final report with the court within twenty (20) days of the completion of the process under RCW 4.48.110.

11. Either Party may move the court to modify or set aside, in whole or in part, the final report of the referee. If the court modifies or sets aside, in whole or in part, the final report of the referee and makes another reference, then this Exhibit C shall also apply to such reference.
12. Each Party shall be responsible for its own costs of the dispute resolution process (including any judicial proceedings), and the Parties shall each pay one-half of the other costs of the dispute resolution proceeding, including the fees of the referee. The fees of the referee shall be established in accordance with RCW 4.48.100.

JOINT LETTER TO 4 CITIES

[Date]

Sent by Email and US Mail

[Add Names and Addresses]

Re: Substitute Wholesale Water Supply Availability – Time is of the Essence

Dear Mayors:

The Cascade Water Alliance is pleased to announce, in cooperation with Tacoma Water, the availability of a substitute wholesale water supply (“Substitute Supply”) and to provide this notice of a limited period of time for your Cities to take action on this unique opportunity. Cascade and Tacoma have entered into a Restated and Amended Agreement for the Sale of Wholesale Water, which replaces the 2005 agreement between the parties for purchase and sale of wholesale water. The 2005 agreement is included as one of the “water supply assistance” measures in the 2010 Lake Tapps Area Water Resources Agreement between Cascade and your cities (the “Four Cities Agreement”).

In the Restated and Amended Agreement, Cascade has agreed to relinquish its right to take delivery of the Substitute Supply. This water is now available to the Cities to purchase directly from Tacoma as a wholesale customer. Cascade has, however, previously paid capacity charges for this wholesale water supply. If your City now desires to purchase the Substitute Supply directly from Tacoma and takes action described in this letter, Cascade is willing to sell your City a credit (reflecting the amounts that Cascade has previously paid to Tacoma) that can be applied against System Development Charges that would otherwise be due to Tacoma (“SDC Credit”). The amount and availability of any SDC Credit will be determined by Cascade in accordance with the terms set forth in the Confirmation Notice that is attached to this letter. You must act promptly, however, in order to secure the opportunity to obtain an SDC Credit from Cascade.

This letter provides Cascade's formal notice of the limited window of time for your City to act, the Confirmation Notice that you must return to Cascade to apply for a SDC Credit, and general guidance as to how Cascade and Tacoma intend to cooperate to facilitate the implementation of the Restated and Amended Agreement.

Limited Time to Act.

You must act within 120 days of the date this letter to confirm your interest in this opportunity by delivering a signed "Confirmation Notice" to Cascade in the form attached to this letter. This opportunity expires on _____, 2013. During this 120-day period, the quantity allocation

among and between the Four Cities as stated in the Four Cities letter to Cascade, dated February 5, 2010, shall be recognized by Cascade and shall determine the maximum allocation of the Substitute Supply (and the Residual Wholesale Water Supply) among the Cities (unless the Four Cities jointly agree to reallocation in accordance with the Four Cities Agreement). A City has until this deadline, _____, 2013, to deliver an executed Confirmation Notice to Cascade. If you select this opportunity by acting within the 120 days, then you have until March 1, 2018 to purchase (or agree to purchase) an SDC Credit from Cascade. (In anticipation of the required steps with Tacoma described below, it is advisable for your City to complete the SDC purchase agreement with Cascade in advance of March 2018 to allow your City adequate time for the Tacoma steps.) If you select this opportunity by acting within the 120 days, then you will also have until March 1, 2018 to submit a Wholesale Water Agreement with Tacoma that is eligible for the SDC Credit.

If you do not confirm your selection by delivering a Confirmation Notice to Cascade by the deadline, then you decline the Substitute Supply opportunity stated in this letter. In that event, you will still be able to purchase wholesale water supply (if any water supply capacity remains available) from Tacoma on terms consistent with Section 3(a) of the Four Cities Agreement. However, you will not be eligible for an SDC Credit.

Next Steps with Cascade

If you deliver the Confirmation Notice within the 120-day deadline stated above and select this Substitute Supply opportunity, then you will need to complete the following steps with Cascade.

- (a) Confirmation to Cascade that your city will proceed with the Substitute Supply opportunity stated herein, and that it fully substitutes for section 3(a) of the Four Cities Agreement which will have no further force or effect.
- (b) Agree with Cascade for payment terms to Cascade for the SDC credit.
- (c) Upon completion of the items in (a) and (b) above, Cascade will send Notice of Confirmation of System Development Charge Credit to Tacoma.

Next Steps with Tacoma Water

If you deliver the Confirmation Notice to Cascade within the deadline stated above and select this opportunity, then you would also need to complete the following steps with Tacoma in order to submit a timely offer to purchase all or a portion of the Substitute Supply. The procedures and requirements that must be followed to submit such an offer are set forth in Section 6 and Section 7 of the Restated and Amended Agreement (attached for reference). It is important to read these procedures and requirements carefully as any offer you make must be in strict compliance with these procedures and requirements. These procedures and requirements are briefly summarized as follows:

(a) In order to obtain a SDC Credit, Tacoma must be in receipt of a Notice of Confirmation of System Development Charge Credit from Cascade.

(b) Prior to submitting your offer to purchase to Tacoma, you must obtain Tacoma's written review and approval of the Wholesale Water Supply Agreement (including any proposed modifications thereof) pursuant to which such offer is to be made to Tacoma.

(c) Your offer to Tacoma must be submitted in the form of duplicate executed originals of the Wholesale Water Supply Agreement, in strict conformity with the form of the Wholesale Water Supply Agreement approved by Tacoma.

(d) No later than March 1, 2018, you must deliver your offer to Tacoma, Attention: Water Superintendent, Tacoma Water, 3628 South 35th Street, Tacoma, WA 98409, and obtain Tacoma's acknowledgment of the time and date of Tacoma's receipt of such offer.

Clarifications

While we are pleased to present this opportunity to your City, we want to avoid any confusion as to what this opportunity is and is not. For avoidance of doubt, this letter does not constitute a modification or waiver of any of the procedures or requirements set forth in the Restated and Amended Agreement. This letter does not constitute an offer by Tacoma to sell a wholesale water supply to any person or entity. Any such sale by Tacoma is subject to and contingent upon the negotiation, execution and delivery of a mutually acceptable Wholesale Water Supply Agreement.

Conclusion

Cascade and Tacoma are pleased to provide the availability of Substitute Supply, and look forward to receiving your offer to purchase, should you desire to do so, in accordance with the guidelines set forth above. We will be contacting your office within the next week to schedule a meeting to present and discuss this opportunity.

Sincerely,

Chuck Clarke
Chief Executive Officer
Cascade Water Alliance

Linda A. McCrea
Superintendent
Tacoma Water

Confirmation Notice

To Be Delivered to Cascade Water Alliance By [*insert date of 120 day deadline*]

The City of _____ (“City”) confirms receipt of the letter, dated _____, from Cascade Water Alliance (“Cascade”) and Tacoma Water presenting the availability of a substitute wholesale water supply (“Substitute Supply”). The City understands that the Substitute Supply is an alternative to the provisions of Section 3(a) of the 2010 Lake Tapps Area Water Resources Agreement between Cascade and the Cities of Auburn, Bonney Lake, Buckley, and Sumner (the “Four Cities Agreement”). The City understands that the Substitute Supply requires the City to enter a wholesale water supply agreement with Tacoma Water to be negotiated and offered to Tacoma Water by March 1, 2018 as described in the above-referenced letter. The City understands that Cascade Water Alliance is offering to sell a System Development Charge Credit to the City on the terms and conditions stated on Exhibit 1 attached hereto, provided that by March 1, 2018 Cascade and the City need to enter an agreement to confirm the purchase and sale and Cascade’s provision of a Notice of Confirmation of System Development Charge (“SDC”) Credit to Tacoma Water.

Now, therefore, the City of _____ hereby confirms and agrees as follows:

- (a) The City elects the “Substitute Supply” opportunity described herein as an alternative that fully substitutes for section 3(a) of the Four Cities Agreement.
- (b) The City provides this Confirmation Notice with respect to the following portion of the Substitute Supply:
 - 4 MGD wholesale supply: _____
 - 6 MGD wholesale supply: _____
- (c) By selecting the “Substitute Supply” alternative, the City agrees that Cascade has fully performed and satisfied all obligations to the City under 3(a) of the Four Cities agreement.
- (d) The City agrees that section 3(a) of the Four Cities Agreement shall be of no further force or effect as between Cascade and the City.
- (e) The City and Cascade shall proceed with diligence to negotiate an agreement for purchase of an SDC Credit consistent with the terms outlined in Exhibit 1.

CONFIRMED, ACCEPTED AND AGREED TO BY THE CITY OF _____ on this _____ day of _____, 2013:

By _____

[Name]
Mayor