

**AGREEMENT FOR WHOLESALE WATER SUPPLY**

**BETWEEN**

**THE CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES,**

**WATER DIVISION**

**AND**

**CASCADE WATER ALLIANCE**

## **TABLE OF CONTENTS**

### **LIST OF SECTIONS**

- 1. Conditions Precedent to Performance and Effectiveness**
- 2. Conflicts Between Agreements**
- 3. Term of Agreement**
- 4. Definitions and Recitals**
- 5. Exhibits**
- 6. Wholesale Water Supply and Service**
- 7. Use of Water and Other Supply Agreements**
- 8. Wholesale Water Service Charges and Fees**
- 9. System Development Charges**
- 10. Wholesale Water Deliveries**
- 11. Wholesale Water Supply Service Connections and Interconnection Facilities**
- 12. Meter and Telemetry Equipment**
- 13. Water Quality and Fluoridation**
- 14. Water Management and Scheduling**
- 15. Payments and Billing**
- 16. Conservation and Planning**
- 17. Cooperation; Management Agreements**
- 18. Technical Committees**
- 19. Review and Updates of Agreement**
- 20. Regulatory Compliance**
- 21. No Right or Claim to Water Rights**
- 22. Mutual Release**
- 23. Representations of the Parties**
- 24. Title; Risk of Loss**
- 25. Indemnities**
- 26. Waiver of Consequential Damages**
- 27. Dispute Resolution**
- 28. Default and Remedies**
- 29. Uncontrollable Forces**
- 30. Prudent Utility Practices and Good Faith**
- 31. Notices**
- 32. Access to Books and Records; Audit**
- 33. Miscellaneous**

## WHOLESALE WATER SUPPLY AGREEMENT

THIS AGREEMENT FOR THE SALE OF WHOLESALE WATER ("**Agreement**" or "**2025 Wholesale Agreement**") is made and entered into as of this 18 day of March, 2025, ("**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

- A. WHEREAS, Tacoma is a municipality organized and operating under the laws of the State of Washington and operates a water utility pursuant to RCW 35.92.010;
- B. WHEREAS, pursuant to RCW 35.92.170–.200, Tacoma is authorized to operate a water utility outside its geographical boundaries and to sell water to customers outside of Tacoma’s city limits;
- C. WHEREAS, Cascade is a Washington municipal corporation organized under Chapter 36.106 RCW as a joint municipal utilities services authority and operating as a water purveyor under the laws of the State of Washington;
- D. WHEREAS, Cascade currently contracts for 33.3 million gallons per day ("**MGD**") of annual average wholesale block water from City of Seattle Public Utilities ("**Seattle Block Contract**") through 2039, at which time the Seattle Block Contract capacity declines until reaching 5.3 MGD of annual average wholesale block water by 2064, with an option for a new contract to continue 5.3 MGD thereafter;
- E. WHEREAS, Cascade’s long-term planning projects small to moderate increases in total water demand, consistent with current trends of increasing efficiency and urban densification, such that Cascade also anticipates reduced peak factors as well as moderated demand forecasts in the future;
- F. WHEREAS, in its long-term water supply planning, Cascade considered the options of extending the Seattle Block Contract and of contracting with Tacoma for replacement of existing contract capacity and the impact of those options on the development schedule of the Lake Tapps Reservoir water supply;
- G. WHEREAS, Cascade holds the water rights to the waters of the Lake Tapps Reservoir and Cascade’s long-term water supply planning indicates that deferral of the development of the Lake Tapps Reservoir water supply project has the potential to provide: (1) Cascade and the

Puget Sound region with flexibility in maintaining a long-term reliable supply portfolio; (2) a regional benefit through more efficient use of existing available supplies and a revenue benefit for wholesale providers during the deferral period; and (3) a financial and economic advantage to Cascade by spreading capital costs over time;

- H. WHEREAS, the Cascade Board of Directors directed staff to negotiate a wholesale supply contract with Tacoma to allow a deferral of the Lake Tapps Reservoir water supply project for an extended period of time, foster regional connectivity, and enhance regional resiliency;
- I. WHEREAS, supply and demand projections from Tacoma’s integrated resource plan indicate that sufficient supply will be available to meet the water resource needs of Cascade for the foreseeable future;
- J. WHEREAS, Tacoma’s place of use for its water rights encompasses all areas designated as places of use in Tacoma’s Water Rights attached as Exhibit F and as allowed under RCW 90.03.386, and Tacoma affirms that it has and will maintain the authority to supply water to Cascade for use within the Cascade Members’ existing service areas;
- K. WHEREAS, Tacoma and Cascade desire to enter into a long-term water supply relationship wherein Tacoma may supply a portion of Cascade’s wholesale supply needs;
- L. WHEREAS, Cascade and Tacoma both desire to advance regional interconnections to create a more resilient regional water supply system, better positioning the Puget Sound region to dynamically adapt to changing conditions, including climate change, seismic events, water quality disruptions, and droughts;
- M. WHEREAS, Cascade and Tacoma seek to make the most efficient use of available infrastructure and supply in the region to avoid unnecessary premature development of additional regional water supplies;
- N. WHEREAS, Cascade is willing to purchase and accept delivery of such wholesale water supply and services from Tacoma as a direct wholesale customer of Tacoma in accordance with the terms and conditions of this Agreement;
- O. WHEREAS, in order to accomplish the above and accommodate Cascade’s water supply needs changing over time, Cascade and Tacoma contemplate entering two agreements: this Agreement and a separate but related agreement, the Agreement for Market-Priced Wholesale Water Supply Between the City of Tacoma, Department of Public Utilities, Water Division and Cascade Water Alliance (“**2025 Market-Priced Agreement**”); and

P. WHEREAS, in order for Tacoma to deliver water supply to Cascade, Cascade is responsible for constructing, at its cost, the facilities necessary to connect Cascade's system with that of Tacoma.

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

## AGREEMENT

### **1. CONDITIONS PRECEDENT TO PERFORMANCE AND EFFECTIVENESS**

Neither Party is obligated to perform under this Agreement and, notwithstanding the Effective Date or any other provision of this Agreement, including Section 23.B (Representations of the Parties), this Agreement is not effective unless and until the 2025 Market-Priced Agreement has been duly authorized for execution by the Tacoma Public Utility Board, the Tacoma City Council, and the Cascade Board of Directors and so executed as authorized. If any of the Tacoma Public Utility Board, the Tacoma City Council, or the Cascade Board of Directors fails to authorize for execution the 2025 Market-Priced Agreement and execution is not accomplished as authorized, this Agreement and the 2025 Market-Priced Agreement will be of no force or effect and the 2012 Water Supply Agreement will remain in full force and effect and govern the Parties' relationship with respect to the subject matter thereof.

### **2. CONFLICTS BETWEEN AGREEMENTS**

Cascade is purchasing water from Tacoma under two different timelines and pricing structures. As such, two agreements govern these transactions: this Agreement and the 2025 Market-Priced Agreement. In the event of a conflict between any provision of this Agreement and Section 16 (Restated Restructuring Payment) of the 2025 Market-Priced Agreement, Section 16 (Restated Restructuring Payment) of the 2025 Market-Priced Agreement shall prevail.

### **3. TERM OF AGREEMENT**

The term of this Agreement ("**Term**") shall commence on the Effective Date and this Agreement shall remain in full force and effect until the Parties mutually agree in writing to terminate it or Tacoma discontinues providing wholesale water supply and service to all wholesale customers.

### **4. DEFINITIONS AND RECITALS**

A. Defined terms for this Agreement are in the attached Exhibit A.

B. Capitalized terms not otherwise defined in the body of this Agreement or in Exhibit A are defined in the Wholesale Water Regulations.

C. The Recitals set forth above are hereby incorporated into and made a part of this Agreement.

## 5. EXHIBITS

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 a conflict between the provisions within the body of this Agreement and the provisions of any Exhibit hereto, then the body of this Agreement shall take precedence, govern, and control. The Exhibits to this Agreement are:

Exhibit A:	Definitions
Exhibit B:	Schematic of Example Wholesale Connections
Exhibit C:	Dispute Resolution Procedures
Exhibit D:	Examples of Management Agreement Subjects
Exhibit E:	Sections 4.3 (Voting), 7.8 (Payment procedures – Default – Step-up provisions), and Article 9 (Duration and Dissolution – Withdrawal) of the Joint Municipal Utilities Services Agreement
Exhibit F:	Tacoma’s Water Rights

## 6. WHOLESALE WATER SUPPLY AND SERVICE

A. Tacoma’s place of use for its water rights encompasses all areas designated as places of use in Tacoma’s Water Rights attached as Exhibit F and as allowed under RCW 90.03.386. Tacoma affirms that it has and will maintain the authority to supply water to Cascade for use within the Cascade Members’ existing service areas. Cascade covenants that it will perform no act that will adversely impact Tacoma’s place of use or water rights associated with the water to be supplied to Cascade under this Agreement.

B. This Agreement provides a wholesale water supply commitment of up to 15 MGD peak day supply (“**Wholesale Water Supply**”). Cascade will phase into delivery of the Tacoma supply capacity as Cascade’s wholesale block water under the Seattle Block Contract declines. The phase-in will be defined by Management Agreement as defined in Section 17 (Cooperation; Management Agreements) of this Agreement. Subject to the terms and conditions of this Agreement, during the Term, Tacoma agrees to sell and deliver the Wholesale Water Supply to Cascade, and Cascade agrees to purchase and take delivery of the Wholesale Water Supply from Tacoma. The Wholesale Water Supply may be used by Cascade Members to serve their retail

customers or for wholesale resale as expressly provided for, and subject to the terms and conditions of, this Agreement.

C. The Wholesale Water Supply shall be provided to Cascade 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**”). Except as otherwise provided by this Agreement, service to Cascade shall be subject to and governed by the Wholesale Water Regulations. If, however, there is an express conflict or inconsistency between the terms and conditions of this Agreement and the terms and conditions of the Wholesale Water Regulations, then the terms and conditions of this Agreement shall take precedence, govern, and control.

D. The Wholesale Water Service shall be provided to Cascade with the same degree of reliability and certainty of supply as water provided by Tacoma to its existing wholesale and retail customers (including limitations thereof, such as provisions of the Wholesale Water Regulations pertaining to interruption of service). The Wholesale Water Service provided to Cascade is not intended to provide fire flows or meet short-term needs for fire suppression purposes, and Tacoma does not warrant that the flow or pressure of the Wholesale Water Service provided to Cascade will be adequate for fire suppression purposes. Cascade acknowledges it is solely responsible for compliance with Applicable Law related to fire flows and fire suppression. The Parties acknowledge that Wholesale Water Service is inherently subject to disruption, interruption, suspension, curtailment, and fluctuation. Tacoma shall not have any liability to Cascade or any other Person for any disruption, interruption, suspension, curtailment, or fluctuation in the Wholesale Water Service, except as otherwise provided in this Agreement.

6.D.1. Tacoma will provide water supply to Cascade at the same reliability standard as for its own system and consistent with its own system reliability.

6.D.2. Periodic shutdowns of Pipeline 5 will be needed for maintenance. These shutdowns will be planned as reasonably as possible in advance, coordinated with Cascade, and communicated in writing prior to the shutdown occurring. Except in the case of Uncontrollable Forces, Tacoma will provide Cascade at least thirty (30) days advance notice pursuant to Section 31 (Notices) of a shutdown of Pipeline 5 for maintenance.

6.D.3. Cascade will have to use alternate sources of water during these shutdowns. Cascade will be responsible for reliable transmission of the water supply from the delivery point to its own service area. In order for Cascade to adequately plan its system for outages, Tacoma will provide in advance to the extent possible, guidance as to reasonably expected outage frequency, duration, and schedule.

## **7. USE OF WATER AND OTHER SUPPLY AGREEMENTS**

A. All water supplied to Cascade under this Agreement is provided with the intent to serve Cascade Members' retail and wholesale customers within all areas designated as places of use in Tacoma's Water Rights attached as Exhibit F and as allowed under RCW 90.03.386.

B. Unless Tacoma provides prior written approval to Cascade, Cascade may not sell water supplied under this Agreement, or water from their respective independent supplies offset by water supplied under this Agreement, to any party who is a Tacoma wholesale customer at the time Cascade seeks to sell water to such party. Cascade or Cascade Members may sell water supplied under this Agreement, or water from their respective independent supplies offset by water supplied under this Agreement, for wholesale purposes to non-Cascade members only as follows:

7.B.1. For temporary emergency purposes; or

7.B.2. For wholesale services to utilities within all areas designated as places of use in Tacoma's Water Rights attached as Exhibit F and as allowed under RCW 90.03.386.

C. The limitations in Section 7.B may be revised or changed per negotiated and written agreement of the Parties.

D. Water supplied under this Agreement may not be delivered outside the authorized place of use in Tacoma's Water Rights attached as Exhibit F and as allowed under RCW 90.03.386.

## **8. WHOLESALE WATER SERVICE CHARGES AND FEES**

A. For Wholesale Water Service between January 1, 2026 and December 31, 2029, Cascade shall pay Tacoma a Ready-to-Serve Charge in accordance with Table 1 (Ready-to-Serve Charges for January 1, 2026 to December 31, 2029) below. Thereafter, Cascade shall pay Tacoma all rates, charges, fees, and other amounts for the Wholesale Water Service as shall be due and payable pursuant to the Wholesale Water Regulations. 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 Tacoma Public Utility Board and Tacoma City Council. At any time during the Term, the applicable rate, charge, fee, or other amount due Tacoma from Cascade for the Wholesale Water Service shall be the rate, charge, fee, or amount as shall then be in effect, with the following exceptions:

8.A.1. During the term of the 2025 Market-Priced Agreement, Tacoma will not charge Cascade a rate, charge, fee, or other amount for Wholesale Water Service such



that the Ready-to-Serve Charge, and any other such fixed charges that may be adopted, exceeds fifteen (15) percent of the total amount due if Cascade were to use its total 15 MGD of Wholesale Water Supply;

8.A.2. After the 2025 Market-Priced Agreement expires, Tacoma will not charge Cascade a rate, charge, fee, or other amount for Wholesale Water Service such that the Ready-to-Serve Charge, and any other such fixed charges that may be adopted, exceeds twenty-five (25) percent of the total amount due if Cascade were to use its total 15 MGD of Wholesale Water Supply; and

8.A.3. At no time shall Tacoma charge Cascade a rate, charge, fee, or other amount for Wholesale Water Service that includes an outside city multiplier or surcharge.

B. For the period from January 1, 2026 to December 31, 2029, Tacoma will charge Cascade a Ready-to-Serve Charge under this Agreement per the following table:

**Table 1**  
**Ready-to-Serve Charges for January 1, 2026 to December 31, 2029**

Year	Monthly Ready-to-Serve Payment	Annual Total
2026	\$50,934	\$611,204
2027	\$53,480	\$641,765
2028	\$56,154	\$673,853
2029	\$58,962	\$707,545

C. The rates, charges, fees, and other amounts due Tacoma from Cascade under Section 8.A above, other than the Ready-to-Serve Charges shown in Table 1 above, are referred to herein as the Wholesale Winter and Summer Volume Charges.

**9. SYSTEM DEVELOPMENT CHARGES**

Upon Cascade’s payment to Tacoma of the full System Development Charge (SDC) of \$37,650,000 or Cascade’s payment of the first annual equalized payment of \$3,386,282 identified in Table 2 (Annual Equalized Payment Schedule) below, Tacoma will commit and agree to supply to Cascade Wholesale Water Service. Cascade agrees to pay the full SDC balance of \$37,650,000 within thirty (30) days of execution of this Agreement, or at its option, Cascade may pay the SDC balance with interest calculated annually over fifteen (15) years as described and shown in Table 2 (Annual Equalized Payment Schedule) below.

If paying in installments, Cascade agrees to pay the SDC balance in fifteen (15) annual installments with the first annual payment commencing and due to Tacoma on January 1, 2026. Cascade shall pay interest at a rate of four (4) percent, calculated on an annual basis on the outstanding principal SDC balance amount. Cascade will make annual equalized installment payments to Tacoma no later than January 31 of each year per the following schedule.

**Table 2  
Annual Equalized Payment Schedule**

Annual Equalized Payment Schedule				
Year	Annual Equalized Payment Amount	Principal	Interest	Payoff Amount
2026	\$3,386,282	\$1,880,282	\$1,506,000	\$37,650,000
2027	\$3,386,282	\$1,955,494	\$1,430,789	\$35,769,718
2028	\$3,386,282	\$2,033,713	\$1,352,569	\$33,814,224
2029	\$3,386,282	\$2,115,062	\$1,271,220	\$31,780,510
2030	\$3,386,282	\$2,199,664	\$1,186,618	\$29,665,448
2031	\$3,386,282	\$2,287,651	\$1,098,631	\$27,465,784
2032	\$3,386,282	\$2,379,157	\$1,007,125	\$25,178,133
2033	\$3,386,282	\$2,474,323	\$911,959	\$22,798,976
2034	\$3,386,282	\$2,573,296	\$812,986	\$20,324,652
2035	\$3,386,282	\$2,676,228	\$710,054	\$17,751,356
2036	\$3,386,282	\$2,783,277	\$603,005	\$15,075,128
2037	\$3,386,282	\$2,894,608	\$491,674	\$12,291,850
2038	\$3,386,282	\$3,010,393	\$375,890	\$9,397,242
2039	\$3,386,282	\$3,130,808	\$255,474	\$6,386,849
2040	\$3,386,282	\$3,256,041	\$130,242	\$3,256,041

Cascade may prepay (without penalty) all or any portion of the outstanding SDC amount, in which case the accrued interest to date of such prepayment shall also be paid to Tacoma and subsequent annual payments recalculated based on the reduced outstanding balance and annual interest calculated.

**10. WHOLESALE WATER DELIVERIES**

This Agreement provides a Wholesale Water Supply commitment of up to fifteen (15) MGD peak day supply. Cascade will phase into delivery of the Tacoma supply capacity as Cascade’s wholesale block water under the Seattle Block Contract declines. The phase-in and reasonable capacity availability during phase-in will be defined by Management Agreement under Section 17 (Cooperation; Management Agreements). The delivery and receipt of water that satisfies regulatory water quality standards pursuant to Section 13 (Water Quality and

Fluoridation), and the transfer of title to and custody and control of such water, shall occur at the Supply Service Connections. Standards for flow and pressure shall be developed by Management Agreement. Upon Cascade's acceptance of such water at the Supply Service Connections, Cascade 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 Cascade to Cascade's Members.

## **11. WHOLESALE WATER SUPPLY SERVICE CONNECTIONS AND INTERCONNECTION FACILITIES**

A. Tacoma shall be responsible for the maintenance and operation of the Supply Service Connections 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 any of the Supply Service Connections, in whole or in part, Tacoma shall so notify Cascade, 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. The cost to upgrade, replace, or modify any of the Supply Service Connections will be the responsibility of Cascade. Such capital costs paid by Cascade to Tacoma are considered funds provided in aid of construction. No wholesale service connections other than the Supply Service Connections 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 with or permit the other Party to construct or use any additional wholesale service connection.

B. Cascade shall, at its expense, cause the Interconnection Facilities to be constructed, operated, tested, maintained, and available for normal and reliable commercial operations within the range of operating conditions specified in this Agreement. Cascade shall submit to Tacoma for review and approval the designs, specifications, and construction schedule for any material repairs or replacements of the Interconnection Facilities, or for any expansions, improvements, or upgrades of the Interconnection Facilities. Tacoma will not unreasonably delay its review of the designs, specifications, and construction schedule submitted to it by Cascade and will not unreasonably withhold its approval of such designs, specifications, and construction schedule. Cascade will not commence any such repairs, replacements, expansions, improvements, or upgrades of the Interconnection Facilities unless and until Cascade has received approved designs, specifications, and construction schedule from Tacoma. Cascade 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. Cascade shall own the

Interconnection Facilities and shall, in all respects, be responsible for the design, function, capacity, and sufficiency of the Interconnection Facilities and the normal and reliable commercial operation thereof.

C. Without limiting the generality of the foregoing, Cascade shall:

11.C.1. be responsible for the operation and control of the Cascade Isolation Valve and any pressure-reducing valves, controllers, pedestals, and boxes operated by Cascade as part of the Interconnection Facilities; and

11.C.2. provide a sufficient permitted discharge location for sump pump discharge for the Supply Service Connections vault.

D. If 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 provide reasonable advance notice prior to the commencement of such work, as is practicable under the circumstances, and request by written notice to Cascade that Cascade relocate such Interconnection Facilities so as to accommodate the time, place, and manner of Tacoma's work. Upon receipt of such notice from Tacoma, Cascade shall promptly so relocate such Interconnection Facilities at Cascade's sole cost and expense.

E. Tacoma shall include Cascade in planning processes that directly relate to the Supply Service Connections. Cascade shall include Tacoma in planning processes that directly relate to the Interconnection Facilities. After Cascade's Tacoma-Cascade Pipeline Facilities Plan is finalized, the Parties shall enter into a Management Agreement to address Cascade's Interconnection Facilities and Tacoma's Supply Service Connections to minimize the potential for relocations under Section 11.D.

## **12. METER AND TELEMETRY EQUIPMENT**

A. Tacoma shall, at Cascade's expense, provide for the procurement, installation, repair, replacement, calibration, and testing of the Meter and Telemetry Equipment as may be required at any time or from time to time. Such costs paid by Cascade to Tacoma are considered funds provided in aid of construction. Cascade shall provide, at its expense, a sufficient and reliable source of power and communications to the Meter and Telemetry Equipment. Tacoma shall determine the size of the Meter and Telemetry Equipment and the flow range within which the Meter and Telemetry Equipment must operate.

B. Tacoma shall perform the calibration and testing of the Meter and Telemetry Equipment. Tacoma shall periodically test the Meter and Telemetry Equipment for accuracy, and the results of such testing shall be made available to Cascade. Cascade may also test the Meter and Telemetry Equipment at any reasonable time at Cascade's expense. The results of any Meter and Telemetry Equipment test conducted by Cascade shall be made available to Tacoma at no charge. A Meter and Telemetry Equipment accuracy measurement consistent with American Water Works Association ("AWWA") specifications or better shall be considered within calibration tolerance.

C. If a Party requires access to any area under the care, custody, or control of the other Party for purposes of this Section 12 (Meter and Telemetry Equipment), then such Party may request such access, subject to the other Party's prior approval, which such approval shall not be unreasonably withheld, conditioned, or delayed.

D. Cascade may request that Tacoma test the Meter and Telemetry Equipment. If the test discloses the Meter and Telemetry Equipment is accurate within the AWWA specifications, Cascade will be billed for the test and Cascade's water bill will not be adjusted. If the test discloses the Meter and Telemetry Equipment is not accurate within the AWWA specifications, Cascade's water bill will be adjusted and Cascade will not be billed for the test. Cascade will be credited for excess payments made by Cascade to Tacoma because of reads from inaccurate Meter and Telemetry Equipment. Cascade will owe Tacoma for water received but not paid for by Cascade because of reads from inaccurate Meter and Telemetry Equipment.

### **13. WATER QUALITY AND FLUORIDATION**

A. Tacoma shall be responsible for water quality within the Tacoma Water System, and it shall supply water to Cascade that meets or exceeds federal and state drinking water quality standards, as those standards may change from time to time. Tacoma shall provide Cascade with notice under Section 31 (Notices) within five (5) days of discovery of a water quality exceedance that Tacoma is required to report to the Washington State Department of Health or other Governmental Authority. Cascade and its Members shall be responsible for water quality within the Cascade Water System.

B. Tacoma shall also be responsible for the fluoridation of the water within the Tacoma Water System. If Cascade prefers non-fluoridated water, the removal of fluoride will be Cascade's responsibility and at Cascade's expense. If Tacoma, in its sole discretion, elects to discontinue fluoridation within the Tacoma Water System and Cascade would like to provide fluoridated water to its customers, the addition of fluoride will be Cascade's responsibility and at Cascade's expense. Tacoma shall provide Cascade as much notice as is practicable.

#### **14. WATER MANAGEMENT AND SCHEDULING**

A. On or before April 1 of each year during the Term, Cascade shall provide Tacoma with a Draft Operating Plan. At a minimum, the Draft Operating Plan shall contain Cascade's projected weekly water use from June 1 of the current year to June 30 of the following year. Water use projections should include water from any and all valid agreements Tacoma has with Cascade.

B. Cascade will provide Tacoma with a forecasted water use schedule for the Service Term as part of the Parties' five-year reviews pursuant to Section 19 (Review and Updates of Agreement) of this Agreement.

C. Prior to 10:00 a.m. on any Thursday during the Term, Cascade 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 14.C.

D. The Parties agree to jointly develop and maintain operating protocols for items including the scheduling of water demand to ensure 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, which such approval shall not be unreasonably withheld, conditioned, or delayed.

E. 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 Cascade with thirty (30) days' advance notice of any modifications, suspensions, changes, or amendments to the Operating Protocols; provided, however, if the need to modify, suspend, change, or amend the Operating Protocols is attributable to Uncontrollable Forces, then Tacoma shall provide as much notice as is practicable under the circumstances.

#### **15. PAYMENTS AND BILLING**

Amounts due Tacoma from Cascade for the Wholesale Water Service shall be determined, billed, and collected by Tacoma and paid by Cascade in accordance with the procedures for billings, collections, and payments set forth in the Wholesale Water Regulations. Tacoma shall

utilize regular meter reads secured from SCADA signals to calculate a statement of charges for water service. In the event SCADA signals are unavailable, monthly manual reads will be used until such time that SCADA signals are restored.

A. During the term of the 2025 Market-Priced Agreement, for billing purposes, Tacoma shall apportion water between the 2025 Market-Priced Agreement and the 2025 Wholesale Agreement through the following procedure on a monthly basis.

In each month, water use is apportioned to the 2025 Market-Priced Agreement up to a maximum of 17.5 MGD per month (“**Market-Priced Agreement Monthly Cap**”). The exact volume varies depending on the number of days in the month or billing period. These volumes will be billed pursuant to the Market-Priced Agreement Volumetric Rate. Water use under the 2025 Market-Priced Agreement may/shall not exceed 4,380 million gallons (“**MG**”) in any calendar year (“**Market-Priced Agreement Annual Cap**”).

Water use above the Market-Priced Agreement Monthly Cap in any month will be apportioned to this Agreement for the duration of that month. Any water use after the Market-Priced Agreement Annual Cap has been exceeded in any calendar year will also be apportioned to this Agreement for the duration of that calendar year. These volumes will be billed pursuant to the Wholesale Winter and Summer Volume Charges.

In no day or month shall water use exceed the combined Market-Priced Agreement Maximum Flow (17.5 MGD) and 2025 Wholesale Agreement Maximum Flow (15 MGD) of 32.5 MGD.

The following Table 3 (Usage Limits) shows the usage limits under this Agreement and the 2025 Market-Priced Agreement.

**Table 3  
Usage Limits**

Market-Priced Agreement Annual Cap	4,380 MG
Market-Priced Agreement Monthly Cap	Billings Days x 17.5 MGD
Market-Priced Agreement Maximum Flow	17.5 MGD
2025 Wholesale Agreement Maximum Flow	15 MGD

B. During the term of the 2025 Market-Priced Agreement, Tacoma shall provide Cascade a monthly invoice documenting the apportionment of Actual Consumption between this Agreement and the 2025 Market-Priced Agreement.

C. After the term of the 2025 Market-Priced Agreement, for billing purposes, Tacoma shall bill Cascade based on Actual Consumption and the Wholesale Winter and Summer Volume Charges, as described in Section 8 (Wholesale Water Service Charges and Fees).

D. Cascade shall treat the payment of invoices as expenses paid out of its gross revenues, as defined in Cascade's bond covenants.

## **16. CONSERVATION AND PLANNING**

### **A. Coordination and Planning**

16.A.1. The Parties shall seek to coordinate regional supply, planning, scheduling, and operational programs that promote efficient use of water supplies, facilities, finances, and staff resources. In addition to the obligations in Section 11.E, Tacoma may include Cascade in the development of its planning documents, including review of Tacoma's water system plan, and Cascade may include Tacoma in the development of its planning documents, including review of Cascade's water system plan. If requested by either Party, the other Party may 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. 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 2025 Market-Priced Wholesale Water Supply consistent with the Wholesale Water Regulations and Prudent Utility Practices.

### **B. Conservation and Water Efficiency**

16.B.1. Each Party is committed to the principles of water conservation and each intends to achieve its anticipated savings by implementing water conservation programs either unilaterally or in partnership with other agencies.

16.B.2. Each Party will be separately responsible for funding and administering their respective water conservation programs.

16.B.3. While maintaining separate programs, 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. The Parties will also share available conservation resources where beneficial to both Parties.



16.B.4. In the event that there is a water shortage or drought that requires Tacoma to institute water rationing or water use restrictions, the provisions of Section 16.C (Shortage Management) shall govern.

**C. Shortage Management**

16.C.1. Each Party recognizes its obligations to plan for water supply and distribution in compliance with the State Department of Health and water system planning regulations.

16.C.2. The Parties shall coordinate the development, adoption, and implementation of their respective water shortage response plans and those elements of overlapping responsibilities.

16.C.3. Cascade will, to the degree necessary (and, while the Seattle Block Contract is in effect, consistent with Cascade's obligations to Seattle Public Utilities under the Seattle Block Contract), update its water shortage response plan for consistency with Tacoma's.

16.C.4. Once Cascade has begun to materially utilize Tacoma water (greater than five (5) MGD annual average), Cascade will initiate its water shortage response plan when Tacoma declares a water shortage. Cascade's response will be generally consistent with Tacoma's actions and level of demand reduction targeted.

16.C.5. During any such shortage, the Ready-to-Serve Charge imposed by Tacoma under Section 15 (Payments and Billing) will be reduced on a percentage basis by a level consistent with the level of demand reduction targeted.

16.C.6. Before invoking their respective water shortage response plans, the Parties shall communicate with each other concerning current and projected water supply conditions with adequate lead time for both Parties to manage the shortage.

16.C.7. Tacoma has negotiated agreements for the long-term preservation and enhancement of watersheds and in-stream beneficial uses and habitat. Such agreements have direct bearing on decisions to curtail the amount of water available for municipal and industrial water supply in any given season. Any water use restrictions imposed under the terms of such agreements shall be borne proportionately by Tacoma, its other wholesale customers and Cascade.

16.C.8. Emergency shutdowns by either Party must be immediately communicated by phone with a follow-up written communication.

16.C.9. The Parties will further develop communication and operational protocols for shortages, supply disruptions, and/or emergencies in a Management Agreement.

## **17. COOPERATION; MANAGEMENT AGREEMENTS**

A. 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, as set forth in Section 30 (Prudent Utility Practices and Good Faith) of this Agreement. The Parties will cooperate and use Prudent Utility Practices to facilitate the implementation of all aspects of this Agreement.

B. The Superintendent of Tacoma Water and the Chief Executive Officer of Cascade are authorized, at their discretion, to negotiate, mutually agree to, and execute written agreements referred to as "Management Agreements" pertaining to the implementation or administration of this Agreement to address more specific details of technical and operational aspects of this Agreement in a manner consistent with the terms of this Agreement. Examples of subjects where Management Agreements may be appropriate (without limitation) are provided in Exhibit D.

C. A Management Agreement under this Section 17 (Cooperation; Management Agreements) may not amend, modify, or waive any provision of this Agreement. Any amendment or modification of this Agreement must be set forth in a written instrument that meets the requirements of Section 33.H (Amendments) of this Agreement. Any waiver of any term, condition, or provision of this Agreement must be set forth in a signed writing that meets the requirements of Section 33.D (Waiver).

## **18. TECHNICAL COMMITTEES**

Technical Committees comprised of the Parties' staff will address day-to-day operational issues. Finance cost and rate issues will be addressed independently between the Superintendent of Tacoma Water and the Chief Executive Officer of Cascade, or their respective designees as provided for in written notice to the other. It is recognized that daily operation of the Tacoma Water System and implementation of this Agreement may require direct communication and coordination between Tacoma staff and the staff of Cascade or Cascade Members and accommodation of Cascade's insurers with respect to claims. The Parties may establish any desired communication or coordination and claim protocols by Management Agreement.

## **19. REVIEW AND UPDATES OF AGREEMENT**

In recognition that emergent issues after the Effective Date may cause the Parties to mutually desire to update this Agreement, the Parties shall meet to jointly review this Agreement at least every five (5) years beginning in 2029 and ending no earlier than 2059.

## **20. REGULATORY COMPLIANCE**

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 and the Wholesale Water Supply). Cascade understands and agrees that Tacoma must comply with all such 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.

## **21. NO RIGHT OR CLAIM TO WATER RIGHTS**

By this Agreement, Cascade 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, Cascade acquires no right, title, or interest in or to (a) any water supply resources, storage, pipelines, infrastructure, facilities, equipment, or other items owned or controlled by Tacoma (including the Supply Service Connections and the Meter and Telemetry Equipment), or (b) any water rights, water claims, water permits, or water certificates.

## **22. MUTUAL RELEASE**

Except and only as otherwise specifically provided by this 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 or 2012 Water Supply Agreements.

## **23. REPRESENTATIONS OF THE PARTIES**

A. Each Party is duly authorized and validly existing under the laws of the State of Washington, is authorized to exercise its powers, rights, and privileges under those laws, 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.

B. 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 a Party is necessary to authorize this Agreement, or the transactions contemplated hereby.

C. The execution, delivery, and performance of this Agreement by each Party 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.

D. 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.

#### **24. TITLE; RISK OF LOSS**

A. Title to and risk of loss of water delivered by Tacoma to Cascade pursuant to Section 10 (Wholesale Water Deliveries) shall pass from Tacoma to Cascade at the Supply Service Connections.

B. Title to the Supply Service Connections and the Meter and Telemetry Equipment shall be vested in Tacoma. Except as otherwise provided by Section 12 (Meter and Telemetry Equipment), Cascade shall have no right to operate, suspend, curtail, design, construct, test, maintain, repair, improve, replace, or use the Supply Service Connections or the Meter and Telemetry Equipment. Title to the Interconnection Facilities shall be vested in Cascade. Tacoma shall have no right or responsibility to operate, suspend, curtail, design, construct, test, maintain, repair, improve, replace, or use the Interconnection Facilities.

#### **25. INDEMNITIES**

A. 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 directly or indirectly from or in connection with:

25.A.1. the transportation, storage, sale, delivery, or use by Cascade of any water delivered to Cascade in compliance with all applicable regulatory standards and in accordance with this Agreement;

25.A.2. any harm to Persons or damage to property caused by Cascade (or any of Cascade's agents, servants, employees, consultants, contractors, subcontractors (of any

tier), or representatives) in connection with the exercise of Cascade's rights or obligations arising under this Agreement;

25.A.3. breach or default by Cascade under the Four Cities Agreement;

25.A.4. any material breach, failure, inconsistency, inaccuracy, or default of any one or more representations made by Cascade in Section 23 (Representations of the Parties);

25.A.5. any failure of Cascade to perform or comply with any one or more obligations, made or arising under this Agreement;

25.A.6. the negligent, reckless, or otherwise tortious acts or omissions of Cascade, or anyone retained or employed by Cascade (including any of Cascade's agents, servants, employees, consultants, contractors, subcontractors (of any tier), or representatives), in performance of this Agreement;

25.A.7. the use or resale of the Wholesale Water Supply for fire flows or fire suppression purposes that is contrary to Section 6.D (Wholesale Water Service) of this Agreement; or

25.A.8. Cascade's Hazardous Substances. Cascade shall provide notice to Tacoma under Section 31 (Notices) within five (5) days of discovering a release of any Cascade Hazardous Substance that is reasonably foreseeable to enter the Tacoma Water System.

25.A.9. Sole Negligence. Nothing herein shall obligate Cascade to indemnify or 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.

B. 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**"), arising from or in connection with:

25.B.1. the transportation, storage, sale, delivery by Tacoma of any water until delivered to Cascade in accordance with this Agreement;

25.B.2. any harm to Persons or damage to property caused by Tacoma (or any of Tacoma's agents, servants, employees, consultants, contractors, subcontractors (of any tier), or representatives) in connection with the exercise of Tacoma's rights and obligations arising under this Agreement;

25.B.3. any material breach, failure of, inconsistency, inaccuracy, or default in any one or more representations made by Tacoma in Section 23 (Representations of the Parties);

25.B.4. any failure of Tacoma to perform or comply with any one or more obligations, made or arising under this Agreement;

25.B.5. the negligent, reckless, or otherwise tortious acts or omissions of Tacoma, or anyone retained or employed by Tacoma (including any of Tacoma's agents, servants, employees, consultants, contractors, subcontractors (of any tier), or representatives), in performance of this Agreement; or

25.B.6. Tacoma's Hazardous Substances. Tacoma shall provide notice to Cascade under Section 31 (Notices) within five (5) days of discovering a release of any Tacoma Hazardous Substance that is reasonably foreseeable to enter the Cascade Water System.

25.B.7. Sole Negligence. Nothing herein shall obligate Tacoma to indemnify or 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.

## **26. WAIVER OF CONSEQUENTIAL DAMAGES**

Except with respect to third-party claims as to which the Parties have assumed obligations arising under Section 25 (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 26 (Waiver of Consequential Damages) has been mutually negotiated by the Parties and shall survive the expiration or termination of this Agreement.

## **27. DISPUTE RESOLUTION**

A. **Resolution of Disputes.** Any and all claims, controversies, or disputes arising out of either Party's breach of or performance under this Agreement, or otherwise relating to or in

connection with this Agreement, (each, a “**Dispute**”) shall be resolved in accordance with the Dispute resolution procedures set forth in this Section 27 (Dispute Resolution).

B. **Initial Notice.** If either Party discovers or otherwise becomes aware of an event or occurrence that is reasonably expected to result in a Dispute, it shall notify the other Party by providing an initial notice pursuant to Section 31 (Notices) of such Dispute. The Parties will have ten (10) business days from receipt of an initial notice under this Section 27.B (Initial Notice) to attempt to resolve a Dispute. The initial mechanism to resolve a Dispute will involve informal negotiations between the Parties’ representatives, as designated by each Party during the initial negotiations under this Section 27.B (Initial Notice).

C. **Formal Notice.** If the Parties do not resolve a Dispute within ten (10) business days after receipt of the initial notice in accordance with Section 27.B (Initial Notice), either Party may deliver to the other Party formal notice of the Dispute with a detailed description of the underlying circumstances of the Dispute. The notice under this Section 27.C (Formal Notice) shall be made pursuant to Section 31 (Notices) and include a schedule of the availability of the notifying Party’s senior officer(s) (having a title of Superintendent, Chief Executive Officer, or an equivalent or higher ranking) duly authorized to settle the Dispute. The Parties will have thirty (30) business days from receipt of a notice under this Section 27.C (Formal Notice) to attempt to resolve the Dispute. Within three (3) business days following receipt of a notice under this Section 27.C (Formal Notice), the recipient Party shall 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 Parties shall meet and confer, as often as they deem reasonably necessary during the remainder of the thirty (30) business day period, to resolve the Dispute.

D. **Dispute Resolution Pursuant to Exhibit C and Judicial Relief.** If the Parties do not resolve a Dispute to their mutual satisfaction within thirty (30) business days after receipt of a formal notice in Section 27.C (Formal Notice), either Party may:

27.D.1. initiate the Dispute Resolution process in Exhibit C by providing notice to the other Party under this Section 27.D (Dispute Resolution Pursuant to Exhibit C and Judicial Relief); or

27.D.2. seek judicial relief by filing suit in a court of competent jurisdiction identified in Section 33.E (Governing Law) of this Agreement.

For avoidance of doubt, the Dispute resolution procedures in this Section 27 (Dispute Resolution) are in addition to, and not in lieu of, the Parties’ right to seek and obtain judicial relief. As such, notwithstanding the Parties’ good faith efforts under Sections 27.B (Initial Notice) and 27.C

(Formal Notice), if at any time either Party determines that such efforts to resolve any Dispute will not result in a mutually satisfactory resolution, such Party may seek judicial relief by filing suit in a court of competent jurisdiction identified in Section 33.E (Governing Law) of this Agreement.

E. **Fulfillment of Duties and Obligations.** Pending resolution of any Dispute, the Parties shall continue to fulfill their respective duties and obligations under this Agreement.

## **28. DEFAULT AND REMEDIES**

A. If a Party fails to perform its obligations hereunder, (“**Defaulting Party**”), then it shall be in default hereunder unless it cures:

28.A.1. a monetary event of default within thirty (30) days after receiving written notice from the non-defaulting Party of such monetary default; and

28.A.2. 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 and within a commercially reasonable timeframe.

B. Except as otherwise provided by the Wholesale Water Regulations, and subject to the procedures set forth in Section 27 (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 terminate this Agreement or 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 28 (Default and Remedies), then such Party may at any time thereafter continue to pursue or cease pursuing that remedy and alternatively, or simultaneously, elect to pursue any other remedy available to it under this Section 28 (Default and Remedies).

## **29. UNCONTROLLABLE FORCES**

A. As provided for in this Section 29 (Uncontrollable Forces), the Parties recognize that Uncontrollable Forces may occur which would require Tacoma to act unilaterally for what it deems to be in the best interest of the general public served by the Tacoma Water System; including but not limited to:



29.A.1. water shortages;

29.A.2. temporary reductions in water supply associated with turbidity or water quality events;

29.A.3. fire, flood, storm, earthquake, lightning, and other natural catastrophes;

29.A.4. 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), blockage, insurrection, riot, civil actions or disturbance, revolution, or sabotage;

29.A.5. any form of compulsory Government acquisition or condemnation or change in Applicable Law that affects the performance of the Parties' obligations under this Agreement;

29.A.6. accidents or other casualty, damage, loss, or delay during transportation, explosions, fire, epidemics, pandemics, quarantines, or criminal acts that affect the performance of the Parties' obligations under this Agreement;

29.A.7. labor disturbances, stoppages, lockouts, strikes, embargoes, or other industrial actions that affect the performance of the Parties' obligations under this Agreement;

29.A.8. inability, after the use of Prudent Utility Practices, to obtain any consent or approval from any Governmental Authority that affects the performance of the Parties' obligations under this Agreement;

29.A.9. inability, after the use of Prudent Utility Practices, to obtain any consent or approval from any Person required by a Party in connection with this Agreement;

29.A.10. 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, actions by Tacoma, Cascade, or any of Cascade's Members, individually or collectively, shall not be considered an "Uncontrollable Force."

B. Upon the occurrence of an Uncontrollable Force, Tacoma shall, to the extent practicable, treat its wholesale and retail customers equally and any curtailment of supply shall be imposed proportionately among these customers.

C. This authority to act unilaterally carries with it a unilateral responsibility for Tacoma to restore, expeditiously, the Tacoma Water System to its pre-emergency capability to supply the region.

D. Upon occurrence of an Uncontrollable Force that adversely impacts the Cascade Water System, Cascade may request Tacoma to temporarily modify or suspend operational or supply provisions of this Agreement and Tacoma shall make reasonable efforts to accommodate such request. Cascade shall act expeditiously to restore the Cascade Water System to its pre-emergency capability.

E. 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 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.

F. 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.

### **30. PRUDENT UTILITY PRACTICES AND GOOD FAITH**

The Parties shall utilize Prudent Utility Practices and act in good faith under this Agreement. In taking actions or making determinations required by or provided for under this Agreement, each Party shall act in fairness and in good faith, cooperate with the other Party, and use Prudent Utility Practices to facilitate the implementation of all aspects of this Agreement. Each Party, upon the request of the other Party, shall 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.

### **31. NOTICES**

Except for routine operational communications, which may be delivered personally or by email, all notices, requests, or other communications required by this Agreement shall be in writing and deemed received by a Party: (a) when delivered in person, (b) when deposited with

a reputable overnight courier service, provided that any such notice shall not be deemed received until the next business day after deposit; or (c) by electronic mail if a copy of the notice is also sent by overnight courier, in which case notice shall be deemed received on transmittal by electronic mail before 5:00 p.m. on a business day (otherwise, any notice sent after 5:00 p.m. shall be deemed received on the next business day). All notices must be properly addressed as follows:

**Tacoma:** Water Superintendent  
P.O. Box 11007  
Tacoma, WA 98411  
Phone: (253) 502-8245  
Email: hpenning@cityoftacoma.org

**Cascade:** Chief Executive Officer  
11400 SE 8th St, Suite 400  
Bellevue, WA 98004  
Phone: (425) 543-0930  
Email: rhoffman@cascadewater.org

A Party may change its address for purposes of this Section 31 (Notices) by giving written notice of such change to the other Party in the manner provided in this Section 31 (Notices).

### **32. ACCESS TO BOOKS AND RECORDS; AUDIT**

Upon not less than thirty (30) days' prior notice to the other Party, a Party shall be given reasonable 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 or another mutually agreed upon location. 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.

### **33. MISCELLANEOUS**

#### **A. Cascade's and its Members' Responsibilities under the Joint Municipal Utilities Services Agreement.**

33.A.1. Joint Municipal Utilities Services Agreement. Under the Joint Municipal Utilities Services Agreement Cascade is a separate municipal corporation formed under the authority of Chapter 39.106 RCW. An individual Member's liability for Cascade's

obligations is limited to those specified in the Joint Municipal Utilities Services Agreement. Nothing in this Agreement shall be construed to alter any term of the Joint Municipal Utilities Services Agreement.

33.A.2. Exhibit E. Article 9 (Duration and Dissolution – Withdrawal) of the Joint Municipal Utilities Services Agreement is attached to this Agreement as Exhibit E.

33.A.3. This Agreement is a Water Supply Asset. The Joint Municipal Utilities Services Agreement defines “Water Supply Asset” to mean “tangible and intangible assets usable in connection with the provision of water supply, including without limitation, real property, physical facilities (e.g., dams, wells, treatment plants, pump stations, reservoirs, and transmission lines), water rights, capacity and/or contractual rights in facilities or resources owned by other entities, and investments in conservation programs and facilities.” For purposes of Article 9 (Duration and Dissolution – Withdrawal) of the Joint Municipal Utilities Services Agreement, this Agreement is a “Water Supply Asset” or “asset.”

33.A.4. Duration. Under Section 9.1 (Duration) of the Joint Municipal Utilities Services Agreement, except upon disincorporation addressed in Section 33.A.6 (Disincorporation) of this Agreement, Cascade shall remain in existence until the longer of the following: (1) it no longer holds any assets, (2) it no longer holds outstanding Bonds, or (3) it no longer includes Members. Therefore, as long as Cascade is a party to this Agreement, which is an asset under the Joint Municipal Utilities Services Agreement, Cascade will remain in existence.

33.A.5. Withdrawal. If during the Term of this Agreement, a Member notifies Cascade of its intent to withdraw from Cascade, Cascade shall apply Section 9.2 (Withdrawals) of the Joint Municipal Utilities Services Agreement, which requires the withdrawing Member to pay its allocable share of the cost of the then-existing obligations of Cascade, including contract obligations, such as this Agreement. The withdrawing Member ceases to have right to, or interest in, any Water Supply Assets, and abandons any and all rights to the use of Cascade Water Supply Assets.

33.A.6. Disincorporation. If during the Term of this Agreement, Cascade Members vote to disincorporate, Cascade’s liabilities and obligations under this Agreement shall be distributed to and binding upon its Members in accordance with Section 9.3 (Disincorporation) of the Joint Municipal Utilities Services Agreement, 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 of this Agreement, Cascade shall not amend the Joint

Municipal Utilities Services Agreement in any way that would 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.

33.A.7. Default. In the event of a default payment by Cascade, Tacoma shall have the right to enforce this Agreement against Cascade under Section 28 (Default and Remedies) of this Agreement. If Cascade Members are in default, Cascade shall comply with Section 7.8 (Payment procedures – Default – Step-up provisions) of the Joint Municipal Utilities Services Agreement, attached as Exhibit E to this Agreement.

33.A.8. Binding Contract. Cascade's Board of Directors authorized execution of this Agreement by Dual Majority Vote of all Members pursuant to Section 4.3 (Voting) of the Joint Municipal Utilities Services Agreement at open public meetings on January 22, 2025, by Resolution No. 2025-01, and on February 26, 2025, by Resolution No. 2025-04, and thereby made this Agreement a binding contractual obligation of Cascade under the terms of the Joint Municipal Utilities Services Agreement.

B. **Sale and Assignment**. The Parties acknowledge that during the Term of this Agreement, pursuant to Section 9.4 (Successor Entity) of the Joint Municipal Utilities Services Agreement, attached as Exhibit E, the assets, liabilities, and obligations of Cascade may be transferred to a successor entity and all obligations of Cascade Members and parties contracting with Cascade (including this Agreement) become obligations of the successor entity. Notwithstanding the foregoing, 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 assigns.

C. **Offsets Not Allowed**. A Party shall not have the right to offset any amounts owed to the other Party under this Agreement against any amounts due from the other Party under this Agreement, nor may a Party offset any amounts due to the other Party under this Agreement against any amounts owed by the other Party under 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 27 (Dispute Resolution).

D. **Waiver**. Any of the terms, conditions, or provisions 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 term, condition, or 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 term, condition, 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 (a) relieve or release Cascade from any of its obligations arising under this Agreement, or (b) subject Tacoma to any liability with respect to such matter.

E. **Governing Law.** 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 Section 27 (Dispute Resolution), the Parties (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.

F. **Construction.** Terms defined in a given number, tense, or form (e.g., singular and plural) shall have the corresponding meaning when used in this Agreement with initial capitals in another number, tense, or form (e.g., singular shall be construed as plural and vice versa as necessary to carry out the intent of the Parties). 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. The term "day" means a calendar day unless otherwise specified as a "business day"; a "business day" means a day, other than a Saturday, Sunday, or Holiday.

G. **Severability.** 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 give effect to 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.

H. **Amendments.** This Agreement may be amended or modified only by a written instrument executed by the Parties that expressly refers to this Agreement and states that it is an amendment hereto. No amendment to or modification 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 any Person, it will promptly notify such other Party, and the Parties will work in good faith to resolve the conflict.

I. **Independence of the Parties.** 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, responsibilities, or obligations in, to, or from any Persons other than Tacoma and Cascade.

J. **Survival.** Sections 22 (Mutual Release), 25 (Indemnities), 26 (Waiver of Consequential Damages), 27 (Dispute Resolution), 32 (Access to Books and Records; Audit), and 33.A (Cascade's and its Members' Responsibilities under the Joint Municipal Utilities Services Agreement) shall survive the expiration or termination of this Agreement. 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.

K. **Counterparts.** 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.

L. **Interpretation.** 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.

M. **Complete Agreement.** This Agreement represents the entire agreement between the Parties concerning the subject matter herein and, upon the Effective Date, supersedes and replaces all other prior agreements and understandings, whether oral or written, between the Parties with respect to the subject matter herein. This Agreement may not be amended or superseded except as provided in Section 33.H (Amendments).



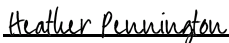
**IN WITNESS WHEREOF**, the Parties have duly executed this Agreement as of the Effective Date.

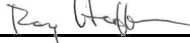
Dated this 20th day of March, 2025.

**City of Tacoma:**

**Cascade Water Alliance:**

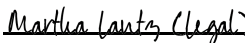
Department of Public Utilities  
Water Division

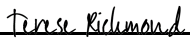
Signed by:  
  
\_\_\_\_\_  
1A96GAM2A390485  
Heather Pennington  
Water Superintendent

Signed by:  
  
\_\_\_\_\_  
1108FD12360082  
Ray Hoffman  
Chief Executive Officer

Approved as to form:

Approved as to form:

Signed by:  
  
\_\_\_\_\_  
E41E7EC13E2248D  
Martha Lantz (Legal)  
Deputy City Attorney

Signed by:  
  
\_\_\_\_\_  
2EA02B8FD45711D1  
Terese Richmond  
Legal Counsel

## **LIST OF EXHIBITS**

**Exhibit A** – Definitions

**Exhibit B** – Schematic of Example Wholesale Connections

**Exhibit C** – Dispute Resolution Procedures

**Exhibit D** – Examples of Management Agreement Subjects

**Exhibit E** – Sections 4.3 (Voting), 7.8 (Payment procedures – Default – Step-up provisions), and Article 9 (Duration and Dissolution – Withdrawal) of the Joint Municipal Utilities Services Agreement

**Exhibit F** – Tacoma’s Water Rights

## EXHIBIT A

### DEFINITIONS

"2005 Water Supply Agreement" means the 2005 Agreement for the Sale of Wholesale Water, dated October 13, 2005, which was amended, restated, and superseded in its entirety in 2012.

"2012 Water Supply Agreement" means the 2012 Amended and Restated Agreement for the Sale of Wholesale Water, dated December 31, 2012 between Cascade and Tacoma.

"2025 Market-Priced Wholesale Water Supply Agreement" or "2025 Market-Priced Agreement" means the accompanying agreement to this Agreement in which Tacoma agrees to provide water to Cascade under a different timeline and pricing structure, dated [\_\_\_\_\_], with a term ending January 1, 2063.

"Actual Consumption" means the amount of water actually delivered as measured and reported by Tacoma to Cascade during the Service Term for Wholesale Service. In the event of invalid or unavailable measured volume, a reasonable estimate will be utilized.

"American Water Works Association" or "AWWA" (or its successor organization) means an international non-profit, scientific, and educational association, and the largest organization of water supply professionals in the world, founded to improve water quality and supply.

"Annual Equalized Payment Schedule" shall have the meaning set forth in the Section 9 (System Development Charges) of this Agreement.

"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 preamble of this Agreement.

"Cascade Claims" shall have the meaning set forth in Section 25 (Indemnities).

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

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

“Cascade Member” or “Member” means the members of the Cascade Water Alliance. As of the creation of this Agreement there are seven (7) Members: the cities of Bellevue, Issaquah, Kirkland, Redmond, and Tukwila, and two special purpose districts Sammamish Plateau Water and Skyway Water & Sewer District.

“Cascade Hazardous Substance” or “Cascade’s Hazardous Substances” means any Hazardous Substances generated, transported, kept, handled, stored, placed, discharged, or released by Cascade, or by anyone directly or indirectly retained or employed by Cascade, in connection with the performance of this Agreement, except that it shall not include Hazardous Substances determined to be Tacoma’s Hazardous Substances.

“Cascade Water System” means infrastructure that is owned by Cascade to enable water delivery to the Cascade Members, including tangible and intangible assets usable in connection with the provision of water supply, including without limitation, real property, physical facilities (e.g., dams, wells, treatment plants, pump stations, reservoirs, and transmission lines), water rights, capacity, and/or contractual rights in facilities or resources owned by other entities, and investments in conservation programs and facilities.

“Construction Work in Progress” or “CWIP” means Tacoma’s capital investment in facilities under construction, but not yet completed and placed into service.

“Defaulting Party” shall have the meaning set forth in Section 28 (Default and Remedies).

“Dispute” shall have the meaning set forth in Section 27 (Dispute Resolution).

“Draft Operating Plan” means a non-binding informational plan intended to advise Tacoma of the amount of the Wholesale Water Supply that Cascade anticipates it will use during the period starting June 1 each year and ending June 30 the following year during the Term.

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

“Existing Agreement” shall have the meaning set forth in the Recitals.

“Flow Control Valve” means the valve that controls the volume of water that is delivered to Cascade and is more particularly described in Exhibit B.

“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 (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.

“Gross Earnings Tax on Utilities” means a tax on money, credits, rights, or property imposed on the water utility by the City of Tacoma and expressed in terms of money proceeding or accruing by reason of the transaction of business and includes but is not limited to gross proceeds of sales, compensation for rendition of services, gains realized from interest, rents, royalties, fees, commissions, dividends, and other emoluments, however designated, all without any deduction on account of cost of property sold, materials used, labor, interest, losses, discount, and any other expense whatsoever.

“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.

“Holiday” means a legal holiday identified in RCW 1.16.050 as revised and amended from time to time.

“Interconnection Facilities” means all facilities, other than the Supply Service Connections, that are necessary for Cascade to access and take delivery of the Supply Water Supply at the Supply Service Connections and to convey such water to Cascade’s transmission and distribution systems. Interconnection Facilities include the Cascade Isolation Valve and such other pressure-reducing valves, power service, storm drainage, vaults, telecommunications service, conduit, controllers, pedestals, and boxes operated by Cascade as part of the Interconnection Facilities. For avoidance of doubt, Interconnection Facilities do not include the Supply Service Connections or any other facilities owned and operated by Tacoma that are necessary to deliver the Wholesale Water Supply to the Supply Service Connections.

“Joint Municipal Utilities Services Agreement” or “2012 Joint Agreement” means the agreement, dated March 28, 2012, through which the Cascade Members formed Cascade Water Alliance under the authority of Chapter 39.106 RCW as the successor for all purposes to the former Cascade created in 1999 under an Interlocal Contract under Chapter 39.34 RCW.

“Lake Tapps Reservoir” means the White River – Lake Tapps Reservoir Project originally purchased by Cascade from Puget Sound Energy, including land, infrastructure, and water rights.

“Management Agreement” means written supplemental agreements, as set forth in Section 17 (Cooperation; Management Agreements), pertaining to subjects authorized by this Agreement, negotiated, mutually agreed to, and executed by both the Superintendent of Tacoma Water and the Chief Executive Officer of Cascade to implement and administer this Agreement.

“Market-Priced Agreement Annual Cap” shall have the meaning set forth in Section 15 (Payments and Billing).

“Market-Priced Monthly Cap” shall have the meaning set forth in Section 15 (Payments and Billing).

“Market-Priced Agreement Volumetric Rate” means the rate charged per unit of Actual Consumption apportioned to Market-Priced Wholesale Service as described in Section 10.C (Payments and Billing) of the 2025 Market-Priced Agreement. The Market-Priced Agreement Volumetric Rate will be calculated in accordance with Section 10.A (Charges and Ratemaking) and Exhibit F (FCS Group Utility-Basis Rate Making Methodology) of the Market-Priced Agreement.

“Meter and Telemetry Equipment” means the delivery metering equipment determined by Tacoma to be necessary for the implementation of this Agreement and 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.

“Operating Protocols” shall have the meaning set forth in Section 14 (Water Management and Scheduling).

“Party” or “Parties” shall have the meaning set forth in the preamble of this Agreement.

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

“Pipeline 5” means Tacoma’s northern transmission main that delivers water from Tacoma headworks to the City of Tacoma.

“Prudent Utility Practices” means, at any particular time, any of the practices, methods, decisions, and acts that (a) 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 (b) 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.

“Ready-to-Serve Charge” means the fixed monthly charge for Wholesale Water Service and is based on Cascade’s peak water allocation of 15 MGD.

“SCADA” means a computer-based supervisory control and data acquisition system used for process monitoring, automation, and real-time data collection.

“Schedule” shall have the meaning set forth in Section 14 (Water Management and Scheduling).

“Seattle Block Contract” means the 2<sup>nd</sup> Amended and Restated Declining Block Water Supply Agreement Between the City of Seattle and the Cascade Water Alliance, dated July 15, 2013.

“Supply Service Connections” means a physical connection(s) between water mains of the Parties and is the point of delivery of the Water Supply. The Supply Service Connections are more particularly described in Exhibit B and include the Tacoma Isolation Valve and the Flow Control Valve.

“System Development Charge” or “SDC” means the system development charge imposed upon Cascade by the Wholesale Water Regulations as defined in Section 9 (System Development Charges).

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

“Tacoma-Cascade Pipeline Facilities Plan” means the scope of work that will form the basis of design and requirements to construct the facilities necessary to connect the Cascade Water System with the Tacoma Water System for delivery of water to Cascade’s service area.

“Tacoma Claims” shall have the meaning set forth in Section 25 (Indemnities).

“Tacoma Indemnites” means Tacoma and Tacoma’s directors, officers, employees, agents, servants, elected officials, and representatives, and the respective successors and assigns of each and all of the foregoing.

“Tacoma Hazardous Substance” or “Tacoma’s Hazardous Substances” means any Hazardous Substances generated, transported, kept, handled, stored, placed, discharged, or released by Tacoma, or by anyone directly or indirectly retained or employed by Tacoma, in connection with the performance of this Agreement, except that it shall not include Hazardous Substances determined to be Cascade’s Hazardous Substances.

“Tacoma Isolation Valve” means a positive shut-off valve installed at the Supply Service Connections and that is more particularly described in Exhibit B.

“Tacoma Points of Delivery” means the point on Tacoma’s Pipeline 5 where Tacoma’s wholesale service connection to Cascade will be located.

“Tacoma Water System” means infrastructure that is owned by Tacoma to enable water delivery to Tacoma customers, including tangible and intangible assets usable in connection with the provision of water supply, including without limitation, real property, physical facilities (e.g., dams, wells, treatment plants, pump stations, reservoirs, and transmission lines), water rights, capacity, and/or contractual rights in facilities or resources owned by other entities, and investments in conservation programs and facilities.

“Technical Committees” shall have the meaning set forth in Section 18 (Technical Committees).

“Term” shall have the meaning set forth in Section 3 (Term of Agreement).

“Uncontrollable Force” means any event or circumstance (or combination thereof) and the effects of a non-permanent nature 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, as further defined in Section 29 (Uncontrollable Forces).

“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.

“Wholesale Water Service” and “Wholesale Water Supply” shall have the meanings set forth in Section 6 (Wholesale Water Service).

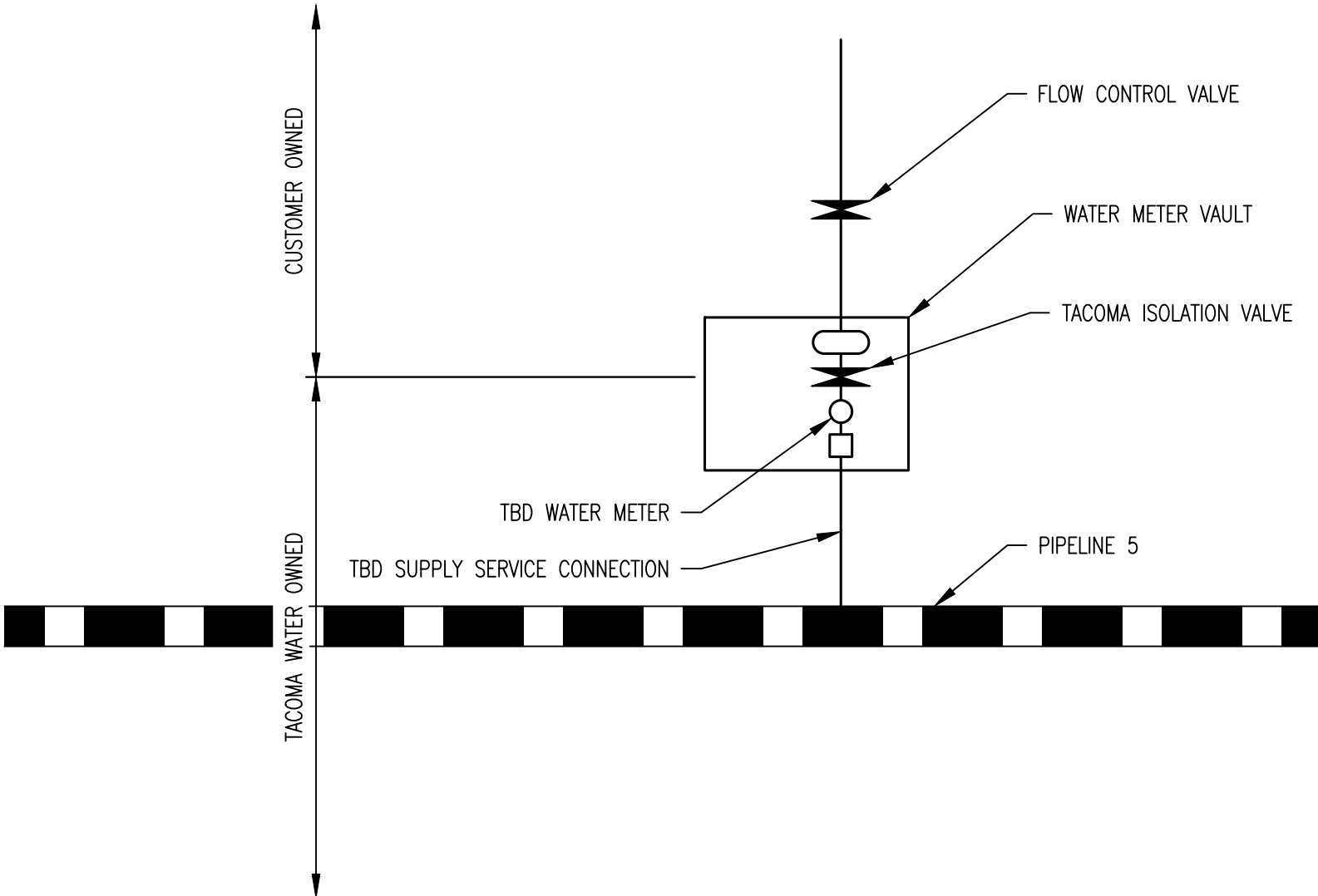


“Wholesale Winter and Summer Volume Charges” means the rate charged per unit of Actual Consumption apportioned to Wholesale Water Service as described in Section 15 (Payments and Billing) of this Agreement. The Wholesale Winter and Summer Volume Charges are set as described in Section 8 (Wholesale Water Service Charges and Fees) of this Agreement.

## **EXHIBIT B**

### **SCHEMATIC OF EXAMPLE WHOLESALE CONNECTIONS**

The schematic below is provided only as an example; it does not represent pipes or connections specific to this Agreement.



## **EXHIBIT C**

### **DISPUTE RESOLUTION PROCEDURES**

If either Party provides notice under Section 27.D (Dispute Resolution Pursuant to Exhibit C and Judicial Relief) of this Agreement to the other Party initiating the Dispute Resolution process in this Exhibit C, the procedures in this Exhibit C shall govern the resolution of such Dispute, and the Parties agree that such procedures will be used in conjunction with and governed by Chapter 4.48 RCW, Trial Before Referee. If at any time either Party determines that efforts to resolve any Dispute pursuant to the procedures in this Exhibit C will not result in a mutually satisfactory resolution, such Party may seek appropriate relief in a court of competent jurisdiction identified in Section 33.E (Governing Law) of this Agreement, including commencing a lawsuit to resolve such Dispute.

1. Within twenty (20) business days of the date of a notice by either Party under Section 27.D (Dispute Resolution Pursuant to Exhibit C and Judicial Relief) of this Agreement 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:
  - 1.1 Each Party will make a list of three individuals that are qualified pursuant to Paragraph 1 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.
  - 1.2 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.
2. Upon the selection of the recommended referee, or the creation of the joint list pursuant to Subparagraph 1.2 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 33.E (Governing Law) of this Agreement, setting forth the issue(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 this Agreement (including this Exhibit C) attached, with the court requesting an order of reference that:

- 2.1 Directs that the issue(s) raised by the complaint and answer be resolved pursuant to Chapter 4.48 RCW by reference to a referee;
  - 2.2 Appoints, pursuant to RCW 4.48.020, either the recommended referee selected by the Parties pursuant to Subparagraph 1.1 of this Exhibit C, or a single referee from the joint list prepared pursuant to Subparagraph 1.2 of this Exhibit C; and
  - 2.3 Directs the referee to conduct the proceeding in accordance with the procedures set out in Paragraphs 3–9 of this Exhibit C.
3. In accordance with RCW 4.48.060, for any Dispute the Parties agree to resolve pursuant to the procedures in this Exhibit C, the Parties 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:
  - 3.1 The Parties shall present their respective positions by written briefs and affidavits, and without testimonial evidence or cross-examination;
  - 3.2 Oral argument will be conducted before the referee; and
  - 3.3 The burdens of proof and persuasion that pertain in a civil trial shall apply, rather than those that apply to motions for summary judgment.
4. 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. If the Parties agree to a joint statement of facts and questions to be decided, they shall submit that to the referee within thirty (30) days after appointment of the referee.
5. Within ninety (90) days after the submission of the joint statement of facts and questions to be decided, or within one hundred and twenty (120) 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 1½-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.

6. 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 1½-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.
7. 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, unless otherwise requested and approved by the referee, shall be limited to fifteen (15) 8½" x 11" double-spaced pages with 1½-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.
8. When all briefs have been filed, the referee will schedule oral argument on the issue(s) in dispute.
9. After the completion of oral argument, the referee will prepare a proposed report in accordance with RCW 4.48.70 and shall provide a copy of the proposed report to the Parties.
10. In accordance with RCW 4.48.110, each Party shall have the right to suggest changes and modifications to the proposed report. 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 and any mutually agreed-upon experts. The fees of the referee shall be established in accordance with RCW 4.48.100.
13. The Parties may mutually agree on an expert to advise the referee and, if such expert is selected, the schedule set forth in Paragraphs 3–11 of this Exhibit C will be adjusted by the referee in consultation with the Parties to accommodate receipt of the expert's input.

## **EXHIBIT D**

### **EXAMPLES OF MANAGEMENT AGREEMENT SUBJECTS**

These examples are intended to inform as to the subjects and types of Management Agreements as described in Section 17 (Cooperation; Management Agreements), contemplated or reasonably anticipated and do not require or constrain the potential subject, topics, or purposes as related to effectively executing the terms of the contract.

- 1) Revisions to Exhibits in this Agreement
- 2) Contacts and communications protocols
- 3) Emergency response protocols
- 4) Conservation coordination or cost-sharing
- 5) Changes to delivery points or pressures
- 6) Revisions to allocable cost centers, assets, or expenses
- 7) Revisions to indices used in rate setting
- 8) Shared use (e.g. wheeling) of Tacoma or Cascade facilities
- 9) Allocating consumption between 2025 Market-Priced and Wholesale agreements
- 10) Water quality monitoring protocols
- 11) Reimbursement agreements and terms
- 12) Meter and telemetry program updates
- 13) Operation and membership of the Technical Committee
- 14) Shortage management plans and coordination
- 15) Interconnection planning
- 16) Five-year reviews

## EXHIBIT E

### **SECTIONS 4.3 (VOTING), 7.8 (PAYMENT PROCEDURES – DEFAULT – STEP-UP PROVISIONS), AND ARTICLE 9 (DURATION AND DISSOLUTION – WITHDRAWAL) OF THE JOINT MUNICIPAL UTILITIES SERVICES AGREEMENT**

#### **4.3 Voting.**

All Board actions must be approved by Dual Majority Vote of all Members, except where this Agreement requires either a 65% Dual Majority Vote, as provided in Sections 4.7, 5.5, 7.3, and 7.5; or ratification by the Members' legislative authority, as provided in Sections 9.3 and 9.4 and Article 10. The Board may act by voice votes, as set forth in the ByLaws. Any Member may require a recorded tabulation of votes either before or immediately after a voice vote is taken. Although voting is, in part, based on Weighted Vote, the Members expressly agree that there is only one class of voting membership, and voting occurs within that single class.

Any Member that has been declared to be in default of its obligations under this Agreement by the Board shall lose its right to vote until the Board has declared the default to be cured.

#### **7.8 Payment procedures – Default – Step-up provisions.**

##### **A. Invoice and Payment.**

1. Cascade shall provide each Member with periodic invoices showing the Member Charges payable by that Member for the billing period and the due date. Invoices shall be provided monthly or on other such periodic schedule as determined by the Board, but no more frequently than monthly nor less frequently than once every six months. The Board will determine a due date for all invoices.

2. Payment of any and all invoices shall be due and payable on or before the due date, and shall be made by wire transfer or such other means as are agreed to by Cascade and the Member. If a treasurer, trustee, fiscal agent or escrow agent is appointed in connection with the issuance of Bonds, Cascade may require, and specify on the invoice, that certain amounts be provided directly to that person or entity, and the Member shall pay those amounts in the manner and to the person so specified.

3. If full payment of any invoice is not received on or before the due date, such payment shall be considered past due and a late payment charge shall accrue for each day that the invoice remains unpaid. The late payment charge shall equal the product of the unpaid amount and an interest rate established by the Board. Late payment charges shall continue to accumulate until the unpaid amount of the invoice and all late payment charges are paid in full. Further, if an invoice or any portion thereof remains unpaid for more than sixty (60) days after the due date, Cascade may pursue any legally available remedy at law or equity for the unpaid amount, including without limitation, specific performance and collection of the late payment charge. Cascade's right to enforce payments in this



regard may be assigned to a treasurer, trustee, credit enhancement provider or other entity. Furthermore, upon written notice, Cascade may reduce or suspend delivery of water until the invoice and late payment charges are paid.

4. If any Member disputes all or any portion of an invoice, it shall notify Cascade immediately upon receipt. If Cascade does not concur, the Member shall remit payment of the invoice in full, accompanied by written notice to Cascade indicating the portions of the invoice that the Member disputes and the reasons for the dispute. The Member and Cascade shall make a good faith effort to resolve such dispute. If the Member fails to remit payment of the invoice in full pending resolution of the dispute, the prevailing party in an action relating to the collection of that invoice shall be entitled to reasonable attorney fees and costs.

#### **B. Default and Step-Up.**

1. If any Member fails to make any payment in full for more than fifty (50) days past the due date, Cascade shall make written demand upon that Member to make payment in full within ten (10) days of the date that the written demand is sent by Cascade. If the failure to pay is not cured within the ten (10) day period, the Member shall be deemed to be in default.

2. Upon an event of default as described in subsection (B)(1) of this section, the other Members shall pay Cascade (in addition to Member Charges otherwise due) the defaulting Member's Member Charges in proportion to each remaining Members' Demand Share in accordance with a schedule established by Resolution of the Board.

3. The payment of a proportionate share of the existing defaulted Member's Member Charges by Members shall not relieve the defaulting Member of its liability for those payments. Cascade shall have a right of recovery from the defaulting Member on behalf of each Member. Cascade may commence such suits, actions or proceedings at law or in equity, including but not limited to, suits for specific performance, as may be necessary or appropriate to enforce the obligations of this Agreement against any defaulting Member. Cascade's right to enforce payments in this regard may be assigned to a treasurer, trustee, credit enhancement provider or other entity. Amounts recovered by Cascade as payment of amounts due shall be passed through to each Member in proportion to the share that each assumed, in cash or in credit, against future Member Charges as the Board shall determine.

4. The prevailing party in any such suit, action or proceeding, shall be entitled to recover its reasonable attorney fees and costs.

### **Article 9. Duration and Dissolution – Withdrawal**

#### **9.1 Duration.**

Except as provided in Section 9.3, Cascade shall remain in existence for the longer of the following: (a) the period it holds any assets; (b) the period during which Bonds are outstanding; or (c) the period it continues to include Members. [Res. 2012-06 § 1; Res. 2004-18 § 1. Formerly 10.1].

## 9.2 Withdrawals.

A Member may notify Cascade of its intent to withdraw by delivery to Cascade of a Resolution of its legislative authority expressing such intent. Upon receipt of such Resolution, the Member shall lose its right to vote and the Board shall determine (a) the withdrawing Member's allocable share of the cost of the then-existing obligations of Cascade; and (b) the withdrawing Member's obligations to Cascade. "Then-existing obligations of Cascade" means obligations or costs incurred by Cascade as of the date the Member's withdrawal notice is received, including but not limited to, Bond obligations, contract obligations, and cash financed capital projects; provided that a withdrawing Member's allocable share shall in no event include an obligation for future expenses for which Cascade has not incurred a legal obligation; and provided further, that to the extent the Member's obligation (with respect to such costs) is re-paid over time, the Member shall be entitled to a credit for supply abandoned by the Member and is otherwise used by Cascade. A "withdrawing Member's obligation to Cascade" includes but is not limited to, the Member's share of fixed operating costs, any other expenses contained in Cascade's adopted budget for that year, and any assessments or other similar charges lawfully imposed by Cascade. For purposes of the preceding sentence, "fixed operating costs" shall be determined in the year of withdrawal, and the Member's obligation with respect to such costs shall be limited only to that amount required to pay for supply abandoned by the Member and not otherwise used by Cascade.

The allocable share of cost or obligations shall be determined by the Board, taking into consideration as deemed applicable by the Board: (a) the ratio of the Member's Demand Share to total Member demand; (b) the ratio of the Member's contribution to Cascade revenue to total Cascade revenue including RCFCs; (c) the cost or a portion of the cost of capital projects or facilities specially benefiting the Member; and (d) and any other factor the Board deems appropriate to consider. The Member's withdrawal shall be effective on payment of such allocable share or provision for arrangements to pay such allocable share that are satisfactory to the Board. Until the effective date of withdrawal, the Member shall continue to comply with all applicable provisions of this Agreement.

Upon withdrawal, except as provided in an Asset Transfer Agreement, the withdrawing Member shall have no right to, or interest in any Water Supply Assets owned by Cascade. The withdrawing Member shall be deemed to have abandoned any and all rights to service, to the use of Cascade Water Supply Assets or other rights with respect to Cascade (except as otherwise expressly provided in this Agreement).

Notwithstanding the provisions of this Section 9.2, Cascade will, upon the withdrawal of a Member that has transferred operational control and management of (but not title to) an Independent Supply Asset to Cascade under Section 5.1, return operational control of such asset to the withdrawing Member. Return of operational control and management will be subject to: (a) continued use by Cascade, to the extent and for such time as the Board deems such use necessary for Cascade to continue providing service to its Members; and (b) payment or provision for payment of any Cascade costs, including but not limited to, those associated with the withdrawing Member's Independent Supply Asset.

The Board may establish additional generally applicable conditions and requirements for withdrawal. [Res. 2012-06 § 1; Res. 2004-18 § 1. Formerly 10.2].

### **9.3 Disincorporation.**

Cascade may vote by a 65% Dual Majority Vote (as ratified within one hundred and twenty (120) days of such Dual Majority Vote by 65% Dual Majority of the Members' legislative authorities), to disincorporate. Upon disincorporation except as provided in an Asset Transfer Agreement, Cascade's assets initially shall be held by its then current Members as tenants in common. Each Member's ownership interest must be based on that Member's Demand Share as of the time of the dissolution. 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. Assets and liabilities must be distributed in accordance with agreement or contract, under a voluntary mediation process, or by a court of law. A court may appoint an arbitrator or special master. Distribution shall be based on the best interests of efficient and economic water supply in the entire area served by the Members, subject to a rebuttable presumption that Water Supply Assets will be returned to the Member that originally transferred them to Cascade. That presumption may be overcome by a showing that another asset distribution is in the best interests of efficient and economic water supply. The proceeds of any sale of assets must be distributed among the then current Members based on the Demand Shares at the time of disincorporation. [Res. 2012-06 § 1; Res. 2004-18 § 1. Formerly 10.3].

### **9.4 Successor entity.**

Notwithstanding the provisions of Section 9.3, upon a 65% Dual Majority Vote of the Board (as ratified within one hundred and twenty (120) days of such Dual Majority Vote by 65% Dual Majority of the Members' legislative authorities), all assets, liabilities, and obligations of Cascade may be transferred to any successor entity (including without limitation, a joint operating agency or other municipal corporation, as permitted under state law), and all obligations of Members and parties contracting with Cascade become obligations to the successor entity.

**EXHIBIT F**  
**TACOMA'S WATER RIGHTS**

## **1<sup>ST</sup> DIVERSION WATER RIGHT**



STATE OF WASHINGTON  
DEPARTMENT OF WATER RESOURCES  
DIVISION OF WATER MANAGEMENT

**WATER RIGHT CLAIM**

RECEIVED  
DEPARTMENT OF ECOLOGY

JAN 25 71003155

CASH OTHER \_\_\_\_\_

WATER DIVISION  
DEPARTMENT OF PUBLIC UTILITIES  
CITY OF TACOMA

1. NAME CITY OF TACOMA

ADDRESS POST OFFICE BOX 11807  
TACOMA, WASHINGTON 98411  
ZIP CODE

2. SOURCE FROM WHICH THE RIGHT TO TAKE AND MAKE USE OF WATER IS CLAIMED: SURFACE WATER  
(SURFACE OR GROUND WATER)

W.R.I.A. 09  
(LEAVE BLANK)

A. IF GROUND WATER, THE SOURCE IS \_\_\_\_\_

B. IF SURFACE WATER, THE SOURCE IS GREEN RIVER, A TRIBUTARY OF THE DUMMISH RIVER

3. THE QUANTITIES OF WATER AND TIMES OF USE CLAIMED:

A. QUANTITY OF WATER CLAIMED 400 (SEE ENCLOSURE) PRESENTLY USED 113  
(CUBIC FEET PER SECOND OR GALLONS PER MINUTE)

B. ANNUAL QUANTITY CLAIMED 289,600 PRESENTLY USED 81,800  
(ACRE FEET PER YEAR)

C. IF FOR IRRIGATION ACRES CLAIMED \_\_\_\_\_ PRESENTLY IRRIGATED \_\_\_\_\_

D. TIME(S) DURING EACH YEAR WHEN WATER IS USED JANUARY 1 TO DECEMBER 31

4. DATE OF FIRST PUTTING WATER TO USE \_\_\_\_\_ MONTH MAY YEAR 1913

LOCATION OF THE POINT(S) OF DIVERSION, WITHDRAWAL 400 FEET NORTH AND  
1,600 FEET EAST FROM THE SOUTHWEST CORNER OF SECTION 28

BEING WITHIN SE 1/4 OF SW 1/4 OF SECTION 18 T. 21 N. R. 8 (E. OF W.) W.M.  
1/4

E. THIS IS WITHIN THE LIMITS OF A RECORDED PLATTED PROPERTY LOT \_\_\_\_\_ BLOCK \_\_\_\_\_ OF

KING COUNTY, WASHINGTON

NAME AND PLAT OF ADJACENT

LEGAL DESCRIPTION OF LANDS ON WHICH THE WATER IS USED. THE WATER IS USED EXCLUSIVELY WITHIN THE  
CORPORATE LIMITS OF THE CITY OF TACOMA AND SUBSTANTIAL AMOUNTS ARE ALSO USED IN BOTH SOUTH  
KING COUNTY AND PIERCE COUNTY.

7. PURPOSE(S) FOR WHICH WATER IS USED COUNTY  
GENERAL MUNICIPAL DOMESTIC, FIRE, COMMERCIAL AND MANUFACTURING PURPOSES SERVING 173,500 PERSONS.

8. THE LEGAL DOCTRINE(S) UPON WHICH THE RIGHT OF CLAIM IS BASED: SEE ENCLOSURE (PRIOR, RIPARIAN  
AND APPROPRIATION).

**DO NOT USE THIS SPACE FOR ANY OTHER INFORMATION**  
THE FILING OF THIS CLAIM DOES NOT CONSTITUTE AN AFFIDAVIT OF ANY KIND TO THE DEPARTMENT OF WATER RESOURCES OR THE DIVISION OF WATER MANAGEMENT. THE FILING OF THIS CLAIM DOES NOT CONSTITUTE AN AFFIDAVIT OF ANY KIND TO THE DEPARTMENT OF WATER RESOURCES OR THE DIVISION OF WATER MANAGEMENT.

I HEREBY CERTIFY THAT THE ABOVE INFORMATION IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF.  
X  
R. J. ROBERTS, DEPARTMENT OF PUBLIC UTILITIES  
DATE: JANUARY 13, 1971  
CLAIM FILED BY DESIGNATED REPRESENTATIVE. SEND TO THE PUBLIC NAME AND ADDRESS OF AGENT BELOW.  
CITY OF TACOMA  
DEPARTMENT OF PUBLIC UTILITIES  
WATER DIVISION  
POST OFFICE BOX 11807  
TACOMA, WASHINGTON 98411  
ANY OF THIS INFORMATION IS AVAILABLE

RETURN ALL THREE COPIES WITH CARBONS SEPARATELY TO:  
DEPARTMENT OF WATER RESOURCES  
DIVISION OF WATER MANAGEMENT  
UNION AVE. BUILDING, OLYMPIA, WASHINGTON 98501

ORIGINAL

## GREEN RIVER WATER RIGHTS

The City of Tacoma claims all rights that are legally applicable to the water of the Green River. These claimed rights include, but are not limited to, a vested right, a riparian right, and numerous appropriated rights to the water of the Green River.

### VESTED RIGHTS

The City of Tacoma first served notice on February 8, 1906, under the 1891 Water Code that it was appropriating water from its present diversion dam location on the Green River. Mr. Frank Davis, City Engineer, posted two notices that met the 1891 statutory requirements, each for 100 cfs, which were filed in the King County Auditor's Office under Fee No. 376191 in Volume 1, Page 312 and Fee No. 376192 in Volume 1, Page 313. Identical notices were again posted July 22, 1908, in the same King County and thereafter filed under Fee Nos. 560603 and 560604 in Volume 1, Pages 473 and 474, on July 23, 1908. Each of the filings were for 100 cfs, totaling 400 cfs, which were thus appropriated by said actions. These notices specifically state that the points of diversion would take place in Section 18, Township 21 North, Range 8 East, W. M. which is the present location of the City's Diversion Dam. Copies of these filings are attached.

Formal construction of the Green River Gravity System was begun in 1910. Water at the rate of 30.9 cfs was delivered to the City on May 8, 1913. Since completion of the original construction, this system has been orderly expanded to the present capacity of 113 cfs commensurate with the water needs of the City of Tacoma and its service area, thus establishing a vested right to the water of the Green River.

A second major pipeline from the Green River will be required to meet expected water demands between the years 1980 to 2000. This pipeline is scheduled to have a design capacity of about 115 cfs. In the year 2000, the City of Tacoma will probably be serving water to a very large service area in both King County and Pierce County. Water demands beyond the year 2000 will require additional expansion of the City's water utility system commensurate with needs similar to the orderly and timely development of the past. A third major pipeline from the Green River (with a design capacity of about 100 to 150 cfs) will be required about the year 2000.

In summary, the City of Tacoma, for and on behalf of its Department of Public Utilities, Water Division, claims a vested right to 400 cfs from the Green River because the water has been legally appropriated, the Green River water supply system has been utilized continuously and orderly expanded since completion of original construction and the system will be orderly expanded to an ultimate capacity approaching 400 cfs.

Two reports prepared by the City of Tacoma Water Division are submitted to support the claim for 400 cfs of water. They are:

"A Comprehensive Water Supply Study and Plan for Pierce County and Vicinity" and

"Planning Tacoma's Water Needs, 1970 - 2000."

### RIPARIAN RIGHTS

In further support of the "vested rights" referred to hereinabove, the City of Tacoma claims riparian rights to 400 cfs of the water of the Green River for its municipal water supply system described and referred to under "vested rights" hereinabove, beginning with the first purchase of land at the diversion dam on August 19, 1910. The Water Division owns lands bordering the Green River in a continuous strip for a distance of approximately twenty-six river miles above and connecting with the City's diversion dam. This ownership is shown on the attached drawing entitled "Green River Watershed Map."

APPROPRIATED RIGHTS

In further support of the claims for 400 cfs for the purposes stated under "vested and riparian rights" hereinabove, the public records on water rights reflect the following appropriated rights perfected by the City of Tacoma under the then existing State laws. These claims are listed below in chronological order.

- |                      |          |   |
|----------------------|----------|---|
| 1. August 8, 1905    | 80 cfs   | Sec. 10, T21N, R7E, W.M.<br>Vol. 1, Page 243<br>King County Water Rights  |
| 2. August 8, 1905    | 80 cfs   | Sec. 22, T20N, R10E, W.M.<br>Vol. 1, Page 246<br>King County Water Rights   |
| 3. August 19, 1905   | 80 cfs   | Sec. 12, T21N, R7E, W.M.<br>Vol. 1, Page 284<br>King County Water Rights  |
| 4. August 19, 1905   | 80 cfs   | Sec. 9, T21N, R7E, W.M.<br>Vol. 1, Page 249<br>King County Water Rights   |
| 5. February 8, 1906  | 100 cfs* | Sec. 18, T21N, R8E, W.M.<br>Fee No. 376191, Vol. 1, Page 312<br>King County Water Rights  |
| 6. February 8, 1906  | 100 cfs* | Sec. 18, T21N, R8E, W.M.<br>Fee No. 376192, Vol. 1, Page 313<br>King County Water Rights  |
| 7. July 23, 1908     | 100 cfs* | Sec. 18, T21N, R8E, W.M.<br>Fee No. 560603, Vol. 1, Page 473<br>King County Water Rights  |
| 8. July 23, 1908     | 100 cfs* | Sec. 18, T21N, R8E, W.M.<br>Fee No. 560604, Vol. 1, Page 474<br>King County Water Rights  |
| 9. February 7, 1933  | 100 cfs* | Sec. 18, T21N, R8E, W.M.<br>Application No. 3787, 1917 Water<br>Code (Pending Application)  |
| 10. February 3, 1956 | 50 cfs*  | Sec. 18, T21N, R8E, W.M.<br>Application No. 13735, 1917 Water<br>Code (Pending Application)   |
| 11. August 24, 1970  | 90 MGD*  | Sec. 15 and 22, T21N, R8E, W.M. 6469 P<br>Application No. 11177, Ground<br>Water, North Fork of Green River<br>Area (Pending application) |

\* These surface water rights and the pending application for ground water will be utilized for the ultimate development of the total Green River water supply system.



NOTICE OF APPROPRIATION OF WATER FOR CITY PURPOSES AND  
SUPPLYING THE INHABITANTS THEREOF WITH WATER.

NOTICE IS HEREBY GIVEN, That I, Frank L. Davis, City Engineer  
of the City of Tacoma, a citizen of the United States, over the age  
of twenty-one years and a resident of Tacoma, Pierce County, Washing-  
ton, for and on behalf of the said City of Tacoma claim the water  
in, to and of a certain stream, lying, being and flowing through  
Section No. 18, Township 21 North, of Range 8 East of  
the W.M., known as the Green River, to the extent of 100 cubic feet  
per second of time of the natural flow of the waters of said river,  
the same being in King County, Washington.

Said water is appropriated and claimed by the said Frank L.  
Davis to be used at, in and near the City of Tacoma for the purpose  
of supplying said City of Tacoma and the inhabitants thereof with  
water for general, municipal, domestic, fire, commercial and manufactur-  
ing purposes and said water will be used at and in the vicinity of  
the City of Tacoma in Pierce County, Washington. Said Frank L. Davis  
for said City of Tacoma, desires to and will divert the water of  
said stream at a point in the South West 1/4  
of said Section 18  
the amount herein claimed, and the said diversion will be made by  
means of conduits, ditches, flumes, pipe lines, boxes and tunnels  
for the purpose of conveying said amount of water, so to be diverted  
from the point of intake on said tract of land above described, to  
the City of Tacoma for the uses and purposes as above set forth.

This notice is posted on the land near the proposed point  
intake and filed in the office of the County Auditor of King County,  
Washington, as required by law, in behalf of and for the use and  
benefit of said City of Tacoma.

Posted July 27 1908.

Frank L. Davis  
City Engineer of the City of  
Tacoma.

**NOTICE OF APPROPRIATION OF WATER FOR CITY PURPOSES AND  
SUPPLYING THE INHABITANTS THEREOF WITH WATER.**

NOTICE IS HEREBY GIVEN, That I, Frank L. Davis, a citizen of the United States, over the age of twenty-one years and a resident of Tacoma, Pierce County, Washington, claim the water in, and of a divert in stream, lying, being and flowing through Section No. 18 Township 21 North of Range 8, East of the W.M., known as the Green River, to the extent of 100 cubic feet per second of time of the natural flow of the waters of said river, the same being in King County, Washington.

Said water is appropriated and claimed by the said Frank L. Davis to be used in and near the City of Tacoma for the purpose of supplying said City of Tacoma and the inhabitants thereof with water for general, municipal, domestic, fire, commercial and manufacturing purposes and said water will be used at and in the vicinity of the City of Tacoma in Pierce County, Washington. Said Frank L. Davis desires to and will divert the waters of said stream at a point in the South West 1/4 of said Section 18 to the amount here in claimed, and the said diversion will be made by means of conduits, ditches, flumes, pipe lines, boxes and tunnels for the purpose of conveying said amount of water, so to be diverted from the point of intake on said tract of land above described, to the City of Tacoma for the uses and purposes as above set forth.

This notice is posted on the land near the proposed point of intake and filed in the office of the County Auditor of King County, Washington, as required by law, in behalf of and for the use and benefit of said Frank L. Davis.

Posted July 22, 1908.

Frank L. Davis

NOTICE OF APPROPRIATION OF WATER FOR CITY PURPOSES  
AND SUPPLYING THE INHABITANTS  
THEREOF WITH WATER.

Notice is hereby given that the City of Tacoma, a municipal corporation of the first class, of the State of Washington, by Frank L. Davis its duly appointed, qualified and acting City Engineer, claims the water in, to and of a certain stream lying, being and flowing through Section 18, Township 21 North, Range 8 East of the W.M., known as Green River, to the extent of one hundred (100) cubic feet per second of time of the natural flow of the waters of said river, the same being in King County, Washington.

Said water is appropriated and claimed by the said City of Tacoma to be used at, in and near the City of Tacoma for the purpose of supplying said City of Tacoma and the inhabitants thereof with water for general, municipal, domestic, fire, commercial and manufacturing purposes and said water will be used at and in the vicinity of the City of Tacoma, in Pierce County, Washington. Said City of Tacoma desires to and will divert the waters of said stream at a point in the southeast quarter of the south<sup>W</sup> quarter of said Section 18, to the amount herein claimed, and the said diversion will be made by means of dams, conduits, ditches, pipe lines, boxes and tunnels for the purpose of conveying said amount of water, so to be diverted from the point of intake on said tract of land above described, to the City of Tacoma for the uses as above set forth.

This notice is posted on the land near the proposed point of intake and filed in the office of the County Auditor of King County, Washington, as required by law in behalf of and for the use and benefit of said City of Tacoma.

*The City of Tacoma*  
By *Frank L. Davis*  
City Engineer

10 30 AM  
Posted this 8th day of February, 1906.

NOTICE OF APPROPRIATION OF WATER FOR CITY PURPOSES  
AND SUPPLYING THE INHABITANTS  
THEREOF WITH WATER

Notice is hereby given that I, Frank L. Davis, a citizen of the United States over the age of 21 years and a resident of Tacoma, Pierce County, Washington, claim the water in, to and of a certain stream lying, being and flowing through Section 18, Township 21 North, Range 8 East of the W.M., known as Green River, to the extent of one hundred (100) cubic feet per second of the natural flow of the waters of said river, the same being in King County, Washington.

Said water is appropriated and claimed by the said Frank L. Davis to be used at, in and near the City of Tacoma for the purpose of supplying said City of Tacoma and the inhabitants thereof with water for general, municipal, domestic, fire, commercial and manufacturing purposes and said water will be used at and in the vicinity of the City of Tacoma, in Pierce County, Washington. Said Frank L. Davis desires to and will divert the waters of said stream at a point in the southeast quarter of the southeast quarter of said Section 18, to the amount herein claimed, and the said diversion will be made by means of dams, conduits, ditches, pipe lines, boxes and tunnels for the purpose of conveying said amount of water, so to be diverted from the point of intake on said tract of land above described, to the City of Tacoma for the uses as above set forth.

This notice is posted on the land near the proposed point of intake and filed in the office of the County Auditor of King County, Washington, as required by law in behalf of and for the use and benefit of said Frank L. Davis.

Frank L. Davis

Posted this 8th day of February, A.D., 1906.



## **2<sup>ND</sup> DIVERSION WATER RIGHT**

# PERMIT

## TO APPROPRIATE PUBLIC WATERS OF THE STATE OF WASHINGTON

- Surface Water** (Issued in accordance with the provisions of Chapter 117, Laws of Washington for 1917, and amendments thereto, and the rules and regulations of the Department of Ecology.)
- Ground Water** (Issued in accordance with the provisions of Chapter 263, Laws of Washington for 1945, and amendments thereto, and the rules and regulations of the Department of Ecology.)

PRIORITY DATE	APPLICATION NUMBER	PERMIT NUMBER	CERTIFICATE NUMBER
February 7, 1933	3787	S1-00726P	

NAME

CITY OF TACOMA, WATER DIVISION, DEPARTMENT OF PUBLIC UTILITIES

ADDRESS - STREET	CITY	STATE	ZIP CODE
P. O. Box 11007	Tacoma	Washington	98411

*The applicant is, pursuant to the Report of Examination which has been accepted by the applicant, hereby granted a permit to appropriate the following described public waters of the State of Washington, subject to existing rights and to the limitations and provisions set out herein.*

**PUBLIC WATER TO BE APPROPRIATED**

SOURCE

Green River

TRIBUTARY OF (IF SURFACE WATERS)

Duwamish River

MAXIMUM CUBIC FEET PER SECOND	MAXIMUM GALLONS PER MINUTE	MAXIMUM ACRE-FEET PER YEAR
100		72397

QUANTITY, TYPE OF USE, PERIOD OF USE

Municipal and Industrial Supply - throughout the year when available (interruptible supply)

**LOCATION OF DIVERSION/WITHDRAWAL**

APPROXIMATE LOCATION OF DIVERSION-WITHDRAWAL

1100 feet west and 400 feet north of the SE corner of Sec. 18

LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION)	SECTION	TOWNSHIP N.	RANGE, (E. OR W.) W.M.	W.R.L.A.	COUNTY
<u>S1-S4</u>	18	21	8E	9	King

**RECORDED PLATTED PROPERTY**

LOT	BLOCK	OF (GIVE NAME OF PLAT OR ADDITION)

**LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED**

Area served by City of Tacoma (by direct service or interlocal agreement).

DESCRIPTION OF PROPOSED WORKS

Division dam, intake structure, 10 mg tank, transmission line, treatment facilities and on-line storage reservoirs.

DEVELOPMENT SCHEDULE

IF PROJECT BY THIS DATE:	COMPLETE PROJECT BY THIS DATE:	WATER PUT TO FULL USE BY THIS DATE:
Started	December 8, 1991	December 8, 2006

PROVISIONS

This authorization is subject to the provisions of Chapter 173-509 WAC as adopted in Olympia, Washington, June 5, 1980, and the general rules of the Department of Ecology as specified under Chapter 173-500 WAC, and others.

Recognitions of instream flows as established at monitoring station 12.1067.00 at river mile 60.4, Sec. 13, T.21N., R.7EWM and as presented in the table below shall be a condition of this diversion as set forth in said WAC 173-509-030.

Instream flow hydrographs, page 5, in the document entitled "Water Resources Management Program in the Green-Duwamish River Basin", dated June 1980, shall be used for definition of instream flows on those days not specifically identified in WAC 173-509-030.

No diversion of water, under this permit or certificate, shall take place when the flow of the river falls below the normal year flows listed below. Except, however, when a critical year is declared by the Director under the provision of WAC 173-509-030, diversion shall cease when flow in the river falls below the following critical year flows.

NORMAL YEAR

Month	Day	Instream Flow (cfs)	Month	Day	Instream Flow (cfs)
April	15	300	August	1	150
May	1	300	August	15	150
May	15	300	September	1	150
June	1	300	September	15	150
June	15	300	October	1	190
July	1	300	October	15	240
July	15	150	November	1	300
			April	1	300

CRITICAL YEAR

Month	Day	Instream Flow (cfs)	Month	Day	Instream Flow (cfs)
April	15	300	August	15	150
May	1	300	September	1	150
May	15	300	September	15	150
June	1	300	October	1	150
June	15	210	October	15	150
July	1	150	November	1	190
July	15	150	November	15	240
August	1	150	December	1	300
			April	1	300

This permit shall be subject to cancellation should the permittee fail to comply with the above development schedule and/or fail to give notice to the Department of Ecology on forms provided by that Department documenting such compliance.

Given under my hand and the seal of this office at Redmond, Washington, this 8 day of December, 19 86

Department of Ecology

GENERATING DATA  
OK PLB

by Nancy Ellison  
Nancy Ellison, Regional Manager



The City of Tacoma, at its own expense, shall enter into an agreement with the U.S. Geological Survey for installation and maintenance of a suitable and accurate stream gaging station on the Green River in the vicinity of River Mile 61. The purpose of this gaging station will be to accurately measure and record the flows passing the City of Tacoma diversion dam. The gage shall be telemetered with stage and discharge data reported to and accessible from the Columbia River Hydrometeorological Monitoring System (CRHMS). Discharge data recorded at this station will be used to determine City of Tacoma compliance with WAC 173-509-030. Therefore, if the final gaging station selected by the USGS and Tacoma is sufficiently removed from existing station 12.1067 to result (in the opinion of WDOE) in the need for a correlation between the existing and new station, both stations shall be supported by the City of Tacoma for a sufficient period of time to accomplish this correlation. Should a correlation take place which alters the instream flow values at the new station, the City of Tacoma diversion authorized through this application will be subject to the new values (this condition is intended only to correct any errors of measurement that may now be occurring at station 12.1067). The final measuring system proposed by the City of Tacoma shall be approved by the WDOE and installed prior to any diversion under this authorization.

The City of Tacoma shall notify the Department of Ecology, Northwest Regional Office when the flows of the Green River approach the instream flow as established by WAC 173-500, and advise the Department of Ecology of actions taken to modify their diversion to comply with conditions of the regulations.

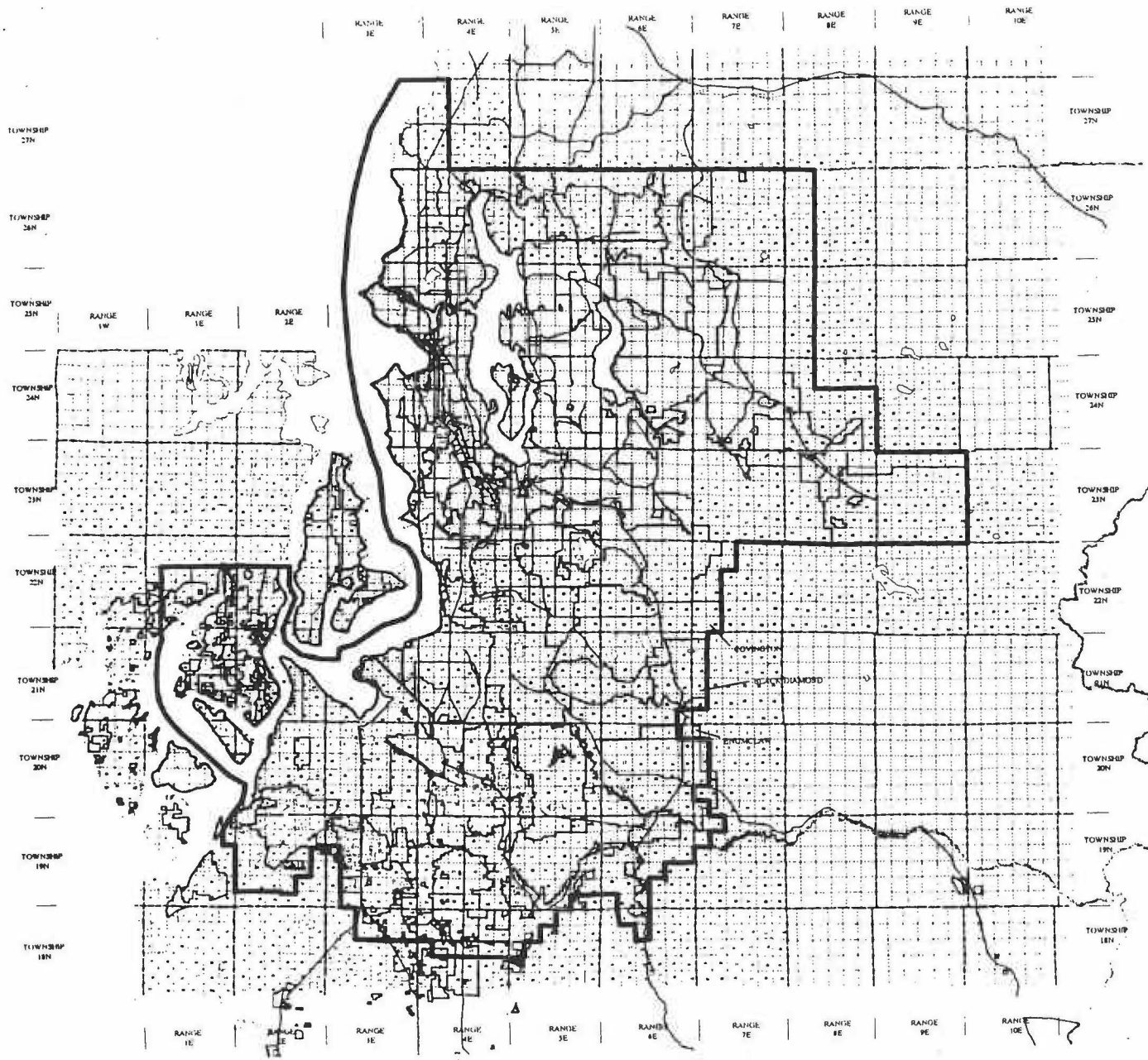
A suitable measuring method shall be in place on pipeline (5) to measure the rate of diversion.

In compliance with the order correcting judgment nunc pro tunc pursuant to CR60(a) and authorizing filing of stipulation nunc pro tunc entered on June 25, 1986, under Thurston County Cause No. 83-2-01104-1, this authorization is also subject to the following items and conditions:

1. Water in the Green-Duwamish River Basin placed there for fish conservation purposes from storage behind Howard Hanson Dam, as operated now or in the future, shall not be subject to appropriation under this permit.
2. Continuous stream gaging, through instrumentation and a program approved by DOE, shall be conducted by the City of Tacoma. An instantaneous monitoring system shall be installed in order that both the City of Tacoma and DOE shall be apprised at all times of stream flows.
3. A suitable measuring method shall be in place on Pipeline Nos. 1 and 5 to measure the rate of diversion. Both Pipelines Nos. 1 and 5 shall have equipment to "throttle-back" the quantity of water diverted.
4. No declaration of a critical period or of over-riding considerations of public interest shall be made by the Director of DOE with respect to diversions under this permit until, in addition to satisfying the conditions of WAC 173-509-030(2), the City of Tacoma demonstrates that it has carried out all provisions of a pre-established drought contingency plan submitted to and approved by DOE. The Department of Ecology will consult with the Departments of Fisheries and Game before approving any drought contingency plan submitted by the City of Tacoma.
5. Insufficiency of ground water supplies shall not be grounds for a declaration of a critical period or of over-riding considerations of public interest by the Director of DOE with respect to diversions under this permit until, in addition to satisfying the conditions of WAC 173-509-030(2), the City of Tacoma demonstrates that it has made a plan and actively pursued development of alternative and supplemental water sources.
6. The perfection period for development of a right under this permit shall be 20 years, subject to extensions.
7. This permit is subject to Chapter 173-509 WAC and that stipulation and judgment as filed in Thurston County Cause No. 83-2-01104-1.

If there is any redundancy or contradiction between the unnumbered provision (taken from the Report of Examination dated August 19, 1981) and the provisions numbered 1. through 7. (additional stipulated provisions), the provisions numbered 1. through 7. shall prevail.

## **PLACE OF USE**




- LEGEND**
- COUNTY BOUNDARY
  - SEATTLE PUBLIC UTILITIES & TACOMA UTILITIES SUPPLY AREA
  - WATER SERVICE AREA BOUNDARY (KING CO. AND PIERCE CO.)

The Seattle & Tacoma Supply System Place of Use Boundary Map is based on the 1980 Seattle Comprehensive Regional Water Plan (See Exhibit) and the 1980 Tacoma Water System Plan (Figure 1-1). The actual alignment was developed by agreement with the Department of Ecology in April, 2001 to coincide with the adjacent township and range location to accommodate specific boundary descriptions. The boundary incorporates the Black Diamond service area based on the January 15, 1970 easement agreement between the town of Black Diamond and the City of Tacoma.

**EXHIBIT 1**

Seattle & Tacoma Supply System Combined  
Water Rights Place of Use Map

May 2001

 ECONOMIC AND ENGINEERING SERVICES, INC.