



RESOLUTION NO. U-11223

A RESOLUTION related to a wholesale water agreement with Tacoma Water and the City of Fife.

WHEREAS the City of Tacoma, Department of Public Utilities, Water Division (d/b/a "Tacoma Water") requests approval to enter into a wholesale agreement ("WSA") with the City of Fife, and

WHEREAS the City of Fife is the City of Tacoma's largest wholesale customer, receiving water from Tacoma Water for over 20 years, and has paid the City of Tacoma \$2.1 million in System Development Charges and is expected to purchase approximately 1.6 million gallons of water per day, and

WHEREAS the WSA would will clarify the rights and obligations related to Tacoma Water providing wholesale water service to the City of Fife through an agreement that is similar to other WSAs Tacoma water has with other large utilities and will provide for over \$1.2 million in revenue annually, and

WHEREAS the rate that will be charged in the WSA is the applicable rate listed in TMC 12.10.400; Now, Therefore,

BE IT RESOLVED BY THE PUBLIC UTILITY BOARD OF THE CITY OF TACOMA:

That the wholesale agreement for Tacoma Water to sell wholesale water to the City of Fife is hereby approved, and the appropriate officers are authorized to execute said wholesale agreement, substantially in the same form as that on file with the Clerk of the Board and as approved by the City Attorney.

Approved as to form:

/s/
Chief Deputy City Attorney

Clerk

Chair

Secretary

Adopted _____



Board Action Memorandum

TO: Jackie Flowers, Director of Utilities
COPY: Charleen Jacobs, Director and Board Offices
FROM: Scott Dewhirst, Tacoma Water Superintendent
MEETING DATE: November 18th 2020
DATE: November 6th 2020

SUMMARY: Tacoma Water requests approval by the Public Utility Board (PUB) of a wholesale water supply agreement (WSA) between the City of Fife (Fife) and Tacoma Water.

BACKGROUND: Tacoma Water provides wholesale water service to 15 neighboring water utilities throughout south Puget Sound. In 2019, Tacoma water sold approximately 2.3 MGD of wholesale water to these utilities for approximately \$2.7 million in revenue.

Fife is Tacoma's largest wholesale customer and has been purchasing water from Tacoma for 13 years. Fife has paid Tacoma \$2.1 million in System Development Charges which provides them with access to an average of 1.47 MGD with a peak allowance of 2.9 MGD. Fife is expected to purchase approximately \$1.2 million worth of wholesale water from Tacoma Water annually.

The proposed WSA will clarify the rights and obligations related to Tacoma Water providing wholesale water service to Fife through an updated agreement that is similar to WSAs Tacoma has with other large utilities. Fife will be charged for water usage in accordance with current rates as listed in TMC 12.10.400.

ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED? Yes

IF THE EXPENSE IS NOT BUDGETED, PLEASE EXPLAIN HOW THEY ARE TO BE COVERED.
N/A

IF THE ACTION REQUESTED IS APPROVAL OF A CONTRACT, INCLUDE LANGUAGE IN RESOLUTION AUTHORIZING \$200,000 INCREASE IN ADMINISTRATIVE AUTHORITY TO DIRECTOR? N/A.

ATTACHMENTS: Fife WSA

CONTACT:

- Primary Contact: Marc Powell, Management Analyst
- Supervisor: Jodi Collins, Financial Stewardship Manager
- Presenter: Marc Powell, Management Analyst

WHOLESALE WATER SUPPLY AGREEMENT

This WHOLESALE WATER SUPPLY AGREEMENT ("Agreement"), by and between the City of Tacoma, Department of Public Utilities, Water Division ("Tacoma"), and City of Fife, a municipal corporation of the State of Washington ("Customer"), is made and entered into as of this ____ day of _____, 2020 ("Effective Date"). Tacoma and Customer are sometimes referred to collectively as the "Parties" and individually as a "Party." This Agreement is made with reference to the following facts:

RECITALS

WHEREAS, Tacoma is a municipality organized and operating under the laws of the State of Washington and operates a water utility pursuant to RCW 35.92.010;

WHEREAS, pursuant to RCW 35.92.170-.200, Tacoma is authorized to operate a water utility outside its geographical boundaries and to sell surplus water to customers outside of Tacoma's city limits;

WHEREAS, Customer is also a municipality organized and operating under the laws of the State of Washington and operates a water utility pursuant to RCW 35.92.010;

WHEREAS, Customer has previously been a wholesale customer of Tacoma without a written agreement where Tacoma provides, upon Customer's request, a wholesale water supply of up to 1,470,556 GPD for average day use, 2,899,996 GPD for peak day use;

WHEREAS, the Parties agreed to make a good faith effort to negotiate a new wholesale water agreement by December 30, 2020;

WHEREAS, Tacoma is willing to provide a wholesale water and services to Customer, on the terms and conditions set forth in this Agreement;

WHEREAS, Customer 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; and

WHEREAS, in order to achieve the foregoing and to better reflect the desired intent of the Parties, the Parties desire to enter this Agreement;

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

AGREEMENT

1. DEFINITIONS

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

"Actual Consumption" refers to the amount of water actually delivered by Tacoma to Customer during the Service Term for Market Wholesale Service. The term "Actual Consumption" shall have the meaning set forth in Section 4.4 of Exhibit B.

"Adjustment Date" refers to the date that the Market Rate is to be adjusted during the Service Term for Market Wholesale Service. The term "Adjustment Date" shall have the meaning set forth in Section 4.1 of Exhibit B.

"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 Governmental Authority having jurisdiction over the Parties or the performance of this Agreement.

"Capacity Rental Rate" refers to the rental rate for capacity in exceedance of the Peak Day Demand Set Amount. The term "Capacity Rental Rate" shall have the meaning set forth in Section 4.4 of Exhibit B.

"Commencement Date" refers to the commencement date of Market Wholesale Service. The term "Commencement Date" shall have the meaning set forth in Section 3.2.1 of Exhibit B. The Commencement Date for Market Wholesale Service may be established, from time to time during the Term, pursuant to Section 3.3 of Exhibit B.

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

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

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

"Dispute" shall have the meaning set forth in Section 16.1.

"Draft Operating Plan" means a non-binding informational plan intended to advise Tacoma of the amount of the Wholesale Water Supply that Customer anticipates it will use during the period starting June 1 and ending September 31 each year during the Term.

"Earned Credit" refers to the credit (if any) to be applied to the Monthly Charge for Market Wholesale Service. The term "Earned Credit" shall have the meaning set forth in Section 4.3 of Exhibit B.

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

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

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

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

"Index" refers to the Index used to adjust the Market Rate during the Service Term for Market Wholesale Service. The term "Index" shall have the meaning set forth in Section 4.1 of Exhibit B.

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

"Market Rate" refers to the Market Rate for Market Wholesale Service. The term "Market Rate" shall have the meaning set forth in Section 3.2 of Exhibit B. The Market Rate for Market Wholesale Service may be established, from time to time during the Term, pursuant to Section 3.3 of Exhibit B.

"Market Wholesale Service" is a form of Wholesale Water Service available to Customer during the Term. The term "Market Wholesale Service" shall have the meaning set

forth in Section 1 of Exhibit B. Market Wholesale Service may be requested by Customer and if so requested may be authorized by Tacoma, from time to time during the Term, pursuant to Section 3 of Exhibit B.

"Market Wholesale Water Supply" refers to the Market Wholesale Water Supply available for Market Wholesale Service. The term "Market Wholesale Water Supply" shall have the meaning set forth in Section 1 of Exhibit B.

"Memorandum of Understanding" refers to a Memorandum of Understanding confirming the terms and conditions of Market Wholesale Service. The term "Memorandum of Understanding" shall have the meaning set forth in Section 3.3 of Exhibit B. A Memorandum of Understanding confirming the terms and conditions of Market Wholesale Service may be entered into by the Parties, from time to time during the Term, pursuant to Section 3.3 of Exhibit B. A form of a Memorandum of Understanding is provided, by way of an example and for illustrative purposes only, in Exhibit C.

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

"Monthly Charge" refers to the Monthly Charge for Market Wholesale Service. The term "Monthly Charge" shall have the meaning set forth in Section 4.2 of Exhibit B.

"Operating Protocols" shall have the meaning set forth in Section 10.4.

"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.

"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.

"Schedule" shall have the meaning set forth in Section 10.3.

"Service Term" refers to the term of the Market Wholesale Service. The term "Service Term" shall have the meaning set forth in Section 3.1.1 of Exhibit B. The Service Term for Market Wholesale Service may be established, from time to time during the Term, pursuant to Section 3.3 of Exhibit B.

"Set Amount" refers to the annual quantity of water to be purchased as a Market Wholesale Water Supply. The term "Market Wholesale Water Supply" shall have the meaning set forth in Section 3.1.2 of Exhibit B. The Set Amount of a Market Wholesale Water Supply may be established, from time to time during the Term, pursuant to Section 3.3 of Exhibit B.

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

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

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

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

"Term" shall have the meaning set forth in Section 19.

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

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

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

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

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

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

(vi) inability, after the use of commercially reasonable efforts, to obtain any consent or approval from any Governmental Authority that affects the performance of the Parties' obligations under this Agreement;

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

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

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

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

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

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

"Wholesale Water Supply" means a quantity of water of up to 1,470,556 GPD (annual average daily demand), subject to the following peak-period limitation: 2,899,996 GPD during any consecutive twenty-four (24) hour period.

2. EXHIBITS TO THIS AGREEMENT

This Agreement includes the Exhibits listed below, and any reference in this Agreement to an "Exhibit" by letter designation or title shall mean one of the Exhibits

identified below. If there is an express conflict between the provisions contained within the body of this Agreement and the provisions of any Exhibit hereto, then the body of this Agreement shall take precedence, except that with respect to (a) technical specifications and requirements pertaining to the design, engineering, operation or testing of the Wholesale Service Connections set forth in Exhibit A, Exhibit A shall take precedence, govern and control; and (b) with respect to the specific requirements pertaining to Market Wholesale Service set forth in this Exhibit B, Exhibit B shall take precedence, govern and control.

Exhibit A: Wholesale Service Connections

Exhibit B: Market Wholesale Service Terms and Conditions

Exhibit C: Memorandum of Understanding (illustrative only)

Exhibit D: Purchased System Capacity (as of the Effective Date)

Exhibit E: Customer's Interconnection Facilities (as of the Effective Date)

3. WHOLESALE WATER SERVICE

3.1 Subject to the terms and conditions of this Agreement, during the Term, Tacoma agrees to sell and deliver the Wholesale Water Supply to Customer, and Customer agrees to purchase and take delivery of the Wholesale Water Supply from Tacoma. The Wholesale Water Supply may be resold by Customer to another water purveyor, subject to the terms and conditions of this Agreement.

3.2 The Wholesale Water Supply shall be provided to Customer 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, Customer 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.

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

4. WHOLESALE WATER SERVICE CHARGES AND FEES

Customer shall pay Tacoma all 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 Public Utility Board and Tacoma City Council. At any time during the Term, the applicable rate, charge, fee or other amount due Tacoma from Customer for the Wholesale Water Service shall be the rate, charge, fee or amount as shall then be in effect.

5. SYSTEM DEVELOPMENT CHARGES

As of the Effective Date, the System Development Charge due and payable to Tacoma as of the Effective Date has been fully paid by Customer to Tacoma. Such payments and the corresponding capacity available to Customer for such payments are more particularly described in Exhibit D attached hereto and incorporated herein by this reference. From and after the Effective Date, and if and only to the extent that such amount has not been previously paid by Customer, Customer shall pay any System Development Charge subsequently due Tacoma pursuant to the terms and conditions of the Wholesale Water Regulations.

6. PAYMENTS

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

7. WHOLESALE WATER DELIVERIES

From and after the Effective Date, the Wholesale Water Supply shall be made available to Customer at the Wholesale Service Connections. The delivery and receipt of water, and the transfer of title to and custody and control of such water, shall occur at the Wholesale Service Connections. Upon Customer's acceptance of such water at the Wholesale Service Connections, Customer 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 Customer to Customer's customers.

8. WHOLESALE WATER CONNECTIONS AND INTERCONNECTION FACILITIES

8.1 Tacoma shall be responsible for the maintenance and operation of the Wholesale 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 Wholesale Service Connections, in whole or in part, Tacoma shall so notify Customer, and cause such upgrade, replacement or modification to

occur at such time, place and manner and with such labor, design, materials and equipment as Tacoma shall determine, in its sole discretion. No wholesale service connections other than the Wholesale Service 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 or permit with the other Party to construct or use any additional wholesale service connection.

8.2 Customer's existing Interconnection Facilities are more particularly described in Exhibit E, attached hereto and incorporated herein by this reference. From and after the Effective Date, Customer shall, at its expense, cause any additional Interconnection Facilities required in order to take delivery of the Wholesale Water Supply in accordance with this Agreement to be constructed, operated, tested, maintained and available for normal and reliable commercial operations. Customer 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 Customer and will not unreasonably withhold its approval of such designs, specifications and construction schedule. Customer will not commence any such repairs, replacements, expansions, improvements or upgrades of the Interconnection Facilities unless and until Customer has received approved designs, specifications and construction schedule from Tacoma. Customer 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. Customer 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.

8.3 Without limiting the generality of the foregoing, Customer shall:

(a) be responsible for the operation and control of the Customer Isolation Valve and any pressure-reducing valves, controllers, pedestals and boxes operated by Customer as part of the Interconnection Facilities; and

(b) provide a sufficient permitted discharge location for sump pump discharge for the Wholesale Service Connections vault.

8.4 If, at any time or from time to time during the Term, Tacoma determines a need to repair, maintain, replace, renew, expand or improve any of Tacoma's infrastructure, facilities or systems and such work requires the relocation of all or any portion of the Interconnection Facilities, Tacoma shall, not less than one hundred twenty (120) days prior to the commencement of such work, request by written notice to Customer that Customer relocate such Interconnection Facilities so as to accommodate the time, place and manner of Tacoma's work. Upon receipt of such notice from Tacoma, Customer shall promptly so relocate such Interconnection Facilities at Customer's sole cost and expense.

9. METER AND TELEMETRY EQUIPMENT

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

9.2 Tacoma shall perform the calibration and testing of the Meter. During the Term, Tacoma shall periodically test the Meter for accuracy, and the results of such testing shall be made available to Customer. Customer may also test the Meter at any reasonable time and at Customer's expense. The results of any Meter test conducted by Customer shall be made available to Tacoma at no charge. A Meter accuracy measurement of two percent (2%) or better shall be considered within calibration tolerance.

9.3 If a Party shall require access to any area under the care, custody or control of the other Party for purposes of this Section 9, 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.

10. WATER MANAGEMENT AND SCHEDULING

10.1 If during the Term:

(a) the Wholesale Water Supply shall be used by Customer for any purpose other than (i) to serve Customer's retail customers, or (ii) aid another purveyor in an emergency through an emergency intertie, or perform routine flushing of an emergency intertie; or

(b) Customer shall acquire or activate an additional or alternative source or supply of water (including storage) that is used by Customer to serve Customer's customers (retail or wholesale), other than storage sufficient enough to serve Customer's Fife Heights Urban Growth Area pressure zone,

then in such event, Customer shall comply with the terms and conditions of Sections 10.2 through 10.5 below. Customer shall provide Tacoma advance written notice of any such emergency intertie or storage facility, and any such emergency intertie or storage facility shall be subject to Tacoma's prior written approval, which shall not be unreasonably withheld (and may under appropriate circumstances include compliance with this Section 10).

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

10.3 Prior to 10:00 a.m. on any Thursday during the Term, Customer 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 10.3.

10.4 The Parties agree to jointly develop and maintain operating protocols for items including the scheduling of water demand to assure consistent flow control and treatment, routine operational communication, emergency shutdown, emergency contacts and other items the Parties determine appropriate ("Operating Protocols"). The Operating Protocols shall be subject to Tacoma's approval, which such approval shall not be unreasonably withheld, conditioned or delayed.

10.5 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 Customer 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

11. CONSERVATION AND PLANNING

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

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

12. RISK OF LOSS

12.1 Title to and risk of loss of water delivered by Tacoma to Customer pursuant to Section 7 shall pass from Tacoma to Customer at the Wholesale Service Connections.

12.2 Title to the Wholesale Service Connections, the Meter and the Telemetry Equipment shall be vested in Tacoma. Except as otherwise provided by Section 9.2, Customer shall have no right to operate, suspend, curtail, design, construct, test, maintain, repair, improve, replace and use the Wholesale Service Connections, the Meter and the Telemetry Equipment. Title to the Interconnection Facilities shall be vested in Customer. Tacoma shall have no right or responsibility to operate, suspend, curtail, design, construct, test, maintain, repair, improve, replace or use the Interconnection Facilities.

13. INDEMNIFICATION

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

- (a) the transportation, storage, sale, delivery and use of any water delivered to Customer in accordance with this Agreement;
- (b) the negligent, reckless, or otherwise tortious acts or omissions of Customer, or of anyone directly or indirectly retained or employed by Customer, in performance of this Agreement;
- (c) any material breach, failure, inconsistency, inaccuracy or default of any one or more representations made to Tacoma in Section 18;
- (d) the use or resale of the Wholesale Water Supply for fire flows or fire suppression purposes, or
- (e) Customer Hazardous Substances.

Nothing herein shall, however, require Customer to defend, indemnify and hold harmless the Tacoma Indemnitees for that portion (if any) of any such liability that is so proportionately and legally attributable to the negligent acts or omissions of any one or more of the Tacoma Indemnitees. As between the Parties and solely for the purpose of the indemnities contained in this Section 13, Customer expressly waives any immunity, defense or protection that may be granted to it under the Washington State Industrial Insurance Act, Title 51 RCW, or any other industrial insurance, workers' compensation or similar laws of the State of Washington to the fullest extent permitted by Applicable Law. This Section 13 shall not be interpreted or construed as a waiver of Customer's right to assert such immunity, defense or protection directly against any of its own employees or any such employee's estate or other representatives. The provisions of this Section 13.1 have been mutually negotiated by the Parties and shall survive the expiration or termination of this Agreement.

13.2. Except with respect to third-party claims as to which Customer has assumed obligations arising under Section 13.1 and notwithstanding anything else in this Agreement to the contrary, neither Party shall be liable as a result of any action or inaction under this

Agreement or otherwise, including, without limitation, negligence or other fault, strict liability without regard to fault, or 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. The provisions of this Section 13.2 have been mutually negotiated by the Parties and shall survive the expiration or termination of this Agreement.

14. 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). Customer 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.

15. NO RIGHT OR CLAIM TO WATER RIGHTS

By this Agreement, Customer 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, Customer 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 Wholesale Service Connections, the Meter or the Telemetry Equipment), or (b) any water rights, water claims, water permits or water certificates.

16. DISPUTE RESOLUTION

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

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

16.3 If the Parties cannot resolve a Dispute satisfactorily within ten (10) days after receipt of the initial notice in accordance with Section 16.2, either Party may deliver to the other Party notice of the Dispute with a detailed description of the underlying circumstances

of such Dispute. The Dispute notice shall include a schedule of the availability of the notifying Party's senior officers duly authorized to settle the Dispute during the thirty (30) day period following the delivery of the Dispute notice. The recipient Party shall, within three (3) business days following receipt of the Dispute notice, provide to the notifying Party a parallel schedule of availability of the recipient Party's senior officers duly authorized to settle the Dispute. Following delivery of the respective senior officers' schedules of availability, the senior officers of the notifying Party and the recipient Party shall meet and confer, as often as they deem reasonably necessary during the remainder of the thirty (30) day period, in good-faith negotiations to resolve the Dispute to the satisfaction of both Parties.

16.4 At any time during such thirty (30) day period a Party may request nonbinding mediation by written notice to the other Party pursuant to this section 16.4. Such notice shall propose the name and credentials of a third-party neutral mediator and shall propose the dates and times for the mediation. Any third-party neutral mediator proposed pursuant to this Section 16.4 shall be experienced with matters involving municipal water supply and service agreements. Upon receipt of such notice, the other Party may within fifteen (15) days of the date of such notice:

- a. decline mediation, and in such event, the Dispute shall be resolved in accordance with Section 16.5;
- b. agree to the proposed third-party neutral mediator and the proposed dates and times for mediation; or
- c. propose the name and credentials of an alternative third-party neutral mediator and/or alternative dates and times for the mediation; provided however, if the Parties are unable to agree upon a third-party neutral mediator and/or the dates and times for mediation within thirty (30) days of the initial request for mediation, then the Dispute shall be resolved in accordance with Section 16.5.

If a Party elects not to respond to a request for mediation (or any subsequent proposal for an alternative third-party neutral mediator and/or alternative dates and times for the mediation), then such failure to respond shall be deemed to be a refusal of such request or proposal for mediation. If the Parties agree to mediation, then the mediation shall take place in Tacoma, Washington and mediator's fees shall be equally shared by the Parties. If the mediation resolves the Dispute, the resolution shall be memorialized in writing, and such resolution is non-binding unless and until it is approved in writing by both Parties. If the Parties cannot resolve the Dispute through mediation, either Party may terminate mediation. Upon termination of mediation, the Dispute shall be resolved in accordance with Section 16.5

16.5 If a Dispute is not resolved to the satisfaction of both Parties pursuant to this Section 16, then either Party may commence suit to pursue any remedy available to such Party under Section 17.2, subject to Section 22.5.

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

17. DEFAULT AND REMEDIES

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

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

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

17.2 Except as otherwise provided by the Wholesale Water Regulations, and subject to the procedures set forth in Section 16, 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, and the right to specifically enforce this Agreement), all of which remedies shall be cumulative. If either Party elects to pursue singularly any remedy available to it under this Section 17, then such Party may at any time thereafter continue to pursue or cease pursuing that remedy and simultaneously elect to pursue any other remedy available to it under this Section 17.

18. REPRESENTATIONS OF THE PARTIES

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

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

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

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

19. TERM

The term of this Agreement (the "Term") shall commence as of the Effective Date and shall remain in full force and effect until the date that Tacoma ceases making wholesale water sales in accordance with the Wholesale Water Regulations.

20. UNCONTROLLABLE FORCES

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

21. NOTICES

21.1 All notices, consents, requests, demands or other communications required or permitted by this Agreement must be given by personal delivery, email or certified mail and shall be sent to the respective Parties as follows:

Tacoma: Water Superintendent
Tacoma Public Utilities
P.O. Box 11007
Tacoma, WA 98411

Customer: Public Works Director
City of Fife
5411 23rd Street East
Fife, WA 98424

21.2 Any such communication by a Party shall be deemed to have been received by the other Party (a) upon the delivery date received by the intended recipient if delivered by hand; (b) five (5) business days after it is sent by certified mail, postage prepaid; or (c) if sent by email transmission, when dispatched and acknowledged by the recipient as having been received in full and in legible form (provided, however, that if such acknowledgement occurs

after 5:00 p.m. on a business day, or at any time on a Saturday, Sunday or holiday, such acknowledgement will be deemed to have occurred as of 9:00 a.m. on the following business day). A Party may change its address for purposes of this Section 21 by giving written notice of such change to the other Party in the manner provided in this Section 21.

22. MISCELLANEOUS

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

22.2 The Parties agree that in taking actions or making determinations required or provided for under this Agreement, each Party shall act in fairness and in good faith. The Parties will cooperate and use commercially reasonable efforts to facilitate the implementation of all aspects of this Agreement. During the Term, each Party, upon the request of the other Party, shall, without further consideration, execute, deliver and acknowledge all such further documents and do and perform all such other acts and things as either Party may reasonably request to effectively carry out the intent of this Agreement.

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

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

22.5 This Agreement shall be governed by and construed in accordance with the laws of the State of Washington (regardless of the laws that might otherwise govern under applicable principles of conflict of laws of such state). Except with respect to a lawsuit or

judicial action or proceeding commenced by a third party in another jurisdiction, the Parties will (a) 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; (b) waive any objection to the laying of venue of any such suit, action or proceeding; and (c) irrevocably submit to the jurisdiction of any such court in any such lawsuit, judicial action or proceeding.

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

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

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

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

responsibilities and/or obligations in, to or from any Persons other than Tacoma and Customer.

22.10 Sections 12, 13, 15, 16, 17, 18, 22.5 and all other terms and conditions of this Agreement that must be reasonably construed to survive the expiration or termination of this Agreement in order to give full force and effect to the intent of the Parties as set forth herein shall survive the expiration or termination of this Agreement, regardless of whether such survival is expressly specified herein.

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

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

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

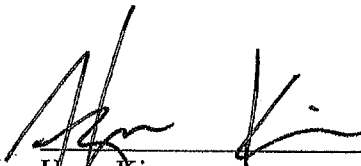
Dated this _____ day of _____, 2020.

City of Tacoma:

Customer: City of Fife

Department of Public Utilities
Water Division


Scott Dewhirst
Water Superintendent



Hyun Kim
City Manager

Approved as to form:

Approved as to form:



City attorney

Exhibit A

WHOLESALE SERVICE CONNECTIONS

MILWAUKEE WAY & EELS ST TRANSFER

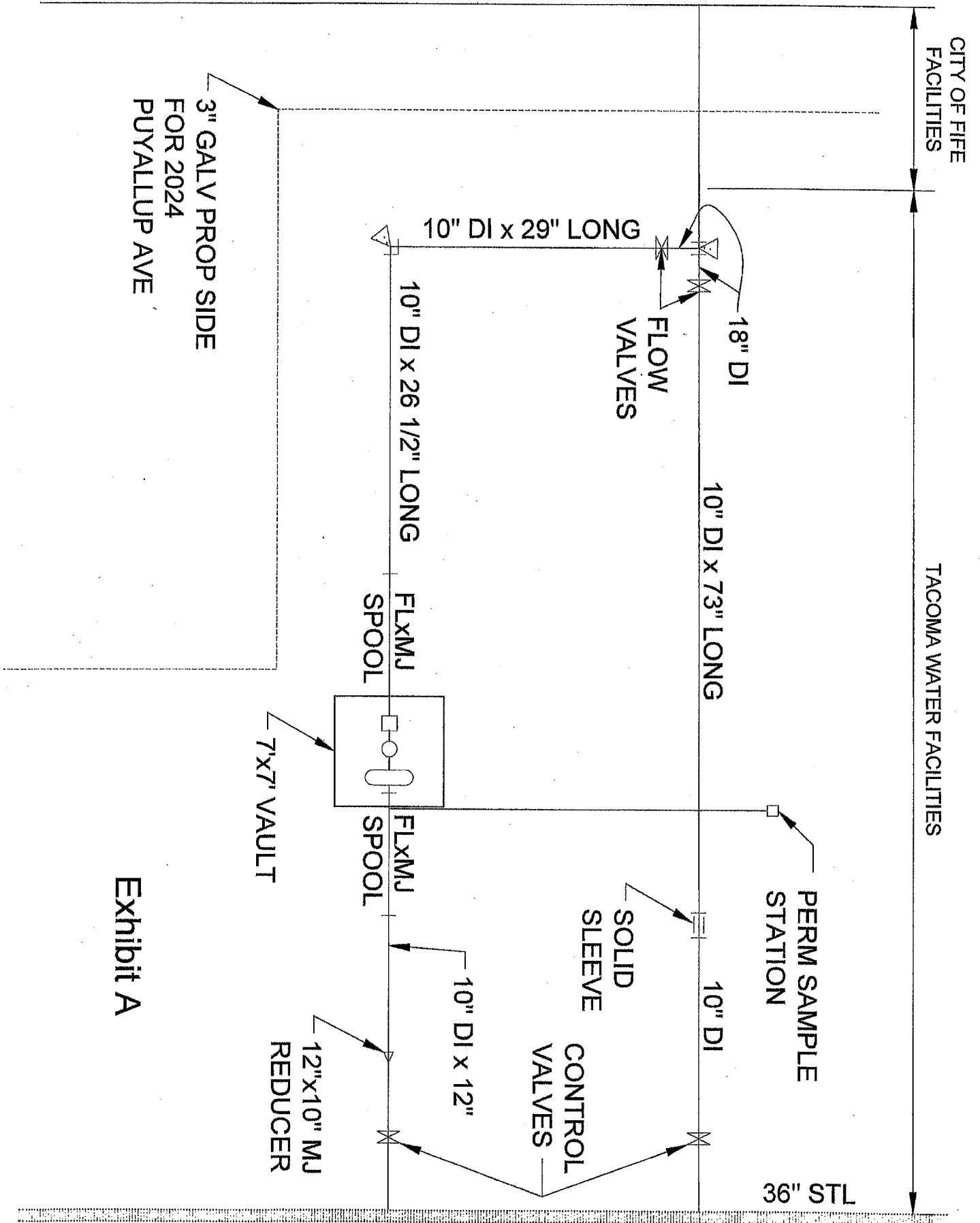


Exhibit A

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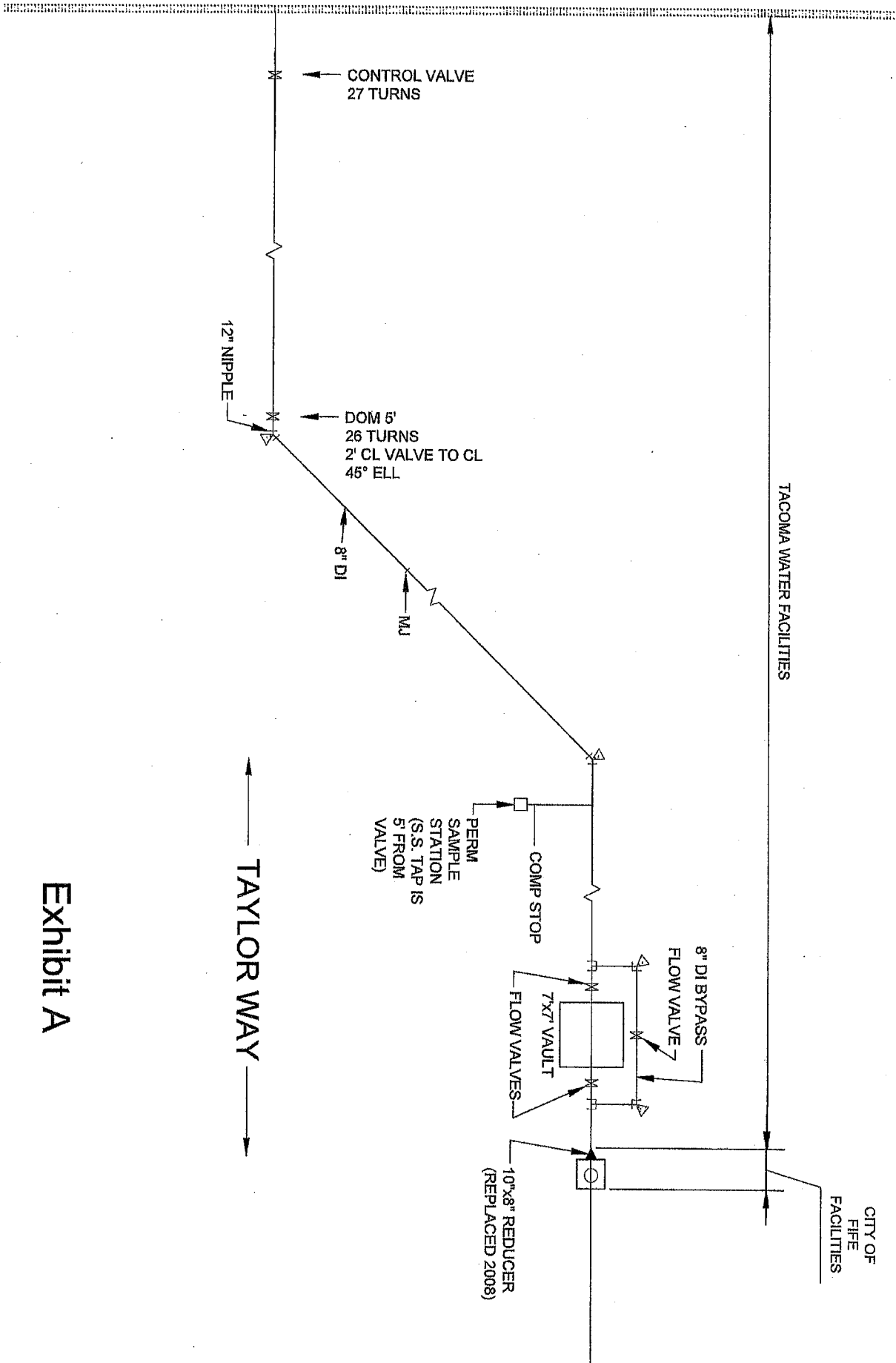


Exhibit A

Exhibit B

Market Wholesale Service Terms and Conditions

1. Market Wholesale Service. As used in this Agreement the term "Market Wholesale Service" means Wholesale Water Service, with the following exceptions:

1.1 notwithstanding Section 1 of the Agreement, the annual average daily demand and peak period limitations applicable to the wholesale water supply to be provided pursuant to the Market Wholesale Service ("Market Wholesale Water Supply") shall be determined in accordance with Section 3 of this Exhibit B; and

1.2. notwithstanding Section 4 of the Agreement, all charges, fees and other amounts due Tacoma for the Market Wholesale Service shall be determined in accordance with Section 4 of this Exhibit B.

2. Terms and Conditions of Market Wholesale Service. Tacoma agrees to sell and deliver the Market Wholesale Water Supply to Customer as a Market Wholesale Service, and Customer agrees to purchase and take delivery of the Market Wholesale Water Supply from Tacoma as a Market Wholesale Service, subject to the Wholesale Water Regulations and the terms and conditions of the Agreement and this Exhibit B. If there is an express conflict between the provisions contained within the body of the Agreement and the provisions of this Exhibit B, then the body of the Agreement shall govern and control, except with respect to the specific requirements pertaining to Market Wholesale Service set forth in this Exhibit B, in which case, the conflicting provisions of this Exhibit B shall govern and control. As it pertains to Market Wholesale Service, the Agreement is inclusive of this Exhibit B and shall be construed and interpreted as a whole.

3. Provision of Market Wholesale Service.

3.1 Market Wholesale Service is available to Customer during the first fifty (50) years of the Term. Within such period, Customer may request and may receive Market Wholesale Service, subject to the terms and conditions of this Agreement. Customer may request Market Wholesale Service by written notice to Tacoma which such notice shall, at a minimum, include the following information:

3.1.1 the proposed term of the Market Wholesale Service ("Service Term"), which shall occur during the first fifty (50) years of the Term, shall not be less than five (5) years or more than twenty (20) years, from and after the date that Tacoma shall approve Customer's request for Market Wholesale Service in accordance with Section 3.2 of this Exhibit B;

3.1.2 the proposed Market Wholesale Water Supply, with specific reference to the annual quantity of water to be purchased and any peak period limitations (i.e., annual average daily demand, peak season (June-September) demand, and peak day demand). The proposed Market Wholesale Water Supply, expressed in measures of

million gallons per day (the "Set Amount"), shall be an absolute and fixed quantity of water purchased by Customer and available for delivery at the Wholesale Service Connections pursuant to the terms and conditions of the Agreement;

3.1.3 an analysis of Customer's cost to acquire or develop alternative water supply resources, with sufficient capacity to supply not less than the Set Amount over the course of the proposed Service Term, which such analysis shall be prepared in accordance with standard practices and methods customary to the industry during the relevant time period and consistent with Prudent Utility Practices; and

3.1.4 a certification by Customer, in a form acceptable to Tacoma, that the information provided to Tacoma in support of its request for Market Wholesale Service is, to the best of Customer's knowledge and belief, true, accurate, correct and complete for purposes of Tacoma's use and reliance in connection with the determination of a Market Rate in accordance with Section 3.2 of this Exhibit B.

3.2 Based upon information provided by Customer in support of its request for Market Wholesale Service, Tacoma shall determine the initial Market Rate pursuant to which Market Wholesale Service may be offered to Customer. The initial Market Rate shall be the rate or rates established for the Set Amount by Tacoma, and such rate or rates shall be based upon Customer's avoided cost to acquire or develop alternative water supply resources and such other generally accepted rate-setting principles and methodologies as Tacoma may apply on a uniform and consistent basis. Within ninety (90) days of Tacoma's receipt of a request for Market Wholesale Service, Tacoma may, by written notice to Customer:

3.2.1 approve Customer's request for Market Wholesale Service on the terms and conditions set forth in the Customer's notice requesting such service, effective as of a commencement date that Tacoma shall designate in its notice of approval ("Commencement Date"), to be provided by Tacoma to Customer at the Market Rate as of the Commencement Date;

3.2.2 reject Customer's request for Market Wholesale Service on the terms and conditions set forth in Customer's notice requesting such service, and propose different or additional terms and conditions of Market Wholesale Service, for future consideration by Customer in connection with any subsequent request by Customer for Market Wholesale Service;

3.2.3 reject Customer's request for Market Wholesale Service as a service not currently available to Customer pursuant to this Agreement; or

3.2.4 advise Customer that Tacoma requires additional information from Customer to evaluate Customer's request for Market Wholesale Service, and/or additional time to evaluate Customer's request for Market Wholesale Service.

3.3 As to any request for Market Wholesale Service requested by Customer and approved by Tacoma pursuant to Section 3.2 of this Exhibit B, concurrent with such approval,

Tacoma shall provide Customer with a memorandum of understanding confirming the terms and conditions of such Market Wholesale Service ("Memorandum of Understanding"). If Customer shall execute and return the Memorandum of Understanding to Tacoma prior to the Commencement Date, then Market Wholesale Service shall thereafter be provided by Tacoma to Customer during the Service Term. If Customer shall fail to execute and return the Memorandum of Understanding to Tacoma prior to the Commencement Date, then Market Wholesale Service shall be deemed to be terminated as of the Commencement Date. The Memorandum of Understanding shall provide for the implementation and administration of the Market Wholesale Service, subject and subordinate to the terms and conditions of this Agreement. In the event of any conflict or inconsistency between the terms and conditions of a Memorandum of Understanding and the terms and conditions of this Agreement, the terms and conditions of this Agreement shall govern and control.

3.4 Customer may request, at any time during the Service Term, that the terms and conditions of Market Wholesale Service set forth in the Memorandum of Understanding be amended. If Tacoma shall agree to any such amendment, the Memorandum of Understanding shall be amended by an instrument in writing executed by the Parties that expressly refers to the Memorandum of Understanding and states that it is an amendment thereof. Any such amendment shall be subject and subordinate to the terms and conditions of this Agreement; provided, however, if any such amendment shall increase the quantity of the Market Wholesale Water Supply available as a Market Wholesale Service, Tacoma reserves the right to charge a rate for such increase in the Market Wholesale Water Supply other than the Market Rate.

4. Wholesale Water Service Charges and Fees. Customer shall pay Tacoma all charges, fees and other amounts for Market Wholesale Service to be determined in accordance with this Section 4 of Exhibit B.

4.1 The initial Market Rate for Market Wholesale Service shall be the rate or rates established by the Memorandum of Understanding for the Set Amount. Beginning on the first anniversary of the Commencement Date, and as of each anniversary thereafter (each, an "Adjustment Date") during the Service Term, the Market Rate shall be the greater of (i) the Market Rate payable immediately prior to the applicable Adjustment Date; or (ii) the Market Rate payable as of the Commencement Date multiplied by a fraction, the numerator of which is the Index (defined below) as of the applicable Adjustment Date and the denominator of which is the Index as of the Commencement Date. "Index" means and refer to the "Construction Cost Index" (20-city average) published by McGraw Hill Construction in the "Engineering News-Record" (1996= 100). If at any time during the Service Term, the Index is no longer published, the Parties agree to substitute any reputable construction cost index, commonly referred to within the construction industry, which is the most nearly comparable to the Index.

4.2 Customer shall pay Tacoma, on a monthly basis, a fixed monthly charge for the Market Wholesale Service ("The Monthly Charge"). The Monthly Charge shall be an amount equal to the sum of all charges to be determined by application of the Market Rate to the Set Amount in any given month. From and after the Commencement Date, the Monthly

Charge shall be due Tacoma and payable by Customer for each month occurring during the Service Term. The Monthly Charge for the Market Wholesale Service shall be due Tacoma and payable by Customer regardless of whether any water shall have been actually delivered by Tacoma to the Customer at the Wholesale Service Connection during the immediately preceding calendar month, subject to reduction by any Earned Credit determined in accordance with Section 4.3 of this Exhibit B. The Monthly Charge, together with any Earned Credit, shall be applied, billed and collected in accordance with the procedures for billings, collections and payments set forth in the Wholesale Water Regulations.

4.3 As to any portion of the Set Amount that is scheduled by Customer for delivery pursuant to Section 10 of the Agreement, and which such delivery does not occur for reasons other than acts or omissions by or on behalf of Customer, an Earned Credit shall be determined by Tacoma for the month in which such scheduled delivery did not occur. The amount of the Earned Credit (if any) shall be determined by applying the Market Rate to the scheduled portion of the Set Amount that was not delivered at the Wholesale Service Connection. The Earned Credit (if any) shall be established by reference to the amount of water actually delivered by Tacoma to Customer at the Wholesale Service Connection, as determined by the Meter, during the month in question. Customer shall not be entitled to an Earned Credit unless the delivery in question was scheduled by Customer in accordance with Section 10.3 of the Agreement, nor shall Customer be entitled to an Earned Credit for any failure of delivery by Tacoma that is (i) withheld by Tacoma by reason of a Customer default, or (ii) otherwise excused by the terms and conditions of the Agreement.

4.4 During the Service Term, the monthly invoice payable by the Customer will include charges for amounts due to Tacoma for Actual Consumption in excess of the Set Amount (if any), which will be calculated against the Set Amount threshold on a daily basis. "Actual Consumption" is the Annual Average Daily Demand, Peak Season Demand, and Peak Day Demand actually delivered by Tacoma to the Customer at the Wholesale Service Connection, as determined by the Meter. "Capacity Rental Rate" is the rental rate for capacity in exceedance of the Peak Day Demand Set Amount. The charges for such excess consumption shall be determined by Tacoma at the rate or rates generally in effect pursuant to the Wholesale Water Regulations for wholesale customers to be calculated as follows:

4.4.1 For the base season (October-May), charges for exceedance of the Average Daily Demand Set Amount will be calculated as follows:

[Exceedance Amount]
× (Applicable Rate pursuant to Wholesale Water Regulations)

4.4.2 For the peak season (June-September), charges for exceedance of the Peak Season Demand Set Amount will be calculated as follows:

[Exceedance Amount]
× (Applicable Rate pursuant to Wholesale Water Regulations)

4.4.3 For the peak season (June-September), charges for exceedance of the Peak Day Demand Set Amount will be calculated as follows:

[*Exceedance Amount*]

× (*System Development Charge as published in the Wholesale Water Regulations*)

× (*Annual Capacity Rental Rate of 10%*)

Any such charges so determined shall be billed and collected in accordance with the procedures for billings, collections and payments set forth in the Wholesale Water Regulations.

4.5 Customer shall not, in any month during the Service Term, have the right to take delivery of water in quantities that exceed the Set Amount. Charges levied and collected in accordance with Section 4.4 of this Exhibit B for Actual Consumption in excess of the Set Amount shall be a right in addition to, and not a limitation of, any and all other rights and remedies available to Tacoma under the Agreement.

5. Expiration of Service Term. Upon the expiration of the Service Term, the Agreement shall remain in full force and effect and the Parties rights and responsibilities under the Agreement thereafter shall be determined without regard to the terms and conditions of this Exhibit B.

6. No Permanent Water Supply

6.1 The Parties acknowledge that the Market Wholesale Service is a temporary service available during the Service Term and that the Market Wholesale Service may not be available to Customer from and after the expiration of the Service Term. The Parties further acknowledge that the Market Wholesale Water Supply is not offered to the Customer as a permanent water supply in augmentation of the Wholesale Water Supply to be provided by Tacoma to Customer pursuant to Section 3 of the Agreement, and that the Market Wholesale Water Supply may not be available to Customer from and after the expiration of the Service Term. Tacoma expressly disclaims any express or implied right arising under this Agreement or Applicable Law to provide all or any portion of the Market Wholesale Water Supply as a permanent water supply. Customer shall be solely responsible for the planning, acquisition and development of its own water supply resources without regard to the availability of the Market Wholesale Water Supply from and after the expiration of the Service Term.

6.2 Upon expiration of the Service Term Tacoma may, in its sole discretion, choose to offer to the Market Wholesale Water Supply (or some portion thereof) as a permanent water supply in augmentation of the Wholesale Water Supply to be provided by Tacoma to Customer pursuant to Section 3 of the Agreement, on such terms and conditions as may then be mutually to Tacoma. Without limiting the generality of the foregoing, as to any portion of the Market Wholesale Water Supply Tacoma may offer in augmentation of the Wholesale Water Supply, Customer shall pay a capital recovery charge for such additional permanent capacity in an amount that is not less than 125% of the system development charge (or equivalent) then in effect pursuant to the Wholesale Water Regulations. Such capital

recovery charge shall be due and payable by the Customer, in full, to Tacoma within one hundred eighty (180) days of the date the expiration or termination of the Service Term (as the case may be).

7. No Resale Without Tacoma's Prior Consent. Notwithstanding Section 3.1 of the Agreement, the Market Wholesale Water Supply may be used by Customer as a source of water for resale by Customer to Customer's retail customers. The Market Wholesale Water Supply may not be used or resold by Customer for any other purpose whatsoever, without Tacoma's prior written consent.

Exhibit C

MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, WATER DIVISION AND _____

This Memorandum of Understanding ("MOU") is made by and between the City of Tacoma, Department of Public Utilities, Water Division ("Tacoma") and _____ ("Customer") as of this ____ day of _____, 20__ ("Effective Date"). Tacoma and Customer are each individually referred to herein as a "Party" and collectively referred to as the "Parties." This MOU is made in reference to the following facts.

RECITALS

A. 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. Customer is a _____ organized and operating as a _____ corporation under the laws of the State of Washington, and is a wholesale water supply customer of Tacoma.

C. Pursuant to that certain Wholesale Water Supply Agreement, entered into by and between the Parties and effective as of _____, __, 20__ (the "Agreement"), Tacoma agreed to sell and deliver a wholesale water supply to Customer, and Customer agreed to purchase and take delivery of a wholesale water supply from Tacoma.

D. Customer has requested Market Wholesale Service pursuant to the Agreement and Tacoma has approved Customer's request for Market Wholesale Service, to be provided pursuant to the terms and conditions of the Agreement.

E. The sole and limited purpose of this MOU is to memorialize the Parties' understanding with respect to the Service Term, the Set Amount, the Market Rate, the Adjustment Date and the Annual Adjustment which, in each case, apply to Market Wholesale Service to be provided by Tacoma to Customer pursuant to the Agreement.

NOW THEREFORE, in consideration of the foregoing the Parties agree as follows:

1 Purpose, Construction and Interpretation: This MOU provides for the implementation and administration of the Market Wholesale Service, subject and subordinate to the terms and conditions of this Agreement. In the event of any conflict or inconsistency between the terms and conditions of a MOU and the terms and conditions of the Agreement, the terms and conditions of the Agreement shall govern and control. All terms and conditions that are defined in the Agreement shall have the same meaning given in the Agreement if and as such terms and conditions are as used in this MOU.

2 Commencement Date: The Commencement Date of Market Wholesale Service shall be _____, 20__.

3. **Service Term:** The Service Term for Market Wholesale Service shall commence as of the Commencement Date and shall end on _____, __ 20__.

4. **Set Amount:** The Set Amount of the Market Wholesale Water Supply available during the Service Term for Market Wholesale Service shall be:

4.1 Base Season (October – May): _____ MGD;

4.2 Peak Season (June – September): _____ MGD;

5. **Market Rate:** The Market Rate for the Set Amount of the Market Wholesale Water Supply available during the Service Term for Market Wholesale Service shall be:

5.1 Market Rate: _____ per CCF.

6. **Adjustment Date:** The initial Adjustment Date for the Market Rate shall be _____.

7. **Annual Adjustment:** The initial Annual Adjustment (if required) shall be determined as of _____.

This MOU is made by and between the undersigned Parties as of the Effective Date.

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

CUSTOMER _____
_____.

By: _____
Its: _____

By: _____
Its: _____

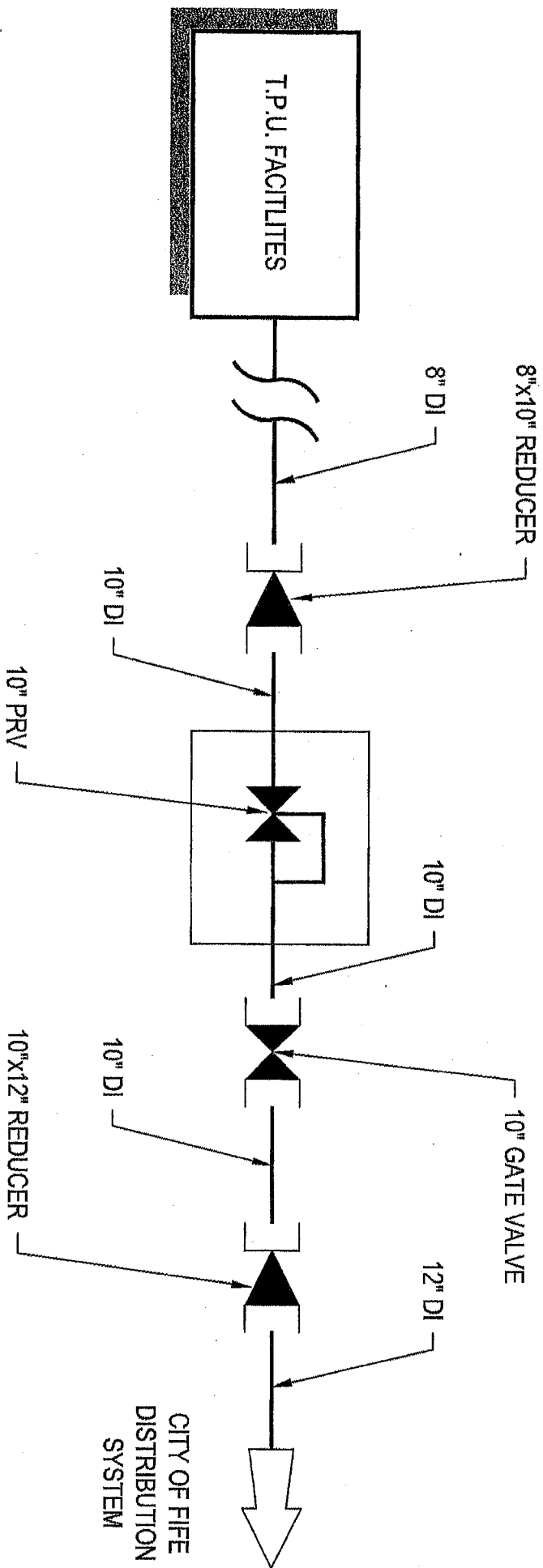
Exhibit D

Purchased System Capacity (as of the Effective Date)

System Capacity (Gallons)			
	Date	Average Day	Peak Day
Initial Capacity	Pre-1999	1,047,157	2,573,868
Additional Capacity	April 2007	423,399	326,128
Total	Effective Date	1,470,556	2,899,996

Exhibit E

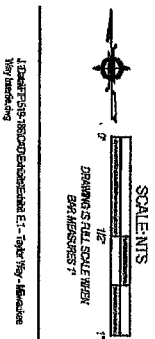
Customer's Interconnection Facilities (as of the Effective Date)



X

CITY OF FIFE FACILITIES

X

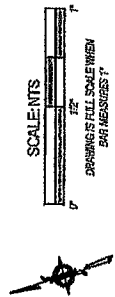
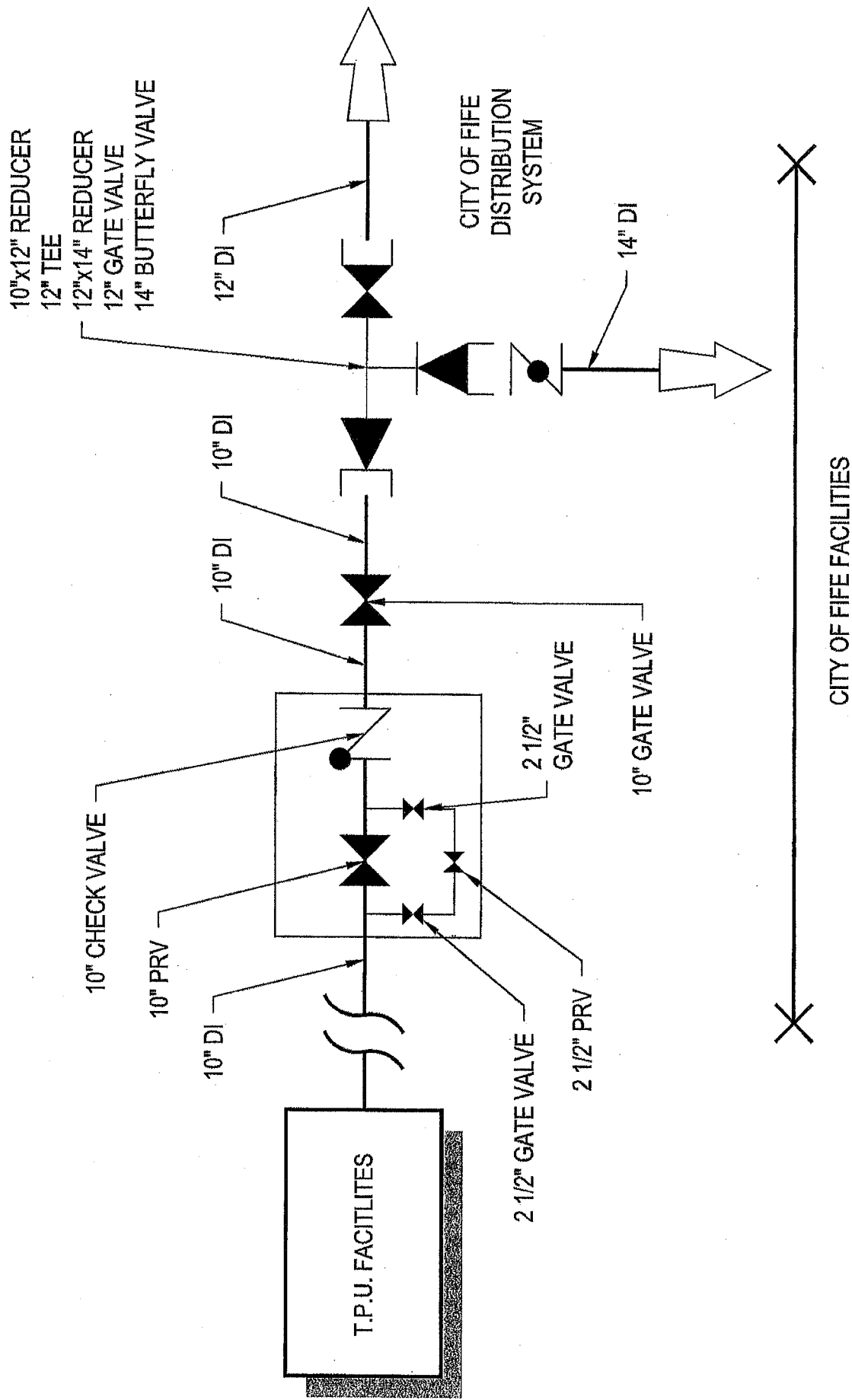


RH2

50
FIFE
WASHINGTON

EXHIBIT E.1

TAYLOR WAY INTERTIE



SCALE

1" = 10'
DRAWING IS FULL SCALE UNLESS
OTHERWISE NOTED



EXHIBIT E.2

MILWAUKEE WAY INTERTIE

DESIGNED BY: [Signature]
CHECKED BY: [Signature]
DATE: 10/1/2010