



RESOLUTION NO. U-11252

1 A RESOLUTION related to the execution of a 50-year Easement Agreement
2 with Pierce County for the construction, operation and maintenance of
approximately 5.5 miles of the Pipeline Trail.

3 WHEREAS the City of Tacoma, Department of Public Utilities, Water
4 Division ("Tacoma Water") has requested authorization to enter into a 50-year
5 Easement Agreement with Pierce County, for the construction, operation and
6 maintenance of approximately 5.5 miles of regional trail, referred to as the
7 Pipeline Trail, within Tacoma Water's Pipeline No. 4 right-of-way, and to amend
8 said easement upon trail completion to include the final as-built legal
9 description, and
10

11 WHEREAS Tacoma Public Utilities ("TPU") has supported trail
12 development in active, non-surplus utility right-of-way (ROW) for the last three
13 decades to reduce operational costs related to ROW monitoring and
14 maintenance, to foster inter/intragovernmental partnerships, and to provide the
15 communities we serve with an expanded active trail network that connect parks,
16 schools, health services, and cultural destinations, and
17

18 WHEREAS these collaborative efforts have led to the Pierce County and
19 Gig Harbor developed Cushman Trail and the City of Tacoma developed Water
20 Flume Line and Pipeline Trails, which has greatly increased the trail networks
21 within the greater Tacoma and Pierce County region, and
22

23 WHEREAS the Pierce County extension of the Pipeline Trail is planned
24 to be a 12-foot wide, non-motorized trail constructed of asphalt pavement, and
25
26



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

WHEREAS Pierce County has requested TPU grant a 50-year easement over approximately 5.5 miles of Tacoma Water Pipeline No. 4 ROW and a small segment of Tacoma Power's un-utilized Cowlitz substation property (SW corner), and

WHEREAS Pierce County has approved the proposed Easement Agreement, and

WHEREAS the Easement Agreement contains conditions requiring Pierce County to reimburse TPU for trail design construction-related costs; maintenance of certain areas of the trail system; and payment to Tacoma Water for an annual maintenance fee for certain services such as grass mowing and tree removal, and

WHEREAS in addition, Tacoma Water is requesting that the Director of Utilities be authorized to amend the Easement Agreement to attach the final as-built legal description as Exhibit B; Now, therefore,

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

That the Public Utility Board of the City of Tacoma hereby authorizes the Director of Utilities to execute the 50-year Easement Agreement, substantially in the form on file with the Clerk, with Pierce County, for the construction, operation and maintenance of approximately 5.5 miles of regional trail, referred to as the Pipeline Trail, and grant the Director of Utilities authority to amend the



TO: Jackie Flowers, Director of Utilities
COPY: Charleen Jacobs, Director and Board Offices
FROM: Dylan Harrison, Senior Real Estate Officer, Public Works
Jennifer Hines, Assistant Division Manager, Public Works
MEETING DATE: May 12, 2021
DATE: April 30, 2021

STRATEGIC DIRECTIVE ALIGNMENT (select as many that apply):

Please indicate which of the Public Utility Board's Strategic Directives is supported by this action.

- | | |
|--|---|
| <input type="checkbox"/> SD1 – Equity & Inclusion | <input type="checkbox"/> SD8 – Telecom |
| <input checked="" type="checkbox"/> SD2 – Financial Sustainability | <input type="checkbox"/> SD9 – Economic Development |
| <input type="checkbox"/> SD3 – Rates | <input checked="" type="checkbox"/> SD10 – Government Relations |
| <input type="checkbox"/> SD4 – Stakeholder Engagement | <input type="checkbox"/> SD11 – Decarbonization/Electric Vehicles |
| <input checked="" type="checkbox"/> SD5 – Environmental Leadership | <input type="checkbox"/> SD12 – Employee Relations |
| <input type="checkbox"/> SD6 – Innovation | <input type="checkbox"/> SD13 – Customer Service |
| <input type="checkbox"/> SD7 – Reliability & Resiliency | <input type="checkbox"/> SD14 – Resource Planning |

SUMMARY: To authorize the Director of Utilities to enter into a 50-year Easement Agreement with Pierce County for the construction, operation, and maintenance of approximately 5.5 miles of regional trail, commonly referred to as the Pipeline Trail, primarily within Tacoma Water's Pipeline No. 4 right of way, and to delegate authority to the Director of Utilities to amend said easement upon trail completion to include the final as-built legal description.

BACKGROUND: Over the last three decades Tacoma Public Utilities has supported trail development in active, non-surplus utility rights of ways (ROW) to reduce operational costs related to ROW monitoring and maintenance, to foster inter/intragovernmental partnerships, and to provide the communities we serve with expanded active transportation facilities that connect parks, schools, health services, and cultural destinations. The collaborative efforts have led to the Pierce County and Gig Harbor developed Cushman Trail and the City of Tacoma developed Water Flume Line and Pipeline Trails, which have greatly increased the trail networks within the greater Tacoma and Pierce County region. During the planning phase of the Pipeline Trail, the City and Pierce County had studied an extension from the City of Tacoma limits to the South Hill area to conceptualize a trail connection between the Regional Tacoma Dome Station and the Foothills Trail. Similar to the city's trail segment, the Pierce County portion will benefit the community by connecting several parks, schools, and other trails along its route. The Pierce County extension of the trail is planned to be a 12 feet wide, non-motorized trail constructed of asphalt pavement.

In order to secure funding for this Pipeline Trail extension and to formally authorize the trail design and construction, Pierce County has requested Tacoma Public Utilities grant a 50-year easement over approximately 5.5 miles of Tacoma Water Pipeline No. 4 ROW and a small segment of Tacoma Power's unutilized Cowlitz substation property (SW Corner). Pierce County has already approved the proposed easement agreement. Among other conditions, the easement will require Pierce County to: a) reimburse Tacoma Public Utilities for trail design construction related costs; b) maintain certain areas of the trail system; and c) pay Tacoma Water an annual maintenance fee for certain services such as grass mowing and danger tree removal.



Board Action Memorandum

This resolution will authorize the Director of Utilities to execute the attached Easement Agreement, substantially in the herein attached form, and will delegate authority to the Director of Utilities to later amend said Easement Agreement to attach the final as-built legal description as Exhibit B.

ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED? No

Reimbursement and maintenance fee revenues will be posted to the operating fund to offset expenses that may be incurred.

IF THE EXPENSE IS NOT BUDGETED, PLEASE EXPLAIN HOW IT IS TO BE COVERED.

N/A

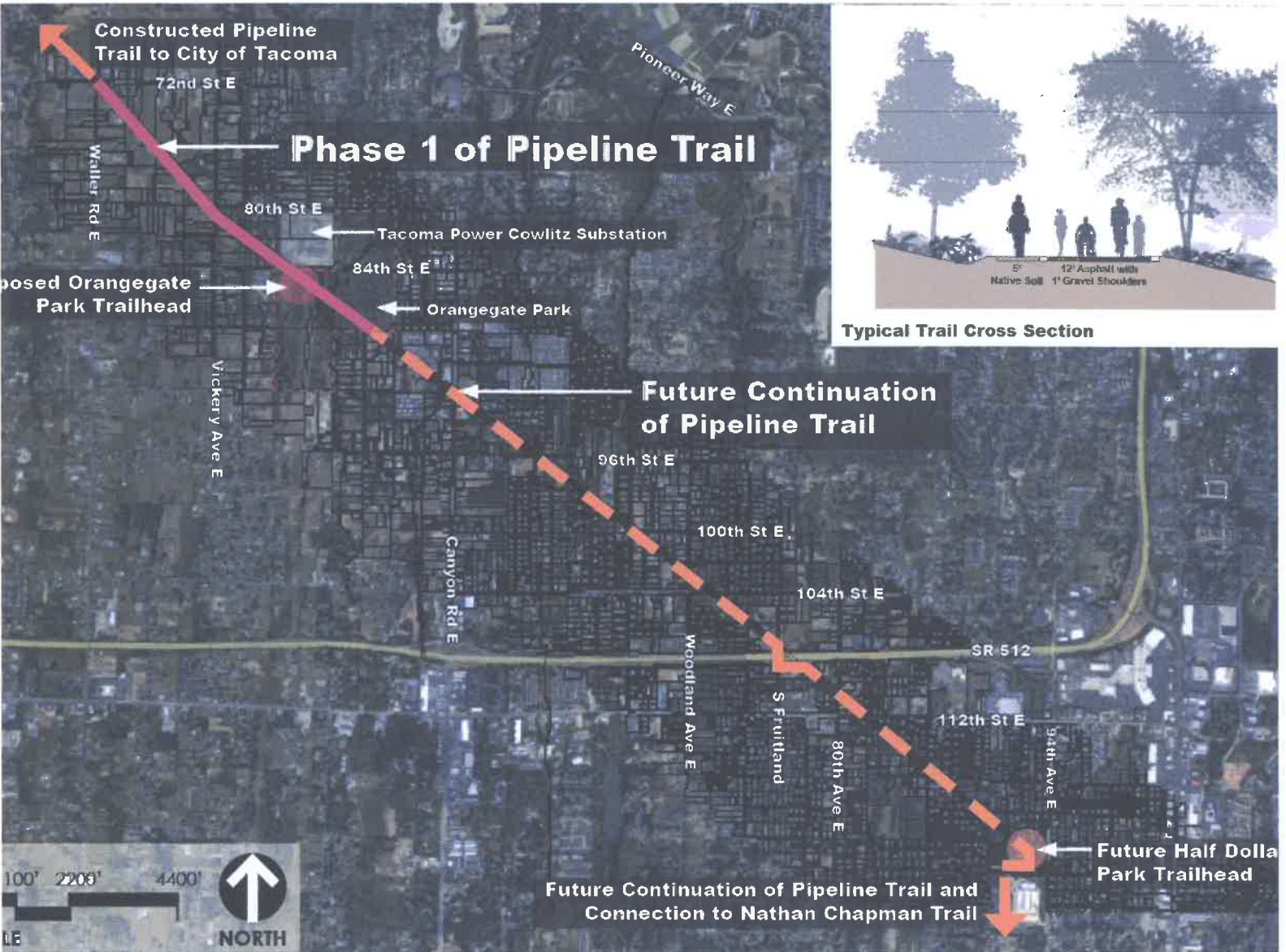
IF THE ACTION REQUESTED IS APPROVAL OF A CONTRACT, INCLUDE LANGUAGE IN RESOLUTION AUTHORIZING \$200,000 INCREASE IN ADMINISTRATIVE AUTHORITY TO DIRECTOR? No

ATTACHMENTS: Easement Agreement, Map of Proposed Trail (Easement Area)

CONTACT: Dylan Harrison, Senior Real Estate Officer, (253) 502-8836, dharrison@cityoftacoma.org
Jennifer Hines, Assistant Division Manager, (253) 591-5320, jhines@cityoftacoma.org

Map of Proposed Pierce County – Pipeline Trail

Future Connection to Foothills Trail



WHEN RECORDED RETURN TO:
Pierce County Parks and Recreation
9112 Lakewood Dr.
Lakewood, WA 98499

**PIERCE COUNTY AND TACOMA PUBLIC UTILITIES EASEMENT
AGREEMENT FOR CONSTRUCTION, OPERATION AND
MAINTENANCE OF THE PIPELINE TRAIL**

This EASEMENT AGREEMENT, herein referred to as this "Agreement" is made and entered into this day and by and between Pierce County and Tacoma Public Utilities, herein referred to as TPU, collectively referred to in this Agreement collectively as the "Parties" and individually as a "Party."

RECITALS

WHEREAS, TPU owns and has easement rights to certain properties located Southeasterly of the East line of the West Half of the Northwest Quarter of Section 26, Township 20 North, Range 3 East, W.M., in Pierce County, Washington (Easterly line of current Tacoma city limits) and Northwesterly of the East line of the Southwest Quarter of Section 9, Township 19 North, Range 4 East, W.M., in Pierce County, Washington (the centerline of 94th Avenue East), which is currently used for a water transmission pipeline known as Pipeline #4 and electrical transmission and distribution lines, herein referred to as the "Property," as shown on the herein attached Exhibit "A";

WHEREAS, the primary purpose of the Property is for the transmission and distribution of a public water supply and electrical services; and

WHEREAS, Pierce County desires TPU to grant easement rights for the use of the fee simple portions of the Property for the construction, operation, and maintenance of a public recreational trail; and

WHEREAS, Pierce County desires TPU to consent to the use of certain TPU easement rights within portions of the Property for the construction, operation, and maintenance of a public recreational trail; and

WHEREAS, TPU is willing to grant Pierce County easement rights and consent to use portions of the Property for limited recreational trail purposes, subject to certain conditions and provided that such use does not unreasonably interfere with TPU's use of the Property for its water supply and electrical systems or other necessary utility purposes; and

WHEREAS, TPU desires to allow public access and use of the public recreational trail to be located on the Property; and

WHEREAS, TPU and Pierce County intend to work cooperatively and collaboratively to continue the work that TPU has already completed through a partnership with the City of Tacoma.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants set forth herein, the sufficiency of which is hereby acknowledged by both Parties, the Parties agree as follows:

1. Permitted Use.

- 1.1 **Grant.** TPU hereby grants easement rights and consent to Pierce County for use of portions of the Property for the construction, operation and maintenance of a multi-modal, recreational trail and appurtenances herein referred to as the "Pipeline Trail." Said use shall be limited to a 30-foot strip of land upon which the existing Pipeline Trail improvements are located between the City of Tacoma city limits and E. 72nd Street (see Section 19 regarding the MOA), and upon which the Pipeline Trail and associated improvements will be placed by Pierce County in accordance with plans approved by TPU as outlined in Section 3 herein. Upon completion of Pipeline Trail, Pierce County agrees to provide an as-built drawing and legal description of said strip subject to review and approval by TPU. Upon said approval, the Parties agree to execute an amendment to this Agreement, attach the final legal description as Exhibit "B," and adopt the same as the herein "Premises."

Pierce County agrees to design the Pipeline Trail and to draft the subsequent legal description in a manner designed to limit the use of the Property to the greatest extent possible.

TPU further grants revocable, non-exclusive permission and consent to Pierce County for use of portions of the Property located outside the Premises for construction and maintenance of the Pipeline Trail as outlined in Section 4 & 5 herein.

The Pipeline Trail shall be defined as a multi-modal paved pathway and equestrian pathway within the Premises made available for use by pedestrians, bicycles,

electric-assisted devices as approved by the Parties, equestrians, cross-country skiers, non-motorized wheeled recreational equipment, and motorized wheelchairs or other specialized equipment that accommodates use by disabled users. Any other reasonable recreational use allowed or anticipated by Pierce County not specified above must be approved in writing by TPU. The definition of Pipeline Trail shall not include informal trails connecting to the Premises that were constructed by private entities without Pierce County's approval. This definition does not include or apply to the access road maintained by TPU for access to the water transmission line that runs parallel to the Pipeline Trail, except where the trail and utility service road are combined (joint use sections) as described in Section 5.7.

- 1.2 **Permitted Use.** Easement rights and/or consent granted herein shall be conditioned upon Pierce County using the Premises solely for the construction, operation, and maintenance of Pipeline Trail for use by and open to members of the general public as specified above free of charge. However, special events shall be subject to TPU's prior approval. Pierce County will not schedule any special event, such as a marathon, bike-a-thon, or any other event where fees are charged and/or TPU access to the Premises may be restricted, without first obtaining a land use permit from TPU, which will be applied for and processed in accordance with applicable TPU policies and procedures and may be granted or denied in TPU's sole discretion. The Permitted Use does not give Pierce County the right to issue use permits to any third party, and Pierce County shall not issue third party permits for the use of the Premises without written permission from TPU. Pierce County will provide TPU a schedule of events quarterly. TPU agrees to respond to special event requests within twenty (20) business days of receipt.
- 1.3 **Non-exclusive Use.** Pierce County's right to use the Premises is non-exclusive. The Parties expressly acknowledge and agree that the Premises will be open to the general public for recreational use. TPU reserves the right to permit other entities or individuals to use any or all portions of the Premises, including the right to permit other utilities to use any portion of the Premises for the benefit of TPU or pursuant to law, orders, or requirements of any government entity with authority to make such orders. TPU agrees to make reasonable efforts to inform Pierce County of proposed or pending uses of the Premises that may significantly affect the operation of the Pipeline Trail.
- 1.4 **Use by Motorized Vehicles.** The use of motorized vehicles on the Pipeline Trail is only allowed as necessary for the construction, maintenance, operation, inspection, rehabilitation or repair of recreational trail facilities, for providing police, security, fire and emergency services, and for utility engineering, construction, installation, operation, inspection, audit, vegetation management, and maintenance as outlined in Sections 5.7, 5.8 and 5.9.
- 1.5 **No Interference.** Pierce County's use of the Premises must not unreasonably interfere with TPU's present or future use of the Premises, or any adjoining City of

Tacoma's properties, for water, electrical, utility or any other City purpose, including the sale of any portion of the Premises or the sale of any adjoining City properties. If such unreasonable interference occurs, as determined in the discretion of the Director of TPU ("Director") or his or her designee, Pierce County will reduce or eliminate the interference at Pierce County's sole cost and expense within thirty (30) calendar days after written notice from the Director.

- 1.6 **Use Subject to Existing Rights.** This Agreement and the rights granted herein are subject to easements, permits, leases, rights and obligations, if any, heretofore granted by or to TPU affecting the Premises. This Agreement and its acceptance by Pierce County shall not in any way be construed as a waiver of TPU's rights to allow additional uses of the Premises.
- 1.7 **No Warranty or Quiet Enjoyment.** TPU does not warrant its title to the Property nor does TPU undertake to defend the Pierce County in the peaceable possession, use or enjoyment thereof. TPU does not warrant its authority to grant the above-described use of the Premises including the use of areas of the Premises for which TPU owns easement rights, and Pierce County agrees to secure any other rights needed for its lawful use of the Premises. TPU expressly disclaims any representation or warranty that the Premises is suitable for any use.

2 Effective Date; Term; Extensions.

- 2.1 **Effective Date.** This Agreement will be effective on the date last signed by an authorized representative of each Party following authorization by the TPU Board and the Pierce County Executive ("Effective Date").
- 2.2 **Term.** The term of this Agreement will be fifty (50) years from the Effective Date, unless extended or terminated earlier by either Party pursuant to the terms herein.
- 2.3 **Extensions.** It is understood and agreed that at least three (3) years prior to the expiration date of the term of this Agreement, TPU and Pierce County will independently review and determine if the Pipeline Trail continues to be in the best interest of the parties and the community as a whole. At that time, if both parties agree the Pipeline Trail continues to be in the best interest of the parties and the community as a whole, TPU and Pierce County agree to negotiate, in good faith, a new agreement prior to the termination of this Agreement.

3 Planning and Design of Pipeline Trail.

- 3.1 **Plan Review and Approval.** Pierce County will not request construction bids or undertake any construction or installation of any modifications or improvements upon the Premises without TPU's prior written approval, which shall include TPU's approval of all plans and specifications, including landscaping elements. Pierce County will submit plans and specifications at 30%, 90% and 100% in the design development process, and more often if Pierce County chooses to do so. TPU will

have thirty (30) calendar days to review submitted plans and specifications and submit comments or request additional information, which Pierce County will provide in a timely manner.

- 3.2 Construction Impacts. The plans and specifications will specifically address the management of construction impacts on site, including but not limited to stockpiling of materials, equipment storage, erosion and sediment control, disposition of dewatering and wastewater discharges,
- 3.3 Protection of Facilities. The plans will address TPU pipelines and other facilities, both from construction impacts as well as permanent weight load or other impacts deriving from the constructed trail.
- 3.4 Design Accommodations. TPU will assist Pierce County in designing the Pipeline trail to minimize impacts from heavy equipment associated with utility activities, including identifying and designing for increased weight loads in areas where heavy equipment use on The Pipeline Trail is unavoidable.
- 3.5 Signage. Pierce County will plan and install Pipeline Trail signage at the Premises as follows:
 - 3.5.1 Prior to posting signage on or adjacent to the Premises, Pierce County will obtain TPU's prior written approval of the sign design, content and location, which approval may be withheld or conditioned in TPU's sole discretion. Some signage will include Pipeline Trail use rules.
 - 3.5.2 Following the initial approval process, Pierce County may routinely repair or replace Pipeline Trail signage so long as the appearance, content or locations of the signs does not change.
 - 3.5.3 Pipeline Trail signage installed at Pipeline Trail access locations will contain a working Pierce County telephone contact number to report Pipeline Trail questions, complaints and maintenance issues. If the contact number changes, Pierce County will replace signage with the new contact telephone number within thirty (30) calendar days of the change of contact.
 - 3.5.4 If requested by TPU, Pierce County will install TPU-approved temporary signage during Pipeline Trail closures.
 - 3.5.5 Pierce County will pay for, supply, and install any additional signs TPU deems necessary to adequately identify Pipeline Trail areas or to warn Pipeline Trail users away from utility facilities.
 - 3.5.6 At its sole cost and expense, Pierce County will maintain all signs in reasonably good condition and at a minimum will ensure that the signs are accurate and legible.

3.5.7 Pierce County will install TPU-approved signage prior to opening any portion of the Premises for Pipeline Trail uses.

3.6 Barriers. Pierce County shall plan for safety barriers, temporary access detours and/or closures.

3.7 Pre-Construction Activities.

3.7.1 Encroachments. Prior to construction, TPU will take commercially reasonable efforts to resolve any existing encroachments effecting the Premises, directly or indirectly, and will work cooperatively with Pierce County to find solutions to any unresolved encroachments. Pierce County agrees to provide resources to resolve any existing encroachments upon request by TPU, including, but not limited to, survey work to stake property lines, labor for encroachment removal and/or fence/driveway reconstruction.

3.7.2 Pre-Construction Inspection. Prior to construction, Pierce County and TPU will jointly inspect the Property to finalize trail alignment and determine and record the pre-construction status of the Property.

3.7.3 Lay Down Area. Pierce County and TPU will jointly determine construction lay-down areas in locations which will protect pipeline infrastructure and other known utilities from construction impacts and weight loads. Pierce County agrees to remove said construction lay-down areas prior to opening the Pipeline Trail. This removal is to be done at Pierce County's expense and to the reasonable satisfaction of TPU.

4 Construction of Pipeline Trail.

4.1 General Obligation Regarding Construction. Pierce County will be solely responsible for completing any construction of the Pipeline Trail on the Premises; however, Pierce County will work closely with TPU to make sure any construction completed is in compliance with TPU needs, interests and directions, the Pierce County Parks, Recreation and Open Space Regional Trail Plan, and all applicable state and local laws. Pierce County will not clear, grub, grade or install pavement, new gravel, landscaping, buildings or structures of any kind in or on the Premises without prior written consent from TPU, which may be conditioned in its discretion and will be subject to the requirements stated below.

4.2 Construction. Pierce County, its agents, and contractors, will perform all work on the Property in accordance with plans and specifications approved by TPU. Pierce County will install barriers, signage and any other appropriate device or infrastructure necessary to reasonably prohibit the public from entering the Property in areas where construction or improvements are occurring. Full enclosure will be provided around work on vertical structures, stormwater systems or

constructed walls. Pierce County will leave such measures in place upon completion of construction until after TPU inspects the current section of the Pipeline Trail under construction and determines the construction (1) conforms to the approved plans and specifications and (2) complies with TPU preferences, needs, internal standards and operational requirements. Pierce County will give TPU five (5) working days' prior notice of (1) all scheduled pre-construction and construction meetings and (2) the commencement of construction. Pierce County shall provide sufficient reasonable prior notice for construction meetings scheduled ad hoc so that TPU has the option of attending such meetings and inspecting the Property during construction. During construction, Pierce County will submit any change orders that substantively address design or operational modifications to TPU for its review and approval prior to any work on such change orders proceeding. TPU will have five (5) business days to either respond with comments, or if the issue requires coordination, to request additional time to review the impacts of the proposed change order. TPU will make reasonable efforts to perform timely review and coordination in order to minimize construction delays. Pierce County and its contractors will abide by state, federal and local codes regarding work, construction, and structures in proximity to water supply and electrical systems, and other utilities on the Property and will request and pay for safety watch(es) when required by applicable codes, TPU or other utilities on the Property. Pierce County will complete all work within the Property in a neat and efficient manner. Pierce County will remove all debris and restore areas outside the Premises affected by construction activities to their preconstruction condition, if possible, or to a reasonably similar condition. Pierce County agrees to provide as-built plans of Pipeline Trail to TPU as soon as possible after completion of trail construction.

- 4.3 Public Notice. Pierce County will be solely responsible for appropriately notifying adjacent property owners about planned construction activities and informing the public about plans to develop or open the Pipeline Trail. Pierce County will be the primary point of contact for the public for all trail-related construction; however, Pierce County will provide TPU advance notice of all public communications involving the Property and will provide TPU the opportunity to review and comment about written public notices and to participate in public meetings at TPU's discretion.
- 4.4 Reimbursement of TPU Design & Construction-Related Costs. Pierce County will complete all Pipeline Trail construction and installation at its sole cost and expense. Pierce County will reimburse TPU for expenses associated with TPU's review, approval and inspection of proposed and constructed Pipeline Trail improvements, and TPU's efforts related to encroachment removal, not to exceed \$50,000 per year of design and construction phases. TPU will issue invoices for its costs and expenses and Pierce County will make payment to TPU within sixty (60) calendar days of receiving invoices. Pierce County hereby acknowledges that the late payment of any sums due hereunder, will cause TPU to incur costs not contemplated by this Agreement, the exact amount of which will be difficult to

ascertain. Such costs include, but are not limited to, costs such as administrative processing of delinquent notices, increased accounting cost, and loss of interest income. Accordingly, if any payment due hereunder is not paid as outlined above, a late charge of one percent (1%) per month on the delinquent balance with a minimum late payment charge of \$3.00, in addition to the past due amount itself, shall become immediately due and payable to TPU.

4.5 Compliance with Law. Pierce County will complete all construction in compliance with all applicable federal, state, and local laws and regulations. TPU will not assume responsibility for or control over the working conditions and safety practices of employees, contractors, or subcontractors hired by Pierce County to perform any work on the Property. Nothing in this Agreement, including TPU's plan review and approval, will be construed to place a duty, express or implied, on TPU to control or be responsible for such activities of Pierce County.

4.6 TPU Review and Approvals. Pierce County further acknowledges and agrees that TPU's review, approval, or consent to any proposals, drawings, and/or plans shall not be deemed to be consent, authorization, acknowledgment, certification, warranty, or representation that Pierce County has obtained all required authorizations or that said proposals, drawings, or plans are in any way sufficient or appropriate for the intended purpose, or that said proposals, drawings, or plans comply with, regulatory, design, or engineering standards. Any inspections performed by TPU, or TPU's failure to conduct an inspection, shall not operate to or in any manner impose any legal duty or liability on TPU or relieve Pierce County of any responsibility, obligation, duty or liability under this Agreement or imposed by any applicable law, rule or regulation.

5 Operation and Maintenance of Pipeline Trail.

5.1 Maintenance. Pierce County will maintain all Pipeline Trail improvements requested, constructed or installed on the Premises including those existing trail improvements, consisting of personal property, located outside of the City of Tacoma city limits between E. 68th Street and E. 72nd Street, installed prior to this date of this Agreement and transferred to Pierce County by the MOA referenced in Section 19 below. Otherwise, Pierce County and TPU will maintain the Property as set forth in this section and as outlined in the table below. During the term of this Agreement, at the Director's discretion, the Parties may agree in writing to change the maintenance responsibilities outlined in the table below. All maintenance tasks on the Property, as outlined in the table below, shall be performed at the sole expense of the Party responsible for the task as follows:

Table 1. Trail Maintenance Responsibilities

Task Description	Responsible Party	
	TPU	Pierce County**
Mow grass	X	

Maintain vegetation and remove invasive plants/weeds in planting beds installed for the Trail		X
Clear brush, fallen or danger trees	X	
Maintain vegetation and remove invasive plants/weeds outside of planting beds installed for the Trail	X	
Maintain posts and bollards within the Premises		X
Pick up litter - Premises		X
Pick up litter – Outside of Premises	X	****
Repair graffiti and other vandalism on Premises		X
Transient encampment removal****	X	X
Maintain 1½ inch minus gravel* outside Premises	X	
Maintain perimeter fences owned by TPU	X	
Remove unsafe or nuisance unauthorized trail connections		X
Maintain asphalt and equestrian pathway (Trails)		X
Maintain and ensure safety of pedestrian bridges	***	X
Respond to trail complaints and maintenance requests per section 5.3 of Agreement	X	X
Maintain signage per section 3.4 of Agreement		X
Joint TPU-Pierce County annual inspection of R-O-W used for recreational trail purposes	X	X
Maintain lighting installed on premises		X

* If Pierce County requests the use of smaller gravel in any location, TPU will determine on a case-by-case basis whether the use of smaller gravel will be permitted and whether the gravel will be installed and maintained by Pierce County or by TPU at Pierce County's expense.

** Pierce County's responsibility to maintain the Premises and Pipeline Trail will begin upon construction of the Pipeline Trail or transfer of existing Pipeline Trail. Pierce County will notify TPU thirty (30) calendar days in advance of opening the Pipeline Trail to the public.

***TPU will maintain the pipeline support bridge over Swan Creek.

**** TPU and Pierce County agree to coordinate encampment removal from the Property. Each Party will perform tasks based on the most efficient and economical means to reduced costs for both Parties. TPU will be responsible for litter, refuse and debris cleanup associated with encampment removal outside the Premises, but both the Parties agree extraordinary costs may be shared as determined by good faith negotiations between the Parties.

5.2 **Notice.** Except in case of emergency, TPU will make reasonable efforts to notify Pierce County about TPU's utility repair or maintenance activities on the Premises if said activities will significantly impact trail use for more than twenty-four (24) hours. TPU retains the right to perform additional or different maintenance on the Property to the extent required for utility or other purposes without unduly or unnecessarily undermining or damaging Pierce County improvements and with prior written notice given to Pierce County. With TPU's prior written approval, Pierce County may perform different or additional grounds maintenance on the Property as it deems appropriate for the recreational nature of the Pipeline Trail,

provided that Pierce County does not interfere with TPU's operations or undermine or damage TPU's facilities as currently exist or may exist in the future.

- 5.3 **Public Requests.** Pierce County will be the initial point of contact for public maintenance requests and Pipeline Trail-related complaints and will provide TPU a Pierce County contact for referral of Pipeline Trail maintenance requests and Pipeline Trail complaints as appropriate. When a Pipeline Trail complaint or maintenance request involves an area of the Property where Pierce County has responsibility for maintenance, Pierce County will respond to Pipeline Trail maintenance requests and complaints in a timely manner. When a Pipeline Trail complaint or maintenance request involves an area of the Property in which TPU has responsibility for maintenance under this section, Pierce County will refer the request or complaint to TPU in a timely manner and will coordinate responses with TPU as necessary.
- 5.4 **Maintenance Fee.** Pierce County will pay TPU an annual fee of \$20,000 (the "Maintenance Fee") for the TPU work outlined in Table 1 upon Trail completion. Beginning in 2020, the Maintenance Fee will be prorated based on the Effective Date of this Agreement and the portion of the trail completed. The Maintenance Fee will be remitted to TPU within thirty (30) calendar days of that Effective Date. The Maintenance Fee will be annually adjusted for inflation starting in 2021 based on the "Consumer Price Index for All Urban Consumers (CPI-U)" published by the Bureau of Labor Statistics of the U.S. Department of Labor. If this index is discontinued or becomes unavailable, a comparable index will be chosen by TPU and Pierce County. The Maintenance Fee is subject to adjustment as mutually agreed to in writing by the Parties based on reallocation of responsibility for the work described in Table 1.
- 5.5 **Surface Water Management.** Pierce County will take all steps necessary to minimize erosion from surface water resulting from use of the Pipeline Trail. If in the reasonable opinion of the Director, such erosion affects the earth cover within the Property and appurtenant facilities, the Director may close the affected areas of the Pipeline Trail until, in the reasonable opinion of the Director, the cause and effect of the erosion have been remedied by Pierce County. This section shall also apply to informal trails connecting to the Premises that were constructed by private entities without Pierce County's approval.
- 5.6 **Access.** Pierce County shall not interfere or restrict TPU's access to the Property and must ensure that TPU will at all times have unrestricted access to the Property. This access will include but not be limited to access for the installation, operation, maintenance and repair of TPU's facilities, and for the patrolling of the Property or for any other purpose. Pierce County will install barriers, signage, or other appropriate devices or infrastructure to manage access to the Premises and provide TPU the ability to have its own padlock or other locking devices on any gates, fences or bollards. Pierce County shall use its own clearly labeled locks to access

the property, which shall be installed in a manner not to interfere with TPU's access to the Property. Both parties will ensure unrestricted access to the property.

- 5.7 TPU Use and Incidental Damage to Trails, Facilities, or the Property. TPU will continue to use the Property for utility purposes, including use by heavy trucks and machinery for utility construction, installation, operation, vegetation management, and maintenance. TPU shall be able to use heavy trucks and machinery on the Premises where the trail and utility service road are combined (joint use sections) and where avoidance of such heavy truck and machinery use is otherwise not possible at the sole determination of TPU. TPU will assist Pierce County in identifying and designing Pipeline Trail for increased weight loads associated with heavy equipment in joint use sections or where use is unavoidable. TPU will promptly notify Pierce County of any damage to Pipeline Trail improvements that occurs as a result of these activities. In the event that TPU damage to trail improvements was deemed avoidable at TPU's sole discretion and not planned pursuant to Section 5.8 below, TPU will pay to repair or restore trail improvements to a good condition. Pierce County will determine in its discretion whether Pierce County will perform the repairs or restoration or whether it will require TPU to do so, subject to TPU pre-approval of such repairs or restoration, and the schedule for such activities. Conversely, Pierce County will promptly notify TPU if Pierce County discovers any damage to the Property or utility facilities. If damage to the Property occurs as a result of Pipeline Trail use, Pierce County will pay to repair or restore the Property or facilities to a good condition. TPU will determine in its discretion whether TPU will perform the repairs or restoration or whether it will require Pierce County to do so, subject to TPU pre-approval of such repairs or restoration, and the schedule for such activities.
- 5.8 Construction of New Utility System Facilities. TPU will provide Pierce County with two (2) years' notice if there are plans for major construction activities that could significantly damage or impact Pipeline Trail, and engage in a mutual planning process to design facilities that accommodate Pipeline Trail without relocation; provided that TPU will not be required to compromise cost effectiveness, reliability, capacity, safety, other utility system requirements or any other requirements deemed by TPU at its sole discretion as necessary for its projected needs. Pierce County will reimburse TPU for costs and expenses TPU incurs as a result of accommodating Pipeline Trail. These costs and expenses may include, but are not limited to, increased costs for design, construction, maintenance and operation incurred in order to accommodate Pipeline Trail.
- 5.9 Service to Utility Customers. This agreement will not restrain or prohibit TPU from maintaining service to existing customers. Where a customer requires a replacement, upgrade or conversion of their service, this agreement will not restrict or prevent any such replacement, upgrade or conversion from occurring. TPU may extend its distribution systems to serve new customers consistent with internal agreements within the TPU right-of-way. Any planned sectional removal and subsequent restoration to the Pipeline Trail, as a result of customer driven activity

consistent with any TPU Customer Service Policies, will be included within costs quoted to the TPU customer(s). TPU will notify Pierce County as to the nature and schedule of activities related to customer services prior to construction. TPU shall complete temporary and permanent restoration of the trail per Pierce County requirements in a timely fashion.

- 5.10 **Temporary Trail Closures.** Pierce County understands that TPU's operation, repair, maintenance, inspection and construction of its water supply and electrical system facilities, as well as field training, acts of nature, and other activities, may, on occasion, require the temporary closure of Pipeline Trail. TPU agrees to minimize the length of time of any closure and to provide as much notice as possible to Pierce County of impending closures, except in cases of closures necessitated by an emergency in which case TPU will notify Pierce County as soon as reasonably possible under the circumstances. TPU will install gates and barriers in the case of TPU-required temporary closures. Pierce County will install trail closure signs if requested by TPU. Pierce County will obtain TPU approval for temporary trail closures the County deems necessary for maintenance or other purposes. Pierce County will be responsible for installing its own closure device in case of Pierce County-required trail closures.
- 5.11 **Permanent Removal or Termination of Portions of the Pipeline Trail.** If either party determines that a portion of the Pipeline Trail must be permanently removed or terminated, the Parties agree to provide two years' written notice. After receipt of written notice, TPU and Pierce County will develop a plan to notify the public of the impending closure. Pierce County will coordinate with TPU about appropriate closure activities, which may include placement of fences or barricades, installation of signage regarding closure and detour, removal of trail improvements, or other actions. Pierce County will pay all costs and expenses associated with the relocation, termination or removal of a trail section from any portion of the Premises if requested by TPU. If Pierce County fails to take steps to close the trail section within one-hundred eighty (180) calendar days of receipt of TPU's notice (or by the time specified in the notice), TPU may take any reasonably necessary steps to close, remove, relocate or terminate any the trail section at the expense of Pierce County, if shown to be necessary as described above.
- 5.12 **Joint TPU – Pierce County Meeting and Emergency Contacts.** Pierce County and TPU shall meet annually to discuss Trail operations, any planned Trail improvements, and maintenance. Pierce County and TPU will provide each other with current emergency contact information, including a phone number for after-hours emergencies.

6 Early Termination of Agreement.

- 6.1 **Pierce County Termination Right.** Pierce County may terminate this Agreement upon one-hundred eighty (180) calendar days' written notice to TPU. Upon such

notification, Pierce County will immediately take steps to advise the public of the impending closure of the Pipeline Trail.

6.2 TPU Termination Right.

6.2.1 Upon one-hundred eighty (180) calendar days' written notice to Pierce County, the Director may terminate this Agreement for utility requirements, which may include but not be limited to a change, modification, or expansion of utility system facilities, operations, or maintenance procedures, a regulatory requirement, a future need by TPU for the use of the Property or a portion thereof, an increased risk to public safety or potential liability to TPU.

7 Restoration of Property upon Termination or Expiration.

Upon the termination or expiration of this Agreement or termination of the use the Premises, Pierce County will remove all trail related improvements, including but not limited to signs, structures, paving and Pierce County property in the portion terminated upon a showing that such removal is necessary to avoid an adverse impact to TPU's daily operations or overall mission. TPU and Pierce County will coordinate such activities beginning one (1) year prior to the expiration of this Agreement or beginning upon receipt of notice of termination. Pierce County will pay all costs and expenses associated with the termination of trail use and the removal of any improvements from any portion of the Premises if shown to be necessary as described above. If Pierce County fails to perform these obligations within one-hundred eighty (180) calendar days of the termination or expiration of the Agreement, TPU may perform them, and Pierce County will reimburse TPU's actual costs incurred in performing these obligations if shown to be necessary as described above. Pierce County's obligation to reimburse TPU will survive the termination of this Agreement.

8 Dispute Resolution.

If a Party claims that another Party has breached any term of this Agreement, the following procedures shall be followed if, and when, informal communications such as telephone conversations fail to satisfy the claiming Party:

8.1 The claiming Party's representative shall provide a written notice to the other Party's representative of the alleged breach. The notice shall identify the act or omission at issue and the specific term(s) of the Agreement which the complaining Party alleges was violated.

8.2 The responding Party's representative shall respond to the notice in writing within ten (10) business days. The response shall state that Party's position as well as what, if any, corrective action the responding Party agrees to take.

8.3 The claiming Party shall reply in writing, indicating either its satisfaction or dissatisfaction with the response. If satisfied, then the responding Party shall take any corrective action within fifteen (15) business days after receipt of the claiming Party's

reply. If dissatisfied, the claiming Party shall call an in-person meeting. The meeting shall occur within thirty (30) calendar days and shall be attended by the designated representatives of each Party, and such others as they individually invite. If the claiming Party remains dissatisfied with the results of the meeting, it may sue to enforce the terms of this Agreement or it may terminate this Agreement. The Parties also may agree to an alternate dispute resolution process.

9 Compliance with Law.

At all times, Pierce County's use and operation of the Property will comply with all applicable federal, state, and local laws, ordinances, codes, rules and regulations, including but not limited to laws prohibiting discrimination and Health and Safety Laws and Environmental Laws.

As used in this Agreement, "Health and Safety Law" means any applicable requirement of the Hazardous Waste Operations and Emergency Response (HAZWOPER) Program, codified at WAC 296-62-300 et seq., and any other applicable requirements under federal, state and local environment, health and safety laws, and regulations or ordinances.

"Environmental Laws" means any and all federal, state, or local statutes, codes, regulations, orders, and requirements issued thereunder, and common-law causes of action, whether federal, state or local, that apply to any toxic material or hazardous substance, pollutant, waste material, health and safety of persons or protection of the environment, including any amendments or supplements to such laws or regulations, including, but not limited to: the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Toxic Substances Control Act, 15 U.S.C. §2601 et seq., the Federal Water Pollution Control Act, 49 U.S.C. § 1801 et seq., the Safe Drinking Water Act, 42 U.S.C. § 300f et seq., the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA") 42 U.S.C. § 9601 et seq., the Washington Model Toxics Control Act (MTCA), RCW Ch. 70.105D, the Washington Hazardous Waste Management Act, RCW Ch. 70.105, the Washington Shoreline Management Act, RCW Ch. 90.58, and all local environmental codes and regulations including without limitation, stormwater, drainage and wastewater, and sewer regulations and requirements.

10 Prohibited Substances.

10.1 No Prohibited Substances without TPU Approval. Pierce County understands and agrees that any hazardous, dangerous or toxic material, waste or substance, or other pollutant or contaminant, regulated under federal, state or local law, or any substance prohibited by TPU from discharge into a public drainage control system or into a public sewer system, drain, ditch or natural watercourse according to federal, state and local laws, as hereafter amended or supplemented ("Prohibited Substances"), are not allowed in or around the Property or any other TPU facilities without the express written permission of TPU. Petroleum products routinely used to operate motorized vehicles used by Pierce County in or around the Property will

not be in violation of this Section so long as the use is consistent with *Section 1.4* and Pierce County takes reasonable precautions to prevent leaking and spills.

10.2 **Prior Approval.** Prior approval may be obtained for bringing Prohibited Substances onto the Property for use during construction through the construction approval process. Prior approval may also be obtained for the use of petroleum products for emergency generation of electrical power during periods of outage. Pierce County will obtain TPU's approval prior to initiating any other process requiring the use, handling or storage of Prohibited Substances on the Property or adjacent to any other City facilities. TPU may consider approving the specific use or activity, but only after Pierce County demonstrates to the satisfaction of TPU that Pierce County has all necessary permits, if any, for operation and a Prohibited Substances emergency response plan. Pierce County will be solely responsible for the use, handling and storage of any Prohibited Substance in compliance with all applicable law, and TPU's approval of such use, handling or storage will not be construed as limiting Pierce County's liability for a release of a Prohibited Substance, or as creating liability on the part of TPU.

10.3 **Environmental Audits.** Pierce County agrees to cooperate in any environmental audits, conducted by TPU's staff or independent third parties, specifically related to Pierce County's use or storage of Prohibited Substances. Pierce County agrees to reimburse TPU for the cost of such audits. Pierce County agrees to provide TPU with notice of every governmental inspection of the Property or any other affected TPU facilities, notice of violation, and order to clean up contamination, within five (5) business days after receipt thereof by Pierce County. Pierce County agrees to permit TPU to participate in all settlement or abatement discussions. In the event Pierce County fails to take remedial measures, as required by any final administrative or judicial order, decrees, or other legal instrument signed by a state, federal, or local regulatory agency within the time specified by such order, decree or instrument, TPU may elect to perform such work, and Pierce County covenants and agrees to reimburse TPU for all costs associated with TPU's work.

11 **Release, Indemnification, and Hold Harmless.**

11.1 **Release and Indemnification.** Pierce County releases and will defend, indemnify and hold harmless TPU, its directors, officers, elected officials, employees, agents and assigns (collectively referred to as the "Indemnitees") from and against any and all Claims arising out of or in connection with Pierce County's occupancy, use or improvement of the Property or informal trail connection thereto, or that of any of its employees, agents, contractors, licensees, officers, guests, or invitees, or the use of the Property by the general public, including but not limited to Claims arising from Pierce County's breach of its obligations hereunder, any act or omission of Pierce County or its agents, contractors, licensees, or invitees, and any Environmental Liability, unless caused by the sole negligence or intentional acts of the Indemnitees. "Claims" includes claims, losses, costs, liabilities, demands,

actions, damages and expenses (including, but not limited to reasonable attorney's fees). "Environmental Liability" means any and all liabilities, claims, lawsuits, costs, liens, obligations, expenses, attorney fees, fines, penalties, damages, consequential damages, and losses, arising from the release of a Hazardous Substance or any non-compliance with Environmental Laws. An Environmental Liability may be based upon an Environmental Law, any cause of action, criminal or civil statute, permit requirements, court or administrative order. "Hazardous Substance" means any material that is regulated or restricted by an Environmental Law, including but not limited to, CERCLA and MTCA.

- 11.2 Waiver of Immunity under Title 51. Pierce County agrees that the foregoing indemnity specifically covers actions brought by its own employees and that this indemnity shall survive termination or expiration of this Agreement. The foregoing indemnity is specifically and expressly intended to constitute a waiver of Pierce County's immunity under Washington's Industrial Insurance Act, RCW Title 51, to the extent necessary to provide TPU with a full and complete indemnity from claims made by Pierce County and its employees. Pierce County shall promptly notify TPU of casualties or accidents occurring in or about the Property.
- 11.3 Application of RCW 4.24.115. To the fullest extent permitted by applicable law, the foregoing release, indemnity and hold harmless shall apply to and for the benefit of the Indemnitees. If it is determined that RCW 4.24.115 applies to this Agreement, Pierce County agrees to defend, indemnify and hold harmless the Indemnitees to the maximum extent permitted thereunder, and specifically for Pierce County's negligence concurrent with that of the Indemnitees to the full extent of Pierce County's negligence.
- 11.4 Recreational Use. TPU is permitting the use of the Property conditioned, in part, upon Pierce County's agreement to make the Pipeline Trail available to the public at no cost except for the types of special events provided in Section 1.2. To the extent that the Recreational Land Use Statute, RCW 4.24.200-210, or other applicable law provides immunity to the City and Pierce County, the Parties do not intend the indemnity in this *Section 11* to act as a waiver of such immunity.
- 11.5 A hold harmless provision to protect TPU, similar to this *Section 11*, shall be included in all contracts or other agreements entered into by Pierce County in connection with the Permitted Use under this Agreement or with Pierce County's execution of its duties and obligations under this Agreement. TPU shall be listed as an "additional insured" in all contractor agreements.
- 11.6 TPU shall give Pierce County timely written notice of the making of any claim or of the commencement of any such action, suit or other proceeding covered by the indemnity in this section. In the event any such claim arises, TPU may tender the defense thereof to Pierce County and thereupon Pierce County shall have the duty to defend, settle or compromise the claim, and TPU shall cooperate fully therein.

11.7 The indemnification obligations under this Section shall survive the termination or expiration of this Agreement.

THE INDEMNIFICATION PROVISIONS OF THIS SECTION 10 WERE SPECIFICALLY NEGOTIATED AND AGREED UPON BY THE PARTIES.

12 Insurance.

Pierce County shall maintain, throughout the term of this Agreement and until all improvements are removed and the Premises restored as provided for in Section 7, adequate insurance to protect TPU, its directors, officers, elected officials, employees, agents and assigns, against all of TPU's and Pierce County's liability arising from the Permitted Use and other use of the Premises. Pierce County shall maintain the insurance coverage in the amounts and in the manner specified in the City of Tacoma Insurance Requirements as is applicable to the work, Permitted Use, and other use of the Premises and Property provided under this Agreement. The City of Tacoma Insurance Requirements document is attached hereto as Exhibit C and is fully incorporated herein by reference. Pierce County shall require that each of its contractors or subcontractors providing work or services on or related to the Permitted Uses described herein to obtain and maintain insurance as described in the City of Tacoma Insurance Requirements.

13 Invalidity.

Any provision of this Agreement which shall prove to be invalid, void or illegal shall in no way affect, impair, or invalidate any other provision hereof and the remaining provisions hereof shall nevertheless remain in full force and effect.

14 Nonwaiver.

The failure of TPU to insist upon or enforce strict performance by Pierce County of any of the provisions of this Agreement or to exercise any rights under this Agreement shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon any such provisions or rights in that or any other instance; rather, the same shall be and remain in full force and effect.

15 Assignment, Successors and Assignees.

This Agreement is personal to the Parties. As a result, Pierce County will not assign, transfer, or otherwise dispose of any of the privileges granted under this Agreement without the prior written consent of TPU.

16 Applicable Law; Venue.

This Agreement shall in all respects be interpreted, construed and enforced in accordance with the laws of the State of Washington and the sole venue for any action arising out of this Agreement shall be the Superior Court of Pierce County, Pierce County, Washington.

17 Notices.

All notices hereunder must be in writing and shall be deemed validly given if sent by United States mail, by personal delivery, or by overnight delivery by a nationally recognized carrier, addressed as follows (or to any other address that the party to be notified may have designated to the sender by like notice):

If to TPU:	If to Pierce County:
Tacoma Public Utilities	Roxanne Miles, Director
Attention: Real Property Services	Pierce County Parks and Recreation
3628 N. 35 th St.	9112 Lakewood Dr.
Tacoma, WA 98409-3192	Lakewood, WA 98499

18 Headings.

The titles of sections are for convenience only and do not define or limit the contents.

19 Entire Agreement; Exhibit A, Exhibit B and Exhibit C.

This Agreement, including Exhibit A, Exhibit B and Exhibit C, sets forth the entire agreement of the Parties, and supersedes any and all prior agreements, with respect to the Property, Pipeline Trail and/or the Premises. Notwithstanding the foregoing, the Parties acknowledge the City of Tacoma, Public Works Department and Pierce County are negotiating a separate Memorandum of Agreement (“MOA”) for the transfer of the existing Pipeline Trail personal property located between the City of Tacoma city limits and E. 72nd Street, and this Agreement is not intended to waive, extinguish, diminish, limit, modify, amend, or otherwise adversely affect the said MOA.

20 Relationship of Parties.

Nothing contained herein shall be construed as to make the parties hereto partners, associates, joint venturers, or participants in any legal relationship other than that of lessor and lessee. Neither party hereto shall have the power to contract or incur any obligation or liability in the name of the other party.

21 Severability

If any clause, sentence, or other portion of the terms, conditions and covenants of this Agreement area held, to any extent, to be invalid or unenforceable, the remainder of this

Pierce County:

Approved as to legal form only:

Approved by T. Campbell 3/15/21
Prosecuting Attorney Date

Approved:

Approved by G. Robinson 3/17/21
Finance Date

Jocanne SM 3/9/21
Department Director Date

BM ~3/22/21
County Executive Date

Tacoma Water:

Authorized:

Scott Dewhirst, Date
Water Superintendent

Reviewed:

Greg Volkhardt, Date
Water Section Manager

Form Approved:

Michael W. Smith, Date
Deputy City Attorney

**City of Tacoma - Department of Public Utilities
Water Division Easement No. 2781
Map of Property**



REAL PROPERTY SERVICES ILLUSTRATION – NOT TO SCALE

**Reference No.
P2013-240**

This illustration is not to scale. It is provided as a convenience to assist in identifying the general location of the Property. No liability is assumed by reason of reliance hereon.

Exhibit A

EXHIBIT B

Legal Description to be Included

After Approval and Amendment Outlined in Section 1.1

EXHIBIT C

INSURANCE REQUIREMENTS

- A.** During the term of this Agreement, Pierce County and its contractors, shall obtain and maintain at its sole expense the following liability insurance coverage:
- i.** A policy of Commercial General Liability insurance coverage, providing coverage for claims of bodily injury, death, personal injury, and property damage arising from operations on the TPU's property. Coverage shall include, but not be limited to: products hazard and completed operations coverage, contractual liability coverage, and employer stop gap coverage. The policy shall name the TPU as an additional insured.
 - ii.** The Pierce County and its contractor(s) shall obtain and have in place prior to entering upon the TPU's property, a policy of Commercial Automobile Liability coverage, with the TPU named as an additional insured.
- B.** For all insurance policies required by this section:
- i.** Coverage shall be written on a policy form published by the Insurance Service Office (ISO) or its functional equivalent. The TPU reserves the right to determine if a proposed policy is in fact a functional equivalent and its decision shall be conclusive on the issue.
 - ii.** Coverage shall be underwritten by insurance carriers licensed to do business in the State of Washington and of adequate financial strength (an A.M. Best Company rating of no less than A-V) subject to review and approval by the TPU.
 - iii.** Coverage shall be primary over and non-contributing to the TPU's own insurance coverage or program.
 - iv.** No coverage required by this section shall be subject to a deductible or self-insured retained limit in excess of \$10,000 without the TPU's prior written approval. To assure that the TPU receives the full benefit of coverage, the Pierce County shall pay any deductible or self-insured retained limit on behalf of the TPU, notwithstanding any negligence or liability on the part of the TPU.
 - v.** All coverage required by this section shall be written on a per "occurrence" basis and not on a "claims-made" policy form.
 - vi.** All policies required by this section shall provide policy limits of no less than \$1,000,000 combined single limit of liability per occurrence with a general aggregate limit of \$2,000,000. The aggregate limit shall be dedicated or limited to the location or work reflected by the contract, permit or right of entry by policy endorsement.
 - vii.** The Pierce County and the TPU, shall mutually and reciprocally waive claims of subrogation against each other for claims of damage to their property or injury to their employees, and shall obligate their insurance carriers to do the same. This provision is not intended to waive contractual indemnification obligations or claims under any additional insured policy provision.

C. Subcontractors. If any portion of Pierce County's operation or work permitted by the TPU is to be contracted by Pierce County, Pierce County must require that the contractor provide and maintain insurance and coverages set forth herein and require that its contractor release, defend, hold harmless, and indemnify the TPU to the same extent and under the same terms and conditions as Pierce County.

D. Certificate of Insurance. Certificates of Insurance, reflecting evidence of the required insurance and coverage as described in A. above, shall be sent to the following address prior to the use of any rights provided by the Agreement:

Tacoma Public Utilities
Real Property Services
3628 South 35th Street
Tacoma, WA 98409

The certificate shall be filed with the acceptance of the Agreement and annually thereafter. All coverage shall be listed on one certificate with the same expiration dates.

In the event that the insurance certificate provided indicates that the insurance shall terminate or lapse during the period of the Agreement, then, in that event, the Pierce County shall furnish, at least 30 days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage has been or will be obtained prior to any such lapse or termination.

Failure to obtain or provide adequate evidence of the required insurance and coverage will entitle, but not require, the TPU to terminate this Agreement.

E. Modification / Adjustment of Insurance Requirements. The TPU reserves the right to modify the insurance requirements of this Agreement, require any other insurance coverage, or adjust the policy limits as it deems reasonably necessary to reflect then-current risk management practices. Pierce County shall have thirty (30) days from receipt of written notice of the change, modification, or adjustment to provide the TPU with a Certificate of Insurance evidencing that Pierce County has obtained the required insurance as described in the notice.

F. Self-Insurance Provision. An entity that is wholly or partially self-insured may, with the approval of TPU, provide evidence of such self-insurance funding and, by letter, commit its self-insurance program to the minimum amounts required herein. By executing this Agreement, Pierce County agrees that it will pay any deductible or self-insured portions of the insurance or self-insurance provided.