



RESOLUTION NO. U-11420

1 A RESOLUTION related to the Department of Public Utilities, Water Division;
2 authorizing the execution of a wholesale water supply agreement with
the Mountain Terrace Homeowners Association.

3 WHEREAS the City of Tacoma, Department of Public Utilities, Water
4 Division (d/b/a Tacoma Water), desires authorization to execute a new
5 wholesale water supply agreement with the Mountain Terrace Homeowners
6 Association ("MTHOA"), and

7
8 WHEREAS Tacoma Water currently supplies wholesale water service to
9 15 neighboring water utilities in the Puget Sound area, and

10 WHEREAS MTHOA serves 11 homes on 97th Ave East of 128th Street
11 East in south Pierce County, and

12 WHEREAS this proposed wholesale water supply agreement will
13 formally document the rights and obligations related to Tacoma Water's
14 provision of wholesale water service to MTHOA that is similar to other
15 wholesale water supply agreements that Tacoma has with other, larger water
16 utilities, and

17
18 WHEREAS MTHOA will be charges for its wholesale water supply in
19 accordance with the rates set forth Section 12.10.400 of the Tacoma Municipal
20 Code as they may be changed and amended from time to time, and

21
22 WHEREAS MTHOA executed the proposed wholesale water supply
23 agreement on November _____, 2023, and
24
25
26



WHEREAS it is in the best interest of Tacoma Water to provide its wholesale
1 water under a written wholesale water supply agreement; Now, Therefore,

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

3 That the proposed wholesale water supply agreement with the Mountain
4 Terrace Homeowners Association is approved and said agreement may be
5 executed and implemented.
6

7 Approved as to form:

Chair

/s/

8
9 Chief Deputy City Attorney

Secretary

10
11 Clerk

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 15th 2023
DATE: November 8th 2023

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"/> GP1 – Diversity, Equity, Inclusion, Belonging | <input type="checkbox"/> GP8 – Telecom |
| <input checked="" type="checkbox"/> GP2 – Financial Sustainability | <input type="checkbox"/> GP9 – Economic Development |
| <input type="checkbox"/> GP3 – Rates | <input type="checkbox"/> GP10 – Government Relations |
| <input type="checkbox"/> GP4 – Stakeholder Engagement | <input type="checkbox"/> GP11 – Decarbonization/Electric Vehicles |
| <input type="checkbox"/> GP5 – Environmental Leadership | <input type="checkbox"/> GP12 – Employee Relations |
| <input type="checkbox"/> GP6 – Innovation | <input type="checkbox"/> GP13 – Customer Service |
| <input type="checkbox"/> GP7 – Reliability & Resiliency | <input type="checkbox"/> GP14 – Resource Planning |

SUMMARY: Tacoma Water requests approval by the Public Utility Board (PUB) of a wholesale water supply agreement (WSA) between the Mountain Terrace Homeowners Association (MTHOA) and Tacoma Water.

BACKGROUND: Tacoma Water provides wholesale water service to 15 neighboring water utilities throughout south Puget Sound. In 2022, Tacoma water sold approximately 2.15 MGD of wholesale water to these utilities for approximately \$2.8 million in revenue.

MTHOA is one of Tacoma's smaller wholesale customers and serves 11 homes on 97th Ave E off of 128th St E in south Pierce County. We have served them for over 20 years

This WSA will formally document the rights and obligations related to Tacoma Water providing wholesale water service to MTHOA in a modern agreement that is similar to WSAs Tacoma has with other large utilities. MTHOA will be charged for water usage in accordance with current rates as listed in 12.10.400.



Board Action Memorandum

ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED? Yes

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: MTHOA Wholesale Water Agreement

CONTACT:

Primary Contact: Marc Powell, Business Services Analyst-Sr, 253-719-4047

Supervisor's Name: Jodi Collins, Financial Stewardship Manager

Presenter (if different from primary contact):

WHOLESALE WATER SUPPLY AGREEMENT

This WHOLESALE WATER SUPPLY AGREEMENT ("Agreement"), by and between the City of Tacoma, Department of Public Utilities, Water Division ("Tacoma"), and the Mountain Terrace Homeowners Association ("MTHOA"), is made and entered into as of this 1st day of January (2023) ("Effective Date"). Tacoma and HOA 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, MTHOA is a homeowner's association in Pierce County

WHEREAS, Tacoma is willing to make a 3,000 GPD wholesale water supply available to MTHOA as a direct wholesale customer of Tacoma in accordance with the terms and conditions of this Agreement, subject to certain peak-period limitations set forth below;

WHEREAS, pursuant to the requirements of RCW 35.92.010, the Parties specifically find that this Agreement will at a minimum generate revenues sufficient for Tacoma to cover the marginal cost of the available surplus water supplied to MTHOA; and

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

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

AGREEMENT

1. DEFINITIONS

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

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

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

"MTHOA Isolation Valve" means a positive shut-off valve owned and operated by MTHOA 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 MTHOA anticipates it will use during the period starting June 1 and ending September 31 each year during the Term.

"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 MTHOA 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.

"Interconnection Facilities" means all facilities, other than the Wholesale Service Connections, that are necessary for MTHOA to access and take delivery of the Wholesale Water Supply at the Wholesale Service Connections and to convey such water to MTHOA'S transmission and distribution systems. Interconnection Facilities include the MTHOA Isolation Valve and such other pressure-reducing valves, power service, storm drainage, vaults, telecommunications service, conduit, controllers, pedestals and boxes operated by MTHOA 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.

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

"Operating Protocols" shall have the meaning set forth in Section 10.3.

"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.

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

"Prudent Utility Practices" means, at any particular time, any of the practices, methods, decisions and acts that (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 10.2.

"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 Indemnitees" 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.

"Temporary Wholesale Water Supply" shall have the meaning set forth in Section 18.

"Term" shall have the meaning set forth in Section 20.

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

- (i) flood, earthquake, drought, climate change, storm, fire, lightning and other natural catastrophes;
- (ii) acts of public enemies, armed conflicts, acts of foreign enemies, acts of terrorism (whether domestic or foreign, state-sponsored or otherwise), war (whether declared or undeclared), blockade, insurrection, riot, civil disturbance, revolution or sabotage;
- (iii) any form of compulsory government acquisition or condemnation or change in Applicable Law (other than such acquisition, condemnation or change by MTHOA) that affect the performance of the Parties' obligations under this Agreement;
- (iv) accidents or other casualty, damage, loss or delay during transportation, explosions, fire, epidemics, quarantines or criminal acts that affect the performance of the Parties' obligations under this Agreement;
- (v) labor disturbances, stoppages, strikes, lock-outs or other industrial actions affecting the Parties or any of their contractors, subcontractors (of any tier), agents or employees;
- (vi) inability, after the use of commercially reasonable efforts, to obtain any consent or approval from any Governmental Authority (other than MTHOA) 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 but not limited to 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 3,000 GPD (annual average daily demand), subject to the following peak-period limitations:

- (a) 16,000 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 technical specifications and requirements pertaining to the design, engineering, operation or testing of the Wholesale Service Connections, the conflicting Exhibit shall take precedence.

Exhibit A: Wholesale Service Connections

Exhibit B: Dispute Resolution Procedures

3. WHOLESALE WATER SERVICE

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

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

4. WHOLESALE WATER SERVICE CHARGES AND FEES

MTHOA shall pay Tacoma all charges, fees and other amounts for the Wholesale Water Service as shall be due and payable, from time to time, pursuant to the Wholesale Water Regulations. 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 MTHOA 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 of this agreement, the System Development Charge due and payable to Tacoma has been fully paid by MTHOA to Tacoma pursuant to TMC 12.10.310. Additional System Development Charges may be due to Tacoma if MTHOA requests their Meter size be increased to 3 inches or larger.

6. PAYMENTS

Amounts due Tacoma from MTHOA for the Wholesale Water Service shall be determined, billed and collected by Tacoma and paid by MTHOA 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 MTHOA 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 MTHOA's acceptance of such water at the Wholesale Service Connections, MTHOA 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 MTHOA to MTHOA's retail customers.

8. WHOLESALE WATER CONNECTIONS AND INTERCONNECTION FACILITIES

8.1 From and after the Effective Date, 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 MTHOA, 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 From and after the Effective Date, MTHOA shall, at its expense, cause the Interconnection Facilities to be constructed, tested, maintained and available for normal and reliable commercial operations. MTHOA 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 MTHOA and will not unreasonably withhold its approval of such designs, specifications and construction schedule. MTHOA will not commence any such repairs, replacements, expansions, improvements or upgrades of the Interconnection Facilities unless and until MTHOA has received approved designs, specifications and construction schedule from Tacoma. MTHOA 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. MTHOA shall own and operate the Interconnection Facilities and shall be responsible for the repair and maintenance thereof.

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

(a) be responsible for the operation and control of the MTHOA Isolation Valve and any pressure-reducing valves, controllers, pedestals and boxes operated by MTHOA 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 MTHOA that MTHOA relocate such Interconnection Facilities so as to accommodate the time, place and manner of Tacoma's work. Upon receipt of such notice from Tacoma, MTHOA shall promptly so relocate such Interconnection Facilities at MTHOA's sole cost and expense.

9. METER AND TELEMETRY EQUIPMENT

9.1 Tacoma shall, at MTHOA's expense, provide for the procurement, installation, repair, replacement, calibration and testing of the Meter and the Telemetry Equipment. Such costs paid by MTHOA to Tacoma are considered funds provided in aid of construction. MTHOA 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 MTHOA. MTHOA may also test the Meter at any reasonable time and at MTHOA's expense. The results of any Meter test conducted by MTHOA 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 On or before May 1 of each year during the Term, MTHOA shall provide Tacoma with a Draft Operating Plan.

10.2 Prior to 10:00 a.m. on any Thursday during the Term, MTHOA 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 10.2.

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

10.4 Tacoma reserves the right to modify, suspend, change or amend Schedules and Operating Protocols as necessary to comply or conform with this Agreement, the Wholesale Water Regulations, Applicable Law, or Prudent Utility Practices, or to respond to Uncontrollable Forces. Tacoma will provide MTHOA 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, MTHOA 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, MTHOA 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 MTHOA 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 MTHOA pursuant to Section 7 shall pass from Tacoma to MTHOA 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, MTHOA

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 MTHOA. 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

MTHOA 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 MTHOA in accordance with this Agreement;

(b) the negligent, reckless, or otherwise tortious acts or omissions of MTHOA, or of anyone directly or indirectly retained or employed by MTHOA, 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 19;

(d) the use or resale of the Wholesale Water Supply for fire flows or fire suppression purposes, or

(e) MTHOA Hazardous Substances.

Nothing herein shall, however, require MTHOA 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, MTHOA 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 MTHOA's right to assert such immunity, defense or protection directly against any of its own employees or any such employee's estate or other representatives. This Section 13 has been mutually negotiated by the Parties and shall survive the expiration or termination of this Agreement.


MTHOA's Initials

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, the Wholesale Water Supply and the Project). MTHOA 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, MTHOA 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, MTHOA acquires no right, title or interest in or to (a) the Project, the Wholesale Service Connection, the Meter or the Telemetry Equipment; or (b) any water rights, water claims, water permits or water certificates.

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 22.

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 If at any time during the good-faith efforts to resolve any Dispute arising under this Agreement either of the Parties determines that such informal discussions will not result

in a resolution of the issue or issues in Dispute, such Party may initiate the Dispute resolution process in accordance with the provisions of Exhibit B.

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

17. DEFAULT AND REMEDIES

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

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

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

17.2 Except as otherwise provided by 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 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. ADDITIONAL WATER

During the Term, MTHOA may request that Tacoma supply MTHOA with wholesale water on a temporary basis in addition to the Wholesale Water Supply ("Temporary Wholesale Water Supply"). The availability of the Temporary Wholesale Water Supply for sale by Tacoma to MTHOA at any time or from time to time during the Term shall be determined by Tacoma in its sole discretion. If Tacoma shall determine that some or all of the Temporary Wholesale Water Supply is available for sale to MTHOA, it may be sold, scheduled, priced and delivered to MTHOA on such terms and conditions as may then be acceptable to the Parties upon approval of the Parties' applicable governing bodies. Without limiting the generality of the foregoing, any such sales shall be subject to the Wholesale Water Regulations (as applicable), the System Development Charge, the availability of resources, and the disruption, interruption, suspension and curtailment of the Temporary Wholesale Water Supply by Tacoma at any time.

19. REPRESENTATIONS OF THE PARTIES

19.1 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.

19.2 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.

19.3 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.

19.4 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.

20. 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.

21. 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, 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.

22. NOTICES

22.1 All notices or other communications required or permitted by this Agreement must be in writing and be personally delivered, delivered by recognized overnight courier service or given by mail or via facsimile. Any notice given by mail must be sent, postage prepaid, by certified or registered mail, return receipt requested. All notices must be

addressed to the Parties at the following addresses or at such other addresses as the Parties may from time to time direct in writing:

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

MTHOA: Brett Kapels
12625 97th Ave E
Puyallup WA 98373
(206) 913-7195

22.2 Any notice will be deemed to have been given (a) if personally delivered, when delivered, (b) if delivered by courier service, one (1) business day after deposit with the courier service, (c) if mailed, two (2) business days after deposit at any post office in the United States, and (d) if delivered via facsimile, the same day as verified; provided that any verification that occurs after 5:00 p.m. on a business day, or at any time on a Saturday, Sunday or holiday, will be deemed to have occurred as of 9:00 a.m. on the following business day.

23. MISCELLANEOUS

23.1 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.

23.2 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.

23.3 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.

23.4 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 MTHOA from any of its obligations arising under this Agreement, or (b) subject Tacoma to any liability with respect to such matter.

23.5 This Agreement shall be governed by and construed in accordance with the laws of the State of Washington (regardless of the laws that might otherwise govern under applicable principles of conflict of laws of such state). Except with respect to a lawsuit or judicial action or proceeding commenced by a third party in another jurisdiction and subject to Exhibit B, the Parties will (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.

23.6 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.

23.7 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.

23.8 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.

23.9 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 MTHOA.

23.10 Sections 12, 13, 15, 16, 17, 19, 23.5 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.

23.11 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.

23.12 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.

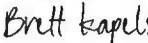
IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the Effective Date.

Dated this 11/08/2023 day of 11/08/2023, 2023.

City of Tacoma

Department of Public Utilities
Water Division

Scott Dewhirst
Water Superintendent

DocuSigned by:


08F6D88B9127447
Brett Kapels
Chief Administrator

Approved as to form:

Mountain Terrace Homeowners Association

Wholesale Service Connection

Exhibit A

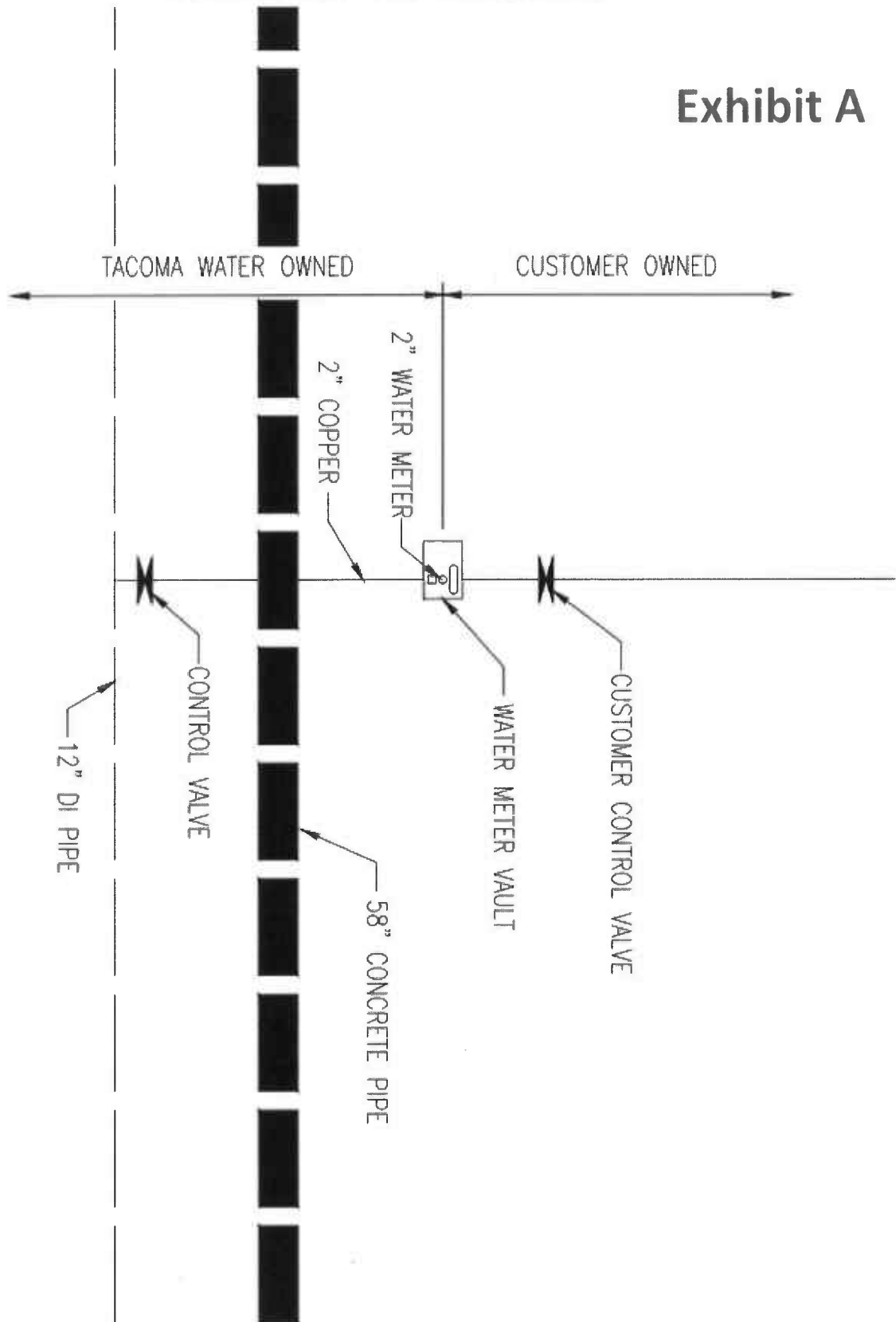


Exhibit B

Dispute Resolution Procedures

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

1. The Party that believes that continued good-faith negotiations will not produce a resolution of the issue or issues that are the subject of such negotiations will notify the other Party in writing that it is invoking the dispute resolution procedures of this Exhibit B.
2. Within twenty (20) days of the date of such notice invoking the dispute resolution procedures of this Exhibit B, the Parties shall meet and select an individual to recommend to the court as referee of the dispute resolution process in accordance with RCW 4.48.020. The Parties shall select an individual who is qualified as a juror as provided by statute, is competent as a juror between the Parties, is a duly admitted and practicing attorney, and has experience presiding over civil litigation of contract disputes. The Parties will use the following procedure to select the recommended referee:
 - 2.1 Each Party will make a list of three individuals that are qualified pursuant to Paragraph 2 to serve as referee and exchange such list with the other Party. If the Parties agree upon a person from either list, or if both Parties list the same person, that person will be the recommended referee.
 - 2.2 If the Parties are unable to agree upon a referee after exchanging their respective lists, they will make a joint list setting forth all six candidates from the two lists.
3. Upon the selection of the recommended referee, or the creation of the joint list pursuant to Subparagraph 2.2 of this Exhibit B, the Party that invoked the dispute resolution procedures shall file a complaint, in the superior court of the appropriate county as set forth in Section 23.5 of the Agreement, setting forth the issue or issues in dispute, and the other Party shall file an answer to such complaint. Not later than twenty (20) days after the filing of the answer, the Parties shall jointly file a motion, with the Agreement (including this Exhibit B) attached, with the court requesting an order of reference that:

- 3.1 Directs that the issue or issues raised by the complaint and answer be resolved pursuant to Chapter 4.48 RCW by reference to a referee;
 - 3.2 Appoints, pursuant to RCW 4.48.020, either the recommended referee selected by the Parties pursuant to Subparagraph 2.1 of this Exhibit B, or a single referee from the joint list prepared pursuant to Subparagraph 2.2 of this Exhibit B; and
 - 3.3 Directs the referee to conduct the proceeding in accordance with the procedures set out in Paragraphs 4-10 of this Exhibit B.
4. In accordance with RCW 4.48.060, the Parties hereby waive their rights to discovery and cross-examination, and direct that the proceeding be conducted in the same manner as a motion for summary judgment as follows:
 - 4.1 The Parties shall present their respective positions by written briefs and affidavits, and without testimonial evidence or cross-examination;
 - 4.2 Oral argument will be conducted before the referee; and
 - 4.3 The burdens of proof and persuasion that pertain in a civil trial shall apply, rather than those that apply to motions for summary judgment.
5. After appointment of the referee, the Parties shall endeavor in good faith to prepare for the referee a joint statement of facts and the questions to be decided in the proceeding. In the absence of an agreed-to joint statement of facts and questions to be decided, each Party may include its own statement of facts and questions to be decided in its initial brief.
6. Within ninety (90) days after the submission of the joint statement of facts and questions to be decided, or within ninety (90) days after the appointment of the referee if the Parties cannot agree to a joint submission of facts and questions to be decided, each Party shall submit to the referee a one-page statement of the proposed resolution and/or award it seeks for each issue in dispute, and its initial brief. The statement and initial brief (excluding any attached affidavits or evidentiary documents) shall not exceed fifty (50) 8½" x 11" double-spaced pages with 1½-inch margins and 12-point typeface. The statement and initial brief shall be filed simultaneously by e-mail and regular mail with the referee and opposing Party.
7. Within thirty (30) days after the date the Parties filed their initial briefs, the Parties shall file their respective reply briefs with the referee and the opposing Party. The reply briefs (excluding any attached affidavits or evidentiary documents) shall not exceed twenty-five (25) 8½" x 11" double-spaced pages with 1½-inch margins and 12-point typeface. The reply briefs shall be filed simultaneously by e-mail and regular mail with the referee and opposing Party.

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