Resolution No. 39698
A resolution appointing and reappointing individuals to the Human Rights Commission.  
[Doris Sorum, City Clerk; Bill Fosbre, Acting City Attorney]

Resolution No. 39699
A resolution requesting the Public Utility Board to develop a plan to increase the use of residential solar power in the City, which shall address economic inequality and ensure an equitable increase in the number of residential solar users from all income levels; and to present its plan to the City Council no later than October 1, 2017.  
[Council Member Campbell]

Ordinance No. 28419
An ordinance amending Ordinance No. 26749 which granted Sound Transit a non-exclusive Right of Use Agreement to construct, operate, own and maintain a passenger rail system within the City; to provide for the expansion of the Right-of-Way Area to include the proposed location of the Link Light Rail Expansion and related amendments; and establishing an effective date.  
[Kurtis D. Kingsolver, P.E., Director, Public Works]

Ordinance No. 28423
An ordinance amending Chapter 12.10 of the Municipal Code, relating to Water - Regulations and Rates, to repeal Subsection 12.10.400.E relating to temporary water service contracts.  
[Sean Senescall, Rates and Financial Planning Manager; Linda McCrea, Water Superintendent]
RESOLUTION NO. 39698

BY REQUEST OF COUNCIL MEMBERS BLOCKER, CAMPBELL AND LONERGAN

A RESOLUTION relating to committees, boards, and commissions; appointing and reappointing individuals to the Human Rights Commission.

WHEREAS vacancies exist on the Human Rights Commission, and

WHEREAS, at its meeting of March 23, 2017, the Community Vitality and Safety Committee conducted interviews and recommended the appointment and reappointment of individuals to said commission, and

WHEREAS Ordinance No. 18301, passed May 31, 1967, provided that initial terms for commission members would be one, two, or three years to ensure a rotation of members with staggered terms, and

WHEREAS, over time, terms have become aligned, such that terms have varying expiration months in March, April, May, and December, and more than one-half of commission member terms will expire in 2019, and

WHEREAS it is necessary to realign terms for ease of administration and to ensure a staggered rotation of commission members, and

WHEREAS, pursuant to the City Charter Section 2.4 and the Rules, Regulations, and Procedures of the City Council, the persons named on Exhibit “A” have been nominated to serve on the Human Rights Commission;

Now, Therefore,
BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

That those nominees to the Human Rights Commission listed on Exhibit “A” are hereby confirmed and appointed or reappointed as members of such commission for such terms as are set forth on Exhibit “A.”

Adopted ___________________  

_________________________  
Mayor

Attest:

_________________________  
City Clerk

Approved as to form:

_________________________  
Acting City Attorney
**EXHIBIT “A”**

**HUMAN RIGHTS COMMISSION**

Appointing **Maria Villalpando Ramos** to fill an unexpired term to expire December 31, 2017.

Appointing **Marie Muniz** to fill an unexpired term to expire December 31, 2017.

Appointing **Brad Bates** to fill an unexpired term to expire December 31, 2018.

Appointing **Jen Haggard-Mlynarek** to fill an unexpired term to expire December 31, 2018.

Appointing **Rebecca Stith** to fill an unexpired term to expire December 31, 2018.

Reappointing **Kelsey Fischer** to a three-year term to expire December 31, 2019.

Reappointing **Joseph Kloby** to a three-year term to expire December 31, 2019.
RESOLUTION NO. 39699

BY REQUEST OF DEPUTY MAYOR THOMS AND COUNCIL MEMBERS CAMPBELL AND IBSEN

A RESOLUTION relating to solar power; requesting the Tacoma Public Utility Board to develop a plan to increase the use of residential solar power in the City of Tacoma, which plan shall address economic inequality and ensure an equitable increase in the number of residential solar users from all income levels; and to present its plan to the City Council no later than October 1, 2017.

WHEREAS burning fossil fuels releases carbon, while solar energy production does not, and fuel-burning power plants frequently release toxic pollutants, including mercury, acid gases, and particulate matter that directly impacts public health, and

WHEREAS the market price of fossil fuels does not factor in the external environmental and health costs caused by burning fossil fuels, and

WHEREAS solar power is a cost-competitive energy source, decreasing dependence on fossil fuels while improving public health, and

WHEREAS solar power is one of the cleanest sources of energy, and can power homes, businesses, and cars to achieve better air quality and reduce carbon pollution, and

WHEREAS the City Council recognizes the benefits provided through solar energy for improving environmental health, public health, and growing the economy, and desires to encourage a community-wide effort to reduce fossil fuel-based energy consumption and to facilitate public involvement in energy conservation, particularly in the use of residential solar power, and

WHEREAS RCW 35.92.360 grants municipally owned electric utilities the authority “to assist the owners of structures or equipment in financing the
acquisition and installation of materials and equipment, for compensation or
otherwise, for the conservation or more efficient use of energy in such structures
or equipment…” and, for the purposes of this section, “conservation purposes in
existing structures” may include projects to allow a municipal electric utility’s
customers to generate all or a portion of their own electricity through the on-site
installation of a distributed electricity generation system that uses as its fuel
solar…,” and

WHEREAS the City Council desires that the Tacoma Public Utility Board
(“Board”) develop a plan to increase the use of residential solar in the City of
Tacoma, which plan shall address economic inequality and ensure an equitable
increase in the number of residential solar users from all income levels, and to
present its plan to the City Council no later than October 1, 2017; Now, Therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

Section 1. That the City Council hereby requests the Tacoma Public Utility
Board (“Board”) to develop a plan to increase the use of residential solar in the
City of Tacoma, which plan will address economic inequality and ensure an
equitable increase in the number of residential solar users from all income levels.
Section 2. That the Board shall present its plan to the City Council no later than October 1, 2017.

Adopted ____________________________

______________________________ Mayor

Attest:

______________________________ City Clerk

Approved as to form:

______________________________ Acting City Attorney
ORDINANCE NO. 28419

AN ORDINANCE relating to public transportation; amending Ordinance No. 26749, granting to Sound Transit a non-exclusive right of use to construct, operate, own and maintain a passenger rail system within the City; providing for expansion of the Right-of-Way Area to include the proposed location of the Link Light Rail Expansion and amendments related thereto; providing for incorporation of amendments set forth in the First Amended right of Use Agreement authorized pursuant to Ordinance No. 28022; and establishing an effective date.

WHEREAS, on January 2, 2001, the City Council approved Ordinance No. 26749, granting to the Central Puget Sound Regional Transit Authority, d/b/a “Sound Transit,” a Right of Use to construct, operate, maintain and own a passenger rail system to provide passenger transportation in the City within and along the Right-of-Way Area and upon the terms and conditions set forth therein (“Right of Use”), and

WHEREAS, pursuant to Ordinance No. 28022, the City Council approved certain amendments (“First Amended Right of Use Agreement”) to the grant of the Right of Use which were intended to recognize the addition of the Commerce Street Station to the Right of Use Agreement, modify the liability and indemnification to include both Sound Transit and the City, establish a five-year review of the Right of Use, and change the 10-minute train headways to 12-minute headways because of the extra time needed to serve the new Commerce Street Station, and

WHEREAS the 1.6-mile Tacoma Link light rail line (“Tacoma Link”) currently serves six stations between the Theater District and Tacoma Dome Station, and
WHEREAS, in 2008, voters approved Sound Transit 2, which included funding for a partnership to explore options for expanding Tacoma Link, and

WHEREAS, in August 2015, the City Council passed Resolution No. 39255, recommending to the Sound Transit Board of Directors that the expansion of the Tacoma Link conform to the alignment and stations examined in the Environmental Evaluation completed by Sound Transit in June 2015, and

WHEREAS the recommendation consists of six new stations and one relocated station along an approximately 2.4 mile expansion of the Tacoma Link, and is generally described as north along Commerce Street to the Hilltop District via Stadium Way, North 1st Street, Division Street, and Martin Luther King Jr. Way, and

WHEREAS, in November 2015, the Sound Transit Board of Directors approved the alignment and stations as recommended by the City Council and as set forth in the 2015 Environmental Evaluation (“Tacoma Link Expansion”), and

WHEREAS the City and Sound Transit desire to affirmatively incorporate into the Right of Use the amendments as set forth in the First Amendment Right of Use Agreement, and to further amend the Right of Use to expand the Right-of-Way Area to include the Tacoma Link Expansion as approved by the City Council, and to implement amendments related thereto, and

WHEREAS the City Council finds that it is in the best interest of the public health, safety and welfare to approve this ordinance subject to it being effective only upon its acceptance by Sound Transit; Now, Therefore,
BE IT ORDAINED BY THE CITY OF TACOMA:

Section 1. That Ordinance No. 26749 is hereby amended to read as set forth in the attached Exhibit “A”; provided that, the Exhibits appended to Ordinance No. 26749 shall remain the same except as otherwise set forth in this Ordinance.

Section 2. That Exhibit “A” (Description of Right-of-Way Area) to Ordinance No. 26255 is hereby amended by the addition of Exhibit “A-1” thereto, which Exhibit “A-1” is set forth in attached Exhibit “B.”

Section 3. That Exhibit “D” (Sound Transit Link Light Rail Levels of Service) to Ordinance No. 26255 is hereby replaced in its entirely with new Exhibit “D,” attached hereto as Exhibit “C.”

Section 4. That Sound Transit shall, within 30 days after the date of passage of this ordinance, execute and return to the City three original countersigned copies of the Right of Use as amended pursuant to this Ordinance, and a signed acceptance in the form attached hereto as Exhibit “D.” In accepting the Right of Use as amended, Sound Transit warrants that it has carefully read the terms and conditions thereof and unconditionally accepts all of the terms and conditions thereof and agrees to abide by the same and acknowledges that it has relied upon its own investigation of all relevant facts, that it has had the assistance of counsel, that it was not induced to accept the terms and conditions of the Right of Use as amended, and that the Right of Use as amended represents the entire agreement between Sound Transit and the City. The rights, duties and obligations granted herein shall not become effective until the signed acceptance is received by the City in acceptable form.
Section 5. This ordinance and the rights, duties and obligations herein, shall be effective 30 days following publication; provided that, this ordinance shall have no force and effect in the event that Sound Transit does not comply with Section 4 of this Ordinance.

Section 6. Upon the effective date of this Ordinance, the First Amended Right of Use Agreement approved by the City Council pursuant to Ordinance No. 28022 shall be and become superseded and replaced by the provisions hereof, and shall no longer be in force or effect.

Passed _____________________

______________________________
Mayor

Attest:

______________________________
City Clerk

Approved as to form:

______________________________
Chief Deputy City Attorney
EXHIBIT “A”
(Right of Use as Amended)

In consideration of mutual promises and covenants herein contained, to be kept, performed, and fulfilled by the respective parties hereto, it is mutually agreed that a Right of Use is hereby granted to the Central Puget Sound Regional Transit Authority, a government Authority organized under the laws of the state of Washington (“Sound Transit”), to construct, operate, maintain, and own a passenger rail system to provide passenger transportation in the City within and along the Right-of-Way Area and upon the following terms and conditions:

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Section 1. Definitions. For purposes of this Right of Use Agreement, the following terms, phrases, words, and their derivations, shall have the meaning given herein where capitalized; words not defined herein shall have their ordinary and common meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever the sense requires. The words “shall” and “will” are mandatory and the word “may” is permissive. A reference to the City’s Charter refers to the same as amended from time to time. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of law referred to herein be renumbered, then the reference shall be read to refer to the renumbered provision. References to laws, ordinances, or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances, and regulations now in force or hereinafter enacted or amended.

A. Agreement. “Agreement” shall mean this Right of Use Agreement as approved pursuant to City Ordinance No. 26749, and as amended pursuant to Ordinance No. XXXXX.

B. City. “City” shall mean the City of Tacoma and any successor or assignee following an assignment that is permitted under this Agreement.
C. City Facility. “City Facility” shall mean and civil infrastructure designed, constructed and/or owned by the City.

D. Commuter. “Commuter” shall mean any business visitor or public invitee who normally would be considered an invitee of Sound Transit as the term “invitee” is interpreted under Washington law (including, without limitation, all passengers aboard, boarding, or disembarking from any Sound Transit train).

E. Emergency. “Emergency” shall mean, except as otherwise provided, a sudden, generally unexpected occurrence or set of circumstances demanding immediate action which interrupts or significantly disrupts the construction, operation, maintenance, or repair of the Passenger Rail System or provision of Passenger Rail Service.

F. Employee. “Employee” shall mean any employee, agent, independent contractor, or consultant of Sound Transit or the City, to the extent that such employee, agent, independent contractor, or consultant is performing duties for such party or such tenant or licensee of such party. For purposes of this Agreement only, Employees of the Operator or any other successor of Sound Transit shall be considered Employees of Sound Transit.

G. Sound Transit Facilities. “Sound Transit Facilities” or “Sound Transit Facility” shall mean any and all improvements, equipment, or property installed, constructed, owned, or maintained by Sound Transit in the Right-of-Way Area for the Passenger Rail Service. Sound Transit Facility shall not include City Facilities.

H. Final Construction Plans. “Final Construction Plans” shall mean prints showing, in detail, the proposed construction and specifications of the Passenger Rail System.
Rail System, including each and every proposed element, Facility, or improvement appurtenant thereto planned for location on the Passenger Rail System. With respect to the Tacoma Link Expansion, this term shall mean and refer only to the Final Construction Plans for the Tacoma Link Expansion.

I. Hazardous Materials. “Hazardous Materials” shall mean any chemical, material, or substance that is now, or at the time in question is, regulated or governed by any law, the release of which creates any liability under any applicable law or any other material which, when released, would cause significant ecological damage.

J. Liability. “Liability” shall mean all loss, damages, cost, expense (including costs of investigation and attorneys’ fees and expenses at arbitration, trial, or appeal and without institution of arbitration or suit), liability, claims, and demands of whatever kind or nature (including those arising under the Federal Employers Liability Act) arising out of an occurrence relating to this Agreement or occurring on or relating to any of the land, tracks, or other improvements described herein.

K. Memorandum of Agreement. “Memorandum of Agreement” shall mean that Memorandum of Agreement for Intergovernmental Cooperation for the Tacoma Light Rail Transit Line between the City and Sound Transit, dated September 2, 1998.

L. Operator. “Operator” shall mean the operator or operators, if any, appointed from time to time by Sound Transit, or its assignees, to operate Sound Transit trains over the Right-of-Way Area and/or to exercise some or all of the
respective rights and obligations of Sound Transit under this Agreement in connection with such operation over the Right-of-Way Area or any portion thereof, but only to the extent such operator or operators are acting in such capacity and not to the extent such operator or operators are acting for their own account or in some other capacity.

M. **Passenger Rail Service.** “Passenger Rail Service” shall mean the operation of trains, authorized in writing by Sound Transit, to transport passengers on its Passenger Rail System or any other related rail passenger service activities.

N. **Passenger Rail System.** “Passenger Rail System” shall mean Sound Transit’s light rail rapid transit within the Right-of-Way Area, together with all Facilities as well as any ancillary Facilities such as commuter parking, bus, auto, bicycle, and pedestrian access infrastructure for the provision of Passenger Rail Service, all as authorized herein by this Agreement and as described in the Final Construction Plans. This term shall mean and include the Tacoma Link Expansion.

O. **Passenger Station.** “Passenger Station” shall mean, collectively, any passenger station owned, leased, or operated by or on behalf of Sound Transit; any adjacent passenger parking lot owned, leased, or operated by or on behalf of Sound Transit; any passenger loading platform owned, leased, or operated by or on behalf of Sound Transit; or any passenger waiting area owned, leased, or operated by or on behalf of Sound Transit for the purpose of providing Passenger Rail Service.
P. **Passenger.** “Passenger” shall mean any person (including, without limitation, an Employee of the City) aboard any Sound Transit Train.

Q. **Public Rights-of-Way.** “Public Rights-of-Way” shall mean the public streets and easements which, under the City Charter, the Tacoma Municipal Code, City ordinances, and applicable laws, the City has authority to grant rights-of-way, permits, or licenses for use thereof or has regulatory authority therefor, excluding railroad rights-of-way, airport, and harbor areas. Public Rights-of-Way, for the purpose of this Agreement, do not include buildings, parks, poles, conduits, or similar facilities or property owned by or leased to the City, including, by way of example and not limitation, structures in the Public Rights-of-Way such as utility poles and light poles.

R. **Right of Use.** “Right of Use” shall mean the rights granted by the City, pursuant to Article VIII of the Tacoma City Charter, to Sound Transit for the non-exclusive use of the rights-of-way of the City within the Right-of-Way Area in accordance with the terms and conditions of the Agreement.

S. **Right-of-Way Area.** “Right-of-Way Area” shall mean the public rights-of-way as described in Exhibit “A” and “A-1.”

T. **Schedule.** “Schedule” shall mean a document which shall include, but not be limited to: (1) the number of stops; (2) the hours of operation; and (3) the frequency of service.

U. **Sound Transit.** “Sound Transit” shall mean the Central Puget Sound Regional Transit Authority, and any other entity to the extent such entity, as permitted under this Agreement, is exercising any rights to operate Passenger Rail
Service over any portion of the Right-of-Way Area, pursuant to a specific written
grant of such rights by Sound Transit, including any Operator.

V. Tacoma Link Expansion. “Tacoma Link Expansion” shall mean and refer
to that portion of the Passenger Rail System constructed and operating within that

W. Third Party. “Third Party” shall mean any person or entity other than the
City, or an employee of the City, and any person other than Sound Transit, or an
employee of Sound Transit.

X. Tracks. “Tracks” shall mean all tracks (including, without limitation,
passing tracks and sidings), turnouts, crossovers, interlocking devices and plants,
track improvements, and support structures that are located, installed, and
maintained by Sound Transit.

Y. Train. “Train” shall mean one or more light rail train units operated by or
on behalf of Sound Transit within the Right-of-Way Area to provide Passenger Rail
Service.

Section 2. Grant of Rights by City.

A. Grant of Non-Exclusive Right of Use. The City grants to Sound Transit a
non-exclusive Right of Use solely to construct, operate, repair, maintain, and own a
Passenger Rail System in, upon, and along the Right-of-Way Area to provide
Passenger Rail Service in accordance with the terms and conditions of this
Agreement. Sound Transit expressly agrees that it will construct, operate, and
maintain the Passenger Rail System in compliance with this Agreement and all
applicable City ordinances and state and federal laws, rules, and regulations subject to subsection B below.

B. Rights Subject to City Approval of Final Construction Plans. Sound Transit shall not construct on or along the Right-of-Way Area any additions to or expansions of the Passenger Rail System unless it has the City’s written consent.

C. Rights Subject to Right-of-Way Area Uses. The City intends to continue using the Right-of-Way Area, as burdened by Sound Transit, for use as a right-of-way and any other activities that do not unreasonably impair the ability of Sound Transit to operate the Passenger Rail System as contemplated in this Agreement. The rights of Sound Transit are subject to the right of City to (1) its exercise of its police powers, (2) use and maintain the entire Right-of-Way Area subject to the terms and conditions of the Agreement; (3) dispose of all or any part of the Right-of-Way Area, including, but not limited to, the air space above and the subsurface area below the Sound Transit Facilities, subject to the terms and conditions of this Agreement; and (4) construct and operate, and to change, modify, or relocate railway tracks (other than Sound Transit Facilities), signals, pipelines, electric lines, other railway facilities, and/or recreational and City Facilities in, on, upon, over, under, along, across, or through any or all parts of the Right-of-Way Area, or permit others to do so for City or for other public improvement projects, all or any of which may be freely done at any time or times by the City or others with the City’s permission, without liability to the City or to any other party for compensation or damages, unless this Agreement otherwise expressly provides therefor.
D. City Use of Right-of-Way Area. Sound Transit understands and agrees that the normal course of Public Right-of-Way use by the City may involve construction, maintenance, demolition, leasing, licensing, permitting, and similar activities that have the potential to cause interruption to the construction, operation, maintenance, or repair of the Passenger Rail System. Sound Transit understands and agrees that such activities may be caused, from time to time, by reasons including, but not limited to: (1) traffic conditions; (2) public safety; (3) Public Rights-of-Way construction; (4) Public Rights-of-Way repair (including resurfacing or widening); (5) change of Public Rights-of-Way grade; (6) construction, installation, or repair of sewers, drains, water pipes, power lines, signal lines, tracks, government-owned communications systems, public works, public Facilities or improvements, or any government-owned utility; and (7) Public Rights-of-Way vacation, and for any other purpose, may enter the Right-of-Way Area and perform work that may impact the construction, operation, maintenance, or repair of the Passenger Rail System.

The City agrees that such activities, to the extent they are permitted or controlled by the City, shall not occur within the Right-of-Way Area without five days’ prior written notice to Sound Transit, except in the event of an Emergency.

E. Non-Exclusive Use. Sound Transit understands that the rights granted herein are nonexclusive. In addition to the City’s use of the Right-of-Way Area under Subsection 2.C., the City may permit other nonexclusive occupancies provided that any such subsequent occupancies may not unreasonably interfere
with Sound Transit’s rights to construction, operation, maintenance, or repair of the
Passenger Rail System. The City shall, where and as practicable, protect from
subsequent occupancies an area on either side of the Sound Transit Facilities
where occupancy would have the risk of interference with the Sound Transit
Facilities or City Facilities, such as the Commerce Street Station or such other City
Facilities as may be added in the future.

F. **Use Restricted.** This Agreement does not authorize the provision of any
services by Sound Transit other than Passenger Rail Service, or in any way relieve
Sound Transit of any obligation to obtain any additional permits, authorizations,
licenses, or agreements to use the Right-of-Way Area to provide other services.
The provisions of this Agreement are not a bar to the imposition of similar,
different, or additional conditions with respect to the use of the Right-of-Way Area.

G. **Ownership.** Sound Transit shall own the Passenger Rail System;
provided, however, that to the extent the City or other governmental entity
constructs, or causes to be constructed, a Passenger Station on the Right-of-Way
Area, then the City or other governmental entity, as the case may be, shall own
such Passenger Station and all improvements thereon. Nothing in this Agreement
shall be construed as granting to Sound Transit any interest or right in the
Right-of-Way Area or the improvements on the Right-of-Way Area other than the
rights expressly provided herein.

H. **Inconsistent Use.** Notwithstanding the above, no Public Rights-of-Way
shall be used by Sound Transit in a manner that is inconsistent with the terms,
conditions, or provisions by which such Public Rights-of-Way were created or dedicated, or presently used under applicable laws.

I. **No Rights by Implication.** No rights shall pass to Sound Transit by implication. Without limiting the foregoing, by way of example and not limitation, this Agreement shall not include or be a substitute for:

1. Any other permit or authorization required for the privilege of transacting and carrying on a business within the City that may be required by the ordinances and laws of the City;

2. Any permit, agreement, or authorization required in connection with construction on or in the Right-of-Way Area or, including by way of example and not limitation, street cut permits; or

3. Any permits or agreements for occupying any other property of the City or private entities to which access is not specifically granted by this Agreement.

J. **Utilities Agreements.** This Agreement shall not be read to diminish, or in any way affect, the authority of the City to control and charge for the use of the light, water, storm, refuse, and sewer utilities. Therefore, if Sound Transit desires to use such utilities, it must obtain necessary agreements or consents for such uses and pay any and all associated fees as may be required by the City. The parties recognize that approval of the Tacoma Public Utilities Board is required for access to and use of light and water utilities.

K. **Operating Agreement.** The Parties have entered into an agreement (the “Operating Agreement”) dated the 9th day of December, 2011, approved pursuant
to Resolution No. 38342, defining the day-to-day operating procedures within the
Right-of-Way Area between Sound Transit, the Public Works Department of the
City and the City’s municipally owned utilities. The Parties agree that the
Operating Agreement, as now or may be hereafter amended or replaced, will
control and that this Agreement shall be interpreted consistent therewith.

Section 3. Payment. The City agrees that, in recognition of the public
benefit provided by Light Rail to the citizens of Tacoma and in recognition that the
franchise fee requirements of Section 7.2 of the Tacoma City Charter are
inapplicable to railways, Sound Transit, for the term of the Agreement, shall not be
obligated to compensate the City for the rights granted herein.

Section 4. Construction.

A. Proposed Construction Plans. Prior to commencing construction, Sound
Transit shall, at its expense, submit to the City such number of Final Construction
Plans as reasonably requested by the City.

B. Approval. Upon the City’s receipt of Final Construction Plans from
Sound Transit the City shall, within 30 days from said receipt, review and approve
or disapprove of the construction specified therein; provided, however, that
approval shall not be unreasonably withheld. To the extent that the City
disapproves of all or any part of the Final Construction Plans, the City shall, within
said 30-day period, provide to Sound Transit a written explanation of the reasons
for disapproval and suggested cures, if any. Sound Transit shall then submit
revised Final Construction Plans, which shall be subject to the same review and
approval or disapproval procedures. Sound Transit shall not commence
construction along any portion of the Right-of-Way Area until Final Construction Plans for such portion have been approved by the City. If unforeseen conditions arise during construction of the Passenger Rail System, the City will promptly consider new or revised Final Construction Plans, or portions thereof, necessary to progress the work in a mutually satisfactory manner.

C. **Entry Upon Right-of-Way Area.** Sound Transit, its servants, employees, agents, contractors, and/or subcontractors shall have the right, as defined and limited pursuant to Sections 7 and 8 of this Agreement, to enter upon the Right-of-Way Area for the purpose of constructing, operating, and maintaining the Sound Transit Facilities and constructing City Facilities.

D. **Construction Schedule.** Sound Transit shall furnish to the City a proposed schedule of construction (the “Construction Schedule”) of the Passenger Rail System. The Construction Schedule shall be used by the parties for purposes of coordinating personnel and conflicting activities and shall be amended from time to time by Sound Transit to reflect any and all schedule changes.

E. **Facilities Drawings.** As promptly as possible, but in no event later than six months after each segment of the Passenger Rail System is installed, Sound Transit shall furnish to the City “record drawings” of all constructed Sound Transit Facilities and City Facilities constructed by Sound Transit.

F. **Use of Right-of-Way Area.** During construction of the Passenger Rail System, Sound Transit, with the prior written agreement of the City, may fence the Right-of-Way Area for the temporary storage of construction equipment and materials; provided that such structures and fences (1) do not interfere with or
disrupt in any way, other than in ways approved in advance by City, the ordinary
use of the Public Right-of-Way; and (2) do not interfere with or disrupt in any way,
other than in ways approved in advance by the City, the ordinary access to
property on either side of the Public Right-of-Way. Sound Transit shall not store or
temporarily place any goods, materials, or equipment (1) near a roadway,
intersection, or crossing in such a manner as to interfere with the sight distance of
persons approaching such crossing; or (2) within such greater distance as required
by public authority; provided, however, that fuel and other hazardous substances
shall not be stored unless approved by appropriate officials of the Tacoma Fire
Department.

G. Compliance with Laws, Rules, and Regulations. Sound Transit, at
Sound Transit’s sole cost and expense, will furnish all materials, parts,
components, equipment, and structures necessary to construct and operate the
Passenger Rail System, or any part thereof, in accordance with this Agreement.
Any and all work performed by and on behalf of Sound Transit shall be done in a
good and workmanlike manner, in conformity with all applicable engineering,
safety, and other statutes, laws, ordinances, regulations, rules, codes, orders, or
specifications of any public body or authority having jurisdiction.

H. Apprentice Program. Sound Transit shall include in any apprenticeship
program for construction projects covered by this Agreement the City’s Local
Employment and Apprenticeship Program (“LEAP”) and Youth Building Tacoma
Program. The City’s staff charged with enforcement of these programs shall be
reasonably available to assist Sound Transit in complying with the requirements of
said programs. Sound Transit shall include in all construction contracts that the City LEAP and Youth Building Tacoma staff shall have access to construction sites for the purpose of enforcement of said programs. The foregoing requirements of this subsection shall be deemed waived in the event that Sound Transit has in place, for construction projects covered by this Agreement, a Project Labor Agreement ("PLA"), in substantially the form as attached hereto as Exhibit "C," which PLA has been fully executed and implemented by the Sound Transit Board; provided that Sound Transit, as a condition of said waiver, shall encourage its contractors for those construction projects covered by this Agreement, to utilize Tacoma labor forces in apprenticeship positions and to cooperate and coordinate local labor hiring with City staff charged with enforcement of the LEAP program.

I. **Installation.** All Sound Transit Facilities and installations, and all City Facilities installed by Sound Transit, must meet or exceed applicable specifications of the City and be in compliance with all existing federal, state, or local laws, ordinances, and regulations.

J. **Track Support.** During any work of any character by Sound Transit at locations of the Transit Facilities, and in accordance with the Final Construction Plans, Sound Transit will support the tracks and roadbed of Passenger Rail System in such manner as is necessary for the safe operation of the Passenger Rail System and ordinary use of the Public Rights-of-Way.

K. **Imminent Danger.** If, during construction, there is an Emergency or the Passenger Rail System creates, or is contributing to, an imminent danger to health, safety, or property that Sound Transit is unable to immediately address, the City
may protect, support, temporarily disconnect, remove, or relocate any or all parts of the Passenger Rail System without prior notice and charge Sound Transit for costs incurred. The City shall provide notice of such danger as soon as practicable.

L. Transmission Wires. Sound Transit shall, on the request of any Third Party holding a valid permit issued by a governmental authority, temporarily raise or lower its wires to permit the moving of buildings or other objects. Sound Transit may require that the expense of such temporary removal or raising or lowering of wires be paid in advance by the Third Party requesting the same. In no case will the cost or disconnection, removal, or relocation be charged to the City.

M. Information Regarding Ongoing Work. In addition to providing notice to the public of ongoing work as may be required under applicable law, Sound Transit shall make available information regarding any ongoing construction of its Passenger Rail System sufficient to show:

1. The nature of the work being performed;

2. Where it is being performed;

3. Its estimated completion date; and

4. Progress towards completion.

N. Inspection during Construction. The City shall have the right to verify, by inspection, that the location of the work and the materials used in construction or operation of the Sound Transit Facilities are in compliance with the Final Construction Plans, as approved by the City. The City shall further have the right to verify, by inspection, that City Facilities relocated and/or constructed by Sound
Transit are to a standard acceptable to the City in accordance with the Final
Construction Plans. The City shall give Sound Transit reasonable notice of such
inspections, and Sound Transit may, at its option, designate a representative to
accompany the City’s representative on such inspections. The costs to the City
shall be borne by Sound Transit, except as may be otherwise provided by mutual
agreement of Sound Transit and the City, unless otherwise agreed to in writing
such as a project funding agreement.

O. Restoration of Right-of-Way Area. Sound Transit shall promptly repair
any and all Public Rights-of-Way and public or private property that is disturbed or
damaged during the construction of its Passenger Rail System. Upon completion
of the initial construction of the Transit Facilities, Sound Transit shall ensure that
the unimproved Right-of-Way Area and all other public and private property that is
disturbed or damaged during construction of the Passenger Rail System is
promptly returned to as good a condition as before the disturbance or damage
occurred, or if to a lesser condition, then to the satisfaction of the City or the private
property owners. In the event Sound Transit does not comply with the foregoing
requirements, the City may, upon reasonable advance notice to Sound Transit,
take action to restore the Public Rights-of-Way or public property at Sound
Transit’s sole cost and expense.

P. Use of Separate Facilities. To the extent available, the City may, at its
sole option, rent or license to Sound Transit space in any vacant or partially vacant
buildings or property, within or beyond the Right-of-Way Area, for such use(s) as
Sound Transit may require in conjunction with the Sound Transit Facilities. For
each such site, the parties shall enter into a separate lease, permit, or license agreement. Sound Transit shall pay to the City separate rental for any buildings used by Sound Transit, owned by City and located within or beyond the Right-of-Way Area.

Q. Use of Right-of-Way Area. During, and in furtherance of, initial construction of Sound Transit Facilities and City Facilities by Sound Transit, the City agrees to allow Sound Transit the reasonable use, at no charge, of available portions of the Right-of-Way Area for the purpose of allowing Sound Transit to erect, at Sound Transit's sole cost and expense, temporary structures and fences to protect Sound Transit's material or equipment necessary for the construction of Sound Transit Facilities and City Facilities constructed by Sound Transit, provided that such structures and fences (1) do not interfere with or disrupt in any way, other than in ways approved in advance by the City, the ordinary use of the Public Right-of-Way; (2) do not interfere with or disrupt in any way, other than in ways approved in advance by the City, the ordinary access to property on either side of the Right-of-Way Area; and (3) shall be as shown and described in the Final Construction Plans. Sound Transit agrees to restore any land used for such structures and fences in accordance with Subsection O herein. Except for Sound Transit Facilities (to the extent, and only to the extent, constructed in accordance with City-approved Final Construction Plans and the provisions of this Agreement), Sound Transit shall not store or temporarily place any goods, materials, or equipment (1) near a roadway, private grade, intersection, or crossing in such a manner as to interfere with the sight distance of persons approaching such
crossing; or (2) within such greater distance as required by public authority; provided, however, that fuel and other hazardous substances shall not be stored unless approved by appropriate officials of the Tacoma Fire Department.

R. Utilities During Construction. Sound Transit shall make its own arrangements and be solely responsible for all electrical power and other utilities or services necessary to construct and operate the Sound Transit Facilities, and Sound Transit shall indemnify the City against any liability to any utility or service company arising out of utilities or services ordered or used by or on behalf of Sound Transit.

S. Crossing. Crossing by Sound Transit under public roadways shall be at a location and depth as agreed by the City and Sound Transit, as shown on the Final Construction Plans.

T. Artifacts. If, during construction or operation of Sound Transit Facilities, or construction of City Facilities by Sound Transit, Sound Transit, its agents, servants, employees, contractors, or subcontractors discover scientific or historic artifacts, Sound Transit shall immediately notify the City of said discovery and shall protect such artifacts in a manner as specified by the City, pursuant to the guidelines identified in Exhibit “B.”

Section 5. Permits.

A. Permits and Licenses. Sound Transit, at its sole cost and expense, shall (1) secure and maintain in effect all federal, state, and local permits and licenses required for the construction, operation, maintenance, and repair of the Passenger Rail System, including, without limitation, crossing, zoning, building, health,
environmental, and communication permits and licenses; and (2) indemnify the
City against payment of the costs thereof and against any fines or penalties that
may be levied for failure to procure, or to comply with, such permits or licenses, as
well as any remedial costs incurred by the City in curing any such failures, except
for City Facilities such as the Commerce Street Station. The City shall cooperate
with and assist Sound Transit in securing and maintaining any such permits or
licenses.

B. Environmental Impact Statement. Environmental Impact Statements, if
any, required at any time during the planning, design, construction, or operation of
the Sound Transit Facilities shall be prepared by Sound Transit at Sound Transit’s
sole cost and expense, except as may be otherwise agreed to by the City and
Sound Transit.

C. City Shall Not Hinder. The City shall not hinder Sound Transit's
attempts to secure, at Sound Transit’s sole cost and expense, obtain, and maintain
any permits, licenses, or approvals of governmental agencies or authorities, or of
any necessary Third Parties, for the use of any structures or Facilities (including
streets, roads, or utility poles).

Section 6. Entry Notice.

A. Access. Sound Transit, its servants, employees, agents, contractors,
and/or subcontractors shall have access to the Right-of-Way Area in connection
with Sound Transit’s construction, operation, maintenance, and repair of the
Passenger Rail System as is reasonably necessary in accordance with this
Agreement; provided, however, except to the extent expressly provided in this
Agreement, this right of access shall not be deemed to require the City to take any actions or expend any funds to enable such persons to exercise such rights of access, and, provided further, that such access may not interfere with or disrupt in any way, other than in ways approved in advance by the City, the use of the Public Right-of-Way by the City or Third Parties in and along the Right-of-Way Area.

B. **Notice Prior to Initial Entry.** During Construction (as defined below), Sound Transit shall give the City at least 48 hours’ written notice before initial entry upon any portion of the Right-of-Way Area for Construction purposes. For purposes of the Agreement, “Construction” shall mean Sound Transit’s construction of the Transit Facilities, pursuant to the approved Final Construction Plans.

C. **Entry After Initial Construction.** After initial Construction, any entry by Sound Transit onto the Right-of-Way Area that is not pursuant to the Routine Maintenance and Operation of the Passenger Rail System, or for purposes relating to an Emergency (both of which are defined below), shall require (1) advance written notice from Sound Transit to the City not less than ten days prior to Sound Transit’s planned entry, with notice to specify the purpose of the entry; (2) if entry involves any new construction, or removal of any portion of the Passenger Rail System, four sets of prints showing in detail the proposed new construction, reconstruction, or removal; and (3) approval by the City, which approval shall not be unreasonably withheld or delayed, taking in account the nature of the proposed entry.
D. **Entry for Routine Operation, Maintenance, and Repair.** Except as may be otherwise provided in the Operating Agreement, during Routine Operation, Maintenance, and Repair (as defined herein), Sound Transit personnel may enter the Right-of-Way Area without notice to the City, as long as such entry is for the sole purposes of Routine Operation, Maintenance and Repair. For purposes of this Agreement, “Routine Operation, Maintenance, and Repair” shall mean Sound Transit’s operation, maintenance, and repair of the Transit Facilities that does not require (1) the excavation of soil that would alter or disturb the Right-of-Way Area; (2) the use of heavy machinery within 50 feet of or upon the Right-of-Way Area; and (3) disruption of other uses of the Public Right-of-Way beyond that typical of Passenger Rail Service.

E. **Emergency Access.** Except as may be otherwise provided in the Operating Agreement, in the event of an Emergency, and for purposes of taking immediate corrective action, Sound Transit personnel may enter the Right-of-Way Area without notice to the City as long as such entry is for the sole purpose of addressing the Emergency; provided, however, that if any entry for such purposes is likely to require excavation of soil that would alter or disturb the Right-of-Way Area, use of heavy machinery within 50 feet of or upon the Right-of-Way Area, or disruption of other uses of the Public Right-of-Way beyond that typical of Passenger Rail Service, Sound Transit shall give the City verbal or telephonic notice of the places where and the manner in which entry is required prior to such entry, promptly followed by written notice.

A. Compliance with Laws, Rules, and Regulations. Sound Transit shall operate, maintain, and repair its Passenger Rail System in compliance with all federal, state, and local laws; ordinances; and departmental rules, regulations, and practices affecting such system, which include, by way of example and not limitation, the obligation to operate, maintain, and repair in accordance with the Operating Agreement or the zoning codes, safety codes and City construction standards. In addition, the construction, operation, and repair shall be performed in a manner consistent with industry standards. Sound Transit shall exercise reasonable care in the performance of all its activities and shall use industry-accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public or to property.

B. Permits Required. Except in cases of Emergency repairs, Sound Transit's construction, operation, or repair of its Passenger Rail System shall not commence until all required permits have been properly filed for and obtained from the proper City officials and all required permits and associated fees paid. In case of Emergency repairs, appropriate permits shall be obtained no later than the second business day following repairs.

C. Level of Operation/Maintenance. All Facilities shall be operated and maintained in such a manner as to minimize disruption to other users of the Public Rights-of-Way. All Facilities shall be maintained to a standard of safety and
aesthetics acceptable to and in accordance with standards adopted from time to
time by the City.

D. **Appointment of Operator.** Sound Transit may appoint an operator as
Sound Transit’s agent to exercise some or all of Sound Transit’s rights under this
Agreement, subject to the terms and conditions of this Agreement.

E. **Staff.** Sound Transit or the Operator shall maintain, or cause to be
maintained, an adequate, competent, trained, licensed, qualified, and experienced
staff to operate Trains that use the Right-of-Way Area.

F. **Regulatory Approvals.** Sound Transit and the Operator shall obtain and
maintain all federal, state, and/or local regulatory approvals as may be required for
the conduct of Passenger Rail Service on the Right-of-Way Area.

G. **Hazardous Materials.** Hazardous Materials shall not be allowed within
the Right-of-Way Area, nor shall any hazardous materials be transported within the
Right-of-Way Area.

H. **Responsibility for Facilities.** The City shall have no responsibility for
inspecting, maintaining, servicing, or repairing any trains or other equipment used
by Sound Transit on the Right-of-Way Area, but all such equipment shall at all
times comply with applicable federal, state, and local governmental requirements.
Further, the City shall not be responsible for the clearing or removal of trees,
shrubs, plants, ice, snow, or debris therefrom.

I. **Prompt Repair.** Sound Transit shall promptly repair any and all Public
Rights-of-Way and public or private property that is disturbed or damaged during
the operation, maintenance, or repair of its Passenger Rail System. Sound Transit
shall ensure that the unimproved Right-of-Way Area and all other public and private property that is disturbed or damaged during the operation, maintenance, or repair of the Passenger Rail System is promptly returned to as good a condition as before the disturbance or damage occurred, or if to a lesser condition, then to the satisfaction of the City or the private property owners. In the event Sound Transit does not comply with the foregoing requirements, the City may, upon reasonable advance notice to Sound Transit, take action to restore the Public Rights-of-Way or public property at Sound Transit’s sole cost and expense.

J. **Tree Trimming.** No tree trimming shall be performed, except in the event of an Emergency, without the permission of the City and other affected authorities, and any tree trimming must be performed in strict accordance with the Tacoma Municipal Code. Even if tree trimming is authorized by the City, Sound Transit is liable for any damage it causes during the course of tree trimming.

K. **Dispute.** In any dispute over the adequacy of a restoration, the Director of the Department of Public Works shall, in his or her sole discretion, make the final determination.

L. **Imminent Danger.** In the event of an Emergency, or where the Passenger Rail System creates, or is contributing to, an imminent danger to health, safety, or property, the City may protect, support, temporarily disconnect, remove, or relocate any or all parts of the Passenger Rail System without prior notice and charge Sound Transit for costs incurred. The City shall provide notice of such danger as soon as practicable.
M. **Transmission Wires.** Sound Transit shall, on the request of any Third Party holding a valid permit issued by a governmental authority, temporarily raise or lower its wires to permit the moving of buildings or other objects. Sound Transit may require that the expense of such temporary removal or raising or lowering of wires be paid in advance by the Third Party requesting the same. In no case will the cost of disconnection, removal, or relocation be charged to the City, even if the City makes the request for such action on behalf of a permit holder.

N. **Information Regarding Ongoing Work.** In addition to providing notice to the public of ongoing work as may be required under applicable law, Sound Transit shall make available information regarding any ongoing maintenance, operation, or repair of its stationary Facilities in the Right-of-Way Area sufficient to show:

1. The nature of the work being performed;
2. Where it is being performed;
3. Its estimated completion date; and
4. Progress towards completion.

**Section 8. Dispatching and Level of Service.**

A. **Dispatching Responsibilities.** The movement and dispatching of any trains and other equipment over the tracks shall, at all times, be subject to the exclusive direction and control of Sound Transit.

B. **Level of Service.** Sound Transit shall determine the quarterly passenger rail transportation schedules for the Passenger Rail System and shall provide such schedule, and any changes thereto, in a timely manner to the City. Sound Transit agrees to maintain service at the minimum and maximum levels for the life of this
Agreement, as described in Exhibit “D,” unless otherwise mutually agreed to in writing by the parties and authorized by the respective governing bodies.

C. Consultation. Upon written request by the City, Sound Transit agrees to promptly make available appropriate representatives to meet with representatives of the City to discuss, review, and consider revisions to the passenger rail transportation schedules requested by the City. Sound Transit agrees to make good faith efforts to accommodate the City’s request and will provide a written response detailing what action Sound Transit will take as a result of the City’s request and the reasons therefor, supported by any facts that were considered.

Section 9. Facility Location Signs. Sound Transit, at its sole cost, expense, and risk, shall furnish, erect, and thereafter maintain signs showing the location of all Sound Transit Facilities. The size, form, color, text, location, and spacing of such signs shall be subject to advance approval by the City and such signs shall be considered part of the Facilities.

Section 10. Third-Party Right-of-Way Area Ownership. This Agreement is not intended to cover and does not cover any occupancies over (1) rights-of-way or other land owned solely or jointly by any other person or entity; or (2) any rights granted to City by Third Parties. The City agrees to cooperate with Sound Transit to assist in its efforts to acquire rights to use any joint facilities or structures or such rights-of-way or land owned by others along the Right-of-Way Area.

Section 11. Conveyance of Right-of-Way Area. In the event of any sale, transfer, or conveyance of the Right-of-Way Area or portion thereof, such sale, transfer, or conveyance shall be subject to any existing rights of Sound Transit
under this Agreement to the extent permitted by law and applicable agreements entered into prior to the date of this Agreement.

Section 12. Liability; Indemnification.

A. Sound Transit hereby agrees to indemnify, defend, and hold the City harmless from any and all claims, demands, suits, actions, damages, recoveries, judgments, costs, or expenses arising or growing out of or in connection with or resulting from, either directly or indirectly, the design, construction, maintenance, operation, repair, removal, occupancy, or use of the Passenger Rail System by Sound Transit, except as provided in Section 12.B.

B. The obligations of Sound Transit as set forth in Section 12.A above do not apply to the extent such claims, demands, suits, actions, damages, recoveries, judgments, costs, or expenses are caused by the sole negligence of the City.

C. The parties hereby agree that no damages shall be recoverable from one another because of any dispossession that results from any failure of or defect in the City's title or the rights granted herein by the City to Sound Transit. The City will cooperate with Sound Transit's actions to rectify any title defect and shall stipulate to judgment upon demand with regard to Sound Transit's title.

D. The party in whose favor an indemnification runs, pursuant to any of Sections 12.A, 12.B, and 12.C (the “Protected Party”), shall give the other party (the “Indemnifying Party”) prompt notice of any claims or actions, of which it is aware, against the Protected Party under this Agreement. The Indemnifying Party shall promptly assume responsibility for the claim or undertake the defense of any litigation on behalf of the Protected Party, its agents, contractors, and employees;
hold the Protected Party harmless for any expense associated therewith; and promptly pay any settlement or judgment that may be agreed to by the parties or entered by a court. The Protected Party shall cooperate fully with the Indemnifying Party in the defense of any such claim or action. The Protected Party shall not settle any such claim or action without the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld. In the event that the Indemnifying Party does not assume and meet its obligations under Section 12.D promptly upon receiving written notice from the Protected Party, the Protected Party may, at its option, make any expenditures or incur any obligations for the payment of money in connection with or arising out of the matters referred to in Sections 12.A, 12.B, and 12.C, including, but not limited to, attorney’s fees. Such sums paid or obligations incurred shall be deemed to be additional obligations of the Indemnifying Party under this Agreement and shall be paid by the Indemnifying Party upon the rendering of a statement to the Indemnifying Party therefor.

E. In indemnifying and holding harmless as to its employees, Sound Transit waives immunity under Industrial Insurance Law, RCW 51. Sound Transit specifically assumes potential liability for actions brought by Sound Transit’s own employees against the City and, solely for the purpose of this indemnification and defense, Sound Transit specifically waives any immunity under the state industrial insurance law, RCW 51. SOUND TRANSIT RECOGNIZES THAT THIS WAIVER WAS SPECIFICALLY ENTERED INTO PURSUANT TO THE PROVISIONS OF RCW 4.24.115 AND WAS THE SUBJECT OF MUTUAL NEGOTIATION.
Section 13. Insurance. Sound Transit shall, at its sole expense, obtain and maintain during the entire term of this Agreement an appropriate program of insurance, self-insurance or any combination thereof in amounts and types sufficient to satisfy its liabilities. When commercial insurance is utilized, Sound Transit shall name the City as an Additional Insured in accordance with insurer underwriting practices, and Sound Transit insurance policies shall be primary and non-contributory to any coverage maintained by the City. Sound Transit waives all rights of subrogation against the City for claims by third-parties arising under this Agreement, other than for damages, claims or liabilities arising from negligent acts or omissions of the City and its officers, employees and agents. The limits of Sound Transit's selected coverage program in no way diminish Sound Transit's obligations to the City as set forth in this Agreement. Further, before Sound Transit may operate, the parties will agree in an operating agreement to the particulars of the insurance requirements that implement the principles expressed in this section.

Section 14. Liens.

A. The Right-of-Way Area is not subject to a claim of lien. In the event that any City property becomes subject to any claims for mechanics', artisans', or materialmen's liens, or other encumbrances chargeable to or through Sound Transit which Sound Transit does not contest in good faith, Sound Transit shall promptly, and in any event within 30 days, cause such lien claim or encumbrance to be discharged or released of record (by payment, posting of bond, court deposit, or other means), without cost to the City, and shall indemnify the City against all
costs and expenses (including attorneys’ fees) incurred in discharging and releasing such claim of lien or encumbrance. If any such claim or encumbrance is not so discharged and released, the City may pay or secure the release or discharge thereof at the expense of Sound Transit after first giving Sound Transit five business days’ advance notice of its intention to do so. The City shall use its reasonable best efforts to keep Sound Transit’s Facilities free of all liens that may adversely affect the Passenger Rail System.

B. Nothing herein shall preclude Sound Transit’s or the City’s contest of a claim for lien or other encumbrance chargeable to or through Sound Transit or the City, or of a contract or action upon which the same arose.

C. Nothing in this Agreement shall be deemed to give, and the City hereby expressly waives, any claim of ownership in and to any part or the whole of the Passenger Rail System, except for City Facilities such as the Commerce Street Station, and as may be otherwise provided herein.

Section 15. Term; Termination.

A. This Agreement, together with any amendments hereto, shall be effective as of the date identified pursuant to Section 29 of this Agreement and, unless sooner terminated pursuant to the terms hereof, shall terminate on April 8, 2067.

B. Five-Year Review. Beginning in the year 2016, on or about each five-year anniversary of this Right of Use Agreement, the Parties shall, except as may be otherwise agreed by the Parties, meet face-to-face, to discuss the continued implementation of this Right of Use Agreement and any changes either
Party believes should be made. Any such changes will be in the form of further amendments to this Right of Use Agreement and shall be negotiated in good faith by the Parties.

C. Upon termination of this Agreement, Sound Transit agrees to prepare, execute, and deliver to the City all documentation necessary to evidence termination of this Agreement or portion thereof so terminated. No such termination, however, shall relieve the parties hereto of obligations accrued and unsatisfied at such termination.

Section 16. Remedies at Law.

A. Remedies. The City has the right to exercise any and all of the following remedies, singly or in combination, in the event Sound Transit violates any provision of this Agreement:

1. Commence an action at law for monetary damages;

2. Commence an action for equitable or other relief;

3. Seek specific performance of any provision that reasonably lends itself to such remedy.

B. Cumulative Remedies. In determining which remedy or remedies for Sound Transit's violation are appropriate, a court may take into consideration the nature and extent of the violation, the remedy needed to prevent such violations in the future, whether Sound Transit has a history of previous violations of the same or similar kind, and such other considerations as are appropriate under the circumstances. Remedies are cumulative; the exercise of one shall not foreclose the exercise of others.
C. **Failure to Enforce.** Sound Transit shall not be relieved of any of its obligations to comply promptly with any provision of this Agreement by reason of any failure of the City to enforce prompt compliance, and the City’s failure to enforce shall not constitute a waiver of rights or acquiescence in Sound Transit’s conduct.

D. **Alternative Remedies.** No provision of this Agreement shall be deemed to bar the right of the City to seek or obtain judicial relief from a violation of any provision of the ordinance or any rule, regulation, requirement, or directive promulgated thereunder. Neither the existence of other remedies identified in this Agreement nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City to recover monetary damages for such violation by Sound Transit, or to seek and obtain judicial enforcement of Sound Transit’s obligations by means of specific performance, injunctive relief or mandate, or any other judicial remedy at law or in equity.

**Section 17. Right to Purchase.**

A. The City has the option to purchase the Passenger Rail System upon termination of this Agreement, whether termination is, or is not, for cause, subject to the Federal Transit Administration’s transfer conditions applicable to the Passenger Rail System.

1. The City may exercise its option rights granted herein, and will have up to 180 days after termination of this Agreement to notify Sound Transit that it intends to exercise its right to purchase the Passenger Rail System. Within 90 days of the date the City notifies Sound Transit of its intent to exercise the
option, or by such other time as the parties may separately agree, the parties shall
meet to establish a purchase price. If the parties are unable to agree to a
purchase price within 180 days after the City notifies Sound Transit that the City
intends to exercise its purchase option, either party may require the price to be set
by appraisal by sending the other party notice that it wishes to have the price set
by appraisal. Within 45 days of the date that notice is submitted, each party may
appoint one appraiser. When each party appoints an appraiser, the two appraisers
shall appoint a third appraiser ("Third Appraiser"); if only a single appraiser is
appointed (whether by mutual agreement or because of the failure of a party to
timely nominate an appraiser), that appraiser shall be the sole appraiser. The
appraiser, if only a single appraiser is appointed, or the three appraisers, if each
party appoints an appraiser and they appoint a third, shall mutually establish a
price for the Passenger Rail System, or portion thereof, that the City desires to
purchase in accordance with this Section 17. In the event that the three appraisers
cannot mutually establish a price for the Passenger Rail System, then the Third
Appraiser shall submit a final binding appraisal establishing the price for the
Passenger Rail System. The appraisal shall be of the fair market value of the
Passenger Rail System as a going concern (taking into account such property
used and useful in providing service within the City that is to be conveyed) and with
no value allocated to the Right-of-Use itself. This appraisal determination shall be
final and non-appealable. The City shall have 120 days after the decision of the
appraiser(s) to notify Sound Transit that it wishes to conclude the transaction; if it
does not so notify Sound Transit, the option shall be deemed terminated.
2. If the City gives the notice required by the preceding paragraph, the parties will thereafter promptly sign all necessary documents required to close the transaction; provided, however, that the City may make conclusion of the transaction conditional upon any necessary voter approval of any bond funding for acquisition of all or a part of the Passenger Rail System and, if applicable, the successful sale of the bonds.

3. The City and Sound Transit will share equally the costs associated with any appraiser that is jointly appointed (by them or by both of the appraisers selected); the City will bear costs associated with any appraiser that it separately appoints and Sound Transit will bear costs associated with any appraiser that it separately appoints.

B. Nothing in this section shall be read to limit the City’s right to acquire the Passenger Rail System as a result of abandonment.

C. In the event the City purchases, acquires, takes over, or holds all or parts of the Passenger Rail System, the City, subject to Federal Transit Administration funding requirements, shall have the right, without limitation, to assign, sell, lease, or otherwise transfer its interest in all or parts of the Passenger Rail System to any Third Party on whatever terms the City deems appropriate.

Section 18. Revocation of Right of Use.

A. In addition to any rights set out elsewhere in this Agreement or the City Charter, the City reserves the right to declare a forfeiture or otherwise revoke or suspend this Agreement and all or part of the rights and privileges pertaining hereto in the event that:
1. Sound Transit is in substantial non-compliance with the Agreement;

2. Sound Transit is found to have engaged in any actual or attempted fraud or deceit upon the City, persons, or customers;

3. Sound Transit fails to obtain and maintain any permit required by any federal or state regulatory body or by the City, relating to the construction, operation, maintenance, and repair of the Passenger Rail System; or

4. At any time during the term of this Agreement, Sound Transit fails to provide and maintain any performance bond, if required; fails to maintain adequate insurance under this Agreement; or fails to satisfy the indemnity set out in this Agreement.

B. Before this Agreement is revoked or suspended, Sound Transit shall be given notice and opportunity to cure.

C. Where, after notice and providing Sound Transit an opportunity to cure, the City finds that there has been an act or omission that would justify revocation or suspension of this Agreement, the City may make an appropriate reduction in the remaining term of this Agreement or revoke or suspend this Agreement. However, this Agreement may only be revoked if Sound Transit was given (1) written notice of the default; (2) 60 days to cure the default; and (3) Sound Transit failed to cure the default, or to propose a schedule for curing the default acceptable to the City where it is impossible to cure the default in 60 days. No opportunity to cure is required for repeated violations, and fraud shall be deemed incurable. Authority to operate the Passenger Transportation System may be
suspended immediately upon notice when continued operation poses an imminent threat to public safety.

D. Notwithstanding the foregoing, the City may declare this Agreement forfeited without opportunity to cure when Sound Transit stops providing service it is required to provide pursuant to this Agreement; however, Sound Transit shall have the right to receive 30 days’ prior notice of an intent to declare this Agreement forfeited, and shall have the opportunity to show cause why this Agreement should not be forfeited.

E. Sound Transit’s property within the Right-of-Way Area, is expressly subject to the rights set forth in Section 8.1(c) of the Charter as follows:

   [The City has the right] To acquire by purchase or condemnation, for the use of the city itself or its inhabitants, all of the property of the grantee within the public streets, alleys, or places at a fair and just value, which shall not include any valuation of the franchise, right, or privilege, which shall thereupon be terminated.

F. Likewise, nothing in this section or in any other section of this Agreement shall be read to limit the City’s right to acquire the Passenger Rail System through exercise of any right of eminent domain.

Section 19. Right To Require Removal of Property/Right To Remove Property.

A. Upon termination of this Agreement, Sound Transit may be required to remove its property from the Right-of-Way Area and restore such Right-of-Way Area to its same or better condition as existed just prior to such removal, subject to any rights Sound Transit may have to abandon property in place. If Sound Transit
fails to remove property that the City requires it to remove, the City may perform
the work and collect the cost thereof from Sound Transit. The actual cost thereof,
including direct and indirect administrative costs, shall be a lien upon all plant and
property of Sound Transit within the Right of Use Area, effective upon filing of the
lien with the Pierce County Auditor.

B. To the extent any portion of the Passenger Rail System in the Public
Rights-of-Way or on any other public property is not removed by Sound Transit
within 12 months of the later of the end of the term of this Agreement or any
continuation period, Sound Transit’s property will be deemed abandoned and shall
become the property of the City, if the City wishes to own it. Provided, that in no
case shall Sound Transit be provided less than 12 months to remove its Facilities,
measured from the date the Sound Transit is ordered to remove its Facilities.

C. Any order, issued pursuant to Section 19.A, to remove the Passenger
Rail System, in whole or in part, shall be sent by registered or certified mail to
Sound Transit not later than 24 months following the date of termination of this
Agreement. Removal shall be completed (except with respect to property that
Sound Transit is permitted or required to abandon in place) not later than
12 months following the date of notification to remove the Facilities.

D. Sound Transit shall file a written removal plan with the City, not later
than 60 calendar days following the date of the receipt of any orders directing
removal or any consent to removal, describing the work that will be performed, the
manner it will be performed, and a schedule for removal by location. The removal
plan shall be subject to approval and regulation by the City. The affected property
must be restored to as good or better condition than existed immediately prior to
removal, and those damaged by removal must be compensated for the damage.

E. The purchase option provided for in Section 17 does not affect the City’s
authority to require Sound Transit to remove its Passenger Rail System upon
termination of this Agreement, as provided in this section, nor does it affect the
City’s right to assume ownership of any portion of the Passenger Rail System that
is abandoned. Within 60 days of a request by the City, Sound Transit shall
execute such documents as may be required to convey such abandoned property
to the City free and clear of all encumbrances.

Section 20. Covenants and Warranties.

A. By execution of this Agreement, the City warrants:

1. That the City has the full right and authority to enter into and
perform this Agreement and any permits which may be granted in accordance with
the terms hereof, and that by entering into or performing this Agreement, the City is
not in violation of its Charter or Bylaws, or any law, regulation, or agreement by
which it is bound or to which it is bound or to which it is subject; it being
understood, however, that the covenant and warranty contained in this Section 20
does not constitute a warranty, expressed or implied, by the City of the right or
rights granted by the City to Sound Transit hereunder; and

2. That the execution, delivery, and performance of this Agreement
by the City has been duly authorized by all requisite corporate action, that the
signatories for the City hereto are authorized to sign this Agreement, and that,
upon approval by City, the joinder or consent of any other party, including a court,
trustee, or referee, is not necessary to make valid and effective the execution, delivery, and performance of this Agreement.

B. By execution of this Agreement, Sound Transit warrants:

1. That Sound Transit has full right and authority to enter into and perform this Agreement in accordance with the terms hereof, and by entering into or performing this Agreement, Sound Transit is not in violation of its charter or by-laws, or any law, regulation, or agreement by which it is bound or to which it is subject; and

2. That the execution, delivery, and performance of this Agreement by Sound Transit has been duly authorized by all requisite Board action, that the signatories for Sound Transit hereto are authorized to sign this Agreement, and that the joinder or consent of any other party, including a court, trustee, or referee, is not necessary to make valid and effective the execution, delivery, and performance of this Agreement.

Section 21. Recordings, Taxes, and Other Charges.

A. Sound Transit shall pay all transfer taxes, documentary stamps, recording costs or fees, or any similar expense in connection with the recording or filing of any permits which may be granted hereunder. Sound Transit further agrees that if it is determined by any federal, state, or local governmental authority that the sale, acquisition, license, grant, transfer, or disposition of any part or portion of the Passenger Rail System or rights herein described requires the payment of any tax, levy, excise, assessment, or charges (including, without limitation, property, sales, or use tax) under any statute, regulation, or rule, Sound
Transit shall pay the same, plus any penalty and/or interest thereon, directly to said
taxing authority and shall hold the City harmless therefrom. Sound Transit shall
pay all taxes, levies, excises, assessments, or charges, including any penalties
and/or interest thereon, levied or assessed on the Sound Transit Facilities, and
City Facilities constructed by Sound Transit, or on account of their existence or use
(including increases thereof attributable to such existence or use, and excluding
taxes based on the income of City), and shall indemnify City against payment
thereof. Sound Transit shall have the right to claim, and City shall reasonably
cooperate with Sound Transit in the prosecution of any such claim, for refund,
rebate, reduction, or abatement of such tax(es).

B. The City may pay any tax, levy, excise, assessment, or charge, plus any
penalty and/or interest thereon, imposed upon Sound Transit for which Sound
Transit is obligated, pursuant to this section, if Sound Transit does not pay such
tax, levy, excise, assessment, or charge when due. Sound Transit shall reimburse
the City for any such payment made pursuant to the previous sentence, plus
interest at the rate of 8 percent per annum.

Section 22. Assignability; Beneficiary.

A. This Agreement shall be binding upon and inure to the benefit of the
parties hereto and their respective successors or assigns. No assignment hereof
or sublease shall be valid for any purpose without the prior written consent of the
other party, and any attempt by one party to assign or license the rights or
obligations hereunder without prior written consent will give the other party the
right, at its written election, to immediately terminate this Agreement or take any
other lesser action with respect thereto. The above requirement for consent shall not apply to (1) any disposition of all or substantially all of the assets of a party; (2) any corporate merger, consolidation, or reorganization, whether voluntary or involuntary; (3) a sublease or assignment of this Agreement (in whole or in part) to a wholly-owned subsidiary, affiliate, or parent company; or (4) a sale, lease, or other conveyance by City, subject to those requirements set forth in Section 17 of this Agreement; provided, however, that no sublease or assignment under (2) or (3) shall be permitted to a company not under common control with Sound Transit, and provided, further, that no unconsented assignment shall relieve Sound Transit of its obligations and liabilities under this Agreement.

B. Either party hereto may assign any monetary receivables due them under this Agreement; provided, however, such assignment shall not relieve the assignor of any of its rights or obligations under this Agreement.

C. Sound Transit acknowledges and agrees that the City may designate, in writing, a designee to (1) receive information (including information designated or identified as confidential) and notices under this Agreement; and (2) provide certain approvals or consents required from the City under this Agreement. In the event of such designation, Sound Transit may rely on approvals or consents by such designee on behalf of the City as fully as if such actions were performed by the designator itself.
Section 23. Notices.

A. Unless otherwise provided herein, all notices and communications concerning this Agreement shall be in writing and addressed to (one copy each):

Sound Transit
Attention: Executive Director of Operations
401 S. Jackson Street
Seattle, WA 98104

And to:

City of Tacoma
Attention: Public Works Director
747 Market Street, 4th Floor
Tacoma, WA 98402

City of Tacoma
Attention: City Manager
747 Market Street, 12th Floor
Tacoma, WA 98402

With a copy to:

City Attorney
747 Market Street, Rm. 1120
Tacoma, WA 98402

or at such other addresses as may be designated in writing by the other party.

B. Unless otherwise provided herein, notices shall be sent by registered or certified United States Mail, or other verifiable physical or electronic transmission, and shall be deemed served or delivered to addressee, or its office, upon the date of actual receipt (if such acknowledgment, or other means), return receipt acknowledgment, or, if postal claim notice is given, on the date of its return marked “unclaimed”; provided, however, that upon receipt of a returned notice marked “unclaimed,” the sending party shall make reasonable effort to contact and notify the other party by telephone.
Section 24. Miscellaneous.

A. This Agreement shall survive delivery and/or recordation of each permit which may be granted hereunder.

B. Each party shall be responsible for its own costs, including legal fees, incurred in negotiating or finalizing this Agreement.

C. The parties shall not be deemed in default with provisions of this Agreement where performance was rendered impossible by war or riots, civil disturbances, floods, or other natural catastrophes beyond Sound Transit’s or the City’s control; the unforeseeable unavailability of labor or materials; labor stoppages or slow downs, or power outages exceeding back-up power supplies. This Agreement shall not be revoked or the parties penalized for such noncompliance, provided that the parties take immediate and diligent steps to bring themselves back into compliance and to comply as soon as practicable under the circumstances without unduly endangering the health, safety, and integrity of the parties’ employees or property, or the health, safety, and integrity of the public, Public Rights-of-Way, public property, or private property.

D. This Agreement may be amended only by a written instrument executed by each of the parties hereto. No failure to exercise and no delay in exercising, on the part of any party hereto, any rights, power, or privilege hereunder shall operate as a waiver hereof and no single or partial exercise of any other rights, power or privilege, except as expressly provided herein.

E. This Agreement constitutes the entire agreement of the parties with respect to the subject matters hereof, and supersedes any and all prior
negotiations (oral and written), understandings, and agreements with respect
hereto, including the First Amendment Right of Use Agreement approved pursuant
to Ordinance No. 28022.

F. Section headings are intended as information only, and shall not be
   construed with the substance of the section they caption.

G. In construction of this Agreement, words used in the singular shall
   include the plural and the plural the singular, and “or” is used in the inclusive
   sense, in all cases where such meanings would be appropriate.

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

I. No Recourse. Without limiting such immunities as the City or other
   persons may have under applicable law, Sound Transit shall have no monetary
   recourse whatsoever against the City or its officials, boards, commissions, agents,
   or employees for any loss or damage arising out of the City’s exercising its
   authority pursuant to this Agreement or other applicable law; provided that, this
   Subsection I shall not apply in the event the Right of Use ordinance is repealed
   pursuant to Article VIII of the City Charter.

   Section 25. Legal Forum. This Agreement shall be interpreted, construed,
   and enforced in accordance with the laws of the state of Washington. Venue for
   any action under this Agreement shall be Pierce County, Washington.
**Section 26. Interpretation.** This Agreement is executed by all parties under current interpretations of applicable federal, state, or local statute, ordinance, law, or regulation.

**Section 27. Billing Procedures.**

A. **Errors or Disputes.** If any portion of a bill is in dispute, the debtor nonetheless shall pay, on a timely basis, the undisputed portion. No exception to any bill shall be honored, recognized, or considered if filed after the expiration of two years from the last day of the calendar month during which the bill is rendered. No bill shall be rendered later than two years after either (1) the last day of the calendar month in which the expense covered thereby is incurred; or (2) with respect to a project for which a roadway completion report is required or with respect to unliquidated liability claims, then 60 days following the date the amount is settled and/or the liability is established.

B. **Books and Records.** The parties shall maintain accurate books and records with respect to amounts due or claimed to be due under this Agreement. Either party, at a reasonable time, upon reasonable notice, and at its own expense, may inspect and/or audit the books, accounts and records of the other party, to the extent that the same relate to matters covered by this Agreement. If any discrepancy is found, the party owing money shall pay the difference to the other party within 30 days.

**Section 28. Severability.**

A. In case any term of this Agreement shall be held invalid, illegal, or unenforceable, in whole or in part, neither the validity of the remaining part of such
term nor the validity of the remaining terms of this Agreement shall in any way be affected thereby.

B. Notwithstanding the foregoing, the material provisions of this Agreement are not severable. In the event that a court, agency, or legislature of competent jurisdiction acts or declares any nonmaterial provision of this Agreement is unenforceable according to its terms, or otherwise void, said provision shall be considered a separate, distinct, and independent part of this Agreement, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that a court, agency, or legislature of competent jurisdiction acts so that, or declares that, any material provision of this Agreement is unenforceable according to its terms, or is otherwise void, the City and Sound Transit agree to immediately enter into negotiations in good faith to restore the relative burdens and benefits of this Agreement, consistent with applicable law.

C. Notwithstanding the foregoing, if either Sound Transit or the City believes a provision is not material, it must commence an action challenging the materiality within 14 days of a request by the other that it enter into negotiations. The obligation to negotiate is not tolled, and the City and Sound Transit must discharge their negotiation responsibility notwithstanding the dispute as to materiality. If there is a dispute as to materiality, the remedies provided for in the preceding paragraph shall be additive, not alternative. The remedies provided for herein do not prevent the City or Sound Transit from contending that a particular provision is enforceable, or foreclose any remedies if a provision is enforceable.
Section 29. Execution. Sound Transit shall execute and return to the City three original countersigned copies of this Agreement and a signed acceptance of this Agreement granted hereunder within 30 days after the date of passage of the Agreement by the City Council. The acceptance shall be in a form acceptable to the City Attorney, and in accepting this Agreement, Sound Transit warrants that it has carefully read the terms and conditions of this Agreement and unconditionally accepts all of the terms and conditions of this Agreement and agrees to abide by the same and acknowledges that it has relied upon its own investigation of all relevant facts, that it has had the assistance of counsel, that it was not induced to accept this Agreement, that this Agreement represents the entire agreement between Sound Transit and the City. The countersigned Agreement and acceptance shall be returned to the City accompanied by: (1) evidence of insurance; and (2) a payment for publication costs. The rights granted herein shall not become effective until all of the foregoing is received in acceptable form. Amendments to this Agreement approved by Ordinance of the City Council, shall be accepted and become effective as provided in the Ordinance approving any such amendments.
EXHIBIT “C”

(New Exhibit “D” to Right of Use)

Sound Transit Link Light Rail
Levels of Service

Following are the minimum and maximum normal levels of service approved for the Tacoma segment of the Link light rail system: (Subject to change with special events and extended service requests)

Minimum Level of Service:

Monday through Saturday - Trains shall operate a minimum of 14 hours per day, with no greater than 12-minute headways between trains.

Sunday - Trains shall operate a minimum of nine hours per day with no greater than 24-minute headways between trains.

Maximum Level of Service:

Trains shall never operate more frequently than five-minute headways between trains.
EXHIBIT “D”

ACCEPTANCE OF CITY RIGHT OF USE AGREEMENT AS AMENDED

Ordinance No. _____, amending Ordinance No. 26749, effective ____________, 2017.

I, ____________________________, am the _____________ of Sound Transit and am the authorized representative to accept the above-referenced amendments to the City Right of Use Agreement on behalf of Sound Transit.

I certify that the Right of Use Agreement as amended pursuant the above referenced ordinance, and all terms and conditions thereof, are accepted by Sound Transit, without qualification or reservation.

DATED this ____ day of ________________, 2017.

Sound Transit

By: ____________________________
Its: ____________________________

Witness: ____________________________
ORDINANCE NO. 28423

AN ORDINANCE relating to the Department of Public Utilities, Water Division; amending Section 12.10.400 of the Tacoma Municipal Code, “Rates – Inside and outside City limits,” by repealing Subsection 12.10.400.E thereof to remove language relating to temporary water service contracts.

WHEREAS Section 4.10 of the Tacoma City Charter (“City Charter”) provides that “[t]he Public Utility Board, subject only to the limitations imposed by this charter and the laws of this state, shall have full power to construct, condemn and purchase, acquire, add to, maintain, and operate the electric, water, and belt line railway utility systems,” and

WHEREAS, pursuant to City Charter Section 4.10, the Public Utility Board has the authority to enter into contracts with its customers that set the terms and conditions for providing utility service, and

WHEREAS City Charter Section 4.11 provides, in pertinent part, that “[a]ll matters relating to system expansion and the making of additions and betterments thereto or extensions thereof, the incurring of indebtedness, the issuance of bonds, and the fixing of rates and charges for utility services under the jurisdiction of the Board shall be initiated by the Board, subject to approval by the Council . . . ,” and

WHEREAS Tacoma Municipal Code (“TMC”) 12.10.400.E provides as follows:

The Superintendent, with the approval of the Board, shall have the right to enter into contracts for periods up to 20 years where service conditions are extraordinary; provided, that such contracts shall contain applicable rates as adopted by the Board and the City Council.

and

-1-
WHEREAS this TMC provision has introduced a lack of clarity of the respective authorities of the Public Utility Board and City Council, and

WHEREAS, because TMC 12.10.400.E reinforces authorities which are explicitly provided by the City Charter, Tacoma Water is recommending that this section be repealed, and

WHEREAS eliminating this language will not infringe upon the Public Utility Board’s Charter authority to manage the services provided by Tacoma Water, or otherwise diminish Tacoma Public Utilities’ commitment to economic development in the region or engaging in transactions that generally benefit retail customers;

Now, Therefore,

BE IT ORDAINED BY THE CITY OF TACOMA:

That Section 12.10.400 of the Tacoma Municipal Code is hereby amended as forth in the attached Exhibit “A.”

Passed ________________  

Attest:  

__________________________  
City Clerk

Approved as to Form:

__________________________  
Acting City Attorney

Requested by Public Utility Board Amended Resolution No. U-10921
EXHIBIT “A”

12.10.400 Rates – Inside and outside City limits.

The standard charge for water supplied inside and outside the City for residential, and commercial/industrial use shall consist of a customer charge, also termed a “monthly ready to serve charge,” based on the meter size together with the rate for the quantity of water used.

For water supplied to a single premises which contains multiple dwelling units, i.e., two or more houses under the same ownership, duplexes, apartment buildings, condominiums, mobile home parks, trailer courts, industrial buildings, etc., the monthly charges will be the same as indicated above.

When water is being supplied to an existing multiple premises, i.e., two or more separate premises being served by one service and meter, the “monthly ready to serve charge” will be based on either the existing meter size or on a 5/8-inch meter size for each premises served, whichever is the greater charge.

When more than one service supplies a premises, the consumption of water for each meter shall be computed separately.

* * *

E. Special Contracts. The Superintendent, with the approval of the Board, shall have the right to enter into contracts for periods up to 20 years where service conditions are extraordinary, provided, that such contracts shall contain applicable rates as adopted by the Board and the City Council.

FE. The Pulp Mill Contract. The rates, terms, and conditions in the contract originally entered between the City and RockTenn CP, LLC (“Pulp Mill”) and all future assignee to the contract are applicable, except as modified by this section. For a nominated contract demand, the water rate will be based on a monthly distribution charge and the daily supply charge. If the monthly water use exceeds 103% of the contract demand or the daily water use exceeds 109% of the contract demand, an excess water usage charge will be applied. The excess water usage charge will be either the daily excess water use charge or the monthly excess water use charge, whichever is greater.

Water use within the range of contract demand plus 3 percent: The charge will consist of a monthly distribution charge and daily supply charge per ccf metered as stated below.

Daily water use greater than one hundred and nine percent (109%) of the contract demand: The charge will consist of a monthly distribution charge, daily supply charge, plus a Daily Excess Water Usage Charge (based upon the commercial and industrial-large volume rate) for water metered daily in excess of the contract demand plus 9 percent as stated below.

Monthly water use greater than one hundred and three percent (103%) of the contract demand: The charge will consist of a monthly distribution charge, daily supply charge, plus a Monthly Excess Water Usage Charge (based on the commercial and industrial-large volume rate) for water metered during a month in excess of the contract demand plus 3 percent, as stated in the following table.

<table>
<thead>
<tr>
<th>Billing Components</th>
<th>Commencing</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>4/1/17</td>
</tr>
<tr>
<td>Distribution Charge per Month</td>
<td>$77,201.64</td>
</tr>
<tr>
<td>Supply Charge/CCF</td>
<td>$0.7148458</td>
</tr>
<tr>
<td>Daily or Monthly Excess Water Usage Charge</td>
<td>$1.666</td>
</tr>
</tbody>
</table>

1. The Superintendent is hereby authorized to execute a contract with the Pulp Mill to provide additional terms and conditions of service and other provisions consistent with this ordinance.
GF. Meter Tests. If a customer has informed the Division that its water consumption has been above its normal billing consumption and verification discovers no leaks on the customer facilities, the customer may request that the Division test the meter. If the test discloses the meter is accurate within the American Water Works Association (“AWWA”) specifications, the customer will be billed for the test and their water bill will not be adjusted. If the test discloses the meter is not accurate within the AWWA specifications and the inaccuracy is the cause of the recorded high consumption, the customer’s water bill will be adjusted and credit given for the excessive consumption and the customer will not be billed for the test. The charge for testing meters shall be added to the customer’s bill as follows:

<table>
<thead>
<tr>
<th>Meter Size</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-inch and smaller</td>
<td>$75.00</td>
</tr>
<tr>
<td>&gt;1-inch</td>
<td>*Estimated Cost</td>
</tr>
</tbody>
</table>

*The customer shall pay a deposit in the amount of the Division’s estimated cost. If the actual cost differs from the estimated cost, the customer will be refunded or billed the difference. The Division will not test meters owned by others.

HG. Low Pressure or Low Flow Concerns. The customer may request the Division to conduct a flow and pressure test on the service to its premises. If the cause of the problem is found to be located on the property side of the meter yoke outlet, the customer will be invoiced for a fee of $25. If the test discloses that the low flow and/or pressure is caused by Division facilities, the Division will attempt to correct the problem and the customer will not be charged.

IH. Low-income Senior and/or Low-income Disabled Residential Rate Discount. Residential customers who qualify as low-income senior or low-income disabled shall be eligible for a 30 percent reduction from the regular residential water rates. The determination of low-income senior and low-income disabled shall be made as set forth in TMC 12.06.165 for City Light Division (d.b.a. “Tacoma Power”) customers. Customers must submit an application for review and acceptance by the authorized administering agency to qualify for this reduction. For the water rate discount, there is no requirement that a customer be a Tacoma Power customer or submit to an energy audit.

JI. Water System Acquisition. A water system may be acquired by the City under an agreement between the water system owner(s) and the City with Board and City Council approval. When all or a portion of the acquired system requires upgrading equal to Division standards, the agreement shall provide for funds to achieve compliance with said standards. Under the agreement, a surcharge may be levied by the City for a period of time or an LID may be formed in accordance with RCW Title 35. The surcharge shall be an additional charge equivalent to the Ready to Serve charge per month times a multiplier, or an actual dollar amount as stated in the acquisition agreement and set forth below. The current surcharge areas include:

<table>
<thead>
<tr>
<th>Former Water System</th>
<th>Total Monthly Charge</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hyada Mutual Service Company</td>
<td>$30.00 per month through July 2022</td>
</tr>
</tbody>
</table>

If allowed by the acquisition agreement, a customer in a surcharge area may opt to pay off the outstanding surcharge amount.