

**WASTEWATER TREATMENT AND DISPOSAL AGREEMENT**

**BETWEEN**

**CITY OF TACOMA**

**AND**

**CITY OF RUSTON**

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- Exhibit A: Depiction of Sewer Systems
- Exhibit B: Delegation of Enforcement Authority

## RECITALS

A. Tacoma owns and operates a POTW (publicly owned treatment works) under authority of RCW 35.21.210, 35.21.215, 35.67.020, and 35.92.020, Article XI, § 11 of the Washington State Constitution, and Section 4.1 of the Tacoma City Charter, which POTW includes the Central Treatment Plant (CTP) and the North End Treatment Plant (NETP).

B. Ruston is a non-charter code city and owns and operates a municipal sanitary sewer system that collects and conveys Wastewater to the Tacoma POTW under authority of RCW 35A.11.020, 35A.21.150, and 35.67.020 and Article XI, § 11 of the Washington State Constitution.

C. Pursuant to RCW 35.67.300 any city or town owning or operating its own sewer system, whenever topographic conditions shall make it feasible and whenever such existing sewer system shall be adequate therefor in view of the sewerage and drainage requirements of the property in such city or town to be served by such system, may contract with any other city or town, for the discharge into its sewer system of sewage from all or any part or parts of such other city or town, upon such terms and conditions and for such periods of time as may be deemed reasonable.

D. Tacoma and Ruston entered into a joint use sewer agreement dated April 5, 1966, approved pursuant to Tacoma City Council Resolution No. 18667, providing for the construction and operation by Tacoma of a sanitary sewer interceptor line through Ruston, and establishing the rights, duties and obligations of Tacoma and Ruston related

to the use of the interceptor line and the terms and conditions upon which Tacoma would provide Wastewater treatment and disposal services to Ruston.

E. Tacoma and Ruston entered into a construction and extension agreement dated June 30, 1978, approved pursuant to Tacoma City Council Resolution No. 25057, providing for construction and dedication to Ruston of a sewer extension through Ruston to convey wastewater originating from Tacoma and Ruston to a connection to the Tacoma POTW at the Ruston City limits.

F. Tacoma and Ruston entered into a contract for sewage disposal commencing January 1, 1979, approved pursuant to Tacoma City Council Resolution No. 25290, incorporating by reference the above-referenced 1978 construction and extension agreement and certain provision of the above-referenced 1966 joint use sewer agreement, and providing for wastewater treatment and disposal services to Ruston.

G. Tacoma and Ruston entered into an interlocal agreement dated September 17, 2008, pursuant to which the Parties agreed to jointly cooperate and participate in the Ruston Way Local Improvement District Project, pursuant to which the Parties formed LID No. 3967 providing for the relocation and construction of sanitary sewer mains of various diameters, as a joint project of both jurisdictions, to serve the Point Ruston development within the City of Tacoma and the Town of Ruston, as follows:

- Relocate a 30-inch sanitary sewer in Ruston Way from North 49th Street northwesterly 710 feet, more or less;
- Construct a 30-inch sanitary sewer main in a public sanitary sewer easement within a private roadway referred to as “Main Street”;
- Construct a 24-inch sanitary sewer main in the proposed Yacht Club Road from a private roadway referred to “Cascade Avenue” southerly 405 feet, more or less, to proposed Ruston Way;
- Construct a 12-inch sanitary sewer main from the intersection of the proposed Ruston Way and proposed Yacht Club Road southerly 300 feet to connect to an existing sanitary sewer main in Baltimore Street;
- Construct an 8-inch sanitary sewer main in the proposed Yacht Club Road from a private roadway referred to as “Cascade Avenue,” 185 feet, more or less, also in Ruston Way from the intersection of North 51st Street and proposed Ruston Way southeasterly 310 feet, more or less,
- Such improvements also included sanitary side-sewer connections from the sewer main to property lines or to the edge of the public sanitary sewer easement together with all the necessary appurtenance equipment, including gate valves, laterals, connections, and other work necessary to complete the same.

H. Some of the sanitary sewer improvements constructed pursuant to LID No. 3967 have been or will be used by Ruston to provide sanitary sewer service to the Point Ruston properties located within Ruston.

I. The term of the 1979 agreement has now expired and the Parties have determined that it is in the best interests of the public health, safety and welfare that the Parties enter into a new agreement superseding and replacing the prior agreements of the Parties and establishing the terms and conditions upon which, (i) Tacoma will provide Wastewater treatment and disposal services to Ruston, (ii) the Parties will grant reciprocal rights to convey wastewater, (iii) Ruston will grant rights to Tacoma to operate, maintain, repair, replace and improve the Tacoma Interceptor Line located within the City of Ruston, and (iv) Tacoma will authorize connections from Ruston customers to its sanitary sewer system located in Ruston.

J. Tacoma acknowledges and agrees that, pursuant to and subject to the terms of this Agreement, Ruston has the right and ability to serve all customers located in Ruston (with the exception shown on Exhibit A) including the portions of Point Ruston that are located within the City of Ruston.

**NOW THEREFORE**, in consideration of the rights, duties and obligations as set forth herein and the mutual benefits to be received, the Parties enter into the following Agreement:

## **AGREEMENT**

This **AGREEMENT** is made and entered into on the Effective Date hereof by and between the City of Tacoma and the City of Ruston under authority of RCW 35.67.300 for the purposes set forth herein. Hereafter City of Tacoma (Tacoma) and City of Ruston (Ruston) may be individually referred to as “Party” and collectively referred to as the “Parties”.

### **SECTION 1. DEFINITIONS**

In construing all provisions of this Agreement, when not inconsistent with the context, the following terms, phrases, words and their derivations where capitalized shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. If specific provisions of law, code, ordinance, regulation or rule referred to herein be renumbered or amended, then the reference shall be read to refer to the renumbered and/or amended provision. In each instance herein where reference is made to a publication, reference work or Federal or State regulation, it is the intention of the parties that, at any given time, the then current edition of any such publication or reference work or Federal or State regulation shall apply. If a publication or reference work is discontinued or ceases to be the generally accepted work in its field or if conditions change or new methods or processes are implemented by Tacoma, new standards shall be adopted which are in compliance with State and Federal laws and any valid rules and regulations and will become a part of this Agreement. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority.

“1966 Agreement” shall mean and refer to the joint use sewer agreement between Tacoma and Ruston dated April 5, 1966 and approved pursuant to Tacoma City Council Resolution No. 18667.

“1966 Interceptor Line” shall mean and refer to that portion of the gravity-flow interceptor line constructed by Tacoma in 1966, as generally described in the 1966 Agreement.

“1978 Construction Agreement” shall mean and refer to the construction and extension agreement between Tacoma and Ruston dated June 30, 1978 and approved pursuant to Tacoma City Council Resolution No. 25057.

“1978 Sewer Trunk Extension” shall mean and refer to the sanitary trunk line extension of the Ruston Sanitary Sewer System as generally described in the 1978 Construction Agreement.

“1979 Sewage Disposal Agreement” shall mean and refer to the contract for sewage disposal between Tacoma and Ruston commencing January 1, 1979 and approved pursuant to Tacoma City Council Resolution No. 25290.

“Agreement” shall mean and refer to the entirety of this agreement as set forth herein and any amendments hereto made in conformance with Sections 4, 25 or 26.4 of this Agreement.

“Available Capacity Right” shall mean and refer to the difference between the then-existing Capacity of the Tacoma POTW being used by Ruston, as measured by current water usage, or metered Flow, and specified in MGD, and the maximum Capacity Right.

“Capacity” shall, with respect to a Wastewater treatment plant, mean and refer to the ability of a Wastewater treatment plant to process and discharge Wastewater given the then-current design and operation of the Wastewater treatment plant and as may be limited by applicable regulatory and permit requirements. With respect to line pipe, “Capacity” shall mean and refer to the ability of a section of pipe to carry a volume of Wastewater at a speed that maintains trouble free operation of the pipe and avoids settling and sedimentation of the solids.

“Capacity Right” shall mean and refer to the numerical limit of Capacity in the Tacoma POTW specified in millions of gallons per Day (MGD) as set forth as Section 8.5 of this Agreement.

“Certificate of Sewer Availability” shall mean and refer to any document prepared, issued or executed by Ruston associated with a Project Permit Application or SEPA review that confirms the availability or unavailability of sanitary sewer service for a proposed project.

“Day” shall mean and refer to calendar days.

“Domestic Wastewater.” Water carrying human wastes including kitchen wastes, bath wastes, and laundry wastes that are typical of residential discharges, but does not include industrial wastes.

“Effective Date” shall mean and refer to the effective date of this Agreement as set forth as Section 4.1 of this Agreement.

“Flow” shall mean and refer to the volume of Wastewater moving into a treatment facility or through a given section of pipe over a given period typically measured in million gallons per Day (MGD) or gallons per minute (gpm).

“Groundwater” shall mean and refer to water in a saturated zone or stratum beneath the surface of the land or below a Surface Water body.

“Initial term” shall mean and refer to the initial term of this Agreement as set forth at Section 4.2 of this Agreement.

“Infiltration” shall mean and refer to water that has migrated from the ground into the Ruston Sanitary Sewer System or the Tacoma POTW.

“Inflow” shall mean and refer to water other than Wastewater that enters into the Ruston Sanitary Sewer System or the Tacoma POTW (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, foundation drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewer catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from, Infiltration.

“Interference” shall mean and refer to a discharge that alone or in combination with other discharges, inhibits or disrupts the Tacoma POTW, its treatment processes or operations or its sludge processes, use or disposal.

“MGD” shall mean million gallons per Day.

“Municipal stormwater system” shall mean and refer to a conveyance, or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, stormwater BMPs/facilities or storm drains) designed or used for collecting, conveying, or managing stormwater and is not part of a combined sewer and is owned or operated by a municipal corporation.

“NPDES Permit.” Waste discharge permits issued by the Washington State Department of Ecology to Tacoma pursuant to Chapter 90.48 RCW and Section 402 of the Federal Clean Water Act that establish special and general conditions for discharging effluent from Tacoma’s Central treatment plant (CTP) and North End treatment plant (NETP), and any other treatment plant operated by Tacoma, into waters of the state.

“Private Lateral Lines” shall mean and refer to lateral lines owned by a private party and that are connected to the Tacoma Interceptor Line within the municipal boundaries of the City of Ruston and collecting and discharging Wastewater generated from Ruston customers.

“Private Side Sewer” shall mean and refer to the Wastewater conveyance pipe owned by a property owner that extends from a building or structure located in Ruston directly to a connection at the Ruston Sanitary Sewer System or Tacoma Interceptor Line. In most circumstances, a portion of the private side sewer extends into public streets or alleys connecting to the public sewer main.

"Private Stormwater system" shall mean and refer to best management practices, facilities and conveyances, or a system of conveyances (including private roads with drainage systems, private streets, roof drains, catch basins, curbs, gutter, ditches, manmade channels, or storm drains) that are not part of the Municipal stormwater system.

“Project Permit Application” shall mean and refer to any land use or environmental permit or license required from a Party for a project action, including but not limited to building permits, subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial development permits, site plan review, permits or approvals required by critical area ordinances, and site-specific rezones authorized by a comprehensive plan or subarea plan.

“Publicly Owned Treatment Works” or “POTW” shall mean and refer to a treatment works, as defined by 33 U.S.C. Section 1292 (2), and any devices and systems used in the conveyance, storage, treatment, recycling and reclamation of Wastewater.

“Renewal Term” shall mean and refer to a term of renewal of this Agreement as set forth at section 4.3 of this Agreement.

“Ruston” shall mean and refer to the City of Ruston, a municipal corporation operating under the laws of the state of Washington as a code city.

“Ruston customer” shall mean any sanitary sewer customer within the Ruston Sanitary Sewer Service Area.

“Ruston Lateral Lines” shall mean and refer to Ruston Sanitary Sewer System lateral lines, Private Lateral Lines, or Private Side Sewers connected to the Tacoma Interceptor Line within the Municipal Boundaries of the City of Ruston and collecting and discharging Wastewater generated from customers located in the City of Ruston.

“Ruston Sanitary Sewer Service Area” shall mean and refer to that area described in Section 7 of this Agreement served by the Ruston Sanitary Sewer System. This area includes all properties within the corporate boundaries of the City of Ruston except for those properties identified in Exhibit “A”.

“Ruston Sanitary Sewer System” shall mean and refer to the system of sanitary sewer trunk, main, and Ruston Lateral Lines, and related devices (e.g. lift stations) and appurtenances, inclusive of the Ruston Trunk Line, owned and operated by Ruston and within Ruston’s municipal boundaries to collect, store and convey Wastewater.

“Ruston Trunk Line” shall mean and refer to the sanitary sewer trunk line, as depicted in Exhibit A attached hereto.

“Stormwater” shall mean and refer to that portion of precipitation, including snowmelt, that does not naturally percolate into the ground or evaporate, but flows via overland flow, interflow, pipes, and other features of a stormwater system into a receiving water or stormwater BMP/facility, and may also be referred to as runoff or stormwater runoff.

“Surface Water” shall mean and refer to water bodies, such as creeks, streams, rivers, lakes, wetlands, estuaries, and marine waters.

“Tacoma” shall mean and refer to the City of Tacoma, a municipal corporation operating under the laws of the state of Washington as a first class charter city.”

“Tacoma customer” shall mean any sanitary sewer customer for property that is located within the corporate boundaries of the City of Tacoma and those customer properties shown on Exhibit A.

“Tacoma Interceptor Line” shall mean and refer to the City of Tacoma interceptor line as depicted in Exhibit A attached hereto, together with any improvements or alterations that may in the future be made thereto, commencing at the Tacoma and Ruston municipal boundary in proximity to the intersection of North Park Avenue and North Pearl Street and terminating at the Tacoma and Ruston municipal boundary in the vicinity of the intersection of Main Street and Grand Avenue.

“Tacoma POTW” shall mean and refer to the publicly owned treatment works owned and operated by Tacoma, inclusive of the 1966 Interceptor Line.

“Term” shall mean and refer to the time period encompassing and inclusive of the Initial term and any Renewal Terms.

“Up-Stream Connection” shall mean and refer to the connection of Tacoma’s sanitary sewer system at the point of connection located west of North Shirley Street and south of North 49<sup>th</sup> Street at the Ruston and Tacoma municipal Boundary as depicted in Exhibit A.

“Wastewater” or “Wastestream.” Liquid and water-carried industrial wastes, holding tank waste, and Domestic Waste from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated.



## **SECTION 2. INTENT AND PURPOSE**

The Parties acknowledge and agree that this Agreement is intended to replace, terminate and supersede the rights, duties and obligations set forth in the 1966 Agreement, the 1978 Construction Agreement, the 1979 Sewage Disposal Agreement and any other agreements whether oral or written preceding the Effective Date and relating to the subject matter of this Agreement, inclusive of any rights, duties or obligations that survive such agreements, and to establish the terms and conditions upon which, (i) Tacoma will provide Wastewater treatment and disposal services to Ruston, (ii) the Parties will grant reciprocal rights to discharge Wastewater, (iii) Ruston will grant rights to Tacoma to operate, maintain, repair, replace and improve that portion of the Tacoma Interceptor Line located within the City of Ruston, (iv) Tacoma will authorize connections to its sanitary sewer system located in Ruston, and (v) Ruston will authorize connections to the Ruston Trunk Line.

Ruston customers who connect directly to the Tacoma Interceptor Line or connect directly to the Tacoma Sewer system shall be subject to Ruston sanitary sewer connection fees, rates and charges as set forth in the Ruston Municipal Code and shall be subject to such review and approval fees as are assessed pursuant to Section 5.1.3 of this Agreement. Tacoma customers who connect directly to the Ruston Sanitary Sewer System, Ruston Lateral Lines or Ruston Trunk Line shall be subject to Tacoma sanitary sewer service connection fees, rates and charges as are set forth in the Tacoma Municipal code.

## **SECTION 3. CONTRACT ADMINISTRATION**

3.1 Single Point of Contact. To facilitate the timely and compliant performance of the obligations in this Agreement, the Parties shall each appoint a representative that shall serve as the primary contact person and contract administrator (**Contract Administrator**).

3.2 Authority of the Contract Administrators. The Contract Administrators shall have full authority to administer this Agreement with respect to the rights, duties and obligations of the Parties as set forth in this Agreement and are authorized to execute or furnish such documents as may be necessary to implement and consummate this Agreement and the actions, duties or responsibilities of this Agreement.

## **SECTION 4. EFFECTIVE DATE; TERM; RENEWAL**

4.1 Effective Date. This Agreement shall be effective at 12:00 a.m. on the **first day of March, 2021.**

4.2 Initial Term. The Initial Term of this Agreement shall commence on the Effective Date and, unless sooner terminated, shall **expire** at 11:59 p.m. on the **28th day of February, 2041** unless automatically renewed pursuant to the provisions of paragraph 4.3 below.

4.3 Renewal Terms. This Agreement shall automatically renew for an additional term of ten (10) years unless, no less than five (5) years prior to expiration of the Initial Term either Party provides Notice to the other party of its intent not to renew the Agreement. Thereafter, at the end of each Renewal Term, the Agreement shall automatically be renewed for an additional term of ten (10) years unless either Party gives the other Party written notice of its intent not to renew the Agreement no less than three (3) years prior to the expiration of the Renewal Term; provided that, there shall be no more than three (3) renewal terms for a cumulative total of thirty (30) years. Notwithstanding the foregoing, the Term of this Agreement may be amended upon such terms and conditions as may be mutually agreed to by the Parties and approved by their respective governing bodies.

## **SECTION 5. CONNECTION AND WASTEWATER DISCHARGE RIGHTS GRANTED**

5.1 Tacoma Interceptor Line. In consideration for the mutual rights, duties and obligations set forth in this Agreement, the Parties grant to each other the following rights for the Term, and subject to the conditions, of this Agreement:

5.1.1 ROW Occupancy Rights Granted to Tacoma. Ruston grants to Tacoma, at Tacoma's cost and expense, the right to operate, inspect, maintain, repair, replace, relocate, protect and improve, the Tacoma Interceptor Line, together with the right to enter into and upon the public right of way wherein the Tacoma Interceptor Line is located and perform all work reasonable and necessary to exercise the rights granted herein to Tacoma, subject to regulatory requirements of the Ruston Municipal Code related to work with the public right of way, including any applicable requirements to obtain a permit for such work.

5.1.2 Wastewater Discharge Rights Granted to Ruston. Subject to the conditions set forth in this Agreement at Subsections 5.1.3 (*New Ruston Lateral Line Connections*) and 9.7 (*Ruston Side Sewer Laterals*), Tacoma grants to Ruston, at Ruston's cost and expense, the right to discharge through Ruston Lateral Lines connected to the Tacoma Interceptor Line, Wastewater collected from Ruston Customers for conveyance to the Tacoma POTW for treatment and disposal in accordance with the provisions set forth in this Agreement at Subsection 8 (*Wastewater Treatment and Disposal*). Tacoma affirms its intent that pursuant to the discharge rights granted herein, Ruston has the right and ability to provide sanitary sewer service to Ruston Customers including the portions of Point Ruston that are located within the City of Ruston.

5.1.3 New Ruston Lateral Line Connections. Tacoma grants to Ruston, the right to make new, and to repair or re-establish existing, connections of Ruston Lateral Lines to the Tacoma Interceptor Line, subject to the prior approval of the City of Tacoma, which approval will not be unreasonably withheld. Connections to the Tacoma Interceptor Line existing on the Effective Date that were previously approved by Tacoma, are hereby approved as authorized connections pursuant to this Agreement. In determining if a new connection, or repair or re-establishment of an existing connection, will be approved, Tacoma may consider among other things, available Capacity, compliance with Tacoma standards, public safety, and the design and engineering of the Ruston Lateral Line and Connections. A request to Tacoma for a new connection shall include one complete set of construction plans and specifications of such proposed facilities together with a work order deposit and replenishment obligation sufficient, as determined by Tacoma, to reimburse Tacoma for its costs for review and approval of the proposed new connection. The plans shall include dimensioned plan view and dimensioned profile view drawings, locations, grades, pipe sizes, details, etc., for all proposed facilities. The submittal to Tacoma shall also include a digital file of the proposed facilities that complies with Tacoma's standard Geographic Information System protocol. The standards of construction shall meet or exceed the standards for construction of similar sanitary sewer facilities in Tacoma.

5.2 Ruston Trunk Line. In consideration for the rights granted under this Agreement, the Parties grant the following rights for the Term of this Agreement:

5.2.1 Connection Rights Granted to Tacoma. Ruston grants to Tacoma, at Tacoma's cost and expense, the right to connect Tacoma's sanitary sewer system at the current point of the Up-Stream Connection, and to maintain, repair, replace, protect and make improvements to the Up-Stream Connection.

5.2.2 Wastewater Discharge Rights Granted to Tacoma. Ruston grants to Tacoma, at Tacoma's cost and expense, the right to discharge to the Ruston Trunk Line, Wastewater collected from customers located in the City of Tacoma for conveyance of Wastewater through the Ruston Trunk Line to the point of connection to Tacoma's Interceptor Line.

5.2.3 Connection Rights Granted to Ruston. Tacoma grants to Ruston, at Ruston's cost and expense, the right to connect the Ruston Trunk Line to the Tacoma Interceptor Line at the point of connection as depicted in Exhibit A, attached hereto, and to maintain, repair, replace, protect and make improvements to the connection.

5.2.4 Wastewater Discharge Rights Granted to Ruston. Tacoma grants to Ruston, at Ruston's cost and expense, the right to discharge to the Tacoma Interceptor Line at the point of connection to the Ruston Trunk Line, Wastewater collected from customers located in Ruston and conveyed through the Ruston Trunk Line to the point of connection to Tacoma's Interceptor Line.

## **SECTION 6. MAINTENANCE**

### **6.1 Ruston Trunk Line.**

6.1.1 Maintenance of Ruston Trunk Line. Ruston shall ensure that the Ruston Trunk Line, together with all Ruston Lateral Line connections to the Ruston Trunk Line, are maintained in good operating condition and repair and shall, at its sole cost and expense, be responsible for inspection, maintenance, operation, repair, adjustment, protection, and improvement to the Ruston Trunk Line and Ruston Lateral Line connections to the Ruston Trunk Line.

6.1.2 Connection of Ruston Trunk Line to Tacoma Interceptor Line. Ruston shall ensure that the Ruston Trunk Line connection to the Tacoma Interceptor Line is maintained in good operating condition and repair and shall be responsible for inspection, maintenance, protection, replacement and repair of the Ruston Trunk Line connection to the Tacoma Interceptor Line.

6.1.3 Up-Stream Connection to Ruston Trunk Line. Tacoma shall ensure that the Up-Stream Connection to the Ruston Trunk Line is maintained in good operating condition and repair and shall be responsible for inspection, maintenance, protection, replacement and repair of the Up-Stream Connection to the Ruston Trunk Line.

6.1.4 Right to Inspect Ruston Trunk Line. Tacoma shall have the right at its cost and expense, but not the obligation, to inspect from time to time the Ruston Trunk line together with all Ruston Lateral Line connections to the Ruston Trunk Line, to ensure that Ruston Trunk Line and Ruston Lateral Line connections are in good operating condition and repair. In the event that Tacoma conducts an inspection of the Ruston Lateral Line and discovers a defect or other condition materially affecting Flow or Capacity or the structural integrity of the Ruston Trunk Line, Tacoma shall provide a detailed inspection report to Ruston and request that Ruston establish a reasonable schedule and plan to perform the maintenance or repair work to correct such discovered defect or condition to ensure that proper and adequate Flow and Capacity is maintained and the Ruston Trunk Line remains in good condition. Except as provided below, Ruston shall within 90 Days following receipt of such report provide Tacoma with its proposed schedule and plan to perform the maintenance or repair. Tacoma shall review and provide comments to Ruston within 60 Days of receipt of the proposed schedule and plan. Ruston shall, after review and consideration of Tacoma's comments, and any additional review requested by Ruston, finalize the schedule and plan for consideration by Ruston before finalizing the schedule and plan within 60 Days following receipt of Tacoma's final comments. In the event that a Dispute occurs regarding the final schedule and plan, the Parties will attempt to resolve the dispute through the Dispute Resolution Process set forth in this Agreement.

In the event that the discovered defect or condition threatens to cause imminent harm to persons or property or threatens to or does cause a sanitary sewer overflow or Interference, Ruston will take such immediate action as is reasonable and necessary to ensure that the Ruston Trunk Line is repaired and remains operational.

## 6.2 Tacoma Interceptor Line.

6.2.1 Maintenance of the Tacoma Interceptor Line. Tacoma shall ensure that the Tacoma Interceptor Line is maintained in good operating condition and repair and shall, at its sole cost and expense, be responsible for inspection, maintenance, operation, repair, adjustment, protection, and making improvements to the Tacoma Interceptor Line.

6.2.2 Maintenance of Connections to Tacoma Interceptor Line. Ruston shall ensure that the Ruston Lateral Line connections to the Tacoma Interceptor Line are maintained in good operating condition and repair and shall be responsible for inspection, maintenance, protection, replacement and repair of all Ruston Lateral Line connections to the Tacoma Interceptor Line.

6.3. Maintenance of Ruston Sanitary Sewer System. The Ruston Sanitary Sewer System shall be the sole property and responsibility of Ruston and Tacoma shall have no responsibility therefore of any kind or character. All operation, maintenance, repair, protection, realignment and replacement of the Ruston Sanitary Sewer System shall be the sole responsibility of Ruston and shall remain under the exclusive ownership, care and control of Ruston.

## **SECTION 7. SERVICE AREA**

7.1 Ruston Sanitary Sewer Service Area. Except as provided at Section 7.2 (*Tacoma Service Area in Ruston*) below, Ruston's Sanitary Sewer Service Area encompasses all real property located within the municipal boundaries of the City of Ruston. For purposes of this Section, Ruston's Sanitary Sewer System shall include the rights granted to Ruston pursuant to Section 5.1.2 (*Wastewater Discharge Rights Granted to Ruston*) of this Agreement.

7.2 Tacoma Service Area in Ruston. Tacoma's sanitary sewer service area includes those properties located within the Ruston municipal boundaries that are connected to Tacoma sanitary sewer system in the vicinity of North 49<sup>th</sup> Street and Orchard as depicted in Exhibit A, attached hereto.

## **SECTION 8. WASTEWATER TREATMENT AND DISPOSAL**

8.1 Wastewater Treatment and Disposal Services. Subject to the conditions set forth in this Agreement, Tacoma agrees to provide Wastewater treatment and disposal for all Wastewater collected within the Ruston Sanitary Sewer Service Area and

discharged to the Tacoma POTW. Ruston agrees to prompt payment of Wastewater treatment and disposal charges as set forth herein.

8.2 Rates and Charges for Sanitary Sewer Service and Connections. Ruston will be responsible for establishment, assessment and collection of rates, fees and charges, including connection fees and capital facilities charges, for providing sanitary sewer service and permitting sewer connections within the Ruston Sanitary Sewer Service Area, including but not limited to connections to the Tacoma Interceptor, subject to the prior approval of Tacoma as set forth in Section 5.

8.3 Wastewater Treatment and Disposal Service Charges.

8.3.1 Interim Rates and Fees. As payment for the provision of Wastewater treatment and disposal services by Tacoma, Ruston shall pay the applicable rate and fees for Wastewater treatment and disposal as are determined in accordance with Section 11 of the 1979 Sewage Disposal Agreement, which section is incorporated by this reference as though fully set forth herein. It is the intent of this Section 8.3.1 that the rates and fees for Wastewater treatment and disposal services provided by Tacoma to Ruston that are in effect prior to the Effective Date of this Agreement shall remain in effect until such time as the Tacoma City Council enacts an ordinance establishing rates and fees for such services (the "Rate Ordinance").

8.3.2 Rates and Fees. Effective beginning on the first day of the month following the month in which the Rate Ordinance becomes effective, as payment for the provision of Wastewater treatment and disposal services by Tacoma, Ruston shall pay the applicable rate and fees for Wastewater treatment and disposal services as set forth at Chapter 12.08 of the Tacoma Municipal Code, the Rate Ordinance, any amendment thereto, and any subsequent ordinance(s) adopting and implementing the rate and fees for such services. The calculation of the rates and fees for Wastewater treatment and disposal services shall be made in accordance with Chapter 12.08B TMC.

8.3.3 Payments. Payments shall be invoiced and paid as provided in Title 12 of the Tacoma Municipal Code and shall be subject to such late payment fees as are set forth therein.

8.4. Operation of Tacoma POTW. Tacoma will operate the Tacoma POTW in conformity with applicable Federal, State and local laws, rules and regulations and its NPDES Permits and any lawful order issued by a regulatory agency or court of competent jurisdiction. Within such requirements, the City shall retain full discretion to determine the method and manner of its operation of the Tacoma POTW.

## SECTION 9. CAPACITY AND OPERATIONS

### 9.1 Operation of Ruston Sanitary Sewer System.

9.1.1 Capacity Not to be Exceeded. Ruston will not, at any time, permit the Ruston Sanitary Sewer System to exceed its design Capacity or its Capacity Right, or issue a Certificate of Sewer Availability that would cause Ruston to exceed its Capacity Right.

9.1.2 Capacity Right. Except as provided below, Ruston is authorized to discharge to the Tacoma POTW up to **0.15 MGD** of Wastewater Flow.

9.1.3 Reduction of Capacity Right. Tacoma reserves the right to reduce some or all of the Available Capacity Right of Ruston as follows:

9.1.3.1 Regulatory Limits. In the event that a governmental body with jurisdictional authority to regulate the Tacoma POTW implements regulatory controls, an order or a directive that, in effect, limits the Capacity of the NETP or CTP, Tacoma reserves the right to reduce some or all Available Capacity Right in the sole discretion of Tacoma.

9.1.3.2 NPDES Permit Violation. Tacoma reserves the right to reduce some or all Available Capacity Right if Tacoma, in its sole judgment, determines that adding additional Flows to the Tacoma POTW may subject Tacoma to enforcement action by a regulatory body with jurisdictional authority to regulate the Tacoma POTW or pursuant to the citizen suit provisions (33 U.S.C. 1365) of the Clean Water Act.

9.1.3.3 Court Order. In the event that a court of competent jurisdiction issues an order that, in effect, limits the Capacity of the NETP or CTP, Tacoma reserves the right to reduce some or all Available Capacity Right in the sole discretion of Tacoma.

9.1.3.4 Insufficient Capacity. Tacoma reserves the right to reduce some or all Available Capacity Right if Tacoma, in its sole judgment, determines that Capacity of the Tacoma POTW (not including the Available Capacity) is insufficient to support a pending project permit application to Tacoma, and the Available Capacity Right is necessary to provide a Certificate of Sewer Availability for the project.

9.1.3.5 Non-Compliance. Tacoma reserves the right to reduce some or all Available Capacity Right if Ruston is in breach of this Agreement and has not cured such breach as provided at Section 11 (*Default and Termination*) of this Agreement.

9.1.4 Planning Future Capacity. Tacoma has engaged in the development of a comprehensive sewer plan to provide a long-term strategy for the

Tacoma POTW. Ruston acknowledges and understands that expanded Capacity of the Tacoma POTW will be necessary to meet projected growth for Tacoma and for those jurisdictions contracting with Tacoma for Wastewater treatment and disposal services. Projects to expand Capacity are included in Tacoma's capital improvement plan and comprehensive sewer plan. Ruston may, as part of its planning process and in coordination with Tacoma's planning process, submit a written request to Tacoma to increase its Capacity Right based upon Ruston's projected Capacity needs. Tacoma and Ruston agree to work cooperatively to include projected growth in Ruston in the Tacoma comprehensive planning process. Ruston agrees, upon request of Tacoma to provide the following information for planning purposes:

- 9.1.4.1 population data, present and projected;
- 9.1.4.2 geography and topography data;
- 9.1.4.3 existing and projected discharge Flows into the Tacoma POTW;
- 9.1.4.4 existing and planned Wastewater collection system maps;  
and
- 9.1.4.5 how existing deficiencies, if any, within Ruston's Sanitary Sewer System will be addressed.

9.1.5 Measurement. Except for Wastewater Flows that are metered, if any, the Wastewater Flow will be calculated based upon water usage over a period converted to an average daily Flow.

9.1.6 Projected Wastewater Flow Calculations. Projected Wastewater Flow calculations for proposed development will be based on industry standard Flow rates, building use, and building square footage, either estimated or based upon submitted plans. Tacoma reserves the right to implement a different methodology to calculate projected Wastewater Flows provided that such methodology is based upon accepted standards.

9.1.7 Certificate of Sewer Availability. Prior to issuing a Certificate of Sewer Availability for commercial, industrial and multi-family development projects, subdivisions, binding site plans, and planned unit developments, and similar projects, Ruston shall seek and obtain written confirmation from Tacoma that Capacity is available for the proposed development based upon projected Wastewater Flows for the proposed project, Available Capacity (less any reductions), Capacity of the Tacoma POTW and other relevant considerations. In the event that Tacoma determines based upon projected Wastewater Flows that the Available Capacity Right is insufficient to serve the proposed development, Ruston may file a written request with the Tacoma Contract Administrator for an increase in its Capacity Right to serve the proposed development. Tacoma shall timely review the request and determine, in its sole discretion, whether Tacoma has Capacity within the Tacoma POTW to approve an increase in Ruston's Capacity Right for purposes of serving the proposed development.



9.1.8 Reporting Requirement. Ruston shall, upon becoming aware, promptly report to Tacoma any change or significant problem or failure of any kind involving the Ruston Sanitary Sewer System or any discharge that may cause an Interference.

9.1.9 No Unauthorized Users. Ruston will prevent unauthorized users and unlawful connections at all times during the Term of this Agreement, and will require all users to comply with Ruston's laws, rules and regulations as well as applicable State and Federal regulations.

## 9.2 Wastewater Discharge Ordinance; Enforcement.

9.2.1 Adoption of Ordinance. Ruston shall adopt an ordinance (the “Wastewater Ordinance”) establishing and implementing Wastewater standards and requirements that are no less stringent and are as broad in scope as Tacoma’s applicable standards and requirements as set forth at TMC Ch. 12.08B. The Wastewater Ordinance will be enforceable as to all sanitary sewer service customers located in the Ruston Sanitary Sewer Service Area and shall include provisions for enforcement of the requirements of the Wastewater Ordinance.

9.2.2 Prior Review. Ruston shall forward to Tacoma for review a draft of its proposed Wastewater Ordinance for conformance with applicable requirements of this Agreement and approve the Wastewater Ordinance, or disapprove the draft Wastewater Ordinance and provide comments to Ruston to review and revise the draft Wastewater Ordinance, and seek regulatory review and approval by other public agencies to the extent required. Upon review and final approval by Tacoma of the Wastewater Ordinance, Ruston will seek approval of the same by the Ruston City Council. Tacoma’s review and approval is not a warranty or representation that the Wastewater Ordinance complies with applicable state or federal laws or regulations.

9.2.3 Amendment of Ruston’s Adopted Wastewater Ordinance. Upon notification of adoption of any amendments made to TMC Ch. 12.08B, Ruston shall, within 120 Days, incorporate such revisions, modifications or amendments into the Wastewater Ordinance to the extent that such revision, modification or amendment changes a procedural or substantive provision of TMC Ch. 12.08B. Ruston agrees that any amendments made to the Wastewater Ordinance shall first be submitted to Tacoma for its review for compliance with this Agreement and that it shall not adopt any amendments to its Wastewater Ordinance that would violate the provisions of this Agreement.

9.2.4 Compliance. Ruston will implement a Wastewater compliance program (**Wastewater Compliance Program**) to ensure compliance with the requirements of this Agreement and the Wastewater Ordinance and ensuring that Ruston’s sanitary sewer service customers comply with the requirements of the Wastewater Ordinance. Ruston agrees that it will not permit the discharge of any

Wastewater, pollutant, or other substance or Flow from within the Ruston Sanitary Sewer Service Area to the Tacoma POTW that is not in compliance with the Wastewater Ordinance, including by way of example and not limitation, introduction to the Tacoma POTW of any pollutant, Wastewater, or other substance or Flow which either alone or by interaction with other materials causes pass through, Interference, or obstructions within the Tacoma POTW.

9.2.5 Enforcement. Ruston shall, at its cost and expense, be responsible for performing all technical and administrative duties necessary to implement and enforce the Wastewater Compliance Program, including by way of example and not limitation, (1) ensuring its permits and approvals and related policies and procedures comply with the requirements of the Wastewater Ordinance, (2) conducting inspections and performing sampling and analysis when reasonable and necessary to ensure compliance with the Wastewater Ordinance, (3) providing educational information to Ruston sanitary sewer service customers in support of compliance with Ruston's Wastewater Compliance Program, (4) taking all appropriate enforcement response to ensure compliance with the Wastewater Ordinance, and (5) taking emergency action to stop or prevent any discharge which presents or may present an imminent danger to the health or welfare of humans, or which reasonably appears to threaten the environment, or which threatens to cause Interference, pass through, or sludge contamination.

9.2.6 Inspection and Audit. Ruston agrees that Tacoma has the right, but not the obligation, to inspect and to audit Ruston's Wastewater Compliance Program and Ruston's Sanitary Sewer System for compliance with this Agreement and the Wastewater Ordinance and for excessive Inflow or Infiltration of Groundwater, stormwater and water other than Wastewater. Tacoma shall provide prior written notice to Ruston that it intends to conduct such an inspection and/or audit and shall conduct such inspection and audits at reasonable time periods (generally during regular business hours Monday through Friday). Ruston shall make its books and records and the Ruston Sanitary Sewer System available to Tacoma for purposes of such inspection and audit. Ruston agrees to cooperate in good faith with Tacoma in carrying out Tacoma's authority to conduct such inspection and audit.

9.2.7 Testing. Tacoma may require Ruston to perform Inflow and Infiltration tests at Ruston's expense, no more frequently than annually. In addition, Tacoma may require quality or quantity tests at Ruston's expense, no more frequently than annually. Such quantity or quality tests may be requested only if Tacoma has a reasonable belief that excessive Inflow or Infiltration is occurring in Ruston's Sanitary Sewer System or that the quality or quantity of Wastewater collected in the Ruston Sanitary Sewer Service Area does not meet the requirements of this Agreement, and when Tacoma is conducting an analysis, study or test of the Tacoma POTW for Inflow and Infiltration. All such tests shall be promptly performed and the results delivered to Tacoma.

9.2.8 Delegation of Authority. The Parties agree that, upon mutual agreement of the Parties or a determination pursuant to the Dispute Resolution provisions of this Agreement, that Ruston is not fully performing its obligations under this Subsection 9.2 (*Wastewater Discharge Ordinance; Enforcement*) of the Agreement, Ruston shall delegate to Tacoma authority, but not the obligation, as set forth in Exhibit B, attached hereto, to enforce compliance with the Wastewater Ordinance.

### 9.3 Industrial Pretreatment.

9.3.1 Tacoma's Delegated Authority. Tacoma has been delegated the authority to permit and accept commercial/industrial Wastewater discharges from all contributing sources, users and facilities pursuant to Washington State Department of Ecology Order No. DE 94WQ-S358. Tacoma is required to implement and enforce a POTW Pretreatment Program to regulate and control Wastewater Discharges from commercial/industrial sources, users and facilities that Discharge directly or indirectly to the Tacoma POTW, pursuant to the requirements of the Federal Clean Water Act (33 U.S.C. §1251 et seq.) and the regulations promulgated thereunder (40 CFR Part 403) and Chapter 90.48 RCW and the regulations promulgated thereunder. Such authority may be contained within statutes, ordinances, or a series of contracts or joint powers agreements that Tacoma is authorized to enact, enter into or implement, and that are authorized by state law.

9.3.2 Pretreatment Interlocal Agreement. The Parties have prior to or contemporaneous with this Agreement, entered into an industrial pretreatment Interlocal Agreement (**Pretreatment Interlocal Agreement**) governing the conditions upon which Tacoma will accept Wastewater from Ruston and implementing Pretreatment Standards and Requirements in Ruston. Ruston agrees that, it shall implement and maintain compliance with the Pretreatment Interlocal Agreement, as now or hereafter amended, and any successor agreement during the Term of this Agreement.

9.3.3 Coterminous Agreements. The Parties intend that this Agreement shall be coterminous with the Pretreatment Interlocal Agreement. Accordingly, in the event that the Pretreatment Interlocal Agreement terminates without renewal or replacement, this Agreement will likewise concurrently terminate; provided that, such termination is not the result of revocation or loss of Tacoma's status as a delegated pretreatment control authority. In such event, this Agreement may remain in place, and may be amended by mutual agreement of the parties to reflect that Tacoma is no longer a delegated pretreatment control authority.

9.4 Special Approved Discharges. The direct or indirect discharge of Wastewater, Stormwater or Groundwater for a short-term duration, in no event to exceed 365 Days, to the Tacoma POTW is prohibited except as authorized by Tacoma pursuant to a special approved discharge authorization issued by Tacoma pursuant to Chapter 12.08 TMC. Tacoma shall collect and retain all fees and charges for the special approved

discharge authorization; provided that, the Flows from such discharges shall not be included in the calculation for Ruston Wastewater treatment and disposal charges.

9.5 Fixed-term discharges of Groundwater “pump and treat” effluent to the Tacoma POTW. Effluent discharges from Groundwater “pump and treat” remediation systems regulated by EPA or the Department of Ecology discharging directly or indirectly to the Tacoma POTW for a fixed-term are prohibited except as authorized by Tacoma pursuant to Chapter 12.08 TMC. Such discharges that cause or have the potential to cause pass through or Interference shall not be allowed. Tacoma shall collect and retain all fees and charges for the special approved discharge authorization; provided that, the Flows from such discharges shall not be included in the calculation for Ruston Wastewater treatment and disposal charges.

9.6 Discharge of Domestic Wastewater from holding tanks. The direct or indirect discharge to the Tacoma POTW of Domestic Wastewater from a holding tank not connected to the Tacoma POTW, is prohibited.

9.7 Ruston Side Sewer Laterals. All Ruston Lateral Lines connected to the Tacoma Interceptor Line shall conform to the standards set forth in the City of Tacoma Side Sewer and Sanitary Sewer Availability Manual and all new connections shall be approved in advance by Tacoma.

9.8 Data Requirements of Ruston. Upon request by Tacoma, Ruston shall provide Tacoma with the following:

9.8.1 The actual number and addresses of Ruston accounts and associated Wastewater Flow from the Ruston Sanitary Sewer Service Area and the total water consumption for such accounts; and

9.8.2 A comprehensive map of the Ruston Sanitary Sewer System. For purposes of this Section, Ruston’s Sanitary Sewer System shall include the rights granted to Ruston pursuant to Section 5.1.2 of this Agreement. Said comprehensive map shall consist of scaled engineering drawings that delineate the location of all manholes, clean-outs, and lines. The drawings shall include the size of every pipe segment and shall indicate the diameter of every pipe segment in inches. The submittal shall include an electronic file of the comprehensive map and drawings compatible with Tacoma’s GIS (Geographic Information System).

9.8.3 Ruston shall furnish an update to the above referenced comprehensive map and electronic file submittal which delineates new and/or upgraded line segments. The updated attribute information shall be depicted in a different color from the initial base map attributes and it shall conform to the same scale pipe sizing annotations that were required in the initial base comprehensive map.

9.8.4 Ruston may be required to provide additional data as reasonably required by Tacoma for rate or cost of service studies and for planning purposes.

9.9 Data Requirements of Tacoma. Upon request by Ruston, Tacoma agrees to provide Ruston with a map of the portion of the Tacoma POTW that Flows into Ruston's Sanitary Sewer System. Said map shall consist of scaled engineering drawings that delineate the location of manholes, clean-outs, and lines for that portion of the Tacoma POTW that flows into Ruston's Sanitary Sewer System. The drawing shall indicate the diameter of every pipe segment in inches.

## **SECTION 10. METERING EQUIPMENT**

10.1 Use of Metering Equipment. Tacoma currently measures Flow based upon water usage converted to an average daily Flow as indicated in MGD. In the event that Tacoma desires to measure Flow using metering equipment and determines that it is feasible to do so, in whole or in part, Tacoma's Contract Administrator shall provide notice to Ruston. Unless otherwise agreed to by the Parties, Tacoma shall be responsible for the costs of design, engineering, construction and installation of the metering equipment. Ruston consents and agrees to the installation, operation, repair, replacement and maintenance of such metering equipment for purposes of metering Ruston Flows for billing purposes; provided that, Flows discharged from Tacoma Customers to the Ruston Trunk Line and the Tacoma Interceptor line are also metered to the extent necessary to take into account Tacoma Wastewater Flows when metering Ruston Wastewater Flows discharged to the Tacoma Interceptor Line.

10.2 Ruston's Request for Use of Metering Equipment. If Ruston desires that Tacoma measure Flow using metering equipment, Ruston shall provide notice in writing to Tacoma. Tacoma shall provide to Ruston an estimate of the cost to review and determine the feasibility of metering Flow and Ruston and, unless otherwise agreed to by the Parties, shall execute a work order agreement with Tacoma to fund the cost of conducting such review at Ruston's sole cost and expense. If the Parties agree to install metering equipment, unless otherwise agreed to by the Parties, the costs of design, engineering, construction and installation of metering equipment shall be borne solely by Ruston.

10.3 Maintenance. Once the metering equipment has been installed, placed into service, and accepted by both Parties, which acceptance shall not be unreasonably withheld or delayed, title and ownership of the metering equipment shall vest in Tacoma; provided that, thereafter Tacoma shall be responsible for the cost of operating the metering equipment and Ruston shall be responsible for the cost of maintaining and calibration of the metering equipment.

10.4 Calibration. Unless otherwise agreed to by the Contract Administrators or the manufacturer recommends a different period of time, Tacoma shall have the metering equipment tested and calibrated at least once every 12 months by a qualified, independent

third party. Tacoma shall provide advance notice to Ruston at least three (3) business days prior to conducting the testing. Ruston shall have the right to have a representative present during the testing and calibration process. Within three (3) business days after receipt of the test results, Tacoma shall provide the results to the appropriate official designated by Ruston. The metering equipment may be tested and calibrated more frequently at the specific request of either Party. In this event, the testing and calibration shall be performed by a method that is agreeable to both Parties.

10.5 Billing Adjustment. If the metering equipment registers not more than two percent (2%) above or below the test result, it shall be deemed accurate. If the metering equipment registers outside of these acceptable limits, it shall be deemed inaccurate. If inaccurate, the previous readings shall be adjusted for the 3-month period prior to the test in accordance with the percentage of inaccuracy found by such test. Billings for this 3-month period shall be recalculated and Ruston's account shall be credited or charged accordingly. If the metering equipment fails to register usage for any period, the amount of Wastewater discharged during such period shall be estimated by any reasonable means agreeable to both Tacoma and Ruston.

## **SECTION 11. DEFAULT AND TERMINATION**

11.1 Communication and Discussion. The Parties are fully committed to working with each other throughout the Term of this Agreement, and agree to communicate regularly with each other at all times so as to avoid or minimize disputes, differences of opinion or controversies (each a "Controversy") arising in connection with this Agreement. The Parties agree to act in good faith to prevent and resolve potential sources of conflict before they escalate into a Controversy and shall attempt to resolve Controversies arising in connection with this Agreement through good faith discussions between the Contract Administrators of both Parties to arrive at an agreeable resolution. In the event that the Contract Administrators are unable to resolve a Controversy after at least one discussion, and the Controversy is alleged to be a default of an obligation under this Agreement, the Party asserting such default may issue a Notice of Default as provided for at Subsection 11.3 (*Notice of Default*) of this Agreement. If the Controversy is not alleged to be a default, either party may request that the Controversy be subject to Dispute Resolution as provided at Section 12 (*Dispute Resolution*) of this Agreement.

11.2 Defaults. If either Party fails to perform an obligation under this Agreement ("Default"), the other Party may consider the non-performing Party to be in Default unless the Default is excused by a Force Majeure Event.

11.3 Notice of Default. The non-defaulting Party may assert a Default claim by giving the defaulting Party a written and detailed notice of default ("Notice of Default"). Unless the defaulting party submits a written request for dispute resolution pursuant to Section 12 (*Dispute Resolution*) of this Agreement within twenty (20) Days of receipt of such Notice of Default, the defaulting Party will have thirty (30) Days after receipt of such Notice of Default to either, (i) cure such Default and provide written evidence of

such cure; or (ii) submit a proposed compliance plan to correct the Default, if the defaulting Party believes in good faith that it will not be able to cure said Default within such timeframe. The contents of the compliance plan shall specify the steps that the defaulting Party will take to correct the Default and bring itself into compliance with its obligations and the period over which the correction will occur. The non-defaulting Party will review the proposed compliance plan and the Parties will work cooperatively and in good faith toward mutual agreement upon its final contents and timeframe for implementation within a further thirty (30) Days from receipt by the non-defaulting Party. The non-defaulting Party must act reasonably in determining whether a compliance plan is acceptable and must make good faith and collaborative efforts to agree upon a mutually acceptable compliance plan. The defaulting Party will begin implementing the compliance plan immediately after receipt of notice by the other Party that it approves the compliance plan. In the event that the Parties are unable to mutually agree upon a compliance plan, either Party may invoke the dispute resolution procedures in Section 12 (*Dispute Resolution*) of this Agreement to resolve the Controversy regarding approval of the compliance plan. In the event that a compliance plan is not agreed to pursuant to the dispute resolution provisions of Section 12 (*Dispute Resolution*) of this Agreement, the non-defaulting party may exercise its remedies available pursuant to this Agreement.

11.4 Action on Failure to Cure. Upon the failure by the defaulting Party to cure any Default within the time specified in Subsection 11.3 (*Notice of Default*), the non-defaulting Party may pursue any remedies it may have under this Agreement, applicable law or in equity relating to such Default; provided that, the Parties shall attempt to resolve the Default pursuant to the dispute resolution provisions of Section 12 (*Dispute Resolution*) of this Agreement prior to giving notice of termination of the Agreement.

11.5 Termination. In the event that the Parties are unable to resolve a Default pursuant to the dispute resolution provisions of Section 12 (*Dispute Resolution*), the non-defaulting Party may give notice of its intent to terminate this Agreement upon a date set forth in the notice; provided that, the date of termination shall be no less than three (3) years following the date of receipt of the notice.

11.6 Compensation for Prior Performance. Termination of this Agreement shall not affect the rights or obligations of any Party hereto with respect to any payment hereunder for performance rendered, refunds, or set-offs accruing or due prior to the effective date of termination.

11.7 Survival of Certain Provisions. The expiration or termination of this Agreement, including due to non-renewal, will not affect the rights or obligations of either Party hereto with respect to, (i) the rights, duties and obligations set forth in Section 13 (*Liability and Indemnification*) of this Agreement, (ii) matters or claims arising or accruing prior to or as of expiration or termination of this Agreement, (iii) any other provisions of this Agreement that, by their sense and context, are intended to

survive the expiration or termination of this Agreement, including but not limited to indemnification and limitation of liability.

## **SECTION 12. DISPUTE RESOLUTION**

Upon receipt of a timely request for dispute resolution, the cure period in the Notice of Default is tolled. A request for dispute resolution shall describe in detail the Controversy or Default that the Party requests be subject to dispute resolution. Each Party shall designate a senior representative (“Senior Representative”) and the Senior Representatives for the Parties shall meet as soon as conveniently possible, but in no case later than thirty (30) Days after such a request is made, to attempt to resolve the Controversy or Default described in the request for dispute resolution. Prior to any meetings between the Senior Representatives, the Parties will exchange relevant information and records that will assist the Parties in resolving the dispute. If the Controversy or Default cannot be resolved through dispute resolution within a reasonable time, not to exceed thirty (30) Days, then the Parties shall be free to, pursue any other remedies they may have under this Agreement and any remedies they may have at law or in equity.

## **SECTION 13. LIABILITY AND INDEMNIFICATION**

13.1. Liability for damages arising from the reception, transportation, delivery, treatment and disposal of all Wastewater collected from Ruston Customers and discharged to the Tacoma POTW shall remain with Ruston to Ruston’s Point of Entry to the Tacoma POTW. Damages as a result of Interference from such Wastewater shall remain with Ruston and shall at all times be the responsibility of Ruston. Tacoma takes the responsibility as between the Parties hereto for the transportation of all such Wastewater properly received by it from Ruston at Points of Entry to the Tacoma POTW. Ruston shall not be responsible for any damages arising from the reception, transportation, delivery, treatment, and disposal of Wastewater that originates from Tacoma Customers and is wheeled through or discharged to the Ruston Sanitary Sewer System and later discharged to the Tacoma POTW. The liability in this section is solely for Wastewater that originates from within Ruston.

13.2. To the maximum extent permitted by law, Tacoma and Ruston shall defend, indemnify and hold harmless the other Party, and its officers, officials, employees, contractors and agents, from any and all claims, demands, suits, actions, fines, penalties and liability of any kind (collectively “Liabilities”), including injuries to persons or damages to property, which arise out of or are related to any negligent acts, errors, omissions of the indemnifying party and its officers, officials, employees, contractors and agents in performing obligations under this Agreement, including by way of example and not limitation, Wastewater discharged from users, Interference of treatment processes or operations, harmful degradation of sludge quality, NPDES permit violations, and other air, water and sludge quality violations caused by wastes discharged from users in the Service Area. However, if any such damages and injuries to persons or



property are caused by or result from the concurrent negligence of Tacoma or its officers, officials, employees, contractors and agents, and Ruston or its officers, officials, employees, contractors, and agents, each Party's obligation hereunder applies only to the extent of the negligence of such Party or its officers, officials, employees, contractors or agents.

13.3. The foregoing indemnity is specifically and expressly intended to constitute a waiver of each Party's immunity under Industrial Insurance, Title 51 RCW, as respects the other party only, and only to the extent necessary to provide the indemnified Party with a full and complete indemnity of claims made by the indemnitor's employees. This waiver has been mutually negotiated.

13.4. In the event that any suit based on such a claim, demand, suit, action, fine, penalty or liability is brought against either Party, each Party retains the right to participate in said suit if any principle of public law is involved.

#### **SECTION 14. GOVERNING LAWS**

Any action related to this Agreement shall be governed by the laws of the State of Washington. Any suit or proceeding arising out of or relating to this Agreement will be brought in the applicable federal or state court located in Pierce County, Washington, and each Party irrevocably submits to the jurisdiction and venue of such courts. The Parties shall comply with any and all valid state, federal or local laws or regulations covering the subject of this Agreement, and any and all valid orders, regulations or licenses issued pursuant to any federal, state or local law or regulation governing the subject of this Agreement.

#### **SECTION 15. RELATIONSHIP OF THE PARTIES**

The relationship between the Parties will not be that of partners, agents or joint venture parties for one another, and nothing contained in this Agreement will be deemed to constitute a partnership or agency agreement between them for any purposes, including, but not limited to, tax purposes. No employment relationship is created by this Agreement. Neither Party will make any commitment, by contract or otherwise, binding upon the other or represent that it has any authority to do so. In performing any of their obligations hereunder, each Party will be an independent contractor or independent Party and shall use its discretion in discharging its contractual obligations at its own risk.

#### **SECTION 16. NOTICES**

Except for routine operational communications (which may be delivered personally or by mail or transmitted by electronic mail), all notices and invoices required hereunder shall be in writing and shall be considered properly delivered when personally delivered, or on the third day following mailing, postage prepaid, certified mail, return receipt requested to the Parties at the following addresses:

**TACOMA**

City of Tacoma  
747 Market Street  
Tacoma, WA 98402  
Telephone: (253) 591-5000

Attention: Environmental Services Department, Business and Operations Division  
Manager

With a copy to:

City of Tacoma  
747 Market Street  
Tacoma, WA 98402  
Telephone: (253) 591-5885

Attention: City Attorney

**RUSTON**

City of Ruston  
5117 N. Winnifred Street  
Ruston WA 98407

Attention: City Clerk

With a copy to:

City of Ruston  
5117 N. Winnifred Street  
Ruston WA 98407

Attention: Mayor

Either Party may change the address to which notices shall be sent by notice to the other Party by providing thirty (30) Days written notice of the change of address.

**SECTION 17. NO WAIVER**

No failure, forbearance, neglect or delay by a Party in regard to enforcing this Agreement or exercising any rights contained in this Agreement, in whole or in part, will affect or limit such Party's right to strictly enforce same, and no such failure, forbearance, neglect or delay will constitute or be implied as a waiver of any right to enforce same in the future.

## **SECTION 18. ASSIGNMENTS & TRANSFERS**

18.1 Either Party may assign or transfer its interest in this Agreement to another party upon the written consent of the other Party, which consent shall not be unreasonably withheld or delayed; provided that, such assignment is in conjunction with an assignment or transfer of ownership and operation of Ruston's Sanitary Sewer System or the Tacoma POTW to another municipal corporation or utility district.

18.2 The covenants, conditions and agreements contained in this Agreement will inure to the benefit of and be binding upon Tacoma and its successors and assigns, and will inure to the benefit of and be binding upon Ruston, its successors and assigns.

## **SECTION 19. SUBCONTRACTING**

19.1 Any delegation or subcontracting by Tacoma will not operate to relieve Tacoma of its responsibilities and obligations under this Agreement.

19.2 Any delegation or subcontracting by Ruston will not operate to relieve Ruston of its responsibilities and obligations under this Agreement.

## **SECTION 20. FORCE MAJEURE EVENT**

20.1 Performance Excused by Force Majeure Event. Neither Party will be deemed in violation of any provision of this Agreement if it is prevented from performing any of the obligations under this Agreement (excluding payment obligations) in whole or in part by reason of any event or circumstance, or combination of events or circumstances, arising after the Effective Date and beyond the reasonable control of, and not the result of the negligent or intentional actions or omissions of, or caused by, the Party that seeks to excuse, in whole or in part, that Party's performance of this Agreement and its obligations hereunder, and that is unavoidable or could not be prevented or overcome by reasonable efforts and due diligence, (a "Force Majeure Event"). In such event the non-performing Party shall be excused from further performance of the obligation(s) so affected for as long as such circumstances prevail and such Party continues to use reasonable efforts to recommence performance whenever and to whatever extent possible, without delay. In the event of a Force Majeure Event, unless otherwise specified in this Agreement, the non-performing Party's performance obligation shall be extended on a Day-by-Day basis. Events that may give rise to a Force Majeure Event may include acts of God, natural disasters, extreme weather and storms, lightning, floods, fires, earthquakes or other natural occurrences; civil disturbances; strikes or other labor unrest (unless they only concern the Party claiming Force Majeure); catastrophic power failures; terrorist activity, riots, war, nuclear or other civil or military emergencies; acts of legislative, judicial, executive or administrative authorities; or any other circumstances that are not within the reasonable control of, or the result of the negligence of, the claiming Party, and which, by the exercise of due diligence, the claiming Party is unable to overcome or avoid or cause to be avoided. A Force Majeure

Event shall not, however, include actions of a government authority with respect to a Party's compliance with applicable laws, franchises, authorizations or permits; any failure by a Party to obtain or maintain any franchise, authorization or permit it is required to obtain or maintain; and any act, omission, delay, default or failure (financial or otherwise) of a subcontractor to a Party.

20.2 Notification. In the event of a Force Majeure Event, the Party who first becomes aware of the event shall promptly give written notice to the other Party of such event. When either Party becomes aware of the end of the Force Majeure event, it shall give prompt written notice to the other Party.

## **SECTION 21. NO THIRD PARTY BENEFICIARIES**

Each of the Parties agree that, (a) their respective representations, warranties, covenants and agreements set forth herein are solely for the benefit of the other Party hereto, in accordance with and subject to the terms of this Agreement, and (b) this Agreement is not intended to, and does not, confer upon any person other than the Parties hereto any rights or remedies hereunder, including the right to rely upon the representations and warranties set forth herein.

## **SECTION 22. FURTHER ASSURANCES**

In connection with this Agreement and the transactions contemplated hereby, each Party will execute and deliver any additional documents and instruments and perform any additional acts that may be commercially reasonable, necessary or appropriate, or reasonably requested by the other Party, to effectuate and perform the Parties' obligations under this Agreement and the transactions contemplated hereby.

## **SECTION 23. ENTIRE AGREEMENT**

This Agreement, including the Exhibits hereto, contains all the terms, conditions and obligations of the Parties with respect to the matters contemplated in this Agreement, and supersedes and replaces any and all other agreements and representations whether oral or in writing relative to the subject matter of this Agreement, including but not limited to the 1966 Agreement, 1978 Construction Agreement and 1979 Sewage Disposal Agreement, inclusive of any rights, duties or obligations that survived expiration of such agreements.

## **SECTION 24. INTERPRETATION**

Both Parties acknowledge that they have each been represented by counsel and this Agreement and every provision hereof has been freely and fairly negotiated. All provisions of this Agreement will be interpreted according to their fair meaning and will not be strictly construed against any Party.

## **SECTION 25. SUBSEQUENT ACTION; REVIEW & AMENDMENT**

The Parties will review this Agreement periodically to ensure compliance with the Federal Clean Water Act (33 U.S.C. § 1251 et seq.), RCW Chapter 90.48, and the rules and regulations issued thereunder, Tacoma's NPDES permits, and Tacoma's applicable sanitary sewer standards and requirements as set forth at TMC Ch. 12.08. In the event that after this Agreement becomes effective, (a) there is a change in or clarification of the law, a regulation or Tacoma's sanitary sewer standards and requirements which changes, narrows, broadens or clarifies the authority or obligations of the Parties with respect to any act permitted or authorized under this Agreement, or (b) the State of Washington or any agency thereof or any agency of the Federal government require the Parties to act in a manner which is inconsistent with any provisions of this Agreement, or (c) any term, article, section, subsection, paragraph, provision, condition, clause, sentence, or other portion of this Agreement, or its application to any person or circumstance, shall be held to be illegal, invalid or unconstitutional for any reason by any court or agency of competent jurisdiction, or (d) because of a change in circumstances, the Parties believe that amendments to this Agreement are necessary or appropriate, then the Parties agree to enter into good faith negotiations to amend this Agreement so as to enable the Parties to address, in a manner reasonably acceptable to Tacoma and Ruston, such change or other development which formed the basis for the negotiations. The Parties recognize that the purpose of the negotiations would be to preserve to the maximum extent consistent with Law, the intent, scope and purpose of this Agreement.

## **SECTION 26. MISCELLANEOUS**

26.1 Except as otherwise expressly provided, the rights and remedies set forth in this Agreement are in addition to, and cumulative of, all other rights and remedies at law or equity.

26.2 The headings in this Agreement are strictly for convenience and do not amplify or limit any of the terms, provisions or conditions hereof.

26.3 In the event any provision of this Agreement is held invalid, illegal or unenforceable, in whole or in part, neither the validity of the remaining part of such provision nor the validity of the remaining provisions of this Agreement will be in any way affected. The Parties will cooperate in trying to replace the invalid, illegal or unenforceable provision with a valid provision that attempts to achieve the same result.

26.4 This Agreement may be amended only by a written instrument executed by the Parties and approved by their respective governing bodies.

26.5 If either Party incurs attorney fees, costs or other legal expenses to enforce the provisions of this Agreement against the other party, all such fees, costs and expenses shall be recoverable by the prevailing party.

26.6 All periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Washington, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday in the State of Washington, the period shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday in the State of Washington.

**SECTION 27. DOCUMENT EXECUTION**

This Agreement may be executed in identical counterparts, all of which shall be considered one and the same Agreement and shall become effective when counterparts, have been signed by each party and delivered to the other party. In the event that any signature is delivered by facsimile transmission or by an e-mail which contains an electronic file of an executed signature page, such signature page shall be deemed to constitute an original instrument, with the same force and effect as execution and delivery of an original, and shall create a valid and binding obligation of the party executing the Agreement.

**IN WITNESS WHEREOF**, Tacoma and Ruston have executed this Agreement effective on the Effective Date.

**CITY OF TACOMA**

**CITY OF RUSTON**

By: \_\_\_\_\_  
Elizabeth A. Pauli,  
City Manager

By: \_\_\_\_\_  
Bruce Hopkins,  
Mayor

By: \_\_\_\_\_  
Michael P. Slevin, III, P.E.,  
Environmental Services Director

**ATTEST:**

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City Clerk, Tacoma

**Approved as to Form:**

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Chief Deputy City Attorney,  
Tacoma

**ATTEST:**

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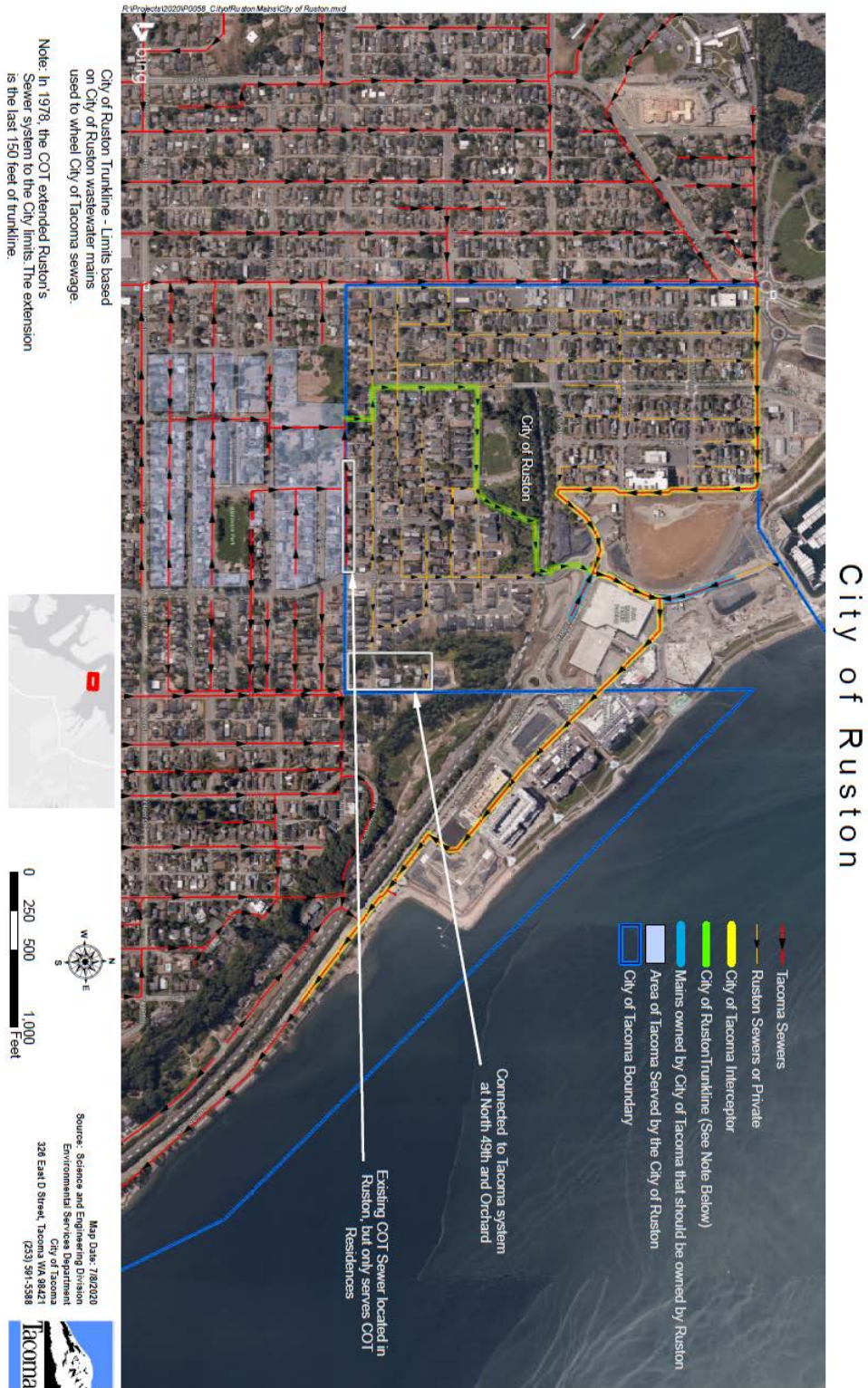
City Clerk, Ruston

**Approved as to Form:**

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Jennifer Robertson,  
Ruston City Attorney

## Exhibit A (Depiction of Sewer Systems)





## **EXHIBIT B**

### *(Delegation of Enforcement Authority)*

The following provisions shall effective as provided at Section 9.2.8 of the Agreement.

A. Delegation of Authority. Ruston designates Tacoma as its agent, and delegates to Tacoma the full power and authority of Ruston, to implement and enforce the Wastewater Ordinance for and on behalf of Ruston. Under such delegation of authority, Tacoma may take any action under the Wastewater Ordinance that could have been taken by Ruston, including the enforcement of the Wastewater Ordinance in courts of law.

B. Technical and Administrative Duties. Tacoma, on behalf of and as agent for Ruston, will perform technical and administrative duties necessary to implement and enforce the Wastewater Ordinance. In addition, Tacoma may, as agent of Ruston, take emergency action to stop or prevent any discharge which presents or may present an imminent danger to the health or welfare of humans, which reasonably appears to threaten the environment, or which threatens to cause Interference, pass through, or sludge contamination.

C. Cost Allocation. Ruston agrees that it will be responsible for all costs incurred by Tacoma in implementing and enforcing Ruston's Wastewater Ordinance; provided that, the costs of such enforcement may be recovered by Tacoma within rates and charges assessed to Ruston pursuant to this Tacoma-Ruston Sewer Agreement, as amended, or a successor agreement.

E. Duty of Cooperation. Ruston agrees that it will cooperate in good faith with Tacoma in carrying out its delegated authority to implement and enforce the Wastewater Ordinance.

F. Penalties; Enforcement. In the event that a criminal complaint or civil infraction notice is filed to enforce the Wastewater Ordinance, Ruston will facilitate prosecution of such criminal or civil action in a court with jurisdiction over such criminal complaint or civil infraction notice, and upon request of Tacoma, agree to appointment of a special prosecutor to prosecute the civil infraction or criminal complaint. In the event administrative enforcement action is taken and/or administrative penalties are assessed to enforce compliance with the Wastewater Ordinance, Ruston agrees that any contested hearings shall be conducted before the Tacoma Hearing Examiner, acting as the Hearing Examiner for the City of Ruston. Ruston agrees that in any criminal, civil or administrative enforcement action, Tacoma may act as an agency representative of Ruston.