

TRANSITION AND SEPARATION AGREEMENT

THIS TRANSITION AND SEPARATION AGREEMENT (Agreement) is made and entered between THE CITY OF TACOMA (hereafter the "City"), a municipal corporation, and WILLIAM A. GAINES (hereafter "Employee"), an employee of the City. This Agreement is dated for reference purposes as of August _____, 2017.

IN CONSIDERATION of the mutual promises set forth herein and of good and valuable consideration, the parties agree as follows:

1. **Recitals.**

- a. Employee has been employed by the City of Tacoma at Tacoma Public Utilities since October 16, 2006, and as the Director (CEO) of Tacoma Public Utilities (TPU) since November 1, 2007.
- b. On June 27, 2012, Employee and the Public Utility Board entered into the most recent Compensation Agreement, which has been amended on November 13, 2013, and on February 11, 2016, outlining specific severance benefits associated with the employment of the Employee.
- c. Tacoma City Charter section 4.18 requires that every two years the Public Utility Board reappoint the TPU Director (CEO) and the City Council reconfirm such reappointment. The City Council has not yet reconfirmed the reappointment of the Employee, and the Employee and Public Utility Board have not established terms for reappointment and a successor compensation agreement to go into effect beyond December 31, 2017.
- d. During July 2017, Employee notified the Public Utility Board of his consideration of retirement from his current position pursuant to the provisions of the Tacoma Employees' Retirement System (TERS).
- e. The parties desire to ensure an orderly leadership transition for Tacoma Public Utilities according to the provisions of this Agreement and the June 27, 2012, Compensation Agreement as amended.

2. **Retirement from Employment.** In light of the foregoing, Employee will retire from his current position at Tacoma Public Utilities on December 2, 2017. Upon the expiration of the statutorily mandated waiting periods set forth in this Agreement, Employee hereby voluntarily waives any right Employee has or may have under the Tacoma Municipal Code, and state or federal law, to revoke Employee's retirement as of December 2, 2017.

3. **Payments.** The June 27, 2012, Compensation Agreement as amended provides that the City shall pay Employee severance benefits in the event of certain conditions as described in the Compensation Agreement, including conditions where (i) the City Council fails to reconfirm the appointment of Employee, or (ii) a successor compensation agreement cannot be mutually agreed upon. The parties agree that the benefits in

Section 2.E. of the June 27, 2012, Compensation Agreement as amended, are owed to Employee. The terms of the Compensation Agreement are incorporated into this Agreement by reference and are attached as Exhibit A. Provisions of the Compensation Agreement that are not affected by this Transition and Separation Agreement will remain in effect through December 31, 2017. The payment of amounts owed to Employee shall be made as follows:

- a. The severance amount equal to Employee's annual salary will be paid in one check made payable to Employee during the month of January 2018.
- b. Payment equal to Employee's retiree COBRA medical insurance premiums for a period of 12 months post-retirement plus a 40% tax gross-up, shall be paid during January 2018. If Employee begins employment within such 12-month period with comparable medical insurance coverage, Employee will repay to Employer the unused portion of the COBRA premiums less gross-up.
- c. Employee will receive all other employment and retirement benefits normally afforded to employees of the City as provided in the Compensation Agreement. Payout of Employee's accrued but unused Paid Time Off balance shall be included in a final paycheck and paid during December, 2017.

4. **Regular Salary.** Employee's current biweekly salary is \$14,909.60 (annually \$387,650.00).

5. **Mutual Release of Claims.**

- a. Employer, and any person or entity entitled to sue on its behalf, hereby releases, acquits and forever discharges the Employee of and from any and all claims, demands, obligations, actions, causes of action, rights, damages, costs, loss of services, expenses and compensation, occurring or arising on or before the effective date of this Agreement, whether based on a tort, contract or other theory of recovery, on account of, or in any way arising out of, Employee's employment with the City of Tacoma.
- b. Employee, and any person or entity entitled to sue on his behalf, hereby releases, acquits and forever discharges the City of Tacoma, its officials, officers, agents, and employees, of and from any and all claims, demands, obligations, actions, causes of action, rights, damages, costs, loss of services, expenses and compensation, occurring or arising on or before the effective date of this Agreement, whether based on a tort, contract or other theory of recovery, on account of, or in any way arising out of, Employee's employment with the City of Tacoma (with exceptions as set forth herein).

Employee agrees not to seek any personal recovery (of money damages, injunctive relief or otherwise) for the claims Employee is releasing in this Agreement, either through any complaint to any

governmental agency or otherwise. Employee agrees never to start any lawsuit, action, proceeding, or arbitration asserting any of the claims Employee is releasing in this Agreement. *(The prior two sentences shall not apply to a charge of discrimination, lawsuit or arbitration to the extent it is brought under the federal Age Discrimination in Employment Act of 1967 (ADEA) and challenges the knowing and voluntary nature of this Agreement under the Older Worker Benefit Protection Act (OWBPA), and nothing in this Agreement shall cause Employee to be liable for attorney's fees, costs or disbursements in connection with any such charge of discrimination, lawsuit or arbitration to the extent it is so brought. However, if this Agreement is found to be knowing and voluntary under the OWBPA, Employee's release and waiver of claims under the ADEA shall be fully effective.)*

The foregoing notwithstanding, this Agreement does not affect Employee's rights, if any, to receive retirement or medical benefits pursuant to the City's benefit plan. Nothing in this Agreement shall interfere with Employee's right, if any, to file a charge, cooperate, or participate in an investigation or proceeding conducted by the Equal Employment Opportunity Commission or other state or federal regulatory or law enforcement agency. This Agreement does not attempt to release any rights that, by law, cannot be released by private agreement. The parties agree that if any portion of this Agreement is found to improperly restrict a nonwaivable right, that portion shall be severed in accordance with the severability provision below.

Employee specifically agrees to withdraw any and all claims by or on Employee's behalf against the City as filed with any Federal, State or Local entity. Furthermore, Employee represents and warrants that Employee has not initiated any complaint, charge, lawsuit, or arbitration involving any of the claims Employee is releasing in this Agreement.

Employee represents and warrants that Employee has all necessary authority to enter into this Agreement (including on behalf of the marital community) and that Employee has not transferred any interest in any claims to Employee's spouse or to any other third party.

6. **Advice from Counsel.** In entering into this Agreement, Employee represents that Employee has had the opportunity to seek the legal advice and counsel of Employee's own attorneys, who are the attorneys of Employee's own choice, concerning the legal consequences of this Agreement; that Employee has carefully read this Agreement and knows the contents thereof, and signs the same as Employee's own free act; and

that the terms and conditions of this Agreement are fully understood and voluntarily accepted by Employee.

7. **Consideration Period.** In order for the parties to comply with federal laws, Employee has 21 days from the date this Agreement is approved by all governing bodies and given to Employee to consider before signing. Employee may use as much or as little of the 21-day period as Employee wishes before signing. If Employee does not sign and return the Agreement within the 21-day period, the Agreement will be null and void. Employee shall return the Agreement to Tacoma City Attorney's Office, 747 Market Street, Room 1120, Tacoma, WA 98402.
8. **Revocation Period.** Employee has seven (7) calendar days after signing this Agreement to revoke it. To revoke this Agreement after signing it, Employee must deliver a written notice of revocation to William Fosbre, City Attorney for the City of Tacoma, before the seven-day period expires. This Agreement shall not become effective until the eighth (8th) calendar day after Employee signs it. If Employee revokes this Agreement it will not become effective or enforceable, and Employee will not receive the benefits described in this Agreement.
9. **Participation in Action.** If any claim is asserted by or against the City as to which Employee has relevant knowledge, Employee will reasonably cooperate with the City in the prosecution or defense of that claim, including providing truthful information and testimony as reasonably requested by the City. If the City decides to call the Employee as an expert witness, then Employee shall be compensated for such purpose at a consulting rate of \$350/hour.
10. **Future City Employment.** Employee agrees to neither apply for nor accept further employment with the City following retirement on December 2, 2017. The City agrees not to oppose Employee's application for unemployment insurance benefits, if any.
11. **Tax Consequences.** Employee assumes complete and sole responsibility for the payment of any and all taxes, whether federal, state, local, FICA or otherwise, provided in this Agreement, and shall protect, defend, indemnify, and hold harmless the City against any and all claims, penalties and other liabilities resulting from any liability, or claim of liability, for the payment or withholding of amounts assessed due to any federal, state or local governments or agencies on payment of any obligation of the City, including but not limited to federal withholding taxes, state withholding taxes, social security or other taxes, resulting from the payment of the settlement amount.
12. **No Disparagement.** The City agrees that its speaking agents and managers, including without limitation members of the City Council, members of the Public Utility Board, and senior City managers, will not criticize, disparage or otherwise demean Employee or his performance as

TPU director to any third party. The term "criticize, disparage or demean" shall mean to offer an opinion which is intended to or in the eyes of a reasonable third person would tend to diminish Employee's professional or personal character, reputation, status or standing. Employee will not criticize, disparage or otherwise demean the City or its elected officials or employees. Notwithstanding the above, public documents and public statements in existence at the time this Agreement goes into effect, are not considered "disparaging" remarks for purposes of this section, nor are statements made as a witness or potential witness in a lawsuit asserted by or against the City; provided further such statements shall be subject to this Agreement after it becomes effective. Prior to the adoption of this Agreement by the Public Utility Board, the Parties shall agree upon and issue a joint information release regarding Employee's retirement, and any public statements by the Parties consistent therewith shall not be deemed to "criticize, disparage or demean" a Party.

13. **Nondisclosure of Confidential or Proprietary Information.** Nothing in this Agreement shall alter or diminish the Employee's obligation to not disclose any privileged, confidential or proprietary information obtained during the course of Employee's employment with the City pursuant to Section 12.C. of the June 27, 2012, Compensation Agreement.
14. **State and City Ethics Laws.** Employee will continue to abide by Washington State and City of Tacoma code of ethics laws until the time of resignation, and then Employee will abide by those portions of the above laws applicable to former employees of the City.
15. **Indemnification.** Nothing in this Agreement shall alter or diminish the City's obligation to indemnify Employee pursuant to Tacoma Municipal Code Section 1.12.920, and to Section 10 of the June 27, 2012 Compensation Agreement.
16. **Governing Law and Venue.** This Agreement shall be construed and governed in all respects by the laws of the state of Washington. All parties shall submit, and shall not object, to jurisdiction and venue in the Pierce County Superior Court, State of Washington, in connection with any claims arising out of this Agreement.
17. **Severability.** If any part, provision, paragraph, sentence, clause, phrase, or word in this Agreement shall be stricken, or be found by any legal tribunal to be null and void or of no effect, each and every other part, provision, paragraph, sentence, clause, phrase, or word in this Agreement shall remain in force and of full effect.
18. **Headings Not Controlling.** The headings in this Agreement are for convenience only and shall not affect the meaning of the terms as set out in the text.
19. **Final and Complete Agreement.** The June 27, 2012, Compensation

Agreement as amended remains in effect, except as expressly modified herein. The June 27, 2012, Compensation Agreement, as amended, and this Agreement contain the entire Agreement between the parties regarding the matters set forth herein and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, and successors and assigns of each. The City and Employee consider each provision of this Agreement material, and any breach of a provision by Employee or the City shall be considered a breach of this Agreement for which full restitution shall be required as to obligations executed under any paragraph of the Agreement by Employee.

I, the undersigned, received this Agreement on _____ and hereby agree to be bound by this Agreement and confirm that I have read and understood each part of it.

Agreed by Employee:

William A. Gaines

Date

Having appeared before me this _____ day of _____, 2017, is William A. Gaines, and having declared to me on oath that he has read this Agreement and Release, agree to its provisions, and have affixed his initials and signature hereto, knowingly and of his own free will.

Subscribed and sworn to before me this ____ day of _____, 2017.

Notary Public in and for the state
of Washington, residing at Tacoma
My Commission expires _____

The City of Tacoma

Monique Trudnowski
Chair, Public Utility Board

Gary Buchanan
HR Director, City of Tacoma

Andrew Cherullo
Finance Director, City of Tacoma

Approved as to Form:

William Fosbre
City Attorney, City of Tacoma