

## AGREEMENT

THIS AGREEMENT is made and entered into this 7<sup>th</sup> day of June 2012, by and between the CITY OF TACOMA, a municipal corporation of the State of Washington, hereinafter called "Employer," and William A. Gaines, hereinafter called "Employee."

### RECITALS

WHEREAS Employer desires to continue to employ the services of Employee as Director of Utilities for the City of Tacoma, pursuant to the terms of this Agreement ("Agreement") and as provided by the Tacoma City Charter and Tacoma Municipal Code, and

WHEREAS it is the desire of the Public Utility Board, hereinafter called the "Board," to establish certain conditions of employment, and to set working conditions of said Employee, and

WHEREAS the parties acknowledge that Employee is appointed and shall serve at the pleasure of the Public Utility Board and that nothing herein is intended to modify Employee's at-will status, which specifically includes the right to discharge said Employee with or without cause, and

WHEREAS Employee desires to accept at-will employment as Director of Utilities with the City of Tacoma under the terms provided herein, and

WHEREAS the Public Utility Board finds the Employee to be a key manager as described in TMC 1.12.110 H and as such the Board believes that to retain the Employee's services it is necessary to provide the Employee with severance benefits as part of this Agreement in the event the Employee is terminated without cause, and

WHEREAS the parties intend that the Employee, as Director of Utilities, shall be responsible for the administration and supervision of Tacoma Public Utilities,

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

### AGREEMENT

1. Duties. Employer hereby agrees to employ Employee as Director of Utilities for said Employer, to perform the functions and duties specified by law, the Tacoma City Charter, and Tacoma Municipal Code ("TMC"), and to perform such other legally permissible and proper duties and functions as Employer shall assign, from time to time and as are consistent with the position of Director of Utilities.
2. Term and Termination of Agreement.

A. This Agreement will become effective on November 1, 2012 (the "Start Date").

B. Employer and Employee agree it is the intent of this Agreement that the Employee remain in the at-will employment of Employer from the Start Date throughout the duration of his employment.

C. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the Public Utility Board to terminate the services of Employee with or without cause; however, when at the sole discretion of the Board, it deems it appropriate, it may provide Employee 30 days prior written notice of such intent to terminate services.

D. This Agreement shall terminate on October 31, 2017, and may be extended upon agreement of the parties.

E. If Employee's employment is terminated without cause, Employer shall, within 30 days of such termination, pay to Employee a severance amount equal to Employee's annual salary in effect as of the date of such termination as authorized under TMC 1.12.110 H. For purposes of this section only, terminated with cause shall mean "the Employee's willful and continued failure to perform his duties resulting in a materially adverse effect on Tacoma Public Utilities." Notwithstanding the above, nothing in this section 2.E. shall be construed as altering or modifying the at-will relationship of the Employee to the Employer, and the Employer's right to terminate the Employee without cause.

F. The prior Employment Agreement between Employer and Employee dated as of September 25, 2006, and relating to Employee's employment as Power Superintendent (the "First Prior Agreement") has terminated. Provisions of the First Prior Agreement which may be reasonably interpreted to survive such termination shall be preserved until satisfied.

G. The prior Employment Agreement between Employer and Employee dated as of October 25, 2007, and relating to Employee's employment as Director of Utilities (the "Second Prior Agreement") will terminate on October 31, 2012. Provisions of the Second Prior Agreement which may be reasonably interpreted to survive such termination shall be preserved until satisfied.

3. Compensation.

A. Employer agrees to pay Employee a starting salary of \$309,795 annually, presently identified as Step 6A of the Pay Band for the Director of Utilities. Thereafter, it shall be the objective of Employer to pay Employee a salary that is not less than the median salary for comparable positions in other large public utilities (with reference to the annual Large Public Power Council salary survey). In addition, Employee shall receive any cost-of-living or other salary increases as

are provided across-the-board for all exempt, unrepresented employees of Employer.

B. Internal Revenue Code section 401(a)(17) limits the total annual compensation that can be taken into consideration when calculating the retirement benefit earned by the Employee under the Tacoma Employee's Retirement System (TERS). To help offset the adverse effect on the Employee benefit calculation caused by this IRS limitation, the Employer agrees pursuant to TMC 1.12.116 B to contribute \$50,000 annually as Employer contributions to an Internal Revenue Code Section 401(a) defined benefit contribution plan for the benefit of Employee starting November 1, 2012, for the lesser of (i) the term of this Agreement (for a potential aggregate total of \$250,000), or (ii) the duration of Employee's employment with the City. Employee shall be responsible for paying any and all federal or state taxes related to the transactions associated with this section. In the event the IRS either eliminates the 401(a)(17) annual compensation limit impacting the TERS benefit calculation or increases the potential maximum contribution rate above \$50,000 for defined benefit contribution plans created under IRC section 401, then the parties agree to reopen this section to discuss potential amendment(s) to this supplemental benefit.

C. The Director of Utilities and the Public Utility Board will make good faith efforts to obtain authorization from the City Council and to implement a performance based compensation system that is reflective of utility industry practices that would provide compensation in addition to base salary contingent upon Employee's satisfactory achievement of key goals and objectives. This commitment does not constitute a presently binding offer of such benefits.

4. Personal Leave/Benefits.

A. Employee shall receive all standard benefits provided to employees of the City of Tacoma pursuant to Employer's current ordinances and policies and as hereafter amended, which currently includes but is not limited to accruing and being paid for unused personal time off, participation in the Tacoma Employee's Retirement System, and participation in the City's Deferred Compensation Plan.

B. Employer reserves the right to apply, interpret, and change its ordinances, policies, or procedures related to personal time off leave, benefit package, Retirement, and Deferred Compensation as listed above, without notice, as it sees fit.

5. Performance Evaluation. Annually, Employee and the Public Utility Board will define such goals and performance objectives as determined necessary for the proper operation of Tacoma Public Utilities and in the attainment of the Public Utility Board and Director's policy objectives. The objectives shall generally be attainable within the time limitations as specified in the biennial operating and

capital budgets and appropriations provided. The Public Utility Board shall review and evaluate Employee's performance annually based on progress towards the performance objectives. Further, the Public Utility Board shall provide Employee with a written summary statement of the Board's findings, and Employee will be provided with an adequate opportunity to discuss said evaluation with the Board.

6. Business Expenses and Equipment. The City shall provide City-owned equipment reasonably necessary to enable Employee to perform his duties as Director of Utilities. At termination of employment, the above-mentioned equipment will be returned to the City.
7. Dues and Subscriptions. Employer agrees to budget for and to pay professional dues and subscriptions of Employee necessary for his continuation and full participation in national, regional, state, and local associations, and organizations necessary and desirable for his continued professional participation growth, and advancement, and for the good of the Employer.
8. Professional Development.
  - A. Employer hereby agrees to budget for and to pay travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions adequate to continue the professional development of Employee and to adequately pursue necessary official functions for Employer, including such national, regional, state, local governmental groups, and professional boards and committees thereof which Employee serves as a member, provided such expenses are consistent with the Employer's policy and procedures for payment of employee expenses or any successor policies.
  - B. Employer also agrees to budget for and to pay for travel and subsistence expenses of Employee for short courses, institutes, and seminars that are necessary for his professional development and for the good of the Employer, provided such expenses are consistent with the Employer's policy and procedures for payment of employee expenses or any successor policies.
9. General Expenses. Employer recognizes that certain expenses of a non-personal and generally job-affiliated nature are incurred by Employee, and hereby agrees to reimburse or to pay said general expenses consistent with the Employer's policy and procedures for payment of employee expenses or successor policies, and the Finance Director is hereby authorized to disburse such monies, upon receipt of duly executed expense or petty cash vouchers, receipts, statements or personal affidavits.
10. Indemnification. Employer shall defend, save harmless, and indemnify Employee as set forth in TMC 1.12.920 or successor sections.

11. Bonding. Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law, the Tacoma City Charter, or Tacoma Municipal Code.

12. Other Terms and Conditions of Employment.

A. The Public Utility Board, in consultation with the Employee, shall fix any other terms and conditions of employment as the Board may determine, from time to time, relating to the performance of Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Tacoma City Charter, Tacoma Municipal Code, or any other law.

B. Employee must reside within City limits within Employee's first six months of employment, and Employee and Employer agree is it the intent of this agreement that Employee shall continue to maintain such residency during the term of this Agreement.

C. As Director of Public Utilities, Employee will have access to privileged, confidential, and proprietary information that is vital to the continued successful operations of the City and its Department of Public Utilities. Employee expressly promises that he shall not disclose, either during or after employment, privileged, confidential, or proprietary information acquired during employment unless such disclosure is required to perform the functions of his position, is authorized by the Employer, or is ordered by a Court.

13. No Reduction of Benefits. Notwithstanding Section 4, Employer shall not, at any time during the term of this Agreement, reduce the salary, compensation, or other financial benefits of Employee including the authority to accumulate and accrue all paid time off days and to be paid for same upon termination of this Agreement subject to the limits set forth currently in the Tacoma Municipal Code and as hereafter amended, and except to the degree of such a reduction across-the-board for all exempt, unrepresented employees of the Employer.

14. Notices. Notices pursuant to this Agreement shall be given, by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

EMPLOYER: Chairman, Public Utility Board  
City of Tacoma, Department of Public Utilities  
3628 South 35<sup>th</sup> Street  
Tacoma, WA 98409  
(253) 502-8200

EMPLOYEE: William A. Gaines  
City of Tacoma, Department of Public Utilities  
3628 South 35<sup>th</sup> Street  
Tacoma, WA 98409  
(253) 502-8203

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of postmark of such written notice in the course of transmission in the United States Postal Service.

15. General Provisions.

A. The text herein shall constitute the entire agreement between the parties.

B. This Agreement may be modified only in writing and by the consent of the Public Utility Board and Employee.

C. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Employee.


D. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

E. Nothing contained herein is intended to modify or supersede any provisions contained in the Tacoma City Charter or Tacoma Municipal Code, and any conflict between the provisions contained herein and the Tacoma City Charter or Tacoma Municipal Code shall be governed by the provisions set forth in the Tacoma City Charter or Tacoma Municipal Code as they appear on the date hereof.

16. Opportunity to Confer with Independent Counsel. In signing below, Employee expressly represents and affirms that the City Attorney was not acting as Employee's counsel in drafting this Agreement and that Employee consulted with independent counsel in reviewing and deciding to execute this Agreement.

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement as of the day and year first written above. This Agreement may be executed in counterparts.

**CITY OF TACOMA**

  
Peter Thein, Chairman  
Public Utilities Board

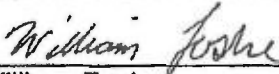
**EMPLOYEE**

  
William A. Gaines

  
Jeff Litchfield  
Interim Finance Director

Acting

Approved as to form and legality:

  
William Fosbre  
Chief Deputy City Attorney

**AMENDMENT NO. 1 TO  
JUNE 27 2012 COMPENSATION AGREEMENT**

THIS AMENDEMENT is made and entered into this 13th day of November 2013, between the CITY OF TACOMA, by through its Department of Public Utilities – Public Utility Board, hereinafter called “Employer,” and its Director of Utilities, William A. Gaines, hereinafter called “Employee.”

RECITALS:

WHEREAS the Employer and Employee entered into an agreement on June 27, 2012, (“Agreement”) to establish certain conditions of employment and to set working conditions of said Employee. The term of the Agreement is June 27, 2012, through October 31, 2017.

WHEREAS as under Section 3.B. of the Agreement the Employer promised to provide certain compensation to the Employee pursuant to Tacoma Municipal Code (“TMC”) 1.12.116 B by contributing \$50,000 annually as Employer contributions to an Internal Revenue Code Section 401(a) defined benefit contribution plan for the benefit of Employee starting November 1, 2012, for the lesser of (i) the term of this Agreement (for a potential aggregate total of \$250,000), or (ii) the duration of Employee’s employment with the City.

WHEREAS the Employer’s first contribution under Section 3.B. was made in January 2013. IRS employer contribution rules cap the amount of contributions that may be made in any given calendar year; consequently, the second Employer contribution cannot be made until the 2014 calendar year.

WHEREAS to ensure the required Employer contributions are made within the existing term of the Agreement the parties agree the four remaining contributions shall be made by January 31st in years 2014, 2015, 2016, and 2017.

NOW, THEREFORE, the parties hereby agree as follows:

Section 3.B. of the Agreement is amended to read.

Internal Revenue Code section 401(a)(17) limits the total annual compensation that can be taken into consideration when calculating the retirement benefit earned by the Employee under the Tacoma Employee’s Retirement System (TERS). To help offset the adverse effect on the Employee benefit calculation caused by this IRS limitation, the Employer agrees pursuant to TMC 1.12.116 B to contribute \$50,000 annually as Employer contributions to an Internal Revenue Code Section 401(a) defined benefit contribution plan for the benefit of Employee starting November 1, 2012, for the lesser of (i) the term of this Agreement (for a potential aggregate total of \$250,000), or (ii) the duration of Employee’s employment with the City. Employee shall be responsible for paying any and all



federal or state taxes related to the transactions associated with this section. In the event the IRS either eliminates the 401(a)(17) annual compensation limit impacting the TERS benefit calculation or increases the potential maximum contribution rate above \$50,000 for defined benefit contribution plans created under IRC section 401, then the parties agree to reopen this section to discuss potential amendment(s) to this supplemental benefit. Employer contributions required to be made under this Section 3.B. shall be credited to the Employee's Internal Revenue Code Section 401(a) defined benefit contribution plan no later than January 31<sup>st</sup> in years 2013, 2014, 2015, 2016, and 2017.

Except as expressly modified hereby, all other terms and conditions of the Agreement shall remain the same and in full force and effect.

**IN WITNESS WHEREOF**, the Parties hereto have entered into this Amendment No. 1 to Agreement effective as of the day and year first written above.

**CITY OF TACOMA**

*for David Nelson Jones*  
\_\_\_\_\_  
David Nelson, Chairman  
Public Utilities Board

**EMPLOYEE**

*William A. Gaines*  
\_\_\_\_\_  
William A. Gaines

*Andy Cherullo*  
\_\_\_\_\_  
Andy Cherullo  
Finance Director

Approved as to form and legality:

*William C. Fosbre*  
\_\_\_\_\_  
William Fosbre  
Chief Deputy City Attorney

**AMENDMENT NO. 2 TO  
JUNE 27, 2012 COMPENSATION AGREEMENT**

THIS AMENDMENT is made and entered into this 11th day of February 2016, between the CITY OF TACOMA, by through its Department of Public Utilities – Public Utility Board, hereinafter called “Employer,” and its Director of Utilities, William A. Gaines, hereinafter called “Employee.”

RECITALS:

WHEREAS the Employer and Employee entered into an agreement on June 27, 2012, (“Agreement”) to establish certain conditions of employment and to set working conditions of said Employee. The term of the Agreement is June 27, 2012, through October 31, 2017.

WHEREAS the Agreement was previously amended in November 13, 2013, to clarify the dates of the required employer contributions to the Employee’s Internal Revenue Code Section 401(a) defined benefit contribution plan.

WHEREAS the Employer and the Employee now desire to clarify the meaning of the phrase “terminated without cause” under Section 2.E and extend the Agreement through December 31, 2017.

NOW, THEREFORE, the parties hereby agree as follows:

1. Section 2.D. of the Agreement is amended and replaced with the following language.

D. This Agreement shall terminate on December 31, 2017, and may be extended upon agreement of the parties.

2. Section 2.E. of the Agreement is amended and replaced with the following language.

E. Should Employee, without cause, be terminated involuntarily, asked to resign, or otherwise end employment at the request of Employer, or if Employer and Employee do not agree on a successor compensation agreement effective after December 31, 2017, Employee shall, within 30 days of such termination, be provided with twelve (12) months’ severance pay at his then-current rate of pay as authorized under TMC 1.12.110 H and payment of Employee’s COBRA medical insurance premiums for twelve (12) months. If Employee begins employment within the 12 month period with comparable medical insurance coverage, he shall notify Employer 30 days prior to commencing such employment and Employer’s payment of Employee’s COBRA medical insurance premiums shall end with the commencement of such medical insurance

coverage. For purposes of this section 2.E. only, termination or non-renewal with cause shall mean "the Employee's willful and continued failure to perform his duties resulting in a materially adverse effect on Tacoma Public Utilities." In addition, if the City Council withholds reconfirmation of Employee's employment for any reason other than a finding of cause by the Tacoma Public Utilities Board, Employee shall be paid the severance payments in the same amount and manner described in the first two sentences of this section 2.E. Nothing in this section 2.E. shall be construed as altering or modifying the at-will relationship of the Employee to the Employer and the Employer's right to terminate the Employee without cause.

Except as expressly modified hereby, all other terms and conditions of the Agreement shall remain the same and in full force and effect.


**IN WITNESS WHEREOF**, the Parties hereto have entered into this Amendment No. 2 to Agreement effective as of the day and year first written above.

**CITY OF TACOMA**

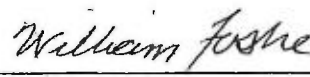
  
\_\_\_\_\_  
Bryan Flint, Chairman  
Public Utilities Board

**EMPLOYEE**

  
\_\_\_\_\_  
William A. Gaines

  
\_\_\_\_\_  
Andy Cherullo  
Finance Director

Approved as to form and legality:

  
\_\_\_\_\_  
William Fosbre  
Chief Deputy City Attorney

*Approved by the Tacoma Public Utility Board pursuant to Motion No. 16-03 on the 10th day of February 2016.*