

**INTERLOCAL AGREEMENT BETWEEN  
THE CITY OF TACOMA AND  
THE CITY OF FIFE  
REGARDING INDUSTRIAL PRETREATMENT**

This interlocal agreement (the “**Agreement**”) for Industrial Pretreatment is entered into this \_\_\_ day of \_\_\_\_\_, 2022, by and between the City of Tacoma, a municipal corporation, operating under the laws of the state of Washington as a first class city (hereafter “**Tacoma**”) and the City of Fife, a Washington municipal corporation (hereafter “**City**”); Tacoma and City may be individually referred to as “**Party**” and collectively referred to as the “**Parties**”.

**RECITALS:**

A. Pursuant to Chapter 39.34 RCW (Interlocal Cooperation Act), one or more public entities may contract with one another to perform government functions or provide services, which each is by law authorized to perform. Pursuant to RCW 35A.11.040 non-charter code cities are authorized to exercise any of its powers, or perform any of its functions, jointly or in cooperation with other public agencies.

B. 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.

C. Tacoma is a first class charter city and 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.

D. City is a non-charter code city and owns and operates a municipal wastewater system under authority of RCW 35A.11.020, 35A.21.150, and 35.67.020 and Article XI, § 11 of the Washington State Constitution, but does not own or operate a wastewater treatment facility.

E. Tacoma and City have previously entered into an agreement (the “Wastewater Treatment and Disposal Agreement”) dated July 12, 1996, whereby Tacoma and City established the quantity of allowable discharge of domestic and non-domestic wastewater from the City municipal wastewater system to the Tacoma POTW, charges for treatment services; and, further agreed to coordinate and plan cooperatively their services and facilities.

F. Federal and State laws and implementing regulations, regulate the collection and conveyance of wastewater to a POTW that discharges into the navigable waters of the United States and the public waters of the state of Washington, under authority of the Federal Clean Water Act, codified at 33 U.S.C. § 1251 et seq. (the "CWA"), and implementing regulations, and RCW Ch. 90.48, and implementing regulations.

G. The Environmental Protection Agency has enacted regulations that establish Pretreatment Standards (See, 40 C.F.R. 403) which require that all discharges of pollutants into the waters of the United States from a POTW be prohibited in the absence of an NPDES (National Pollutant Discharge Elimination System) Permit. See, 33 U.S.C. 1311 (Section 301).

H. NPDES permits may be issued by the Federal Government, or they may be issued by state agencies that have been delegated the authority to administer their own permit programs. 33 U.S.C. §1342 (a) & (b). The State of Washington has been delegated such authority by the Environmental Protection Agency and has issued NPDES Permits to Tacoma for discharges into waters of the United States and waters of the State.

I. The State Department of Ecology ("Ecology") manages a waste disposal permit (industrial wastewater discharge permit) program authorized pursuant to RCW 90.48.160 - 200. These statutes require any person who conducts a commercial or industrial operation of any type resulting in disposal of wastewater into a POTW discharging into waters of the state, to obtain an industrial wastewater permit, unless a permit exemption applies (See WAC 173-216-050).

J. Ecology has adopted regulations codified at WAC Ch. 173-208 that establish the program requirements applicable to cities, like Tacoma, that seek authorization to issue industrial wastewater discharge permits. The program requirements include the obligation that the permit program adheres to the state or federal pretreatment standards and requirements.

K. 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.

L. 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 such POTW, pursuant to the requirements of the CWA 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, which Tacoma is authorized to enact, enter into or implement, and which are authorized by state law.

M. Commercial/industrial sources, users and facilities located in City either currently

contribute, or may in the future contribute, process wastewater discharges to the City municipal wastewater system which are discharged to Tacoma's POTW. At the time of the execution of this Agreement, there are approximately 177 known industrial users in the City.

N. Food service establishments have the potential to discharge floatable or settleable material to Tacoma's POTW which may be harmful to, or cause obstruction in, the POTW or cause or contribute to pass through or interference.

O. In order to continue to provide services to City, Tacoma must ensure that processed wastewater contributed from industrial sources, users or facilities located in City and food service establishments located in City meet or exceed the standards and requirements prescribed in Tacoma's pretreatment ordinance, Tacoma Municipal Code Chapter 12.08C (hereafter "TMC 12.08C"), Tacoma's pretreatment program approved pursuant to Department of Ecology Order No. DE 94WQ-S358, and the NPDES Permit No. WA0037087, condition S6, and such same or similar condition as may be required in a future NPDES permit issued to Tacoma.

P. NPDES Permit No. WA0037087 and Permit No. WA0037214, condition S6 requires, among other things, that Tacoma establish, where necessary, contracts or legally binding agreements with contributing jurisdictions to ensure compliance with applicable pretreatment requirements by commercial or industrial users within these jurisdictions. Condition S6 requires that these contracts or agreements shall identify the agency responsible for the various implementation and enforcement activities to be performed in the contributing jurisdiction, and the specific roles, responsibilities, and pretreatment activities of each jurisdiction.

Q. The Parties acknowledge and agree, that it is necessary to enter into this Agreement to conform to the foregoing requirements and authorities, and that, in particular in this Agreement, City agrees to adopt a pretreatment ordinance and related enforcement ordinance that subjects the commercial/industrial users within its boundaries to the necessary pretreatment controls, and by this Agreement, delegates to Tacoma as lead agency, the authority of the City, to implement and enforce that pretreatment ordinance.

R. It is in the best interests of the Parties of this Agreement and in the interest of the public health, safety and welfare of the area served by the Parties that this Agreement be executed.

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## **AGREEMENT**

Pursuant to RCW Ch. 39.34 and RCW 35.67.020, and in consideration of the terms, conditions, covenants and performances contained herein, as well as the attached exhibits, which are incorporated and made a part, hereof, the Parties agree as follows:

### **SECTION 1. RECITALS ADOPTED**

The recitals set forth above are hereby adopted as the factual and legal basis for this Agreement.

### **SECTION 2. INTENT; PURPOSE**

A. City desires to continue to discharge Wastewater to the Tacoma POTW as set forth in the Wastewater Treatment and Disposal Agreement, as may be amended, or any successor agreement that may be agreed to by the Parties. The Parties acknowledge and agree that City, as a condition of discharging to the Tacoma POTW, must establish, implement and enforce a pretreatment program for industrial users that conforms to applicable federal and state laws and regulations and to Tacoma's pretreatment standards and requirements, as amended from time to time. City further desires that the City of Tacoma be and remain the control authority for issuance and enforcement of all industrial wastewater discharge permits within the corporate boundaries of the City and that Tacoma take responsibility as lead agency for implementation and enforcement of the pretreatment program in the City. City acknowledges and understands that Tacoma has adopted a pretreatment program codified at Chapter 12.08C of the Tacoma Municipal Code. Chapter 12.08C contains substantive requirements intended to conform to requirements under applicable laws and regulations made applicable to all permittees under the industrial wastewater discharge permits issued by Tacoma as control authority. City acknowledges and understands that City shall adopt pretreatment standards and requirements that are substantively the same as those adopted by Tacoma.

B. The Parties intend that this Agreement will operate to meet and satisfy Tacoma's obligations, pursuant to the requirements of the CWA (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, to implement and enforce a POTW pretreatment program to regulate and control wastewater discharges from commercial/industrial sources, users and facilities that contribute process wastewater discharges to the City municipal wastewater system which are then discharged to the Tacoma POTW or that contribute non-domestic wastewater that has the potential to be harmful to, or cause obstruction in, the POTW or cause or contribute to pass through or interference.

C. The Parties intend that this Agreement will establish the roles and responsibilities of Tacoma and City for adoption, maintenance and enforcement of commercial/industrial pretreatment standards; for the user identification and permitting process; and for inspection, sampling, records management, enforcement and other aspects of

implementation and delivery of Tacoma's pretreatment program.

D. The Parties intend that City and Tacoma shall jointly exercise certain regulatory powers as set forth herein, with Tacoma acting on behalf of City as lead agency for implementation and enforcement of pretreatment regulations and as control authority for issuance of industrial wastewater discharge permits, within the corporate boundaries of City. This Agreement shall therefore operate to delegate to Tacoma, as lead agency and on behalf of the City, all lawful power and authority necessary to enforce compliance with City ordinances and regulations governing pretreatment standards and requirements and discharges into the City municipal wastewater system which are then discharged to the Tacoma POTW and establish Tacoma as the control authority for purposes of issuance of industrial wastewater discharge permits.

### **SECTION 3. 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, 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. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. Any terms not defined in this Agreement shall have the definitions as given in the most current version of Tacoma's Municipal Code Chapter 12.08C (TMC Ch. 12.08C). Any terms not defined in this Agreement or TMC Ch. 12.08C, shall have the same meaning as those terms are given in the most current version of WAC 173-208-040. Any terms not defined in this Agreement or TMC Ch. 12.08C, or WAC 173-208-040 (Definitions), shall have the same meaning as those terms are given in the most current version of 40 C.F.R. 403.3 (Definitions). Words not otherwise defined, shall be given their common and ordinary meaning.

A. Control Document. An industrial wastewater discharge permit or any other formal written discharge authorization or prohibition issued by Tacoma, City or Washington State Department of Ecology.

B. Effective Date. The effective date of this Agreement shall be the date set forth above, and if no date is set forth above, the last date entered below by the executive signatories hereto.

C. City municipal wastewater system. The devices and systems owned or operated by City and used in the collection, storage and conveyance of wastewater.

D. Service Area. Property within the corporate boundaries of the City which discharges wastewater to the Municipal Sanitary Sewer System.

E. TMC. The Tacoma Municipal Code.

## SECTION 4. PRETREATMENT PROGRAM AUTHORITY AND STANDARDS

A. Tacoma's Delegated POTW Pretreatment Program Authority. Tacoma owns and operates a POTW and has been delegated the authority to permit and accept industrial wastewater discharges from all industrial sources, users and facilities, pursuant to Washington State Department of Ecology Order No. DE 94-WQ-S358. Tacoma is currently the control authority over the POTW pretreatment program governing direct and indirect discharges to its POTW pursuant to this delegation from the Department of Ecology.

B. Tacoma's Adopted Pretreatment Ordinance. Tacoma has adopted an ordinance codified at TMC Ch. 12.08C which establishes a POTW pretreatment program for the regulation and permitting of users and the enforcement of pretreatment standards and requirements, which meet federal, state and local water quality standards for users.

C. City's Adopted Pretreatment Ordinance.

1. City shall adopt an ordinance (the "**Pretreatment Ordinance**") establishing and implementing wastewater pretreatment standards and pretreatment requirements that are no less stringent and are as broad in scope as Tacoma's applicable pretreatment standards and pretreatment requirements as set forth in TMC Ch. 12.08C. The pretreatment ordinance will be enforceable as to all commercial/industrial users located in City's Service Area and shall include provisions for enforcement of industrial wastewater discharge permits issued by Tacoma to commercial/industrial users within the Service Area. The pretreatment ordinance shall include enforcement provisions consistent with the authority granted to Tacoma pursuant to TMC Ch. 1.82 and TMC Ch. 1.84.

2. City shall forward to Tacoma for review a draft of its proposed pretreatment ordinance within ninety (90) days of the effective date of this Agreement. Tacoma shall review the pretreatment ordinance for conformance with applicable requirements of this Agreement and approve the pretreatment ordinance, or disapprove the draft pretreatment ordinance and provide comments to City explaining the deficiencies resulting in disapproval. The Parties will act diligently to review and revise the draft pretreatment ordinance, and seek regulatory review and approval by other public agencies to the extent required. Upon review and final approval by Tacoma of the pretreatment ordinance, City will seek approval of the same by its City Council.

D. Amendment of City's Adopted Pretreatment Ordinance. Upon notification of adoption of any amendments made to TMC Ch. 12.08C, or any related enforcement provisions of the TMC, City shall, within 120 days, incorporate such revisions, modifications or amendments into the pretreatment ordinance and any other City sewer use/pretreatment resolution, to the extent that the TMC Ch. 12.08C revision, modification or amendment significantly revises, modifies or amends City's pretreatment ordinance. City agrees that any amendments made to the pretreatment 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 pretreatment ordinance that would violate the provisions of this Agreement.

E. Pollutant Specific Local Limits. Contemporaneous with the adoption of the pretreatment ordinance, City will adopt pollutant specific local limits, which address at least the same pollutant parameters and are at least as stringent as the local limits enacted by Tacoma. If Tacoma makes any revisions or additions to its local limits, Tacoma will forward to City a copy of such revisions or additions within thirty (30) days of enactment thereof. City will adopt any such revisions or additions within 120 days of receipt thereof

## **SECTION 5. LEAD AGENCY AUTHORIZATION; DELEGATION OF AUTHORITY**

A. Delegation of Authority. City designates Tacoma as its agent, and delegates to Tacoma the full power and authority of City, to implement and enforce the pretreatment ordinance, and related enforcement provisions, for and on behalf of City. Under such delegation of authority, Tacoma may take any action under the pretreatment ordinance, and related enforcement authority, that could have been taken by City, including the enforcement of the pretreatment ordinance in courts of law. Pursuant to such delegation of authority, and Tacoma's delegation of permitting authority pursuant to Ecology Order No. DE 94WQ-S358, all industrial wastewater discharge permits issued to commercial/industrial users located in the Service Area shall be issued by Tacoma as the control authority. City understands that it may be considered as an implied co-permittee under Ecology Order No. DE 94WQ-S358, or successor order.

B. Technical and Administrative Duties. Tacoma, on behalf of and as agent for City, will perform technical and administrative duties necessary to implement and enforce the pretreatment ordinance. Tacoma will: (1) update the industrial user survey; (2) issue industrial wastewater discharge permits to all industrial users in the Service Area required to obtain a permit; (3) conduct inspections, take enforcement action, perform sampling and analysis; (4) take all appropriate enforcement response planned and provided for in the pretreatment ordinance and any adopted policies and procedures, including Tacoma's pretreatment enforcement response plan; and (5) perform any other technical or administrative duties the Parties deem appropriate, including those specified in Section 6 of this Agreement. In addition, Tacoma may, as agent of City, 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. Contributing Jurisdictions. Intentionally Omitted.

D. Cost Allocation. Tacoma agrees that it will be responsible for all costs incurred by Tacoma in implementing and enforcing City's pretreatment ordinance; provided that, the costs of such enforcement may be recovered by Tacoma within rates and charges assessed to City pursuant to the Wastewater Treatment and Disposal Agreement, as

may be amended, or a successor agreement, and such fees assessed to applicants and industrial users pursuant to the pretreatment ordinance. City agrees to adopt a rate and fee schedule consistent with the rate and fee schedule applicable to TMC 12.08C. Any fees directly assessed to applicants and users pursuant to such fee schedule shall be retained by Tacoma to recover its administrative costs. Monetary penalties assessed pursuant to administrative enforcement action taken by Tacoma on behalf of City pursuant to this Agreement, shall be collected and retained by City. Rates and fees assessed pursuant to a special approved discharge authorization or other control mechanism for a short-term discharge to the City municipal wastewater system shall be paid to and retained by Tacoma. Supplemental fees assessed and collected shall be allocated between City and Tacoma based proportionally upon each Party's response costs included in the assessment.

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

F. Penalties; Enforcement. In the event that a criminal complaint or civil infraction notice is filed to enforce the pretreatment ordinance, City will facilitate prosecution of such criminal or civil action in a court or other hearing body 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 pretreatment ordinance, City agrees that any contested hearings shall be conducted before the Tacoma Hearing Examiner, or designee, acting as the Hearing Examiner for the City. City agrees that in any criminal, civil or administrative enforcement action, Tacoma may act as an agency representative of City.

## **SECTION 6. USER IDENTIFICATION**

A. Categorization of Industrial Users. To identify and categorize users, City will work with Tacoma to ensure all significant industrial users are identified and tracked. This shall include methods for periodic and ongoing surveys of all commercial/industrial users, which will be processed in conformance with the pretreatment ordinance. At the time this Agreement is executed, there are approximately 177 known industrial users in the City.

B. Notice to New Users. Prior to connection to the City municipal wastewater system, all new commercial/industrial users shall be informed of their responsibility to provide survey information.

C. Changes in Discharge Flow or Pollutants. When an existing significant industrial user alters or increases its discharge in flow or pollutants characteristics by twenty percent (20%) or more, or any time it is requested by Tacoma, City will immediately require that such significant industrial user respond to a user pretreatment survey. City will forward a copy of the completed survey to Tacoma within five (5) days of receipt of the survey.



## **SECTION 7. PERMITTING**

A. After determining that an industrial wastewater discharge permit is required, and upon receipt of a completed industrial wastewater discharge permit application, City shall consult with Tacoma's pretreatment coordinator, who will process the application in accordance with the pretreatment ordinance. Tacoma will provide copy of the draft industrial wastewater discharge permit to City for review and comments. Tacoma will be responsible for issuance of the industrial wastewater discharge permit to the significant industrial user. Representatives of City may attend any permit issuance meeting.

B. Tacoma shall forward a copy of any industrial wastewater discharge permit or industrial wastewater discharge permit renewal to City within 30 days of its issuance by Tacoma.

## **SECTION 8. SAMPLING**

A. Tacoma shall be responsible for coordination of the discharge monitoring, sample collection and laboratory analysis for parameters with effluent limits in an industrial user's industrial wastewater discharge permit.

1. All sampling procedures will conform to procedures set out in the pretreatment ordinance.

2. No permitted industrial user shall be allowed by City to discharge industrial wastewater containing concentrations in excess of the daily or instantaneous maximum allowable discharge limits, "local limits", as stated in the pretreatment ordinance, unless authorized in writing from Tacoma's Director of Environmental Services. These limits shall apply at the point where the wastewater is discharged at end of process before mixing with domestic wastewater.

3. All concentrations for metallic substances are for "total" metal unless indicated otherwise.

## **SECTION 9. INSPECTIONS**

A. Tacoma will perform inspections, surveillance and oversight on industrial users to determine and/or confirm compliance with applicable pretreatment standards and requirements. Tacoma will thoroughly inspect each industrial user in accordance with its approved program document and document findings and efforts to resolve deficiencies.

B. City will notify Tacoma of any pretreatment related issues discovered during normal operation and maintenance of City's municipal wastewater system.

## **SECTION 10. ENFORCEMENT**

A. City agrees to adopt Tacoma's Pretreatment Enforcement Response Plan (ERP) as it now exists, and as may from time to time be amended, as the enforcement response plan of City applicable to enforcement of the pretreatment ordinance. Tacoma will enforce the effluent limits and conditions of an industrial wastewater discharge permit issued to an industrial user in City's Service Area and will enforce the pretreatment ordinance, in accordance with the ERP adopted by City. Responsibility for other administrative and judicial enforcement actions may be allocated between the Parties as set forth herein, and as may be further negotiated and agreed to by City and Tacoma.

B. Nothing in this Agreement shall be construed as prohibiting City's ability to take any other action or enforcement, beyond those stated in this Agreement, to the extent authorized by law.

## **SECTION 11. RECORDS MANAGEMENT**

A. Consistent with the Public Records Disclosure Act, and any other applicable public records statutes, City will allow Tacoma to inspect and copy records that are relevant to the obligations and duties of City under this Agreement for any user.

B. Tacoma will submit annually a report to Ecology specifying the commercial/industrial users surveyed in City and include a list in its annual pretreatment report. Tacoma shall make a copy of the report available to City.

## **SECTION 12. INTERAGENCY COMMUNICATIONS**

All communications and reports in connection with this Agreement, unless otherwise noted, shall be directed to the following staff, in writing by email, facsimile, regular U.S. mail or certified mail, return-receipt requested. All notices required or permitted to be given hereunder shall be in writing, and shall be deemed effective either, (i) upon hand delivery to the person then holding the office shown on the attention line of the address below, or, if such office is vacant or no longer exists, to a person holding a comparable office, or (ii) or when delivered by a nationally recognized overnight mail delivery service, to the Party and at the address specified below, or (iii) on the third business day following its deposit with the United States Postal Service, first class and certified or registered mail, return receipt requested, postage prepaid, properly sealed and addressed as follows:

The City of Tacoma  
Environmental Services Director  
2201 Portland Avenue  
Tacoma, WA 98421  
98424 \_\_\_\_\_

City of Fife  
City Clerk  
5411 23<sup>rd</sup> Street East  
Fife, WA

EMERGENCY SPILL REPORTING	
City of Tacoma Pretreatment Coordinator (253)502-2162	City of Fife City Clerk (253) 922-2489
24HR Response (253) 502-2222	24HR Response (253) 922-9315
	WA State Department of Ecology Water Quality Engineer Southwest Regional Office PO Box 47775 Olympia, WA 98504

**SECTION 13. INDEMNIFICATION.**

A. To the maximum extent permitted by law, Tacoma and City 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 or domestic wastewater discharged from users, disruption of treatment processes or operations, harmful degradation of sludge quality, NPDES permit violations, and other air, water and sludge quality violations caused by harmful 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 City 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.

B. 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.

C. 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. OTHER PROVISIONS**

A. Entire Agreement. This Agreement contains the entire written Agreement and

constitutes the final Agreement between the Parties concerning the adoption and enforcement of pretreatment standards and requirements for industrial users. This Agreement supersedes all prior discussions and previous agreements concerning such industrial discharges or pretreatment; with the exception that, this Agreement is not intended to supersede or replace the Wastewater Treatment and Disposal Agreement, as may be amended or any successor agreement. This Agreement may be amended only in writing, signed by both Parties.

B. Severability. If any word, article, section, subsection, paragraph, provision, condition, clause, sentence, or its application to any person or circumstance (collectively referred to as "Term"), shall be held to be illegal, invalid, or unconstitutional for any reason by any court or agency of competent jurisdiction, such term declared illegal, invalid or unconstitutional shall be severable and the remaining terms of the Agreement shall remain in full force and effect. In the event that such term shall be held or otherwise mutually agreed to by the Parties to be illegal, invalid, or unconstitutional, the Parties shall reform the Agreement pursuant to Subsection C of this Section 14.

C. Subsequent Action; Review and Amendment. The Parties will review this Agreement periodically to ensure compliance with the CWA, RCW Chapter 90.48, and the rules and regulations issued thereunder, Tacoma's NPDES permits, and Tacoma's approved pretreatment program. 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 Pretreatment Program 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) City is authorized by the United States Environmental Protection Agency and Ecology to develop and implement a delegated POTW pretreatment program, or (e) 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 City, 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 the law, the intent, scope and purpose of this Agreement.

D. Challenge to Delegated Authority. If a court, hearing body, or regulatory agency with authority over the City's pretreatment program, determines that the Tacoma lacks authority to enforce the City's pretreatment ordinance, the City will take whatever action is reasonably necessary to ensure the implementation and enforcement of its pretreatment ordinance against its industrial users, including, but not limited to, implementing and enforcing its pretreatment ordinance on its own behalf, and agreeing to amend this Agreement to the extent necessary and reasonable to remedy the lack of authority.

E. Further Documents. The City of Tacoma, Environmental Services Director and the City's Mayor, or their designees, 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.

F. Term of Agreement. The term of this Agreement shall be ten (10) years, which shall renew automatically for successive one-year terms so long as the Wastewater Treatment and Disposal Agreement, as may be amended, or any successor agreement, remains effective. Upon termination of such service agreement and cessation of discharge of wastewater from any source from the City municipal wastewater system to the Tacoma POTW, this Agreement shall automatically terminate without further action by Tacoma or City.

G. Termination. Because the Agreement is necessary to ensure compliance with Tacoma's POTW pretreatment enforcement obligations under federal law, this Agreement may be terminated only if the Wastewater Treatment and Disposal Agreement, as may be amended, or any successor agreement, that obligates Tacoma to accept wastewater from City has been terminated, and only upon cessation of discharge of wastewater from the City municipal wastewater system to the Tacoma POTW.

H. Dispute Resolution. Tacoma and City shall attempt to resolve a dispute regarding this Agreement by informal negotiation, pursuant to an informal process agreed to by both Parties. If the Parties fail to agree upon an informal process within ten (10) business days of notice of a dispute, or fail to resolve the dispute through an agreed upon informal process, the Parties shall submit the dispute to a dispute board for a non-binding determination. Each party shall timely appoint one member to the dispute board. Those appointed members shall jointly appoint an additional member. The dispute board shall timely consider the dispute and make a non-binding determination. As long as the dispute board acts in a timely manner, the Parties agree not to seek legal or equitable relief in the courts until the dispute board renders a determination. Thereafter, either party may seek legal or equitable relief in the courts.

I. Jurisdiction and Venue. This Agreement shall be interpreted in accordance with the laws of the State of Washington and relevant federal requirements. The Superior Court of Pierce County, Washington and/or the Federal District Court for Western Washington, shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.

J. No Third Party Rights. No term or provision of this Agreement is intended to be, or shall be, for the benefit of any person not a party hereto, and no such person shall have any right or cause of action hereunder, except as may be otherwise provided herein. The Parties intend that the rights, obligations, and covenants in this Agreement and the collateral instruments shall be exclusively enforceable by City and Tacoma, their successors, and assigns.

K. No Joint Venture. No joint venture or partnership is formed as a result of this Agreement. No employees or agents of one party or any of its contractors or subcontractors shall be deemed, or represent themselves to be, employees of the other party.

L. Attorneys' Fees and Costs. 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 substantially prevailing party.

M. Waiver. Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this Agreement, unless stated to be such through written approval of the non-breaching party and attachment of such written approval to this Agreement.

N. Interlocal Cooperation Act Compliance. This is an Agreement entered into pursuant to Chapter 39.34 RCW. Its purpose is as set forth in Section 2. Its duration is as specified in Section 14.F. Its method of termination is set forth in Section 14.G. Except as otherwise specifically provided herein, each party shall bear its own costs and control its own manner of financing and of establishing and maintaining a budget therefore. No separate entity is created and no real or personal property shall be acquired pursuant to this Agreement, which will need to be disposed of upon partial or complete termination of this Agreement.

O. Calculation of Time. 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

P. Document Execution and Filing. City and Tacoma agree that there shall be three (3) duplicate originals of this Agreement procured and distributed for signature by the necessary officials of Tacoma and City. Upon execution, one executed original of this Agreement shall be retained by the Tacoma City Clerk, one shall be retained by the Tacoma Environmental Services Department, and one shall be retained by City. The Tacoma City Clerk shall cause a copy of this Agreement to be posted on the City website pursuant to RCW 39.34.040. Upon execution of the originals and posting of a copy on Tacoma's website, each such duplicate original shall constitute an Agreement binding upon all Parties.

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.

One each of the duplicate originals shall be distributed to the designated agents of the Parties, named as follows:

City of Tacoma  
Director of Environmental Services  
2201 Portland Avenue  
Tacoma, WA 98421

City of Fife  
City Clerk  
5411 23<sup>rd</sup> Street East  
Fife, WA 98424

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their authorized representatives.

**CITY OF TACOMA:**

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: City Manager  
Date: \_\_\_\_\_

Attest:

\_\_\_\_\_  
City Clerk

Approved:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Environmental Svcs. Director

\_\_\_\_\_  
Name: \_\_\_\_\_  
Finance Director

Approved as to form:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Chief Deputy City Attorney

\_\_\_\_\_  
Name: \_\_\_\_\_  
Risk Manager


**CITY OF FIFE**

  
\_\_\_\_\_  
Name: Derek Matheson  
Title: City Manager  
Date: 8/4/22

Attest:

  
\_\_\_\_\_  
Brodie Rota, City Clerk

Approved as to form:

  
\_\_\_\_\_  
Gregory F. Amann, City Attorney