

RESOLUTION NO. 1748

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON AUTHORIZING THE CITY MANAGER TO EXECUTE A TEMPORARY WATER SERVICE AGREEMENT WITH CITY OF TACOMA

Whereas, pursuant to state law, City of Fife and City of Tacoma are each authorized to operate water systems, and to enter into agreements regarding the transmission, distribution and supply of potable water; and

Whereas, Tacoma and Fife realize certain mutual benefits from cooperative efforts in the operation and maintenance of their respective water systems and desire to cooperate in the planning and service of their future customers; and

Whereas, WAC 246-290-106 authorizes a municipal water supplier to extend water service outside its retail service area to provide temporary service for a neighboring water system, if there is a written agreement in place, and

Whereas, the Tacoma City Charter authorizes the Tacoma City Council upon the recommendation of the Tacoma Public Utility Board to issue permits to outside entity to furnish utility service inside Tacoma where it is shown that, because of peculiar physical circumstances or conditions, Tacoma cannot reasonably serve said property, and

Whereas, certain 60 + acre property located on the north side of Fife's 12th Street East, between 46th and 52nd Avenues East, and within the Tacoma city limits and Tacoma Water's service territory is scheduled to be developed in the near future ("Parcel 14"); and

Whereas, City of Fife owns and operates a water main in the public right of way next to Parcel 14, and

Whereas, City of Tacoma does not have water distribution infrastructure located near Parcel 14 and the cost of constructing such infrastructure would likely exceed five hundred thousand dollars, and

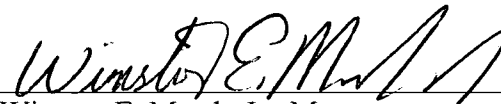
Whereas, City of Fife currently receives its water supply from Tacoma Water; and

Whereas, the Parties agree it would be a more efficient use of existing facilities at this time if City of Fife were to provide temporary water service to Parcel 14 using its existing water distribution infrastructure instead of the property owner and/or Tacoma Water construct new water main to serve the property, and

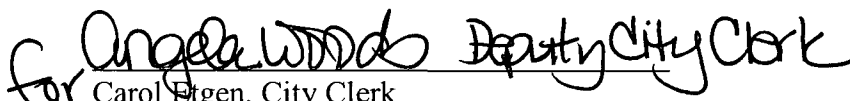
Whereas City of Fife is willing to provide temporary water service to Parcel 14 and City of Tacoma is willing to have City of Fife provide the service on temporary basis upon the terms and conditions of this Agreement; now, therefore,

BE IT RESOLVED that the City Council hereby authorizes the City Manager to execute on behalf of the City of Fife, the Temporary Water Service Agreement the City of Tacoma substantially in the form set forth in Exhibit A, The City Manager is authorized to make changes to the agreement prior to signing that are consistent with the intent and purpose of the form attached hereto as Exhibit A.

ADOPTED by the City Council at an open public meeting held on the 13th day of December 2016.

  
Winston E. Marsh, Jr., Mayor

Attest:

  
for Angela Woods Deputy City Clerk  
Carol Etgen, City Clerk

Temporary Water Service Agreement

This Temporary Water Service Agreement ("Agreement") dated the \_\_\_ day of \_\_\_\_\_, 20\_\_ is entered into by and between City of Fife, a political subdivision of the State of Washington ("Fife" or "City of Fife") and the City of Tacoma, Department of Public Utilities, Water Division, a political subdivision of the State of Washington ("City of Tacoma", "Tacoma", or "Tacoma Water") (individually a "Party" and collectively the "Parties") for the purposes set forth in this Agreement.

RECITALS

Whereas, pursuant to state law, City of Fife and City of Tacoma are each authorized to operate water systems, and to enter into agreements regarding the transmission, distribution and supply of potable water; and

Whereas, Tacoma and Fife realize certain mutual benefits from cooperative efforts in the operation and maintenance of their respective water systems and desire to cooperate in the planning and service of their future customers; and

Whereas, WAC 246-290-106 authorizes a municipal water supplier to extend water service outside its retail service area to provide temporary service for a neighboring water system, if there is a written agreement in place, and

Whereas, the Tacoma City Charter authorizes the Tacoma City Council upon the recommendation of the Tacoma Public Utility Board to issue permits to outside entity to furnish utility service inside Tacoma where it is shown that, because of peculiar physical circumstances or conditions, Tacoma cannot reasonably serve said property, and

Whereas, certain property located at 4700 12th Street East, Tacoma, Washington as shown on Exhibit "A" ("the property") and within the Tacoma city limits and Tacoma Water's service territory is scheduled to be developed in the near future, and

Whereas, City of Fife owns and operates a water main in the public right of way next to the property, and

Whereas, City of Tacoma does not have water distribution infrastructure located near the property and the cost of constructing such infrastructure would likely exceed five hundred thousand dollars, and

Whereas, City of Fife currently receives its water supply from Tacoma Water; and

Whereas, the Parties agree it would be a more efficient use of existing facilities at this time if City of Fife were to provide temporary water service to the property using its existing water distribution infrastructure instead of the property owner and/or Tacoma Water construct new water main to serve the property, and

Whereas City of Fife is willing to provide temporary water service to property and City of Tacoma is willing to have City of Fife provide the service on temporary basis upon the terms and conditions of this Agreement; now, therefore,

1. Term.

This Temporary Agreement shall be effective from the date of execution by authorized representatives of both Parties and shall continue for a term of \_\_\_ years, or as extended by mutual agreement of the Parties.

2. Water Service, Sale, Purchase, And Delivery.

Fife agrees to sell and make commercially reasonable efforts to deliver potable water and water service to the property located at 4700 12th Street East, Tacoma, Washington shown in Exhibit "A," directly from its distribution system.

Tacoma agrees to sell and to make commercially reasonable efforts to supply wholesale water to Fife for Fife to use to sell and supply water to the property for as long as this Agreement remains in effect.

3. Termination.

Either party may terminate this Agreement upon \_\_\_\_ ( ) days' notice, and upon termination Fife will cease providing water service to the property. Upon termination of the Agreement, Tacoma and Fife will coordinate disconnection of the water service with the property.

4. Fees And Rates Between The Parties For Providing Water Service.

- a) City of Tacoma shall not charge City Fife any fees for authorizing it to supply water to the property, and City of Fife shall not charge City of Tacoma any fees for supplying water to the property.
- b) City of Tacoma shall charge City of Fife its rate charged for wholesale water under its water rate ordinance, regulations and customer service policies in effect at the time of sale and as hereafter amended, for wholesale water supplied to serve the property under this Agreement.

5. Rates and fees charged to property

City of Fife shall charge the property such rates and fees as it deems necessary and reasonable to recover the costs of infrastructure and service to the customer.

6. Water quality.

- a) The City of Tacoma shall supply wholesale water to the City of Fife that complies with all laws and regulations related to drinking water, including the Washington State Department of Health Drinking Water Regulations. After the City of Fife takes possession and ownership of the wholesale water into its system, the City of Fife takes sole responsibility for water quality supplied to the property. The City of Fife shall be responsible for maintaining compliance with drinking water quality standards and requirements after accepting delivery of the wholesale water. The City of Fife shall hold the City of Tacoma harmless from and against claims, losses, or damages arising from or relating to water quality or the introduction into its system of water or other substances beyond the location where the City of Fife takes possession of the wholesale water.
- b) Tacoma and Fife will immediately notify Tacoma or Fife of water quality emergencies and both will coordinate public notice.
- c) Fife will be responsible for administering a cross-connection program between the property and its system in accordance with Washington State Department of Health guidelines.

7. Quantity and Reliability.

- a) It shall be the sole obligation of the City of Fife to operate and maintain its water system and do so in a manner consistent with reasonable municipal water system standards laws and regulations applicable to municipal water utilities, prudent utility practices, and applicable rules and regulations when supplying water and providing water service to the property.

b) In the event of a drought or other water shortage that requires the City of Tacoma to implement water rationing or water shortage management plan for the City of Tacoma's retail customers, the City of Fife may proportionately require the reduction of water deliveries under this Agreement to the property.

8. Customer Service Policies Used To Govern Water Service.

The City of Fife shall follow its customer service policies and regulations related to providing water service to the property.

9. Dispute resolution.

Any dispute that arises out of an interpretation, performance, enforcement, or any other aspect of this Agreement, shall first be addressed by a management from the City of Fife and management from Tacoma Water to discuss the dispute and to engage in good faith negotiations. If management-level discussions do not resolve the dispute, the dispute shall be resolved by submitting the same to mediation with an agreed mediator or one selected by the Pierce County Superior Court presiding judge if the parties cannot agree. The Parties shall split evenly the costs of the mediator and each Party shall bear its own costs in the mediation. If the mediation fails to resolve the dispute after a good faith effort, then either Party may commence legal action in court.

10. Uncontrollable Forces.

No Party shall be considered to be in breach of this Agreement on account of any failure to perform if such failure is the result of uncontrollable forces or events that are beyond the reasonable control of the Party.

11. Non-applicability to Water Service Area.

This Temporary Agreement does not change or affect any water service area of the Parties as recognized and approved under Washington state law.

12. Indemnity and Hold Harmless/Limitation on Damages.

a) Each Party agrees to indemnify the other Party and hold them harmless from and against any loss, cost, damage, or expense of any kind and nature, including reasonable attorneys' fees, arising out of injury to person or damage to property in any manner caused by the negligent act or omission or by the intentional misconduct of the indemnifying Party in the performance of its work pursuant to or in connection with this Agreement.

b) Each Party agrees that this indemnification applies to any claim or injury or damage to the persons or property of that Party's employees. As to such claims, each Party waives any right of immunity which it may have under industrial insurance (Title 51 RCW and any amendment thereof or substitution therefore). THIS WAIVER IS SPECIFICALLY NEGOTIATED BY THE PARTIES AND IS SOLELY FOR THEIR BENEFIT. IN NO EVENT WILL A PARTY OR ITS RESPECTIVE OFFICIALS, OFFICERS, EMPLOYEES, AGENTS OR TAX/RATE PAYERS BE LIABLE TO ANOTHER PARTY OR PARTIES TO THIS AGREEMENT OR TO ANY OTHER PERSON OR ENTITY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO, DIRECTLY OR INDIRECTLY, IN WHOLE OR IN PART, THIS AGREEMENT OR ANY SERVICES OR PRODUCTS PROVIDED OR TO BE PROVIDED HEREUNDER, INCLUDING, BUT NOT LIMITED TO, INTERRUPTION OF SERVICE,

LOSS OF REVENUE OR PROFIT, LOSS OF TIME OR BUSINESS, OR ANY SIMILAR LOSS, WHETHER LIABILITY IS ASSERTED IN CONTRACT, IN TORT OR UNDER ANY OTHER LEGAL OR EQUITABLE THEORY OR BASIS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

13. Miscellaneous.

- a) To the extent required to implement this Agreement, each Party shall amend its comprehensive water system plan and obtain State approvals for the interties referenced herein.
- b) This Agreement shall inure to the benefit of and be binding upon successors of interest and assigns of the Parties. Neither this Agreement nor any obligations to perform hereunder may be voluntarily assigned by a Party without the other Party's' written consent.
- c) This Agreement may be modified only by further written agreement executed by the Parties.
- d) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

WAC 246-290-001 Definitions

(215) "Retail service area" means the specific area defined by the municipal water supplier where the municipal water supplier has a duty to provide service to all new service connections. This area must include the municipal water supplier's existing service area and may also include areas where future water service is planned if the requirements of RCW 43.20.260 are met.

(227) "Service area" means the specific area or areas a water system currently serves or plans to provide water service. This may be comprised of the existing service area, retail service area, future service area, and include areas where water is provided to other public water systems.

WAC 246-290-106 Duty to provide service.

Municipal water suppliers required to submit a water system plan for approval under WAC 246-290-100(2) must also include in the water system plan the provisions of this section as required under RCW 43.20.260. In approving a water system plan, the department shall ensure that water service to be provided by the water system for any new industrial, commercial, or residential use is consistent with local plans and regulations.

(1) A municipal water supplier has a duty to provide retail water service to all new service connections within its retail service area if:

(a) It can be available in a timely and reasonable manner;

(b) There is sufficient water rights to provide water service;

(c) There is sufficient capacity to serve the water in a safe and reliable manner as determined by the department; and

(d) It is consistent with the requirements of local plans and regulations and, for water service by the water utility of a city or town, with the utility service extension ordinances of the city or town.

(2) Municipal water suppliers must provide a retail service area map.

(3) Municipal water suppliers must meet the requirements of WAC 246-290-108 for their retail service area.

(4) Municipal water suppliers must provide their service policies and conditions of service including how new service will be provided.

(5) Municipal water suppliers may provide temporary water service to another water system if a written agreement with the water system is in place.

(6) To resolve a significant public health and safety concern, the department may allow water service to be extended prior to meeting the requirements of this section.

[Statutory Authority: RCW 70.119A.180 and 43.20.050. WSR 08-03-061, § 246-290-106, filed 1/14/08, effective 2/14/08.]

Tacoma City Charter Section 4.7 – The legislative power of the City is forever prohibited from granting any franchise, right or privilege to sell or supply water or electricity within the City of Tacoma to the City or to any of its inhabitants as long as the City owns a plant or plants for such purposes and is engaged in the public duty of supplying water or electricity; provided, however, this section shall not prohibit issuance of temporary permits authorized by the Council upon the recommendation of the Utility Board of the City of Tacoma for the furnishing of utility service to inhabitants of the City where it is shown that, because of peculiar physical circumstances or conditions, the City cannot reasonably serve said inhabitants.

(Amendment approved by vote of the people September 18, 1973)