

MEMORANDUM OF AGREEMENT

For

THE ADMINISTRATION OF ENGINEERING, PROCUREMENT, AND CONSTRUCTION
TASK ORDERS

Between

TACOMA POWER and THE PORT OF TACOMA

This Agreement is made and entered into this 1st day of April, 2011, between the Port of Tacoma, hereinafter referred to as the "Port" and the City of Tacoma, Department of Public Utilities, Light Division, a municipal corporation of the State of Washington, hereinafter referred to as "Tacoma Power". Tacoma Power and the Port each may be referred to as a "Party," or collectively as the "Parties."

WHEREAS, the Port of Tacoma and Tacoma Power have a shared interest in promoting economic development within their respective jurisdictional areas, and

WHEREAS, the Port of Tacoma and Tacoma Power have a shared interest in identifying opportunities to conserve energy or harvest renewable power; and

WHEREAS, the Port's development program within the Tacoma Tidelands and at Fredrickson represents a major economic development opportunity and requires the Parties to enter into a series of engineering, procurement, and other Task Orders as necessary for the relocation of existing Tacoma Power utility infrastructure systems, the construction of new Tacoma Power infrastructure, together with related real property transactions necessary to support said development, and

WHEREAS, The Port recognizes that Tacoma Power's infrastructure located on the Tacoma Tidelands and at Fredrickson is integral to Tacoma Power's ability to serve its customers both on and beyond said area, and that any Task Order for the relocation or redevelopment of Tacoma Power's infrastructure in order to accommodate the Port's capital program shall neither compromise nor hinder Tacoma Power's ability to serve said customers, and

WHEREAS, The Port recognizes that Tacoma Power is an electrical utility whose first and foremost priority is the maintenance of service to its existing customers and accordingly neither the Port nor its contractor shall be entitled to damages if during emergencies, Tacoma Power resources are diverted from projects/task orders within the Port to restore electrical service throughout its service territory and the surrounding region as needed, and

WHEREAS, both Parties recognize that time is of the essence in the performance of the obligations set forth in this Agreement;

WHEREAS, both Parties desire to set forth consistent terms and conditions for the administration of the above mentioned Task Orders,

NOW, THEREFORE, the Parties agree as follows;

GENERAL REQUIREMENTS

- 1) This Memorandum of Agreement (MOA) shall set forth the administrative terms and conditions for subsequent Task Orders, which shall incorporate this MOA by reference.
- 2) This Agreement shall remain in effect until December 31, 2015.
- 3) A Task Order shall contain the scope, schedule, and budget for one or more mutually agreed upon scope(s) of work or procurement related to the Port's development program. A sample Task Order is included in Exhibit A. Task Orders should include, but not be limited to the following:
 - a) Project Study/Scope
 - b) Project Management & Administration
 - c) Engineering
 - d) Procurement
 - e) Construction/Inspection
 - f) Assumptions/Clarifications
 - g) Staff Rates
 - h) Schedule

RESOURCES

- 4) The assignment of engineering, procurement, and other resources to address the requirements of the Task Orders under this Agreement for the Port's development program within the Tacoma Tideflats will be determined for each individual Task Order. The Resource Matrix, which is attached hereto as Exhibit B, will serve as a template for future project work allocation considering the available resources of qualified agencies and key personnel. Both parties reserve the right to review the Resource Matrix until the termination of this MOA and notify the other party of any necessary adjustments.
- 5) If additional consultant services are required beyond either party's existing internal and/or contracted resources, the party with lead responsibility will determine the best approach to providing consultant services. Both parties will be involved in consultant selection. The lead party may negotiate and execute consultant contracts after affording the other party an opportunity to review scope, schedule and fee. Neither party will retain a consultant to whom the other party has a reasonable objection. For a project in which both Tacoma Power and the Port are leads for individual Task Orders the parties will consider the feasibility of project insurance prior to retaining consultants. The consultant will be selected through competitive process meeting the contracting requirements of the lead party that may be either through:
 - a) A listing of qualified consultants created through an open RFQ process.
 - b) A competitive solicitation specific to the task order.
- 6) The consultant(s) and contractor(s) retained by the Port for the modification or construction of Tacoma Power infrastructure shall not deviate from Tacoma Power Design and Construction Standards and/or Practices unless formally authorized by

Tacoma Power's authorized representative. Any request for deviation from Tacoma Power's standards or issues that are not addressed by Tacoma Power Standards shall be submitted by the Port in a written format agreed to between the Port and Tacoma Power. Upon receipt of the request for deviation Tacoma Power will with due diligence and after giving said request full and fair consideration submit a response in writing back to the Port.

- 7) Tacoma Power shall have the authority to approve or disapprove the short list of all consultant(s) or contractor(s) retained by the Port for the modification or construction of Tacoma Power infrastructure together with the work and the work product performed by said consultant(s) and contractor(s) including but not limited to:

- a) Substations Site Work, Structures, and Equipment
- b) High-Voltage Transmission Structures and Lines
- c) Medium-Voltage Distribution Structures and Lines
- d) Low-Voltage Secondary and Service Structures and Lines
- e) Transformation and Sectionalizing Equipment
- f) Communication Structures and Lines
- g) Property and easement locations or franchise terms

- 8) In performing this work, Tacoma Power and the Port will rely, to the extent reasonably practicable, on existing electrical planning studies, if available, and on current Tacoma Power standards and policies, and prudent electrical utility engineering and operating practices. Both Parties will pursue the efficient delivery of the most cost effective solutions consistent with Tacoma Power's standards and practices. Any data provided by the Port is subject to verification by Tacoma Power.

- 9) Both Parties shall have full rights of use and reuse of the design and work product produced herein whether produced by Tacoma Power, Tacoma Power consultants and/or contractors, or Port consultants and/or contractors. The design and work product includes any drawings, calculations, and photos used in the design, procurement, and construction of Tacoma Power infrastructure. The Parties grant to each other an irrevocable non-exclusive right to use and reuse the design and work product for Tacoma Power infrastructure for work related to the Port's Tacoma Tideflats development. This design and work product information and data is sensitive information and shall not be released for public disclosure unless

- a) Release is approved in writing by both Parties;
- b) Release is required to complete design or solicit bids for construction;
- c) Release is required by court order, or the law; or
- d) Recipients of the released information shall sign a Confidentiality and Nondisclosure Agreement, unless the obligation is prohibited by law.

Neither party will be responsible to supply 3rd party proprietary process systems, such as licensed software, which was used to create the design or work product. Such 3rd party process systems would be obtained independently by the requesting party as needed.

- 10) All electrical utility equipment and materials required for the construction of Tacoma Power infrastructure will be supplied by Tacoma Power unless the Parties otherwise agree in individual Task Orders. The following is a partial list of exceptions that may be obtained by the Port as detailed in subsequent Task Orders:

- a) Electrical conduit per Tacoma Power Specifications
 - b) Precast Concrete Vaults per Tacoma Power Specifications
 - c) Self Supporting structures for transmission and distribution lines and associated foundations per Tacoma Power review and approval
 - d) Substation structures and foundations per Tacoma Power review and approval
 - e) 115 kV cable procurement and installation
- 11) Salvage of electrical equipment, conductors, and materials will be addressed in subsequent Task Orders. Unless otherwise agreed the Port will be entitled to ownership of said salvaged equipment subject to the transfer of surplus equipment regulations that Tacoma Power is required to follow and provided said equipment was replaced by equipment purchased by the Port and that said salvaged equipment was a part of Tacoma Power's functional electrical system. Tacoma Power shall have the sole authority to identify equipment that is a component of Tacoma Power's functional electrical system and obtain sole ownership of equipment purchased by the Port for Tacoma Power. Identification of equipment and the transfer of ownership will be addressed within individual task orders.

SCHEDULE

- 12) Each Task Order will include a schedule developed and agreed upon by the Parties. Both Parties will use due diligence to meet the agreed upon schedule milestones and completion dates. Notwithstanding said due diligence, all dates of completion provided by Tacoma Power for individual Task Orders shall be estimations only and not a date certain of completion.
- 13) If Tacoma Power anticipates or experiences a delay in meeting said schedule of milestones and delivery dates, then Tacoma Power shall notify the Port of the reason for the delay and provide an estimate of any additional time and cost required for completion. The schedule will be adjusted unless the Port directs that Tacoma Power meet the original schedule if possible. If the Port so directs, then Tacoma Power will provide the Port with the option(s) available and the estimated associated cost(s) to meet the original schedule. The Port shall be responsible for choosing the desired option.
- 14) If the Parties enter into Task Orders for the procurement of long lead time items, then either Party may request that long lead time items be bid with normal and accelerated equipment delivery schedules. The Port may select the accelerated equipment schedule and shall be responsible for the vendor's additional bid cost.
- 15) The Port's and Tacoma Power's management will meet as mutually agreed upon when Task Orders are active to maintain oversight of performance, specifically as respects schedule and cost control so that potential problems may be addressed proactively.

COST

- 16) This Agreement does not authorize expenditure of funds. The Parties will prepare a not-to-exceed cost estimate for each of the subsequent Task Orders.
- 17) Said not to exceed cost estimates do not include any costs that may be incurred by Tacoma Power due to unforeseen conditions, delays, or disruptions by the Port or its

operations nor does it include any costs for a request by the Port for acceleration of the performance of the scope of any Task Order. Further, the Parties agree that said not-to-exceed estimate or estimates are estimates only and do not constitute a firm fixed price for the performance of said scope(s).

- 18) If at any time Tacoma Power anticipates that the cost to complete a specific Task Order will exceed the not-to-exceed amount and in any case when the costs for a specific Task Order exceed 70% of the not-to-exceed cost, it will promptly notify the Port in order that the Parties can review and update the estimate as appropriate.
- a) Tacoma Power shall charge and the Port shall pay for the actual cost of work performed by Tacoma Power subject to the following conditions;
 - i) Tacoma Power is not obligated to work on any work nor incur additional costs that exceed the not to exceed cost
 - ii) The Port is not obligated to pay for any cost that exceeds the not-to-exceed cost unless the Parties agree in writing as to the increased cost.
- 18) Notwithstanding any other terms and conditions set forth herein, if this MOA or any subsequent Task Order is terminated by the Port prior to completion for reasons other than the default of Tacoma Power, or if the Port defaults on this MOA or any subsequent Task Order and said termination or default would cause a state of reduced operation and reliability to Tacoma Power's electrical system, then Tacoma Power shall restore its system to a reliable and operable condition and the Port shall be responsible for all costs associated with that effort, regardless of the amount of the Port's currently available funds. Tacoma Power shall be the sole authority to determine what is required to return its system to "a reliable and operable condition" subject to its obligation to mitigate the costs of restoration.
- 19) Tacoma Power's current overhead rate will be applied against all charges submitted to the Port for payment unless otherwise set forth herein, modified by Tacoma Power policy or negotiated in a specific Task Order.

PAYMENT

- 20) Payment terms of the Task Orders for work performed by Tacoma Power will generally be as described below:
- a) Engineering Design, Construction & Construction Support, Project Management and Contract Administration Task Orders. Tacoma Power will invoice the Port monthly. The Port agrees that it will remit payment to Tacoma Power within thirty (30) days following receipt of a complete invoice for any balance due.
 - b) Procurement agreements for long lead materials and equipment as set forth in Paragraph 13;
 - b.1 Subject to paragraph 20.b.2 the Port shall pay Tacoma Power for long lead time equipment or materials in accordance with Tacoma Power's vendors' terms and conditions plus applicable overhead; however the applicable overhead will not apply if the Port orders the equipment or materials directly from the vendor for shipment directly to the construction site.

b.2 If the Port takes any action that would cause the need for said equipment to be either terminated or delayed beyond the scheduled date of delivery the Port shall promptly pay Tacoma Power any costs required to make Tacoma Power whole.

b.3 If a vendor requires payment in full then the Port shall be entitled to ownership of said equipment unless the equipment is required by Tacoma Power under the terms of Paragraph 18. Tacoma Power shall be entitled to ownership of any and all equipment required under Paragraph 18.

21) INVOICE PAYMENT

- a) Using its work breakdown structure, Tacoma Power will track expenses consistent with the format used to develop its estimates. Invoices shall be accompanied with supporting data showing:
 - i) Written summary of work performed for the period of the invoice
 - ii) Staff charges by name, discipline, date of service and description of task if available, and rates,
 - iii) Costs for equipment, supplies or other expenses,
 - iv) Any markups, overhead or other fees comprising the total cost.
 - v) A copy of any consultant agreement and invoice will also be provided when applicable.
- b) The Port or its auditors may audit the records of Tacoma Power related to the costs upon prior notice to Tacoma Power; such audit shall not delay the payment of a complete invoice submitted to the Port for payment.
- c) Invoices shall be submitted to the Port of Tacoma, Contracts Department, P.O. Box 1837 Tacoma, WA 98401-1837.
- d) In the event the Port fails to pay any monies to Tacoma Power when due hereunder, the Port shall pay interests on such unpaid sum which shall accrue thirty (30) calendar days after the date due per 20a above at the rate of 1% per month compounded with a three dollar (\$3.00) minimum.

22) The approval or payment of invoices shall not in any way relieve the Parties of any liability to one another for any error, omission or other deficiencies in performance, or operate as a waiver of any rights or remedies of either Party under this Agreement. However, the Parties agree that the Party found to be deficient in its performance as a result of the fault of that Party, the Party shall only be liable to the other Party for the costs of curing the deficiency, not damages, except as otherwise set forth herein.

DELAY DAMAGES

23) Tacoma Power's liability for any claim for delay damages by the Port shall be limited to those specific Task Orders identified as Construction Task Orders wherein Tacoma Power is identified as the "Owner" and the Port is identified as the "Contractor". Said delay damages shall be further limited to those delay damages incurred by contractors retained by the Port for those particular construction related Task Orders only. The amount of said delay damages attributed to Tacoma Power shall be limited only to the proportional liability of Tacoma Power as a cause of the

delay, not under joint and several liability. Upon notification by a contractor of facts or circumstances that may result in a delay claim or the submission of a delay claim, the Port shall immediately notify Tacoma Power of the facts and circumstances, and tender the claim (if any) to Tacoma Power for investigation. The Port shall act immediately to preserve any and all evidence regarding the claim, and shall immediately deliver the evidence to Tacoma Power.

- 24) The Parties specifically waive any claim for delay damages for any Task Order that is not identified as a Construction Task Order as defined above and any said Task Order not so identified shall not be deemed a construction contract for purposes of RCW 4.24.360-380.
- 25) Force Majeure - Force Majeure means an event or occurrence or circumstance beyond the reasonable control of the Party claiming Force Majeure, including, but not limited to, acts of nature, labor dispute (including strikes), floods, earthquakes, storms, fires, lightning, epidemics, wars, riots, civil disturbances, sabotage, acts of public enemy, explosions, curtailments, orders, regulations or restrictions imposed by governmental, military, or lawfully established civilian authorities, or any other event or cause which is beyond the claiming Party's reasonable control, and which wholly or in part prevents the claiming Party from performing its obligations under this Agreement. Mere economic hardship of a Party does not constitute Force Majeure. A Force Majeure event does not include an act of negligence or intentional wrongdoing. Neither Party will be considered in Default as to any obligation under this Agreement if prevented from fulfilling the obligation due to an event of Force Majeure. However, a Party whose performance under this Agreement is hindered by an event of Force Majeure shall make all reasonable efforts to perform its obligations under this Agreement, and is obligated to perform immediately after the Force Majeure event has ended. Tacoma Power reserves the right to claim Force Majeure when Tacoma Power resources are required to restore service within its service territory and/or within the region as needed.

CHANGES

- 26) This Agreement may be extended or otherwise modified by mutual agreement in writing by both parties.
- 27) Project Managers for the Port and Tacoma Power may establish a management plan for each Task Order. At a minimum the plan will include:
- a) Communication plan to facilitate timely and accurate flow of information
 - b) Meeting schedules for design teams and construction teams
 - c) Documentation and reporting processes for
 - i) status of work,
 - ii) project costs – direct and indirect costs
 - iii) requests for information (RFI's),
 - iv) impacts to scope, schedule, and budget
 - v) other utility participants requiring accommodation
 - vi) change orders, included but not limited to:
 - (1) new information concerning site conditions
 - (2) modification of structures, equipment, or materials based on constructability

- (3) Unforeseen changes in schedule due to operating requirements of the electrical system or the Port's development separate from the electrical infrastructure.
- 28) The Port shall notify Tacoma Power at the earliest opportunity of any requested changes that may directly or indirectly impact the service provided by Tacoma Power under specific Task Orders.
- 29) Any and all changes in the scope of any Task Order shall require a written Change Order signed and dated by authorized representatives of both Parties. No other services for which additional compensation will be charged shall be furnished by Tacoma Power to the Port without a written Change Order. The price and evaluation of any change order shall include direct and indirect costs that apply to any additions and/or deletions of work and/or material items, and schedule impacts including delay. The Parties shall agree in writing as to the scope, costs, and additional time required to accommodate said changes prior to any work being done on said changes.

PERMITS AND ACCESS

- 30) Unless the Parties otherwise agree, all property and right-of-way related issues concerning ownership, easements, franchises and permits shall be resolved and secured by the Port prior to construction of any infrastructure for Tacoma Power. All easements or franchise rights for electrical substations, overhead structures & lines, and underground infrastructure must be perpetual.
- 31) The Port shall furnish, at no cost to Tacoma Power, any necessary access, licenses, and/or rights of way upon, over, under, and across lands owned or controlled by the Port and/or its affiliated interests for the performance of any Task Order and shall, at all reasonable times, grant Tacoma Power and/or its employees, representatives, agents, and/or contractors free access to such land.
- 32) The Port will be responsible for acquiring all environmental permits necessary for the construction of Tacoma Power infrastructure, including but not limited to substations, structures, transmission, distribution and data lines.
- 33) Transportation Worker Identification Card (TWIC) is required for any personnel needing unescorted access to secure areas of Port facilities, including utility workers and delivery personnel. Secure areas are those areas with security measures for access control in accordance with a Coast Guard approved security plan. New terminals under construction prior to terminal operations are not secure areas. The Port will identify on each Task Order whether the site of the work requires TWIC. If so, the Parties will determine whether obtaining TWIC's or providing escorted access is the preferred alternative. To minimize the cost of obtaining TWIC's, Tacoma Power will identify the key personnel and forecast their availability to complete the Task Order. The Port shall be responsible for the payment of all costs of providing escorts for escorted access and the costs incurred by Tacoma Power's personnel in obtaining any necessary TWIC's.

DISPUTE RESOLUTION

- 34) The Parties agree to use their best efforts to resolve disputes arising out of or related to this Agreement at the project manager level using good faith negotiations and engaging in the following dispute escalation process should any such disputes arise:
- a) Level One – the Port's Senior Project Manager, who has oversight responsibility for the project, and Tacoma Power's Transmission & Distribution Assistant Manager for Engineering shall meet to discuss and attempt to resolve the dispute in a timely manner. If they cannot resolve the dispute within 10 business days after the referral of the dispute to Level One, either Party may refer the dispute to Level Two.
 - b) Level Two – the Port's Chief Sustainable Development Officer and Tacoma Power's Transmission & Distribution Manager shall meet to discuss and attempt to resolve the dispute in a timely manner.
 - c) If the Parties are unable to resolve a dispute between them arising out of this Agreement, the Parties will refer the matter to an independent third Party selected by them for resolution. Such referral shall be a condition precedent before any Party resorts to other remedies it may have. At all times prior to resolution of the dispute, the Parties shall continue to perform their respective duties under this Agreement.
 - d) Any litigation arising out of this Agreement shall be filed in the Pierce County Superior Court of the state of Washington.
 - e) In the event of a suit, action, arbitration, or other proceeding of any nature whatsoever is instituted to interpret or enforce any provision of this Agreement, or with respect to any dispute relating to the Agreement, including, without limitation, any action in which a declaration of rights is sought or an action for rescission, the prevailing Party shall be entitled to recover from the non-prevailing Party its reasonable attorneys', paralegals, accountants', and other appraisers' fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the judge or arbitrator at trial or arbitration, as the case may be, or on any appeal or review, in addition to all other amounts provided by law.

TERMINATION

- 35) This Agreement may be terminated by either Party for governmental convenience, or rescinded by mutual agreement of the Parties, or upon either Party exercising its rights as set forth below:
- a) Remedies upon Default. Except as otherwise provided herein, if a default occurs, the injured Party, at any time after periods set forth for the exercise of rights herein, shall have the following cumulative rights and remedies;
 - b) The injured Party shall be entitled to immediately terminate this Agreement if any default continues for a period of fifteen (15) days after written notice thereof from the injured Party to the defaulting Party, or in the case of such default which cannot with due diligence and in good faith be cured within fifteen (15) days, the defaulting Party fails to proceed promptly after such notice and with due diligence and in good faith, to begin to cure said default; provided, that, in such event proper time to cure may be extended only by written consent of the injured Party.
 - c) The injured Party shall have the right to institute such actions or proceedings as it may deem desirable. Any delay by the injured Party in instituting or prosecuting

any such actions or proceedings or otherwise asserting its rights shall not operate as a waiver of such rights, or to deprive it of or limit such rights in any way (it being the intent of this provision that the injured Party should not be constrained because of concepts of waiver, laches or estoppel so as to avoid the risk of being deprived of or limited in the exercise of the remedy provided in this section or otherwise to exercise such remedy at a time when it may still hope otherwise to resolve the problems created by the default involved); nor shall any waiver in fact made by the injured Party with respect to any specific default by the defaulting Party be considered or treated as a waiver of rights with respect to any other defaults by the defaulting Party or with respect to any particular default except to the extent specifically waived.

INDEMNIFICATION

- 36) To the fullest extent permitted by law, each Party (the "Indemnifying Party") shall fully indemnify, defend and hold the other Party, its directors, officers, managers, employees, agents, representatives, servants, and its affiliated companies, (the "Indemnified Party") harmless from and against any and all claims, demands, liability, losses, damage, costs or expenses (including attorneys' fees and other costs of defense), of any nature or kind whatsoever, including, but not limited to, claims, demands and/or liability for personal injury to (including death of) any person whomsoever (including payments and awards made to the Indemnified Party's employees or other under any workers' compensation law or under any plan for employees' disability and death benefits), and for damage to any property whatsoever including the Port's property and Tacoma Power's electrical system arising or growing out of, or caused or occasioned, in whole or in part, by reason of the negligent acts or omissions of the Indemnifying Party pursuant to its respective obligations hereunder; provided, however, that the provisions of this paragraph shall not apply if any such personal injury or property damage is held to have been caused by the sole negligence or intentional wrongdoing of the other Party, its agents or employees. The Parties recognize that they are waiving immunity under Washington Industrial Insurance law, Title 51 RCW, and further agree that this indemnification clause has been mutually negotiated. This indemnification shall extend to and include attorney's fees and the costs of establishing the right of indemnification hereunder in favor of either Party.
- 37) Except as otherwise set forth herein in any other provision of this MOA, it is understood and agreed that Tacoma Power and the Port, as the case may be, shall each not be liable under this Agreement for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability to Tacoma Power or the Port, as the case may be, its agents, representatives, its affiliated and associated companies, and/or its assigns, resulting from The Port's or Tacoma Power's, as the case may be, performance or non-performance of an obligation imposed on it by this Agreement nor shall Tacoma Power or any of its employees be liable for claims for damages based upon professional liability.

WARRANTY

- 38) Each Party expressly warrants that the design, workmanship and installation services provided herein shall be free from defects and shall be suitable for their intended purpose as stated herein. In the performance of services and purchase of material and equipment under this contract, each Party agrees to exercise the degree of skill and care required by customarily accepted good practices and procedures adopted by contractors and utilities rendering the same or similar type of service. Each Party shall, at its own expense, correct any services furnished by it or its subcontractors or agents which do not conform to the foregoing standard. However, neither Tacoma Power nor any of its employees shall be liable for warranty claims based upon professional liability. Tacoma Power does not warrant that portion of its design product that relies on information and/or data supplied by the Port and/or its assigns.
- 39) Warranties for materials and equipment procured by the Port for Tacoma Power shall be transferred to Tacoma Power upon installation and acceptance.
- 40) Except as otherwise provided herein, it is understood and agreed that Tacoma Power shall not be liable pursuant to statute, contract, in tort (including negligence), strict liability, or otherwise to the Port, its agents, representatives, its affiliated and associated companies, and/or its assigns, for any indirect, incidental or consequential loss or damage whatsoever, including, but not limited to, loss of profits or revenue on work not performed, for loss of use of or under-utilization of the Port's other facilities, or loss of use of revenues or loss of anticipated profits, resulting from either Party's performance or non-performance of an obligation imposed on it by this Agreement.

INSURANCE

- 41) For each task order involving public works, an ISO form Owners and Contractors Protective Liability Policy will be obtained by the contractor naming the City of Tacoma and the Port of Tacoma as named insureds, with policy limits of no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate to be in effect during the Period of the work, providing coverage for bodily injury and property damage arising from the Project. The required insurance coverage shall be primary, non-contributory to the Port of Tacoma or City of Tacoma's existing insurance programs, not subject to any self-insured retained limit of liability in excess of \$100,000, and shall be written on an occurrence basis, not a claims-made basis. This requirement is in addition to the contractor having in place during the term of any construction contract, ISO form Commercial General Liability coverage, with policy limits of \$1,000,000 per occurrence with no less than a \$2,000,000 general aggregate limit.

For each task order involving public works, the contractor shall have in place during the term of any contract or task order, a policy of insurance providing ISO form Business Auto Coverage for bodily injury and property damage arising from the contractor's work on any Project for the Port of Tacoma or City of Tacoma. The Port and the City shall be named as additional insured under the Policy, with policy limits of no less than \$1,000,000 combined single limit of liability, with a general aggregate limit of no less than \$2,000,000, written on an occurrence not a claims-made basis. Coverage shall extend to "owned", "non-owned", and "hired" autos.

For each task order requiring design, engineering or other professional services, the consultant or design professional shall obtain and keep in effect during the performance of all work required by the contract or task agreement, a professional liability policy, with policy limits per event, wrongful act or negligence of no less than \$1,000,000 and subject to a deductible of no more than \$5,000. Unless the professional liability policy is on an "occurrence basis" as opposed to a "claims made" basis, professional liability coverage shall remain in effect for a period of no less than three years after physical completion of the Project designed or for which engineering services had been provided.

OWNERSHIP

- 42) Infrastructure which services only Port-owned facilities may be owned by the Port. The Parties will identify the appropriate point of ownership demarcation.


MISCELLANEOUS

- 43) It is understood and agreed by the Parties that Tacoma Power is, and shall remain, an independent contractor, under this MOA and all subsequent Task Orders, and that no relationship of agency, master-servant, or employer-employee shall be created or exist between Tacoma Power and the Port. This MOA is not intended to and will not constitute, give rise to, or otherwise recognize a joint venture, partnership or formal business association or organization of any kind between the Parties, and the rights and the obligations of the Parties shall be only those expressly set forth in this MOA and subsequent Task Orders.
- 44) This MOA and the rights and obligations hereof, shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties hereto.
- 45) Neither Party shall assign this MOA without the prior written consent of the other Party.
- 46) The applicable laws of the State of Washington shall govern the validity, interpretation and performance of this MOA and each of its provisions.
- 47) This MOA constitutes the entire agreement between the Parties hereto with reference to the subject matter hereof, and no change or modification as to any of the provisions hereof shall be binding on either Party unless reduced to writing and approved by a duly authorized representative of the Port and Tacoma Power.

IN WITNESS WHEREOF, Tacoma Power and the Port have caused this MOA to be executed by their respective authorized officials.

TACOMA POWER

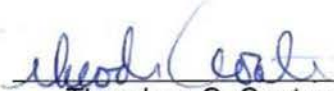
By:


William A. Gaines
Utilities Director / CEO

Date:

Don
April 1, 2011

By:



Theodore C. Coates
Power Superintendent / COO

Date:

3/29/11

Approved as to form and legality:

By:

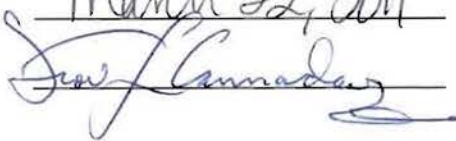

TPU Legal

Date:

March 21, 2011

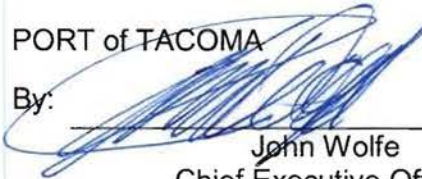
Received:

Finance
Approval

March 22, 2011



PORT of TACOMA

By:


John Wolfe
Chief Executive Officer

Date:

By:


Sue Mauermann
Sr. Director, Facilities Development

Date:

2/25/2011

By:


Dorcas Nepple
Director, Contracts & Purchasing

Date:

February 18, 2011

EXHIBIT A - TASK ORDER OUTLINE

PROJECT NAME: _____

The general provisions and clauses of the Memorandum of Agreement for The Administration of Engineering, Procurement and Construction shall be in full force and effect for this Task Order. The agreed to scope, schedule and cost for this task order is as noted below and as attached and referenced herein.

PROJECT SCOPE:

Provide details of all tasks that are required to complete the scope of work. Include tasks for planning, engineering, procurement, construction and inspection as required. Scope should include cost of each task including labor hours and cost, material costs, expenses, ect.

DELIVERABLES:

Provide list of all deliverables.

SCHEDULE:

Provide detailed schedule including all deliverables and major milestone activities.

ASSUMPTIONS:

Provide all assumptions.

CLARIFICATIONS:

Provide all clarifications.

STAFF RATES:

Provide rates for all staff levels by job classification working on project.

MATERIALS:

Identify new and/or existing materials or equipment required for the scope of work. Include details on whether they will be salvaged, recycled, and/or if the Port will be able to received any salvage value.

	Substation		Line				
Engineering	Substation	TPWR	Transmission		TPWR		
	Protection & Control	TPWR	Distribution		TPWR		
	Communications (inside Sub)	TPWR	Civil		TPWR		
	Civil – Geo-Tech & Site Work	PoT	Data / Communications		TPWR		
	Civil – Foundation & Structure	TPWR	New Service		TPWR		
Construction	Civil – Geo-Tech Stabilization and Sub-grade	PoT	Underground	Civil – Conduit & Vault purchase and installation		PoT	
				110kV Transmission	Cable Purchase,	PoT	
		Installation ¹ , termination ³ , & testing ²			PoT		
	15kV Distribution*	Cable Purchase		TPWR			
		Installation ¹ , termination ¹ , & testing ²		TPWR			
	Data / Communications	Cable Purchase		TPWR			
		Installation, termination, & testing	TPWR				
	Civil – Survey, Final Grading, Drainage, Grounding ¹ , Foundations, Conduits ¹ , Structures, Fencing, & Landscaping	TPWR		Wire and Wood Pole Purchase		TPWR	
				Steel Pole and Foundation Purchase & Installation ¹		PoT	
				Overhead	110kV Transmission*	Lines that include Steel Poles & Poles > 90 ft, including wire stinging ¹	TPWR
						Lines that consist only of wood poles < 90 ft including wire stringing	TPWR
	15kV Distribution*	Normal Distribution Lines.	TPWR				
		Under-build on Transmission lines	TPWR				
	Electrical Equipment, Bus, & wiring purchase and installation, Commissioning	TPWR			Data / Communications	Cable Purchase	TPWR
Installation, termination, & testing						TPWR	

TPWR = Tacoma Power, PoT = Port of Tacoma

* Individual segments of work will be assigned per task order.

¹ The installation of electrical utility infrastructure will be performed by a Tacoma Power or a Pre-Qualified Electrical Contractor per RCW 35.92.350

² Testing Method and Contractor to be as Approved by Tacoma Power

³ Cable Manufacturer Supplied Labor or Approved Contractor