



RESOLUTION NO. U-10922

1
2 A RESOLUTION related to the purchase of materials, supplies, equipment and
3 the furnishing of services; authorizing the City officials to enter into
4 contracts and, where specified, waive competitive bidding requirements,
5 authorize sale of surplus property, or increase or extend existing
6 agreements.

7
8 WHEREAS the City of Tacoma, Department of Public Utilities, requested
9 bids/proposals for the purchase of certain materials, supplies, equipment and/or
10 the furnishing of certain services, or proposes to purchase off an agreement
11 previously competitively bid and entered into by another governmental entity, or
12 for the sales of surplus, or desires to increase and/or extend an existing
13 agreement, all as explained by the attached Exhibit "A," which by this reference
14 is incorporated herein, and

15
16 WHEREAS in response thereto, bids/proposals (or prices from another
17 governmental agreement) were received, all as evidenced by Exhibit "A," and

18
19 WHEREAS the Board of Contracts and Awards and/or the requesting
20 division have heretofore made their recommendations, which may include
21 waiver of the formal competitive bid process because it was not practicable to
22 follow said process, or because the purchase is from a single source, or there is
23 an emergency that requires such waiver, and/or waiver of minor deviations, and
24 in the case of sale of surplus, a declaration of surplus has been made certifying
25 that said items are no longer essential for continued effective utility service, as
26 explained in Exhibit "A," and



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

WHEREAS the Director requests authorization, pursuant to

TMC 1.06.269 A, to amend contract amounts up to \$200,000 and to approve term extensions and renewals for all items contained in Exhibit "A;" Now, therefore,

BE IT RESOLVED BY THE PUBLIC UTILITY BOARD OF THE CITY OF TACOMA:

That the Public Utility Board of the City of Tacoma hereby concurs and approves the recommendations of the Board of Contracts and Awards and/or the requesting division, and approves, as appropriate: (1) the purchase and/or furnishing of those materials, supplies, equipment or services recommended for acceptance; (2) the sale of surplus materials, supplies or equipment recommended for acceptance; (3) the Interlocal agreement that authorizes purchase off another governmental entity's contract; (4) the increase and/or extension of an existing agreement, and said matters may include waiver of the formal competitive bid process and/or waiver of minor deviations, all as set forth on Exhibit "A," and authorizes the execution, delivery and implementation of appropriate notices, contracts and documents by the proper officers of the City for said transactions, and (5) the administrative authority of the Director, per TMC 1.06.269 A., to amend contract amounts up to \$200,000 and to approve term extensions and contract renewals for all items in Exhibit "A."

Approved as to form and legality:

William Foster

Chief Deputy City Attorney

Chair

Secretary

Clerk

Adopted _____



3628 South 35th Street
Tacoma, Washington 98409-3192

TACOMA PUBLIC UTILITIES

EXHIBIT "A"

RESOLUTION NO.: U-10922

ITEM NO.: #1

MEETING DATE: APRIL 12, 2017

DATE: March 14, 2017

TO: Board of Contracts and Awards

SUBJECT: Onsite Coaching and Training for Strategic Maintenance Management Program
Budgeted from Water Utility Fund 4600 and RWSS Operating Fund 4600-RWSS
Request for Proposals Specification No. WA16-0447F

RECOMMENDATION: Tacoma Water recommends a contract be awarded to **IDCON, Inc., Raleigh, NC**, for onsite consulting, coaching, training, document review and document preparation to support the implementation of a Strategic Maintenance Management Program.

The recommendation is for an initial 18-month term in the amount of \$316,920.00, sales tax not applicable, plus the option to renew for two additional 1-year periods, for an aggregate total of \$525,120.00, sales tax not applicable.

EXPLANATION: The work of this contract is to support implementation of the Strategic Maintenance Management Program in a consistent manner and with consistent work practices across the three operating sections within Tacoma Water (Distribution Operations, Water Supply and Water Quality). The scope includes providing onsite consulting, coaching and facilitation around work orders, notifications, maintenance planning, daily scheduling, weekly scheduling and warehouse/parts strategy. This contract also includes formal onsite training sessions related to Planning and Scheduling, Maintenance Optimization and Root Cause Failure Analysis that are tailored specifically for Tacoma Water Staff. Additionally, the scope includes reviewing and preparing documents that help support the Strategic Maintenance Management Program, such as standard operating procedures, standard repair plans, parts lists, maintenance strategies and our Strategic Asset Management Plans.

COMPETITIVE SOLICITATION: Request for Proposals Specification No. WA16-0447F was opened November 8, 2016. Five companies were invited to bid in addition to normal advertising of the project. A total of three of submittals were received.

<u>Respondent</u>	<u>Location (city and state)</u>	<u>Score</u>
IDCON, Inc.	Raleigh, NC	97.2
Life Cycle Engineering, Inc.	North Charleston, SC	92.5
Daniel Penn Associates, LLC	Hartford, CT	58

CONTRACT HISTORY: New contract.

FUNDING: Funds for this contract are available in the Water Utility Fund 4600 and RWSS Operating Fund 4600-RWSS. This allows a portion of the training at the Green River Filtration Facility to be shared with our partners out of the 4600-RWSS fund. Funding beyond the current biennium is subject to future availability of funds.

SBE/LEAP COMPLIANCE: Not applicable.

PROJECT ENGINEER/COORDINATOR: Todd Shepherd, Tacoma Water, 253-396-3319.



Linda McCrea
Tacoma Water Superintendent

Approved:



William A. Gaines
Director of Utilities/CEO

cc: Marie Holm, Senior Buyer, Finance/Purchasing
SBE Coordinator
LEAP Coordinator

PROFESSIONAL SERVICES CONTRACT

THIS CONTRACT, made and entered into effective as of the 1st day of June, 2017 (“Effective Date”), by and between the **CITY OF TACOMA**, a municipal corporation of the state of Washington (hereinafter referred to as the “CITY”), and **IDCON, Inc.**, a North Carolina corporation, doing business in Washington state (hereinafter referred to as “CONTRACTOR”);

In consideration of the mutual promises and obligations hereinafter set forth, the parties hereto agree as follows:

1. Scope of Services/Work

- A. The CONTRACTOR agrees to diligently and completely perform the services and/or deliverables relating to onsite coaching and training as is described CONTRACTOR’S Proposal dated November 6, 2016, submitted in response to CITY’s Request for Proposals Specification No. WA16-0447. Proposal is attached as Exhibit A and incorporated herein. Such services and deliverables will further be performed as shown in Exhibit B, Scope of Work, attached hereto and incorporated herein by reference.
- B. Changes to Scope of Work. The CITY shall have the right to make changes within the general scope of services and/or deliverables upon execution in writing of a change order or amendment hereto. If the changes will result in additional work effort by CONTRACTOR, the CITY will agree to reasonably compensate the CONTRACTOR for such additional effort up to the maximum amount specified herein or as otherwise provided by City Code.

2. Term

- A. All services shall be satisfactorily completed on or before December 31, 2018, and this Contract shall expire on said date unless mutually extended in writing by the parties.
- B. Neither party shall be considered to be in default in the performance of this Contract to the extent such performance is prevented or delayed by any cause which is beyond the reasonable control of the affected party and, in such event, the time for performance shall be extended for a period equal to any time lost as a result thereof. In the event CONTRACTOR is unable to proceed due to a delay solely attributable to CITY, CONTRACTOR shall advise CITY of such delay in writing as soon as is practicable.

3. Compensation and Payment

- A. The CITY shall compensate the CONTRACTOR for the services and deliverables performed under this Contract in accordance with Exhibit B.
- B. The total price to be paid by CITY for CONTRACTOR’S full and complete performance of the Scope of Work hereunder shall not exceed \$316,920 without the written consent of the CITY. Said price shall be the total compensation for CONTRACTOR’S performance hereunder including, but not limited to, all work, deliverables, materials, supplies, equipment, subcontractor’s fees, and all reimbursable travel and miscellaneous or incidental expenses to be incurred by CONTRACTOR.

- C. The CONTRACTOR shall submit monthly invoices for services completed and/or deliverables furnished during the previous month. Upon CITY'S request, CONTRACTOR shall submit necessary and appropriate documentation, as determined by the CITY, for all invoiced services and deliverables.
- D. Payment shall be made through the CITY'S ordinary payment process, and shall be considered timely if made within 30 days of receipt of a properly completed invoice.
- E. The CITY may withhold payment to the CONTRACTOR for any services or deliverables not performed as required hereunder until such time as the CONTRACTOR modifies such services or deliverables to the satisfaction of the CITY.
- F. All payments shall be subject to adjustment for any amounts, upon audit or otherwise, determined to have been improperly invoiced.
- G. In the event the CONTRACTOR incurs cost in excess of the sum authorized for service under this Contract, the CONTRACTOR shall pay such excess from its own funds, and the CITY shall not be required to pay any part of such excess, and the CONTRACTOR shall have no claim against the CITY on account thereof.

4. Independent Contractor Status

- A. The services and deliverables shall be furnished by the CONTRACTOR as an independent Contractor, and nothing herein contained shall be construed to create a relationship of employer/employee or master/servant. No payroll or employment taxes of any kind shall be withheld or paid by the CITY with respect to payments to CONTRACTOR. The payroll or employment taxes that are the subject of this paragraph include, but are not limited to, FICA, FUTA, federal income tax, state personal income tax, state disability insurance tax and state unemployment insurance tax. By reason of CONTRACTOR'S status as an independent Contractor hereunder, no workers' compensation insurance has been or will be obtained by the CITY on account of CONTRACTOR. CONTRACTOR may be required to provide the CITY proof of payment of these said taxes and benefits. If the CITY is assessed or deemed liable in any manner for those charges or taxes, the CONTRACTOR agrees to hold the CITY harmless from those costs, including attorney's fees.
- B. The CONTRACTOR shall provide at its sole expense all materials, office space, and other necessities to perform its duties under this Contract, unless otherwise specified in writing herein.

5. Professional Services Warranty

- A. The CONTRACTOR warrants that all services performed pursuant to this Contract shall be generally suitable for the use to which CITY intends to use said services and deliverables as expressed in Exhibits A and B.
- B. In the performance of services under this Contract, the CONTRACTOR and its employees agree to exercise the degree of skill and care required by customarily accepted good practices and procedures followed by professionals/consultants rendering the same or similar type of service. All obligations and services of the CONTRACTOR hereunder shall be performed diligently and completely according to such professional standards.

- C. If the CONTRACTOR intends to rely on information or data supplied by the CITY, other CITY contractors or other generally reputable sources without independent verification, such intent shall be brought to the attention of the CITY.

6. Contract Administration and Right to Audit

- A. Tacoma Water by Todd Shepherd, Asset Management Analyst for the CITY shall have primary responsibility for contract administration and approval of services to be performed by the CONTRACTOR, and shall coordinate all communications between the CONTRACTOR and the CITY.
- B. The CONTRACTOR shall, at such times and in such form as the CITY may reasonably require, furnish the CITY with periodic status reports pertaining to the services undertaken pursuant to this Contract.
- C. Upon CITY'S request, the CONTRACTOR shall make available to CITY all accounts, records, and documents related to the Scope of Work for CITY'S inspection, auditing, or evaluation during normal business hours as reasonably needed by CITY to assess performance, compliance, and/or quality assurance under this Contract or in satisfaction of CITY'S public disclosure obligations as applicable.

7. Records Retention

CONTRACTOR shall establish and maintain records with respect to all matters related to the performance of this Contract. Except as otherwise authorized or required by CITY the CONTRACTOR shall retain such records for a period of six (6) years after receipt of the final payment under this Contract or termination of this Contract.

8. Notices

Except for routine operational communications, which may be delivered personally or transmitted by electronic mail or facsimile, all notices required hereunder shall be in writing and shall be deemed to have been duly given if delivered personally or mailed first-class mail, postage prepaid, to the parties at the following addresses:

CITY	CONTRACTOR
Todd Shepherd 3628 South 35 th Street Tacoma, WA 98409	Torbjörn Idhammar 8081 Arco Corporate Drive, Suite 320 Raleigh, NC 27617
Phone: (253) 396-3319	Phone: (919) 847-8764
Facsimile: (253) 502-8694	Facsimile: (919) 847-8647
E-mail: tshepher@cityoftacoma.org	E-mail: t.idhammar@idcon.com

9. Termination and Suspension

- A. The CITY may terminate this Contract at any time, with or without cause, by giving ten (10) business days' written notice to CONTRACTOR. In the event of termination, all finished and unfinished work prepared by the CONTRACTOR pursuant to this Contract shall be provided to the CITY. In the event CITY terminates this Contract due to the CITY'S own

reasons and without cause due to the CONTRACTOR'S actions or omissions, the CITY shall pay the CONTRACTOR the amount due for actual work and services necessarily performed under this Contract up to the effective date of termination, not to exceed the total compensation set forth herein.

- B. The CITY may suspend this Contract, at its sole discretion, upon seven (7) business days' written notice to the CONTRACTOR. Such notice shall indicate the anticipated period of suspension. Any reimbursement for expenses incurred due to the suspension shall be limited to the CONTRACTOR'S reasonable expenses and shall be subject to verification. The CONTRACTOR shall resume performance of services under this Contract without delay when the suspension period ends.
- C. Termination or suspension of this Contract by CITY shall not constitute a waiver of any claims or remaining rights the CITY may have against CONTRACTOR relative to performance hereunder.

10. Taxes, Licenses and Permits

- A. The CONTRACTOR acknowledges that it is responsible for the payment of all charges and taxes applicable to the services performed under this Contract, and the CONTRACTOR agrees to comply with all applicable laws regarding the reporting of income, maintenance of records, and all other requirements and obligations imposed pursuant to applicable law. If the CITY is assessed, made liable, or responsible in any manner for such charges or taxes, the CONTRACTOR agrees to hold the CITY harmless from such costs, including attorney's fees.
- B. In the event the CONTRACTOR fails to pay any taxes, assessments, penalties, or fees imposed by any governmental body, including a court of law, then the CONTRACTOR authorizes the CITY to deduct and withhold or pay over to the appropriate governmental body those unpaid amounts upon demand by the governmental body. It is agreed that this provision shall apply to taxes and fees imposed by City ordinance. Any such payments shall be deducted from the CONTRACTOR's total compensation.
- C. The CONTRACTOR, at its expense, shall obtain and keep in force any and all necessary licenses and permits. The CONTRACTOR shall obtain a business license as required by Tacoma Municipal Code Subtitle 6B.20 and shall pay business and occupation taxes as required by Tacoma Municipal Code Subtitle 6A.30.

11. Indemnification

- A. The CONTRACTOR shall indemnify, defend, and hold harmless the CITY, its officials, officers, agents, employees, and volunteers, from any and all claims, demands, damages, lawsuits, liabilities, losses, liens, expenses and costs arising out of the subject matter of this Contract; provided that this provision shall not apply to the extent that damage or injury results from the fault of the CITY, or its officers, agents, or employees. The term "fault" as used herein shall have the same meaning as set forth in RCW 4.22.015, as that statute may hereafter be amended.
- B. The CONTRACTOR specifically assumes potential liability for actions brought by the CONTRACTOR'S own employees against the CITY and, solely for the purpose of this

indemnification and defense, the CONTRACTOR specifically waives any immunity under the state industrial insurance law, Title 51 RCW. THE CONTRACTOR RECOGNIZES THAT THIS WAIVER WAS THE SUBJECT OF MUTUAL NEGOTIATION.

- C. This indemnification shall extend to and include attorneys' fees and the cost of establishing the right of indemnification hereunder in favor of the CITY. This indemnification shall survive the termination of this Contract.

12. Insurance

During the course and performance of the services herein specified, CONTRACTOR will maintain the following insurance coverage:

- A. Workers' Compensation and employer's liability--statutory limits.
- B. Commercial General Liability--\$1,500,000 single limit combined for personal injury, property damage; \$2,000,000 aggregate.
- C. Commercial automobile public liability and property damage--\$1,500,000 single limit combined for bodily injury and property damage.

Certificates of the above insurance coverage shall be delivered, within ten (10) days, to the CITY by CONTRACTOR'S insurance carrier or agent certifying the above insurance coverage items are in effect and will not be cancelled or materially changed without 30 days' written notice given to the CITY. The commercial general liability policy shall be on an occurrence basis and shall include an endorsement naming the CITY as an additional insured by way of an additional insured endorsement and stating that coverage under such policy is primary over and non-contributory with any insurance the CITY may maintain.

13. Nondiscrimination

The CONTRACTOR agrees to take all steps necessary to comply with all federal, state, and City laws and policies regarding non-discrimination and equal employment opportunities. The CONTRACTOR shall not discriminate in any employment action because of race, religion, creed, color, national origin or ancestry, sex, gender identity, sexual orientation, age, marital status, familial status, veteran or military status, the presence of any sensory, mental or physical disability or the use of a trained dog guide or service animal by a disabled person. In the event of non-compliance by the CONTRACTOR with any of the non-discrimination provisions of this Contract, the CITY shall be deemed to have cause to terminate this Contract, in whole or in part.

14. Conflict of Interest

No officer, employee or agent of the CITY, nor any member of the immediate family of any such officer, employee or agent as defined by City ordinance, shall have any personal financial interest, direct or indirect, in this Contract, either in fact or in appearance. The CONTRACTOR shall comply with all federal, state, and City conflict of interest laws, statutes and regulations. The CONTRACTOR represents that the CONTRACTOR presently has no interest and shall not acquire any interest, direct or indirect, in the program to which this Contract pertains, which would conflict in any manner or degree with the performance of the CONTRACTOR'S services

and obligations hereunder. The CONTRACTOR further covenants that, in performance of this Contract, no person having any such interest shall be employed. The CONTRACTOR also agrees that its violation of the City's Code of Ethics contained in Chapter 1.46 of the Tacoma Municipal Code shall constitute a breach of this Contract subjecting the Contract to termination.

15. City Ownership of Work/Rights in Data and Publications:

- A. To the extent that CONTRACTOR creates any Work subject to the protections of the Copyright Act (Title 17 U.S.C) in its performance of this Contract, CONTRACTOR agrees to the following: The Work has been specially ordered and commissioned by CITY. CONTRACTOR agrees that the Work is a "work made for hire" for copyright purposes, with all copyrights in the Work owned by CITY. To the extent that the Work does not qualify as a work made for hire under applicable law, and to the extent that the Work includes material subject to copyright, CONTRACTOR hereby assigns to CITY, its successors and assigns, all right, title and interest in and to the Work, including but not limited to, all patent, trade secret, and other proprietary rights and all rights, title and interest in and to any inventions and designs embodied in the Work or developed during the course of CONTRACTOR'S creation of the Work. CONTRACTOR shall execute and deliver such instruments and take such other action as may be required and requested by CITY to carry out the assignment made pursuant to this section. Any documents, magnetically or optically encoded media, or other materials created by CONTRACTOR pursuant to this Contract shall be owned by CITY and subject to the terms of this sub-section. To the maximum extent permitted by law, CONTRACTOR waives all moral rights in the Work. The rights granted hereby to CITY shall survive the expiration or termination of this Contract.
- B. The CONTRACTOR shall be solely responsible for obtaining releases for the performance, display, recreation, or use of copyrighted materials.
- C. This section does not apply to any Work or materials CONTRACTOR has developed prior to the Effective Date of this Contract and which is not Work for Hire under this Contract or subject to copyright under this Contract.

16. Public Disclosure

- A. This Contract and documents provided to the CITY by CONTRACTOR hereunder are deemed public records subject to disclosure under the Washington State Public Records Act, Chapter 42.56 RCW (Public Records Act). Thus, the CITY may be required, upon request, to disclose this Contract and documents related to it unless an exemption under the Public Records Act or other laws applies. In the event CITY receives a request for such disclosure, determines in its legal judgment that no applicable exemption to disclosure applies, and CONTRACTOR has complied with the requirements of sub-section B herein, CITY agrees to provide CONTRACTOR ten (10) days' written notice of impending release. Should legal action thereafter be initiated by CONTRACTOR to enjoin or otherwise prevent such release, all expense of any such litigation shall be borne by CONTRACTOR, including any damages, attorney's fees or costs awarded by reason of having opposed disclosure. CITY shall not be liable for any release where notice was provided and CONTRACTOR took no action to oppose the release of information. Notice of any proposed release of information pursuant to Chapter 42.56 RCW, shall be provided to CONTRACTOR according to the "Notices" provision herein.

- B. If CONTRACTOR provides the CITY with records that CONTRACTOR considers confidential or proprietary, CONTRACTOR must mark all applicable pages of said record(s) as "Confidential" or "Proprietary." If CONTRACTOR fails to so mark record(s), then (1) the CITY, upon request, may release said record(s) without the need to satisfy the requirements of subsection A above; and (2) the CONTRACTOR expressly waives its right to allege any kind of civil action or claim against the CITY pertaining to the release of said record(s).

17. Duty of Confidentiality

- A. CONTRACTOR acknowledges that unauthorized disclosure of information or documentation concerning the Scope of Work hereunder may cause substantial economic loss or harm to the CITY.
- B. Except for disclosure of information and documents to CONTRACTOR'S employees, agents, or subcontractors who have a substantial need to know such information in connection with CONTRACTOR'S performance of obligations under this Contract, the CONTRACTOR shall not without prior written authorization by the CITY allow the release, dissemination, distribution, sharing, or other publication or disclosure of information or documentation obtained, discovered, shared or produced pursuant to this Contract.
- C. The CONTRACTOR shall inform its employees, agents, and subcontractors of the confidentiality obligations under this Contract and instruct them so as to ensure such obligations are met. If so requested by the CITY, the CONTRACTOR further agrees to require all such individuals and entities performing services pursuant to this Contract to execute a Confidentiality and Non-Disclosure Agreement in a form acceptable to CITY.
- D. The CONTRACTOR shall not release any information or documentation concerning the work under this Contract or any part thereof for marketing, advertising, or other commercial activities or publication including, but not limited to, news releases or professional articles, without the prior written approval of the CITY. Any and all news releases, professional articles, marketing, advertising, publicity, or other commercial activities that describe or discuss the Scope of Services shall be reviewed and approved by the CITY prior to publication, disclosure and/or distribution. The CONTRACTOR may submit for review and approval a generic abstract describing the component parts of the completed Scope of Services ("Project Abstract"). After receiving written approval of the Project Abstract from the CITY, the CONTRACTOR may make minor insignificant changes to the Project Abstract and use all or parts of the Project Abstract in proposals.
- E. This Section shall survive for six (6) years after the termination or expiration of this Contract.
- F. CONTRACTOR shall ensure that the text of this Section is included in each subcontractor's contract pertaining to the Scope of Services hereunder.

18. Dispute Resolution

In the event of a dispute pertaining to this Contract, the parties agree to attempt to negotiate in good faith an acceptable resolution. If a resolution cannot be negotiated, then the parties

agree to submit the dispute to voluntary non-binding mediation before pursuing other remedies. This provision does not limit the CITY'S right to terminate authorized by this Contract.

19. Miscellaneous Provisions

- A. Governing Law and Venue. Washington law shall govern the interpretation of this Contract. Pierce County shall be the venue of any mediation, arbitration or litigation arising out of this Contract.
- B. Assignment. The CONTRACTOR shall not assign, subcontract, delegate, or transfer any obligation, interest or claim to or under this Contract or for any of the compensation due hereunder without the prior written consent of the CITY.
- C. No Third Party Beneficiaries. This Contract shall be for the sole benefit of the parties hereto, and nothing contained herein shall create a contractual relationship with, or create a cause of action in favor of, a third party against either party hereto.
- D. Waiver. A waiver or failure by either party to enforce any provision of this Contract shall not be construed as a continuing waiver of such provisions, nor shall the same constitute a waiver of any other provision of this Contract.
- E. Severability and Survival. If any term, condition or provision of this Contract is declared void or unenforceable or limited in its application or effect, such event shall not affect any other provisions hereof and all other provisions shall remain fully enforceable. The provisions of this Contract, which by their sense and context are reasonably intended to survive the completion, expiration or cancellation of this Contract, shall survive termination of this Contract.
- F. Entire Agreement. This Contract and the attached Exhibits, as modified herein, contain the entire agreement between the parties as to the services to be rendered hereunder. All previous and contemporaneous agreements, representations or promises and conditions relating to the subject matter of this Contract are superseded hereby. The parties hereto mutually acknowledge, understand and agree that the terms and conditions set forth herein shall control and prevail over any conflicting terms and conditions stated in any attachments hereto.
- G. Modification. No modification or amendment of this Agreement shall be effective unless set forth in writing and signed by the parties.
- H. Authority to enter into this Contract. The undersigned Contractor representative, by his/her signature below, represents and warrants that he/she is duly authorized to execute this legally binding Contract for and on behalf of Contractor.

IN WITNESS WHEREOF the parties hereto have accepted and executed this Contract as of the day and year first written above.

CITY OF TACOMA

IDCON, INC.

William A. Gaines
Director of Utilities/CEO

Printed Name: Torbjörn Idhammer

Title: President

Linda McCrea
Superintendent Tacoma Water

Address:

8081 Arco Corporate Drive, Suite 320

Andrew Cherullo
Finance Director

Raleigh, NC 27617
City/State/Zip

Approved as to Form:

Tax ID: 63-0908414

Deputy City Attorney

SAP Contract No. _____

EXHIBIT "A"
SCOPE OF WORK



Proposal #12047-A Response to Tacoma Water-
Asset and Information Management RFP-
Onsite Coaching and Training For SMMP
Specification No. WA16-0447F

Prepared for:

City of Tacoma Procurement and
Payables Division
Tacoma Public Utilities- Administration
Building North, Main Floor
3628 South 35th Street
Tacoma, WA 98409

November 6, 2016

8081 Arco Corporate Drive
Suite 320
Raleigh, NC 27617





web site: www.idcon.com • e-mail: info@idcon.com

8081 Arco Corporate Drive • Suite 320 • Raleigh, North Carolina 27617 • Telephone: 919-847-8764 • 800-849-2041 • Fax: 919-847-8647

Prepared for:

City of Tacoma Procurement and Payables Division
Tacoma Public Utilities- Administration Building North, Main Floor
3628 South 35th Street
Tacoma, WA 98409

To Whom It May Concern:

IDCON INC is pleased to submit this proposal in response to Tacoma Water's Request for Proposal, Specification No. WA16-0447F- Onsite Coaching and Training For Strategic Maintenance Management Program.

On Thursday, November 3rd, IDCON's Proposal 12048 was delivered to the City of Tacoma. On subsequent review, a version control error was discovered. If possible, IDCON would like to replace that document with Proposal 12048-A.

We look forward to working with Tacoma Water during this bid process and would be pleased to answer any questions that may arise from this submittal.

Best regards,

IDCON INC

Torbjörn Idhammar, President
C: 818-239-9696
O: 919-723-2680
t.idhammar@idcon.com

TABLE OF CONTENTS

Table of Contents	2
Introduction & Statement of Interest.....	3
Past Performance.....	3
Approach & Scope Tasks.....	4
IDCON Consultant Qualifications and Assignment	9
SAP PM Module Experience	9
Investment: Scope of Work.....	10
Sample Invoice	13
Small Business Enterprise	14
Credit Card Acceptance	14
Terms and Conditions that Deviate from the Professional Services Contract .	14

INTRODUCTION & STATEMENT OF INTEREST

IDCON, INC is a highly specialized management consultant firm in the field of reliability and maintenance management. Our mission is to improve overall reliability and minimize total production cost. All our consulting and training is based on the Results Oriented Reliability and Maintenance™ (RORM) philosophy. This philosophy has been developed by IDCON, INC over the years through project experience in the industry.

IDCON has provided assistance and guidance to over 400 organizations in over 50 countries to improve equipment reliability and maintenance performance. A key difference in our approach is the focus on working with client resources, engaging them early to contribute to the transformation throughout the duration of the program. This approach ensures lasting benefits.

Tacoma Water has submitted a Request for Proposals covering the coaching and training for the Strategic Maintenance Management Program. We believe our past engagement with Tacoma Water makes IDCON uniquely qualified to fulfill the required Scope of Work and are interested in assisting Tacoma Water in improving their current state. Using IDCON would be of benefit to Tacoma Water due to our familiarity to your current processes and team and would reduce the amount and cost of preparation time.

PAST PERFORMANCE

IDCON's experience with project scopes similar to the one put forth by this RFP is extensive. This RFP requests at a minimum of two references, we have supplied three. More references and projects are available upon request.

1. TAMKO Building Products (Confidential)- SIC code 2400
 - a. Work Description: The TAMKO project was a Total Reliability Project that included assessments of manufacturing sites, reliability and maintenance coaching, formal and on-the-job training of maintenance and operations professionals. Key stakeholders that IDCON worked directly with included Corporate Reliability Manager, General Managers at all sites, maintenance managers, maintenance supervisors and superintendents, crafts (mechanics/E&I), planners and schedulers, and operations/production managers and operators.
 - b. Contact: Hugh Edmondson, Corporate Reliability Manager
Telephone: 417 624 6644 x2361
Email: Hugh.Edmondson@tamko.com

2. Domtar- SIC code 2800
 - a. Work Description: The Domtar Project is focused on improvement to the Work Management of Planning and Scheduling. IDCON has assessed the current state at 11 manufacturing sites in the US and Canada, acted as coach and trainer, developed

materials including optimized process work flows, improving planner skills through coaching and training. Key stakeholders IDCON works with include Corporate Reliability Manager, General Managers, Maintenance Managers, maintenance supervisors, operations maintenance coordinators, planners and schedulers.

- b. Contact: Larry Bryant, Corporate Reliability Manager
Telephone: 270-927-7309
Email: larry.bryant@domtar.com

3. Union Gas, Ontario Canada- SIC Code 1300

- a. For this project, IDCON assessed the facilities and developed an improvement plan. In 2013 and 2014 we supported their Preventive Maintenance Initiatives and provided customized classroom and on-the-job training in Developing and Managing Preventive Maintenance, Essential Care and Condition Monitoring, Planning and Scheduling including best Practices in Backlog Management.
- b. Contact: Mike Hildebrand, Maintenance and Reliability Manager
Telephone: 519-683-4468 x254
Email: mrhildebrand@uniongas.com

APPROACH & SCOPE TASKS

The implementation support provided by IDCON includes Coaching, On-The-Job training, documentation and reviews. Most of this work is On-The-Job with the frontline organization of maintenance and operations functions including Planners, Supervisors, Craftspeople, Engineers and Operators.

Successful improvement initiatives have managed to transfer knowledge, *commitment*, and *ownership* to the organization. At any given time, most organizations have many competing improvement initiatives so it is important not to overload them and give time to execute and accept better practices. This will be especially important for Water Quality and Water Distribution as many of the items in the work scope needs to be consistently applied in these two sections.

The RFP states “one week per month every other month”. We believe based on the current status of the Water Supply division, that in Year One a one-week quarterly visit is adequate to continue the good progress they have made. In Year Two we recommend bi-annual weekly visits (2).

For the Water Quality and Water Distribution we recommend for Year One, one visit a month for six (6) months. If adequate progress has been made, at the end of the 6-month period, we would move coaching/training to one visit every 6 weeks. In Year Two, we recommend one visit every other month. This is roughly 16 weeks.

- a. **Work Identification Using Notifications:** IDCON believes that all employees have the right to request that maintenance performs a repair. Under the best circumstances, this occurs via a Computerized Maintenance Management System (CMMS) such as SAP. Employees must learn to log-on to the system, identify the location of the problem, communicate a priority from their perspective, and describe it adequately so that the request can be vetted. IDCON coaches all employees to perform this task and assists with the development of work identification training documents.

All requests should not be automatically turned into work orders. Some requests may be duplicates. Others might be low priorities - or the proposed solution is too expensive to implement. Perhaps the identified problem will get addressed via a capital project. A timely review of notifications prevents the backlog from getting cluttered. When notifications are rejected, the original requestor should be informed. The individual who approves work notifications should also be empowered to change the priority of the task based on their understanding of the actual needs of the entire facility. IDCON assists with setting up work notification approval and prioritization protocols and coaches appropriate personnel on this process.

- b. **Daily Scheduling:** A daily schedule should be produced each day before the crew goes home. This schedule includes the assignment of work orders to individuals and time estimates about the duration of each repair. These schedules should be widely distributed and communicated to all employees. Once the schedule has been issued, the only deviations are true emergencies: safety, environmental, or customer issues. IDCON finds that when daily schedules are posted before the crew goes home, crafts will spend the last few minutes of each day preparing for tomorrow. They can confirm that parts / materials are available, check out special tools, or review prints and drawings. It may also influence how individuals dress for work. Posting a daily schedule in advance ensures an efficient start to the next day's work.

Schedule Compliance can be challenging to calculate. The schedule should be "frozen" a day in advance and actual hours from the work documentation process should be compared to the scheduled hours. Schedule Non-Compliance codes are also a good way to understand the factors that are causing the schedule to be broken. Is it last minute absences? Weather Changes? Lack of parts or tools? Were there equipment access concerns? Some factors will be beyond the control of the managers. However, other factors ARE within their control and can be addressed through effective planning and scheduling. Tracking the reasons that schedules are not completed helps the site continuously improve.

- c. **Weekly Scheduling:** Weekly schedules should be produced on Thursday or early Friday of the preceding week. These schedules can either be "buckets" of work for the entire week or can include 5 preliminary daily schedules. Schedules must be

produced collaboratively between production, maintenance and engineering. A weekly schedule meeting is typically needed to facilitate scheduling discussions. Weekly schedules are most efficiently created when all stakeholders are aware of the details in their backlog and have individual preferences about which work needs to be accomplished.

- d. **Backlog Management:** The SAP backlog should be the "one version of truth." All of the potential work for the organization should have a documented work order in the system. The size of the backlog based on crew weeks should be tracked. A crew of 10 working a 40-hour week means that 400 hours of planned work is one crew week. Work Order Status codes are used to explain where the work order is in its life cycle: is it unplanned? Awaiting parts? Ready to schedule?

Backlogs must be periodically reviewed to ensure they are current. Aging reports flag work orders that have been stuck in a particular status longer than the priority code recommendation. Separate Backlog Management meetings may be required although they can often be combined with a weekly scheduling meeting. Backlog Management feeds the scheduling process and prevents work from getting lost in the system.

- e. **Planning for Preventive, Predictive and Corrective Maintenance Activities:** All assets should have a maintenance strategy: Do you run the equipment to failure, perform fixed time replacement of components, or inspect and/or continuously monitor the asset? If you do inspect the equipment, what specifically are you looking for? IDCON can coach Tacoma Water on the decision process for selecting the most cost effective maintenance method for each component. Then, the specific tasks to either prevent the failure or identify the failure early can be identified. Task frequency, tools, and the role that should perform the inspection must also be documented.

Planners can plan more corrective maintenance when a library of standard repair plans is in place. These job plans are often 80% solutions and require job-specific details. SAP should be used to facilitate the creation of this library. Work templates, non-triggering PM's, or links to files stored on a SharePoint site or a Public Folder are all potential ways to set up this library. IDCON can help the site determine the most effective way to structure a library of standard repair plans.

- f. **Work Documentation:** The best-case scenario is for all crafts to briefly and self-sufficiently document the details of the repairs they perform. This includes the parts used, the time to do the repair, and a description of what was done. The best organizations teach all employees to do this directly in the CMMS. The documentation should occur immediately after the work is performed. A work notification is often used to collect this documentation. Notifications can also contain cause and damage codes, which can be used for continuous improvement and problem solving. These codes can be misleading since crafts will have differing interpretations about what the codes mean.

Training documents and follow-up coaching is necessary to ensure a consistent implementation.

Documentation can be a significant change for the craftspeople that believe this should primarily be a management activity. Coaching and training - along with clear management expectations - is necessary to get all employees on board with improved documentation practices. Quality work histories are an essential part of a Root Cause Problem Elimination program.

- g. **Warehouse Management and Kitting**: Kitting is an important collaboration between the warehouse and the maintenance department. Needed parts should be listed on work orders as requirements. If there is not enough supply on site to meet the demand for the work order, parts may need to be ordered. Once the work order has been scheduled for a particular week, storeroom personnel should pull the parts from the shelves and place them in a kit. This kit should be clearly labeled with a work order number. Kitting ensures the identified parts / materials are on-site before the work is assigned. It also ensures an efficient start of the next day's activities.

Warehouse Management can involve a variety of topics. Cycle counting policies contribute to inventory accuracy. Reviews of inactive inventory (parts that have not been checked out for 3-5 years) may result in the identification of dead inventory. When removed from the site, this is a source of cost savings. Tracking stock-outs (when crafts attempted to check-out a part but it wasn't on-site) is a good metric of customer service. Optimizing stocking parameters (MINs, MAXs, and Order points) of stock is a data-driven exercise based on vendor lead-time, usage rates, and equipment criticality. IDCON coaches storeroom personnel to establish and follow inventory and warehouse management best practices.

Satellite storerooms (like the ones at McMillin and Headworks) will not have a full-time storeroom employee, but many effective warehouse management techniques can still be employed. Parts should still be formally checked out and charged against work orders. This will ensure that the on-hand amounts shown in SAP are up-to-date. Cycle-counts can also be performed at these satellite storerooms. IDCON can help these sites adopt the appropriate Warehouse Management practices.

- h. **KPIs**: Key Performance Indicators are tools that help an organization continuously improve. They should drive desired behaviors, communicating broadly the activities that are most important to the organization. In the best-case scenario, KPI's are used to "understand reality" rather than punish or reward employees. IDCON helps organizations focus on the leading indicators that ultimately drive ("lead to") desired results such a low costs, high quality production, and a safe work environment.

KPI's should also answer questions about the work management process. Examples include: Where is new work coming from? How long does it take to approve work notifications? How long does it take to plan work based on the priority? How close do work order actuals match the estimates? What is the size of the backlog? What is my schedule compliance? How long does it take to close out a work order? What is the cost to maintain an asset? How often does it fail? The KPI's that provide insight about these questions should be widely posted and communicated with all personnel.

- i. **Maintenance Optimization**: Depending on the asset, different kinds of maintenance strategies can be considered: Run-To-Fail, Fixed-Time Maintenance, or Predictive Maintenance. IDCON uses a simple process flowchart to help an organization think through these issues. Cost issues, access issues, criticality issues, and effectiveness of available predictive technologies all impact this decision. IDCON can teach this thinking process to site employees, coaching them on ways to research the appropriate information and choose the right strategy. If desired, IDCON can actually perform this Maintenance Optimization Assessment, resulting in a rough draft recommendation that site employees can review and approve.

- j. **Root Cause Failure Analysis**: We have named our process for problem solving training and elimination Root Cause Problem Elimination™ (RCPE). We believe RCPE™ better describes the desired results of a Root Cause process. The desired outcome should be to eliminate the problem. Our experience finds that teaching the frontline organization the RCPE process can eliminate 80-90% of problems. Embedding the process in your organization is the key to sustainable results. Deliverables include:
 - a. Design and implementation of the work processes, documentation, and measurement of RCPE.
 - b. On-the-job RCPE using your problems
 - c. On-the-job training for facilitators

- k. **On-site Training**: IDCON believes in a customized approach to on-site training that includes a combination of formal classroom training and on-the-job training. In our experience, this combination gives the most complete understanding of the work processes. We have developed and delivered on site training for a diverse group of industry clients. When combined with on-the-job coaching, it delivers an overall mastery of Best Practices in Reliability and Maintenance. Our customization includes both our standard training and your customized slides, which will require Tacoma Water to license the final trainings. The IDCON copyright must remain on all slides that were not "Work for Hire". By using our copyrighted material, we reduce the amount of prep time that would be billed to Tacoma Water.

- l. **Document Review / Document Creation:** As needed, IDCON can provide an off-site consultant-level resource to write drafts of Maintenance Strategies, Standard Job Plans, and Bill of Materials. Business Process documentation for most Maintenance and Reliability-related activities (Planning & Scheduling, Maintenance Strategy Selection, Documentation procedures) can often be accomplished during a typical consulting week. If the desired Business Process Flow-chart requires extra detail, the same off-site consultant-level resource can be used. An average rate for this service is US\$190/hr.

IDCON CONSULTANT QUALIFICATIONS AND ASSIGNMENT

The assignment of consultants is dependent on timing of the project and availability. IDCON consultants are already familiar with Tacoma Water and we will attempt to place Ryan Farr if he is available. Mr. Farr's CV and CVs of other potential consultants are included as a separate document.

RYAN FARR BRIEF BIO:

Mr. Ryan Farr is a Senior Maintenance Management Consultant for IDCON INC. A versatile organizational change management professional with nearly 20 years of experience in cement, mining, petrochemical, pulp & paper, building products, and power generation. Ryan has experience working with all levels in an organization—from the hourly ranks to the executive.

Prior to joining IDCON in 2011, Ryan was Corporate Reliability Manager for Ash Grove Cement Company (2003-2010).

SAP PM MODULE EXPERIENCE

IDCON works with SAP in around 50-60 percent of our projects. Our consultants have hands-on experience in SAP. We also have some consultants with SAP licenses that can coach and help with SAP more in depth. In some cases, where the SAP support may include advanced support and/or configuration of the whole SAP PM module, we work with a 3rd party partner.

INVESTMENT (COST): SCOPE OF WORK

The Investment for the implementation support and training are based on time and materials and meet your Scope of Work and Effort Hours. Any deviation from your RFP based on our experience and recommendations are noted in red.

2017 Scope	Resources/Time/Description	Fee/ per consultant
Onsite Visits: Water Supply	IDCON Consultant (s)- @ \$270/hr - 45 to 55 hours per week. Fee shown is for One weekly visit per quarter for 2017 (4 visits 2017)	\$48,600 to \$59,400 + Expenses <i>(See expense line items)</i>
Onsite Visits: Water Quality Water Distribution	IDCON Consultant (s)- 45 to 55 hours per week, one week every month for 6 months then 1 week every 6 weeks for 2017. Approximately 16 weeks <i>This is a deviation from your RFP based on our experience working with organizations in this capacity</i>	\$194,400- \$237,600 + Expenses <i>(see expense line items)</i>

2018 Scope	Resources/Time/Description	Fee amount
Onsite Visits all three divisions	One weekly visit every other month @ \$270/hr - 45 to 55 hours per week Fee shown is for six weekly visits for 2018	\$72,900 to \$89,100 + <i>(see expense line items)</i>
2 Year Estimate Consulting Fees		\$315,900 to \$386,100

Scope	Resources/Time/Description	Fee
Training Course: Planning and Scheduling	1 IDCON Consultant – Fee Includes Customization of Material Awareness Training for larger group (4 hours-35 participants, training materials not required) Planning Training – 1 day (20 participants) Scheduling Training- 1 day (20 participants) Training Materials for total of 40 people Shipping of Materials via UPS Ground Note: This class requires quite a bit of customization.	\$15,000 + Expenses (See expense line items)
Training Course Maintenance Optimization (Develop & Manage PM)	1 IDCON Consultant: Fee Includes Customization of Material Two, Two-Day Courses (20 per class) Training Materials for 40 people Shipping of Materials via UPS Ground	\$16,130 + Expenses (See expense line items)
Training Course Root Cause Problem Elimination	1 IDCON Consultant: Fee Includes Customization of Material Two, Two-Day Courses Training Materials for 40 people Shipping Materials via UPS Group	\$16,130+ Expenses (See expense line items)

Estimated Expenses	Description	Estimate Cost
Weekly Onsite Estimated Expenses	Include: Airfare Hotel Rental Car Phone Charges Travel time at US\$90/hr Note this is an estimate based on currently published rates. Rates for air and hotel will fluctuate based on season	\$2,500 per visit

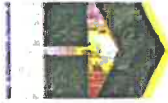
Optional Services	Fees
A licensing agreement and fee for future use/duplication by Tacoma Water for training courses, as much of the content will be IDCON's standard training customized for Tacoma Water.	US\$30,000
Optional Materials: IDCON has developed 100 Essential Care and Condition Monitoring Standards. These standards have been used in organizations to assist with the planning of work, development of inspection and PM routes, consistent training for different inspectors. They have also been used in the	US\$10,000

training of operators to perform inspections and routes.

Optional Documentation Services: As desired, IDCON can provide an off-site consultant to write equipment-specific Maintenance Strategies that can be reviewed and approved by SAMP teams. A Tacoma Water employee would still need to transform these strategies into inspection routes and load them into SAP. The total cost of this task depends on the scope of the project.

US\$190/hr
Rate for
Consultant (non-
Sr.)

SAMPLE INVOICE



IDCON, INC.
8081 Arco Corporate Drive, Suite 320
Raleigh, NC 27617

(919) 723-2689
th.idhammar@idcon.com
http://www.idcon.com

Date	Invoice #
08/25/2016	2016-815
Terms	Due Date
Net 30	09/24/2016

Bill To
Tacoma Water Attn: Seth Doull 3628 South 35th Street Tacoma, WA 98409-3192

P.O. Number	Contract Number
4600010424	11698

Date	Description	Qty	Rate (\$US)	Total (\$US)
	Billable Time			
08/14/2016	Consulting time - R. Farr	1:00	260.00	260.00
08/14/2016	Travel time - R. Farr	1:00	90.00	90.00
08/15/2016	Consulting time - R. Farr	9:00	260.00	2,340.00
08/16/2016	Consulting time - R. Farr	10:00	260.00	2,600.00
08/17/2016	Consulting time - R. Farr	9:00	260.00	2,340.00
08/18/2016	Consulting time - R. Farr	9:00	260.00	2,340.00
08/19/2016	Consulting time - R. Farr	7:00	260.00	1,820.00
08/19/2016	Travel time - R. Farr	1:00	90.00	90.00
	Billable Expenses			
08/23/2016	travel expenses R. Farr 8/20			2,697.10

			Total	\$14,577.10
--	--	--	--------------	--------------------

Payment Instructions:
Bank of America, NC, USA
Routing no: (ACH) 053000196 (international) 026009593
Account no: 000041232679
SWIFT Code: BOFAUS3N
Beneficiary: IDCON, Inc, Raleigh NC 27617 USA

SMALL BUSINESS ENTERPRISE

We are not eligible to certify as a Small Business Enterprise based on Section 1.07.050 #4.

CREDIT CARD ACCEPTANCE

IDCON is fully capable of accepting payment via credit card through our merchant account. IDCON does not possess a Level II Merchant designation for credit card processing. We do accept bank wire transfers.

TERMS AND CONDITIONS THAT DEVIATE FROM THE PROFESSIONAL SERVICES CONTRACT

2.25 City ownership of work/rights in data/publications.

IDCON cannot agree to assigning rights of materials that IDCON has developed and uses as a basis for customizing training for Tacoma Water. Tacoma Water may purchase a perpetual license to the materials however; IDCON's copyright must be maintained on the material. Any editing of the IDCON base material by Tacoma Water must be approved by IDCON.

SAP Contract No. _____

EXHIBIT "B"
SCOPE OF WORK

IDCON Contract

Specification No. WA16-0447F

1/18/2017

IDCON Scope of Work (through 12/31/2018) \$316,920

Onsite Coaching \$208,200

Visits	Hours/ Visit	\$/hr	Labor	Travel Expenses (\$2,500 ea Trip)	Total
12	55	\$270	\$178,200	\$2,500	\$208,200
				SubTotal	\$208,200

Onsite Training \$54,760

Training Course	Cost/course	Travel	Total
Planning and Scheduling	\$15,000	\$2,500	\$17,500
ECCM	\$16,130	\$2,500	\$18,630
RCPE	\$16,130	\$2,500	\$18,630
		SubTotal	\$54,760

Document Review \$53,960

Hours	Rate	Total	
144	\$190	\$27,360	
140	\$190	\$26,600	
		SubTotal	\$53,960



RESOLUTION NO. U-10923

1 A RESOLUTION authorizing execution of a utility installation agreement
2 between Tacoma Power and James Hardie Building Products, Inc.
3 ("James Hardie").

4 WHEREAS James Hardie intends to build a new facility located at
5 4615 192nd St. E, inside the City of Tacoma, Department of Public Utilities,
6 Light Division (dba "Tacoma Power") service territory, which will require a new
7 transmission line and substation to provide electrical power, and

8 WHEREAS this project will be 100% customer-funded in advance with
9 an estimated cost not to exceed \$900,000. James Hardie will build, own, and
10 operate the substation while Tacoma Power will build, own, and operate the
11 transmission line and 115 kV circuit breaker; Now, Therefore;

12 BE IT RESOLVED BY THE PUBLIC UTILITY BOARD OF THE CITY OF TACOMA:

13 That Tacoma Power's request to execute a utility installation
14 agreement with James Hardie to provide a new electrical service, as
15 described in the backup materials on file with the Clerk of the Board, in the
16 amount not to exceed \$900,000, funded by the customer in advance of
17 construction, is hereby approved, and the proper officers of the City are
18 authorized to execute any required contract(s) to be developed and approved
19 by the City Attorney to perform said work.
20
21

22 Approved as to form and legality:

Chair

23 
24 _____
25 Chief Deputy City Attorney

Secretary

26 _____
Clerk

Adopted

of April 12, 2017

REQUEST FOR RESOLUTION

Date March 31, 2017

INSTRUCTIONS: File request in the Office of the Director of Utilities as soon as possible but not later than nine working days prior to the Board meeting at which it is to be introduced. Completion instructions are contained in Administrative Policy POL-104.

1. Summary title for Utility Board agenda: (not to exceed twenty-five words)

Tacoma Power requests approval to execute a Utility Installation Agreement between Tacoma Power and James Hardie Building Products, Inc.

2. A resolution is requested to: (brief description of action to be taken, by whom, where, cost, etc.)

To authorize Tacoma Power to execute a Utility Installation Agreement between Tacoma Power and James Hardie Building Products, Inc. to (1) accept funds from James Hardie to provide new electrical service and (2) to execute any contracts to be developed and approved by the City Attorney required to perform the said work. The estimated cost of the project is \$900,000.

3. Summarized reason for resolution:

James Hardie Building Products, Inc. intends to build a new facility at 4615 192nd St E, inside of Tacoma Power's service territory, which will require a new transmission line and substation to provide electrical power. James Hardie will build, own, and operate the substation while Tacoma Power will build, own, and operate the transmission line and 115 kV circuit breaker.


This project is 100% customer funded in advance.

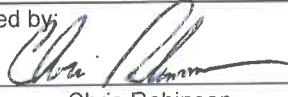
4. Attachments:


- a. Memo from Chris Robinson to William A. Gaines dated March 31, 2017
- b. Preliminary James Hardie Site Plan
- c.
- d.
- e.
- f.

5. Funds available Proposed action has no budgetary impact
This project will have no financial impact to the City because it is 100% customer funded.

6. Deviations requiring special waivers: None

Originated by:

Dolores Stegeman
Transmission & Distribution Manager

Requested by:

Chris Robinson,
Power Superintendent/COO

Approved:

William A. Gaines
Director of Utilities/CEO



DATE: March 31, 2017

TO: William A. Gaines, Director of Utilities/CEO

FROM: Chris Robinson, Power Superintendent/COO

SUBJECT: Utility Installation and Funding Agreement between Tacoma Power and James Hardie Building Products, Inc.

RECOMMENDATION: Tacoma Power recommends the Public Utility Board approve a Utility Installation Agreement between James Hardie Building Products, Inc. and Tacoma Power to (1) accept funds from James Hardie to provide new electrical service and (2) to execute any contracts to be developed and approved by the City Attorney required to perform the said work for an estimated total of \$900,000.

EXPLANATION: James Hardie Building Products, Inc. intends to build a second facility within Pierce County and has requested a new electrical service for the anticipated initial 6 MW load. Tacoma Power has determined a new substation is required to serve the James Hardie Plant 2. The attached drawing shows the proposed substation.

James Hardie has selected to own the new substation in order to (1) expedite the construction timeline and (2) to procure energy at the HVG rates. James Hardie's will build and own the following:

- Civil construction
- Grounding
- Fencing
- Foundations
- Conduit
- 115/12.5 kV transformer
- 12.5 kV switchgear

Tacoma Power will build, own, and operate a new 0.2 mile transmission line and 115 kV circuit breaker feeding the substation. Tacoma will build and own, at James Hardie's cost:

- 0.2 mile 115 kV transmission line
- 115 kV disconnect
- 115 kV circuit breaker and associated relays, controls and batteries.
- Metering equipment

James Hardie will prepay Tacoma Power for all direct costs incurred to construct the new substation to serve the James Hardie Plant 2. Additionally, James Hardie will provide any necessary easements to operate and maintain the final system.

cc: Khanh Thai, Dolores Stegeman, Joe Wilson



SCALE OF APPROPRIATE

NO.	DATE	REVISION DESCRIPTION	BY	CHKD	DATE
CITY OF TACOMA DEPARTMENT OF PUBLIC UTILITIES LIGHT DIVISION					
JAMES HARDIE SUBSTATION PRELIMINARY SITE PLAN					
DESIGNED	BY	DATE	SCALE	SHEET NO. OF	
APPROVED	BY	DATE	SCALE	SHEET NO. OF	



NAD 83
 PERCE COUNTY PUBLIC WORKS DATUM - NGVD 29



RESOLUTION NO. U-10918

1 A RESOLUTION relating to Tacoma Power; authorizing the execution
2 and conveyance of an easement to Elbe Water and Sewer
District.

3 WHEREAS the City of Tacoma, Department of Public Utilities, Light
4 Division (d.b.a. "Tacoma Power"), requests the Public Utility Board approve the
5 execution and conveyance of an easement of approximately 2.04 acres of
6 property to Elbe Water and Sewer District ("EWSD") located in unincorporated
7 Pierce County, Washington within the Nisqually River Hydroelectric Project
8 ("Project") boundary, and
9

10 WHEREAS Tacoma Power had granted a 30-year no fee easement to
11 construct a sanitary sewer disposal system adjacent to Alder Lake in 1982, that
12 expired in 2012, via Board Resolution No. U-6349 and Council Resolution
13 No. 2724, and
14

15 WHEREAS the facilities are still in use and serve the Elbe community,
16 and with no other feasible alternatives to provide sewage services, Tacoma
17 Power and EWSD have determined that granting a new, perpetual easement is
18 the best mutually acceptable resolution to this issue, and
19

20 WHEREAS a fee of \$5,000 was determined via an in-house valuation by
21 the City of Tacoma, Department of Public Works, Real Property Services
22 section, and includes consideration for the diminished economic utility of the
23 site due to its location and the constraints created by the FERC license; Now,
24 therefore,
25
26



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

BE IT RESOLVED BY THE PUBLIC UTILITY BOARD OF THE CITY OF TACOMA:

That the conveyance of an easement from Tacoma Power to Elbe Water and Sewer District, in the amount of \$5,000, for approximately 2.04 acres of property within the Nisqually River Hydroelectric Project, and as described in the easement on file with the Clerk of the Board, is approved and the appropriate City officials are authorized to execute said easement substantially in the form on file with the Clerk and as approved by the City Attorney.

Approved as to form and legality:

William Foster

Chief Deputy City Attorney

Chair

Secretary

Clerk

Adopted _____

of April 12, 2017

REQUEST FOR RESOLUTION

Date: March 27, 2017

INSTRUCTIONS: File request in the Office of the Director of Utilities as soon as possible but not later than nine working days prior to the Board meeting at which it is to be introduced. Completion instructions are contained in Administrative Policy POL-104.

1. Summary title for Utility Board agenda: (not to exceed twenty-five words)
Convey an easement to Elbe Water and Sewer District over approximately 2.04 acres of Tacoma Power property within the Nisqually River Hydroelectric Project for \$5,000.

2. A resolution is requested to: (brief description of action to be taken, by whom, where, cost, etc.)

Elbe Water and Sewer District (EWSD) has been using this area for a sewage system (pump, tank, and drainfield) since 1982. This use, which serves approximately 50 homes within the Elbe community, was originally granted by Tacoma Public Utilities via a thirty-year easement, which expired in 2012. The original easement did not have any renewal or extension clauses and required that EWSD remove all of the facilities upon expiration. Since the facilities are still in use, and there are no feasible alternatives to provide sewage services, Tacoma Power and EWSD have determined that granting a new, perpetual easement was the best mutually acceptable resolution to this issue. The \$5,000 fee was determined via an in-house valuation by RPS and includes consideration for the diminished economic utility of the site due to its location and the constraints created by the FERC license.

3. Summarized reason for resolution:

The proposed transaction clarifies the 1982 intent to allow for a long term use of this property by EWSD. The new easement contains updated indemnity language and can be revoked in the event the FERC license is terminated and/or EWSD no longer needs the property.

4. Attachments:

- a. Draft Easement
- b. Directors Memo
- c. Aerial Photo

5. Funds available Proposed action has no budgetary impact


6. Deviations requiring special waivers:

Originated by:

Requested by:

Approved:


Pat McCarty, Generation Manager


Chris Robinson, Power
Superintendent/COO


Bill Gaines, Director of Utilities/CEO



3628 South 35th Street
Tacoma, Washington 98409-3192

TACOMA PUBLIC UTILITIES

Date: March 6, 2017
To: William A. Gaines, Director/CEO
From: Chris Robinson, Power Superintendent
Subject: Easement – Elbe Water and Sewer District

Recommendation: Tacoma Power requests your approval to convey an easement for an existing sewage system (pump, tank, and drainfield) over approximately 2.04 acres to the Elbe Water and Sewer District (EWSD) for \$5,000

Background: Tacoma Power granted a 30-year no fee easement to construct a sanitary sewer disposal system on this property adjacent to Alder Lake in 1982 via U-6349, and Council Resolution 2724. The easement area is within the Nisqually River Hydroelectric Project boundary and serves the Elbe community, which is an unincorporated area of Pierce County. EWSD is governed by a commission comprised of three elected officials.

The easement expired in 2012 and, although Tacoma Power had been in contact with EWSD regarding this expiration, no action was taken for renewal. In December 2013, the Department of Health (DOH) contacted Real Property Services (RPS) to alert Tacoma Power of the possibility that EWSD might lose its right to operate their system due to the expired easement. Since that time, Tacoma Power, RPS, and EWSD have worked to determine the best mutually acceptable resolution of this issue. As an interim measure, DOH granted EWSD a Large On-Site Sewage System (LOSS) operating permit.

Alternatives considered in addition to granting a new, perpetual easement included: 1) enforcing the terms of the original easement, which required the removal of EWSD facilities; 2) grant a revocable permit subject to ongoing administration and oversight; and 3) convey the property in fee simple. It was determined that the most viable resolution was to grant a perpetual easement that would be in effect until either the FERC license was terminated and/or EWSD no longer needed the property. The \$5,000 fee was based on a valuation performed by RPS, which considered the overall economic utility of this area given the constraints created by its location as well as the FERC license.

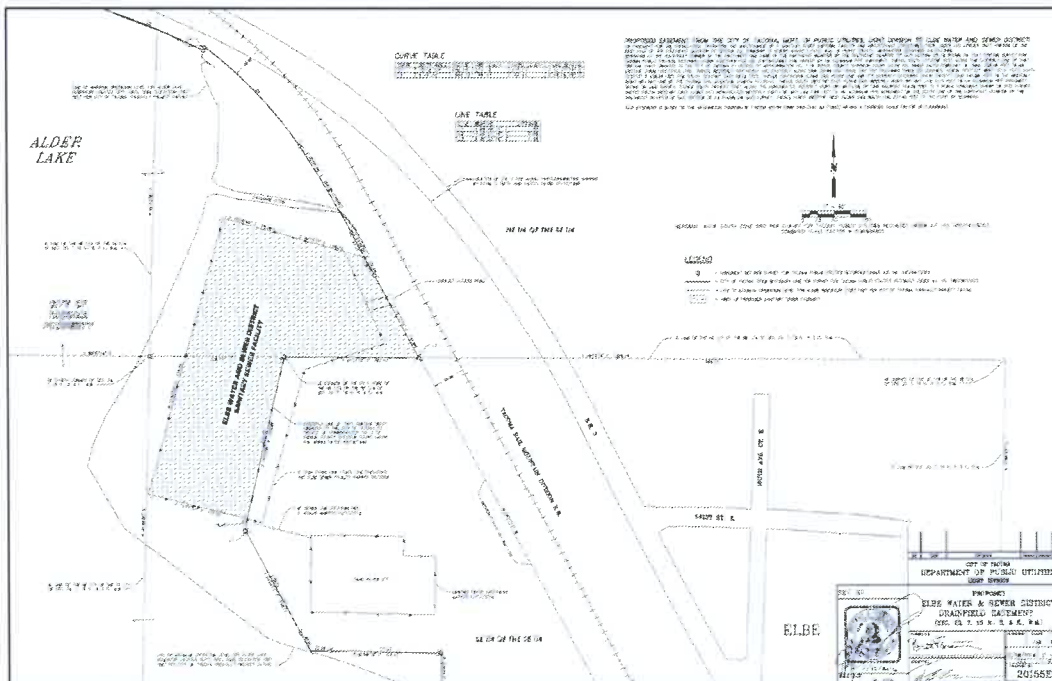
Thank you for your consideration of this request.

Easement – Elbe Water and Sewer District Site Location and Easement Area

Site Location:



Easement Area:



After recording return to:
Elbe Water and Sewer District
PO Box 4
Elbe, WA 98330-0004

CITY OF TACOMA
DEPARTMENT OF PUBLIC UTILITIES
EASEMENT NO. E13437

Reference #: **P2013-243**

Grantor: **City of Tacoma**

Grantor's Tax Parcel ID#: **0515204000, 0515204023**

Grantee/Beneficiary: **Elbe Water and Sewer District**

Description: A portion of the E 1/2 of S20, T 15 N, R 5 E, W. M. Pierce County

THIS EASEMENT AGREEMENT, dated this _____ day of _____ 2017, is by and between the CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, LIGHT DIVISION (d.b.a. TACOMA POWER)("Grantor") a municipal corporation and political subdivision of the State of Washington, and ELBE WATER AND SEWER DISTRICT, a Washington State water and sewer district, ("Grantee") (collectively "Parties).

RECITALS

A. On January 7, 1982, Grantor granted Grantee an easement, Lewis County Recording Number 8202030229 for the purposes of constructing, erecting, installing, and maintaining a sanitary sewer disposal system.

B. Said easement is located on lands that are part of Grantor's Nisqually Hydroelectric Project ("Nisqually Project"). Grantor operates said project pursuant to a hydroelectric project license granted by the Federal Energy Regulatory Commission (this license is referred to below as "FERC License").

C. By its terms, the easement expired on January 7, 2012, and the parties desire to enter into this Easement Agreement per the terms and conditions below.

IN CONSIDERATION of benefits to the general public health, safety and welfare and other good and valuable consideration, and for benefits to be derived by the Grantor herein, the Parties agree as follows:

1. Grant of Easement. Grantor hereby grants to Grantee their successors and assigns, a perpetual, non-exclusive easement ("Easement") for the operation, improvement, maintenance, and repair of a sanitary sewer disposal system that includes septic tank(s), pump station and drainfield and other related appurtenances ("Sewer System") under and through the following described "Easement Area" being a portion of the Grantor's property located in Pierce County, Washington, and legally described as follows:

THAT PORTION OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 20, TOWNSHIP 15 NORTH, RANGE 5 EAST, W.M., IN PIERCE COUNTY, WASHINGTON DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE SOUTHWEST ONE ACRE OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 20 AS SHOWN ON THAT CERTAIN SURVEY FOR TACOMA PUBLIC UTILITIES RECORDED UNDER AUDITOR'S FILE NO. 200704115003 AND MARKED BY AN ALUMINUM PIPE MONUMENT; THENCE SOUTH 13°13'58" WEST ALONG THE EASTERLY LINE OF THAT CERTAIN TRACT GRANTED TO THE CITY OF TACOMA BY DECREE OF APPROPRIATION NO. 3 OF PIERCE COUNTY SUPERIOR COURT CAUSE NO. 86653 DATED FEBRUARY 19, 1942, 255.49 FEET TO AN EXISTING CHAIN LINK FENCE LINE; THENCE WESTERLY, NORTHERLY AND EASTERLY ALONG SAID CHAIN LINK FENCE LINE THE FOLLOWING THREE (3) COURSES: NORTH 75°57'32" WEST 157.51 FEET, NORTH 15°30'12" E 439.24 FEET AND SOUTH 75°05'46" EAST 86.29 FEET; THENCE CONTINUING ALONG SAID FENCE LINE AND IT'S EASTERLY EXTENSION SOUTH 74°15'11" EAST 140.20 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF THE TACOMA RAIL MOUNTAIN DIVISION RAILROAD; THENCE SOUTH 28°19'09" EAST ALONG SAID WESTERLY RIGHT-OF-WAY LINE 31.11 FEET TO AN ALUMINUM PIPE MONUMENT SHOWN ON SAID SURVEY; THENCE SOUTH 28°20'53' EAST ALONG THE MONUMENTED WESTERLY RIGHT-OF-WAY LINE OF SAID RAILROAD 143.08 FEET TO A REBAR MONUMENT SHOWN ON SAID SURVEY; THENCE SOUTH 26°03'46" EAST ALONG SAID MONUMENTED WESTERLY RIGHT-OF-WAY LINE 0.66 FEET TO AN

ALUMINUM PIPE MONUMENT ON THE SOUTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 20 AS SHOWN ON SAID SURVEY; THENCE NORTH 89°37'14" WEST ALONG SAID SOUTH LINE 207.43 FEET TO THE POINT OF BEGINNING.

SAID EASEMENT IS BASED ON THE WASHINGTON COORDINATE SYSTEM SOUTH ZONE GRID [NAD 83 (1991)] HAVING A COMBINED SCALE FACTOR OF 0.99984805.

Grantee shall take all reasonable precautions to insure that the construction, operation, and maintenance of structures or facilities on the conveyed lands will occur in a manner that will protect the scenic, recreational, and environmental values of the project.

The use of the land conveyed shall not endanger health, create a nuisance, or otherwise be incompatible with overall Nisqually Project recreational use.

2. Grantor's FERC License. This Easement is granted subject and subordinate to Grantor's FERC License for its Nisqually River Hydroelectric Project. Further, this Easement is conditioned on and subject to the Grantor maintaining its FERC License. Grantee agrees that in the event the FERC License is not renewed and the City can no longer grant the Easement without violating contractual obligations to the federal government, then the Easement may be cancelled at the option of the Grantor without payment of any damages to Grantee, its successors, or assigns.

3. Limitation. The Easement herein granted is for the Sewer System only and to serve real property which is being serviced by the Grantee. Without limitation to the foregoing, this grant does not include the right to install or allow the installation of other utilities of any nature, including, without limitation, fiber optics, cable television, electrical, gas or liquid distribution, and telephone lines in, over, under, along and/or across the Easement Area, unless such utilities are directly necessary for the purposes granted herein. Grantee shall not enlarge or change its use of the Easement Area without the properly authorized prior written consent of Grantor.

4. Grantor's Use of Easement Area. Grantor retains the right to use the Easement Area for any purpose that does not interfere with Grantee's operations authorized herein.

5. Grantor's Right to Occupancy, Possession, and Use of Easement Area. The Easement Area is part of the Grantor's Nisqually hydroelectric project. Grantee's facilities and use of the Easement Area shall not damage or interfere with Grantor's use of the Easement Area or the Grantor's property, structures or facilities. Grantee may in no way interfere with or compromise the safe operations of the Grantor's facilities. Grantee shall at all times operate its Facilities in accordance with all applicable laws, rules and regulations. Grantee shall maintain its facilities and the Easement Area in a safe, clean and neat manner, as determined by Grantor in Grantor's sole discretion.

6. Indemnification. Grantee, its successors and assigns, agrees to indemnify, defend, and save the Grantor, its officers and employees, harmless from any and all claims, costs, and attorney fees occasions from loss or damage to Grantor's facilities and lands and from any property damage or injuries

or death to other persons, including Grantor's employees, contractors, subcontractors, agents, invitees, and assigns, occasioned by any use, improvement or installation which Grantee, its successors or assigns, may make. In this regard, Grantee hereby waives immunity under Title 51 RCW, Industrial Insurance Laws of the State of Washington. This indemnification shall include Grantee holding Grantor harmless from damages to Grantee's facilities caused by high water in Alder Reservoir and from all claims alleging malfunction, improper treatment, or other allegations relating to Grantor's activities.

7. Hazardous Substances. Grantee and its agents, contractors, and subcontractors shall defend, indemnify, and hold harmless Grantor and its respective officials, officers, members, representatives, employees, agents, and contractors against any and all liability, costs, damages, fines, taxes, special charges by others, penalties, punitive damages, or expenses (including reasonable attorney's fees and all other costs and expenses of litigation) arising from or due to the release, threatened release, storage, or discovery of any Hazardous Substances on, under, or adjacent to the Easement Area or Grantor's Parcel attributable to Grantee's use of or activities on the Easement Area. "Hazardous Substances" shall be interpreted broadly to mean any substance or material designated or defined as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar terms by any federal, state, or local laws, regulations or rules now or hereafter in effect, including any amendments. This Section 7 shall survive termination of this Sanitary Sewer Easement.

8. Termination. If the Easement Area, or any part thereof, shall at any time cease to be used by Grantee for the aforesaid purposes, or should the Easement Area be converted to any other use whatsoever, or should the Grantee fail to remedy a violation of any of the conditions herein expressed within 60 days after written notice from Grantor of any such violation, then and in any such event, all the right, title, interest, benefits and enjoyment of said Grantee or of the public in and to the Easement Area, for any purpose whatsoever, shall immediately cease and Grantor, its successors and assigns, may, at its or their option, re-enter, retake possession of, and hold the Easement Area without compensation to Grantee, the public, or any other person whomsoever, for improvements or property removed, taken or destroyed, or liability for loss of, or damage to any premises or the improvements thereon abutting on said Easement Area or any part thereof. Grantee, upon termination of this Easement, shall return the Easement Area to the condition it was in at the beginning of the easement period of the easement executed January 7, 1982, unless otherwise permitted in writing by Grantor.

9. Title. The Grantor does not warrant its title to the Easement Area nor does Grantor undertake to defend the Grantee in the peaceable possession, use or enjoyment thereof; and the grant herein made is subject to all outstanding rights or interests of others, including the tenants and licensees of the Grantor. Grantee shall secure any other rights that are needed by it for its lawful use of the Easement Area.

10. Succession. This Easement shall be binding upon and inure to the benefit of the heirs, executors, administrators, assigns and successors of Grantor and Grantee, unless terminated pursuant to Section 8 herein.

11. Taxes. Grantee shall pay all taxes resulting from their use of the Easement Area including the leasehold excise tax levied by the State of Washington pursuant to Chapter 82.29A RCW, or as hereafter amended in addition to any other payments herein required.

Authorized:
Tacoma Public Utility Board Resolution U-_____, Approved on _____

IN WITNESS WHEREOF this easement is executed as of this _____ day of _____, 2016.

GRANTOR

GRANTEE

William A. Gaines Date
Director of Utilities/CEO

Date
Name: _____
Title: _____

Chris Robinson Date
Tacoma Power Superintendent / COO

Legal Description Approved: _____

Jeff Singleton Date
Chief Surveyor

Approved as to form:

Deputy City Attorney Date

Reviewed:

Generation Manager Date

Natural Resources Manager Date

STATE OF WASHINGTON)
 : ss
COUNTY OF PIERCE)

On this _____ day of _____, 2016 before me personally appeared **William A. Gaines**, to me known to be the Director / CEO of City of Tacoma, Department of Public Utilities, who executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said City, for the uses and purposes therein mentioned, and on oath stated that she was authorized to execute said instrument.

GIVEN under my hand and official seal the day and year last above written.

Notary Public in and for the State of
Washington, residing at _____

My commission expires _____



RESOLUTION NO. U-10920

1
2 A RESOLUTION related to transferring property from Tacoma Water to Public
3 Works.

4 WHEREAS the City of Tacoma, Department of Public Works ("Public
5 Works") has requested the City of Tacoma, Department of Public Utilities,
6 Water Division (d.b.a. "Tacoma Water"), to transfer approximately 1.95 acres of
7 land located near Puyallup Avenue in the City of Tacoma ("Property") to
8 facilitate the planned replacement of the Puyallup Avenue Bridge ("Project"),
9
10 and

11 WHEREAS the property was originally acquired in 1999 for the Second
12 Supply Pipeline (P5) project, and

13 WHEREAS, during the design phase of this Project, the City required
14 additional right-of-way from the Puyallup Tribe ("Tribe"), and

15
16 WHEREAS the Tribe requested the Property instead of cash as partial
17 consideration for the additional right-of-way and the City and Tribe entered into
18 an Interlocal Agreement ("Agreement") in March 2016, and

19 WHEREAS Tacoma Water has agreed to transfer the Property to Public
20 Works, subject to a perpetual easement for utility purposes, for the fair market
21 value of \$50,000, and

22
23 WHEREAS Public Works will subsequently transfer the Property to the
24 Tribe in accordance with the Agreement as well as RCW 35.94.040, and

25
26



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

WHEREAS Tacoma Water believes the transfer of the Property to Public Works is in the best interests of Tacoma Water's customers and the citizens of Tacoma, Now, Therefore,

BE IT RESOLVED BY THE PUBLIC UTILITY BOARD OF THE CITY OF TACOMA:

That Tacoma Water is authorized to transfer approximately 1.95 acres of property to Public Works, located near Puyallup Avenue to facilitate the Puyallup Avenue Bridge Project, for a fair market value of \$50,000, and the appropriate officers of the City are authorized to execute such documents in a form substantially the same as on file with the Clerk of the Board and approved by the City Attorney.

Approved as to form and legality:

William Fisher
Chief Deputy City Attorney

_____ Chair

_____ Secretary

_____ Clerk

Adopted _____

of March 22, 2016

REQUEST FOR RESOLUTION

Date: March 7, 2017

INSTRUCTIONS: File request in the Office of the Director of Utilities as soon as possible but not later than nine working days prior to the Board meeting at which it is to be introduced. Completion instructions are contained in Administrative Policy POL-104.

1. Summary title for Utility Board agenda: (not to exceed twenty-five words)

Transfer approximately 1.95 acres of Tacoma Water property to the Department of Public Works for \$50,000 for the Puyallup Avenue Bridge Replacement project.

2. A resolution is requested to: (brief description of action to be taken, by whom, where, cost, etc.)

The Department of Public Works has requested that Tacoma Water transfer an approximately 1.95 acre parcel of land located near Puyallup Avenue to facilitate the planned replacement of the Puyallup Avenue Bridge. The property was originally acquired in 1999 from Pierce County for the Second Supply Pipeline (P5) project.

Tacoma Water has agreed to transfer this property in exchange for fair market value and subject to a perpetual easement for utility maintenance, repair, and replacement. This property will subsequently be transferred to the Puyallup Tribe of Indians ("Tribe") as part of a negotiated agreement between the City and the Tribe related to additional right-of-way needed for the bridge project.

3. Summarized reason for resolution:

This transaction will allow the City to move forward with a critical infrastructure project while continuing to provide necessary water utility operations. The \$50,000 consideration was based on an independent appraisal reviewed by Real Property Services.

4. Attachments:

- a. Interfund Transfer Agreement
- b. Directors Memo
- c. Aerial Photo
- d. Intergovernmental Agreement

5. Funds available Proposed action has no budgetary impact

6. Deviations requiring special waivers:

Originated by:



Chris McMeen, Water Supply Manager

Requested by:



Linda McCrea, Water Superintendent

Approved:



William A. Gaines

Director of Utilities/CEO



3628 South 35th Street
Tacoma, Washington 98409-3192

TACOMA PUBLIC UTILITIES

Date: March 6, 2017
To: William A. Gaines, Director/CEO
From: Linda McCrea, Water Superintendent *ow*
Subject: Disposition of Real Property to Department of Public Works

Recommendation: Tacoma Water requests your approval to transfer approximately 1.95 acres of property located in Tacoma to the Department of Public Works, for \$50,000. This property will be subsequently conveyed by the City to The Puyallup Tribe of Indians ("Tribe").

Background: The City's Department of Public Works plans to replace a portion of the Puyallup Avenue Bridge, which crosses the Puyallup River near the Port of Tacoma, later this year. During the design phase of this project, it was noted that the City required additional right-of-way from the Tribe. The Tribe requested that the City provide real property instead of cash as consideration for the necessary property rights to complete the bridge replacement project. Some of the requested parcels were owned by Tacoma Water and used for the Second Supply Pipeline (P5). Tacoma Water agreed to transfer this property and a confidential memorandum from the City's legal department was submitted in May, 2015 recommending that Tacoma Water move forward with transferring the three parcels requested to support this project.

After subsequent negotiations, the City entered into an Intergovernmental Agreement with the Tribe in March, 2016. That Agreement contains the terms and conditions between the City and the Tribe related to the bridge replacement project, which include the transfer of one parcel, not three as originally contemplated, to the Tribe. Public Works is now ready to move forward with the construction phase of that project, and has requested that Tacoma Water transfer the subject parcel to them at this time.

Tacoma Water has agreed to transfer this parcel to Public Works in exchange for fair market value (\$50,000), subject to a perpetual easement for utility purposes. Public Works will subsequently transfer this parcel to the Tribe in accordance with the Intergovernmental Agreement, as well as with RCW 35.94.040, which requires a public hearing prior to conveying real property acquired for utility purposes.

Schedule: Upon approval from the Public Utility Board, Real Property Services will seek final approval for this transaction from Tacoma City Council. If approved, the transaction is expected to be completed by May 31, 2017.

Thank you for your consideration of this request.

**TRANSFER MEMORANDUM
BETWEEN
TACOMA WATER
AND
TACOMA PUBLIC WORKS**

Grantor: City of Tacoma, Department of Public Utilities, Water Division (d.b.a. Tacoma Water)
Grantee: City of Tacoma, Department of Public Works
Abbreviated Legal Description: SE 1/4 OF SECTION 3, TOWNSHIP 20 NORTH, RANGE 3 EAST, W.M.
Assessor's Tax Parcel Number: 4715024400

THIS TRANSER MEMORANDUM ("Transfer Memorandum") is memorialized this _____ day of _____, 2017, by and between City of Tacoma (the "City"), Department of Public Utilities, Water Division, (d.b.a. Tacoma Water), hereinafter referred to as "Water", and City of Tacoma, Department of Public Works, hereinafter referred to as "Public Works" in order to set forth responsibilities in compliance with RCW 43.09.200 *et seq.* (The Local Government Accounting Act).

WITNESSETH:

WHEREAS, Water has fund accounting responsibility over the real property owned by the City that is legally described in the attached Exhibit A, located within the City of Tacoma, hereinafter referred to as "Property"; and

WHEREAS, Public Works has requested that Water transfer the Property to Public Works in order to facilitate the replacement of the Puyallup Avenue Bridge; and

WHEREAS, Water is willing to transfer the Property to Public Works for fair market value provided that Water is able to retain certain easement rights necessary for ongoing maintenance and operation of Tacoma Public Utility assets, and

WHEREAS, Public Works intends to convey this Property to the Puyallup Tribe of Indians pursuant to Tacoma City Council resolution Number 39393, subject to the aforementioned easement rights, and

WHEREAS, the departmental parties hereto mutually agree to document their understanding regarding their respective uses and responsibilities relevant to the Property.

NOW, THEREFORE, it is hereby agreed as follows:

1. **Consideration.** The consideration for this transfer is \$50,000.
2. **Method of Payment.** Payment, as set forth above, shall be made to the appropriate Water fund as determined by Water.
3. **Closing/Termination Date.** The transfer date for this transaction shall be within thirty (30) calendar days from the approval of this Transfer Memorandum. "Transfer" shall mean the date on which the responsibilities for the management and administration of the Property is transferred to Public Works from Water.
4. **Conveyance of Title.** Because title to the Property is held in the name of "City of Tacoma," it is unnecessary to execute, deliver, and record a deed conveying title to the Property. However, at Transfer, Public Works will put the Pierce County Assessor office on notice that the correct 'taxpayer' for the Property is Public Works for fund accounting purposes.
5. **Possession.** Public Works is entitled to physical possession of the Property upon completion of the Transfer.
6. **Future Conveyances.** In the event of a future sale, conveyance, or transfer by the City of part or all of the Property, the conveyance deed will contain a reservation by the City for a perpetual easement for public utility purposes over, under, along, across and through the Property to include rights to light, view and air for overhead equipment. Said utility easement to be used as needed by the City of Tacoma for construction, installation, repair, replacement, operation and maintenance of its utility facilities and related infrastructure. No permanent structures shall be placed upon the Property without the prior written approval of the City of Tacoma. In the event that the City's conveyance or transfer document fails to provide the aforementioned easement reservation substantially consistent with this Transfer Memorandum, then this Transfer Memorandum shall constitute a binding easement reservation effective as of the date of the City's transfer document.

7. **Notice of Easement.** This Transfer Memorandum shall be recorded with the Pierce County Auditor for the purposes of providing notice to the successor, assigns, purchasers, transferees, lessees and easement grantees of Public Works.

Authorized by Public Utility Board Resolution Number _____ adopted on _____, 2017

.ACCEPTED AND AGREED:

TACOMA PUBLIC UTILITIES

William A. Gaines
Director of Utilities/CEO


TACOMA WATER

fol: 

Linda McCrea
Water Superintendent



Chris McMeen
Water Supply Manager



Greg Volkhardt
Environmental Programs Manager

CITY OF TACOMA

Elizabeth Pauli
Interim City Manager

PUBLIC WORKS

Kurtis D. Kingsolver, P.E.
Public Works Director

Approved as to Form:

Deputy City Attorney

TRANSFER MEMORANDUM

**EXHIBIT A
PROPERTY LEGAL DESCRIPTION**

LOTS 9 AND 10, BLOCK 1, EXCEPTING THOSE PORTIONS LYING BETWEEN THE LINE OF ORDINARY HIGH WATER OF THE PUYALLUP RIVER AND PUYALLUP RIVER FLOOD CONTROL PROJECT LINE, REPLAT OF PART OF TRACT No. 2 OF THE INDIAN ADDITION TO THE CITY OF TACOMA.

RESERVING FOR THE GRANTOR, ITS SUCCESSOR AND ASSIGNS, A PERPETUAL EASEMENT FOR PUBLIC UTILITY PURPOSES OVER, UNDER, ALONG, ACROSS, AND THROUGH THE PROPERTY TO INCLUDE RIGHTS TO LIGHT, VIEW, AND AIR FOR OVERHEAD EQUIPMENT. SAID UTILITY EASEMENT TO BE USED AS NEEDED BY THE CITY OF TACOMA FOR CONSTRUCTION, INSTALLATION, REPAIR, REPLACEMENT, OPERATION, AND MAINTENANCE OF ITS UTILITY FACILITIES AND RELATED INFRASTRUCTURE. NO PERMANENT STRUCTURES SHALL BE PLACED UPON THE PROPERTY WITHOUT THE PRIOR WRITTEN APPROVAL OF GRANTOR.

ALSO TOGETHER WITH AND SUBJECT TO EASEMENTS, COVENANTS, CONDITIONS, AND RESTRICTIONS OF RECORD.

SITUATE IN THE CITY OF TACOMA, COUNTY OF PIERCE, STATE OF WASHINGTON

Tacoma Water
Parcel #4715024400

General Location – Puyallup Avenue Bridge over the Puyallup River



Site Location – Parcel Number 4715024400



PTOI GOVERNMENTAL CONTRACT-2014 INTERGOVERNMENTAL AGREEMENT

concerning the
Phase I Replacement of the Puyallup Avenue Bridge Construction Project
between the
Puyallup Tribe of Indians and the
City of Tacoma and the

I. INTRODUCTION

This Intergovernmental Agreement ("Agreement") is entered into between the City of Tacoma ("COT") and the Puyallup Tribe of Indians ("Tribe"), (collectively "Parties"). The Parties agree that they will consider applicable to the phased replacement of the Puyallup Avenue Bridge ("Project") the terms, conditions, restrictions, authorizations, processes and other provisions described in this document. This Agreement, once executed, shall be binding on and enforceable against each Party.

The Project is defined as the activities proposed by COT on the Puyallup Indian Reservation related to the phased construction of the Puyallup Avenue Bridge and ingress/egress points thereto as described in the State Environmental Policy NEPA documentation completed on 23 January 2012; a Shoreline Substantial Development Permit including a SEPA Checklist and a JARPA was completed on 2 February 2012, including any terms or conditions imposed upon the activities by federal, state or local permits and other authorizations for the Project.

This Agreement applies to the Project. The Parties agree to bi-furcate approvals into two phases: the on-shore development ("Phase 1") and the subsequent over-water development ("Phase 2"). COT has secured \$ 38,800,000.00 in funding for Phase I of the Project from the Bridge Replacement Advisory Committee (federal bridge funds); Freight Mobility Strategic Investment Board (state funds); Surface Transportation Program (federal highway funds); Washington State Department of Commerce (state legislature); the Port of Tacoma and the COT. COT estimates the cost of Phase 2 between \$ 120,000,000 and 175,000,000; no funding for Phase 2 has been obtained. The Parties acknowledge their intent to diligently pursue and obtain Phase 2 funding.

The Parties agree that nothing in this Agreement shall be interpreted as waiving any requirement or limitation imposed by the Puyallup Tribal Land Claims Settlement Agreement dated August 28, 1988, ratified by Congress in P.L. 101-41.

II. PURPOSE

The purpose of this Agreement is to delineate the commitments by all Parties related to avoiding, minimizing and mitigating the potential impacts of the Project on Tribal Treaty

rights, cultural resources and property interests, and facilitating the successful completion of the Project.

III. BACKGROUND

- A. COT plans to construct the Project wholly in the City of Tacoma in Pierce County, Washington. COT and federal and state authorities, and the Port of Tacoma have analyzed the Project pursuant to the National Environmental Policy Act (NEPA), the State Environmental Policy Act (SEPA), and other applicable laws and authorities.
- B. COT recognizes that the Project is to be conducted within the boundaries of the Puyallup Indian Reservation as defined within the 1873 survey on real property owned by both the COT and the Tribe (or in trust therefor).
- C. COT recognizes that the Puyallup Tribe owns the beds and banks of the Puyallup River within the Project's geographic boundaries. Phase 1 of the COT Project is programmed for on-land activities on and adjacent to Tribal lands including, but not limited to, the Ceremonial Grounds (PC Parcel No. 4715023640). COT recognizes that the Tribe has established and administers Planning and Land Use Services Permitting whilst the Department of Natural Resources has established and administers water quality standards and Clean Water Act (CWA) Section 401 Certification of water Quality Compliance authority for the Puyallup River within the Project limits.
- D. The Parties recognize that building the Project is subject to the availability of funds and the timely receipt of necessary Federal, Tribal, state and local regulatory approvals. COT has completed environmental documentation which addressed anticipated impacts associated with the Project.
- E. The Tribe has adjudicated Treaty fishing and gathering rights, including the right to take fish at its usual and accustomed fishing grounds and stations, which include the Puyallup River and parcels adjacent thereto. The parties expect that construction activities programmed for Phase 2 of the Project will impact the exercise of those rights.
- F. The construction activities of the Project will impact traffic to the local Tribal governance and economic center as well as regional impacts to COT, the Port of Tacoma and the City of Fife.
- G. COT is seeking to obtain temporary and permanent easements on land that is, or will become, Tribal trust lands for construction activities, for maintenance and operation of the constructed facilities, and for associated infrastructure, to include city owned utilities.
- H. COT recognizes that the project's complexity has a major impact on Tribal staff time for review and comment on several elements of the Project, including potential impacts on water quality, and transportation, legal matters, land use issues, project design and cultural resources.

- I. The City and the Tribe have met on a government-to-government basis to explore opportunities to modify the Project in order to avoid or minimize its potential impacts on the Tribe's rights and interests and have met to discuss how to mitigate for unavoidable impacts from the Project on those rights.

This Agreement is the result of the government-to-government consultation and reflects mutual commitments and undertakings of the Parties pertaining to the Project.

- J. The City and the Tribe agree to negotiate in good faith in order to resolve any real property/right-of-way use issues identified for Phase 2 of the Project.
- K. Pursuant to the Washington Inter-local Cooperation Act, Chapter 39.34 RCW, COT has the authority to enter into this agreement with the Tribe.

IV. PUYALLUP RIVER USAGE

- A. **Goal.** COT recognizes and acknowledges that the Puyallup River is at the center of the Tribe's Treaty-protected fishing rights and that the Project impacts on those rights, and on the fishery resource and habitat, in the River and the contiguous Ceremonial Grounds. The Parties' goal is to permit work on the Project to go forward but only in a manner that avoids permanent interference, and holds to a minimum any temporary interference, with those rights and the resource and habitat. In order to achieve that goal, COT will manage work on the Project according to the following standards: the Parties recognize the need for careful management of construction facilities and activities such as temporary work trestles; construction of new fixed bridge structures and removal of old fixed bridge structures. (For purposes of this Section IV of the Agreement, references to "COT" shall include COT's contractors and subcontractors performing work on the Project.)

V. COORDINATION WITH TRIBAL DEVELOPMENT

The Parties agree that the Project's final configuration, is as shown in Exhibit 1. By entering into this Agreement, the Tribe acknowledges its acceptance of the design.

- A. COT will:
- Perform all preconstruction activities for the realigned Puyallup Avenue Bridge and adjacent roadside features, including design, permitting, cultural resource investigation, and similar activities.
 - Alter and/or relocate affected city owned utilities prior to, during, and after construction activities.
 - Construct the realigned shore-side bridge infrastructure and any adjacent roadside features.
 - Convey Parcel J (PC Parcel No. 471502-3640) and the other real property depicted in Exhibit 2 (the "Property") to the Tribe prior to the construction of Phase 1, except for Parcel No. 471501-3112, that will be conveyed at some

future point to the Tribe when the Casino expansion plans are approved and the roadway alignment has been established and constructed. The City is required to pay Just Compensation for the additional right of way needed to construct the project. Just Compensation has been set at \$225,500.00. The City will provide a written offer letter to the Tribe via separate writing. In lieu of accepting the cash payment for the ROW needs, the parties have agreed to transfer the properties identified within Exhibit 2, herein as Just Compensation.. Conveyance of the Property shall be via a QCD in substantially the same form as depicted in Exhibit 2, and subject to the easement reservations and deed restrictions noted thereon.

- Communicate plans and identify any potential property issues for Phase 2 to the tribe prior to developing final design.
- B. The Tribe will:
- After acceptance of the QCD for Parcel J and the Property, the Tribe shall immediately convey to COT the property rights needed to construct Phase 1 via a dual closing, which includes: ground easement(s), utility easement(s), aerial easement(s) and temporary construction easement(s).
 - Coordinate any necessary review and approval activities with COT in accordance with the Project schedule.
 - Communicate any issues with the Project as they relate to Tribal operations.
 - .
- C. The Parties agree that COT's construction activities will be planned and carried out in a manner that will maintain access to the Tribal governance, Ceremonial and fishing areas during construction.
- D. COT acknowledges that construction of the Project will impact traffic to the Tribal governance, cultural and economic centers. COT will coordinate with the Tribe for any road closures or road restrictions required for the purpose of construction safety and will seek, to the maximum extent commercially feasible, to minimize all impacts to the Tribal Governance facilities, Cultural Grounds and Tribal economic enterprises.

VI. STREET VACATIONS

The parties acknowledge that, related to the Project and the terms and conditions of this Agreement, the Tribe is seeking the vacation of two different City right-of-way areas:

- That portion of Cleveland Way lying southerly of the Puyallup River Bridge and northerly of Young Street, and
- The alleyway lying between East R Street and East T Street between East 29th and East 30th Streets,

The parties agree to work together within the framework of applicable Washington State and local laws to accomplish these right-of-way vacations. The Tribe understands and

acknowledges that conditions may attach to the vacations, for example, the requirement to preserve access to affected properties.

VII. CULTURAL RESOURCES

Tribal properties that will be affected by the Project have religious and cultural significance to the Tribe and its members. COT has consulted with the Tribe and has signed a Memorandum of Agreement dated 11-30-2011 (the "MOA" attached hereto as Exhibit 3) that will control all religious and cultural issues that arise as a result of the Project. COT will provide cultural resources monitoring during construction in accordance with the approved monitoring plan required in the MOA.

VIII. WATER QUALITY

In order to protect the fishery resource and habitat as well as human health and the environment, COT will ensure that all work on the Project complies with Project permits together with Tribal water quality standards.

IX. CONSIDERATION

The Parties agree that, as consideration for the Tribe's participation in the Project, COT will transfer the Property to the Tribe, as described in Section V. A above prior to construction of Phase 1. Per Uniform Act requirements, COT hereby informs the Tribe of just compensation due the Tribe for the additional right of way needs for Phase 1. The determination of value has been established at \$39,500.00, by a yellow book appraisal. The Tribe hereby agrees that monetary payment of the foregoing amount is satisfied by the conveyance of the Property. The estimated value of the Property is \$248,680. COT agrees to obtain all necessary approvals for this conveyance prior to the commencement of Phase 1 construction activities. COT further agrees to pay fair market value for any additional property rights that may be needed to complete Phase 2 of the Project.

X. SERVICES DURING CONSTRUCTION

Task Orders for Tribal staff and Consultant Services

COT will reimburse the Tribe for services performed by its staff throughout Project construction. The scope and budget for these services will be documented in Task Orders prior to the commencement of work.

- A. The services provided by the Tribe pursuant to this Agreement shall continue through the life of the Project including:

1. Within the Project boundaries, observe monitoring for archaeological and cultural resources during ground-disturbing activities for the Project.
 2. Within the Project boundaries perform routine inspections and participate in Project meetings.
 3. Perform water quality monitoring, sampling and testing
- B. In preparing each Task Order, the COT shall furnish the Tribe concurrence Task Authorization Form (Exhibit 4). The Tribe shall provide COT with an estimate of the cost and time, including all labor and direct costs, required to complete the services based on the Fee Schedule (Exhibit 5). This estimate will be provided on the Task Authorization Form. After review and approval, which shall not be unreasonably withheld, the COT shall include the approved cost and date of completion in its Task Order. A Task Order will become effective when all signatures by both Parties have been obtained on the final Task Order. In urgent or emergency situations where schedule does not allow for a written Task Order to be processed, the COT may verbally authorize the Tribe to allow the Tribe's staff to begin work on a specific task. The COT shall provide written confirmation to the Tribe within one day of verbal authorization, and then follow the procedures outlined above for issuing a written Task Order as soon as practical.
- C. Should any Task Order be terminated by either Party, this Agreement and all remaining Task Orders shall remain in effect. If this Agreement is terminated, all open Task Orders shall automatically terminate on the same date as this Agreement.
- D. Section XXI of this Agreement addresses the resolution of disputes which may arise from the negotiation or execution of the contracted services.

Payments for Tribal Staff and Consultant Services.

Pre-Construction and Project Services:

Pre-Construction Services –

Payments to the Tribe will be on a cost reimbursement basis for actual direct and related federally approved indirect costs incurred for each specific Task from the commencement date of Tribal Project review. Invoices detailing the charges and expenses incurred will be submitted by the Tribe for reimbursement with payment from COT to be made to the Tribe as Task Order 1. Expenses eligible for reimbursement are detailed below. Reimbursement will not be made for any costs not clearly supported by the Tribe's records.

Project Services -

Payments to the Tribe will be on a cost reimbursement basis for actual direct and related federally approved indirect costs incurred for each specific Task Order which is assigned, accepted and executed by the Parties. Invoices detailing the charges and expenses incurred may be submitted by the Tribe for reimbursement not more often than once a month. COT agrees to reimburse the Tribe within thirty (30) calendar days from receipt of a properly documented and approved invoice. Reimbursement will not be made for any costs not clearly supported by the Tribe's records.

Expenses eligible for reimbursement include:

1. Direct costs, including consultant services, which will be detailed in each Task Order, may be billed without additional markup.
2. Actual salaries and wages paid, based on the Tribe's current pay rates for Tribal personnel working directly on the provision of Task Order services.
3. Actual Tribal employee's benefits. At the time each Task Order is assigned, the Tribe will provide data detailing such costs to the COT Agreement Manager for each Tribe employee assigned to the Task.
4. Invoiced costs without markup for materials, equipment, and supplies used in performing the Task Order services.
5. Travel costs incurred for travel directly connected with the Task at current Tribal Government approved rates.
6. Reimbursement for the Tribe's overhead, including hourly accrual rates for paid leave, will be calculated by multiplying the Tribe's federally approved overhead rate times the Tribe's direct labor for Tribal employees only that performed work on the Task Order during the billing period and the Tribe's Project Manager to negotiate Task Orders.
7. Paid leave for Tribal employees will not be reimbursed directly. Reimbursement for paid leave is included via the accrual rate in the approved overhead portion of the hourly rates.
8. Cost, without markup, for Task Order services work performed by non-employee Tribal members. Such costs must be supported by invoices detailing hours worked and the documented rates charged by each non-employee Tribal member.

XI. POST CONSTRUCTION SERVICES

It is anticipated that the Tribe will provide services after construction of the Project is complete, including but not limited to, water quality monitoring for NPDES and 401 Water Quality Certification compliance.

XII. TECHNICAL APPENDICES

All technical plans included as Exhibits may be subject to modification with the written approval of all Parties without formally amending this Agreement.

XIII. AMENDMENT

This Agreement may be amended by written amendment. Such amendments and changes made under this Agreement shall be made in writing and signed by Lead Representatives of all the Parties, as noted in Section XXII, LEAD AND DESIGNATED REPRESENTATIVES. Any supplemental agreement shall be agreed upon in writing prior to undertaking any work or incurring any costs covered by such amendment.

Task orders and amendments to Task Orders may not change or alter the terms and conditions of this Inter-governmental Agreement.

XIV. NO OBJECTION TO PROJECT

As long as COT is in compliance with the provisions of this Agreement, the terms of any permits, and the provisions of all applicable laws, the Tribe agrees that it will not object to or otherwise oppose the Project in any federal, state, or local regulatory, administrative, or judicial proceedings associated with the permitting, financing, and construction of the Project, including any permit modifications or NEPA, SEPA, JARPA or Section 106 reevaluations for the Project that do not materially increase the impacts of the Project and on other interests of the Tribe identified in this Agreement beyond those described in the EA, so long as this Agreement remains in effect.

XV. RECORDS RETENTION & AUDITS

During the term of this Agreement and for a period not less than six (6) years from the date of final payment by COT, the records and accounts pertaining to the work provided by the Tribe and accounting therefore are to be kept available for inspection and audit by COT and federal and State agencies providing Project funding and copies of all records, accounts, documents, or other data pertaining to the work provided by the Tribe will be furnished upon request. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until said litigation, claim, or audit finding has been resolved even though such litigation, claim, or audit continues past the six (6) year retention period.

XVI. RELEASE

The Parties agree that the terms of this Agreement constitute a full and fair settlement regarding actual or potential interference with the TRIBE's Treaty fishing rights including, but not limited to, potential interference with Tribe fishing access resulting from the Project.

Except for those obligations which any federal agency, state agency and COT undertake in this Agreement, the Tribe, its successors or assigns, hereby release and forever discharge the COT, its officers, employees, agents and contractors from any and all claims, demands and causes of action of any nature whatsoever against the COT for damages or equitable or other non-monetary relief associated with the impact of the Project on its Treaty rights and cultural interests. This release does not pertain to claims or causes of action from the Project for other than anticipated potential impacts to the Tribe's Treaty rights and cultural interests including unanticipated impacts caused by any modifications through design changes.

XVII. INTEGRATION AND SEVERABILITY

This Agreement constitutes a single integrated contract that expresses the entire agreement of the Parties hereto. Any prior representations or agreements, whether oral or written, in regard to this Agreement or its subject matter are hereby superseded in their entirety by this Agreement. If any provision of this Agreement is held invalid, it shall be considered severable from the remainder, and the remaining provisions shall be given full force and effect, provided that such remainder conforms to the terms and requirements of applicable law and the intent of this Agreement.

XVIII. TERMINATION

In the event that the COT makes material modifications to the Project that may increase the adverse impact of the Project on the Tribe's access to its usual and accustomed Treaty fishing grounds and stations or on any other interests of the Tribe identified in this Agreement, then the Tribe may withdraw from this Agreement after providing at least thirty (30) calendar days written notice to the other Parties and after complying with the dispute resolution requirements of Section XXI of this Agreement. Any dispute about whether modifications to the Project are "material" or whether they result in increased adverse impacts to Tribe's access to its usual and accustomed Treaty fishing grounds and stations shall be resolved in accordance with the dispute resolution provisions of Section XXI. In the event that the Tribe withdraws from this Agreement pursuant to this Section, the Tribe agrees to enter into additional negotiations with COT regarding the extent of the modified Project's increased adverse impact to Tribe's access to its usual and accustomed Treaty fishing grounds and stations. In the event that the Parties enter into a subsequent agreement regarding the Project impact to the

Tribe's Treaty fishing access rights, any mitigation or compensation already provided to the Tribe by COT shall be included in any new agreement negotiated by the Parties.

XIX. AGREEMENT BINDING

The terms and conditions of this Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and assigns.

XX. AUTHORITY TO SIGN

The Tribe represents, warrants, and covenants that it has the authority to enter into this Agreement, and that its execution and delivery have been duly authorized by Tribal Resolution. As part of this Agreement, the Tribe will furnish a copy of the resolution of the Tribal Council granting authority of the undersigned to execute this Agreement on behalf of the Tribe no later than five (5) business days following execution of this Agreement.

The COT represents, warrants and covenants that it has the authority to enter into this Agreement, and that its execution and delivery have been duly authorized.

XXI. DISPUTE RESOLUTION PROCESS

The Parties shall make good faith efforts to quickly and collaboratively resolve any dispute arising under or in connection with this Agreement. The dispute resolution process outlined in this Section applies to disputes arising under or in connection with the terms of this Agreement.

A. Informal Resolution. The informal resolution process commences by the Parties' staff meeting and attempting to resolve disputes.

B. In the event that the Parties are unable to resolve the dispute, the Parties shall submit the matter to non-binding mediation facilitated by a mutually agreed upon, mediator. The Parties shall share equally in the cost of the mediator.

C. Each Party agrees to compromise to the fullest extent possible in resolving the dispute in order to avoid delays or additional incurred cost to the Project.

D. Any claim not resolved by mediation may be submitted by either party to binding arbitration, to which each Party hereby agrees to be bound; provided, however, that either party may submit to a Bureau of Indian Affairs administrative proceeding or to federal district court any dispute whose subject matter is within the jurisdiction of that entity. Arbitration when held shall be conducted by a neutral arbitrator selected by agreement of the parties and shall follow the commercial arbitration rules of the American Arbitration Association. Fees and costs of the arbitrators shall be divided

equally by the parties. Enforcement of an arbitration order may be had in the Tribal Court or Pierce County Superior Court.

XXII. LEAD, DESIGNATED AND PROJECT REPRESENTATIVES

Lead Representatives

- a. Puyallup Tribe of Indians
Chairperson
Puyallup Tribe of Indians
E. 3009 Portland Avenue
Tacoma, WA 98404
253-573-7800
- b. City of Tacoma
City Manager
747 Market Street, 12th Floor
Tacoma, WA 98402
253-591-5135

Designated Representatives

- a. Puyallup Tribe of Indians
Tribal Project Manager, Andrew Strobel
The Puyallup Tribe of Indians
E. 3009 Portland Avenue
Tacoma, WA 98404
253-573-7800
- b. City of Tacoma
Director of Public Works
747 Market Street, 4th Floor
Tacoma, WA 98402
253-591-5269

Project Representatives

The parties shall provide contact information for project representatives noted in this Agreement. The contact information shall include contact name, mailing address, phone number and e-mail address. The information shall be updated as needed.

XXIII. RESERVATION OF RIGHTS, NO WAIVER OF CLAIMS

Except as provided in the Waiver of Sovereign Immunity (Section XXV), by entering into this Agreement, the Tribe does not waive any rights to exercise its Treaty rights, and any and all such rights are hereby expressly reserved. Nothing in this Agreement is intended to or shall be construed to constitute an admission by any Party that the geographic areas referenced in this Agreement corresponds to, defines or otherwise represents an accurate final legal description of the Tribe's usual and accustomed fishing areas.

XXIV. INDEMNIFICATION

To the maximum extent authorized by law, each Party shall indemnify and hold harmless the other Party and its employees and/or officers from and shall process and defend at the indemnifying Party's expense any and all claims, demands, suits at law or equity, actions, penalties, losses, damages (both to persons and/or property), or costs, of whatsoever kind or nature, brought against the other Party arising out of, in connection with, or incident to the indemnifying Party's negligent performance or failure to perform any aspect of this Agreement, including the work done by each party on the project covered by this Agreement.

The provisions of this Section shall survive the termination of this Agreement.

XXV. WAIVER OF SOVEREIGN IMMUNITY AND VENUE

- A. The Tribe voluntarily enters into a limited waiver of its sovereign immunity on the following terms and conditions: The Tribe consents to binding arbitration of disputes involving the enforcement of the terms of this Agreement and, if necessary, to judicial enforcement of arbitration decisions in Pierce County Superior Court or the Puyallup Tribal Court. The Tribe consents only to arbitration of claims made by COT under the provisions of this Section XXV. The Tribe agrees that it will not raise sovereign immunity as a defense in any such arbitration or action for judicial enforcement of an arbitration decision. This limited waiver shall expire upon the expiration or termination of this Agreement, or when the Tribe has fulfilled all of its obligations to COT under this Agreement, whichever occurs later.
- B. Upon the demand of either party, any dispute that cannot be resolved by discussion or mediation shall be resolved by binding arbitration following the procedure spelled out in this section. Arbitration proceedings shall be administered by the American Arbitration Association ("AAA") or such other

administrator as the parties shall mutually agree upon in accordance with the AAA Commercial Arbitration Rules. All disputes submitted to arbitration shall be resolved in accordance with the Federal Arbitration Act (Title 9 of the United States Code). The arbitration shall be conducted at a location in Tacoma. If there is any inconsistency between the terms of this Agreement and any such rules, the terms and procedures set forth herein shall control. All statutes of limitation applicable to any dispute shall apply to any arbitration proceeding. All discovery activities shall be expressly limited to the dispute being arbitrated.

XXVI. INSURANCE

A. General Requirements

During the term of the Agreement, the COT shall maintain in full force and at its own expense each insurance coverage or policy noted below, from insurance companies that are authorized to transact insurance and issue coverage in the State of Washington and are acceptable to the Tribe, or alternatively shall maintain functionally equivalent coverage through the COT's program of self-insurance/self-retention with excess coverage. The COT shall pay for all applicable deductibles.

B. Commercial General Liability

The COT shall obtain, at its expense, and keep in effect during the term of this Agreement, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that is satisfactory to the Tribe. This insurance shall include personal injury liability, products and completed operations, and contractual liability coverage for the indemnity provided under this Agreement, and is made on an occurrence basis. Combined single limit per occurrence shall not be less than \$1,000,000. Each annual aggregate limit shall not be less than \$1,000,000.

C. Bonding

The COT shall obtain either on its own or through its contractor for the Project, at its (or its contractor's) expense, and keep in effect during the term of this Agreement, a Performance & Payment Bond with Guaranty. COT is undertaking the work primarily in areas under the ownership or control of the Tribe as right of way or construction easement. As a result of the foregoing, the work guaranteed by this bond is guaranteed both as to the COT and to the Tribe and this Bond may be drawn upon in the event of non-performance by the Contractor.

D. Automobile Liability Insurance: Automobile Liability

The COT shall obtain, at its expense, and keep in effect during the term of this Agreement, Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial

General Liability Insurance. Combined single limit per occurrence shall not be less than \$1,000,000.

E. Additional Insured – Waiver of Reliance on Sovereign Immunity Defenses

(1) The liability insurance coverage required for performance of the Agreement shall include the Tribe as Additional Insured with respect to the COT's activities to be performed under this Agreement. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

(2) The insurer may not invoke immunity up to the limits of the policy in any proceeding authorized by this Agreement.

(3) The COT's insurance policies required by this Agreement must have an endorsement providing that neither the insurer nor the COT may invoke immunity up to the limits of the policy in any proceeding authorized by this Agreement.

F. Certificate(s) of Insurance

Within ten (10) days of execution of this Agreement the COT shall furnish evidence of the insurance coverage required by this Agreement.

XXVII. GOVERNING LAW

The Parties agree that this Agreement and all questions concerning the performance of this Agreement shall be interpreted, construed and enforced in all respects in accordance with contract law of the State of Washington, without reference to rules relating to the choice of law, and any federal law applicable to that interpretation. Further the parties recognize and agree that they will follow all applicable federal, state and Tribal laws in the conduct of their activities under this Agreement.

XXVIII. TERM

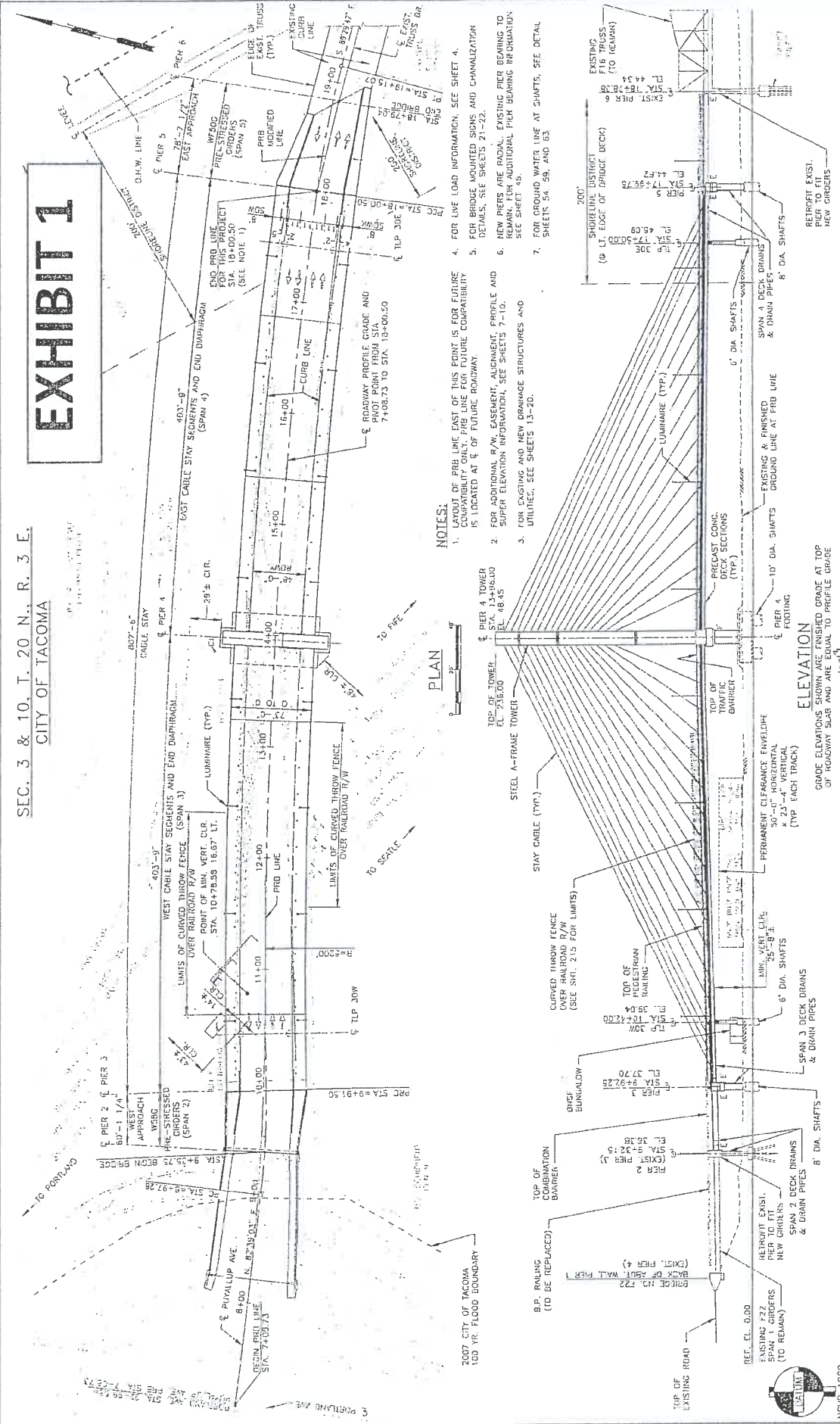
The term of this Agreement shall begin at the date of final execution by the Parties and shall continue until completion of the Project, unless otherwise noted herein.

IN WITNESS WHEREOF, the Parties hereto agree to the terms and conditions of this Agreement as of the day and year last written below.

<p>PUYALLUP TRIBE OF INDIANS</p> <p>Date: <u>2/23/16</u></p> <p>By: <u>Bue Steud</u></p> <p>Chairman, Puyallup Tribe of Indians</p> <p>APPROVED AS TO FORM</p> <p>By: <u>John Howard Bell</u></p> <p>John Howard Bell, Attorney</p> <p>Date: <u>2/23/16</u></p> <p>By: _____</p>	<p>CITY OF TACOMA</p> <p>Date: <u>3/15/16</u></p> <p>By: <u>T.C. Broadnax</u></p> <p>T.C. Broadnax, City Manager</p> <p><u>Kurtis D. Kingsolver</u></p> <p>Kurtis D. Kingsolver, P.E., Director, Public Works</p> <p><u>Andy Cherullo</u></p> <p>Andy Cherullo, Finance Director</p> <p><u>Barbara Grogan</u></p> <p>Barbara Grogan, Risk Management</p> <p>APPROVED AS TO FORM</p> <p>By: <u>Deputy City Attorney</u></p> <p>Deputy City Attorney</p> <p><u>Doris Sorum 3-21-2016</u></p> <p>Doris Sorum, City Clerk</p>
---	--

EXHIBIT 1

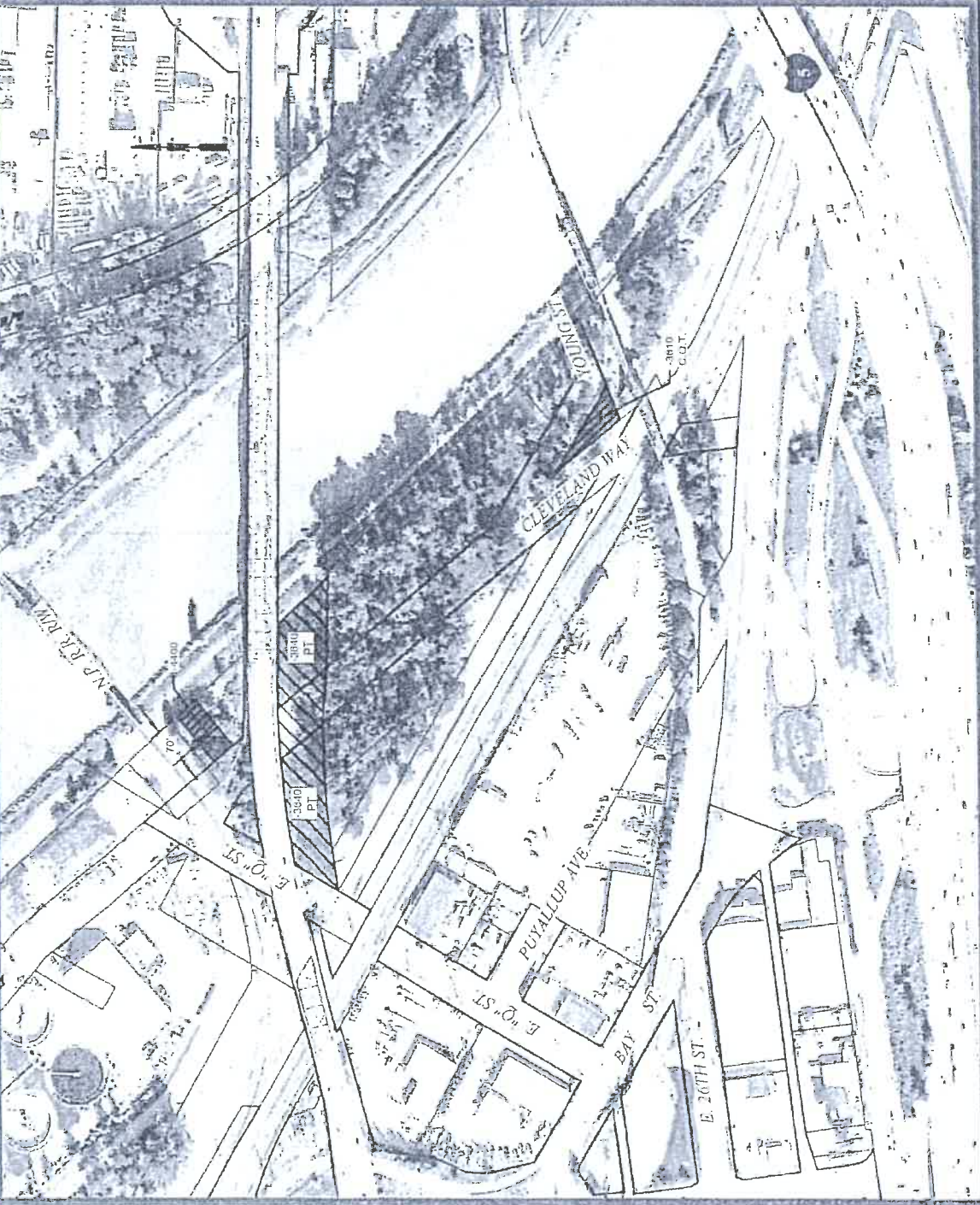
SEC. 3 & 10, T. 20 N., R. 3 E.
CITY OF TACOMA



		CITY OF TACOMA DEPARTMENT OF PUBLIC WORKS PUYALLUP RIVER BRIDGE F-16A AND F-16B REPLACEMENT GENERAL PLAN AND ELEVATION	
BRIDGE NO. BR-1	SHEET NO. PWK-00274	DRAWING NUMBER BR-16A AND F-16B REPLACEMENT	DATE 11/17/13
DESIGNER DAVID EVANS AND ASSOCIATES INC.	CHECKED BY [Signature]	DATE 11/17/13	SCALE AS SHOWN
PROJECT NO. 1115 West Bay Drive N.W., Suite 301 Olympia Washington 98502	REGION OLYMPIC	STATE WASH	COUNTY BRU-0208 (012)

NOV 19 2013

EXHIBIT 2



CITY OF TACOMA AND
PUYALLUP TRIBE OF INDIANS
PUYALLUP AVENUE
BRIDGE PROJECT
MAP 1 OF 2

LEGEND:





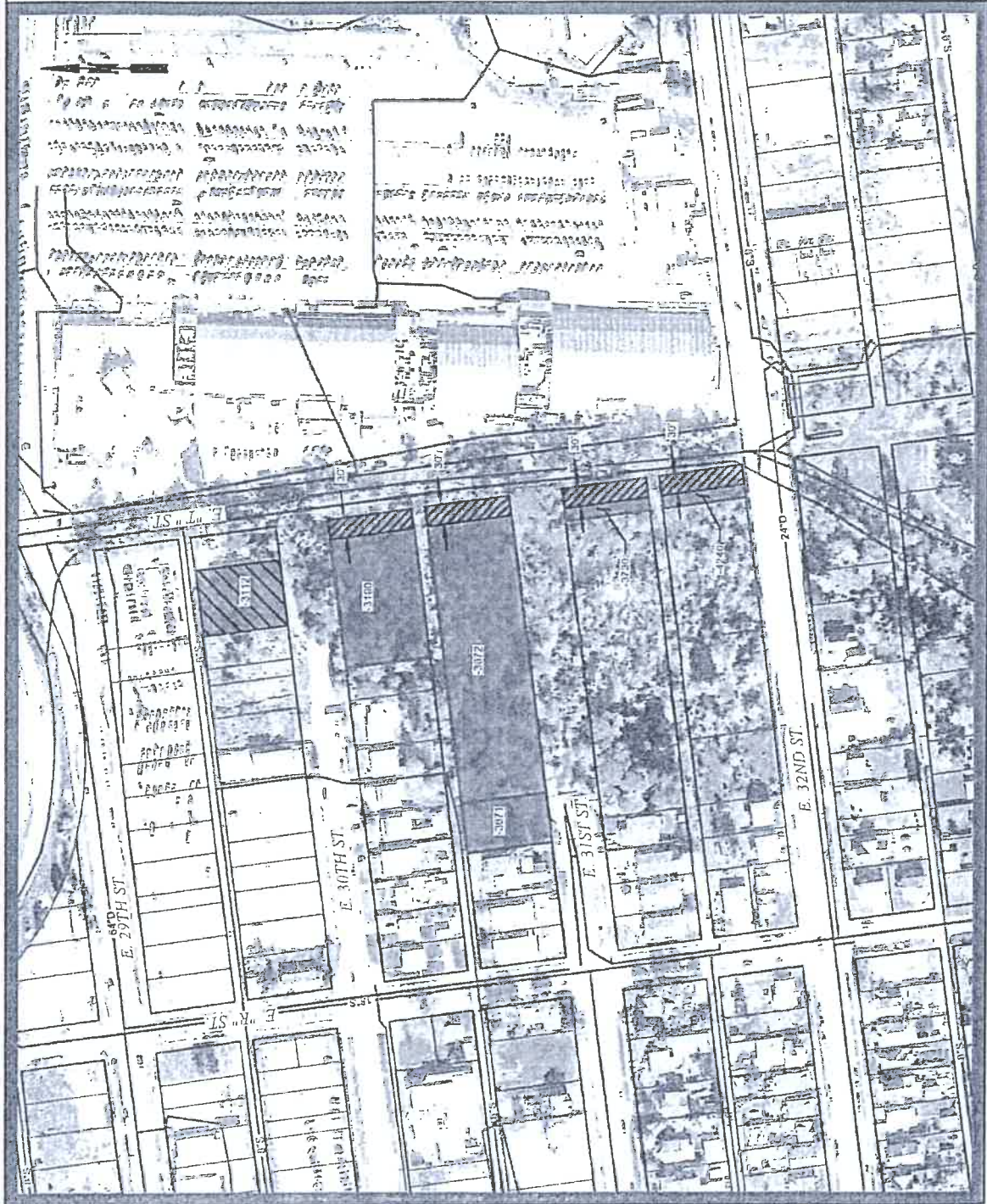





-  PARCEL -4400 (TRIBAL TRUST TRACT 115-T1003) AND PARCEL -3610 (TRIBAL TRUST TRACT 115-T1001) TO BE TRANSFERRED TO TRIBE. UTILITY EASEMENTS RETAINED.
-  PARCEL 'J' (-3640) QUIT CLAIM FROM CITY TO TRIBE.
-  UTILITY EASEMENT RETAINED.
-  UTILITY & STRUCTURE EASEMENT RETAINED

EXHIBIT 2



CITY OF TACOMA AND
PUYALLUP TRIBE OF INDIANS
PUYALLUP AVENUE
BRIDGE PROJECT
MAP 2 OF 2

LEGEND:

-  PROPERTY TO BE TRANSFERRED TO TRIBE, OPEN SPACE CONSERVATION DESIGNATION. REMAINS WITH PARCEL.
-  RIGHT OF WAY RETAINED FOR CASINO ACCESS
-  30' SEWER EASEMENT RETAINED.
-  EXISTING STORM SEWER.
-  EXISTING SANITARY SEWER.