



## RESOLUTION NO. U-10932

1  
2 A RESOLUTION related to the purchase of materials, supplies, equipment  
3 and 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



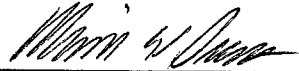
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WHEREAS the Director requests authorization, pursuant to TMC 1.06.269 A, to amend contract amounts up to \$200,000 and to approve term extensions and renewals for all items contained in Exhibit "A;" Now, therefore,

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:

  
\_\_\_\_\_  
Chief Deputy City Attorney

\_\_\_\_\_  
Chair  
\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Clerk

Adopted \_\_\_\_\_



3628 South 35<sup>th</sup> Street  
Tacoma, Washington 98409-3192

TACOMA PUBLIC UTILITIES

EXHIBIT "A"

RESOLUTION NO.: U-10932

ITEM NO.: #1

MEETING DATE: June 21, 2017

**DATE:** June 6, 2017  
**TO:** Board of Contracts and Awards  
**SUBJECT:** Taylor Substation- Civil Construction  
Request for Bids Specification No. PG17-0059F

**RECOMMENDATION:** Tacoma Power recommends a contract be awarded to low bidder **JH Kelly, Longview, Washington**, for the award of the Taylor Substation – Civil Construction for a total award amount of \$1,536,305.74, plus sales tax.

**EXPLANATION:** This contract will allow for the construction of the Taylor Substation in support of the new Puget Sound Energy Liquid Natural Gas facility in the Port of Tacoma.

**COMPETITIVE SOLICITATION:** Request for Bids Specification No. PG17-0059F was opened June 6, 2017. Twenty-four companies were invited to bid in addition to normal advertising of the project. Four (4) submittals were received. The Small Business Enterprise (SBE) participation level proposed by the bidder(s) are reflected as a credit (maximum applies) against the submitted base bid to arrive at an "evaluated bid" for ranking purposes. JH Kelly submitted a bid that resulted in the lowest evaluated submittal after consideration of SBE participation goals. The table below reflects the total bid submittal amount.

<u>Respondent</u>	<u>Location</u> <i>(city and state)</i>	<u>Submittal Amount</u> Plus sales tax	<u>Evaluated</u> <u>Submittal</u>
JH Kelly, LLC	Longview, WA	<b>\$1,536,305.74</b>	<b>\$1,459,490.45</b>
Potelco, Inc.	Sumner, WA	\$1,728,879.21	\$1,728,879.21
Rognlin's, Inc.	Aberdeen, WA	\$1,730,716.00	\$1,730,716.00
Sturgeon Electric Company, Inc.	Troutdale, OR	\$2,005,218.00	\$1,938,127.43
	Pre-bid Estimate	\$1,400,000.00	

The recommended award is 9.7 percent above the pre-bid estimate.

**CONTRACT HISTORY:** New contract.

**FUNDING:** The project is 100% funded by Puget Sound Energy with \$5,520,000 of the project total being pre-paid.

**SBE/LEAP COMPLIANCE:** The recommended contractor is in compliance with the Small Business Enterprise (SBE) requirements per memorandum dated April 5, 2017. The SBE goal for this project is 9 percent. The SBE participation level of the recommended contractor is 19 percent. JH Kelly, LLC. submitted the lowest evaluated bid per the SBE requirements. The Local Employment and Apprenticeship Training Program (LEAP) goal of 480 hours is applicable to this project.

**PROJECT ENGINEER/COORDINATOR:** Ryan McLaughlin, Generation/Plant Engineering, 253-502-8814.

Chris Robinson, Power Superintendent/COO

APPROVED:

William A. Gaines, Director of Utilities/CEO

Cc: Kimberly Ward, Finance/Purchasing  
SBE/LEAP Coordinators  
Generation/Contract Services



3628 South 35<sup>th</sup> Street  
Tacoma, Washington 98409-3192

TACOMA PUBLIC UTILITIES

EXHIBIT "A"

RESOLUTION NO.: U-10932

ITEM NO.: #2

MEETING DATE: June 21, 2017

**DATE:** June 6, 2017  
**TO:** Board of Contracts and Awards  
**SUBJECT:** Facilities General Construction & ABN Ground Floor Auditorium Remodel  
Request for Bids Specification No. PG17-0072F

**RECOMMENDATION:** Tacoma Power recommends a contract be awarded to low bidder **Pease Construction, Lakewood, Washington**, for the award of the Facilities General Construction & ABN Ground Floor Auditorium Remodel for a total award amount of \$2,399,865.00, plus sales tax.

**EXPLANATION:** This contract will allow for general facilities construction and maintenance for Tacoma Power facilities on an on-call basis. The work will include general repairs, renovations, and minor new construction contracts. In addition to the on-call work the contractor will also be responsible for the auditorium remodel project.

**COMPETITIVE SOLICITATION:** Request for Bids Specification No. PG17-0072F was opened June 6, 2017. Forty (40) companies were invited to bid in addition to normal advertising of the project. Four (4) submittals were received. Pease Construction submitted a bid that resulted in the lowest bid. The table below reflects the amount of the total bid submittal amount.

<u>Respondent</u>	<u>Location</u> <i>(city and state)</i>	<u>Submittal Amount</u> Plus sales tax
Pease Construction	Lakewood, WA	\$ 2,399,865.00
RHD Enterprises	Lacey, WA	\$ 2,556,939.80
MJ Takisaki Inc.	Seattle, WA	\$ 2,638,782.00
Bolt Belt Operations	Tacoma, WA	\$ 2,758,348.00
	Pre-bid Estimate	\$ 2,200,000.00

The recommended award is 9 percent above the pre-bid estimate.

**CONTRACT HISTORY:** New contract.

**FUNDING:** Funds for this are available in the 2017/2018 budget. Funding beyond the current biennium is subject to future availability of funds.

**SBE/LEAP COMPLIANCE:** The recommended contractor is in compliance with the Small Business Enterprise (SBE) requirements per memorandum dated March 6, 2017. The SBE goal for this project is 0 percent. The Local Employment and Apprenticeship Training Program (LEAP) goal of 0 hours is applicable to this project.

**PROJECT ENGINEER/COORDINATOR:** Ryan McLaughlin, Generation/Plant Engineering, 253-502-8814.

Chris Robinson, Power Superintendent/COO

APPROVED:

William A. Gaines, Director of Utilities/CEO

Cc: Kimberly Ward, Finance/Purchasing  
SBE/LEAP Coordinators  
Generation/Contract Services



3628 South 35<sup>th</sup> Street  
Tacoma, Washington 98409-3192

TACOMA PUBLIC UTILITIES

EXHIBIT "A"

RESOLUTION NO.: U-10932

ITEM NO.: #3

MEETING DATE: JUNE 21, 2017

**DATE:** June 5, 2017

**TO:** Board of Contracts and Awards

**SUBJECT:** Direct Negotiation of Professional Services  
Annual Fish and Habitat Surveys by Olympic National Park  
Budgeted from Cushman Fish Habitat and Population Monitoring Funds

**RECOMMENDATION:** Natural Resources recommends a contract be awarded to **National Park Service/Olympic National Park, Port Angeles, WA**, for annual fish and habitat monitoring of the upper North Fork Skokomish River with the Olympic National Park. The direct negotiation has been requested for 15 years, until September 30, 2031, the duration of the monitoring requirement in the Cushman hydro project license, and be used to enter into five-year term contract agreement in the amount of \$190,000 and no more than \$676, 400 over 15 years, sales tax not applicable.

**EXPLANATION:** Chapter 3.3 of the Cushman FERC License Article 413 directs Tacoma to monitor the fish distribution and habitat utilization in the upper North Fork Skokomish River within the Olympic National Park. Tacoma contracted with the National Park Service in 2012 to implement this work. This new contract with the National Park Service will fund the continuation of annual fish community and spawner surveys in over 3.7 miles of the river and tributaries and river habitat surveys once every 5 years.

**COMPETITIVE ANALYSIS:** The National Park Service is the federal fish manager and land owner within the Olympic National Park and therefore controls access and scientific data collection permits. The National Park Service collects environmental studies annually as part of its responsibilities as a resource manager and has enhanced its studies to meet Tacoma's requirements. The National Park Service will not allow Tacoma Power, nor contractors to conduct the enhanced studies to ensure their long-term study remains intact. Tacoma Power's monitoring requirement is in place for 12 years after salmon reintroduction has occurred. Since the first adult salmon will likely be moved upstream of the dams within the next three years, this is a request to allow for a 15 year authorization.

**CONTRACT HISTORY:** The National Park Service / Olympic National Park has been under contract with Tacoma Public Utilities for two decades. In 1997 PUB Resolution U-9289 allowed for a land exchange with the National Park Service to acquire land needed for management of the Cushman reservoir. An annual contract for \$10,000 to \$15,000 (adjusted annually) has been in place between Tacoma Power and the National Park Service since then, to provide continued land management services (security, public access, restroom facilities etc.) on this land which is within the Olympic National Park boundary.

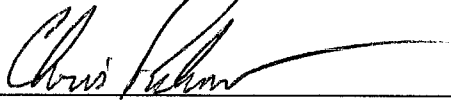
Since October 1, 2012 Tacoma Power has contracted with the National Park Service to implement part of the Article 413 requirements of the new Cushman license. The two year contract for up to \$100,000 was extended for another two years in 2014 for an additional \$100,000. This is a new contract with a slightly reduced scope of work which totals \$190,000 for 5 years.

Board of Contracts and Awards  
June 5, 2017  
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**FUNDING:** Funds for this contract are available in the Cushman Fish Habitat and Population Monitoring budget. Funding beyond the current biennium is subject to future availability of funds.

**SBE COMPLIANCE:** SBE staff were not contacted. There are no SBE qualified vendors at this time.

**PROJECT COORDINATOR:** Florian Leischner, Generation/Tacoma Power ext 8298.



Chris Robinson, Power Superintendent/COO

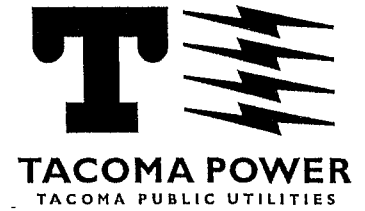
**AUTHORIZED:**



William A. Gaines, Director of Utilities/CEO

FL:rlm

cc: Patsy Best, Financial Manager, Finance/Purchasing  
Kimberly Ward, Senior Buyer, Purchasing  
SBE Coordinator



**DATE:** June 5, 2017

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

**FROM:** Chris Robinson, Tacoma Power Superintendent/COO

**Subject:** Authorization of Direct Negotiation for Professional Services and Personal Services Over \$25,000, Excluding Architectural and Engineering Services Annual Fish and Habitat Surveys by Olympic National Park

For your review and recommendation.

In accordance with TMC 1.06.256 (B), Generation / Power requests a waiver of the competitive solicitation process and authorization to directly negotiate with **National Park Service / Olympic National Park, Port Angeles WA**, for annual fish and habitat monitoring of the upper North Fork Skokomish River with the the Olympic National Park, in the amount of \$190,000 over five years and no more than \$676,400 over 15 years , plus applicable sales tax.

Direct negotiation approval constitutes a waiver of further competitive solicitation for amendments to the subject contract provided that any such amendment(s) shall be signed by personnel as authorized in the Delegation of Procurement Signature and Approval Authority memorandum. Contract totals shall not exceed \$200,000 without City Council or Public Utility Board approval as appropriate.

**EXPLANATION:** Chapter 3.3 of the Cushman FERC License Article 413 directs Tacoma to monitor the fish distribution and habitat utilization in the upper North Fork Skokomish River within the Olympic National Park. Tacoma contracted with the Park Service in 2012 to implement this work for Tacoma. This new contract with the Park Service will fund the continuation of annual fish community and spawner surveys in over 3.7 miles of the river and tributaries and river habitat surveys once every 5 years. The direct negotiation is being requested for 15 years, until September 30, 2031, the duration of the monitoring requirement in the Cushman hydro project licence, and be used to enter into five-year term contract agreements.

**JUSTIFICATION FOR DIRECT NEGOTIATION:**

1. Explain why it's in the best interest of the city to waive the competitive solicitation process.

The National Park Service is a federal fish manager and land owner within the Olympic National Park and therefore controls access and scientific data collection permits. The Park Service collects environmental studies annually as part of its responsibilities as a resource manager and has enhance its studies to meet Tacoma's requirements. The Park Service will not allow Tacoma Power, nor Contractors to conduct the enhanced studies to ensure their long-term study remains in tact. Tacoma Power's monitoring requirement is in place for 12 years after salmon reintroduction has occurred. Since the first adult salmon will likely be moved upstream of the dams within the next three years, this is a request to allow for a 15 year authorization.

2. Is this purchase based on a previous competitive solicitation conducted by the City or other agency? If yes, provide the contract information, specification number, etc., and explain the relationship of this request to the previous contract.

No.

3. Describe the screening efforts made to identify potential service providers.

None.

4. Describe the efforts made to assure that the City is receiving the lowest or best price possible.

Olympic National Park is benefitting from this work by obtaining the fish and habitat data for their own purpose. Over the first five years, the Park plans on contributing about \$104,200 in staff time, vehicle use and supplies towards this project. The City is therefore experiencing major savings by receiving 35% of project cost in match from the Park Service.

**FUNDING:** Funds for this purchase are available in the Cushman Fish Habitat and Population Monitoring budget.

**SBE COMPLIANCE:** The Department/Division did not check the City of Tacoma Small Business Enterprise (SBE) website for opportunities to contract with SBE firms.

**PROJECT COORDINATOR:** Florian Leischner, Generation/Tacoma Power ext 8298.



Chris Robinson, Power Superintendent/COO

6-7-17

Date

**AUTHORIZED:**



William A. Gaines, Director of Utilities/CEO

6/8/17

Date

C: Kimberly Ward, Senior Buyer, Finance/Purchasing



Intergovernmental Cooperation Agreement  
Between the  
City of Tacoma  
Department of Public Utilities, Light Division  
And the  
National Park Service, Olympic National Park

This agreement is entered into by and between the United States Department of the Interior, National Park Service (hereinafter "NPS"), acting through the Superintendent, Olympic National Park, and the City of Tacoma Department of Public Utilities, Light Division, doing business as Tacoma Power, for the purpose of implementing selected requirements of License Article 413 (Fish Habitat and Monitoring Plan) of the Federal Energy Regulatory Commission (FERC) license for the Cushman Hydroelectric Project No. 460.

## ARTICLE 1 – BACKGROUND AND OBJECTIVES

The Act of August 25, 1916, as amended, 16 U.S.C § 1a-2g, 2-4 (1982); declares that the NPS shall promote and regulate the use of various federal areas known as the national park system by such means and measures as conform to the fundamental purpose of the national park system, which purpose is to conserve the scenery and natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.

The act establishing Olympic National Park, June 29, 1938, (52 Stat. 1241) directs the Secretary of the Interior to administer the park in accordance with the Act of August 25, 1916 (39 Stat 535; 16 U.S.C. Sec 254), as amended and supplemented.

Tacoma Power is authorized to produce power with consideration for flood protection, fish and wildlife resources, and recreation designed to benefit all people of the State and also to serve for the use, conservation, and management of park and recreation areas in accordance with all articles of the FERC license for the Cushman Hydroelectric Project No. 460, including Article 413 (Fish Habitat and Monitoring Plan). The National Park Service has technical expertise specific to the fisheries resources of this area, it is to the advantage of both parties that the work required by the FERC License, within the boundaries of Olympic National Park, be performed by the NPS with funding provided by Tacoma Power.

The NPS and Tacoma Power recognize the opportunity for improved public service in managing the Lands and natural resources within Olympic National Park with concerns for natural resource, cultural, visitor protection, safety, and wildlife and fisheries programs, and enter into this Reimbursable Agreement.

## ARTICLE II – AUTHORITY

The NPS authority for this Agreement is the Intergovernmental Cooperation Act, 31 U.S.C. § 6505, which authorizes Executive Branch agencies to enter into reimbursable agreements with State or local governments that encourage intergovernmental cooperation in the conduct of specialized or technical services and provisions of facilities essential to the administration of State or local governmental activities, so long as the local government makes a written request for said services in accordance with OMB Circular A-97.

## ARTICLE III – STATEMENT OF WORK

### 1) The NPS Agrees to:

- a) Implement specific monitoring activities within Olympic National Park as described in Article 413 of the FERC license for the Cushman Hydroelectric Project No. 460 “License”), which License is fully incorporated herein by reference as if attached, including:
  - i) Conduct annual bull trout spawner surveys, consisting of both redd counts and live counts, in the upper North Fork Skokomish River from October 1 through December 15 during each year this Agreement is in effect. Surveys will be conducted every 7 to 10 days, dependent upon flow (<300 cfs measured at the USGS gage 12056500 for main stem surveys and 600 cfs for tributary surveys). Surveys will be conducted in the mainstem channel from Four Stream to the USFS causeway, as well as Elk Creek and Slate Creek. Individual redds will be marked utilizing biodegradable flagging, including redd #, date of observation, approximate redd location, observer initials, and agency name. Individual redds will also be located with GPS. Data will be maintained in hard copy form and electronically in an Excel or similar spreadsheet format;
  - ii) Conduct annual snorkel surveys to monitor trends in fish assemblages, migratory timing, and relative abundance from June 1 to September 30 and January 1 to February 28 during each year this Agreement is in effect. Snorkel surveys shall be conducted once every 7 to 10 days utilizing the protocols described in Brenkman and Connolly (2008) dependent upon flow (<300cfs measured at the USGS gage 12056500). Data will be maintained in a hard copy form and also in the park’s relational database which is implemented in Microsoft © Access. ;
  - iii) Conduct a single habitat survey during the summer of 2020 in the upper North Fork Skokomish River from the Four Stream confluence to the inlet during summer low-flow conditions. The purpose of the habitat assessments in the upper NF Skokomish watershed is to identify quality and quantity of habitat available to existing and reintroduced salmonids above Cushman Dam #1.

### Locations

Approximately 3.1 miles (5000m) of the North Fork Skokomish River and 0.3 miles (500m) of accessible tributary habitat will be surveyed.

- Segment 9 (Station 1): NF Skokomish River from Four Stream confluence (RM 31.3) to upper end of Staircase rapids (RM 30.5).
- Segment 8 (Station 2): NF Skokomish River upper end of Staircase rapids to Red Reef (RM 30).
- Segment 7 (Station 3, 4 and 5): NF Skokomish River RM 30 (Red Reef) to the upper extent of Lake Cushman (approximately 1.8 miles), using all three (3) sub-reaches as identified in snorkel surveys. The downstream extent of Segment 7 will be jointly determined in the field by NPS and Tacoma staff.
- Significant and accessible tributaries (Elk Creek, Four Stream, Slate Creek etc.) Annual total minimum of 500m of tributary habitat assessment.

### Timing

All mainstem NF Skokomish River habitat surveys should be conducted during low flow periods in mid-summer to early fall defined by the onset of fall rains. The habitat surveys of the mainstem will take up to 6 weeks depending upon how much of Staircase rapids can be assessed. Surveys of the tributaries can be accomplished during a longer timeframe using after spring run-off until the end of October. The tributary surveys will take about 2-3 weeks depending how many streams will be surveyed.

### Methods

Timber Fish and Wildlife (TFW) methods as developed by the Northwest Indian Fisheries Commission (NWIFC.org) and WA State Department of Natural Resources should be utilized unless otherwise noted below under Olympic National Park Protocol. All measurements should be recorded in metric units. In addition to the specific monitoring protocols as listed below, gradient measurements should be taken throughout the reaches.

The full suite of TFW monitoring protocols should be used for segments 7 and 9, unconfined valley bottom reaches, with these modifications and options:

- Reference Point (RP) survey- complete survey; except bankfull depth measurements not necessary if it cannot be obtained safely. No triangulation points needed at RP's, but GPS points should be taken at each RP taken in addition in mid-channel
- LWD survey- conduct Level 1 and Jam surveys only; tally of LWD in Zone 3 not needed.
  - a) Qualifying LWD pieces need to be dead and 10cm of the piece within bankfull channel (Zone 2) or wetted channel (Zone 1).
  - b) Differentiate between rootwads, small (10-20cm dia), medium (20-50cm

dia) and large pieces (50cm+) of LWD at least 2m long and 10cm in diameter along the entire 2 meters.

c) Single pieces will be recorded separately by RP; pieces in conglomerates of more than 10 pieces will be recorded as LWD jams. Large jams may be measured by area instead of piece count.

- Habitat unit survey: Follow Olympic National Park protocol for determining substrate composition.

Follow TFW protocol to determine:

- a) maximum pool depth
- b) pool outlet depth
- c) pool forming factor
- d) association with Reference Point (RP)
- e) to split or lump habitat unit at RP break
- f) habitat types
- g) channel types, i.e. main, secondary, side-channel
- h) water surface area

Segment 8 is a steep confined river reach which includes the Staircase Rapids. The RP survey should be completed in the same fashion as in Segment 7 and 9. All the other surveys should be completed if it can be accomplished safely in this steep segment.

#### Data management

Olympic National Park staff will enter all data into approved excel spreadsheets provided by Tacoma Power, ensure data integrity and provide hard copies and electronic data to Tacoma Power.

A QA/QC protocol for data collection and management will be developed in conjunction with and approved by Tacoma Power prior to the start of field data collection.

#### Qualifications

A crew of 2-3 members is needed for several weeks to complete the work. The crew lead should have at least a bachelor's degree and the crew member(s) have a minimum of 1 year of field experience in conducting scientific studies. A 1 or 2 day training will be provided in June by Tacoma Power staff if needed.

#### Deliverables

The results of the habitat assessment will be presented in a stand-alone draft report to Tacoma Power by March 1<sup>st</sup>, 2021. A final report to be incorporated into the FERC license article 413 annual report will be due April 15<sup>th</sup>, 2021.

- b) Jointly develop, with Tacoma Power, an annual written report as outlined in Article VII below.
- c) Acknowledge Tacoma Power's involvement and cooperation in the above activities during any public contacts or presentations.

2) Tacoma Power Agrees to:

- a) Jointly develop, with the NPS, agreed to protocols for implementing monitoring activities identified above.
- b) Provide the NPS with electronic data forms and for recording field observations collected utilizing TFW protocols.
- c) Provide a 1-2 day training session for NPS staff for collection of field data utilizing the TFW protocols, if needed.
- d) Jointly develop, with the NPS, an annual written report for fish and habitat monitoring as outlined in Article VII below.
- e) Make payment to the NPS the amount agreed herein.
- f) Acknowledge Olympic National Park's involvement and cooperation in the above activities during any public contacts or presentations.

3) Both Parties Agree to:

- a) Work cooperatively with the Skokomish Tribe, Washington Department of Fish and Wildlife, US Fish and Wildlife Service, NOAA Fisheries, and the Bureau of Indian Affairs to implement the requirements of License Article 413.
- b) Meet biannually or more frequently to share information and discuss progress towards achieving items listed above.

ARTICLE IV – TERM OF AGREEMENT

This Agreement is effective from October 1, 2016 and remains in full force and effect through September 30, 2021.

ARTICLE V – KEY OFFICIALS

A. Key officials are essential to ensure maximum coordination and communications between the parties and the work performed. They are:

1. For the NPS/Olympic National Park:

Sarah Creachbaum  
Superintendent  
Olympic National Park  
600 E. Park Avenue  
Port Angeles, Washington 98362  
303-565-3003  
[Sarah\\_Creachbaum@nps.gov](mailto:Sarah_Creachbaum@nps.gov)

Patrick Crain  
Fisheries Biologist  
Olympic National Park  
600 E. Park Avenue  
Port Angeles, Washington 98362  
303-565-3075  
[patrick\\_crain@nps.gov](mailto:patrick_crain@nps.gov)

Sam Brenkman  
Fisheries Biologist  
Olympic National Park  
600 E. Park Avenue  
Port Angeles, Washington 98362  
303-565-3081  
[sam\\_brenkman@nps.gov](mailto:sam_brenkman@nps.gov)

2. For Tacoma Power:

Keith Underwood  
Natural Resources Manager  
Tacoma Power  
3628 S. 35<sup>th</sup> St.  
Tacoma, WA 98409  
253-502-8196  
KUnderwood@ci.tacoma.wa.us

Florian Leischner  
Fish Biologist  
Tacoma Power  
3628 S. 35<sup>th</sup> St.  
Tacoma, WA 98409  
253-502-8298  
Fleischner@ci.tacoma.wa.us

B. Coordination – The Fisheries Biologists, will be the principle NPS coordinators for this Agreement. Keith Underwood, the Natural Resource Manager will be the principle Tacoma Power coordinator for this Agreement.

C. Communications – Tacoma Power shall address any communications regarding this Agreement to the Fisheries Biologists with a copy to the Superintendent. The NPS shall address any communication regarding this Agreement to the Natural Resource Manager, with a copy to all key officials. Communications that relate solely to routine operational matters need not be copied to all key officials.

D. Changes in Key Officials – Neither the NPS nor Tacoma Power may not make any permanent change in a key official without written notice to the other party reasonably in advance of the proposed change. The notice will include a justification with sufficient detail to permit evaluation of the impact of such a change on the scope of work specified within this agreement. Any permanent change in key officials will be made only by modification to this Agreement.

## ARTICLE VI – FUNDING

- 1) Following the signing by both parties to this agreement, NPS shall submit an invoice to Tacoma Power no more frequently than quarterly for work completed at the time of the invoice. Invoices shall not exceed \$50,000 in any one year and \$190,000 for the full 5 years, the amount agreed upon to cover all activities identified in Article III above. Tacoma Power will process the invoice for payment within 30 days of receiving the invoice

- 2) Amendments to funding levels may be made per Article VIII below.
- 3) Availability of Funds

Accomplishment of all items discussed in this Agreement are contingent upon the availability of funds, space and personnel; nothing in this Agreement shall be construed as obligating Tacoma Power or the NPS to the expenditure of funds in excess of appropriations authorized by law.

#### ARTICLE VII – REPORTS AND DELIVERABLES

The data and findings will be incorporated into the License Article 413 annual report. The report for the upper North Fork Skokomish River will be co-authored by NPS and Tacoma Power fisheries biologists. The report will be filed with the Federal Energy Regulatory Commission by June 30 of each year and will include the previous year's data. The draft annual report will be provided to the Fisheries and Habitat Committee, as established by the FERC License for the Cushman Hydroelectric Project No. 460, on April 15th for a 30-day review and comment period. Additionally, the data will be entered into the NPS/Olympic National Park fisheries relational database.

#### ARTICLE VIII – MODIFICATIONS AND TERMINATION

- 1) This Agreement may be modified only by a written instrument executed by the parties.
- 2) Either party may terminate its participation in this Agreement by providing sixty (60) days written notice to the other party.
- 3) In the event that this Agreement is terminated prior to the completion of the work agreed to annually, then the NPS shall refund to Tacoma Power any unexpended funds, except that:
  - a. If the Agreement is terminated by the NPS, then the NPS shall also be responsible for providing to Tacoma Power all data and a report of all activities completed at the time termination, or;
  - b. If the Agreement is terminated by Tacoma Power, then the NPS shall retain a portion of unexpended funding necessary to cover any staff benefit expenses incurred due to the termination of the agreement (e.g. term employee benefits which must be paid when a term employee is placed in furlough status).



## ARTICLE IX – SPECIAL PROVISIONS

- 1) Nothing herein contained shall be construed as limiting or affecting in any way the authority of Tacoma Power, the NPS, or any other agency.
- 2) Nothing herein is intended to preclude communication by Tacoma Power with other administrative levels of the NPS or by the NPS with neighboring agencies.

## ARTICLE X – STANDARD CLAUSES

### 1) Civil Rights

During the performance of this Agreement, the participants agree to abide by the terms of the U.S. Department of the Interior – Civil Rights Assurance Certification, non-discrimination and will not discriminate against any person because of race, color, religion, sex, or national origin. The participants will take affirmative action to ensure that applicants are employed without regard to their race, color, sexual orientation, national origin, disabilities, religion, age, or sex.

### 2) Promotions and Public Information Release

Tacoma Power will not publicize, or otherwise circulate, promotional material (such as advertisements, sales brochures, press releases, speeches, still and motion pictures, articles manuscripts, or other publications) which states or implies Governmental, Departmental, bureau, or Government employee endorsement of a product, service, or position which Tacoma Power represents. No release of information relating to this Agreement may state or imply that the Government approves of Tacoma Power's work product or considers Tacoma Power's work product to be superior to other products or services.

- a. Tacoma Power will ensure that all information submitted for publication or other public releases of information regarding this project will carry the following disclaimer: "The views and conclusions contained in this document are those of the authors and should not be interpreted as representing the opinions or policies of the U.S. Government. Mention of trade names or commercial products does not constitute their endorsement by the U.S. Government."
- b. Tacoma Power will obtain prior NPS approval from the regional public affairs office for any public information release that refers to the Department of the Interior, any bureau or employee (by name or title), or to this Agreement. The specific text, layout, photographs, etc., of the proposed release must be submitted to the key official, who will forward such materials to the public affairs office, along with a request for approval.

- c. Tacoma Power agrees to include the above provisions of this Article in any sub-award to any sub-recipient, except for a sub-award to a state government, local government, or to a federally recognized Indian tribal government.
  - d. Neither party will unilaterally publish a joint publication without consulting the other party. This restriction does not apply to popular publication of previously published technical matter. Publications pursuant to this Agreement may be produced independently or in collaboration with others; however, in all cases proper credit will be given to the efforts of those parties contributing to the publication. In the event no agreement is reached concerning the manner of publication or interpretation of results, either party may publish data after due notice and submission of the proposed manuscripts to the other. In such circumstances, the party publishing the data will give due credit to the cooperation but assume full responsibility for any statements on which there was a difference of opinion.
- 3) The National Park Service agrees to cooperate, to the extent allowed by law, in the submission of claims pursuant to the Federal Tort Claims Act against the United States for personal injuries or property damage resulting from the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his employment, arising out of the agreement.
  - 4) 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 key official identified in this Agreement.
  - 5) 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 either party's right to terminate authorized by this Agreement.

ARTICLE XI – SIGNATURES

IN WITNESS HERETO, the parties hereto have executed this Agreement on the date(s) set forth below.

**FOR CITY OF TACOMA**

\_\_\_\_\_  
William A. Gaines, Date  
Director of Utilities/CEO

\_\_\_\_\_  
Chris Robinson, Date  
Power Superintendant

**FOR THE NATIONAL PARK SERVICE, OLYMPIC NATIONAL PARK**

\_\_\_\_\_  
Sarah Creachbaum, Superintendent Date  
NPS, Olympic National Park



3628 South 35th Street  
Tacoma, Washington 98409-3192

TACOMA PUBLIC UTILITIES

EXHIBIT "A"

RESOLUTION NO.: U-10932

ITEM NO.: #4

MEETING DATE: JUNE 21, 2017

**DATE:** May 5, 2017

**TO:** Board of Contracts and Awards

**SUBJECT:** Waiver of Competitive Solicitation Request – Sole Source  
Leased High Voltage Test Equipment  
Budgeted from Tacoma Power Operations & Maintenance Budget

**RECOMMENDATION:** Tacoma Power requests a waiver of competitive procurement procedures for the renewal and increase to SAP Contract 4600006305 with **Doble Engineering Company, Watertown, MA**, for lease of proprietary high voltage test equipment, in the amount of \$250,000, plus sales tax. This increase will bring the contract to a cumulative total of \$645,300, plus applicable sales tax.

**EXPLANATION:** This three-year agreement provides for leasing on an annual basis of high voltage test equipment used for Tacoma Power's substation and power plant facilities. This equipment is provided solely by Doble Engineering Co. (Doble).

**COMPETITIVE SOLICITATION:** Waiver of competitive bidding requested due to sole source. Doble is the sole manufacturer and lessor of the high voltage test equipment, consulting services, and database tools utilized by Tacoma Power for major substation assets.

**CONTRACT HISTORY:** This is a renewal of a Master Services Agreement that was approved as a sole source in December 2009 in the amount of \$195,300 (SAP Contract 4600006305). In June of 2014, the Public Utility Board approved Resolution No. U-10697 to extend this contract for a three-year term and increase the value by \$200,000 for a cumulative total of \$395,300. This increase will bring the contract to a cumulative total of \$645,300.

**FUNDING:** Funds for this are available in the Tacoma Power Operations & Maintenance Budget.

**SBE/LEAP COMPLIANCE:** Not applicable.

**PROJECT ENGINEER/COORDINATOR:** Mike Allen, Tacoma Power/T&D, 253-396-3126.

Chris Robinson  
Tacoma Power Superintendent/COO

William A. Gaines  
Director of Utilities/CEO

cc: Jessica Tonka, Senior Buyer, Finance/Purchasing



**Date:** June 1, 2017

**To:** Patsy Best, Procurement and Payables Division Manager

**From:** Power/Transmission & Distribution

**Subject:** Waiver of Competitive Solicitation Request – Sole Source Purchase  
Doble Engineering Company (Doble) Leased High Voltage Test Equipment

Please forward for Board of Contracts and Awards review and recommendation.

In accordance with Tacoma Municipal Code 1.06.257.A. (Sole Source), Tacoma Power/Transmission & Distribution requests a waiver of the competitive solicitation process for leased high-voltage test equipment for continued asset monitoring. This is a renewal of the Master Services Agreement that was approved as a sole source in December 2009 (SAP Contract 4600006305). The sole source vendor is **Doble Engineering Company, Watertown, MA**. This is an on-going contract, with a three-year estimate totaling \$250,000, plus sales tax.

**“Follow-on” Contracts:**

Is this sole source purchase based on a contract that was previously competitively bid by the City?  
Yes  No

If “yes”, provide brief history of the initial contract award, bid specification or RFP number, date, etc. Briefly explain relationship of this sole source purchase to previously competitively bid contract.

**Waiver Criteria:**

1. Is there more than one feasible supplier of the product or service in the marketplace?

Yes  No

Briefly explain.

Doble is the sole manufacturer and lessor of the high voltage test equipment, consulting services, and database tools utilized by Tacoma Power for major substation assets.

2. Please support your contention it would be futile to advertise and competitively bid for the product or service as it would result in only one bid:

- a. Describe the screening efforts you engaged in to identify potential suppliers. Include names of potential suppliers, contact person, phone numbers, or addresses.

Doble is the owner of proprietary database software and expert system analysis tools that interface with the entire array of high voltage diagnostic tools utilized by Tacoma Power. Tacoma Power's database of test results, dating back to 1956, are accessed exclusively via

Doble's proprietary software. Industry-wide test data collected by Doble from global clients is also accessible and used by Tacoma Power to aid in equipment analysis.

There is a competitor in the marketplace that sells equivalent test equipment for some, but not all, of the equipment currently leased from Doble. They do not provide a lease option for such equipment and do not have the capability of utilizing Tacoma Power's historical data. Expert analysis is available at an additional annual cost. This manufacturer is Megger Corporation, represented by Bill McMaster of D'Ewart Representatives, (253) 606-0677.

- b. Describe any technical or unique product/service attributes that prevent drafting specifications for a competitive bid to which more than one supplier could successfully respond.

Per Purchasing Policy Manual section XXI.B.2.a.b. and c. this purchase qualifies as a Sole Source. Tacoma Power requires a collection of test equipment that can interface with a common database that includes all historical test results. Those test results have been obtained using Doble equipment, and a Doble proprietary database, since 1956. The supplier of test equipment to Tacoma Power must be able to provide tools for testing insulation integrity, circuit breaker timing, capacitor condition, and transformer reactance and writing those results to an existing Doble database. Tacoma Power staff has found no other supplier that can meet all these performance requirements.

- c. Is the product available only through one vendor? Yes  No   
If "yes", such certification should be in writing from the manufacturer (not the vendor) and supported by results of the screening process or validated by the Purchasing Division.  
Written certification attached? Yes  No

A letter from the manufacturer, dated May 5, 2017 is attached to this sole source purchase memo declaring that the leased equipment that is the subject of this memo is available through Doble Engineering Company only.

- d. What efforts were made to assure the City is receiving the lowest or best price possible?

A letter from Doble dated May 5, 2017 is attached to this sole source purchase memo declaring that the City pays Doble's standard pricing and discount schedule available to all clients.

Written certification from manufacturer or vendor attached (optional)? Yes  No

- e. Is this a one-time purchase? Yes  No  Total amount: \_\_\_\_\_  
If "no," estimated total dollar amount over three-year period: \$250,000.00

Other supporting documentation attached? Yes  No

City Contact person: Mike Allen, PE Phone: 253-396-3126

Chris Robinson  
Department/Division Head (Please Print)



Department/Division Head Signature      Date

  
William A. Gaines, Director of Utilities/CEO

cc: Jessica Tonka, Senior Buyer, Finance/Purchasing

<b><u>Purchasing Use Only</u></b>	
Approved _____	Rejected _____
None (after the fact) _____	
Date _____	By _____



May 5, 2017

Mr. Mike Allen, PE  
The City of Tacoma  
3628 South 35th St.  
Tacoma, WA 98409-3192

## **RE: Doble Test Equipment and Services**

Dear Mike:

This letter is in response to your request to Maria McSherry, concerning the renewal of our Contract #4,065, under which we are providing Consulting Engineering Service including the use of one (1) Doble M7100 High-Voltage Asset Analyzer with DTA 7 Pro, one (1) Doble M4100 Insulation Analyzer, one (1) Doble Test Assistant (DTA) 6 Pro software license, one (1) M4300 Transport, one (1) TDR900 Circuit Breaker Analyzer, and two (2) TR3190 Digital Rotary/Linear Motion Transducer / Adapters, and one (1) CABLE, CAP BANK TEST OPTION, 65FT, M4140.

Doble's leased equipment is available through a single channel only and cannot be bid out to multiple suppliers.

The City of Tacoma receives Doble's standard pricing and discount schedule available to all of our Clients.

### ***Introduction and Unique Features of Doble Services and Equipment***

The Doble Engineering Company, founded in 1920, produced its first AC dielectric-loss and power-factor field test set in 1929, and held its first annual Client Conference in 1934.

Doble's Client Service Agreements are focused primarily on supporting the test programs of high-voltage power apparatus. At the core of the Doble-Client relationship is an orderly apparatus test program carried out by the client utilizing specialized instruments provided by Doble; tests are performed for acceptance, troubleshooting, preventive maintenance, and predictive maintenance.

Insulation testing is an "art" which is made effective when the results are prudently compared with an extensive database and correlated with apparatus operating experience. Central to this process is Doble's statistical test database, compiled over eighty years covering all major manufacturers and apparatus types, plus annual published reports relating to apparatus troubles and failures. This information, in both electronic and print forms, is proprietary and copyrighted material available only to Doble Clients.



Doble's Client Service provides maximum assurance that the optimum test techniques – most of which were developed by Doble – will be employed, and the results will be properly interpreted so that serious conditions are recognized as such and corrected, while avoiding taking unnecessary actions or actions which otherwise can be postponed or delayed. Thus, testing is merely one part of a broader picture that includes practical issues (e.g. “what to do, when, and how”) which arise whenever abnormal test results are obtained. Doble Service addresses these interrelated issues in all-encompassing and in-depth ways.

This service thereby includes two “deliverables,” instrumentation and back-up support. Back-up support is provided to clients in various forms such as personalized field training, direct consultations, minutes of Doble Conferences, maintenance and test guides, technical reports, and quarterly newsletters.

The effectiveness of the analysis of results is enhanced by a database containing not only test results on similar apparatus, but reports on actual operating experiences (i.e. troubles and failures). Doble has on file over 25,000,000 test results for hundreds of thousands of apparatus covering all makes, types and ratings of all conventional high-voltage power apparatus manufactured throughout the world.

The test data tabulations are arranged in orderly fashion (by equipment type, manufacturer, and rating) and published in the Doble Test-Data Reference Book, which is supplied to all subscribers. The Test-Data Reference Book is periodically updated, particularly since additional test results on relatively uncommon and new types of apparatus are constantly being accumulated by Doble.

There are three main advantages on the equipment portion of the current contract arrangement:

1. The equipment is covered by Doble Engineering Company's perpetual warranty. Thus, there is no concern about having to make repairs to the instruments or accessories, and there is no concern about having to recertify the calibration of the instrument periodically.
2. Replacement modules and components are shipped within 24 hours to correct malfunctions.
3. All instruments are exchanged on a three-year basis maximum. Replacement units are completely refurbished and recalibrated, with all the latest enhancements; this ensures that your test equipment will always be up-to-date.

Along with the services detailed above, the benefits of the Doble agreement include the ability to attend and participate in Annual International Conference of Doble® Clients and the twice-yearly meetings of the nine Doble Client Technical Committees, Access to the Doble Library, Client Portal, DTA Web, and the AskDoble Email Discussion Forum, five days of onsite training per year, and \$500 worth of oil samples per year.

Doble has been providing quality insulation test instruments, with related Consulting Engineering Service, since 1929, and this represents Doble's primary activity today. No company in the world has had as much experience and expertise in ac field testing of high-

voltage apparatus insulation. Power Factor testing remains as much an art as a science, and it is the analysis, including updates of our published data tabulation, not the recording of the data, that is the challenge. It is not the numbers, but what you do with the numbers. It is in this area that Doble offers expertise and service impossible to find elsewhere in the industry.

I hope that the above information clarifies the unique value that the Doble agreement provides to your organization. We look forward to hearing from you and to being of continued service to your organization. Please do not hesitate to contact us with any additional questions.

Very best regards,

Brian Wilkin  
Regional Sales Manager  
Doble Engineering Company



May 5, 2017

The City of Tacoma  
3628 South 35<sup>th</sup> Street  
Tacoma, WA 98409-3192

Ref. #: 4653

## DOBLE MASTER SERVICES AGREEMENT

Doble Engineering Company ("Doble"), a Massachusetts corporation with global headquarters located at 85 Walnut St., Watertown, MA 02472, hereby confirms the Doble Master Services Agreement ("Agreement") with The City of Tacoma, a Washington company with principal address at 3628 South 35<sup>th</sup> Street, Tacoma, Washington 98409-3192, ("you" or "your") as follows:

1. **Term.** The duration of this Agreement ("Agreement Period") shall extend from **June 1, 2017 until May 31, 2018** ("the Initial Term") and shall be extended thereafter for successive periods of one year with two (2) option years at Doble's then applicable rates ("Extended Terms") unless either party shall notify the other in writing at least sixty days prior to the end of the then current term of its intention to terminate this Agreement.
2. **Contract Price.** During the agreement period, Doble will furnish you for your use, EXW Watertown, Massachusetts ("Test Equipment") with pricing ("Contract Price") per Exhibit A attached hereto for reference.
3. **General Service.** In connection with your use of the described equipment, software, and/or services, together with any additional or substitute equipment, software, and/or services furnished you by Doble under this Agreement or any amendment thereof ("Test Equipment") as per Exhibit A, and in consideration for your agreement to pay the Contract Price, Doble, at your request, agrees to provide the following services and instructions (hereinafter called "General Service") during the Agreement Period:
  - A. Access to Doble Library and Knowledge Base of Conference Proceedings, tutorials, reference guides, maintenance and test procedures, manufacturer service advisories, test data reference book, and committee transactions.
  - B. Right to attend and participate in the twice-yearly meetings of the nine Doble Client Technical Committees.
  - C. Right to participate in the Annual International Conference of Doble Clients, and access of the proceedings thereof.
  - D. The services of an engineer, as mutually agreed and during normal business hours, to consult with and instruct you on insulation power-factor testing for a continuous period not exceeding five (5) eight-hour days plus travel time once each contract year
  - E. Oral reviews and reasonable written reviews of and reports on your test data; and the privilege of general consultation on your insulation problems.
  - F. Laboratory testing service on insulating fluid samples up to \$500 annually.
  - G. Right to participate in the Doble Maintenance Engineer E-Mail Discussion Forum, access via Internet to the Doble On-Line Center for technical support, FAQs on apparatus testing and Doble publications, access to Doble electronic test data base via Doble Engineer.
4. **Services, Generally.** The above listed Test Equipment and General Service, together with any additional or substitute Test Equipment and/or General Service furnished you by Doble under this Agreement or any amendment thereof, shall hereinafter be called the "Services". Any equipment included as part of the provision of Services shall still be referred to as Test Equipment alone when the intent is to speak of such apart from its existence under the Services generally.
5. **Substitution and Provision of Additional Test Equipment.** Doble agrees to furnish you at your request with such substitute or additional Services as may be available at Doble's then applicable rates. Any additional or substitute Test Equipment furnished you by Doble shall be held by you subject to all of the terms, provisions and conditions of this Agreement except as may be expressly agreed in writing between you and Doble at or prior to the time of delivery thereof. This Agreement and its terms are

1 of 5



based upon you retaining the Test Equipment for the Initial Term, and the Test Equipment shall not be returned during the term of this Agreement, except as expressly defined under Section 7, Warranty.

6. **Defense of Claims.** Subject to your compliance with the provisions of §24 hereof, Doble will defend you in any legal proceeding or against any claim brought or threatened against you for alleged infringement of patent rights occasioned by your use of the Services provided under this Agreement and will indemnify and save you harmless from and against all such claims or judgments resulting therefrom and/or settlement of such claims if Doble has assented to such settlement;
7. **Warranty.** Doble will repair, adjust or replace, as the circumstances may warrant, any impaired Test Equipment returned by you to Doble at Watertown, Massachusetts:
  - A. without charge for transportation, including handling costs (if any) or for Doble's actual cost of repair, adjustment or replacement if occasioned by inherent defect;
  - B. on payment by you of charges for transportation, including handling costs (if any), and without charge to you for Doble's actual cost of repair, adjustment or replacement, if occasioned by reasonable wear and tear; and
  - C. on payment by you of charges for transportation, including handling costs (if any) and for Doble's actual cost of repair, adjustment or replacement, if occasioned by any cause other than inherent defect or reasonable wear and tear.
8. **Payments.** You agree to pay Doble promptly and as the same shall become due:
  - A. the Contract Price specified in the Exhibit A;
  - B. additional charges at Doble's then current monthly rates with respect to any Services retained by you after the expiration of the Agreement Period;
  - C. the actual living and traveling expenses incurred by Doble engineers sent to you in accord with your §3(d) request;
  - D. the actual cost of repair, adjustment or replacement of any Test Equipment retained by you as part of the Services as provided in §7;
  - E. the cost of transportation of any Test Equipment except as provided in paragraph §7;
  - F. any additional equipment provided, or charges which may become payable by reason of furnishing of additional or substitute Services at your request, or the application of any other provision of this Agreement.
  - G. any additional monthly late charge for any invoice remaining unpaid beyond the period set forth in Section 7(e) of this Agreement. This late fee shall be calculated each month at 1.5 percent of the total amount due on the invoice, inclusive of any pre-existing fees and late charges as of the date of the calculation.
9. **Taxes.** You hereby assume, unless current evidence of tax exempt status is provided to Doble, liability for and payment of all taxes, duties and assessments which shall be levied against or in respect of this Agreement, its renewals, the Services, or any interest therein upon whomsoever the same may be assessed or levied.
10. **Invoices.** You shall render invoices for payment of the Contract Price in advance and invoices with respect to all other charges under this Agreement shall be rendered by you as they accrue; and payment of all invoices shall be due thirty (30) days from the invoice date.
11. **Calibration.** You shall return any Test Equipment to Doble for calibration and testing when requested by Doble;
12. **Impaired Equipment.** You shall return impaired Test Equipment to Doble as soon as such impairment is discovered;
13. **Return of Equipment upon Termination.** To the extent possible, you shall return all Test Equipment and Doble instruction books to Doble at the expiration of the Agreement Period or upon the earlier termination of your rights hereunder in the same condition as they were in when delivered to you, reasonable wear and tear excepted.
14. **Authorized Use Only.** You shall use the Services only in accordance with the written or printed instructions furnished by Doble and, except as Doble may expressly authorize in writing, to permit its use only by your employees and authorized agents and only upon your property. The words "only upon your property" shall be deemed to include power systems on which you have been retained to do testing and/or maintenance. This shall be a non-exclusive right and shall not be construed as a prohibition against direct dealings and transactions between Doble and any of these systems.
15. **Indemnification.** To the fullest extent permitted by applicable law, you shall indemnify and save Doble harmless from and against any and all claims for personal injury, death or property damage (including reasonable Attorney and court fees) resulting



from or incidental to the operation of any Test Equipment while it is in your possession or control, except to the extent (if any) that such injury or damage shall be due to Doble's sole negligence.

**16. Holdover and Short-Term Rentals.** You shall comply with all of the terms, provisions and conditions of this Agreement with respect to any short-term rentals of equipment, or any Test Equipment retained by you after the expiration of the Agreement Period. Rental options are available, to be billed on a monthly basis. In the event of any such holdover after termination, you shall have a sixty (60) day period to cure by either promptly returning the applicable equipment, or formally renewing the applicable Agreement. After the expiration of such cure period, you shall be charged two (2) times the applicable Agreement price until the equipment is confirmed returned to Doble or a new Agreement has been executed.

**17. EULA Applicability.** You shall comply with the terms of any applicable end-user license agreement ("EULA") that may be provided to you by Doble at the time of the Doble proprietary software being furnished to you.

**18. Supplemental Consulting.** You shall comply with the provisions of the Supplemental Terms and Conditions for Testing and Consulting Services for any additional field testing or consulting services that you may request to be performed by Doble on your behalf.

**19. Confidentiality.** To hold and keep any information or data provided to you by Doble and identified by Doble as confidential under no less than the same provisions by which you would protect your own confidential information, and in no case less than is reasonable, for the duration of this agreement and for the five years following its termination. You shall not communicate to others the data or methods used or furnished by Doble hereunder.

**20. Bankruptcy or Insolvency.** This Agreement shall be automatically terminated in the event of 1) you commence a voluntary case under title 11 of the United States Code or the corresponding provisions of any successor laws; 2) anyone commences an involuntary case against you under title 11 of the United States Code or the corresponding provisions of any successor laws and either (A) the case is not dismissed by midnight at the end of the 60th day after commencement or (B) the court before which the case is pending issues an order for relief or similar order approving the case; 3) a court of competent jurisdiction appoints, or you make an assignment of all or substantially all of your assets to, a custodian (as that term is defined in title 11 of the United States Code or the corresponding provisions of any successor laws) for you or all or substantially all of your assets; or 4) you fail generally to pay your debts as they become due (unless those debts are subject to a good-faith dispute as to liability or amount) or you acknowledges in writing that you are unable to do so..

**21. Expressly Unauthorized Use of Doble Equipment.** Without limiting any other terms of this agreement, you agree to refrain from:

- A. breaking any seal on, or repairing or permitting repairs on any Test Equipment except at the request or with the consent of Doble;
- B. manufacturing or causing or permitting to be manufactured copies of any Services; or
- C. in any way impairing, reverse engineering, or otherwise manipulating or handling any Test Equipment in a manner inconsistent with the advice or consent of an authorized client service engineer or otherwise violating any of Doble's patents, copyrights, trade secrets, or other intellectual property rights.

**22. Assignment.** Doble and you further agree that neither this Agreement nor any right created hereby shall be assigned or assignable by your voluntary act or by operation of law, and no Test Equipment or written material including instructions shall be transferred, delivered, sublet or the use thereof authorized by you to any other person, firm or corporation without Doble's prior consent in writing.

**23. Title and Risk of Loss.** Any Test Equipment and Doble instruction books shall at all times remain and be the sole and exclusive property of Doble, and you shall have no property right therein, but only the right to use the same during the Agreement Period. Any Test Equipment shall until redelivery to Doble at Watertown, Massachusetts, be held at your sole risk of loss from injury, loss or destruction from any cause whatsoever except as specified in §7.

**24. Notification of Claims.** You shall promptly notify Doble of any legal proceedings or claims brought or threatened against you for alleged infringement of patent rights occasioned by your use of any Services or methods furnished hereunder, allow Doble to undertake the defense thereof and furnish Doble with all information in your possession relating thereto.

**25. Breach.** In the event of any breach of any of the terms, provisions or conditions of this Agreement, not remedied within 30 days, then Doble by notice in writing to you may immediately terminate your rights hereunder, and in such event you hereby





EXHIBIT A

TEST EQUIPMENT AND CONTRACT PRICE

EQUIPMENT

Qty.	Description	Price
1	M4100 Insulation Analyzer	\$23,370.00
1	Doble Test Assistant	\$2,330.00
1	M4300 Transport	\$280.00
1	M7100 High-Voltage Asset Analyzer with DTA 7 Pro	\$40,000.00
1	TDR900 CIRCUIT BREAKER ANALYZER	\$7,220.00
2	TR3190 Digital Rotary/Linear Motion Transducer	\$1,820
	<b>TOTAL</b>	<b>\$75,020.00</b>

Contract Price payable: annually in advance, net 30 days, pricing in USD  
EXW Watertown, MA, USA (Incoterms 2010)  
Taxes are not included

**METHOD OF PAYMENT**

Purchase Order \_\_\_\_\_ (please attach copy)       No Purchase order required

Check# \_\_\_\_\_  
(REMIT TO: DOBLE ENGINEERING COMPANY, P.O. BOX 843730, KANSAS CITY, MO 64184-3730)

Wire Transfer  
(USA WIRE TO: COMMERCE BANK; ABA# 101000019; SWIFT: CBKCUS44; ACCT# 208016616)  
ACH'S: COMMERCE BANK; ABA# 101000019; ACCT# 208016616

Billing instructions: \_\_\_\_\_



3628 South 35th Street  
Tacoma, Washington 98409-3192

EXHIBIT "A"

RESOLUTION NO.: U-10932

ITEM NO.: #5

TACOMA PUBLIC UTILITIES

MEETING DATE: June 21, 2017

**DATE:** May 23, 2017

**TO:** Board of Contracts and Awards

**SUBJECT:** Tacoma Public Utilities Uniformed Security Guard Services  
Budgeted from 2017 – 2018 Tacoma Power Capital Budget  
Request for Proposals PG14-0179F  
Contract No. 4600009906

**RECOMMENDATION:** Tacoma Power requests approval to increase and extend Contract No. 4600009906 to **Phoenix Protective Corp./PPC Solutions, Inc., Auburn, Washington**, by \$3,515,000, sales tax not applicable, for security officer services at Tacoma Power facilities. This increase will bring the contract to a cumulative total of \$8,415,000.00, sales tax not applicable.

**EXPLANATION:** This contract renewal is to continue to provide security officer services required at the Tacoma Public Utilities complex, Cowlitz Project, Cushman Project, and Nisqually Project.

**COMPETITIVE SOLICITATION:** This contract was originally awarded to Phoenix Protective Corp./PPC Solutions, Inc. as a result of Request for Proposals Specification No. PG14-0179F in June 2014. The contractor has agreed to extend the contract at the same prices, terms, and conditions as the original contract.

**CONTRACT HISTORY:** The original contract for \$4,900,000.00 was approved by Public Utility Board Resolution No. U-10697 on June 11, 2014. This increase will bring the contract to a cumulative total of \$8,415,000.00, sales tax not applicable, for a contract period ending June 30, 2019. This is the 2<sup>nd</sup> amendment to the contract. Amendment No. 1, dated June 12, 2015, modified the scope of work to add a marked security vehicle. This is the first and only renewal allowed under this contract.

**FUNDING:** Funds for this are available in the 2017-2018 Tacoma Power Capital Budget. Funding beyond the current biennium is subject to future availability of funds.

**PROJECT ENGINEER/COORDINATOR:** Judd Johnson, Tacoma Power, 253-441-4102.

Chris Robinson  
Power Superintendent/COO

**APPROVED:**

William A. Gaines  
Director of Utilities/CEO

JJ:rr

cc: Kimberly Ward, Finance/Purchasing  
SBE Coordinator  
LEAP Coordinator





3628 South 35th Street  
Tacoma, Washington 98409-3192

TACOMA PUBLIC UTILITIES

EXHIBIT "A"

RESOLUTION NO.: U-10932

ITEM NO.: #6

MEETING DATE: June 21, 2017

**DATE:** May 24, 2017

**TO:** Board of Contracts and Awards

**SUBJECT:** Telecommunications System Outside Plant Construction & Maintenance  
Budgeted from Tacoma Power's Capital Outlay Budget  
Request for Bids Specification No. PT17-0147F

**RECOMMENDATION:** Tacoma Power recommends a contract be awarded to low bidder **Tercom Construction, Inc., Tacoma, WA**, for installation and maintenance of Tacoma Power's telecommunications network. The recommendation is for an initial two-year contract in the amount of \$2,480,998, plus sales tax, as well as the option for three additional one-year renewal periods. At this time, no additional funding is requested for the optional renewal periods.

**EXPLANATION:** This contract will provide the necessary labor and equipment to supplement Tacoma Power's Transmission & Distribution Hybrid Fiber Coax work force during peak workload demands and storm restoration. It is anticipated that the contract crews will be used to augment Tacoma Power crews on some of the following work:

- Transfer telecommunications systems to new poles
- Aerial fiber and coax cable placement
- Underground trenching; including conduit, fiber and coaxial cable placement
- Relocation of facilities for state, county, or city road widening projects
- New underground service conduit installations
- Underground projects for new developments
- Emergency restoration

**COMPETITIVE SOLICITATION:** Request for Bids Specification No. PT17-0147F was opened May 9, 2017. Eight companies were invited to bid in addition to normal advertising of the project. Three submittals were received. The Small Business Enterprise (SBE) participation level proposed by the bidder(s) are reflected as a credit against the submitted base bid to arrive at an "evaluated submittal bid" for ranking purposes. Tercom Construction, Inc. offered a bid that resulted in the lowest evaluated submittal after consideration of SBE participation goals.

<u>Respondent</u>	<u>Location</u> <i>(city and state)</i>	<u>Submittal Amount</u> Plus sales tax	<u>Evaluated Submittal</u>
<b>Tercom Construction, Inc.</b>	<b>Tacoma, WA</b>	<b>\$ 2,480,998.00</b>	<b>\$ 2,356,948.10</b>
Sefnco Communications	Puyallup, WA	\$ 2,628,642.85	\$ 2,628,642.85
Michels Power	Tumwater, WA	\$ 2,822,642.11	\$ 2,822,642.11

Pre-bid Estimate \$ 2,250,000.00

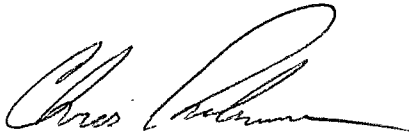
The recommended award is 10 percent above the pre-bid estimate.

**CONTRACT HISTORY:** New contract.

**FUNDING:** Funds for this contract are available in Tacoma Power's Capital Outlay budget. Funding beyond the current biennium is subject to future availability of funds.

**SBE/LEAP COMPLIANCE:** The recommended contractor is in compliance with the Small Business Enterprise (SBE) requirements per memorandum dated May 15, 2017. The SBE goal for this project is ten percent. The SBE participation level of the recommended contractor is 82.47 percent. Tercom Construction, Inc. submitted the lowest evaluated bid per the SBE requirements. The Local Employment and Apprenticeship Training Program (LEAP) goal is 752 hours.

**PROJECT ENGINEER/COORDINATOR:** Ken Mathes, Power Supervisor III, 253-502-8851.



Chris Robinson  
Power Superintendent/COO



William A. Gaines  
Director of Utilities/CEO

cc: Jessica Tonka, Senior Buyer, Finance/Purchasing  
SBE Coordinator  
LEAP Coordinator



**Community & Economic Development Department  
Small Business Enterprise (SBE) Office  
Evaluated Bid Status Report**

To: Ken Mathes, Project Engineer

Date: May 15, 2017

Subject: PT17-0147F, Telecommunications System outside Plant Construction & Maintenance \$2,480,998.00; plus applicable sales tax.

Contractor: Tercom Construction, Inc.  
9712 Waller RD E  
Tacoma, WA 98446

Subcontractors to be used on the project:

	<u>Certification</u>	<u>SBE Goal 10%</u>	<u>Dollar Amount</u>
Tercom Construction, Inc.	<b>SBE Participation</b>	82.47%	\$2,046,000.00
Advanced Government Services	<b>DBE Participation</b>	0.00%	\$0.00
	<b>WBE Participation</b>	0.00%	\$0.00
	<b>MBE Participation</b>	0.00%	\$0.00
	<b>Totals</b>	82.47%	\$2,046,000.00

APPROVED

Bidder is in compliance with required provisions of Ordinance 27867.

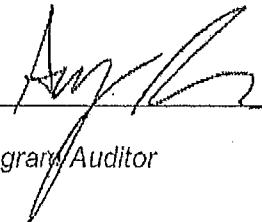
**WAIVERS:**  
Justification:

DISAPPROVED

Bidder is not considered responsive for the following reason(s):

- Bidder did not complete all necessary forms.
- See attached memorandum dated \_\_\_\_\_

Fund Number:

  
\_\_\_\_\_  
Amy Thomas  
Contract & Program Auditor

SBE Evaluation		DESCRIPTION: Telecommunications System outside Plant Construction & Maintenance					
Contract: PT17-0147F		SBE Goal: 10.00%					
	Contractor Name	Base Bid	SBE Bid	SBE %	SBE Credit	Evaluated Bid	
Low Bid	Tarcom Construction, Inc.	\$ 2,480,998.00	\$ 2,046,000.00	82.47%	\$ 124,049.90	\$ 2,356,948.10	Lowest Evaluated Bid
2nd Low	SEFNCO Communications	\$ 2,628,642.85	\$ -	0.00%	\$ -	\$ 2,628,642.85	
3rd Low	Michels Power	\$ 2,822,642.11	\$ -	0.00%	\$ -	\$ 2,822,642.11	

1



2601 SR 509 North Frontage Road  
Tacoma, Washington 98421

TACOMA PUBLIC UTILITIES

EXHIBIT "A"

RESOLUTION NO.: U-10932

ITEM NO.: #7

MEETING DATE: JUNE 21, 2017

**DATE:** June 2, 2017

**TO:** Board of Contracts and Awards

**SUBJECT:** Tacoma Rail Locomotive and Rolling Stock Heavy Repair and Services  
Budgeted from Tacoma Rail Fund 4500.  
Waiver - Not Practicable to Bid  
Contract No. 4600009927

**RECOMMENDATION:** Tacoma Rail requests approval to increase and extend SAP contract number 4600009927 to **Progress Rail Services Corporation, Tacoma WA**, by \$200,000, plus applicable tax, for heavy mechanical repairs and specialized services for Tacoma Rail's locomotive and caboose fleet. This increase will bring the contract to a cumulative total of \$400,000, plus applicable tax, and will extend the contract for an additional three-year term.

**EXPLANATION:** Heavy repair of locomotives and rail equipment can be performed only by firms with specialized facilities and specifically designed equipment. Tacoma Rail's existing on-site locomotive repair facility is not equipped with an appropriately sized overhead crane or other railroad industry specific shop features to perform heavy repairs such as major engine component removals, wheel set change outs, traction motor rebuilds/replacements, and body damage and paint repair due to derailments and accidents. Progress Rail's locomotive repair facility, located approximately one mile east of Tacoma Rail, is connected to Tacoma Rail's Tidelands track network, and is equipped and staffed to address the aforementioned activities. Progress Rail is an Association of American Railroads (AAR) registered facility and knowledgeable in the applicable federal regulations and industry best practices for this type of heavy equipment maintenance. Progress Rail's proximity to Tacoma Rail avoids the expense of outfitting locomotives with the additional equipment required to lawfully traverse mainline track and the excessive downtime needed in order to reach an out-of-area repair facility. Progress Rail remains the only local firm that meets these requirements. It is not economically feasible to move locomotives and cabooses to out-of-area repair facilities.

**COMPETITIVE SOLICITATION:** This contract was originally awarded to **Progress Rail Services Corporation, Tacoma WA**, as a result of a waiver of competitive solicitation (Not Practicable to Bid) in July of 2014. The contractor has agreed to extend the contract at the same prices, terms, and conditions as the original contract.

**CONTRACT HISTORY:** In July of 2014, Tacoma Rail entered into a Purchased Services Contract with Progress Rail Services Corporation in the amount of \$200,000, for a three year term. This increase will bring the contract to a cumulative total of \$400,000, plus applicable tax, and will extend the contract an additional three years through June 30, 2020. This is the first amendment to the contract.


**FUNDING:** Funds for this are available in the Tacoma Rail Fund 4500. Funding beyond the current biennium is subject to future availability of funds.

**PROJECT ENGINEER/COORDINATOR:** Kari Halliday/Tacoma Rail/396-3285.

APPROVED:



Dale W. King  
Tacoma Rail Superintendent/COO



William A. Gaines  
Director of Utilities/CEO

KLH

cc: Richelle Krienke, Senior Buyer, Finance/Purchasing  
SBE Coordinator  
LEAP Coordinator



2601 SR 509 North Frontage Road  
Tacoma, Washington 98421

TACOMA PUBLIC UTILITIES

**Date:** June 2, 2017

**To:** Patsy Best, Procurement and Payables Division Manager

**From:** Kari Halliday, Operations Manager, Tacoma Rail *K. Halliday*

**Subject:** Waiver of Competitive Solicitation Request – Not Practicable to Bid  
Tacoma Rail Locomotive and Rolling Stock Heavy Repair and Services  
Contract No. 4600009927

Please forward for Board of Contracts and Awards review and recommendation.

**RECOMMENDATION:** In accordance with TMC 1.06.257.B. (Not Practicable), Tacoma Rail requests a waiver of the competitive solicitation process to increase the contract with **Progress Rail Services Corporation, Tacoma, WA**, by \$200,000, plus applicable tax, for heavy mechanical repairs and specialized services for Tacoma Rail's locomotive and caboose fleet. This increase will bring the contract to a cumulative total of \$400,000, plus applicable tax, and will extend the contract for an additional three-year term.

**BACKGROUND:** In July of 2014, Tacoma Rail entered into a Purchased Services Contract with Progress Rail Services Corporation that was executed from an approved waiver of competitive solicitation request (Not Practicable to Bid), in the amount of \$200,000, for a three year term. This increase will bring the contract to a cumulative total of \$400,000, plus applicable tax, and will extend the contract an additional three years through June 30, 2020. This is the first amendment to the contract.

**JUSTIFICATION FOR WAIVER:** Heavy repair of locomotives and rail equipment can be performed only by firms with specialized facilities and specifically designed equipment. Tacoma Rail's existing on-site locomotive repair facility is not equipped with an appropriately sized overhead crane or other railroad industry specific shop features to perform heavy repairs such as major engine component removals, wheel set change outs, traction motor rebuilds/replacements, and body damage and paint repair due to derailments and accidents. Progress Rail's locomotive repair facility, located approximately one mile east of Tacoma Rail, is connected to Tacoma Rail's Tidelands track network, and is equipped and staffed to address the aforementioned activities. Progress Rail is an Association of American Railroads (AAR) registered facility and knowledgeable in the applicable federal regulations and industry best practices for this type of heavy maintenance. Progress Rail's proximity to Tacoma Rail avoids the expense of outfitting locomotives with the additional equipment required to lawfully traverse mainline track and the excessive downtime needed in order to reach an out-of-area repair facility. Progress Rail remains the only local firm that meets these requirements. It is not economically feasible to move locomotives and cabooses to out-of-area repair facilities.

**FUNDING:** Funds for this purchase are available in the Tacoma Rail Fund 4500.

**PROJECT COORDINATOR:** Kari Halliday, Tacoma Rail, 253-396-3285.

CONCUR AS TO IMPRACTICABLE TO BID:

*Dale W. King for*  
Dale W. King, Superintendent/COO  
Tacoma Rail

*6.7.2017*  
Date

*William A. Gaines*  
William A. Gaines, Director of Utilities/CEO

*6/9/17*  
Date

cc: Richelle Krienke, Senior Buyer, Finance/Purchasing





2601 SR 509 North Frontage Road  
Tacoma, Washington 98421

TACOMA PUBLIC UTILITIES

EXHIBIT "A"

RESOLUTION NO.: U-10932

ITEM NO.: #8

MEETING DATE: JUNE 21, 2017

**DATE:** June 5, 2017  
**TO:** Board of Contracts and Awards  
**SUBJECT:** Janitorial Services for Tacoma Rail  
Budgeted from Tacoma Rail Fund 4500  
Request for Proposals TR15-0141F  
Contract No. 4600010730

**RECOMMENDATION:** Tacoma Rail requests approval to increase SAP Contract number 4600010730 to **Pacific Building Care, Inc., dba Commercial Cleaning Systems, Inc.**, by \$100,000, plus sales tax, for Janitorial services and supplies for the Tacoma Rail facility. This increase will bring the contract to a cumulative total of \$300,000, plus sales tax.

**EXPLANATION:** This contract is for janitorial services and supplies needed to maintain the Tacoma Rail facilities in a manner necessary to provide a clean, healthy, and safe work environment for Tacoma Rail staff and visitors. The contracted services include basic surface cleaning 7 days per week, other cyclical deep cleaning activities, and provides all of the equipment, cleaning and toiletry supplies and personnel for the aforementioned services.

**COMPETITIVE SOLICITATION:** The contract was originally awarded to Pacific Building Care, Inc. dba Commercial Cleaning Systems, Inc., as a result of Request for Proposals Specification No. TR15-0141F in May of 2015. The contractor has agreed to increase the contract at the same prices, terms, and conditions as the original contract with the exception of the City's increased minimum wage requirements.

**CONTRACT HISTORY:** A Purchased Services Contract was initially entered into for an amount of \$90,000, plus sales tax, to be paid at the monthly rate of \$7,500 with a termination date of June 1, 2016, and included the option to renew up to four additional one year terms.

The first amendment in March 2016, was for an increase of \$105,000, bringing the cumulative total to \$195,000, and extended the termination date from June 1, 2016 to June 1, 2017. This amendment also adjusted the monthly amount paid to the contractor by \$418.26 to \$7,918.26 in recognition of the City's increased minimum wage law, which was in excess of the initial Prevailing Wage calculation used in the Contractor's proposal.

The second amendment in January 2017 increased the monthly payment to the contractor by \$347 to \$8,265.26 in recognition of the City's minimum wage increase implemented on January 1, 2017.

The third amendment, effective June 1, 2017, extended the term by one year to June 1, 2018, and increased the value by \$5,000, bringing the cumulative total to \$200,000.

This request will bring the contract to a cumulative total of \$300,000, plus sales tax. This is the fourth amendment to the contract. This is the second of four renewals allowed under this contract.

**FUNDING:** Funds for this are available in the Tacoma Rail Fund 4500. Funding beyond the current biennium is subject to future availability of funds.

PROJECT ENGINEER/COORDINATOR: Dan Knouff (253) 377-3071.

APPROVED:



Dale W. King  
Tacoma Rail Superintendent/COO



William A. Gaines  
Director of Utilities/CEO

KLH

cc: Richelle Krienke, Senior Buyer, Finance/Purchasing  
SBE Coordinator  
LEAP Coordinator



City of Tacoma  
Finance

EXHIBIT "A"

RESOLUTION NO.: U-10932

ITEM NO.: #9

MEETING DATE: JUNE 21, 2017

DATE: June 6, 2017

TO: Board of Contracts and Awards

SUBJECT: Apparel/Linen Rental and Laundry Services Citywide Contract  
Budgeted from various funds as-needed by department  
U.S. Communities Government Purchasing Alliance (U.S. Communities) Request  
for Proposals No. 12JLH011, Cintas Corporation, Contract 12-JLH-011C

**RECOMMENDATION:** Finance, Procurement and Payables Division, recommends a citywide contract be awarded to **Cintas Corporation, Mason, OH**, in the amount of \$850,000, plus applicable sales tax, for apparel and linen rental and laundry services as needed. The recommended amount is for a contract term through June, 2020.

**EXPLANATION:** This citywide contract provides for the rental of uniforms, linens, and other articles and laundering services for use by various departments. Primary usage of this contract is for garment rental and laundering services for employees in Public Works Solid Waste and Wastewater Management, General Government and Tacoma Public Utilities (TPU) Fleet Services, TPU Customer Service, Tacoma Power Transmission & Distribution and Generation, and Tacoma Rail. These services provide several garments for compliance with labor agreements. Other usage would include the rental and servicing of mops, towels, floor mats, and various linen items.

**COMPETITIVE SOLICITATION:** U.S. Communities Government Purchasing Alliance (U.S. Communities) Contract 12-JLH-011C, issued per Request for Proposals No. 12JLH011, is a competitively solicited contract with Harford County Public Schools, Maryland as the lead agency in issuing the solicitation. This contract meets Tacoma's competitive solicitation requirements by means of an interlocal cooperative purchasing agreement with U.S. Communities and by utilizing this cooperative agreement the City will benefit from cost savings achieved through volume purchasing on a national scale.

**CONTRACT HISTORY:** New contract.

**FUNDING:** Funds for this are available through individual departments that will use this contract. Funding beyond the current biennium is subject to future availability of funds.

**SBE/LEAP COMPLIANCE:** Not applicable.

**COORDINATOR:** Jessica Tonka, Senior Buyer, 253-502-8332.

Approved:

Patsy Best  
Procurement and Payables Division Manager

Approved:

William A. Gaines  
Director of Utilities/CEO

cc: Dawn Leischner, Purchasing Financial Manager, Finance/Purchasing  
SBE Coordinator  
LEAP Coordinator

June 21, 2017

MOTION

I hereby move that the following motion be approved:

17-02. That the recommendations of the Department of Public Utilities and the City of Tacoma's Insurance Committee and its advisor/broker, Kim Wilson, of Brown and Brown Insurance, are approved and the appropriate officers are authorized to purchase:

(1) Property damage insurance with earthquake, flood and harm to departmental vehicle coverage, through Public Entity Property Insurance Program (PEPIP); and (2) Rail equipment coverage, through Allianz Global Corporate & Specialty (AGCS Marine) for locomotive, coach, and track equipment insurance, for a total premium of \$392,241; as outlined in the memorandum dated June 21, 2017, from Jim Sant, Deputy Director for Administration, to William A. Gaines, Director of Utilities/CEO, and on file with the Clerk of the Board. Funds are budgeted and available for said purpose.



**To:** William A. Gaines, Director of Utilities/CEO  
**From:** Jim Sant, Deputy Director for Administration  
**Date:** June 21, 2017  
**Subject:** Property Insurance Coverage

**Recommendation**

Our insurance advisor/broker recommends that the Department bind property insurance coverage, with earthquake, flood and terrorism coverage, through the Public Entity Property Insurance Program (PEPIP) and Rail equipment coverage through Allianz Global Corporate & Specialty (AGCS Marine) for locomotives, coaches and track equipment. The terms of each of these policies provide coverage from July 1, 2017 to June 30, 2018. The City Insurance Committee has reviewed and approved the proposal and recommends seeking approval from the Public Utility Board.

**Background**

Coverage will insure against most types of exposure to property damage, including earthquake, flood and harm to departmental vehicles while parked on our property. Properties covered consist of the administration complex, including the warehouse, fleet, Click! Network buildings, Click! Network hubs, the ECC building, some hydro project and park structures, salmon and trout hatcheries, the Water Distribution complex, Water reservoirs, the Green River Headworks Chemical Treatment Plant, and Tacoma Rail headquarters, locomotives, coaches, and track equipment. Some facilities are also insured with boiler and machinery coverage because of their dependence upon mechanical and electrical equipment. Properties not covered under this policy include the powerhouses and dams, substations, the distribution and transmission lines, and water mains.

Consistent with current coverages, the requested property coverage through PEPIP has a \$250,000 self-insured retention (deductible) per occurrence and a \$150 million limit, in general. Earth movement has a 5 percent self-insured retention (\$100,000 minimum), with a \$10 Million limit. Flooding has self-insured retentions ranging from \$100,000 to \$250,000 per occurrence and limits ranging from \$15 Million to \$50 Million, depending on flood zone designations. Total insured value is approximately \$533 Million, which is an increase of \$1 million.

The Rail Rolling Stock coverage maintains a self-insured retention of \$75,000 per occurrence with a policy limit of \$2.4 Million. The total insured value for Rail equipment is \$13,075,000 which incorporates a decrease of \$1,485,000 over current covered property.


**Summary**

The annual renewal premium for the property insurance with Public Entity Property Insurance Program (PEPIP) is \$356,756 which is a decrease of \$437 (.001%) from the previous year. This is due to favorable claims experience and conditions in the property insurance market.

The Rail Rolling Stock premium through Allianz Global Corporate & Specialty (AGCS Marine) is \$35,485 which is a decrease of \$4,032 (10.2%) over current premiums. This cost decrease in coverage is driven by a decrease in the total insured value of Tacoma Rail's rolling stock for the coming year.

Your approval is requested to submit this matter to the Public Utility Board for its consideration.

Approved: \_\_\_\_\_

  
William A. Gaines  
Director of Utilities/CEO

June 21, 2017

MOTION

I hereby move that the following motion be approved:

17-03. That upon concurrence by the City Council, the Director of Utilities is hereby authorized to settle all claims in the following matters: (i) *Richert v. City of Tacoma*, Mason County Superior Court case number 10-2-01058-4, (ii) *Baskin v. City of Tacoma*, Mason County Superior Court case number 11-2-00477-9, and (iii) *Carrington v. City of Tacoma*, Mason County Superior Court case number 16-2-00452-4, and United States District Court for the Western District of Washington case number 3:16-cv-05900, in the amount of \$3,500,000, in exchange for dismissal of the above cases, release of all claims, and execution of easements by the plaintiffs, as further explained in the confidential memorandum from Matthew Love, outside counsel for the City of Tacoma, to the Director of Utilities, dated June 12, 2017.



## RESOLUTION NO. U-10933

1  
2 A RESOLUTION related to Tacoma Water; authorizing participation in a City of  
3 Tacoma contract for the East 40<sup>th</sup> Street Green Stormwater Infrastructure  
4 Project.

5 WHEREAS the City of Tacoma, Department of Public Utilities, Water  
6 Division ("Tacoma Water") is requesting authorization to participate in the City  
7 of Tacoma, Environmental Services Department ("Environmental Services")  
8 contract for the East 40<sup>th</sup> Street Green Stormwater Infrastructure Project  
9 ("Project"), and

10 WHEREAS Tacoma Water has partnered with Environmental Services to  
11 implement an integrated approach to retrofit the East 40<sup>th</sup> Street roadway from  
12 McKinley Avenue to East L Street, proposing to replace the existing 6-inch, 8-  
13 inch, and 12-inch cast iron mains constructed in 1930, with approximately 2,500  
14 linear feet of same diameter ductile iron pipe, and

15 WHEREAS Tacoma Water's portion of the project cost is \$516,346.50  
16 plus a fifteen percent contingency for an aggregate total of \$593,798.48 (plus  
17 sales tax), with funding for this project available from the 2010 Water Bond  
18 Fund, , and

19 WHEREAS the opportunity to participate in this contract allows Tacoma  
20 Water's water main work to be executed concurrently with Environmental  
21 Services' contract in the same area, resulting in reduced construction impacts  
22 and overall project costs while improving project delivery, and  
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WHEREAS Tacoma Water requests authority to participate in the Environmental Services contract for the above purpose and reasons; Now, Therefore,

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

That Tacoma Water is authorized to participate in the Environmental Services' contract for the East 40<sup>th</sup> Street Green Stormwater Infrastructure Project, \$516,346.50 plus a fifteen percent contingency for an aggregate total of \$593,798.48 (plus sales tax), and the proper officers of the City are authorized to execute an agreement in a form as approved by the City Attorney.

Approved as to form and legality:

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Chief Deputy City Attorney

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Clerk

Adopted \_\_\_\_\_



of June 21, 2017

**REQUEST FOR RESOLUTION**

Date: May 22, 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)

Authorize Tacoma Water to participate in the City of Tacoma Environmental Services Department East 40th Street Green Stormwater Infrastructure project.

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

Tacoma Water Distribution Engineering requests authorization to participate with the City of Tacoma Environmental Services Department, Science and Engineering Division in the East 40<sup>th</sup> Street Green Stormwater Infrastructure project. Tacoma Water's estimated project cost is \$516,346.50, plus a 15 percent contingency for a cumulative total of \$593,798.48, plus applicable taxes. As part of the project, Tacoma Water proposes to replace the existing 6-inch, 8-inch and 12-inch cast iron water main constructed in 1930, with approximately 2,500 linear feet of same diameter ductile iron water main and appurtenances. Water main work will occur along East 40th Street and East Howe Street.

3. Summarized reason for resolution:

Tacoma Water has partnered with City of Tacoma's Environmental Services Department and Public Works Department to implement an integrated approach to retrofit the East 40th Street roadway from McKinley Avenue to Portland Avenue. The project will improve water quality, reduce localized flooding, improve traffic safety and pedestrian and bicycle accessibility. The improvements will include permeable pavements, bioswales, stormwater pipes, shared-use path, and new sidewalks and curb ramps. Construction is anticipated to commence in July 2017.

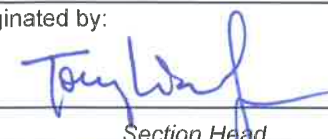


Tacoma Water believes it is in the best interest of the utility and our customers to include the water main work in the Environmental Services contract. Project partnership will improve project delivery, reduce project costs, mitigate future risks, and minimize construction disturbance to adjacent businesses and the general public.

4. Attachments:

- a. Project Authorization Memorandum
- b. Project Participation Agreement

5.  Funds available  Proposed action has no budgetary impact

6. Deviations requiring special waivers: None

Originated by:  Section Head	Requested by:  Division Head	Approved:  Director of Utilities
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Date: May 22, 2017

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

From: Chris McMeen, Acting Water Superintendent

Subject: East 40th Street Green Stormwater Infrastructure  
MRP-2016-30 E 40th St, McKinley Ave to E L St  
Authorization to Participate with Environmental Services Department

Tacoma Water Distribution Engineering requests authorization to participate with the City of Tacoma Department of Environmental Services, Science and Engineering Division in the East 40<sup>th</sup> Street Green Stormwater Infrastructure contract. Tacoma Water's estimated project cost is \$516,346.50, plus a 15 percent contingency for a cumulative total of \$593,798.48, plus applicable taxes, budgeted from the Water Bond Fund.

#### **BACKGROUND**

Tacoma Water has partnered with the City of Tacoma's Environmental Services Department and Public Works Department to implement an integrated approach to retrofit the East 40th Street roadway from McKinley Avenue to Portland Avenue. The project will improve water quality, reduce localized flooding, improve traffic safety and pedestrian and bicycle accessibility. The improvements will include permeable pavements, bioswales, stormwater pipes, shared-use paths, and new sidewalks and curb ramps.

As part of the project, Tacoma Water proposes to replace the existing 6-inch, 8-inch and 12-inch cast iron water main constructed in 1930, with approximately 2,500 linear feet of same diameter ductile iron water main and appurtenances. Water main work will occur along East 40<sup>th</sup> Street and East Howe Street. Construction is anticipated to commence in July 2017.

Tacoma Water believes it is in the best interest of the Utility and our customers to include the water main work in the Environmental Services contract. Project partnership will improve project delivery, reduce project costs and minimize construction disturbance to adjacent businesses and the general public.

#### **PROJECT AUTHORIZATION**

Tacoma Water's estimated project cost is \$516,346.50, plus a 15 percent contingency for a cumulative total of \$593,798.48, plus applicable taxes.

Funding for this project is available in the 2010 Water Bond Fund.

**RECOMMENDATION**

We recommend authorizing Tacoma Water to participate in the Environmental Services contract for the East 40th Street Green Stormwater Infrastructure project.

**PROJECT ENGINEER/COORDINATOR**

Ali Polda, Distribution Engineering (253) 502-8152.

Please indicate your concurrence by signing below.



William A. Gaines  
Director of Utilities/CEO

AP:td

cc: Kimberly Ward, Purchasing

File: MRP 2016-30



City of Tacoma  
Environmental Services Department

April 13, 2017

**TO:** Tony Lindgren, P.E., Distribution Engineering Manager,  
Tacoma Water Distribution Engineering  
Geoffrey Smyth, P.E., Division Manager,  
Environmental Services Department, Science & Engineering

**FROM:** Olivia Mathison, Environmental Services Department, Science & Engineering

**SUBJECT:** Agreement for Joint Water Distribution – Environmental Services Project  
ENV-03025-06 East 40<sup>th</sup> Street Green Stormwater Infrastructure  
MRP-2016-30 E 40<sup>th</sup> St, McKinley Ave to E L St.

Environmental Services and Tacoma Water Distribution Engineering have been working to develop plans and specifications for the East 40<sup>th</sup> Street Green Stormwater Infrastructure Project. The project is anticipated to start construction in June 2017.

Our respective organizations believe a coordinated effort to replace the surface water and water mains under a single City of Tacoma contract will result in efficiency and cost savings to all parties. Additionally, a joint project will minimize construction disturbance to adjacent residents and the general public. The following summarizes the arrangements, assumptions, and action items necessary to move forward with this project:

- Environmental Services will be responsible for coordinating the compilation of the contract plans and specifications.
- The Environmental Services Department will administer the construction contract. The Environmental Services Department will charge Tacoma Water for the additional incremental contract administration time associated with Tacoma Water work. This is consistent with the method by which contract management and overhead costs addressed on previous Environmental Services - Water Division projects. The estimated cost of the construction administration is \$12,600.00 for the Tacoma Water portion. The payment of the construction administration amount will be completed via journal entry at the completion of the project.
- Tacoma Water has provided the WBSE for charging water main construction administration costs to the Water Division fund. The Water Division WBSEs are as follows for this project:
  - WBSE WTR-00478-22-03:MRP 2016-30 Contract Costs by ES

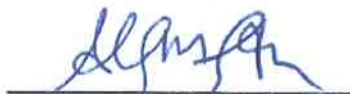
- Tacoma Water will be responsible for the cost of water distribution main work, valves, hydrants, pavement removal and temporary restoration, trench excavation, trench backfill and compaction to subgrade elevation, mobilization, traffic control, and other appurtenant items directly related to the installation of new water main. These costs have been segregated within the contract bid proposal.
- Tacoma Water will request authorization from the Utility Board to participate in the Environmental Services' contract as soon as possible following determination of the lowest responsible bidder.
- Tacoma Water will be included and fully involved in the initiation, discussion, and review of any addendums, review of submittals in eBuilder, revisions, change orders, or change of scope pertaining to the water main work. Any addendums, revisions, change orders, or change of scope pertaining to the water main scope of work shall be subject to the approval of Tacoma Water.
- Tacoma Water will perform all water main construction staking and water service reconnections
- The Environmental Services Department will act as the overall contract construction inspection lead. Tacoma Water will be responsible for the daily inspection of the water main construction. Tacoma Water and Environmental Services inspections will be a cooperative and coordinated effort.

We look forward to continuing our spirit of coordination and cooperation to accomplish this and future projects of mutual benefit to the citizens of Tacoma, the Environmental Services Department, and Tacoma Water. By signature, please indicate your approval to proceed with this joint project.



Tony Lindgren, P.E.  
Distribution Engineering Manager, Tacoma Water

4-17-17  
Date



Geoffrey M. Smyth, P.E.  
Environmental Services Division Manager

14 Apr 2017  
Date

cc: Greg Armstrong, Tacoma Water  
Erik Ward, P.E., Environmental Services, Science & Engineering  
Jessica Knickerbocker, Environmental Services, Science & Engineering

File: 2016-30



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## RESOLUTION NO. U-10934

A RESOLUTION authorizing the extension of a locomotive servicing contract between Tacoma Rail and the BNSF Railway Company.

WHEREAS the City of Tacoma, Department of Public Utilities, Beltline Division (d.b.a. "Tacoma Rail"), requests approval to extend a locomotive servicing contract with the BNSF Railway Company ("BNSF"), and

WHEREAS in August 2014, Tacoma Rail entered into a servicing contract through Resolution U-10717, for a term of three years, and

WHEREAS under the contract, BNSF pays for all labor and material costs to Tacoma Rail to provide inspections, servicing, and running repairs of BNSF locomotives destined to Tacoma Rail, and

WHEREAS the extension is for a period of two years and not limited to a maximum amount in revenues received by Tacoma Rail; Now, therefore,

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

That the extension for the locomotive servicing contract between Tacoma Rail and the BNSF Railway Company, for a period of two years, is hereby approved and the proper officers are authorized to execute said agreement substantially in a form as approved by the City Attorney.

Approved as to form and legality:

  
\_\_\_\_\_  
Chief Deputy City Attorney

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Clerk

Adopted \_\_\_\_\_

of June 21, 2017

**REQUEST FOR RESOLUTION**

Date: June 6, 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 Rail requests authorization to extend an agreement with the BNSF Railway Company to provide daily locomotive inspections and service on an "as needed" basis.

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

Tacoma Rail requests the Public Utility Board's approval to extend a locomotive servicing and inspection contract between Tacoma Rail and the BNSF Railway Company. If approved, Tacoma Rail will continue to provide daily inspections, servicing and minor repairs to BNSF locomotives on an "as needed" basis, with all work occurring at the existing Tacoma Rail maintenance of equipment facility. All direct Tacoma Rail costs associated with the daily inspections, servicing and repairs of the BNSF locomotives are fully reimbursable by the BNSF Railroad. The extension is for a period of two years and is not limited to a maximum amount in revenues received by Tacoma Rail.

3. Summarized reason for resolution:

In July of 2013, Tacoma Rail entered into a pilot program to provide inspections, servicing and running repairs on BNSF unit oil train locomotives destined to Tacoma Rail. In August of 2014, through Resolution U-10717, the Tacoma Public Utility Board approved a contract to provide servicing and inspections for all BNSF locomotives destined to Tacoma Rail with a term of three years.

The services include, but are not limited to cab cleaning, fueling, sanding, light running repairs, locomotive consist arrangement, and distributive power linkage. With Tacoma Rail performing these services, the need for BNSF locomotives to return to their Seattle maintenance facility and potentially be redirected to other trains not originating at Tacoma Rail is eliminated; thereby increasing locomotive availability for trains departing from Tacoma Rail, reducing previous maintenance routine cycles by 8-14 hours, and improving through-port velocity.

4. Attachments:

- a. Memo from Dale W. King to William A. Gaines dated June 6, 2017.
- b. Amendment No.1 to Off Property Locomotive Repair Agreement between the BNSF Railway Company and Tacoma Rail.

5.  Funds available  Proposed action has no budgetary impact

6. Deviations requiring special waivers: None

<p>Originated by:</p>  <p>Alan Matheson/Assf. Superintendent</p>	<p>Requested by:</p>  <p>Dale W. King/COO</p>	<p>Approved:</p>  <p>William A. Gaines/CEO</p>
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2601 SR 509 North Frontage Road

Tacoma, Washington 98421

TACOMA PUBLIC UTILITIES

DATE: June 6, 2017

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

FROM: Dale W. King, Superintendent/COO, Tacoma Rail *AKM for DWK*

SUBJECT: BNSF Railway Company Locomotive Servicing Contract

**RECOMMENDATION:**

Tacoma Rail requests Public Utility Board approval to extend a locomotive servicing contract with the BNSF Railway Company. Tacoma Rail would continue to provide daily inspections, servicing and minor repairs to BNSF locomotives on an "as needed" basis, at the Tacoma Rail maintenance of equipment facility. The duration of this contract extension is two years, may be extended upon mutual agreement, and is not limited to a maximum amount in revenues received by Tacoma Rail.

**BACKGROUND:**

Tacoma Rail entered into a contract with BNSF in August of 2014 to provide inspections, servicing and running repairs on all BNSF unit train locomotives destined to Tacoma Rail. Since establishment of this contract, Tacoma Rail has serviced more than 9,000 BNSF locomotives. The services include, but are not limited to cab cleaning, fueling, sanding, light running repairs, locomotive consist arrangement, and distributive power linkage. With Tacoma Rail performing these services, the need for BNSF locomotives to return to their Seattle maintenance facility and potentially be redirected to other trains not originating at Tacoma Rail is eliminated; thereby increasing locomotive availability for trains departing from Tacoma Rail, reducing previous maintenance routine cycles by 8-14 hours, and improving through-port velocity.

**SUMMARY:**

All direct costs incurred by Tacoma Rail associated with the daily inspections, servicing and repairs of the locomotives are fully reimbursable by the BNSF. Tacoma Rail invoices the BNSF monthly through the established SAP billing process.

We request your approval to submit this matter to the Public Utility Board for their consideration.

**APPROVED:**

William A. Gaines, Director of Utilities/CEO





Contract Number: BF10006298  
Amendment Number: 1

## AMENDMENT 1

This Amendment 1 (the "Amendment") is entered into as of May 31, 2017, by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("BNSF"), and **CITY OF TACOMA WASHINGTON**, f/k/a City of Tacoma, Department of Public Utilities, Beltline Division d/b/a Tacoma Rail ("Provider").

**WHEREAS**, BNSF and Provider are parties to the Off Property Locomotive Repair Agreement, dated July 14, 2014, BNSF Contract Number BF10006298 (together with any and all modifications, supplements and amendments thereto, the "Agreement"); and

**WHEREAS**, the parties desire to amend certain provisions of the Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants exchanged herein, BNSF and Provider agree as follows:

- 1) **COMPENSATION AND BILLING**: Section 2) of the Agreement is deleted in its entirety and replaced with the following:
  - a) All invoicing should be as per Exhibit B.
  - b) BNSF shall pay Provider all charges, fees, and other amounts for Work provided and shall be due and payable, as computed in accordance with the terms specified herein, and will be paid within Net-30 days from receipt of invoice. An invoice shall be deemed to have been received by BNSF on the actual date of receipt or on the third business day following the issue date listed on the invoice, whichever occurs sooner ("receipt of invoice"). BNSF may contest a charge within the invoice within 30 days of receipt of any invoice. The Provider will investigate BNSF's contest and will make appropriate amendments to the invoice, if necessary. Nonetheless, BNSF shall pay the entire amount of the invoice within Net 30 days from receipt of the invoice; however, BNSF does not waive its rights to Dispute Resolution processes under Section 20 of this Agreement by making such payment.
  - c) Provider agrees to furnish BNSF's Contract Number **BF10006298** on all invoices when submitting them for payment of services provided under this Agreement. Further Provider agrees to furnish BNSF one invoice per month. Each invoice must have line item detail listing all locomotives currently being worked on separately as they relate to the quotation. To expedite payment, Provider should submit invoices for services to Quickpay.
  - d) It is further understood and agreed that in no event shall BNSF be required to make deductions from compensation or report earnings of an employee of Provider or any



Contract Number: BF10006298

Amendment Number: 1

subcontractor, under any Social Security Act, BNSF Retirement Act, Unemployment Compensation or Insurance Act, or any other applicable local, state or federal law, purporting to levy a tax on payrolls or the compensation of employees. Provider shall pay, and shall assure that its subcontractor, suppliers and/or all other parties performing Services under this Agreement pay, all such amounts and make such deductions.

2) **TERM AND TERMINATION:** Section 4) of the Agreement is deleted in its entirety and replaced with the following:

4) **TERM AND TERMINATION**

This Agreement shall be effective as of the Effective Date and shall remain in effect thereafter until July 13, 2019, unless earlier terminated by either party giving not less than ninety (90) days' written notice to the other party. BNSF may terminate this Agreement at any time on ten (10) days' written notice in the event that BNSF determines that the services provided by Provider are Substandard. "Substandard" for purposes of this Agreement means such services are not in accordance with commonly-accepted standards in the railroad industry. Either party may terminate this Agreement in the event there is any breach of the terms and conditions of this Agreement and such breach remains uncured after a period of at least ten (10) days following the receipt of written notice from the non-breaching party. However, no termination or cancellation hereof shall release either party from any liability or obligation under this Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of such termination or cancellation.

3) The parties may execute multiple counterparts of this Amendment, each of which will be deemed an original and all of which together will constitute one and the same instrument. The parties may exchange counterpart signatures by facsimile or electronic transmission (including PDF and TIF formats) and the same shall constitute delivery of this Amendment with respect to the delivering party.

4) Except as amended herein, the terms and conditions of the Agreement remain in effect. Capitalized terms not defined herein have the same meaning as set forth in the Agreement.

(Signature page follows)



Contract Number: BF10006298  
Amendment Number: 1

BNSF and Provider have caused this Amendment to be entered into on the date stated in the introductory clause.

**CITY OF TACOMA WASHINGTON**

**BNSF RAILWAY COMPANY**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name Printed)

\_\_\_\_\_  
(Name Printed)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Signature)

Dale W. King, Rail Superintendent/COO  
(Name Printed and Title)

\_\_\_\_\_  
(Signature)

Andrew Cherullo, City Finance Director  
(Name Printed and Title)

Approved as to form:

\_\_\_\_\_  
Deputy City Attorney



Contract Number: BF10006298  
Amendment Number: 1

### **Exhibit B**

The services listed on Exhibit A will be performed at the rate of \$65 per hour for labor.

When Tacoma Rail provides materials, they will be provided at cost + 15%. All Invoices that include Materials must have detail showing what materials were used on what locomotives. This applies to all materials used on BNSF locomotives except fuel.

#### Hostling-

There will be no charge for Tacoma Rail hostling within Tacoma Rail Yard limits and Tacoma Rail will enter into a separate Locomotive Use Agreement (LULU) with BNSF. If Tacoma Rail is requested to hostle BNSF power between the BNSF Yard and Tacoma Rail, the charge will be \$468 per move.

#### Distributed Power-



Contract Number: BF10006298  
Amendment Number: 1

Tacoma Rail will configure a train for Distributed Power Operation per BNSF instructions at a cost of \$300 per train.

**ORIGINAL**



Contract Number: BF10006298

## **OFF PROPERTY LOCOMOTIVE REPAIR AGREEMENT**

**THIS OFF PROPERTY LOCOMOTIVE REPAIR AGREEMENT** (the "Agreement"), is effective as of August 1, 2014 ("Effective Date"), by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("BNSF"), and **CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, BELTLINE DIVISION D/B/A TACOMA RAIL** ("Provider").

**NOW, THEREFORE**, the parties hereto, for the considerations hereinafter expressed, covenant and agree as follows:

### **1) SCOPE OF SERVICES**

- a) Subject to the terms and conditions of the this Agreement, Provider agrees to provide Services as described on Exhibit A ("Work") on BNSF's locomotives on an on-call as needed basis at direction of a BNSF representative and BNSF agrees to pay for such services from the Provider.
- b) Notwithstanding the above, this Agreement is non-exclusive and BNSF has the right to contract any of the above services to other outside Providers and the Provider has the right to provide the above services to any other carrier.

### **2) COMPENSATION AND BILLING**

- a) All invoicing should be as per Exhibit B.
- b) BNSF shall pay Provider all charges, fees, and other amounts for Work provided and shall be due and payable, as computed in accordance with the terms specified herein, and will be paid within Net-30 days from receipt of invoice. An invoice shall be deemed to have been received by BNSF on the actual date of receipt or on the third business day following the issue date listed on the invoice, whichever occurs sooner ("receipt of invoice"). BNSF may contest a charge within the invoice within 30 days of receipt of any invoice. The Provider will investigate BNSF's contest and will make appropriate amendments to the invoice, if necessary. Nonetheless, BNSF shall pay the entire amount of the invoice within Net 30 days from receipt of the invoice; however, BNSF does not waive its rights to Dispute Resolution processes under Section 20 of this Agreement by making such payment.
- c) Provider agrees to furnish BNSF's Contract Number **BF10006298** on all invoices when submitting them for payment of services provided under this Agreement.



Contract Number: BF10006298

Further Provider agrees to furnish BNSF one invoice per month. Each invoice must have line item detail listing all locomotives currently being worked on separately as they relate to the quotation. To expedite payment, Provider should submit invoices for services to Quickpay.

- d) It is further understood and agreed that in no event shall BNSF be required to make deductions from compensation or report earnings of an employee of Provider or any subcontractor, under any Social Security Act, BNSF Retirement Act, Unemployment Compensation or Insurance Act, or any other applicable local, state or federal law, purporting to levy a tax on payrolls or the compensation of employees. Provider shall pay, and shall assure that its subcontractor, suppliers and/or all other parties performing Services under this Agreement pay, all such amounts and make such deductions.

### 3) NOTICES

Unless otherwise expressly specified or permitted by the terms hereof, all notices and demands required or desired to be given by either party to the other with respect to this Agreement shall be in writing or by a telecommunications device capable of creating a written record (including electronic mail), and any such notice shall become effective (a) upon personal delivery thereof, including, without limitation, by overnight mail and courier service, (b) in the case of notice by United States mail, certified or registered, postage prepaid, return receipt requested, upon receipt thereof, or (c) in the case of notice by such a telecommunications device, upon transmission thereof, provided such transmission is promptly confirmed by either of the methods set forth in clauses (a) or (b) above, in each case addressed to each party hereto at its address set forth below or, in the case of any such party hereto, at such other address as such party may from time to time designate by written notice to the other parties:

If to BNSF:

BNSF Railway Company  
2600 Lou Menk Drive - OOB 2  
Fort Worth, TX 76131  
Attn: Direct Services and/or Dave Bertholf  
Email: DirectServices@bnsf.com  
Dave.Bertholf@bnsf.com



Contract Number: BF10006298

With a copy to:

BNSF Railway Company  
2500 Lou Menk Drive  
Fort Worth, TX 76131  
Attn: Manager, Contract Services  
Fax: 817-352-2139  
Email: [ssscontractsteam@bnsf](mailto:ssscontractsteam@bnsf)

If to Provider:

Tacoma Rail  
2601 SR-509 N. Frontage Road  
Tacoma, WA 98421-3134  
Phone: 253-502-8934  
Attn: Alan Matheson  
Email: [alan.matheson@cityoftacoma.org](mailto:alan.matheson@cityoftacoma.org)

#### 4) **TERM AND TERMINATION**

This Agreement shall be effective as of the Effective Date and shall remain in effect thereafter until July 13, 2017, unless earlier terminated by either party giving not less than ninety (90) days' written notice to the other party. BNSF may terminate this Agreement at any time on ten (10) days' written notice in the event that BNSF determines that the services provided by Provider are Substandard. "Substandard" for purposes of this Agreement means such services are not in accordance with commonly-accepted standards in the railroad industry. Either party may terminate this Agreement in the event there is any breach of the terms and conditions of this Agreement and such breach remains uncured after a period of at least ten (10) days following the receipt of written notice from the non-breaching party. However, no termination or cancellation hereof shall release either party from any liability or obligation under this Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of such termination or cancellation.

#### 5) **RELEASE OF LIABILITY AND INDEMNITY**

- a) Provider shall release, indemnify and hold harmless BNSF for all judgments, awards, claims, demands, and expenses (including attorneys' fees), for Provider's failure to comply with the provisions of any applicable law; for injury or death to all persons, including BNSF's and Provider's officers and employees; and for loss and damage to property belonging to any person (including environmental damage), caused by Provider or Provider's subcontractor's





Contract Number: BF10006298

negligent acts or omissions or intentional misconduct or failure to perform as required under this Agreement. **THE LIABILITY ASSUMED BY PROVIDER SHALL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE SOLE NEGLIGENCE OR INTENTIONAL MISCONDUCT OF BNSF AND ITS EMPLOYEES.**

- b) **THE INDEMNIFICATION OBLIGATION ASSUMED BY PROVIDER UNDER SECTION 5(a) SHALL INCLUDE ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST BNSF UNDER THE FEDERAL EMPLOYER'S LIABILITY ACT OR STATE BASED WORKERS' COMPENSATION LAWS AND REGULATIONS; INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL HEALTH AND SAFETY ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE, WHENEVER SO CLAIMED.**
- c) Provider further agrees, at its expense, in the name and on behalf of BNSF, that it shall adjust and settle all claims made against BNSF, and shall, at BNSF's discretion, appear and defend any suits or actions at law or in equity brought against BNSF on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Provider under this Agreement for which BNSF is liable or is alleged to be liable. BNSF shall give notice to Provider, in writing, of the receipt or pendency of such claims and thereupon Provider shall proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against BNSF, BNSF may forward summons and complaint or other process in connection therewith to Provider, and Provider, at BNSF's discretion, shall defend, adjust, or settle such suits and protect, indemnify, and save harmless BNSF from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.
- d) In addition to any other provision of this Agreement, in the event that all or any portion of this Section 5 shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this Article shall be interpreted as requiring Provider to indemnify BNSF to the fullest extent permitted by applicable law. **THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR PROVIDER TO INDEMNIFY BNSF FOR BNSF'S ACTS OF NEGLIGENCE.**
- e) It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement shall survive any termination of this Agreement.



Contract Number: BF10006298

## 6) INSURANCE

a) Provider shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

(i) Commercial General Liability insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$10,000,000 each occurrence and an aggregate limit of at least \$ 10,000,000 but in no event less than the amount otherwise carried by the contract holder. Coverage must be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:

- Bodily Injury and Property Damage
- Personal Injury and Advertising Injury
- Fire legal liability
- Remove any limitation and/or exclusion regarding property in the Provider's care, custody and control.

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- Waiver of subrogation in favor of and acceptable to BNSF.
- Additional insured endorsement in favor of and acceptable to BNSF.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by BNSF.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to BNSF employees.

No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy.

(ii) Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- Bodily injury and property damage
- Any and all vehicles owned, used or hired

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to BNSF.



Contract Number: BF10006298

- Additional insured endorsement in favor of and acceptable to BNSF.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by BNSF.

(iii) Workers Compensation and Employers Liability insurance including coverage for, but not limited to:

- Provider's statutory liability under the Worker's Compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to BNSF.

- b) Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.
- c) Provider agrees to waive its right of recovery against BNSF for all claims and suits against BNSF except as outlined in the Release of Liability and Indemnification section of this Agreement. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against BNSF for all claims and suits except as outlined in the Release of Liability and Indemnification section of this Agreement. Provider further waives its right of recovery, and its insurers also waive their right of subrogation against BNSF for loss of its owned or leased property or property under Provider's care, custody or control.
- d) Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.
- e) Provider is not allowed to self-insure without the prior written consent of BNSF. If granted by BNSF, any self-insured retention or other financial responsibility for claims shall be covered directly by Provider in lieu of insurance. Any and all BNSF liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Provider's insurance will be covered as if Provider elected not to include a deductible, self-insured retention or other financial responsibility for claims.



Contract Number: BF10006298

- f) Prior to commencing services, Provider shall furnish to BNSF an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments.
- g) The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify BNSF in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision shall be indicated on the certificate of insurance.
- h) Any insurance policy shall be written by a reputable insurance company acceptable to BNSF or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.
- i) If coverage is purchased on a "claims made" basis, Provider hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this contract. Annually Provider agrees to provide evidence of such coverage as required hereunder.
- j) Provider represents that this Agreement has been thoroughly reviewed by Provider's insurance agent(s)/broker(s), who have been instructed by Provider to procure the insurance coverage required by this Agreement.
- k) In the event this Agreement is extended, but not more frequently than once every five years with the first opportunity being the five year anniversary date of the effective date of this Agreement, BNSF may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.
- l) If any portion of the operation is to be subcontracted by Provider, Provider shall require that the sub Provider shall provide and maintain insurance coverage(s) as set forth herein, naming BNSF as an additional insured, and shall require that the sub Provider shall release, defend and indemnify BNSF to the same extent and under the same terms and conditions as Provider is required to release, defend and indemnify BNSF herein.
- m) Failure to provide evidence as required by this section shall entitle, but not require, BNSF to terminate this Agreement immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Provider's obligations hereunder.
- n) The fact that insurance (including, without limitation, self-insurance) is obtained by Provider shall not be deemed to release or diminish the liability of Provider including, without limitation, liability under the indemnity provisions of this Agreement. Damages



Contract Number: BF10006298

recoverable by BNSF shall not be limited by the amount of the required insurance coverage.

- o) In the event of a claim or lawsuit involving BNSF arising out of this agreement, Provider will make available any required policy covering such claim or lawsuit.
- p) For purposes of this section, BNSF shall mean "Burlington Northern Santa Fe LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

## **7) SALES AND OTHER TAXES**

- a) In the event applicable sales taxes of a state or political subdivision of a state of the United States are levied or assessed in connection with and directly related to any amounts invoiced by Provider to BNSF ("Sales Taxes"), BNSF shall be responsible for paying only the Sales Taxes that Provider separately states on the invoice or other billing documents provided to BNSF; *provided, however*, that (i) nothing herein shall preclude BNSF from claiming whatever Sales Tax exemptions are applicable to amounts Provider bills BNSF, (ii) Provider shall be responsible for all sales, use, excise, consumption, services and other taxes which may accrue on all services, materials, equipment, supplies or fixtures that Provider and its subcontractors use or consume in the performance of this Agreement, (iii) Provider shall be responsible for Sales Taxes (together with any penalties, fines or interest thereon) that Provider fails to separately state on the invoice or other billing documents provided to BNSF or fails to collect at the time of payment by BNSF of invoiced amounts (except where BNSF claims a Sales Tax exemption), and (iv) Provider shall be responsible for Sales Taxes (together with any penalties, fines or interest thereon) if Provider fails to issue separate invoices for each state in which Provider delivers goods, provides services or, if applicable, transfers intangible rights to BNSF.
- b) Upon request, Provider shall provide BNSF satisfactory evidence that all taxes (together with any penalties, fines or interest thereon) that Provider is responsible to pay under this Agreement have been paid. If a written claim is made against Provider for Sales Taxes with respect to which BNSF may be liable for under this Agreement, Provider shall promptly notify BNSF of such claim and provide BNSF copies of all correspondence received from the taxing authority. BNSF shall have the right to contest, protest, or claim a refund, in BNSF's own name, any Sales Taxes paid by BNSF to Provider or for which BNSF might otherwise be responsible for under this Agreement; *provided, however*, that if BNSF is not permitted by law to contest any such Sales Tax in its own name, Provider shall, if requested by BNSF at BNSF's sole cost and expense, contest in Provider's own name the validity, applicability or amount of such Sales Tax and allow BNSF to control and conduct such contest.



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- c) BNSF retains the right to withhold from payments made under this Agreement amounts required to be withheld under tax laws of any jurisdiction. If Provider is claiming a withholding exemption or a reduction in the withholding rate of any jurisdiction on any payments under this Agreement, before any payments are made (and in each succeeding period or year as required by law), Provider agrees to furnish to BNSF a properly completed exemption form prescribed by such jurisdiction. Provider shall be responsible for any taxes, interest or penalties assessed against BNSF with respect to withholding taxes that BNSF does not withhold from payments to Provider.

## 8) **CONFIDENTIALITY; TAX TREATMENT EXCEPTION**

- a) Provider recognizes that irreparable harm to BNSF can result from a disclosure of certain data and information relating to BNSF or its business. Accordingly, Provider agrees that all information, ideas, concepts, and techniques obtained and/or developed pursuant to this Agreement, all commercially sensitive information Provider obtains from BNSF during the course of this engagement, and all BNSF information to which Provider has access while performing the Work, shall be deemed "confidential information," except information which:
- is at the time of disclosure, or thereafter becomes, a part of the public domain through no act or omission by Provider;
  - is lawfully in the possession of Provider prior to disclosure by BNSF; or
  - is lawfully disclosed to Provider by a third party which did not acquire the same under an obligation of confidentiality from or through BNSF.
- b) Provider further agrees at all times during and after the termination of this Agreement to preserve and protect the confidentiality of all such confidential information and not to disclose the same to anyone for any reason, or make any use thereof, at any time without the prior written consent of BNSF. Provider shall obtain, maintain, and enforce assurances from any of Provider's employees or consultants that come into contact with any confidential information of BNSF, that such information shall not be disclosed to, or used by, any unauthorized person or organization. Such assurances shall be binding on affected employees of Provider and shall run to the benefit of BNSF; PROVIDED HOWEVER, that any such assurances shall not create any employment relationship between BNSF and employees of Provider; and PROVIDED FURTHER, that BNSF and Provider agree to cooperate with the identification of information that is considered confidential and proprietary.
- c) Provider is subject to the Washington State Public Records Act, Chapter 42.56 RCW (Public Records Act). Thus, the Provider may be required, upon request, to disclose this Agreement and documents related to it unless an exemption under the Public



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Records Act or other laws applies. In the event Provider receives a request for such disclosure, determines in its legal judgment that no applicable exemption to disclosure applies, Provider agrees to provide BNSF ten (10) days written notice of impending release. Should legal action thereafter be initiated by BNSF to enjoin or otherwise prevent such release, all expense of any such litigation shall be borne by BNSF, including any damages, penalties, attorney's fees or costs awarded by reason of having opposed disclosure. Provider shall not be liable for any release where notice was provided and BNSF 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 BNSF according to the "Notices" provision herein.

- d) Notwithstanding anything herein to the contrary, any party subject to confidentiality obligations hereunder or under any other related document (and each employee, representative, or other agent of such party) may disclose to any and all persons, without limitation of any kind, such party's U.S. federal income tax treatment and the U.S. federal income tax structure of the transactions contemplated by this agreement and any other agreement related thereto and all materials of any kind (including opinions or other tax analyses) that are provided to the taxpayer relating to such tax treatment and tax structure.

## 9) RECORDS

Provider will keep full and detailed records relating to the Services performed and as may be needed for proper oversight and management of this Agreement. BNSF will be afforded access at any reasonable time to all of Provider's records relating to billing, quality, nature and existence of the Services performed and to be performed, correspondence, instructions, drawings, receipts, vouchers and memoranda relating to this Agreement, and Provider will preserve all such records and afford access to them to BNSF for a period of three (3) years after final payment.

## 10) DELAY

A party shall not be entitled to any damages or compensation for delay in performance under this Agreement as a result of strikes, occurrences beyond the control of the parties, acts of God.

## 11) INDEPENDENT CONTRACTOR STATUS

- a) In the performance of Services under this Agreement, Provider is acting as an independent contractor. All persons employed by Provider or any of its subcontractors in the performance of this Agreement shall be the sole employees of Provider or its subcontractors.
- b) Provider shall complete the Services hereunder according to Provider's own manner



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and methods and with and by Provider's own means and employees, free from any supervision or control by BNSF (except as may be necessary to enable BNSF to determine whether the Services performed comply with the requirements of this Agreement). Provider will be given general directions and instructions regarding the Services that Provider has agreed to render under this Agreement, but Provider shall have the exclusive right and duty to control the work of its employees and agents.

12) **ASSIGNMENT OR SUBCONTRACTING**

This Agreement shall not be assigned nor shall any portion of the Services be subcontracted without the prior written consent of BNSF. No such contract shall release or relieve Provider from any obligation hereunder, but Provider shall be as fully responsible to BNSF for the acts and omissions of any and all subcontractors and of persons either directly or indirectly employed by them as if such acts and omissions were the acts and omissions of Provider or of persons directly employed by Provider.

For any Services which Provider subcontracts out it shall also require each subcontractor to assume liability for and indemnify and hold BNSF harmless for any injuries or damages arising out of Services the subcontractor performs to the same extent as required of Provider under the terms of this Agreement.

13) **COMPLIANCE WITH LAWS**

- a) In the performance of the Services under this Agreement, Provider, its employees, subcontractors or agents shall comply with all applicable federal, state and local laws, statutes, ordinances, orders, rules and regulations including the **Federal Railroad Administration's Roadway Worker Protection regulation** the employee right-to-know requirement of 29 CFR Part 1910 and 1926.
- b) Provider, its employees, subcontractors and agents shall comply with all federal, state and local environmental laws and regulations in connection with providing the Services under this Agreement.

BNSF participates in the U.S. Customs and Border Protection (CBP) Trade Partnership Against Terrorism (C-TPAT) program to improve supply chain security. Participation ensures a more secure and expeditious supply chain for our employees, suppliers and customers. Our commitment to supply chain security **requires that all BNSF service providers adhere to established BNSF security practices while working on BNSF properties.** Additionally, **BNSF strongly encourages our business partners to develop and commit to their own security practices that are consistent with C-TPAT security recommendations.** The CBP Industry Partnership Program office may be reached at (202) 344-1180 or [www.industrypartnership@dhs.gov](mailto:www.industrypartnership@dhs.gov) for additional information on C-TPAT security recommendations or program.





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- c) If Provider discovers any hazardous waste, hazardous substance, petroleum or other deleterious material, including but not limited to any non-containerized commodity or material on or adjacent to BNSF's property, in or near any surface water, swamp, wetlands or waterway, while performing any work under this Agreement, Provider shall immediately: (a) notify BNSF's Resource Operations Center at (800) 832-5452, of such discovery; (b) take safeguards necessary to protect its employees, subcontractors, agents and/or third parties; and (c) exercise due care with respect to the release, including the taking of any appropriate measures to minimize the impact of such release.

14) **LIENS**

Provider shall promptly pay all subcontractors and persons furnishing labor or materials, whether pursuant to an agreement with Provider or one of its subcontractors, and Provider shall deliver such Services free from any claims or liens; and, in the event of Provider's failure to do so, BNSF may pay and discharge any such lien or claim and deduct the amount so paid from any moneys which may become due and payable to Provider even if there is a dispute between Provider and the person asserting the claim or lien. Provider also agrees to indemnify and defend BNSF against any loss or damage BNSF may suffer or become liable for on account of such lien.

15) **GENERAL PROVISIONS**

- a) *Entire Agreement.* This Agreement contains the entire agreement of the parties hereto as to the subject matter hereof, and no representations, inducements, promises or agreement, oral or otherwise, between the parties not embodied herein shall be of any force or effect.
- b) *Choice of Law; Forum.* This Agreement shall be governed by and interpreted under the laws of the State of Texas without regard to the principles of conflicts of law of such state, and any actions, proceedings or counterclaims brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Agreement must be brought in a federal or state court in the State of Texas.
- c) *Interpretation.* To the maximum extent possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this Agreement.
- d) *Successors, Assigns.* All of the covenants and agreements of the parties hereto shall be binding upon, and shall inure to the benefit of, the respective parties and their



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respective heirs, legal representatives, successors and assigns.

e) **Equal Opportunity; Nondiscrimination.** Provider/Supplier and its subcontractor(s) (if any) shall not discriminate against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, Provider/Supplier shall take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

f) *Drug-Free Workplace.* In performance of the Services, Provider agrees it shall comply and shall cause its employees, agents and subcontractors to comply with the provisions of the Drug Free Workplace Act of 1988, 41 U.S.C. 8101, et seq.; Federal Rail Safety Act, 49 U.S.C. 20101, et seq.; or other applicable law. Provider further agrees it shall maintain a program of alcohol and drug testing, including pre-employment, random and probable-cause testing. This program shall include all employees, agents and subcontractors working on or within 50 feet of railroad track and employees, agents and subcontractors who are operating heavy machinery or vehicles.

If the result of a pre-employment, random or probable cause drug and/or breath-alcohol test is positive, Provider's work site supervisor shall immediately cause the affected person to leave the work site and BNSF's property and account.

Provider shall, in an annual report or upon reasonable request by BNSF, provide a report on its testing results and effectiveness of its drug/alcohol abuse program.

g) *Performance and Guarantees.*

i. Provider warrants that locomotives released from shop due to Work (e.g. modification work or unscheduled events) will operate for thirty (30) days without experiencing a failure of the same or related nature of the original Work performed. In the event the locomotive fails within the first thirty days after released from shop, BNSF will, in its sole discretion and Provider's expense:

1. Remedy the defect and invoice Provider; or,
2. Request a full refund where Provider will grant such refund as either a credit on next invoice or pay such invoice as presented by BNSF.

ii. Provider further warrants that any non-consumable material purchased by BNSF from Provider will be warranted for one (1) year from the date the locomotive is released from Provider's facility and placed into revenue



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service for BNSF. In the event there is a failure of any component the remedy as set forth in Section 15 g) (i) above will apply. In addition, Provider shall make commercially reasonable efforts to pass through to BNSF any third party warranties that apply to non-consumable materials purchased by BNSF from Provider under this Agreement.

BNSF reserves the right to amend the Scorecard at any time without a formal contract amendment.

## 16) PROPRIETARY INFORMATION

- a) Upon full payment of all amounts due Provider in connection with the Work, all right, title and interest in the deliverables set out in the Work will become BNSF's sole and exclusive property, except as set forth below. Provider will retain sole and exclusive ownership of all right, title and interest in its work papers, proprietary information, processes, methodologies, know how and software ("Provider Property") that was in Provider's possession prior to Provider's performance of the Work. To the extent Provider's deliverables to BNSF contain Provider Property, Provider grants BNSF a non-exclusive, non-assignable, royalty-free perpetual license to use Provider Property in connection with the deliverables and the subject of the Work. If Provider's deliverables are subject to any third party rights in software or intellectual property, Provider will notify BNSF of such rights.
- b) Provider represents and warrants that it has the full right and authority to enter into this Agreement, to perform the Work contemplated by this Agreement, and that it is not under any obligation to any third party that is inconsistent with its obligations under this Agreement. Provider further represents and warrants that any equipment, hardware, software, or other deliverable provided pursuant to this Agreement or the Work hereunder does not infringe any patent, copyright, or trademark and that in performing the Work, it has not misappropriated any trade secrets or violated any proprietary rights of any third parties.
- c) It is expressly agreed between the parties that BNSF is the sole and exclusive owner of all original material, including, but not limited to, programs, notes, work papers, diagrams, products, inventions, artistic creations, and documents, whether written or machine readable, prepared for or jointly with BNSF pursuant to this Agreement; and BNSF is entitled to all patents, copyrights, trademarks, and other such rights associated with and available to said material. Upon completion or termination of this Agreement, Provider shall deliver to BNSF all copies of any and all material relating to this Agreement. Provider acknowledges that all material has been developed for BNSF for its sole use and further agrees not to sell, disclose, use, or otherwise exploit any of said material without the prior written consent of an authorized representative of BNSF. If any request for such permission is not consented to in writing within 15



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days of the receipt of such request, the request shall be deemed rejected by BNSF.

- d) Provider agrees to cooperate with BNSF, and at BNSF's expense, and, upon BNSF's request, shall execute all documents as may be necessary to protect, preserve, perfect, and enforce BNSF's ownership of and proprietary rights in and to said material.
- e) In the performance of this Agreement, Provider may have access to BNSF's computer mainframe. Provider agrees not to (a) modify, adapt, alter, or translate any Software located on BNSF's mainframe; (b) reverse engineer, decompile, disassemble, or otherwise attempt to derive the Source Code for such software; (e) otherwise use or copy the software or the Source Code. Any breach of the foregoing shall be subject to Provider's indemnity obligations in Section 5 above.

#### **17) BACKGROUND INVESTIGATIONS**

In lieu of e-RAILSAFE certifications, Provider shall furnish proof of a valid Transportation Worker Identification Card (TWIC) for any or all of its employees upon request by the BNSF.

#### **18) INABILITY TO CONTRACT**

Provider shall not have the authority nor the right to make, execute or enter into any contracts, commitments or other obligations for, or on behalf of, BNSF without first obtaining the written consent of BNSF.

#### **19) TERMS AND CONDITIONS OF THIS AGREEMENT CONTROL**

This Agreement represents the full and complete agreement between Provider and BNSF with respect to all matters relating to the Services to be provided, and supersedes any and all other agreements between the parties hereto relating to the Services to be provided. This Agreement may only be amended by a document which expressly provides that it is amending this Agreement and is executed by all parties hereto. Notwithstanding the terms, conditions or provisions of any proposal, rental agreement form, custody receipt or other written document (which may be executed by BNSF personnel pursuant to this Agreement (other than a document expressly amending this Agreement), the terms and conditions in this Agreement shall control over any term, condition or provision in any such proposal, rental agreement form, custody receipt or other written document



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20) **DISPUTE RESOLUTION**

Preventing Conflicts. The Parties agree to use their best efforts to prevent and resolve potential sources of conflict by engaging in good faith negotiations on reasonable timelines, in order to avoid having any sources of conflict escalate into dispute, claims or legal actions.



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IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized officer the day and year first above written.

CITY OF TACOMA, DEPARTMENT OF  
PUBLIC UTILITIES, BELTLINE DIVISION  
D/B/A/TACOMA RAIL

BNSF RAILWAY COMPANY

Dale W. King  
(Signature)

[Signature]  
(Signature)

DALE W. KING  
(Name Printed)

Blaine Rozas  
(Name Printed)

SUPERINTENDENT  
(Title)

Director - Strategic Sourcing  
(Title)



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### Exhibit A

Provider shall provide the following Work to all unit train power for BNSF trains moving to and from Provider. All intermodal (or other) trains will be handled in the same manner as the unit crude oil trains are now handled. Upon interchange, and hours of service permitting, BNSF crews will yard trains and handle locomotive power to the Provider servicing location, which will facilitate ease of taxi access and expeditious return of crews to the BNSF terminal. Provider may also hostle the power to and from the Provider servicing location, perform some or all of the services specified in the work section below, and prepare outbound trains for on-time scheduled departure. When trains are offered for interchange to BNSF, crews arrive directly to the readied train and can depart as soon as clearance is granted by the BNSF dispatcher.

#### **Work:**

##### Locomotive Maintenance and Inspection-

- Engine Lube Oil Level - check and top-off
- Engine Governor Oil Level - check and top-off
- Air Compressor Oil Level - check and top-off
- Cooling System Level and Color - check and top-off
- Water, Oil, Exhaust or Fuel Leaks - inspect and repair minor leaks
- Steps, Walkways, Doors and Hinges - inspect, clean and correct minor problems
- Handbrake - inspect
- Fire Extinguisher Less Than 1 Year Old - inspect
- Guards, Protective Covers and Stencils - inspect, secure
- Horn, Bell and Wiper Operation - inspect and correct minor problems
- Speed Indicator and Seal - inspect
- Toilet and Restroom - clean & service for lead locomotive(s)
- Cab - clean, remove trash & graffiti inside the cab
- Sandbox - check level and fill to within 10" of full
- Trucks, Underframe and Side Bearings - inspect
- Wheels, Traction Motors and Air Ducts - inspect
- Sander Nozzles, Hoses and Operation - inspect and correct minor problems
- Main Reservoir and All Air Blowdown Drains - inspect and fix minor problems
- MU Cutout Cocks - inspect and set
- Retention Tanks - inspect to determine if less than ½ full



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- Brake Shoes and Rigging - inspect, replace shoes, adjust rigging to perform minor repairs as needed
- Fuel Cap, Gauge and Vent Line - inspect
- Coordinate fuel delivery with the BNSF designated DTL vendor. Locomotives shall be fueled to 3,500 gallon limit. Any change to this will be communicated by BNSF to both the DTL vendor and Tacoma Rail prior to returning locomotives back to BNSF.
- Heater/Air Conditioner - inspect and perform minor repairs
- Exterior and Interior Lights - inspect, replace and repair as necessary for FRA compliance
- Reverser Handle Interlock - inspect
- Indicators, Enunciators and DID Panel - inspect
- Radio Operation - verify clear transmissions
- FOT Calibration Date - record
- Cab Signals - inspect and seal (seals to be provided by BNSF if Tacoma Rail is to re-set them as necessary)
- Receiver bar (Ultra Cab II) - inspect
- GPS Circuit Breaker - ensure seal is applied

**Work Report:**

All Work completed on each locomotive will be tracked and documented with in a document that will record Date, Locomotive ID, Lube added, Engine water added, sand added, toilet pumped, Inspection completed, cab cleaned, and any material used with its cost.





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**Exhibit B**

The services listed on Exhibit A will be performed at the rate of \$62 per hour for labor.

When Tacoma Rail provides materials, they will be provided at cost + 15%. All Invoices that include Materials must have detail showing what materials were used on what locomotives. This applies to all materials used on BNSF locomotives except fuel.

**Hostling-**

There will be no charge for Tacoma Rail hostling within Tacoma Rail Yard limits and Tacoma Rail will enter into a separate Locomotive Use Agreement (LULU) with BNSF. If Tacoma Rail is requested to hostile BNSF power between the BNSF Yard and Tacoma Rail, the charge will be \$468 per move.

**Distributed Power-**

Tacoma Rail will configure a train for Distributed Power Operation per BNSF instructions at a cost of \$300 per train.

June 21, 2017

MOTION

I hereby move that the following motion be approved:

17-04. That in accordance with the Tacoma City Charter Article IV Section 4.18, the Board has reviewed the performance of the Director of Utilities and reconfirms its appointment of William A. Gaines as Director of Utilities and recommends the City Council concur in the reconfirmation.