



## RESOLUTION NO. U-10926

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

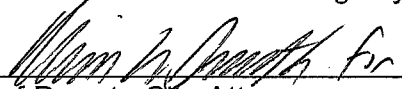


1 WHEREAS the Director requests authorization, pursuant to  
2 TMC 1.06.269 A, to amend contract amounts up to \$200,000 and to approve  
3 term extensions and renewals for all items contained in Exhibit "A;" Now,  
4 therefore,

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

6 That the Public Utility Board of the City of Tacoma hereby concurs and  
7 approves the recommendations of the Board of Contracts and Awards and/or  
8 the requesting division, and approves, as appropriate: (1) the purchase and/or  
9 furnishing of those materials, supplies, equipment or services recommended for  
10 acceptance; (2) the sale of surplus materials, supplies or equipment  
11 recommended for acceptance; (3) the Interlocal agreement that authorizes  
12 purchase off another governmental entity's contract; (4) the increase and/or  
13 extension of an existing agreement, and said matters may include waiver of the  
14 formal competitive bid process and/or waiver of minor deviations, all as set forth  
15 on Exhibit "A," and authorizes the execution, delivery and implementation of  
16 appropriate notices, contracts and documents by the proper officers of the City  
17 for said transactions, and (5) the administrative authority of the Director, per  
18 TMC 1.06.269 A., to amend contract amounts up to \$200,000 and to approve  
19 term extensions and contract renewals for all items in Exhibit "A."  
20  
21

22 Approved as to form and legality:

23   
24 \_\_\_\_\_  
Chief Deputy City Attorney

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Adopted

25 \_\_\_\_\_  
26 Clerk



City of Tacoma  
Finance

EXHIBIT "A"

RESOLUTION NO.: U-10926

ITEM NO.: #1

MEETING DATE: May 10, 2017

DATE: April 18, 2017

TO: Board of Contracts and Awards

SUBJECT: Electrical Products Citywide Contract  
Budgeted from various department funds  
U.S. Communities Purchasing Alliance (U.S. Communities) Graybar Contract No.  
MA-IS-1340234, SAP Contract 4600011639

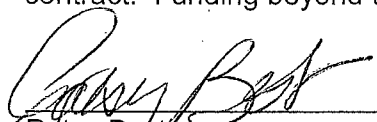
**RECOMMENDATION:** The Finance Department, Purchasing Division requests Public Utility Board and City Council approval to increase citywide contract 4600011639 to **Graybar Electric Company, Inc., Tacoma, WA**, by \$310,000 plus sales tax, for the purchase of as needed electrical supplies. This increase will bring the contract to a cumulative aggregate total of \$660,000 plus sales tax through March 31, 2018.

**EXPLANATION:** The current citywide contract for electrical supplies is valid until March 31, 2018 but will run out of funds prior to the expiration date.

**COMPETITIVE SOLICITATION:** U.S. Communities Purchasing Alliance (U.S. Communities) Contract MA-IS-1340234 (issued per Request for Proposals No. IS-13255001) is a competitively solicited contract valid until March 31, 2018. The County of Los Angeles took the lead in issuing the solicitation. Three submittals were received on January 1, 2013. This contract meets Tacoma's competitive solicitation requirements by means of an interlocal cooperative purchasing agreement with U.S. Communities Purchasing Alliance (U.S. Communities). The contract term was for three years from the date of award (2013) with two (2) additional 12 month extension options. The contract offers fixed pricing on core items and discounts off manufacturer price lists for all other items, rebate options, free delivery, no minimum purchase requirement and no cost to use the contract.

**CONTRACT HISTORY:** This citywide contract for \$350,000, plus sales tax, approved per Resolution No. U-10857 on May 6, 2016, is based on the U.S. Communities Purchasing Alliance (U.S. Communities) Graybar Contract No. MA-IS-1340234 good through October 31, 2016. US Communities extended their contract to March 31, 2018 so the Citywide Contract was administratively extended to coincide with the expiration date of the US Communities contract. This increase will bring the contract to a cumulative total of \$660,000 plus applicable sales tax to be able to utilize the contract until the current expiration date. This is the first amendment to the 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

  
Patsy Best  
Procurement and Payables Division Manager

  
William A. Gaines  
Director of Utilities/CEO

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



City of Tacoma  
Finance

EXHIBIT "A"

RESOLUTION NO.: U-10926

ITEM NO.: #2

MEETING DATE: May 10, 2017

DATE: April 12, 2017

TO: Board of Contracts and Awards

**SUBJECT: AT&T citywide contract increase for Cell Phone Airtime, Wireless Data Services and Related Equipment Purchases**  
**Budgeted from:** Multiple Division Funds  
**Solicitation Source:** Washington State Department of Enterprise Services  
NASPO Contract No. 06012, **Contract No.** 4600008749

**RECOMMENDATION:** The Finance Department, Procurement and Payables Division requests approval to increase Citywide Contract No. 4600008749 with **AT&T, Redmond, WA** by \$485,000 for cell phone airtime, wireless data services and related equipment purchases. The total increase of \$485,000 includes ratification of prior expenditures and future estimated Tacoma Public Utilities (TPU) and General Government usage. This increase will bring the contract to a cumulative amount of \$685,000 plus applicable sales tax.

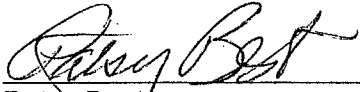
**EXPLANATION:** The City of Tacoma (City) and the Tacoma Public Utility (TPU) Departments/Divisions have the need for cell phone airtime services, wireless data services, and the ability to purchase related equipment on an 'as-needed basis.' This citywide contract provides for these needs allowing more efficient use of staff time, efficient vehicle usage and the expediting of needed City services. Wireless services are provided for TPU business use and are available to employees where the associated benefits justify the costs. Justification and monitoring of the use of wireless services and equipment purchases are performed by the individual Department/Division and by policy. The current citywide contract is valid through June 30, 2019, but is currently out of funds.

**COMPETITIVE SOLICITATION:** The Washington State Department of Enterprise Services NASPO Contract No. 06012 is a competitively solicited contract valid through June 30, 2019. This contract meets Tacoma's competitive solicitation requirements. The City uses it though an interlocal agreement. The city utilizes SAP contract 4600008749 as a means to track expenditures as well as for departmental ease in payment processing.

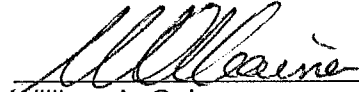
**CONTRACT HISTORY:** This citywide contract for \$200,000 plus applicable sales tax, created on February 13, 2013 is based on the Washington State Department of Enterprise Services Contract No. 06012 participating addendum with the National Association of State Procurement Officials (NASPO) Contract No. 1907 good through October 31, 2016. The State extended their contract to June 30, 2019 so the Citywide Contract was administratively extended to coincide with the expiration date of the State contract. This increase will bring the contract to a cumulative total of \$685,000 plus applicable sales tax to be able to utilize the contract until the current expiration date. This is the first amendment to the contract.

**FUNDING:** Funds for this are available in various division budget

**PROJECT COORDINATOR:** Kimberly Ward, Procurement and Payables, 253-502-8250



Patsy Best  
Procurement and Payables Division Manager



William A. Gaines  
Director of Utilities/CEO

cc: Kimberly Ward, Buyer, Finance/Procurement and Payables  
SBE Coordinator  
LEAP Coordinator



City of Tacoma  
Finance

EXHIBIT "A"

RESOLUTION NO.: U-10926

ITEM NO.: #3

MEETING DATE: MAY 10, 2017

DATE: April 24, 2017

TO: Board of Contracts and Awards

SUBJECT: Apparel/Linen Rental and Laundry Services Citywide Contract  
Budgeted from various funds as-needed by department  
Local Government Purchasing Cooperative (BuyBoard) , G&K Services, Contract  
1000174

**RECOMMENDATION:** Finance, Procurement and Payables Division, recommends a contract be awarded to **G&K Services, Minnetonka, MN**, 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 May, 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:** Request for Proposals 507-16 was competitively solicited by The Local Government Purchasing Cooperative (BuyBoard) for Uniforms and Accessories. Several contracts were awarded nationwide from this solicitation including contract 1000174 to G&K Services. This contract meets Tacoma's competitive solicitation requirements by means of an interlocal cooperative purchasing agreement with BuyBoard. 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:** Dawn Leischner, Purchasing Financial Manager, 253-502-8251.

Approved:

Patsy Best

Procurement and Payables Division Manager

Approved:

William A. Gaines

Director of Utilities/CEO

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



3628 South 35th Street  
Tacoma, Washington 98409-3192

TACOMA PUBLIC UTILITIES

EXHIBIT "A"

RESOLUTION NO.: U-10926

ITEM NO.: #4

MEETING DATE: May 10, 2017

**DATE:** April 26, 2017

**TO:** Board of Contracts and Awards

**SUBJECT:** Energy Management System (EMS) System Integration and Implementation Support Services  
Budgeted from PWR-00945-05 in the 2017-2018 Capital Budget  
Request for Proposals Specification No. PS16-0427F

**RECOMMENDATION:** Tacoma Power, Utility Technology Services (UTS) recommends a contract in the amount of \$3,966,740, plus applicable sales tax, be awarded to **Utilicast LLC, Kirkland, WA**, for Energy Management System (EMS) System Integration and Implementation Support Services to replace the existing EMS at Tacoma Public Utilities.

**EXPLANATION:** Tacoma Power has identified the need to replace the Energy Management System due to end-of-life and technology obsolescence factors. Tacoma Power's current SCADA/EMS is nearly 15 years old and needs to be replaced. The goal is to implement a system that will position Tacoma Power to manage the SCADA/EMS environment with minimal risk to reliability and CIP regulatory compliance for a minimum of 10 years while meeting existing and future business needs.

**COMPETITIVE SOLICITATION:** Request for Proposals No. PS16-0427F was opened December 13, 2016. Three companies were invited to participate in addition to normal advertising of the project. Three submittals were received.

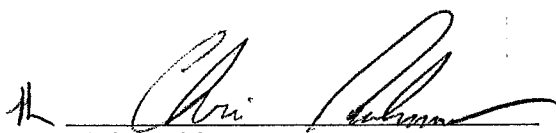
<u>Respondent</u>	<u>Location (city and state)</u>	<u>Score</u>
Utilicast	Kirkland, WA	76.4
Accenture	Denver, CO	63.7
GridSME	Folsom, CA	48.4

**CONTRACT HISTORY:** New contract.

**FUNDING:** Funds for this contract are available in the PWR-00945-05 included in the 2017-2018 Capital Budget.

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

**PROJECT ENGINEER/COORDINATOR:** Mark Pervinich, Tacoma Power, UTS Project Management Office, 253-441-4611.

A handwritten signature in black ink, appearing to read "Chris Robinson", written over a horizontal line.

Chris Robinson  
Power Superintendent/COO

A handwritten signature in black ink, appearing to read "William A. Gaines", written over a horizontal line.

William A. Gaines  
Director of Utilities/CEO

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

File: Contract File






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

TACOMA PUBLIC UTILITIES

**Date:** April 26, 2017

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

**From:**  Chris Robinson  
Power Superintendent/COO *CR*

**Subject:** Authorization of Professional Services Contract with Utilicast for system integration services for the implementation of the new Energy Management System

For your review and recommendation:

TMC 1.06.256 requires competitive solicitation of all services. Wherever possible, services should be procured as a result of a request for bids (RFB), request for proposals (RFP), or request for qualifications (RFQ), as appropriate. Utility Technology Services (UTS) issued a RFP (No. PS16-0427F) for Energy Management System (EMS) Integration and Implementation Support Services which three (3) responses were received.

**RECOMMENDATION:** : Having completed the RFP, and in accordance with TMC 1.06.256, Tacoma Power, Utility Technology Services (UTS) section is requesting authorization for a Professional Services Contract with Utilicast for Energy Management System (EMS) System Integration and Implementation Support Services to replace the existing EMS at Tacoma Public Utilities for an estimated amount of \$3,966,740.

**EXPLANATION:** Tacoma Power identified the need to replace the EMS due to technology obsolescence. Under Resolution U-10880, on October 12, 2016, the Public Utility Board approved a contract with Open Systems International, Inc. for new Energy Management System software, hardware, and product training. We are requesting approval to enter into a professional services contract with Utilicast, LLC to act as our systems integrator for implementation of the new EMS.

**JUSTIFICATION OF SELECTION:** Tacoma Power- UTS section issued RFP No. PS16-0427F on October 5, 2016 to solicit proposals to establish a Contract with a qualified vendor to fulfill TPU's needs to integrate and implement a new Energy Management System. RFP Responses were received from three (3) entities: Accenture, GridSME, and Utilicast.

A selection advisory committee comprised of six (6) members, ranked the sections of the proposals using the following categories and weights: (1) Project Approach: 40%, (2) Price: 25%, (3) Qualifications and Experience of Firm: 15%, (4) Small Business Enterprise (SBE) Certification: 5%, (5) Qualifications of Key Personnel: 10%, and (6) Submittal Quality, Organization, Completeness: 5%.

Utilicast had the highest total aggregate score and provides a solution that is much more aligned with the functional requirements of integrating and implementing operational systems at TPU and has successfully implemented several other new EMSs at a number of other utilities.


**FUNDING:** Funds for this contract are available in the Tacoma Power 2017-2018 Capital Budget, under project PWR-00945-05.

**HUB COMPLIANCE:** HUB staff was not contacted. Not applicable (TPU). (HUB section required for General Government departments only)

**PROJECT COORDINATOR:** Terry Gifford, Power Section Assistant Manager, (253) 502-8456

**AUTHORIZED:**

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

  
\_\_\_\_\_  
Date

cc: Richelle Krienke, Finance/Purchasing





## RESOLUTION NO. U-10927

A RESOLUTION related to Tacoma Power; authorizing Tacoma Power to enter into an Interagency Agreement with the Mason County Public Utility District Three for shared communications infrastructure usage.

WHEREAS the City of Tacoma, Department of Public Utilities, Light Division (d.b.a. "Tacoma Power"), UTS, Network and Communications Systems group, is in the process of upgrading communications services at the Cushman Project ("Project"), and has identified alternative transport methods that will meet current business and operational requirements and significantly increase the capacity and resiliency of Tacoma Power's current Microwave system, and

WHEREAS Utility Technology Services ("UTS") requests to enter into a 20-year, mutually beneficial interagency agreement with MCPUD3 to leverage existing and new communications infrastructure, and

WHEREAS the estimated cost for this agreement is \$800,000, with net 2017/2018 biennium costs to be \$141,000, from Tacoma Power's Capital and Operations Budget, Now, Therefore,

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

That the proposed 20-year Interagency Agreement with the Mason County Public Utility District No. 3, for an estimated \$800,000, with the net 2017/2018 biennium costs estimated to be \$141,000, is approved; the Director of Utilities is authorized to execute said Agreement on behalf of the City substantially in the form on file with the Clerk of the Board and as approved by the City Attorney, and the City Council is requested to concur in the approval of

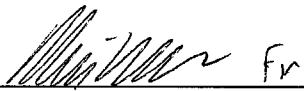


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the agreement, and appropriation thereof for the purposes designated in the agreement.

Approved as to form and legality:

\_\_\_\_\_  
Chair

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

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Clerk

Adopted \_\_\_\_\_

Request for Board meeting

CITY OF TACOMA  
DEPARTMENT OF PUBLIC UTILITIES

of May 10, 2017


**REQUEST FOR RESOLUTION**

Date: 4/28/17

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 Interagency Agreement With Mason County PUD 3 For Shared Communications Infrastructure Usage.
  
2. A resolution is requested to: (brief description of action to be taken, by whom, where, cost, etc.)  
Authorize Utility Technology Services (UTS) to enter into a 20 year, mutually beneficial, interagency agreement with Mason County PUD 3 (MCPUD 3). This agreement enables both Tacoma Power, and MCPUD 3, to leverage existing and new communications infrastructure. The estimate is \$800,000 for the term of this agreement.
  
3. Summarized reason for resolution:  
Tacoma Power, UTS, Network and Communications Systems group is in the process of upgrading communications services at the Cushman project, and has identified alternative transport methods that will meet current business and operational requirements. By leveraging MCPUD 3's existing and planned fiber optic cable infrastructure, Tacoma Power can significantly increase the capacity and resiliency of Tacoma Power's current Microwave system.
  
4. Attachments:
  - a. Memo from Superintendent Robinson to Director Gaines
  - b. Agreement Between Tacoma Power And Mason County Public Utility District No. 3 For Telecommunications Facilities
  
5. ☒ Funds available      ☐ Proposed action has no budgetary impact
  
6. Deviations requiring special waivers:

Originated by:

  
Section Head

Requested by:

  
Division Head

Approved:

  
Director of Utilities



3628 South 35<sup>th</sup> Street

Tacoma, Washington 98409-3192

TACOMA PUBLIC UTILITIES

**Date:** April 28, 2017

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

**From:**  Chris Robinson   
Power Superintendent/COO

**Subject:** Interagency agreement with Mason County PUD 3 for shared communications infrastructure.

**RECOMMENDATION:** Tacoma Power, Utility Technology Services (UTS) section is requesting authorization to enter into a 20 year, mutually beneficial, interagency agreement with Mason County PUD 3 (MCPUD 3). This agreement enables both Tacoma Power, and MCPUD 3, to leverage existing and new communications infrastructure. The estimate is \$800,000 for the term of this agreement. The net 2017/2018 biennium costs are estimated to be \$141,000.

**EXPLANATION:** Tacoma Power, UTS, Network and Communications Systems group is in the process of upgrading communications services at the Cushman project, and has identified alternative transport methods that will meet current business and operational requirements. By leveraging MCPUD 3's existing and planned fiber optic cable infrastructure, Tacoma Power can significantly increase the capacity and resiliency of Tacoma Power's current Microwave system.

**FUNDING:** Funds for the 2017-2018 biennium are available in Tacoma Power's Capital and Operations Budget.

**HUB COMPLIANCE:** HUB staff were not contacted. Not applicable (TPU).

**PROJECT COORDINATOR:** Tim Bagwell, Tacoma Power/UTS, 253-502-8285.

**AUTHORIZED:**

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

  
\_\_\_\_\_  
Date

**AGREEMENT BETWEEN  
TACOMA POWER AND MASON COUNTY PUBLIC UTILITY DISTRICT No. 3 FOR  
TELECOMMUNICATIONS FACILITIES**

This Agreement (Agreement) dated this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between Tacoma Power, a division of the City of Tacoma, Washington, Department of Public Utilities (TPU), and Mason County Public Utility District No. 3 of Mason County, a Washington municipal corporation (PUD 3), and collectively referred to as the "Parties." In consideration of the mutual covenants and conditions hereinafter provided it is agreed as follows:

**RECITALS**

WHEREAS: PUD 3 operates a telecommunications system for its internal communication needs and utilizes excess capacity of its system to provide wholesale telecommunications services as authorized under RCW Title 54.

WHEREAS: PUD 3 will construct new fiber optic facilities and utilize existing excess capacity available in its telecommunications system located in PUD 3 service territory as authorized under RCW Title 54 which TPU desires to utilize for its internal communications needs.

WHEREAS: TPU has existing excess capacity on its communications system that PUD 3 desires to utilize for its communications system.

WHEREAS: TPU will construct new fiber optic facilities located in PUD 3 service territory which TPU will use for its communication needs and PUD 3 desires to utilize excess capacity for its telecommunications system.

**DEFINITIONS**

The following definitions shall be used in this Agreement:

1. **Cable:** One or more fibers and/or buffer tubes, together with any housing or protective material surrounding or containing the fibers and/or buffer tubes.
2. **Capacity:** Fiber strands or facilities that are in excess of the PUD 3's and/or TPU's current internal network and operational needs.
3. **Demarcation Point:** Any physical location where the fiber optic network terminates and connects to or is capable of being connected to: fiber termination panel; splice case; or network access equipment/switch.



4. **Facilities:** All physical components of PUD 3's and/or TPU's fiber optic network, including, without limitation, poles, wires, pipes, underground conduits, ducts, equipment cabinets, manholes, hand holes, vaults, fibers, cables, buffer tubes, devices, switches, routers, amplifiers, power supplies and other structures and appurtenances.
5. **Fiber:** Thin, transparent, flexible fiber made of glass or plastic, which is used to transmit light from one point to another for communication purposes.
6. **Network:** Cables and facilities which are existing or being constructed by the Parties at the locations reference in **Exhibit A and Exhibit B**; together with any extensions, modifications, improvements or expansions thereto as determined by the Parties.
7. **NOC:** Network Operations Center; the physical space from which a telecommunications network is managed, monitored, and supervised.
8. **Officer:** Includes any elected or appointed member of the Parties.
9. **OTDR:** Optical Time Domain Reflectometer; an instrument that analyzes the light loss in an optical fiber for the purpose of testing and/or troubleshooting. An OTDR injects a short, intense laser pulse into the optical fiber and measures the backscatter and reflection of light as a function of time. The reflected light characteristics are analyzed to determine the location of any fiber optic breaks or splice losses.
10. **Person:** An individual, limited liability company, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.
11. **Rights-of-way:** Streets, roads, alleys, sidewalk areas and other dedicated rights-of-way within Mason County, together with dedicated utility easements within the PUD 3 and TPU limits and easements deeded to the PUD 3 and TPU for utility purposes.
12. **Splice Case:** A waterproof housing in which fiber optic cables begin, end, and/or are spliced together.

**Now, therefore it is agreed between PUD 3 and TPU as follows:**

1. PUD 3 hereby leases to TPU, Segments 1 - 5 to provide internal network connectivity for its Hydro Generation, SCADA, and utility data management systems. (See Exhibit A)
2. TPU hereby leases to PUD 3, Segment 6 to extend its telecommunications network. (See Exhibit B)
3. TPU shall deposit upon execution of this agreement \$ 191,000.00 representing one half of the current engineering estimate which is its fair and equitable contribution of PUD 3's Fiber installation cost. If the actual costs are less than the engineering estimate, PUD shall refund

the excess contribution to TPU. The cost of the Cable and Facilities are not included in the installation cost, since the Cable and Facilities shall at all times remain the property of PUD 3 (Segment 1-5).

4. PUD 3 shall deposit upon execution of this agreement \$100,000 representing one half of the current engineering estimate which is its fair and equitable contribution of TPU's Fiber installation cost. If the actual costs are less than the engineering estimate, PUD shall refund the excess contribution to TPU. The cost of the Cable and Facilities are not included in the installation cost, since the Cable and Facilities shall at all times remain the property of TPU (Segment 6).
5. TPU shall pay an operations fee for accessing PUD 3's Fiber Network in the amount of \$ 31,524.00 (Exhibit C) for the first year of this Agreement beginning in 2018. After the first year, the annual rate for each succeeding year shall increase by amount of the Consumer Price Index for the Seattle/Tacoma area. No rate modification shall be assessed during a year with a negative Consumer Price Index. Payment for each consecutive year will be due by January 31 of each year following for the term of the agreement.
6. PUD 3 shall pay an operations fee for accessing TPU's Fiber Network in the amount of \$ 7,671.60 (Exhibit C) for the first year of this Agreement, beginning in 2018. After the first year, the annual rate for each succeeding year shall increase by amount of the Consumer Price Index for the Seattle/Tacoma area. No rate modification shall be assessed during a year with a negative Consumer Price Index. Payment for each consecutive year will be due by January 31 of each year following for the term of the agreement.
7. The term of this Agreement shall be TWENTY (20) years from the date of installation and commissioning.
8. Parties shall make all payments required herein.
9. Parties shall not use the Capacity as collateral for any loan or otherwise pledge any property of other Party, including this Agreement as payment or surety for the payment of any amount, debt or obligation.
10. Parties shall promptly notify designated representatives of any matters pertaining to, or the occurrence (or impending occurrence) of, any event of which it is aware that could give rise to any damage or impending damage to the Networks.
11. Parties represent and warrant that they will use Capacity in compliance with this Agreement and all applicable government codes, ordinances, laws, rules and regulations as may now or in the future exist.
12. TPU shall cooperate with and support PUD 3 in complying with any requirements of any governmental authority, applicable to its respective rights and obligations hereunder.

13. PUD 3 shall cooperate with and support TPU in complying with any requirements of any governmental authority, applicable to its respective rights and obligations hereunder.
14. TPU shall have sole responsibility for the expense and acquisition of any property or utilities necessary for its equipment along the route of the Capacity. PUD 3 may provide assistance in such acquisitions, but this offer shall not constitute the creation of a responsibility for such acquisition. PUD 3 shall provide all components necessary for the operation of any facilities or services offered by PUD 3.
15. TPU shall utilize the Fiber for its internal use only. TPU covenants not to resell or sublease any Fiber Capacity, assign its rights to use said Capacity, or utilize the Fiber in any manner that exceeds the authority authorized by this Agreement.
16. PUD 3 shall utilize the TPU Fiber only for its internal use and the provision of telecommunications services within its service territory as authorized by RCW 54.16.330. PUD 3 covenants that it will not otherwise resell or sublease any Fiber Capacity or assign its rights to use said Capacity or utilize the Fiber in any manner that exceeds the authority authorized by this Agreement.
17. The Parties shall keep the Capacity and Facilities in good repair, operating condition, and working order. In performing any repairs, replacements, alterations, or other work performed on or around the Capacity or Facilities, the Parties shall not cause unreasonable interference with use of the Capacity. It shall be the Segment owner's responsibility to perform basic maintenance inspection work and provide locates.
18. Parties shall promptly notify the designated representatives of any matters pertaining to, or the occurrence (or impending occurrence) of, any event of which it is aware that could give rise to any damage or impending damage to the Network.
19. At any time the Parties determine that an alteration, repair, or inspection is needed, the Party will notify the designated NOC 48 hours in advance and abide by any changes in scheduling that may be required by the Parties. The Parties will coordinate and schedule resources necessary for maintenance, testing, or repairs as required to maintain reliable and continuous services. Parties may be required to provide a representative to be present, at their cost, during such activities.
20. PUD 3 will maintain a 24/7 NOC for the purpose of reporting service and Facilities disruption and coordination and repair of the Fiber Network Capacity.
21. TPU in the future may elect to stand up a 24/7 NOC for the purpose of reporting service and Facilities disruption and coordination and repair of the Fiber Network Capacity. TPU may in the future stand up a NOC, which then would service as the monitoring and reporting
22. Any unscheduled maintenance work shall be reported to the Parties. The Parties shall perform all network maintenance functions to ensure the Capacity per this Agreement meet a TWENTY-FOUR (24) hour per day, SEVEN (7) days per week functional requirement.

Parties will make all reasonable efforts to schedule emergency maintenance during off peak hours and at such a date and time that will provide Parties reasonable notice.

23. Any scheduled or routine activities or maintenance shall be performed in accordance with standard industry practices. Intrusive maintenance (maintenance that requires service down time or potentially service down time) will be performed during the hours of 11:00 pm and 4:00 am (when feasible). A Party will notify the other Party in writing at least FOURTEEN (14) calendar days prior to commencing any such scheduled maintenance.
24. Each party shall designate a representative to assist with maintenance and repairs, beyond the ordinary operation and basic maintenance inspection work on the Network. In the event that a Party requires additional assistance from the other Party, the Party shall contact the other Party's designated representative either verbally or in writing. Such assistance may include, but is not limited to assistance in making any connection to the Capacity, assistance in acquiring additional rights of use, assistance in dealing with any unusual loss of signal, defect or break, or other actions. Upon receipt of a request for such services, the Parties shall endeavor to perform the requested services as soon as possible. If the designated representatives of the Parties are unable to complete the services and third party assistance becomes necessary, the Parties shall equally share the cost thereof. The Parties shall conduct all such work to minimize the effect on the Capacity.
25. Parties shall provide their own equipment to light the fiber and operate, maintain, repair, and replace its internal communications network(s). The Parties shall be exclusively responsible for the operation of their internal communications network, systems, and equipment.
26. Upon the termination of this Agreement, all rights to use the Capacity shall revert to the Segment owner and the other Party shall have no further rights or obligations hereunder with respect thereto unless such rights or obligations are specifically provided herein to survive the Terms. Other obligations, including obligations to make payments, shall remain in effect, and shall not be cancelled or modified by the termination of this Agreement, except those obligations that require use of the Capacity.
27. The term of this Agreement may be extended only by mutual written agreement of the Parties. The Parties agree to begin negotiations of renewal on or about a year prior to the end of this Agreement and shall negotiate in good faith with the mutual intent to extend this Agreement for all or some portion of the Capacity with due regard for unusual circumstances, including the loss of a Party's rights to lease or use some or all of the Capacity herein. The dispute resolution provisions in this Agreement do not apply to the termination of this Agreement or to the negotiations to renew this Agreement.
28. PUD 3's point of contact for this Agreement is [name and/or title of PUD 3's point of contact.] TPU's point of contact for this Agreement is [name and/or title]. Either Party may change the point of contact by written notice to the other party.

29. There are no additional parties intended to be benefited under this agreement. There are no other agreements or representations, written or oral, concerning the subject matter of this agreement.
30. No amendments or variations of the terms and conditions of this Agreement shall be valid unless they are in writing and signed by all of the Parties thereto.
31. The Parties agree to perform any further acts and to execute and deliver any further documents as may be reasonably necessary to fully effectuate the provisions of this Agreement.
32. None of the Parties shall be liable nor deemed to be in default for any delay or failure in performance under the Agreement or other interruption of service or employment resulting, directly or indirectly, from acts of God, civil or military authority, acts of the public enemy, terrorism, bomb threats, computer virus, epidemic, power outage, acts of war, accidents, fires, explosions, earthquakes, floods, failure of transmission equipment, machinery, or supplies, vandalism, strikes or other work interruptions by the employees of any party, or any other cause beyond the reasonable control of the party affected thereby. However, each party shall utilize its best good faith efforts to perform under this Agreement in the event of any such occurrence or circumstance.
33. TPU agrees to protect, defend, indemnify and hold harmless PUD 3 from any and all claims, demands, losses, liens, liabilities, penalties, fines, lawsuits, and other proceedings and all judgments, awards, costs and expenses (including attorneys' fees and disbursements) caused by or occurring by reason of any violation of law or negligent act and/or omission of its elected officials, officers, agents, volunteers or employees, arising out of or in connection with the activities of the TPU under and pursuant to this Agreement, including but not limited to any personal injury, death, and/or property damage claim, demand, lawsuit or other proceeding, including industrial insurance claims and administrative enforcement actions, brought against PUD 3 or the TPU.
34. PUD 3 agrees to protect, defend, indemnify and hold harmless TPU for any and all activities by PUD 3 employees, officers, elected officials, agents and volunteers, from any and all claims, demands, losses, liens, liabilities, penalties, fines, lawsuits, and other proceedings and all judgments, awards, costs and expenses (including attorneys' fees and disbursements) caused by or occurring by reason of any violation of law or negligent act and/or omission of its elected officials, officers, agents, volunteers or employees, arising out of or in connection with the activities of PUD 3 under and pursuant to this Agreement, including but not limited to any personal injury, death, and/or property damage claim, demand, lawsuit or other proceeding, including industrial insurance claims and administrative enforcement actions, brought against TPU or PUD 3.
35. This Agreement will be enforced to the fullest extent permitted by applicable law. If any term or provision of this Agreement is held to be invalid, illegal, or unenforceable by a court or other governmental authority of competent jurisdiction, such invalidity, illegality or

unenforceability shall not affect any other term or provision of this Agreement, which shall remain in full force and affect.

36. This Agreement shall be governed for all purposes by the law of the State of Washington. The venue for any action arising under this Agreement shall be in Mason County, Washington, unless otherwise mutually agreed in writing by the parties.
37. Neither Party shall be liable to the other Party under this Agreement for any indirect, special, punitive, incidental or consequential damages, or for loss of profits, time, opportunity or data, whether in an action in contract, tort, product liability, statute, equity or otherwise. The exclusion of damages shall apply even if the limited remedies fail of their essential purpose.
38. PUD 3 and TPU will attempt to settle all disputes arising under this Agreement, including, but not limited to, payment disputes, and disputes relating to the wrongful termination of this Agreement, through informal means. In the event the parties are unable to resolve a dispute informally, the dispute shall be referred to binding arbitration. Either party may submit such dispute to binding arbitration, in accordance with the provisions of RCW 7.04. Judgment upon the award rendered may be entered in any court having jurisdiction. All post-arbitration procedures will be in conformity with RCW 7.04. Both parties will act in good faith and with due diligence to resolve the matter through arbitration as quickly as possible. Except for disputes concerning wrongful termination of this Agreement, pending the outcome of arbitration of any dispute, this Agreement will remain in effect in accordance with its terms. In any dispute arising out of this Agreement, the parties shall bear their own costs and attorney's fees, provided that in any litigation to enforce an arbitration award, the prevailing party in such action shall be entitled to recover from the other party its costs and reasonable attorney's fees in addition to any other relief granted.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement effective the date first indicated above:

Tacoma Power

Public Utility District No. 3


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William F. Gaines  
Director of Utilities/CEO

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Annette Creekpaum  
Manager

---

 Chris Robinson  
Power Superintendent/COO

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Andy Cherullo  
Director of Finance

Approved as to Form:

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Michael W. Smith  
Deputy City Attorney



## RESOLUTION NO. U-10928

A RESOLUTION requesting approval to execute a contract between Tacoma Power and Puget Sound Energy, Inc.

WHEREAS the Department of Public Utilities, Light Division (d.b.a. "Tacoma Power"), requests authority to execute a contract with Puget Sound Energy, Inc. ("PSE"), in the estimated total amount of \$6,072,000, for Tacoma Power to construct a new electrical substation to serve PSE's liquefied natural gas ("LNG") facility, adjacent to 3313 E. 11<sup>th</sup> Street, within the City of Tacoma,

WHEREAS PSE has agreed to pay Tacoma Power 100% of the project costs in advance, and

WHEREAS, due to scheduling requirements and the scope of utility installation activities involved, including long-lead times for procurement of equipment as well as the complexity of LNG project design engineering, the contract is occurring in two phases per resolution U-10898, and

1) Phase I has been approved by the Board and pertains primarily to and governs performance and payment of the preliminary engineering design and initial procurement services for long-lead time equipment.

Phase I work is ongoing and is estimated to cost \$1,700,000.

2) The Phase II contract comprises the work from Phase I along with the final design and construction services required to complete the substation. The estimated cost is \$5,520,000, which includes \$1,700,000 for Phase 1 work and \$3,820,000 for the remaining work,





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with a 10% contingency fund of \$552,000 for Phase II, for an estimated  
total contract cost of \$6,072,000; Now, Therefore,

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

That Tacoma Power is authorized to execute Phase II of the contract  
with Puget Sound Energy, Inc., with an estimated total contract amount of  
\$6,072,000, for Tacoma Power to construct a new electrical substation to serve  
PSE's LNG facility, adjacent to 3313 E. 11<sup>th</sup> Street, and the proper officers of  
the City are authorized to execute said contract in final form as approved by the  
City Attorney.

Approved as to form and legality:

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

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Clerk

Adopted \_\_\_\_\_

of May 10, 2017**REQUEST FOR RESOLUTION**Date May 1, 2017

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

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

Tacoma Power requests approval to execute the Contract between Tacoma Power and Puget Sound Energy, Inc.

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

To authorize Tacoma Power to execute a Contract for \$6,072,000 between Tacoma Power and Puget Sound Energy, Inc. for Tacoma Power to construct a new electrical substation to serve PSE's new liquefied natural gas (LNG) facility within the City of Tacoma.

3. Summarized reason for resolution:

Puget Sound Energy is building a liquefied natural gas facility adjacent to 3313 E 11<sup>th</sup> St, which will require a new Tacoma Power substation to provide electrical power. Due to scheduling requirements and the scope of utility installation activities involved, including long-lead times for procurement of equipment as well as the complexity of LNG Project design engineering, the contract is occurring in two phases per Resolution No. U-10898.

Phase I contract has been approved and pertains primarily to and governs performance and payment of the preliminary engineering design and initial procurement services for long-lead time equipment. Phase I work is ongoing and is estimated to cost \$1,700,000.

Phase II contract comprises of the Phase I contract along with the final design and construction services required to complete the substation. The estimated cost is \$5,520,000, which includes \$1,700,000 for Phase I work and \$3,820,000 for the remaining work. With a 10% contingency fund of \$552,000, the total estimated Phase II contract cost is \$6,072,000.

This request for new facilities has a high enough monetary value that it requires Utility Board approval even though 100% of the project estimate will be customer funded in advance.

4. Attachments:

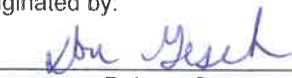
- Memo from Chris Robinson to Bill Gaines dated April 26, 2017
- Contract between Tacoma Power and Puget Sound Energy, Inc. dated January 13, 2017
- Substitute Resolution No U-10898
- 

5. ☐ Funds available ☒ Proposed action has no budgetary impact

This project will have no financial impact to the City because it is 100% customer funded.

6. Deviations requiring special waivers: ☐ None


Originated by:

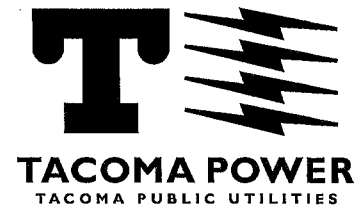
  
FOR Dolores Stegeman  
Transmission & Distribution Manager

Requested by:

  
Chris Robinson,  
Power Superintendent/COO

Approved:

  
William A. Gaines  
Director of Utilities/CEO



**DATE** April 26, 2017

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

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

**SUBJECT:** Phase II Utility Installation and Funding Agreement between Tacoma Power and Puget Sound Energy, Inc.

**RECOMMENDATION:** Tacoma Power recommends that the Public Utility Board approve a billable contract with Puget Sound Energy, Inc. for an estimated total amount of \$6,072,000.

**EXPLANATION:** Puget Sound Energy, Inc. (PSE) is building a new liquefied natural gas (LNG) facility within the City of Tacoma and has requested a new electrical service for the anticipated 12 MW load. Tacoma Power performed an interconnection study and determined a new substation is required to serve the LNG facility.

Due to timing constraints and the scope of utility installation activities involved, including long-lead times for procurement of materials and equipment as well as the complexity of LNG Project design engineering involved, the contract for constructing the substation is occurring in two (2) separate contract phases per Resolution No. U-10898:

Phase I contract has been approved and pertains primarily to and governs performance and payment of the preliminary engineering design and initial procurement services for long lead time equipment. Phase I work is ongoing and is estimated to cost \$1,700,000.

Phase II contract comprises of the Phase I contract along with the final design and construction services required to complete the substation. The anticipated responsibilities and scope of the Utility Installation and Funding Agreement, Phase II Final Design and Construction are outlined in Exhibits A and B of the attached Phase II contract. The estimated cost is \$5,520,000, which includes \$1,700,000 for Phase I work and \$3,820,000 for the remaining work. With a 10% contingency fund of \$552,000, the total estimated cost is \$6,072,000.

PSE will compensate Tacoma Power for all direct costs incurred to construct the new substation to serve the LNG project. Additionally, PSE will provide all required easements to operate and maintain the final system. In the event the parties do not proceed with Phase II, PSE will be responsible for the disposition of all equipment, with the caveat that Tacoma Power may elect to take ownership of the long-lead time equipment, should it determine a need for this standard substation equipment, and refund to PSE the applicable costs.

cc: Chad Edinger, Khanh Thai, Dolores Stegeman, Joe Wilson

## UTILITY INSTALLATION AND FUNDING AGREEMENT

~ Phase II: Final Substation Design and Construction ~

Between  
**Tacoma Power**  
And  
**Puget Sound Energy, Inc.**

This Utility Installation and Funding Agreement for Final Design and Construction of Substation ("Phase II Contract" and/or "Agreement") with an effective date of April 27, 2017 ("Effective Date") is made by and between **Puget Sound Energy, Inc.** a Washington State corporation (hereinafter referred to as "PSE") and the **City of Tacoma, Department of Public Utilities, Light Division**, a municipal corporation of the State of Washington, (d/b/a and hereinafter referred to as "Tacoma Power and/or City"). PSE and Tacoma Power each may be referred to as a "Party," or collectively as the "Parties".

### RECITALS:

**WHEREAS**, PSE has a long term lease to develop real property owned by the Port of Tacoma located within the City of Tacoma at and adjacent to 3313 E. 11<sup>th</sup> Street<sup>1</sup>, upon which PSE intends to construct a liquefied natural gas plant (the "LNG Plant"). PSE's site development and construction (see "LNG Project" below) is contingent upon *inter alia* its ability to secure a supply of electrical energy with capacity, as required by PSE, to energize and operate the new LNG Plant;

**WHEREAS**, Tacoma Power and PSE have previously executed a Phase I Contract that sets forth terms and conditions governing the LNG Project as referenced herein, together with certain material terms and conditions that were mutually agreed to be fully incorporated herein and which, by this Recital, are hereby fully incorporated;

**WHEREAS**, PSE has requested electrical service to its new LNG Plant from Tacoma Power's electrical system and Tacoma Power is prepared to provide electrical service to the LNG Plant, subject to completion of certain utility infrastructure improvements and modifications ("utility installation work") including, but not limited to, the installation of a new point of service connection and construction of a new electrical substation ("Substation") as necessary to provide additional power infrastructure capacity to connect and to serve the new LNG Plant load requirements;

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<sup>1</sup> Pierce County tax parcels 2275200502, 2275200532, 5000350021, and 5000350040.

**WHEREAS**, the scope of utility installation work necessitated by the LNG Project that is to be performed by Tacoma Power includes all electrical infrastructure construction, installation, and modification work required to complete a new point of service connection and Substation facility, together with all requisite design engineering services and incidental inspection activities related thereto in order to meet applicable safety and operating requirements. Collectively, said work, services and activities shall be deemed, and are referred to herein as, the "**Tacoma Power Work**" (as further defined in Section 1.3 f. below and in the Exhibits to the Parties' Agreement);

**WHEREAS**, PSE has requested Tacoma Power to perform the Tacoma Power Work as specified herein and necessary to serve the LNG Plant, and Tacoma Power is prepared to perform same PROVIDED that (i) all new and modified facilities required for such new electrical service are designed, constructed, and completed as set forth in the Agreement and in accordance with applicable Tacoma Power and other regulatory electrical safety and operating requirements, and (ii) PSE shall bear the sole risk and expense of the LNG Project including, but not limited to, sole responsibility for all developmental costs to complete the LNG Project and to compensate Tacoma Power as necessary to offset impacts associated therewith such that no cost effect shall result to Tacoma Power or to its other customers;

**WHEREAS**, the LNG Project developmental costs PSE is solely responsible for and will pay include, but are not limited to, all time and materials costs incurred by Tacoma Power to perform the Tacoma Power Work and such further design and inspection services related to the PSE Work (described below) as specified in and pursuant to the Agreement. Such costs specifically include "**Direct Costs**" (as defined in Section 1.3 a. below) and may include further costs for Additional Work per Article 2.4 and/or Extra Work per Article 4. Notwithstanding the foregoing, it is understood and agreed that Tacoma Power will own and operate all electrical infrastructure and facilities resulting from performance of the Tacoma Power Work hereunder unless expressly noted otherwise herein;

**WHEREAS**, all development site preparation and management activities necessary to complete the LNG Project will be the sole responsibility of and be fully performed by PSE. Such activities specifically include performance of all Substation site preparation work necessary and incidental to the Tacoma Power Work. Said work shall be deemed and is referred to herein as the "**PSE Work**" (as further defined in Section 1.3 f. below and in the Exhibits to the Agreement) and shall be performed by PSE directly and/or through its separately contracted contractor(s) (the "**PSE Contractor**" as further defined in Section 1.3 e. below);

**WHEREAS**, to arrange for the orderly and timely performance of LNG Project work and to ensure such work is compatible with the Tacoma Power Work, the PSE Work will be fully and completely performed in accordance with Tacoma Power's engineered design as set forth in the "**Design Documents**" attached hereto as **Exhibit A** and **Exhibit B** (as further defined in Section 1.3 b. below). Tacoma Power shall not be deemed a party to any contract(s) by and between PSE and its PSE Contractor; and

**WHEREAS**, for purposes of interpretation and construction, the "Agreement" referenced herein is intended, unless otherwise specified, to be comprised of this Phase II Contract and the previously executed Phase I Contract, which together form the Utility Installation and Funding Agreement between Tacoma Power and PSE.

**In Consideration of** the mutual promises set forth herein and the mutual benefits to be derived hereunder, the Parties hereby agree as follows:

## **ARTICLE 1 - SCOPE**

- 1.1 Purpose and Intent.** The purpose of this Phase II Contract is to set forth the terms and conditions pursuant to which the Parties will cooperatively undertake, at PSE's expense, the following LNG Project Work:

It is intended that Tacoma Power will perform all utility installation work required to complete a new point of service connection and electrical Substation facility to serve the LNG Plant. New service to the LNG Plant will be provided through two new substation transformers in 2018, with the capacity for two other new substation transformers in the future, and Tacoma Power will reconfigure its existing overhead power system as required.

It is intended that PSE and/or PSE's Contractor(s) will perform all LNG Project work and activities necessary and incidental to the timely completion of the Tacoma Power Work as otherwise specified herein and in the attached Design Documents (primarily Exhibit A) to provide a buildable site for the Tacoma Power Substation within the boundaries of the LNG Project. PSE understands that its timely and satisfactory performance of the "PSE Work" specified in this Phase II Contract as well as other activities by PSE or the PSE Contractor will directly affect Tacoma Power's costs to be paid and/or reimbursed by PSE.

Further elaboration of the Parties' intended roles and responsibilities under this Agreement is provided in the definitions of "PSE Work" and "Tacoma Power Work" found in Section 1.3 f. and h., respectively.

- 1.1.1** This Phase II Contract and the attached Design Documents provide for all Tacoma Power Work and PSE Work to be performed during the final design and construction phase of the LNG Project. Said work shall be completed in accordance with all drawings and/or construction standards identified as design documents in the attached Exhibits A and B

Upon final inspections by Tacoma Power and all safety permitting authorities, as well as establishment of PSE service billing account(s), Tacoma Power shall energize the electrical service to the LNG Plant. At all times, Tacoma Power shall own and operate the new Substation and all related electrical infrastructure and equipment as part of its electrical system.

**1.2 Incorporation of Recitals.** The Parties acknowledge that the above stated Recitals are true and accurate and are incorporated as contractual provisions herein.

**1.3 Definitions.**

- a) **"Direct Costs"** shall mean and encompass all costs and expenses incurred by Tacoma Power directly related to the LNG Project as provided under the Parties' Agreement and includes, without limitation, the following:
- i. All costs and expenses of materials, equipment, supplies, utilities, consumables, goods and other items used or incorporated in connection with and in furtherance of the Agreement and any taxes, insurance, and interest expenses related thereto, together with all other activity pricing and incidental charges and fees that are normally attributable to such items and recognized in accordance with the City's standard administrative and general expense accounting procedures;
  - ii. All costs and expenses incurred by City to date pursuant to the Phase I Contract or otherwise directly related to the LNG Project, as well as all costs and expenses to be incurred by the City following the Effective Date of this Phase II Contract and during the performance of the Tacoma Power Work and all related design, engineering, and inspection services and/or crew activities. Said costs and expenses shall include, but not be limited to, labor inclusive of payroll benefits, non-productive time and overhead for each of the labor classifications of Tacoma Power employees performing work for the LNG Project, together with any taxes, insurance, and interest expenses related thereto, and all other activity pricing and incidental charges and fees that are normally attributed to such work, services and activities and recognized in accordance with the City's standard administrative and general expense accounting procedures;
  - iii. All cost and expenses incurred by City to date and during performance of this Phase II Contract for any work by consultants or contractors performing the LNG Project Work and/or Tacoma Power Work under the Agreement.
- b) **"Design Document(s)"** means the specifications, plans, drawings, studies, sketches and other design, engineering and/or construction related documents for the PSE Work and the Tacoma Power Work that are prepared pursuant to the Agreement. Specific documents are attached hereto as **Exhibit "A"** which governs and sets forth requirements and standards applicable to the PSE Work, and (ii) **Exhibit "B"**, which governs and sets forth requirements, drawings and/or work sketches applicable to the Tacoma Power Work. Said Exhibits A and B are by this reference fully incorporated herein.
- c) **"LNG Project Work"** means all development work and activities related to the LNG Project including, but not limited to, the PSE Work and the Tacoma Power Work. PSE shall be solely responsible for the risk and expense of all such work and



activities. Other than the Tacoma Power Work as specified herein, PSE shall also be solely responsible for the performance of all other LNG Project Work.

- (d) **"LNG Project Area"** means all property leased from the Port of Tacoma by PSE for development of the LNG Plant and adjacent public or private property affected by associated construction activities.
- (e) **"PSE Contractor"** means the general or prime contractor(s) designated by PSE to prosecute the LNG Project and that is contractually responsible (as between said contractor(s) and PSE) to perform the PSE Work hereunder for and on behalf of PSE. All references to the "PSE Contractor" herein shall expressly include and refer to any and all subcontractors acting by and through the PSE Contractor. Notwithstanding any separate contract executed by PSE with the PSE Contractor that may pertain to the LNG Project, PSE shall be and remain fully bound and responsible hereunder for the:
  - (i) full and proper performance of the PSE Work,
  - (ii) full and proper completion of the LNG Project as a whole, other than performance of work and services expressly identified as "Tacoma Power Work" herein, and
  - (iii) payment of all costs and expense of the LNG Project as provided for hereunder. All of the foregoing shall be fulfilled in accordance with the terms and conditions of this Phase II Contract.
- f) **"PSE Work"** means all labor, equipment, engineering, surveying, supervision and supplies for the demolition, grading, soil handling, and water handling to prepare the designated substation site for construction by Tacoma Power as described in the Design Documents (**Exhibit "A"**). The PSE Work shall not include the Tacoma Power Work that Tacoma Power is expressly required to perform hereunder.

The PSE Work and activities specifically include, but is not necessarily limited to:

- i. LNG Project coordination, scheduling, and all permitting of whatsoever kind and nature;
- ii. All pre-construction Substation site preparation and all other site development and management activities necessary or incidental to the Tacoma Power Work including, but not limited to: demolition and grading; storm water management and control; de-watering activities; soil and other materials management, handling and disposal; and pre-construction surveying and staking;
- iii. Installation of temporary fencing and provision of security during Substation construction; and



- iv. All other LNG Project work, equipment, materials, and any design or inspection coordination activities not specified to be performed or provided by Tacoma Power.
- g) **"Project Manager"** means the respective persons designated by the Parties in Section 5.3 herein to be the point of contact for design and contract changes and/or updates. These persons shall further be the point of contact for all construction related work and services hereunder. Either Party may change its Project Manager, provided advance written notice of such change identifying the successor Project Manager shall be delivered at least ten (10) business days in advance of the effective date of such change.
- h) **"Tacoma Power Work"** means all labor, materials, poles, vaults, ducts, equipment, services, supplies, overheads, applicable taxes and all other items necessary to relocate, reroute, modify and reconnect the power systems and facilities for a new electrical Substation facility to serve the LNG Plant. Tacoma Power will perform and/or provide the following, as further specified herein and in the attached Design Documents (primarily Exhibit B). The Tacoma Power Work will also include:
  - i. All electrical and civil construction, installation, and modification work related to Tacoma Power electrical infrastructure. The civil portion of substation construction work may be publically bid and contracted by Tacoma Power as necessary and in its sole discretion;
  - ii. Final electrical and civil design engineering services;
  - iii. Inspection activities incidental to the above and/or to the PSE Work; and
  - iv. Materials and equipment procurement and/or installation associated with the above including, but not limited to, electrical apparatus such as poles, switches, power cables, vaults, conduit, foundations, structures, transformers, busses and associated parts.
- i) **"The City"** is used interchangeably with "Tacoma Power" in this document.

## **ARTICLE 2 – RESPECTIVE PROJECT OBLIGATIONS**

### **2.1 City Obligations:**

**2.1.1 Design & Work:** Tacoma Power will provide all Design Documents and perform all Tacoma Power Work as noted herein and in the Design Documents. The preparation of Design Documents and performance of the Tacoma Power Work pursuant thereto will be in accordance with the design and construction requirements set forth in Tacoma Power's T&D Construction Standards and in the National Electrical Safety Code (NESC)

**A.** Tacoma Power has already commenced design and equipment purchase related to the Tacoma Power Work pursuant to the Parties' Phase I Contract. See Sections 3.1 and 3.2 below regarding advance payment for said design and procurement services, including further payment in the event Tacoma Power's actual costs to perform these Phase I Contract services exceed the initial advance payment amount paid by PSE thereunder.

**2.1.2 Scheduling and Inspection Activities:** Tacoma Power agrees to provide inspection of the PSE Work as necessary in Tacoma Power's discretion to ensure it has been satisfactorily completed for purposes of commencing the Tacoma Power Work. Inspection activities incidental to the PSE Work and/or Tacoma Power Work will be provided as scheduled or required during PSE's prosecution of the LNG Project. It is expressly understood that by performing any inspection activities Tacoma Power shall not be deemed to have any direct control over, or have assumed any duties or liabilities for the full, proper, and lawful prosecution of the PSE Work or related to any LNG Project activities that are not specified herein as Tacoma Power Work; all of which is and shall remain at all times the sole responsibility of PSE. All City communications regarding inspection, acceptance, approval, rejection or modification of the PSE Work will be addressed to the PSE Project Manager. The Parties' respective Project Managers will schedule such inspection activities in such manner as not to unreasonably delay or interfere with the performance of PSE Work; provided, that Tacoma Power shall not be responsible for any costs or claims based on delay attributable to PSE or the PSE Contractor.

**2.1.3 Additional Work:** Except as specifically set forth in this Phase II Contract and/or in the Exhibits attached hereto, any additional electrical work necessary to accommodate the multitude of construction activities involved in the LNG Project shall be subject to additional design, labor, equipment, services, materials and supplies costs. PSE and/or the PSE Contractor shall be responsible for the timely request and coordination of all such additional work. The cost of such additional work shall be in addition to the amounts set forth in the Preliminary Cost Estimate (attached hereto as **Exhibit C**) and PSE shall be responsible for, and shall pay, such cost to Tacoma Power.

## **2.2 PSE Obligations:**

**2.2.1 Work to be Performed and LNG Project Activities:** PSE shall be, at its sole cost and expense, responsible for the full and complete performance of the PSE Work specified herein and in **Exhibit A**, as well as all other LNG Project Work not expressly required hereunder to be performed by Tacoma Power. The PSE Work and all other LNG Project activities that PSE is solely responsible for shall be performed and completed in compliance with all applicable laws and regulations whether or not set forth in **Exhibit A**. In performing the PSE Work, PSE shall be responsible for the PSE Contractor and/or other related contracting functions.

**2.2.2 Scheduling:** PSE shall provide an LNG Project Schedule to Tacoma Power and shall thereafter timely notify Tacoma Power of scheduling changes related to

the LNG Project that are expected to materially impact the PSE Work and/or Tacoma Power Work schedules. PSE and Tacoma Power shall jointly schedule frequent work coordination meetings to ensure both Parties are informed of progress, plans, changes or issues. Meeting minutes shall document any issues that may affect cost or schedule and when they become known to each party. The PSE Project Manager shall coordinate with Tacoma Power's Project Manager to accomplish desired changes or corrections to the Tacoma Power Work in the field as necessary to avoid delays to LNG Project Work.

**2.2.3 Property Rights and Access:** As mutually agreed in the Phase I Contract, PSE shall provide, and will be solely responsible for securing or obtaining at no cost or expense to Tacoma Power, all real property access, use, right of way, and/or easements rights and interests required by Tacoma Power for the construction, ownership, operation, and maintenance of the new Substation. Said obligations shall include and be governed by the following terms and conditions:

- A. At all times during Tacoma Power's performance of final engineering design and construction work, PSE shall furnish upon request by Tacoma Power, all necessary access, licenses, right of way, and/or easement rights and interests upon, over, under and across lands owned or controlled by PSE and/or its affiliated interests (specifically including the Port of Tacoma) required for the performance of the Tacoma Power Work and for future maintenance. Free access to such lands shall be granted at all reasonable times to Tacoma Power and/or its employees, representatives, agents and/or contractors;
- B. PSE shall further obtain for and/or assign to Tacoma Power all real property access and use rights, including but not limited to easements reasonably necessary to allow Tacoma Power to complete the Tacoma Power Work and to operate, maintain, repair, and reconstruct the resulting Substation and related electrical facilities in the future.
- C. Tacoma Power's approval, in its sole discretion, as to the form and adequacy of the foregoing real property access, rights, and interests shall be a condition to performance of the Tacoma Power Work, provided that such approval shall not be unreasonably withheld. Tacoma Power shall have no duty to commence any construction activities related to the Tacoma Power Work unless or until approved real property access and use rights are in place. It is expressly understood and agreed by the Parties that material terms and conditions governing their respective rights, risks, and liabilities relative to hazardous materials and other environmental conditions shall be included in the formal easement to be granted by the Port of Tacoma in accordance with Section 7.1.1 below.
- D. Although it shall have no duty whatsoever to do so, Tacoma Power may agree in its sole discretion to procure such additional access, license, right of way, and/or easement rights and interests pertinent to real property owned by persons or entities other than PSE if and as reasonably necessary to

performance of the Tacoma Power Work. Tacoma Power shall inform PSE of such proposals and associated costs prior to executing. Any actual costs and expenses incurred by Tacoma Power to procure said rights and/or interests in a form satisfactory to Tacoma Power shall be deemed to be Direct Costs and shall be fully and promptly reimbursed by PSE upon receipt of invoice(s) for same by Tacoma Power.

**2.2.2 Performance of Work:** PSE will employ all persons or entities necessary to perform the PSE Work and any related LNG Project Work necessary to performance thereof other than such work that is expressly assigned to Tacoma Power herein or by amendment hereto. Without limiting the foregoing, PSE shall be responsible for environmental compliance, permitting, management, control, construction, and inspection necessary to fully and properly complete the PSE Work.

### **2.3 Schedule of Work**

Tacoma Power has provided PSE with an estimate of eighteen (18) months to complete the Tacoma Power Work set forth herein commencing with the Effective Date of the Phase I Contract. Tacoma Power shall work with due diligence toward completion of the Tacoma Power Work within 18 months of commencing the same, but shall not be responsible for any damages to PSE if the work is not fully completed by said date. Tacoma Power shall communicate with PSE about unplanned issues and delays that may threaten the 18-month timeline and will provide a revised schedule. Current projected milestones for performance of the Tacoma Power Work are detailed in Exhibit D.

### **2.4 Changes of Scope of Work and/or Design Documents**

**2.4.1** In the event Tacoma Power submits a change in **Exhibit A and/or Exhibit B** following commencement of the LNG Project Work, PSE shall have ten (10) business days following receipt to review and approve any such submittal; which approval shall not be unreasonably withheld. Should PSE not approve the change as submitted, PSE shall provide written comments to Tacoma Power specifying the reasons for non-approval.

**2.4.2** In the event PSE requests a change in **Exhibit A and/or Exhibit B** following commencement of PSE Work, PSE shall provide Tacoma Power with written notice specifying the basis and scope of such proposed change. Within ten (10) business days following receipt of such notice, Tacoma Power shall review such request and either (i) approve such change and modify **Exhibit A and/or Exhibit B** accordingly, which approval shall not be unreasonably withheld, or (ii) provide written comments to PSE.

**2.4.3** All proposed or actual changes to **Exhibit A and/or Exhibit B** requested by PSE that result in a cost increase over the Preliminary Cost Estimate (Exhibit C) shall be paid by PSE. All proposed or actual changes to Exhibit A requested by Tacoma Power that result in such cost increase shall be governed by **Article 4** below.

The Parties agree to work cooperatively to timely resolve any disputes arising out of the review process for changes to **Exhibit A** and/or **Exhibit B**, using the process set forth below in **Article 8**.

### **ARTICLE 3 – PAYMENT OBLIGATIONS OF CUSTOMER**

**3.1 Payment.** Puget Sound Energy, Inc. agrees that it shall be responsible for, and shall pay, all of the City's actual Direct Costs (as defined in Section 1.3 a. above) related or attributable to the LNG Project. PSE's payment obligation for the Tacoma Power Work to be performed pursuant to the Parties' Agreement is estimated at \$5,520,000.00 plus a 10% contingency fund of \$552,000.00 for a total **Preliminary Cost Estimate** of **\$6,072,000.00** as more fully described in **Exhibit C**. The Preliminary Cost Estimate set forth in Exhibit C may be modified based on (i) the procedures for changes to the Design Documents and/or adjustment of costs as provided in Section 2.4, or (ii) **Article 4** of this Phase II Contract. This payment obligation is based on a preliminary estimate of the total cost of the Tacoma Power Work described herein, and all other related design, procurement, construction, and inspection activities required to be performed by Tacoma Power under the Parties' Agreement, and reflects the Parties' best estimates of the total Direct Costs that may be incurred by Tacoma Power pursuant to said Agreement.

Actual amounts to be paid in advance and/or reimbursed by PSE hereunder shall be based on actual work performed and materials provided pursuant to the Agreement. In the event it is determined that the scope of work for which Tacoma Power is responsible hereunder has been accomplished for a lesser amount than identified in the Preliminary Cost Estimate, PSE shall only be responsible for and will pay Tacoma Power's actual Direct Costs.

**3.2 Advance Payments and Invoices.** PSE has made an initial advance payment of \$1,700,000.00 pursuant to the Phase I Contract. Upon mutual execution of this Agreement, PSE shall immediately tender a further advance payment in the amount of **\$3,820,000.00**, which is the remaining balance of the total Preliminary Cost Estimate. Subject to the terms and conditions of this Phase II Contract, PSE shall reimburse Tacoma Power for any Direct Costs incurred in excess of these initial advance payments within thirty (30) days of receipt of Tacoma Power invoice(s) therefor.

If Tacoma Power determines that Direct Costs will likely exceed the total advance payments amount of \$5,520,000, Tacoma Power will require and invoice a final additional advance payment from PSE of the contingency fund in the amount of \$552,000.00 without the need of an Amendment hereto. An Amendment to this Phase II Contract will be required, however, in the event actual Direct Costs incurred by Tacoma Power exceed the total Preliminary Cost Estimate amount of \$6,072,000.

It is understood and agreed that Tacoma Power will not begin construction activities associated with the Tacoma Power Work unless or until it has received the advance payment of \$3,820,000.00 as required. It is further agreed that Tacoma Power may

cease performance hereunder if any advance payment and/or other invoiced amount is not paid in full within thirty (30) days following the due date for same.

**3.3. Records.** Tacoma Power shall, in accordance with its standard processes and procedures, keep records of its actual costs and expenses using a project and work order accounting system (SAP). Spending reports will be made available to PSE on a regular basis as requested.

**3.4 Invoices.** Any invoices required to be paid pursuant to Section 3.2 shall be mailed to:

**Puget Sound Energy**  
Attention: Francisco Reyna  
P.O. Box 97034 - PSE09S  
Bellevue, WA 98009  
425-456-2234  
[francisco.reyna@pse.com](mailto:francisco.reyna@pse.com)

**3.5 Payment.** Except for the payment of **\$3,820,000.00**, which is required to be tendered at the time this Phase II Contract is mutually executed, PSE shall fully pay each invoice submitted by Tacoma Power within 30 calendar days of receipt of the invoice. Checks shall be made payable to the Treasurer, City of Tacoma and shall be mailed to:

City of Tacoma  
Department of Public Utilities, Power Division  
Attn: Renata Knutson, Power Distribution Supervisor  
T&D Business & Financial Management  
3628 South 35<sup>th</sup> Street  
Tacoma, WA 98409-3192  
(253)-502-8040 Office  
[rknutson@cityoftacoma.org](mailto:rknutson@cityoftacoma.org)

In the event PSE fails to pay any monies to the City as and when due hereunder, PSE shall pay interest on such unpaid sum from thirty (30) calendar days after the date due at an annual rate equal to twelve percent (12%) per annum, or the maximum rate permitted by law, whichever is less. Tacoma Power reserves the right to suspend performance hereunder, including but not limited to construction activities, for non-payment.

Notwithstanding any contested invoice by PSE, per Section 3.6 below, PSE shall make full payment on all invoices issued by Tacoma Power.

**3.6 Contested charges.** PSE may contest a charge for any Tacoma Power Work detailed in an invoice within 30 days of receipt of such invoice by providing written notice to Tacoma Power specifying the charges and/or documentation in dispute. Upon receipt of such notice, Tacoma Power will investigate items contested and make appropriate amendments to the invoice, if necessary. If warranted, Tacoma Power will

arrange a meeting between the Parties to discuss PSE concerns as specified in its written notice. The Parties shall attempt to resolve all disputes within 30 days of the date of notice of a contested invoice. At or before the end of said period, PSE shall submit any outstanding items to Dispute Resolution as provided in **Article 8**.

It is further agreed that at the time of a final audit, all required adjustments will be made and reflected in a final payment. Interest shall not accrue on the contested part of any billing until mutually resolved. PSE will not unreasonably contest any bill.

**3.7 Refund.** Upon completion of the LNG Project, the Direct Costs actually incurred by Tacoma Power will be compared with the total amount of advance payments actually paid by PSE together with all invoiced amounts, if any. If an overpayment to Tacoma Power exists then a refund will be made to PSE within 60 days. No interest will be paid by Tacoma Power to PSE on these funds. If an underpayment to Tacoma Power exists then PSE shall tender such amount to Tacoma Power within 60 days.

**3.8 Audit.** During the progress of the Parties' work under the Agreement and for a period not less than three (3) years from the date of final payment to the City, the records and accounts pertaining to the such work and accounting therefore are to be kept available for inspection and audit by either Party. Copies of all records, accounts documentation or other data pertaining to the LNG Project will be made available for inspection, copying, or audit upon written request by either Party. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until all litigation, claim or audit finding has been resolved even though such litigation, claim or audit continues past the three-year retention period.

In the event a written request to audit is received, the recipient Party agrees to cooperate fully with the auditor or independent auditor chosen, retained, and paid by the requesting Party. If the Parties cannot agree on the results of the audit, or upon a method of refund or payment related thereto, the disagreement shall be dealt with in accordance with the Dispute Resolution provisions of **Article 8** below.

#### **ARTICLE 4 - EXTRA WORK**

In the event either Party identifies additional work, other than additional work due to unforeseen conditions, that require an increase over the Preliminary Cost Estimate for the Tacoma Power Work as set forth in **Exhibit C**, the Party asserting such additional work will provide written notice thereof to the other Party. The Parties agree to negotiate in good faith to modify this Agreement to authorize any increased payment resulting from such additional work. For additional costs due to unforeseen conditions, PSE shall be responsible for and pay such costs.

Actual or proposed cost increases of less than \$10,000.00 over the amount set forth in **Exhibit C** will not require formal approval by PSE to be chargeable by, and paid to, the City. Any necessary authorization(s) for payment shall be processed in a timely manner to avoid delaying work by Tacoma Power and/or the PSE Contractor.

Actual or proposed cost increases of \$10,000.00 or more over the amount set forth in Exhibit C, including payment for increased work and/or a substantial change in the scope of the Tacoma Power Work, shall be limited to Direct Costs allowed by written modification, change order, or extra work orders which are to be pre-approved by the Parties and pre-paid by PSE.

## **ARTICLE 5 – PROJECT WORK**

**5.1** It is acknowledged that all pre-construction Substation site work and other activities to be performed by PSE as part of the PSE Work, as set forth herein and in Exhibit A, that is necessary or incidental to performance of the Tacoma Power Work and within the LNG Project Area will be timely and fully completed by PSE and/or the PSE Contractor.

**5.2 Permits.** Except as otherwise specifically provided herein, PSE shall be responsible, at its sole expense, for acquiring all necessary permits, including but not limited to demolition, fencing, shoreline, conditional use, construction easements, or other governmental approvals necessary to perform and complete PSE Work including the new substation to be constructed by Tacoma Power. Tacoma Power shall not be responsible for securing any permit nor any easements required, necessary, or appropriate for the prosecution of the LNG Project and/or the PSE Work; provided, that Tacoma Power will secure a City building permit as necessary for the foundations and structures inside the new Substation facility. The Parties agree that PSE may assign responsibility to the PSE Contractor for obtaining any permits necessary for performance of the PSE Work.

**5.3 Administration.** The following designated Project Managers shall be responsible for administrating the joint and cooperative undertaking of the project as described herein:

**5.3.1** Tacoma Power's Project Manager shall be **Pat Leach**. All Tacoma Power Work and related PSE Work correspondence, review and approval of changes to Design Documents, scheduling, participation, and other activities pertinent to said work and/or administration of this Agreement shall be coordinated through the Tacoma Power Project Manager. The Tacoma Power Project Manager, or his official designee, will be available to assure that Tacoma Power standards are followed, to coordinate any work with Tacoma Powers dispatch office, to assure proper as built documentation is recorded, and to otherwise communicate with PSE's Project Manager regarding LNG Project matters involving performance of Tacoma Power Work and/or PSE Work hereunder.

**5.3.2** PSE Project Manager shall be **Francisco Reyna**. All PSE Work and Tacoma Power Work related correspondence, Design Document review and compliance, scheduling, participation, and other LNG Project activities pertinent to said work and/or administration of this Agreement shall be coordinated through the PSE Project Manager. The PSE Project Manager, or official designee, will be available and in



control of the construction site to handle all scheduling, inspection, approval, change orders and other construction activities relating to the work under this Agreement. All communications between Tacoma Power and the PSE Contractor shall be made through the PSE Project Manager.

**5.3.3** The foregoing designation of Project Managers shall not modify or supersede the dispute escalation process or designated Party representatives set forth in **Article 8**.

**5.4 Notices.** Except as may be otherwise specified in **Exhibit A**, all notices which may be or are requested to be given pursuant to this Agreement shall be deemed given when personally delivered, or when deposited in the United States mail, postage prepaid, and marked registered or certified mail, return receipt requested, and addressed to the parties at the following addresses unless otherwise provided for herein:

**To Tacoma Power:**

**Pat Leach**, Project Manager  
Tacoma Power, Projects & Services  
3628 South 35<sup>th</sup> Street  
Tacoma WA, 98409-3192  
Work: (253) 502-8122  
Cell: (253) 307-2454  
[Pleach@cityoftacoma.org](mailto:Pleach@cityoftacoma.org)

**With a copy to:**

David Cole  
Tacoma Power, Projects & Services  
3628 South 35<sup>th</sup> Street  
Tacoma, WA 98409-3192  
Work: (253) 502-8359  
[Dcole@cityoftacoma.org](mailto:Dcole@cityoftacoma.org)

**To Puget Sound Energy, Inc.:**

Francisco Reyna  
Puget Sound Energy, Major Projects  
10885 NE 4<sup>th</sup> St, PSE09S  
Bellevue, WA 98004  
Work: (425) 456-2234  
Cell: (206) 471-9742  
[Francisco.reyna@pse.com](mailto:Francisco.reyna@pse.com)

**With a copy to:**

Nirhmala Lucas, Senior Contract Administrator  
Puget Sound Energy  
19900 N Creek Pkwy  
Bothell, WA 98011  
BOT01G S36  
Work: (425)-398-6182  
Cell: (425)-681-6076  
[Nirhmala.Lucas@pse.com](mailto:Nirhmala.Lucas@pse.com)

Either Party may change the address to which notices shall be sent by providing written notice of such change to the other Party at least ten (10) days prior to the effective date of such change.

## **ARTICLE 6 - INSPECTION AND ACCEPTANCE OF PSE WORK**

**6.1 Timely Inspection/Approvals.** As the work progresses, the PSE Project Manager will coordinate with and allow Tacoma Power to conduct reasonable and timely inspection of the PSE Work. PSE shall give at least two (2) business days' prior notice to the Tacoma Power Project Manager of substantial completion of each major stage of the PSE Work as necessary to allow Tacoma Power, in its discretion, to inspect such completed work stage. As stages are completed, Tacoma Power will provide approvals or rejections under the process set forth below. Tacoma Power shall cooperate in providing timely inspections so that progress of the PSE Work is not delayed.

**6.2 Approvals/Acceptance.** The PSE Work must be fully and satisfactorily completed before Tacoma Power will commence any Substation construction activities. Consequently, PSE will ensure it has obtained Tacoma Power approval and acceptance of each stage before PSE or the PSE Contractor proceeds with the next stage of the PSE Work. The sequence of inspections, approvals and final acceptance is as follows:

- A. Inspections/Review.** Tacoma Power will be entitled to inspect and/or review the pre-construction Substation site and documentation related to performance of the PSE Work as coordinated with the PSE Project Manager. Said documentation will include adequate information relative to demolition, subgrade preparation and fill work. If Tacoma Power discovers that the particular elements of the PSE Work were not performed or installed per **Exhibit A** or as otherwise required herein, then Tacoma Power shall give prompt notice of such defects to the PSE Project Manager and what work remains to be done. Tacoma Power shall endeavor to provide notice of approval or rejection in less than three (3) business days. PSE and/or the PSE Contractor will promptly re-perform the PSE Work as necessary to fully comply with **Exhibit A**. Following its inspection and approval, Tacoma Power shall be allowed to occupy and commence and fully prosecute all construction activities.

- B. Final Inspection.** At the completion of all the PSE Work, the PSE Project Manager will schedule a final inspection with Tacoma Power's Project Manager and Tacoma Power shall have three (3) working days after receipt of written notice from PSE to accept or reject the completed PSE Work ("Final Inspection").
- C. Final Acceptance.** Tacoma Power's final acceptance of PSE Work shall occur only when Tacoma Power is satisfied that all such work is completed in accordance with **Exhibit A** and the requirements herein. Upon such final acceptance, Tacoma Power's Project Manager shall provide written notice thereof to PSE Project Manager.

Nothing in Tacoma Power's inspection, approval, or acceptance of the PSE Work shall reduce PSE responsibility for performance and full and proper completion of PSE Work. It is expressly acknowledged and agreed that Tacoma Power does not, by reason of its inspection and/or approval of PSE Work pursuant to this Article 6, assume any duty whatsoever for the full and proper performance of the PSE Work – nor any other duties relative to management and/or liability associated with performance of other LNG Project Work.

**6.3 Warranties.** PSE fully warrants the PSE Work, as well as all PSE Contractor warranties it obtains and/or may assert in connection with said work. PSE will assign all rights under said warranties to the City with respect to elements of the PSE Work as applicable and deemed necessary by Tacoma Power.

**6.4 Construction on Site.** Upon receiving notice of Final Acceptance from Tacoma Power regarding the PSE Work, PSE shall transfer control of the completed pre-construction Substation site to Tacoma Power for its use, occupancy, and construction activities. Tacoma Power shall thereafter be responsible for such use, occupancy and construction activities.

**6.5 Ownership/Use.** It is mutually understood and expressly agreed that, notwithstanding PSE's obligation to fully fund and pay for the LNG Project, including its payment obligations hereunder, Tacoma Power will own and operate the electrical supply system facilities to be modified, improved and/or constructed during the LNG Project including, but not limited to, the resulting electrical Substation.

## **ARTICLE 7 - LEGAL RELATIONS**

**7.1 Incorporation of Material Phase I Contract Terms and Conditions.** Pursuant to the Phase I Contract, the Parties previously established certain terms and conditions that apply to and govern legal relations under their Agreement, which includes this Phase II Contract. Accordingly, it is mutually and expressly acknowledged that the provisions identified below shall apply to and be a part of this Phase II Contract.

The following Phase I Contract provisions are, by this reference, fully incorporated herein:

- (i) All Indemnification provisions as stated in Section 5.3, including all terms and conditions in subsections 5.3.1 through 5.3.3 thereof;
- (ii) All Insurance provisions as stated in Section 5.3.4, including all terms and conditions in subsections (a) through (d) thereof;
- (iii) Agency and Employee Relationship clause stated in Section 5.4;
- (iv) Entire Agreement clause stated Section 5.5;
- (v) Severability clause stated in Section 5.6;
- (vi) Amendments clause stated in Section 5.7;
- (vii) Rights and Remedies clause stated in Section 5.8;
- (viii) Force Majeure clause stated in Section 5.9;
- (ix) Transfer/Assignment clause stated in Section 5.10; and
- (x) Benefits clause stated in Section 5.11;

7.1.1 In addition to the forgoing referenced and incorporated provisions, the Parties expressly acknowledge and agree that material terms and conditions governing their respective rights, risks, and liabilities relative to hazardous materials and other environmental conditions applicable to the real property where LNG Project Work including, but not limited to the Tacoma Power Work and the PSE Work, shall be included in the formal Easement to be granted by the Port of Tacoma to Tacoma Power pursuant to Section 2.2.3 hereinabove. Each Party shall exercise best efforts to promptly and in good faith negotiate said terms and conditions for inclusion in the subject Easement; provided, however, that Tacoma Power's shall have no duty to commence any construction activities related to the Tacoma Power Work unless or until final terms and conditions of such Easement are reasonably satisfactory to Tacoma Power and said Easement has been formally granted by the Port of Tacoma per PSE's duties under Section 2.2.3 above.

## **ARTICLE 8 - DISPUTE RESOLUTION**

**8.1 Preventing Conflicts.** The Parties agree to use their best efforts to prevent and resolve potential sources of conflict before they escalate into dispute, claims, or legal actions.

**8.2 Resolving Disputes Through Negotiation.** The Parties agree to use their best efforts to resolve disputes arising out of or related to the Agreement using good faith negotiations by engaging in the following dispute escalation process should any such disputes arise:

8.2.1 Level One – The respective Project Managers of the Parties shall meet to discuss and attempt to resolve the dispute in a timely manner. If they cannot resolve the dispute within ten (10) business days after the referral of that dispute to Level One, either party may refer the dispute to Level Two.

8.2.2 Level Two – The Managing Member of PSE or designee and the Superintendent for the City of Tacoma, Department of Public Utilities, Light Division or his designee shall meet to discuss and attempt to resolve the dispute in a timely manner.

**8.3 Failure to Resolve Dispute Through Best Efforts.** Except as otherwise specified in the Agreement, in the event the dispute is not resolved at Level Two within ten (10) business days after referral of that dispute to Level Two, the dispute may be referred to mediation as mutually agreed to by the Parties, or the Parties may exercise whatever other rights they may have at law or in equity. At all times prior to resolution of the dispute, the Parties shall continue to perform their respective duties under the Agreement in the same manner and under the terms as existed prior to the dispute.

**8.4 Venue.** Venue for any legal action shall be in Pierce County, Washington.

## **ARTICLE 9 – MISCELLANEOUS PROVISIONS**

**9.1 Termination.** If this Agreement is terminated by PSE and/or if PSE defaults under this Agreement prior to completing all PSE Work, and said termination or default results in a state of reduced operation and reliability to City-owned utilities, then the City shall restore its utility systems to a reliable and operable condition and PSE shall be responsible for and shall promptly pay Tacoma Power all incurred costs associated with such default and restoration.

**9.2 Authorization To Execute Agreement.** The undersigned, by their respective signatures below, represent and warrant that they are each duly authorized to execute this legally binding Agreement for and on behalf of the Party for whom they have signed. PSE through its undersigned representative expressly acknowledges and agrees that the formal approval of this Phase II Contract by the City of Tacoma's Public Utility Board is a required pre-condition to the effectiveness and enforceability hereof. Tacoma Power shall have no legal or equitable liability hereunder and/or in connection with the Parties' Utility Installation and Funding Agreement or the LNG Project - beyond those obligations accepted under the Phase I Contract - unless or until such approval is obtained. Upon such approval, this Phase II Contract and the Utility Installation Agreement to which it pertains shall become effective as of the Effective Date first above written.

The Parties, through their authorized representatives, are signing this Phase II Contract to become effective as of the Effective Date first above written.

**PUGET SOUND ENERGY, INC.**

By \_\_\_\_\_  
Wayne Gould  
Director Corporate Shared Services

Approved as to form:

\_\_\_\_\_  
Puget Sound Energy, Inc.  
Legal Counsel

**CITY OF TACOMA  
DEPARTMENT OF PUBLIC UTILITIES**

By \_\_\_\_\_  
William A. Gaines, Utilities  
Director/CEO

Approved:

By \_\_\_\_\_  
Chris Robinson  
Power Superintendent/COO

Approved:

\_\_\_\_\_  
Finance Director

Approved as to Form:

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

## **Exhibit A**

### **Puget Sound Energy, Inc. Work**

In further elaboration of the PSE Work described and defined in the Phase II Contract to which this Exhibit A is attached, it is mutually understood and agreed that Puget Sound Energy, Inc. (PSE) shall, unless otherwise specified, be solely responsible for and shall fully complete the following work, services, and activities:

**1. Demolition and Grading Prior to Substation Construction:** Demolition including buildings, structures, foundations, paving, utilities, and pilings to a depth of 4 feet or more below final grade. Site clearing including cleaning site of debris, grass, trees, and other plant life. Site subgrade preparation, compaction and grading including filling voids to 18 inches below grade with satisfactory compacted structural fill materials as a result of removals or demolition and slope for drainage to storm-water retention area.

The condition of the subgrade shall be inspected and tested after removal of the building foundation, piles, utilities and obstructions, by PSE's Geotechnical Engineer prior to filling. All soils disturbed as a result of building demolition shall be removed and tested for suitability for reuse as structural fill. The subgrade shall be compacted to a firm, unyielding state before concrete or fill soils are placed. Any localized zones of loose granular subgrade soils shall be compacted to a density commensurate with surrounding soils. Any organic, soft, or pumping soils shall be over excavated and replaced with a suitable structural fill material. All fill shall be placed and compacted in layers to a uniform density of a least 95% (based on ASTM D-1557). PSE's Geotechnical consultant shall provide Tacoma Power a stamped report summarizing the inspection and acceptance testing of the subgrade soils and the subsequent filling operations.

**2. Geotechnical Consulting Services:** PSE's Geotechnical consultant shall provide Tacoma Power a stamped report by a Washington State licensed geotechnical engineer summarizing the inspection and acceptance testing of the substation site subgrade soil preparation and compaction activities and the subsequent filling operations.

**3. Soils:** Store and properly dispose of all soils removed from the substation construction site, whether removed by Tacoma Power or Tacoma Power's contractors or Puget Sound Energy or PSE's contractors. Provide reasonable access to the soils storage area on the LNG Project site for Tacoma Power or Tacoma Power's contractors.

**4. Drainage and Storm water:** Provide retention, storage, processing, cleaning for all water drainage from the new substation site during construction and subsequent operation.

**5. Work Area:** Puget Sound Energy, Inc. shall require its contractor to coordinate with Tacoma Power to ensure Tacoma Power has accessible and adequate work areas so as to not unreasonably delay or interfere with the performance of the Tacoma Power Work within the Puget Sound Energy, Inc. LNG Project area.

**6. Coordination with other Utilities:** Puget Sound Energy, Inc. shall coordinate with other utilities to ensure the timely transfer, conversion and/or relocation of their respective facilities in a timely manner so as not to unreasonably delay or interfere with the Tacoma Power Work. No utilities, conduits, raceways, pipes or any other structure or device shall be allowed within the boundary of the new substation except those solely required by and for the use of Tacoma Power, except for the electrical service conductors and raceways to the LNG Plant.

**6. Site Security:** During construction, PSE will provide and set up temporary fencing as requested by Tacoma Power. Tacoma Power will cooperate with Puget Sound Energy, Inc. for installation of LNG Plant security equipment along the east fence of the new substation, to the extent that electrical hazards can be eliminated. Tacoma Power will not be responsible for any monitoring, maintenance or operation of said security equipment.

**7. Permits:** Obtain all environmental, construction and land use permits required for the construction of the substation other than the City of Tacoma Building Permit for the substation foundations.

Tacoma Power and PSE understand and agree that each Party will be coordinating construction activities, and PSE and Tacoma Power agree that they shall cooperate with one another to the fullest extent possible to maximize the efficiency of such construction, and to minimize the disruption to either PSE's or Tacoma Power's construction activities.

**Design Documents Attached -**

CB&I Drawing:      000-PI-01-000001  
                         Overall Plot Plan  
                         Main LNG Plant  
                         Tacoma LNG  
                         Tacoma, WA



## **Exhibit B**

### **Tacoma Power Work**

**I. Tacoma Power Work and services is expected to include:**

- A. Engineering, procurement and construction for:**
  - 1. Bus and breaker support foundations
  - 2. A control enclosure
  - 3. Steel bus support structures
  - 4. Grounding
  - 5. Underground conduit
  - 6. Cable trenches
  - 7. Lighting
  - 8. Fencing
  - 9. Site drainage to PSE "rain garden"
  - 10. Site preparation and grading if needed
  - 11. Transmission poles
  - 12. Potential Transformers
  - 13. Current Transformers
  - 14. Metering equipment
  - 15. Protective relays
  - 16. Integration/SCADA equipment
  - 17. Communications equipment
  - 18. Panels
  - 19. Battery system
  - 20. Conductors
  - 21. Insulators
  - 22. Gang operated switches
  - 23. Steel dead-end structures and foundations
  - 24. Substation security cameras and alarms
  - 25. Secondary containment for 115 kV oil filled transformers
- B. Communications engineering and construction, excluding raceways linking Tacoma Power and PSE's facilities as necessary throughout PSE's property.**
- C. Surveying and geotechnical engineering as necessary.**
- D. Installation of all long-lead equipment identified in Section I of Phase I Contract.**
- E. Testing, commissioning and energization of Tacoma Power equipment.**

- F. Supply, install, test and terminate 15kV service conductors in customer provided conduits from transformer banks to PSE service points designated by Tacoma Power.

**Design Documents Attached-**

**Tacoma Power's Facilities Study-Puget Sound Energy – Liquefied Natural Gas Project**

Tacoma Power Drawing: H126P033  
Taylor Substation  
Electrical Layout Plan View

Tacoma Power Drawing: H126P034  
Taylor Substation  
Electrical Section Views

Tacoma Power Drawing: H126W001  
Taylor Substation  
115kV – 13.8kV  
One-Line Diagram

## Exhibit C

### Project Cost Estimate

**Puget Sound Energy, Inc.** shall be solely responsible for funding and paying (including reimbursement to Tacoma Power if and as invoiced) all Direct Costs for the Tacoma Power Work, which includes all cost and expense of labor and services performed by Tacoma Power, together with all materials, equipment and other items it provides associated with the LNG Project pursuant to the Phase II Contract to which this Exhibit C is attached.

<u>Group</u>	<u>Estimated Cost</u>
Substation Engineering & Procurement	\$ 1,990,000
Substation C&M	\$ 882,000
Protection & Control	\$ 882,000
Communications	\$ 100,000
Line	\$ 725,000
Civil	\$ 811,000
Project Management	\$ 130,000
Subtotal	\$ 5,520,000
Contingency	\$ 552,000
Total Estimate	\$ 6,072,000

## Exhibit D

### Schedule of Work

Task Name	Start	Finish
<b>Taylor Substation Project</b>	<b>January 17, 2017</b>	<b>October 26, 2018</b>
Project Kickoff	January 17, 2017	January 17, 2017
Project Initiation	January 17, 2017	March 10, 2017
Team Assignments	January 17, 2017	January 31, 2017
Kickoff Meeting	January 18, 2017	January 18, 2017
Scope Confirmation	January 18, 2017	February 24, 2017
Preliminary Engineering	January 25, 2017	March 10, 2017
Permitting & Legal	January 17, 2017	July 28, 2017
Customer Contract	January 17, 2017	April 13, 2017
Customer Contract PUB Approval	April 26, 2017	April 26, 2017
Property Easement	January 18, 2017	May 18, 2017
Building Permit	March 13, 2017	July 28, 2017
Civil Engineering	January 18, 2017	July 31, 2017
Civil Construction	August 1, 2017	January 5, 2018
Line Engineering	January 30, 2017	June 16, 2017
Line Construction	June 4, 2018	June 22, 2018
Substation Engineering	January 19, 2017	May 21, 2018
P&C Engineering	February 20, 2017	April 16, 2018
Comm Engineering & Construction	February 20, 2017	April 16, 2018
HFC Engineering & Construction	January 30, 2017	April 16, 2018
Facilities Engineering	January 30, 2017	April 23, 2018
Electrical Engineering Complete	November 3, 2017	November 3, 2017
Electrical Construction	November 6, 2017	June 26, 2018
Commissioning	May 28, 2018	June 26, 2018
Final Commissioning & Energization	July 2, 2018	July 2, 2018
WECC Notifications	July 2, 2018	July 3, 2018
Closeout	July 5, 2018	October 26, 2018



## SUBSTITUTE RESOLUTION NO. U-10898

A RESOLUTION requesting approval to execute a Phase I contract between Tacoma Power and Puget Sound Energy, Inc.

WHEREAS the Department of Public Utilities, Light Division (d.b.a. "Tacoma Power"), requests authority to execute a reimbursement contract with Puget Sound Energy, Inc. ("PSE"), in the estimated total amount of \$1,700,000, related to Tacoma Power building facilities necessary to interconnect PSE's new large electrical load in the Port of Tacoma area to Tacoma Power's system ("Project"). PSE has agreed to pay Tacoma Power 100% of the Project costs in advance, and

WHEREAS PSE intends to build a new liquefied natural gas ("LNG") facility within the City of Tacoma and has requested a new electrical service for the anticipated 12 MW load. Tacoma Power performed an interconnection study and determined a new substation is required to serve the LNG facility, and

WHEREAS, due to timing constraints and the scope of utility installation activities involved, including long-lead times for procurement of materials and equipment as well as the complexity of Project design engineering, the contract for constructing the substation will have two (2) separate contract phases:

- 1) The Phase I contract pertains primarily to and governs performance and payment of the preliminary engineering design and initial procurement services for long-lead time equipment. This phase is



1 estimated to cost \$1,700,000. A copy of the proposed contract is on file  
2 with the Clerk of the Board.

3 2) The Phase II contract will pertain primarily to the final design and  
4 construction services required to complete the substation. The  
5 anticipated responsibilities of the Phase II contract are outlined in  
6 Exhibits A and B of the attached Phase I contract. This phase is  
7 estimated to cost \$3,800,000. The Phase II contract will be finalized  
8 prior to completion of the work under Phase I and will be brought back to  
9 the Public Utility Board for final approval.  
10

11 WHEREAS PSE will compensate Tacoma Power for all direct costs  
12 incurred to construct the new substation to serve the LNG project. Additionally,  
13 PSE will provide all required easements to operate and maintain the final  
14 system. In the event the parties do not proceed with Phase II, PSE will be  
15 responsible for the disposition of all equipment, with the caveat that Tacoma  
16 Power may elect to take ownership of the long-lead time equipment and refund  
17 to PSE the applicable costs, and  
18

19 WHEREAS, pursuant to Tacoma Municipal Code section 1.06.269,  
20 Tacoma Power requests that the Board delegate to the Director of Utilities  
21 authority to increase the Phase I contract by 10% and extend contract terms  
22 related to the Project so long as PSE reimburses Tacoma Power for all  
23 increased contract amounts; Now, Therefore,  
24  
25  
26



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

2 Sec. 1 That Tacoma Power's request to execute a Phase I contract with  
3 Puget Sound Energy, Inc., for preliminary engineering design and initial  
4 procurement services for long-lead time equipment to construct facilities  
5 necessary to interconnect PSE's proposed LNG plant to Tacoma Power's  
6 system in the amount of \$1,700,000, is hereby approved, and the proper  
7 officers of the City are authorized to execute said contracts in final form as  
8 approved by the City Attorney.  
9

10 Sec. 2 That pursuant to Tacoma Municipal Code section 1.06.269, the  
11 Board delegates to the Director of Utilities authority to increase the Phase I  
12 contract amount by 10% and extend contract terms so long as PSE reimburses  
13 Tacoma Power for all increased contract amounts related to the Project.  
14

15 Approved as to form and legality:

Chair

16 *William Foshe*

17 Chief Deputy City Attorney

Secretary

18  
19 Clerk

Adopted

## UTILITY INSTALLATION AND FUNDING AGREEMENT

~ Phase I: Procurement and Preliminary Engineering Design Services ~

Between

**Tacoma Power**

And

**Puget Sound Energy, Inc.**

This Utility Installation and Funding Agreement for Procurement and Preliminary Engineering ("Phase I Contract") with an effective date of ~~June 13, 2013~~ 2014 ("Effective Date"), is made by and between **PUGET SOUND ENERGY, INC.**, a Washington State corporation (hereinafter referred to as "**PSE**") and the **City of Tacoma, Department of Public Utilities, Light Division**, a municipal corporation of the State of Washington (d/b/a and hereinafter referred to as "**Tacoma Power**"). PSE and Tacoma Power each may be referred to as a "Party," or collectively as the "Parties."

### RECITALS:

**WHEREAS**, PSE has a long term lease to develop real property owned by the Port of Tacoma located within the City of Tacoma at and adjacent to 3313 E. 11<sup>th</sup> Street<sup>1</sup>, upon which PSE intends to construct a liquefied natural gas facility (the "LNG Facility"). PSE's site development and construction (see "LNG Project" below) is contingent upon *inter alia* its ability to secure a supply of electrical energy with capacity, as required by PSE, to energize and operate the new LNG Facility;

**WHEREAS**, Tacoma Power is authorized under Washington law to engage in the production, acquisition, transmission, distribution, and sale of electric power. Tacoma Power owns and operates electric utility facilities within a service area that includes the real property upon which PSE proposes to construct and operate its LNG Facility;

**WHEREAS**, it is PSE's desire to connect its new LNG Facility to Tacoma Power's electrical system, and Tacoma Power desires to provide electrical service to the LNG Facility, but due to the anticipated 12MW load increase entailed by the LNG Project additional load capacity is required, which in turn requires certain modifications and improvements be made to Tacoma Power's existing electrical system facilities as well as construction and connection of a new electrical substation;

<sup>1</sup> Pierce County tax parcels 2275200502, 2275200532, 5000350021, and 5000350040.



**WHEREAS**, the LNG Facility to be constructed by PSE, together with the modifications and improvements to Tacoma Power's facilities and related utility installation work proposed to be built and performed by Tacoma Power herein as necessary to provide electrical service to the LNG Facility, are collectively referred to herein as the "LNG Project";

**WHEREAS**, based on PSE's desire to proceed with development of the LNG Project with minimal delay, and Tacoma Power's desire to serve the LNG Facility as requested by PSE, Tacoma Power has conducted a preliminary evaluation of the development activities necessary to construct the LNG Facility and to complete the LNG Project, including the scope of utility installation related activities each Party will be required to perform;

**WHEREAS**, due to timing constraints and the scope of utility installation activities involved, which include long lead times for procurement of necessary materials and equipment as well as the complexity of LNG Project design engineering involved, the Parties wish to proceed with the LNG Project in two (2) separate contract phases. The first phase, which is the subject of this Phase I Contract, pertains primarily to and governs performance and payment of the preliminary engineering design and initial procurement services required to commence the LNG Project. The second phase, which is the subject of the Phase II Contract more fully described in Section IV. below, pertains primarily to the final design and construction services required to complete the LNG Project as currently contemplated by the Parties;

**WHEREAS**, it is mutually understood and acknowledged that PSE assumes all risk, cost, and expense of the LNG Project. Accordingly, all work performed and materials supplied by Tacoma Power pursuant to this Phase I Contract, as well as the Phase II Contract contemplated herein, shall be at the sole cost and expense of PSE, which requires PSE to offset all LNG Project developmental impacts to Tacoma Power. Such developmental impacts include, but are not limited to, the actual costs incurred by Tacoma Power to provide capacity for the LNG Facility per applicable safety and operating requirements. All actual costs incurred by Tacoma Power in connection with the LNG Project must be fully paid by PSE either in advance, based on a preliminary estimate of Tacoma Power's costs, or when otherwise due in accordance with the payment and invoicing provisions in Section III below;

**WHEREAS**, in reliance upon the foregoing recitals, the Parties mutually desire to proceed with the LNG Project according to the terms and conditions set forth in this Phase I Contract, which include provisions applicable to their contemplated Phase II Contract;

**IN CONSIDERATION OF** the foregoing Recitals, the mutual promises set forth herein, and the mutual benefits expected to be derived hereunder, the Parties hereby agree as follows:

## **I. INITIAL PROCUREMENT SERVICES**

**1.1** Upon mutual execution of this Phase I Contract, and PSE's tender of the required Advance Payment as specified in Article III herein, Tacoma Power shall immediately proceed with procurement of long lead equipment it deems will be necessary to complete utility installation work for the LNG Project. Said procurement services shall include ordering, and ensuring delivery at the LNG Facility site, the following long-lead equipment items:

Equipment	Quantity	Estimated cost
115 kV Circuit Breakers	3	190000
115 kV Switches	14	110000
115 kV PTs	6	60000
115/13.8 kV Transformers	2	1040000
		1400000

As shown, the estimated cost of long-lead equipment to be procured by Tacoma Power is **\$1,400,000** and will be included in the required Advance Payment (as further defined in Section 3.2 below). It is mutually agreed that should the actual cost of long-lead equipment exceed this estimated amount and Advance Payment funds are insufficient to cover the additional procurement cost, Tacoma Power will invoice PSE, and PSE shall timely pay, such excess costs in accordance with the terms and conditions in Article III (Payment) herein.

Tacoma Power's procurement services shall also include reservation requests for additional materials and/or equipment from its current inventory, as it deems necessary and in accordance with its standard warehouse procedures, to ensure said items are available during LNG Project construction.

**1.2 Equipment Ownership and Other Responsibilities.** It is mutually agreed that in the event the Parties are unable to successfully negotiate and execute the contemplated Phase II Contract pursuant to Article IV herein, or should PSE terminate or otherwise not proceed with the LNG Project, ownership and disposition of long-lead equipment procured by Tacoma Power per this Phase I Contract shall be reconciled as follows:

- 1.2.1** Subject to Tacoma Power's right and option specified in Section 1.2.2 below, PSE shall own and be solely responsible for the final disposition of said equipment including, but not limited to, risk of loss, storage, and any other costs of whatsoever kind that may be incurred following the date such equipment is delivered to the LNG Facility site.
- 1.2.2** Tacoma Power shall have the right, and in its sole discretion the option, to assume full ownership of any or all equipment items. In the event Tacoma Power desires to exercise this option, it shall provide PSE written notice of such intent, the particular equipment involved, and the date Tacoma Power intends to assume ownership. The Parties shall thereafter make good faith and reasonable efforts to coordinate a timely transfer of ownership and possession of the subject equipment. Upon actual transfer of possession, Tacoma Power shall be deemed to own and be solely responsible for the equipment so transferred.
- 1.2.3** It is mutually agreed that upon transfer of equipment ownership and possession to Tacoma Power per Section 1.2.2, Tacoma Power shall refund to PSE the original purchase order price of said equipment subject to reduction and offset by the total amount of (i) actual costs incurred by Tacoma Power in connection with this Phase I Contract that exceed the Advance Payment amount that PSE has not previously paid, and/or (ii) any costs or expense required to be paid to obtain possession of and relocate equipment from its original delivery location.

## **II. PRELIMINARY ENGINEERING DESIGN SERVICES**

**2.1** Upon mutual execution of this Phase I Contract, and PSE's tender of the required Advance Payment as specified in Article III herein, Tacoma Power shall immediately begin work to develop and prepare the preliminary engineering design for the LNG Project. It is mutually intended and agreed that said preliminary engineering design will

be used by the Parties to develop the final design documents and detailed cost estimates of the Phase II Contract. Preliminary engineering design services shall include:

**2.1.1 Electrical engineering and drafting services for:**

- Substation design
- Protective relaying
- Metering
- Transmission line design

**2.2.2 Civil engineering and drafting services for**

- Transmission line design
- Substation design including all switchyard foundations, steel structures, surveying, transformer foundation/containment design, and geotechnical engineering.

**2.2** The estimated cost of the preliminary engineering design services to be performed by Tacoma Power is **\$300,000.00**. It is mutually agreed that should Tacoma Power's actual costs for such preliminary design services exceed said estimated amount, and Advance Payment funds are insufficient to cover the additional procurement cost, Tacoma Power will invoice PSE for such excess cost and PSE shall timely pay said invoice in accordance with the terms and conditions in Article III (Payment) herein.

### **III. PAYMENT AND INVOICING**

**3.1 PSE Payment Obligations.** PSE agrees that it shall be solely responsible for, and shall pay, any and all actual costs whatsoever incurred by Tacoma Power in connection with or attributable to the LNG Project. This obligation applies to any and all procurement and preliminary engineering design services performed by Tacoma Power hereunder (collectively the "Services"), the total cost of which is currently estimated at **\$1,700,000.00**. This Preliminary Cost Estimate amount is based on Tacoma Power's good faith estimate of the total actual costs it will incur to fully perform its obligations under this Phase I Contract. The total cost of Services includes, but is not necessarily limited to, the cost of: (i) all materials and equipment it is responsible to purchase hereunder and related procurement administration, (ii) all preliminary engineering design work it will perform and complete, and (iii) any applicable taxes, fees, charges, or

other expenses that may arise in connection with Tacoma Power's performance hereunder.

It is expressly agreed that should the total actual costs incurred by Tacoma Power to fully perform the Services hereunder exceed the Preliminary Cost Estimate, PSE shall promptly reimburse Tacoma Power for said excess amount when invoiced. It is further expressly agreed that should the Parties mutually determine total actual costs incurred by Tacoma Power for such performance are less than the Preliminary Cost Estimate, PSE shall only be obligated to pay such actual costs.

**3.2 Advance Payment and Invoices.** Upon mutual execution of this Agreement, PSE shall tender an Advance Payment to Tacoma Power in the total amount of \$1,700,000.00. For purposes of this Phase I Contract, said "Advance Payment" shall mean that portion of the total customer funded project amount that must be paid by PSE as a pre-condition to Tacoma Power's obligation to perform under this Phase I Contract and is equal to the mutually agreed Preliminary Cost Estimate amount. Tacoma Power shall invoice PSE (c/o Accounts Payable) for additional actual costs incurred.

In the event Tacoma Power incurs actual costs that exceed the Advance Payment, Tacoma Power shall be entitled to immediately invoice and be paid for those excess costs. Such invoices, if any, will include a detail of the excess actual costs incurred. It is mutually agreed that Tacoma Power may cease performance hereunder if any invoiced amount is not paid within thirty (30) days following issuance. It is further mutually agreed that Tacoma Power shall have no obligation to proceed with the Phase II Contract, or any related final design activities, if any amount invoiced and due hereunder has not been paid by PSE.

In the event the Parties mutually determine the actual costs incurred by Tacoma Power to fully perform its obligations hereunder are less than the Advance Payment amount, remaining Advance Payment funds will, at PSE's option, be (i) applied as a credit toward its monetary obligations under the Phase II Contract, or (ii) refunded.

**3.2.1 Records and Invoicing Address.** Tacoma Power shall, in accordance with its standard processes and procedures, keep records of its actual costs using a work

order accounting system. Invoices and any required associated documentation shall be mailed to:

Puget Sound Energy  
Attn. **Aaron Drake**  
P.O. Box 97034 – PSE09S  
Bellevue, WA 98009  
425-766-1609  
[aaron.drake@pse.com](mailto:aaron.drake@pse.com)

**3.3 Invoice Payment.** PSE shall fully pay each invoice submitted by the City within thirty (30) calendar days of receipt of the invoice. Checks shall be made payable to the Treasurer, City of Tacoma and shall be mailed to:

City of Tacoma,  
Department of Public Utilities, Light Division  
Attn: Renata Knutson, Power T&D Business & Financial Mgt  
3628 South 35th Street  
Tacoma, WA 98409-3192  
253-502-8040  
[rknutson@ci.tacoma.wa.us](mailto:rknutson@ci.tacoma.wa.us)

In the event PSE fails to pay any monies to the City as and when due hereunder, PSE shall pay interests on such unpaid sum from thirty (30) calendar days after the date due at an annual rate equal to twelve percent (12%) per annum, or the maximum rate permitted by law, whichever is less. Tacoma Power reserves the right to suspend construction activities for non-payment.

Notwithstanding any contested invoice by PSE, per Section 3.4 below, PSE shall make full payment on all invoices issued by Tacoma Power.

**3.4 Contested charges.** PSE may contest a charge of any Tacoma Power Work detailed in an invoice within 30 days of receipt of such invoice by providing written notice to Tacoma Power specifying the charges and/or documentation in dispute. Upon receipt of such notice, the City will investigate items contested and make appropriate amendments to the invoice, if necessary. If warranted, the City will arrange a meeting between the Parties to discuss PSE's concerns as specified in its written notice. The Parties shall attempt to resolve all disputes within 30 days of the date of notice of a contested invoice. At or before the end of said period, PSE shall submit any outstanding items to Dispute Resolution as provided in Section 5.3.5.

It is further agreed that at the time of a final audit, all required adjustments will be made and reflected in a final payment. Interest shall not accrue on the contested part of any billing until mutually resolved. PSE will not unreasonably contest any bill.

#### **IV. PHASE II CONTRACT**

##### **Final Engineering Design and Construction Services**

**4.1 Scope of Phase II Contract:** The Parties contemplate and intend to enter into a second, supplemental, Utility Installation and Funding Agreement applicable to the final design and construction phase of the LNG Project (the "Phase II Contract"). Under the Phase II Contract, PSE expects that it will continue to assume all risk, cost, and expense of the LNG Project with sole responsibility for, and payment of, all actual costs incurred by Tacoma Power. As with this Phase I Contract, PSE anticipates that it will be required to pay Tacoma Power's actual costs in advance, based on a preliminary cost estimate of same, or when otherwise due according to invoicing and payment provisions similar to those contained herein.

**4.1.1 Expectations Regarding Phase II Contract Work and Responsibilities:**

Tacoma Power expects that it will perform the work of final design, inspection, relocation, and conversion of its existing overhead and underground electrical power facilities, electrical substation construction, and other electrical system modifications and connections in conjunction with certain underground utilities structure work to be performed by PSE and/or its contractor(s). A further description of the currently anticipated Phase II Contract work and responsibilities is set forth in **Exhibit A**, attached hereto and fully incorporated herein by this reference.

**4.1.2 Expectations Regarding Phase II Contract subject matter and material provisions:** It is mutually acknowledged that Exhibit A is not intended to be a complete description of the necessary work or their respective rights and obligations under the Phase II Contract. The Parties agree to further develop and negotiate final terms and conditions to fully address these and other

pertinent subject matters. It is expressly understood and agreed that Phase II Contract shall address each of the material subject matters identified in the attached **Exhibit B**, which is fully incorporated herein by this reference.

Exhibit B shall be deemed to accurately reflect the Parties' current respective expectations and intent with respect to the subject matter and the material provisions to be included in the Phase II Contract.

PSE acknowledges and agrees that in the event a Phase II Contract is executed, it will provide and be solely responsible for securing at no cost or expense to Tacoma Power all real property access, use, and/or permanent easement rights required by Tacoma Power for the construction, ownership, operation, and maintenance of the contemplated electrical substation.

**4.2 Negotiation and execution of the Phase II Contract:** Upon completion of preliminary design documents sufficient to support the Phase II Contract, but in no event later than 120 calendar days following the mutual execution of this Phase I Contract, the Parties shall commence good faith and commercially reasonable efforts to negotiate and finalize a mutually acceptable Phase II Contract. In the event the Phase II Contract has not been fully negotiated and mutually executed within 180 calendar days following mutual execution of this Phase I Contract, this Phase I Contract shall be deemed terminated; Provided, however, that the Parties respective rights and obligations with respect to initially procured materials as set forth in Section I and the Miscellaneous provisions set forth in Section V shall survive such termination and continue to be fully enforceable.

## **V. ADDITIONAL TERMS AND CONDITIONS**

The following Terms and Conditions shall apply to performance of the LNG Project activities specified and contemplated in this Phase I Contract. The contemplated Phase II Contract shall, if executed, include all said terms and conditions (except for those found in Sections 5.1 and 5.2 that are exclusive to Phase I Contract performance) and be deemed part of the "Agreement" as referenced in this Article V.



## **5.1 Property Access and Information During Phase I Contract:**

As necessary to perform and complete its preliminary engineering services, including site survey work for the substation and related transmission line alignments, Tacoma Power requires the following property access and information:

- 5.1.1 Unrestricted ingress and egress access to visually confirm conditions at proposed substation site, including indications of potential overhead, at grade, and underground conflicts;
- 5.1.2 Up to date site drawings of active and inactive underground utilities, known structures, naturally occurring springs, and any other known or potential conflicts;
- 5.1.3 Current site development drawings defining the substation location, surrounding structures and lines, and planned substation access; and
- 5.1.4 Identification of any known imposed restrictions applicable to the installation of an electrical utility substation and lines of 0V to 115,000V

PSE shall provide and/or make available all such access and information in a timely manner and at no cost to Tacoma Power.

**5.2 Development Lease Rights and Representations:** PSE represents that it has sufficient leasehold rights and/or authority to execute and fully perform under this Phase I Contract without the prior consent or written approval of the Port of Tacoma as owner/lessor of the real property to be developed by the LNG Project. PSE further represents that the terms and conditions of this Phase I Contract, including those set forth in Article IV and as identified in Exhibit B with respect to the contemplated Phase II Contract, do not materially conflict with the provisions of any lease or contract between PSE and the Port of Tacoma nor will they in any way interfere with or prevent either Party's full performance as required or contemplated hereunder, PSE agrees to reasonably inform the Port of Tacoma of this Phase I Contract as necessary to determine any objections or conditions by the Port of Tacoma relative to any property access, information and/or uses required or contemplated herein.

**5.3 Legal Relations:** Subject to the indemnification provisions in subsections 5.3.1 and 5.3.2, PSE agrees to be fully responsible for, and shall pay and/or sufficiently insure against, all claims, demands, liability, losses, damage, costs, and expenses (including attorneys' fees and other costs of defense) of any nature or kind whatsoever arising out of or in connection with the LNG Project including, but not limited to, those related to (i) personal injuries, and/or death, of any person whomsoever (including payments and awards made to PSE's employees or others under any workers' compensation law or under any plan for employees' disability and death benefits), and/or (ii) damage to any property whatsoever (including the real and/or personal property of either or both PSE and Tacoma Power).

**5.3.1 Indemnification by PSE.** To the extent permitted by law, PSE shall protect, defend, indemnify, and save harmless Tacoma Power, and its officers, officials, employees, and agents, while acting within the scope of their employment, from any and all third party claims, demands, judgments, damages, or liability of any kind including injuries to persons or damages to property, including reasonable attorney's fees and costs incurred in connection therewith, which arise out of, or in any way result from, or are connected to, or are due to the negligent acts or omissions of PSE, its contractor(s), and/or their respective officers, employees, agents or sub-contractors in performing under this Agreement. The foregoing defense, indemnification and hold harmless provisions shall not apply if the claim, suit, or action for injuries, death, or damages is caused by the negligence or misconduct of Tacoma Power, its employees, agents and/or contractors. Where such claims, suits, or actions result from concurrent negligence of the Parties, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the indemnifying Party's own negligence. PSE agrees that its obligations under this indemnification section extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents and/or by PSE's contractor(s) or their employees, agents or sub-contractors.

**5.3.2 Indemnification by Tacoma Power.** To the extent permitted by law, Tacoma Power shall protect, defend, indemnify, and save harmless PSE, and its officers, employees, and agents, while acting within the scope of their employment, from any and all third party claims, demands, judgments, damages, or liability of any kind including injuries to persons or damages to property, including reasonable attorney's fees and costs incurred in connection therewith, which arise out of, or in any way result from, or are connected to, or are due to the negligent acts or omissions of Tacoma Power, its employees, agents and/or contractors in performing the procurement, design, and any construction related work under this Agreement. The foregoing defense, indemnification and hold harmless provisions shall not apply if the claim, suit, or action for injuries, death, or damages is caused by the negligence or misconduct of PSE and/or its contractor(s), or their respective officers, employees, agents or sub-contractors. Where such claims, suits, or actions result

from concurrent negligence of the Parties, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the indemnifying Party's own negligence. Tacoma Power agrees that its obligations under this indemnification section extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents.

**5.3.3** For purposes of the indemnification provisions set forth in Sections 5.3.1 and 5.3.2 above, each Party hereby waives, with respect to the other only, any immunity that would otherwise be available against such claims under the industrial insurance provisions of Title 51 RCW. EACH PARTY EXPRESSLY RECOGNIZES THAT THIS WAIVER WAS THE SUBJECT OF MUTUAL NEGOTIATION. Such waiver shall not, however, be construed as establishing any independent right or cause of action by employees of PSE against it or by employees of Tacoma Power against it. In the event of any claims, demands, actions and lawsuits, the indemnifying Party upon prompt notice from the indemnified Party shall assume all costs of defense thereof, including legal fees incurred by the indemnified Party, and of all resulting judgments that may be obtained against the indemnified Party. In the event that a Party incurs attorney fees, costs or other legal expenses to enforce the provisions of this section, all such fees, costs and expenses shall be recoverable by the prevailing Party. This indemnification shall survive the termination of this Agreement.

**5.3.4 Insurance.** PSE, as well as its contractor(s) that will perform construction work on the LNG Project, shall be required to obtain such insurance coverage types and limits as deemed necessary by Tacoma Power prior to commencement of any work that involves construction of and/or connection to Tacoma Power electrical facilities as part of the LNG Project. It is PSE's responsibility to ascertain that all contractors including, but not limited to, its prime contractor and each of affiliated sub-contractors that participate in performance of such work, shall have the insurance required by Tacoma Power at all times during performance of the LNG Project work. The insurance coverage types that shall be required and maintained at all times during construction of the LNG Project include, but may not be limited to:

- (a) Workers Compensation Insurance. PSE shall, at all times fully comply with all of the terms and conditions of the laws of the State of Washington pertaining to Workers' Compensation together with any and all amendments and supplements thereto and any and all regulations promulgated there-under.
- (b) Public Liability and Property Damage Insurance. PSE shall procure and maintain a policy of commercial general liability insurance, with an insurance carrier authorized to do business in the State of Washington. Evidence of coverage shall be approved as to form by the Tacoma City Attorney and a copy of the policy made available upon request when deemed reasonably necessary or in the event of a claim. Such insurance shall protect Tacoma Power from liability imposed by law for damages suffered by any persons arising out of or resulting from acts or omissions in the performance of construction work: (1) for bodily injury or death resulting therefrom caused by accidents or occurrences resulting from any act or omission by PSE, and its contractor(s), and their respective

employees, agents, and other contractors in the performance of the construction, and (2) for injury to, or destruction of, any property, including property of Tacoma Power, and including loss of use. The policy or policies shall include coverage for claims for damages because of bodily injury or death or property damage arising out of the ownership, maintenance or use of any motor vehicle, including hired or non-owned vehicles. The City of Tacoma, Department of Public Utilities, Light Division shall be designated in said policy as additional insured and such insurance shall be primary and non-contributory to any insurance carried by City of Tacoma. No insurance required under this Contract shall be cancelled, non-renewed or materially changed without 30 days written notice to Tacoma Power, and PSE will provide updated certificate(s) of insurance as evidence of replacement or renewed coverage prior to the cancellation of the existing policy(ies). Said insurance shall be on a Commercial General Liability form with coverages to include Blanket Contractor, Broad Form Property Damage, Personal Injury, Protective Liability and Employers Liability. Limits shall be at \$1,000,000 per occurrence, \$2,000,000 aggregate and for contracts in excess of \$500,000 the minimum coverage limits include Umbrella Excess Liability of \$5,000,000.

PSE shall further furnish CGL policy coverage provisions or endorsements specifying that the City's insurance is excess to any other collectible insurance. PSE shall furnish evidence of the amount of any deductible or self-insured retention under the CGL policy or policies, which amount shall be subject to approval by the City Attorney's Office for the City of Tacoma if the amount of the deductible or self-insured retention exceeds \$20,000. Tacoma Power may require PSE to furnish evidence of its ability to pay the amount of any deductible or self-insured retention. If the policy provides for a deductible or self-insured retention, PSE shall be solely responsible for paying the amount of the deductible or self-insured retention toward the cost of any claim under the policy. If PSE fails to maintain such insurance during the LNG Project, Tacoma Power, at its discretion, may obtain equivalent substitute insurance coverage and be entitled to full reimbursement and payment of its costs thereof. Nothing herein contained shall be in any manner construed as limiting the extent to which PSE or its contractor(s) may be held liable or responsible for payment of damages resulting from their operations.

- (c) Builder's Risk. PSE and its contractor(s) shall be expected to protect and insure from loss for any tools and equipment owned or rented by PSE and/or said contractor(s), and each of their respective sub-contractors, employees or agents. Until the LNG Project work is completed and finally accepted by Tacoma Power, all construction is at the sole risk of PSE and no acceptance of payment by Tacoma Power shall constitute acceptance of PSE's work or relieve PSE of responsibility to complete LNG Project as required in the Phase II Contract.
- (d) Proof of Insurance Coverage. PSE shall furnish and file with Tacoma Power, within ten business days of the Effective Date of the Phase II Contract, a certificate of insurance coverage together with policy endorsements verifying the insurance coverage types and limits required herein. An up-to-date certificate of

insurance must be on file with Tacoma Power throughout the term of the Phase II Contract. Tacoma Power may, if and when it deems reasonably necessary, require PSE to furnish and file with Tacoma Power a certified true copy of the insurance policy or policies. The policy or policies shall be approved as to insurer, limits, and coverage type by the City Attorney.

**5.3.5 Dispute Resolution.** The Parties agree to use their best efforts to prevent and resolve potential sources of conflict before they escalate into dispute, claims or legal actions. The Parties agree to use their best efforts to resolve disputes arising out of or related to this Agreement using good faith negotiations. If a dispute arises, representatives of the Parties shall meet to discuss and attempt to resolve the dispute in a timely manner (Level One). If said representatives cannot resolve the dispute within ten (10) business days thereafter, the dispute shall be referred to an executive officer of PSE or designee and the Superintendent of Tacoma Power or his designee shall meet to discuss and attempt to resolve the dispute in a timely manner (Level Two). In the event the dispute is not thereafter resolved within ten (10) business days, the dispute may be referred to mediation as mutually agreed to by the Parties, or the Parties may exercise whatever other rights they may have at law or in equity. At all times prior to resolution of the dispute, the Parties shall continue to perform their respective duties under this Agreement in the same manner and under the terms as existed prior to the dispute. Venue for any alternative dispute proceedings and/or legal action shall be in Pierce County, Washington. The Parties may agree to further dispute resolution provisions to be included in the Phase II Contract.

**5.4 Agency or Employee Relationship.** No joint venture or partnership is formed as a result of this Agreement. No employees, agents or subcontractors of one Party shall be deemed, or represent themselves to be, employees of any other Party. In performing work and services pursuant to this Agreement, neither Party (or their respective employees, consultants, agents, and representatives) shall be acting as the agent for the other nor shall either be deemed or construed to be employees or agents of the other Party in any manner whatsoever. Neither Party shall not hold itself out as, nor claim to be, an officer or employee of the other nor make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the other Party. PSE shall be solely responsible for any claims for wages or compensation by the respective employees, contractors, sub-contractors, agents, and representatives of PSE and shall defend, indemnify and hold Tacoma Power harmless from these claims. In performing work and services pursuant to this Agreement, Tacoma Power and its, employees, consultants, agents, and representatives shall be acting as agents

of Tacoma Power and shall not be deemed or construed to be employees or agents of PSE in any manner whatsoever.

**5.5 Entire Agreement.** This Agreement and the Exhibits attached hereto constitute the entire agreement and understanding between PSE and Tacoma Power relating to the subject matter contained herein. There are no restrictions, promises, representations, warranties, covenants or undertakings, oral or otherwise, except those expressly set forth or referenced herein.

**5.6 Severability.** In the event that any term, covenant, condition, or provision of this Agreement, or the application of the Agreement to any person or circumstance, is found to be invalid or unenforceable in any respect, the remainder of this Agreement, and the application of such term or provision to other persons or circumstances nevertheless shall be binding with the same effect as if the invalid or unenforceable provision were originally deleted. The Parties agree to bargain in good faith to reform this Agreement or replace any invalid or unenforceable provision with a valid and enforceable provision that comes as close as possible to the intention of the invalid or unenforceable provision.

**5.7 Amendments.** No waiver, modification, addition, or amendment to this Agreement shall be of any force or effect unless reduced to writing and signed by the authorized employees of each Party hereto.

**5.8 Rights and Remedies.** The duties and obligations imposed by this Agreement and the rights and remedies available hereunder shall be in addition to and not a limitation of or waiver regarding any duties, obligations, rights, and remedies otherwise available by law. No waiver by either Party hereto of any default shall affect or impair any right arising from any subsequent default. The failure of either Party hereto to insist at any time upon the strict observance or performance of any of the provisions of this Agreement or to exercise any right or remedy provided for in this Agreement shall not impair any such right or remedy nor be construed as a waiver or relinquishment of such right.

**5.9 Force Majeure.** Neither Party hereto shall be liable to the other Party for any failure to perform an obligation set forth herein to the extent such failure is caused by war, act of terrorism or an act of nature, provided that such Party has made and is making all reasonable efforts to perform such obligation and minimize any and all resulting loss or damage. Tacoma Power has a responsibility to restore service after storms before returning to scheduled work. Storm related schedule delays shall not constitute liability.

**5.10 Transfer/Assignment.** Neither Party shall assign any interest, obligation, or benefit in this Agreement or transfer any interest in the same, whether by assignment or novation, without prior written consent by the other Party. This Agreement is binding upon, and inures to the benefit of, the Parties and their respective permitted successors and assigns.

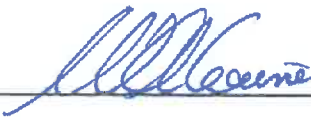
**5.11 Benefits.** This Agreement is intended for the sole benefit of the Parties to this Agreement. Nothing in this Agreement is intended to give any person or entity, other than the Parties hereto, any legal or equitable right, remedy, or claim under this Agreement.


**5.12 Authorization to Execute Agreement.** The undersigned, by their respective signatures below, represent and warrant that they are each duly authorized to execute this legally binding Agreement for and on behalf of the Party for whom they have signed. PSE, through its undersigned representative, expressly acknowledges and agrees that the formal approval of this Agreement by the City of Tacoma's Public Utility Board is a required pre-condition to the effectiveness and enforceability of this Agreement. Tacoma Power shall have no legal or equitable liability hereunder and/or in connection with the LNG Project unless or until such approval is obtained. Upon such approval, this Utility Installation Agreement shall become effective as of the Effective Date first above written.

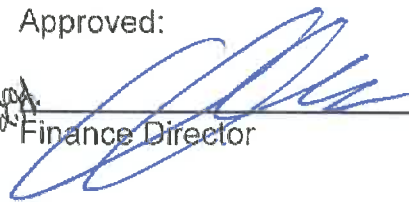
PUGET SOUND ENERGY, INC.

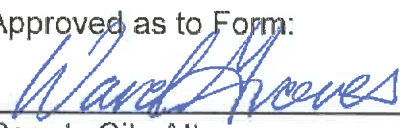
By   
Roger Garratt  
Director Strategic Initiatives

CITY OF TACOMA  
DEPARTMENT OF PUBLIC UTILITIES,  
d/b/a Tacoma Power

By   
William A. Gaines,  
Utilities Director/CEO

Approved:  
By   
Chris Robinson  
Power Superintendent/COO

Approved:  
  
Finance Director

Approved as to Form:  
  
Deputy City Attorney



# **Exhibit A**

## ***Detailed Final Design Services and Construction Work***

Upon execution of the Phase II Contract (for Final Engineering Design and Construction), the Tacoma Power Work will include providing final electrical and civil design engineering along with civil and electrical construction work for the substation to be installed to serve the LNG Facility.

### **I. Tacoma Power Work and services is expected to include:**

- A. Procurement and Site construction for:
  - 1. Bus and breaker support foundations
  - 2. Control enclosure
  - 3. Steel bus support structures
  - 4. Grounding
  - 5. Underground conduit
  - 6. Lighting
  - 7. Fencing
  - 8. Environmental controls
  - 9. Site drainage
  - 10. Site preparation and grading
  - 11. Transmission poles
  - 12. Potential Transformers
  - 13. Current Transformers
  - 14. Metering equipment
  - 15. Protective relays
  - 16. Integration/SCADA equipment
  - 17. Communications equipment
  - 18. Panels
  - 19. Battery system
  - 20. Conductors
  - 21. Insulators
- B. Communications engineering and construction, excluding raceways linking Tacoma Power and PSE's facilities as necessary throughout PSE's property.
- C. Surveying and geotechnical engineering.
- D. Installation of all long-lead equipment identified in Section I of Phase I Contract.
- E. Commissioning and testing services.

### **II PSE Work and services expected to include:**

- A. Design documentation review and coordination with Tacoma Power as necessary to finalize Design Document Exhibits for Phase II Contract, including timely review and comments regarding preliminary design work and sufficiency relative to LNG Facility and completion of LNG Project.
- B. Potential PSE activities on TPWR substation site:
  - Site preparation, clearing, grading, etc. May include preliminary surveying and final as built survey work.
  - Underground utility installation preparation, trenching, possible installation of vaults and conduit, and conduit connections at property line (i.e. at existing fence line)
  - Wire pulling of conductors between Tacoma Power transformer and PSE motor control center
  - Maintenance of site during construction, such as security fencing, silt fencing, storm water controls, etc

## **Exhibit B**

The following items are a *preliminary* list of subject matter to be included in Phase II Contract. Parties mutually understand and agree that further development of listed items is required, including confirmation of each Party's responsibility on each subject item, and that this Exhibit B is not intended to identify all material subject matters to be included in Phase II Contract. Parties expressly agree to further clarify, supplement, and assign responsibility for the following matters during negotiations of Phase II Contract.

### **A. Obtain all required permits including but not limited to:**

1. Construction
2. Building
3. Land use
4. Water
5. Shoreline

### **B. Assumed Site Conditions**

The existing building and foundations on the substation site shall be removed prior to the execution of the referenced Construction contract. Any grading and storm water controls performed as part of the demolition should be coordinated with the Tacoma Power civil engineering design.

### **C. Environmental Contamination review:**

1. Phase 1 environmental review (Detailed site usage history to check the potential for contamination)
2. Phase 2 environmental review (On site testing of soil)
3. Applicable environmental laws, regulations and requirements

### **D. Coordination and performance of LNG Project Work**

Phase II Contract will include terms and conditions to address the following:

1. Project schedule and construction work scheduling
2. Project administration, notices, and Party representatives, including Project Managers and Field Representatives
3. Changes in Design Documents, including any approvals required, if any, and additional payment provisions
4. Warranties and Bonding
5. All other matters identified by Tacoma Power during Phase I Contract Services

The Parties expressly agree the following material terms and conditions are to be included in the contemplated Phase II Contract:

1. **Access and Property Rights During Phase II Contract:** At all times during Tacoma Power's performance of final engineering design and construction work, PSE shall furnish, upon request by and at no cost to Tacoma Power, any necessary access, licenses, and/or rights of way upon, over, under, and across lands owned or controlled by PSE and/or its affiliated interests. PSE shall, at all reasonable times, grant Tacoma Power and/or its employees, representatives, agents, and/or contractors free access to such land. If, to perform the Services, Tacoma Power requires access to property owned by persons or entities other than PSE, the costs incurred by Tacoma Power to procure any necessary access, easements, licenses, and/or rights of way, in a form satisfactory to Tacoma Power shall be deemed an actual and direct cost of Tacoma Power's performance hereunder and shall be promptly reimbursed by PSE upon receipt of invoice therefor from Tacoma Power.
2. **Ownership of Utility Installation Facilities.** Notwithstanding PSE's obligation to fully fund and pay for the LNG Project, including pursuant to its payment obligations hereunder, or it is expressly understood and

agreed that Tacoma Power will own and operate the electrical supply system facilities to be modified, improved and/or constructed during the LNG Project including, but not limited to, the proposed electrical substation. As necessary to ensure such Tacoma Power ownership and operation, it is mutually understood and agreed that Tacoma Power may require, in its sole discretion, express easement(s) granted by the Port of Tacoma over, under, and upon the real property where Tacoma Power's electrical substation is to be sited.



## RESOLUTION NO. U-10929

1 A RESOLUTION related to Tacoma Water; authorizing the execution of a water  
2 system acquisition agreement with the Curran Road Mutual Water  
3 Association ("Curran Road").

4 WHEREAS the City of Tacoma, Department of Public Utilities, Water  
5 Division (d.b.a. "Tacoma Water"), requests the Public Utility Board authorize  
6 Tacoma Water to execute a water system acquisition agreement ("Agreement")  
7 with Curran Road to establish the terms and conditions under which Tacoma  
8 Water will acquire Curran Road's service area and provide direct retail water  
9 service, and

10 WHEREAS the Agreement will allow Tacoma Water to complete water  
11 system improvements as part of the acquisition of the service area, which are  
12 proposed to be completed over a 10-year period, and

13 WHEREAS the estimated cost of the water system improvement work is  
14 \$12,000,000, which will be paid for by those customers within the boundaries of  
15 the Curran Road water system through a customer surcharge over an  
16 estimated 33-year period, and

17 WHEREAS the laws of the state of Washington, RCW 35.92.200,  
18 authorize a city to provide water service outside its corporate limits, and

19 WHEREAS this proposed expansion satisfies the criteria set forth in the  
20 service expansion policy approved by the Board and City Council, and

21 WHEREAS, pursuant to City of Tacoma Charter Section 4.11, the Public  
22 Utility Board may initiate system expansion, extensions, additions and  
23 betterments subject to the approval of the City Council, and  
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WHEREAS it appears to be in the best interest of the customers of Tacoma Water and citizens of the City of Tacoma to approve the expansion of Tacoma Water's service area as described above and authorize Tacoma Water to enter into an agreement with Curran Road; Now, therefore,

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

That Tacoma Water's request to enter into a water system acquisition agreement with Curran Road Mutual Water Association to establish the terms and conditions under which Tacoma Water will acquire Curran Road's service area and provide direct retail water service to its members is approved; and the City Council is requested to concur in such approval and authorize the proper officers of the City of Tacoma to execute the necessary documents in final form as approved by the City Attorney, in order to serve said area.

Approved as to form and legality:

\_\_\_\_\_ Chair

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

\_\_\_\_\_ Secretary

\_\_\_\_\_  
Clerk

Adopted \_\_\_\_\_

of May 10, 2017

**REQUEST FOR RESOLUTION**

Date: April 21, 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 execution of a Water System Acquisition Agreement between the Curran Road Mutual Water Association.

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

Tacoma Water recommends the Public Utility Board authorize the execution of the Water System Acquisition Agreement between the Curran Road Mutual Water Association and Tacoma Water. The Agreement establishes the terms and conditions under which Tacoma Water will acquire the Curran Road Mutual Water Association service area and provide direct retail water service to its members in accordance with the City Council's Service Expansion Policy.

Authorization of the Agreement will allow Tacoma Water to complete water system improvements as part of acquisition of the service area. The water system improvements are proposed to be completed over a period of 10-years. The estimated cost of the water system improvement work is \$12,000,000, which will be paid for by those customers within the boundaries of the Curran Road water system through a customer surcharge over an estimated 33-year period.

3. Summarized reason for resolution:

The Curran Road Mutual Water Association serves more than 620 customers, in the vicinity of 128<sup>th</sup> Street East and Canyon Road East in Pierce County. Curran Road is a Tacoma Water wholesale customer and has received all of its water from Tacoma Water since the 1940's.

As a requirement of the Washington State Department of Health, Curran Road is due to develop a new water system plan. In-lieu of developing a water system plan and securing financing to make system improvements, Curran Road has requested Tacoma Water acquire the Curran Road service area and provide direct retail service to its members.

Over a period of 10-years, Tacoma Water proposes to replace more than 6-miles of asbestos cement water main and complete other system improvements. The estimated cost of this water system improvement work is \$12,000,000, which will be paid for by those customers within the boundaries of the Curran Road water system through a customer surcharge over an estimated 33-year period, in accordance with the City Council's Service Expansion Policy.

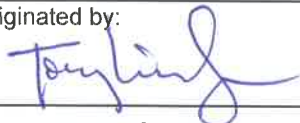
4. Attachments:

- a. Water System Acquisition 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



DATE: April 21, 2017

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

FROM: Chris McMeen, Acting Water Superintendent *CM*

SUBJECT: Water System Acquisition Agreement – Curran Road Mutual Water Association

#### RECOMMENDATION

Authorize the execution of a water system acquisition agreement with the Curran Road Mutual Water Association. The water system acquisition agreement establishes the terms and conditions under which Tacoma Water will acquire the Curran Road Mutual Water Association service area and provide direct retail water service to its members.

#### EXPLANATION

The Curran Road Mutual Water Association (Curran Road) provides services to more than 620 customers, in the vicinity of 128<sup>th</sup> Street East and Canyon Road East in Pierce County. Curran Road is a Tacoma Water wholesale customer and has received all of its water from Tacoma Water since the 1940's.

As a requirement of the Washington State Department of Health, Curran Road is due to develop a new water system plan. In-lieu of developing a water system plan and securing financing to make system improvements, Curran Road has requested Tacoma Water acquire the Curran Road service area and provide direct retail service to its members.

Over a period of 10-years, Tacoma Water proposes to replace more than 6-miles of asbestos cement water main and complete other system improvements. The estimated cost of this water system improvement work is \$12,000,000, which will be paid for by those customers within the boundaries of the Curran Road water system through a customer surcharge over an estimated 33-year period, in accordance with the City Council's Service Expansion Policy.

APPROVED

William A. Gaines  
Director of Utilities/CEO

**WATER SYSTEM ACQUISITION AGREEMENT**  
(Between Tacoma Water and Curran Road Mutual Water Association)

**THIS AGREEMENT** entered into this \_\_\_\_ day of April, 2017, by and between the **CITY OF TACOMA**, a municipal corporation, for and on behalf of its Department of Public Utilities, Water Division (hereinafter referred to as the "CITY" and/or "Tacoma Water") and the **CURRAN ROAD MUTUAL WATER ASSOCIATION**, a non-profit corporation formed under the laws of the State of Washington (hereinafter referred to as "CURRAN ROAD").

**WITNESSETH** that:

**RECITALS**

**WHEREAS**, CURRAN ROAD is located in Pierce County, Washington, and owns and operates a Group A Community water system ("System" as the same is further described herein) that serves the area legally described on Exhibit "A," which is attached hereto and incorporated herein by reference; said area and boundary being also set forth on the map attached hereto marked Exhibit "B" and by this reference incorporated herein;

**WHEREAS**, due to the lack of sufficient funds to make sustained improvements to the aging System it currently operates, CURRAN ROAD desires to convey said System to the CITY for consolidation with Tacoma Water's service area;

**WHEREAS**, the title owners of real property located within the CURRAN ROAD service area described in Exhibit A, acting in their current capacity as "shareholders" or "members" under the By-laws of Curran Road Mutual Water Association and on behalf of their respective future successors and assigns (collectively referred to herein as "Members of CURRAN ROAD" and/or "Members"), believe it to be to their benefit to receive direct water service from the CITY utilizing the System as improved and operated by the CITY;

**WHEREAS**, certain improvements to the System are needed to meet CITY water service reliability and capacity standards and must be made as a condition of System acquisition and operation by the CITY – said "System Improvements" are further described in Section 2.1 below and in Exhibit "B-1" attached hereto and incorporated herein by this reference;

**WHEREAS**, the CITY has conducted a consolidation survey of the System, which survey indicated that it is feasible for the CITY to provide direct water service to Members of CURRAN ROAD within the framework of CITY's existing ordinances for water supply if the necessary System Improvements are made over the next 8-10 years;

**WHEREAS**, consistent with the CITY's Service Expansion Policy, the CITY desires to acquire new customers and is prepared to construct, replace, and otherwise improve the System, Provided that, the Members of CURRAN ROAD fund all such



System Improvements costs pursuant to the Surcharge terms and conditions set forth herein; and

**WHEREAS**, the Members of CURRAN ROAD will each, according to their respective ownership interests in real property located within the CURRAN ROAD service area, be responsible for all existing or future property side water service pipes and appurtenant equipment, excluding meter(s), located on their respective real properties including, but not limited to, all cost of installation, maintenance, and compliance with applicable jurisdictional water service standards and requirements.

**NOW, THEREFORE**, in consideration of the foregoing Recitals, mutual benefits to be derived, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

## **ARTICLE I. CONVEYANCE AND ACQUISITION OF SYSTEM**

**1.1** Upon Closing – as further described and specified in Article IV herein – and unless otherwise specifically provided in this Agreement, CURRAN ROAD shall convey to the CITY the complete ownership and exclusive control of all CURRAN ROAD owned and operated mains, valves, meters, equipment and services comprising the existing Curran Road Mutual Water Association's water main and distribution system ("System").

**1.1.1** The conveyance of the System expressly excludes any and all property side water service pipes and appurtenant equipment located on Member owned real property. Said property side pipes and appurtenant equipment shall remain the property and sole responsibility of each Member owning the real property upon which such pipes and equipment are located.

**1.1.2** The conveyance of the System further expressly excludes the real property premises, including the CURRAN ROAD administrative building thereon, located at 5003 141<sup>st</sup> Street East, Tacoma, WA 98446 and listed under Pierce County Tax Parcel No. 0319134027. The Parties expressly understand and agree that immediately following mutual execution of this Agreement, and not later than thirty (30) days following the Effective Date hereof, CURRAN ROAD shall actively market said real property for sale and exercise commercially reasonable efforts to obtain full fair market value.

**A. Real Property Closing, Sales Proceeds, and Security:** CURRAN ROAD shall complete and formally close the sale transaction for said real property on or before the System acquisition "Closing Date" specified in Article IV of this Agreement. It is expressly agreed that in the event said sale is completed prior to the Closing Date for this Agreement, CURRAN ROAD shall immediately, and not more than ten (10) business days following such completed sale, tender the total net sales proceeds thereof to the CITY as "Security" (pursuant to Section 5.1 herein) to ensure CURRAN ROAD's full and faithful performance hereunder.

1.2 Upon Closing of this Agreement, CURRAN ROAD shall further convey all of its rights and interests under applicable Federal, State, and local laws and regulations to the City as necessary to ensure that the CITY is the sole and exclusive provider of water service to and within the CURRAN ROAD service area described in Exhibit A.

1.3 To the extent of its rights and interests as a water purveyor and/or water service company under State law, and as necessary to effect the conveyances under Section 1.1 and/or 1.2, CURRAN ROAD shall further timely convey all franchise, right-of-way, easement, and other real property rights and interests it holds and/or may exercise related to the System to the CITY as required or necessary to allow the CITY to acquire full ownership of the System and to operate same to provide direct water service using either or both said systems.

1.3.1 Assignment and Grant of Easements. By and upon execution of this Agreement, CURRAN ROAD expressly assigns and conveys to the CITY of Tacoma, Department of Public Utilities, Water Division, and its successors and assigns, all System operational rights of way, easements, and other real property rights and interests held by CURRAN ROAD, as necessary and convenient for the CITY to install, lay, construct, renew, operate and maintain the water utilities and associated facilities and equipment comprising the System over, under, and upon the real property and service area described in Exhibit A.

A. In the event any existing easement rights and interests are insufficient for the CITY's construction, improvement, maintenance and/or operation of the System, then by and upon recording of this Agreement, CURRAN ROAD shall be deemed to have granted, and does hereby expressly grant, a further and additional easement to the CITY of Tacoma, Department of Public Utilities, Water Division, and its successors and assigns, as necessary and convenient for the CITY to install, lay, construct, renew, operate and maintain water utilities and associated facilities and equipment comprising the System over, under, and upon the real property and CURRAN ROAD service area described in Exhibit A.

B. As necessary to effect the purposes and intent of this Section 1.3, CURRAN ROAD shall promptly give such notices, make such applications, and otherwise exercise best efforts to obtain any and all required approvals from Pierce County Departments and Officials to acknowledge and affirm the existing and additional water utility franchise and/or rights-of-way necessary to be assigned and/or granted under this Agreement.

1.3.2 Additional Grant of Easements by Members. It is contemplated and agreed that the Members of CURRAN ROAD will timely execute and deliver additional easements over, under and upon their respective privately owned real properties within the CURRAN ROAD service area upon request by the CITY and as the CITY determines reasonably necessary for it to provide such Members water service utilizing the System. These additional easements will

be filed of record. See Exhibit C for sample form.

1.3.3 CURRAN ROAD shall timely make and complete all other conveyances required under this Section 1.3 upon request by CITY.

1.4 CURRAN ROAD shall further timely convey to the CITY all other water utility assets and personal property comprising and/or related to the System including, but not limited to, copies of all current System customer billing and accounting records, maps, bills of sale, bank and other financial institution accounts and all monies, instruments, and other assets associated with such accounts owned or controlled by CURRAN ROAD, and any other documentation required or requested by CITY relating to the ownership, operation and/or management of the System.

1.4.1 Transition Period Duties and PRE-Closing Security for Performance. It is mutually understood and agreed that between the Effective Date of this Agreement and the Closing Date specified in Section 4.2 below (the "Transition Period"), CURRAN ROAD shall have the following responsibilities and duties:

A. CURRAN ROAD will deliver to Tacoma Water, at the time it executes and delivers this Agreement, copies of the following documentation relating to System ownership and operations:

- 1) All water service account and billing records for each Member served by the System as of the Effective Date hereof;
- 2) All maps, deeds, easements and other instruments that grant or convey rights-of-way and other real property rights and interests pertaining to System ownership and operations;
- 3) Any engineering, financial, or other professional consultant reports, statements, and similar written deliverables, if any, pertaining to the ownership, operation and management of the System.

B. CURRAN ROAD will tender or otherwise deliver to Tacoma Water, when specified, all water utility bank and other financial institution account monies and assets including:

- 1) Proceeds of the Heritage Bank issued Certificate of Deposit, in the approximate amount of \$73,000, will be tendered upon CD maturity date in May 2017 or the Effective Date hereof, whichever last occurs, and will be used for the purpose of securing performance of CURRAN ROAD's Pre-Closing obligations hereunder;
- 2) All other bank and financial account funds or any type or nature, together with all cash on hand, are to be tendered to Tacoma Water on the Closing Date.

**NOTE:** The Parties contemplate and mutually expect the foregoing bank and financial account assets, cash on hand, and the net sale proceeds from sale of real property, if any, per Section 1.1.2 A will total at least \$500,000 as of the Closing Date. In any event, it is expressly and mutually agreed that CURRAN ROAD shall be required to convey a minimum of at least \$300,000 on, and no later than, the Closing Date.

- C. CURRAN ROAD shall maintain a minimum balance of cash or other System operations bank and financial account funds of not less than \$400,000, subject to and reduced by the amount of any funds tendered pre-Closing for Security purposes per Section 1.1.2 A. and/or Section 1.4.1 B. 1);
  - 1) Exercise good faith and due diligence to manage and preserve all other System assets and property to be conveyed hereunder at Closing; and
- D. CURRAN ROAD will convey all other water utility assets and personal property per this Section 1.4 on, and no later than, the Closing Date specified in Section 4.2 herein.
- E. CURRAN ROAD shall deliver prompt written notice to Tacoma Water in the event any actual or expected claim(s) and/or liability related to the System arise.

**1.5** Except as otherwise specified in Section 1.1 (per subsections 1.1.1 and 1.1.2), System facilities not required by the CITY for CITY's operation and maintenance of the System shall either be (i) liquidated by CURRAN ROAD following the Closing hereof and the proceeds thereof conveyed to the CITY on the Closing Date as additional Security for CURRAN ROAD's performance pursuant to the provisions of this Agreement, or (ii) abandoned in accordance with Pierce County requirements and be subject to the indemnification and hold harmless provisions set forth in Article V. herein.

**1.6** CURRAN ROAD shall retain ownership of and continue to operate the System until Closing. CURRAN ROAD shall be solely responsible for all liability arising or resulting from such System ownership and/or operation prior to the Closing Date. Except as otherwise provided herein, all other liabilities arising from the ownership or operation of the System shall be governed by the provisions in Article V. herein.

**1.7** Upon Closing, all Members served by the System will be deemed water service customers of the CITY and individual utility accounts will be established for each said Member. Effective as of the Closing Date and thereafter, each Member will be charged and responsible for paying all applicable water rates, charges and fees in accordance with CITY ordinances and Tacoma Water's Customer Service Policies together with the Surcharge specified in Article II herein.

## ARTICLE II. SYSTEM IMPROVEMENT FUNDING

2.1 After the Closing Date, the CITY will initially incur and pay all costs necessary for the sustained improvement of the System including, but not limited to, acquisition, design, equipment, materials construction and related work ("System Improvements"), all as required and/or proper for the CITY's ownership and operation of the System as a public utility under Washington State law. The necessary System Improvements expected to be made by CITY following Closing are summarized in Exhibit B-1 attached hereto and are estimated to cost a total of \$12,000,000.00. Said estimated costs are subject to revision based on actual conditions. The Surcharge specified in Section 2.3 below shall be initially based on said estimated costs, and likewise subject to revision based on the costs actually and finally incurred by CITY.

2.2 Members shall be solely responsible for, and shall pay, the costs of any necessary improvements to property side water service pipes and appurtenant equipment located on and serving their respective real properties (aka Member "Premises" per Section 2.3 below). Said responsibility includes, but is not limited to, purchase and installation of all equipment or facilities on said Member's private property side of the meter(s) as needed to serve such property. Each Member shall further be solely responsible for, and shall pay, all rates, charges and fees applicable to CITY water service as further specified in Section 3.6 below.

2.3 **Surcharge.** Final payment of the total, actual, costs of the System Improvements shall be the sole responsibility of CURRAN ROAD and its Members. Each Member residing within the CURRAN ROAD service area described in Exhibit A shall be responsible for and shall pay a share of the Surcharge attributable to such Member's respective ownership interest in any real property (hereinafter a Member's "Premises") located within the CURRAN ROAD service area identified in Exhibits A and B regardless of whether such Premises receives water service from the System as of the Closing Date or is thereafter connected to the System.

2.3.1 Surcharge Amount. Upon Closing, and based on CITY's estimate of the actual costs expected to be incurred the CITY shall determine and establish in its sole discretion the total Surcharge amount, duration, and payment options. In no event shall the Surcharge amount be less than the City's "Ready-to-Serve" charge applicable to each water service. The Ready-to-Serve charge is determined by water meter size as set forth in City rate Ordinance(s) now in effect or as the same may hereafter be amended. Notwithstanding the initial Surcharge amount established by the CITY at Closing, the following post-Closing Surcharge provisions shall apply:

- A. Retroactive Surcharge. Requests for new service connection shall be conditioned upon a retroactive lump-sum payment of the Surcharge, which shall be due at time of the service request. The retroactive lump-sum payment shall be equal to the total of monthly Surcharge

payments calculated from the Closing Date through date of the new service request.

- B. Adjustment of Surcharge Term. The actual duration of the Surcharge will be adjusted by the City to reflect total Surcharge payments actually received and applied toward total costs for System Improvements as the result of new service connections following the Closing Date.
- C. Other Adjustment of Surcharge Amount. In the event the CITY requests additional Security for performance pursuant to Section 5.1 herein and CURRAN ROAD does not, or cannot, timely provide the requested Security, the CITY shall have the right to adjust the Surcharge amount as necessary to fully satisfy and/or discharge any obligation, indebtedness or liability as may result from CURRAN ROAD's non-performance of its duties under Section 5.2 and/or Section 5.4 herein.

2.3.2 Surcharge Payment. It is contemplated by the Parties that the Surcharge shall be payable on a bi-monthly basis (once every two months), or on a monthly basis as determined by the service account of particular individual Members, with a payment period of approximately thirty-three (33) years in length, with the understanding such bi-monthly Surcharge amount may be included and billed with all other utility service charges in a single invoice issued monthly. It is further contemplated that CURRAN ROAD Members will pay such amounts as are identified as the CURRAN ROAD Surcharge and set forth in Section 12.10.400 M., TMC, as now enacted or as may be later amended.

2.3.3 The CITY shall retain the sole and complete authority to determine the actual payment amounts and payment methods to be applied based on actual costs incurred for the System.

2.3.4 Termination of Water Service For Non-Payment of Surcharge. The water service to the Premises of any Member who has not paid the Surcharge established by the CITY will be discontinued and will not be restored until full payment of all outstanding Surcharge amounts is made.

2.3.5 Removal of CITY Equipment for Non-Payment of Surcharge. The CITY reserves the right to reclaim and remove any meter or other CITY equipment installed to serve any Premises subject to a delinquent Surcharge. In the event of such reclamation and removal, and upon subsequent application for water service, the Member owning such Premises, regardless of prior succession or assignment of rights in such Premises, shall be required to pay as a condition to new service all applicable water service construction and connection charges and fees associated with re-installation and water service at the rates in effect as of

the date of such subsequent application.

- 2.3.6 Memorandum of Understanding. The Parties acknowledge the need to establish further clarification concerning the calculation and application of Surcharge amounts to certain Premises located on the mutual border of CURRAN ROAD's System and Tacoma Water's abutting water service system. The Parties agree these "Border Premises" require special consideration and contractual provisions to govern the respective rights and duties of Tacoma Water, CURRAN ROAD, and the Members who own said Border Premises. Accordingly, the Parties hereby agree to negotiate in good faith following the Effective Date hereof and to draft and execute a Memorandum of Understanding (MOU) that fully addresses the special terms and conditions applicable to the Border Premises. The Parties agree to promptly commence said negotiations following mutual execution of this Agreement and exercise good faith and best efforts to enter into a mutually acceptable MOU on or before September 30, 2017

### **ARTICLE III. WATER SERVICE**

3.1 The CITY shall furnish water to the Premises of each Member according to that individual Member's title interest of record in such Premises within the CURRAN ROAD service area in accordance with the rates and charges set from time to time by CITY ordinance applicable to customers directly served outside the CITY. Water service shall be subject to all terms, covenants, and conditions of such ordinance and be conditioned upon payment of any Surcharge established pursuant to Section 2.3 above.

3.2 The CITY's operating personnel and equipment shall be made available to render ordinary and emergency maintenance and repair on the same basis and to the same standards provided customers within the CITY.

3.3 The appropriate meter size will be determined by the CITY, in its sole discretion, and be based on the existing fixture units, existing water meter sizing, or any special needs required for each Premises served or to be served.

3.4 Within two (2) weeks following mutual execution of this Agreement, if not previously provided per Section 1.4, CURRAN ROAD shall provide to the CITY a listing of all current title owners of each CURRAN ROAD Member's Premises entitled to receive water service utilizing the System. Said listing shall include lot legal descriptions, parcel numbers, and structure information for each Premise as available. The CITY will verify Premises ownership records provided by CURRAN ROAD with Pierce County. All Member and Premises ownership documentation and information received or used hereunder shall be deemed a public record.

3.5 Water service to a Member's Premises shall be conditioned upon payment of the Surcharge specified in Section 2.3 herein and satisfaction of the following:

3.5.1 If, during the term of the Surcharge, a new water service is requested for a

Premises that did not previously have its own dedicated water service connection from the CITY, water service will be provided only upon CITY's receipt of a lump sum retroactive payment of all Surcharges accrued during the period from (i) the date of the last timely Surcharge payment received by the CITY (or if no Surcharge payment has ever been made, from the date the Surcharge first became due hereunder) to (ii) the date the new water service is to commence.

**3.6** Notwithstanding any Surcharge established hereunder and/or upon expiration of the term of such Surcharge, all applications for water service by a Member and to a Premises within the CURRAN ROAD service area as delineated in Exhibits A and B, whether for new service or to revise an existing service, will be subject to the CITY's normal prevailing rates, charges and fees as set forth in CITY ordinances including, but not limited to Chapters 12.01 and 12.10, TMC, as now enacted or as it may hereafter be amended. Said rates, charges and fees will be credited to the CITY and will include, but not be limited to:

- 3.6.1 System development charges per Chapter 12.10, TMC, as now enacted or as hereafter amended;
- 3.6.2 Water service construction charges per Chapter 12.10, TMC as now enacted or hereafter amended;
- 3.6.3 Changes to meter size,
- 3.6.4 New services such as irrigation, and
- 3.6.5 A water main charge, which shall apply only to requests for service made after the Surcharge has been fully paid.

#### **ARTICLE IV. APPROVALS and SYSTEM ACQUISITION CLOSING**

**4.1** CURRAN ROAD shall cause a vote of its Members and membership in the manner provided under its By-laws to approve or disapprove (i) the terms and conditions of this Agreement, (ii) the ultimate conveyance of the System and all related rights and interests to the CITY, and (iii) the amendment of CURRAN ROAD's governing documents to the extent necessary to carry out the terms and conditions of this Agreement. Within ten (10) days following execution of this Agreement by its authorized representative, CURRAN ROAD agrees to furnish written evidence of its official authorization of this Agreement and confirmation of intent to convey to the CITY all rights, interests and property, as specified in Article I herein. The CITY will thereafter submit this Agreement for approval by CITY's Public Utility Board and City Council.

**4.2** Water System Acquisition Closing: The conveyance and acquisition of the System pursuant to this Agreement shall be fully completed on **January 1, 2018 ("Closing" and/or "Closing Date")**. The following terms and conditions shall apply and govern the Parties' respective rights and obligations prior to and upon the Closing Date,



and all acts required hereunder to achieve System acquisition Closing shall be fully performed on or before said Closing Date:

- 4.2.1 CURRAN ROAD will have sole responsibility for, and shall operate, the System until the Closing Date. All costs and expense to operate and maintain the System will be paid solely by CURRAN ROAD until the Closing Date.
- 4.2.2 CURRAN ROAD will finalize and fully complete all System and System related operational asset conveyances and documentation deliveries specified in Sections 1.1, 1.2, 1.3, 1.4, and 1.5 of this Agreement. Pursuant to Section 5.10, this Agreement shall be recorded as necessary to convey and fully vest the easement rights and interests specified in Section 1.3 hereunder, as well as to give and perfect public notice of the Surcharge obligations specified in Sections 2.3 and 3.5 hereunder.
- 4.2.3 CURRAN ROAD will make final tender of all cash and financial account funds in its possession as necessary to fully secure its performance hereunder including, but not limited to, all post-Closing obligations specified in Article V. Said funds and cash shall be held by the CITY, interest free, as Security pursuant to Section 5.1.

#### **ARTICLE V. MISCELLANEOUS PROVISIONS**

**5.1 Security for Performance.** The CITY shall hold, retain, and apply all real property sale proceeds tendered pursuant to Section 1.1.2 A., together with all bank and financial account assets conveyed by CURRAN ROAD pursuant to Section 1.4 and Section 1.5, as Security sufficient to ensure CURRAN ROAD's performance of its duties and obligations under this Agreement; which duties include, but are not limited to, indemnification pursuant to Section 5.2 below. If, upon the third (3<sup>rd</sup>) anniversary of the Closing Date, the CITY determines that all such obligations have been faithfully observed, performed, and otherwise satisfied, the CITY agrees to credit and apply any then remaining Security funds toward the total outstanding Surcharge amount for the purpose of reducing the duration of said Surcharge.

- 5.1.2 In the event the real property sale proceeds, bank, and/or other financial account assets conveyed to the CITY pursuant to Section 5.1 are, in the CITY's reasonable opinion, insufficient to adequately secure CURRAN ROAD's performance of obligations under this Agreement, the CITY shall have the right to demand, and CURRAN ROAD agrees to provide upon said demand, such further and other Security in the form of cash, bond(s), guarantee(s), letter(s) of credit, or other financial commitment(s) that CURRAN ROAD is reasonably capable of obtaining and furnishing to ensure sufficient Security for its full and faithful performance hereunder.

**5.2 Indemnification by CURRAN ROAD.** CURRAN ROAD shall defend, indemnify, save and hold the CITY (and its directors, officers, employees, agents, and insurers)

harmless from and against any damages said indemnitees might sustain for any negligent and/or intentional acts or omission by CURRAN ROAD prior to the mutual execution of this Agreement relating to the System and/or arising out of the execution hereof including, but not limited to, claims, actions, or proceedings (together with any costs, expenses, and reasonable attorneys' fees necessarily incurred), brought by or on behalf of CURRAN ROAD, any Member thereof, any third party, any regulatory agency, and/or franchise authority having competent jurisdiction; Provided, that the foregoing obligations shall not apply to damages arising out of CITY's sole negligence or intentional misconduct (i) in operating the System following the Closing date, (ii) in abandoning any portion and/or component of the System following Closing, and/or (iii) related to the CITY's construction, operation or maintenance of the System following Closing unless caused by or otherwise arising from the acts or omissions of CURRAN ROAD and/or its Members.

**5.3** Indemnification by CITY. The CITY shall indemnify, defend and hold CURRAN ROAD (and its owners, members, officers, directors, agents, insurers) harmless from and against any damages said indemnitees might sustain for any negligent and/or intentional acts or omission by CITY relating to the System including, but not limited to, claims, actions, or proceedings (together with any costs, expenses, and reasonable attorneys' fees necessarily incurred), brought by or on behalf of any third party, any regulatory agency, and/or franchise authority having competent jurisdiction; Provided, that the foregoing obligations shall not apply to damages arising out of CURRAN ROAD's negligence or intentional misconduct in operating the System prior to the Closing Date unless caused by or otherwise arising from the acts or omissions of the CITY.

**5.4** In the event of any obligations, indebtedness or liabilities of CURRAN ROAD that arise as the result of (i) incidents occurring prior to the mutual execution of this Agreement, (ii) its execution hereof, and/or (iii) any of its actions or omissions during its ownership and operation of the System between mutual execution hereof and the Closing Date specified in Section 4.2, the CITY may in such event, and at its sole discretion, elect to make payment to satisfy and fully resolve such obligations, indebtedness or liabilities, subject to the following:

5.4.1 In the event the CITY intends to make any payment pursuant to this Section 5.4, it shall provide CURRAN ROAD with at least sixty (60) days prior written notice of such intent in order to provide CURRAN ROAD an opportunity to satisfy such obligation, indebtedness or liability -- or to express reasonable objection to payment thereof by CITY. The CITY will reasonably cooperate with any good faith effort commenced by CURRAN ROAD during such 60 day period to fully resolve the subject obligation, indebtedness or liability.

5.4.2 In the event the CITY makes any payment pursuant to this Section 5.4, upon expiration of the notice period in Section 5.4.1 and following CURRAN ROAD's failure to timely and fully resolve any obligation, indebtedness or liability pursuant to Section 5.4.1, CURRAN ROAD and

its Members shall be jointly and severally liable for the full and prompt reimbursement of any and all payments made by the CITY; Provided that, the several liability of Members shall be limited to each Member's respective interest in the Curran Road Mutual Water Association such that no individual Member shall be held liable for the entirety of CURRAN ROAD's liability.

- 5.4.3 Notwithstanding any Security the CITY may obtain pursuant to Section 5.1 herein, any and all other bank or financial account funds held pursuant to this Agreement shall be made available by the holder thereof for the satisfaction of any and all obligations, indebtedness or liabilities of CURRAN ROAD hereunder.

5.5 The CITY shall not be responsible for the application of any funds of CURRAN ROAD, from whatever source derived, except as otherwise expressly stated in this Agreement, nor for any tax liability of any sort assessed or levied thereon or arising out of the transactions and/or conveyances contemplated or required by this Agreement. CURRAN ROAD shall, on behalf of itself, secure and furnish to the CITY without cost to the CITY, whatever final tax rulings may be required in this matter to so protect the CITY, and in any event shall indemnify and hold the CITY harmless from any costs of defense and from all such claims and/or litigation, assessments or levies of whatsoever kind, nature or description for taxes actually owed to, alleged to be owed to or imposed by, any Federal, State, City, Municipal or other Governmental body or agency thereof and arising either directly or indirectly from entering into this Agreement.

5.6 CURRAN ROAD will cooperate in good faith with the CITY to timely obtain and deliver proof of any and all further authorizations, documents, and instruments, necessary for CITY to perform and/or enforce the rights and obligations set forth herein.

5.7 The Parties agree and stipulate that in the event any litigation should occur concerning or arising out of this Agreement, the sole venue of any legal action shall be the Pierce County Superior Court of the State of Washington and the interpretation of the terms of this Agreement shall be governed by the laws of the State of Washington.

5.8 CURRAN ROAD shall, upon the Closing Date permanently discontinue the water business and service to the CURRAN ROAD service area described in Exhibit A as a water company in accordance with applicable Department of Health regulations.

5.9 Effective Date. This Agreement shall not become effective unless approved by formal Resolutions of the CITY's Public Utility Board and CITY Council. If so approved, the Effective Date of this Agreement shall be on the next ensuing business day after the CITY Council Resolution has been adopted.

5.10 Recording of this Agreement. The CITY shall promptly record this Agreement with the Pierce County Auditor's Office upon the Closing Date. All costs of such recording shall be included in the calculation of CITY's acquisition costs to be paid according to Article II herein. Upon such recording, all easement rights and interests

specified in Section 1.3 shall vest in the CITY and public notice of all Surcharge obligations pursuant to Section 2.3 and Section 3.5 shall be deemed given and perfected. It is understood and agreed that such Surcharge may be further set forth by ordinance adopted by the City Council, but such ordinance shall not be a required condition for enforcement of any Surcharge or related remedies hereunder.

5.11 It is understood and agreed that the individuals signing this Agreement on behalf of CURRAN ROAD and the CITY are doing so solely in their official capacity as the authorized representatives for the respective Parties, and not in their individual capacity.

Dated this 18<sup>th</sup> day of April, 2017.

**APPROVED AND ACCEPTED:**

**CURRAN ROAD MUTUAL WATER ASSOCIATION**

By: [Signature]  
President

By: [Signature]  
Secretary

Printed Name: PRESTON DEVERS

Printed Name: Tom Langseth

**ATTEST:**

State of Washington )  
County of Pierce ) ss

On this 18<sup>th</sup> day of April, 2017, before me personally appeared Preston Devers and Tom Langseth to me known to be the Chairman and Secretary, respectively, of the Curran Road Mutual Water Association, the nonprofit corporation that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Gail E. Langseth  
Notary Public in and for the State  
of Washington, residing at Tacoma  
My Commission expires: 1-6-18

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**APPROVED AND ACCEPTED:**

**CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES**

By: \_\_\_\_\_  
William A. Gaines, Utilities Director/CEO

**ATTEST:**

**AUTHORIZED BY PUBLIC UTILITY BOARD RESOLUTION NO. \_\_\_\_\_ AND  
CITY COUNCIL RESOLUTION NO. \_\_\_\_\_**

By: \_\_\_\_\_  
Clerk of the Public Utility Board

**APPROVED:**

\_\_\_\_\_  
Linda McCrea, Tacoma Water Superintendent

Description Approved:

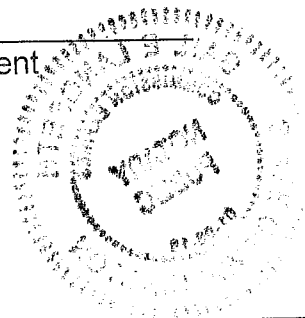
\_\_\_\_\_  
Engineer

Approved as to Form:

Approved:

Ward Gaines  
Deputy City Attorney

\_\_\_\_\_  
Finance Department



**EXHIBIT A**  
**Legal Description For Curran Road Mutual Water Association**  
**Service Area**

The purpose of the following legal description is to delineate the boundaries of the Curran Road Mutual Water Associations' service area as of June 2017, which is to be acquired by the City of Tacoma's Department of Public Utilities, d/b/a Tacoma Water. The following description should be used only for such purposes.

Parcels of land, all in Sections 12, 13, 24, and 25; Township 19 North, Range 3 East, W.M.; in Pierce County, Washington, further described as follows:

BEGINNING at a point 30 feet north of and 30 feet west of the quarter corner between Sections 12 and 13, Township 19 North, Range 3 East, W.M., in Pierce County, Washington, said quarter corner being a surface brass monument at the intersection of East 128<sup>th</sup> street and Bingham Avenue;  
Thence westerly, along the north line of East 128<sup>th</sup> street, a distance of 281.13 feet to the southwest corner of Parcel 'A', as noted on Pierce County BLA No. 200404165001;  
Thence northerly, 133.44 feet;  
Thence easterly, 88 feet;  
Thence northerly, 276 feet;  
Thence westerly, 112 feet;  
Thence northerly, 115.09 feet to the northwest corner of said BLA No. 200404165001;  
Thence continuing northerly, 238 feet, more or less, to a point 792.71 feet north of the south line of Section 12;  
Thence westerly, 160 feet to the west line of the east ½ of the west ½ of the east ½ of the southeast quarter of the southwest quarter of Section 12;  
Thence northerly, along the west line of the aforementioned subdivision, a distance of 531 feet, more or less to the south line of the northeast quarter of the southwest quarter of Section 12;  
Thence westerly, 495 feet, more or less, to the west line of the east three quarters of the northeast quarter of the southwest quarter of Section 12;  
Thence northerly, 550 feet, more or less to the north line of the south half of the north 220 feet of the east three quarters of the south half of the northeast quarter of the southwest quarter of said Section 12;  
Thence easterly, 960 feet, more or less, along the north line of said subdivision to the west line of Bingham Ave;  
Thence continuing easterly, 60 feet to the east line of Bingham Avenue;  
Thence northerly, 295 feet, more or less, to the northwest corner of Lot 17, in the Plat of Boyles Addition, in the southeast quarter of Section 12, Township 19 North, Range 3 East, W.M., Pierce County;  
Thence easterly, 270 feet to the northeast corner of Lot 4 of said Boyle's Addition;  
Thence southerly, along the west line of 47<sup>th</sup> ave, a distance of 187 feet, more or less, to a point west of the north line of Pierce County short plat No. 8008190183;  
Thence easterly, 50 feet, to the northwest corner of said short plat;  
Thence continuing easterly, along the north line of said short plat, a distance of 798.46 feet, to the northeast corner of said short plat;  
Thence southerly, a distance of 661.36 feet, to the southeast corner of said short plat;  
Thence easterly, a distance of 495 feet, more or less, to the northeast corner of the west half of the west half of the southeast quarter of the southeast quarter of said Section 12;  
Thence southerly, along the east line of the aforementioned subdivision, a distance of 1290 feet, more or less, to the north line of East 128<sup>th</sup> street;  
Thence westerly 1620 feet, more or less, along the north line of East 128<sup>th</sup> street, to a point 30 feet north of and 30 feet east of the quarter corner between Sections 12 and 13, Township 19 North, Range 3 East, W.M.;  
Thence westerly, 60 feet, to the POINT OF BEGINNING.  
EXCEPT roads.

ALSO BEGINNING at a point 30 feet south of and 30 feet east of the quarter corner between Sections 12 and 13, Township 19 North, Range 3 east, W.M.; said quarter corner being a surface brass monument at

**Water System Acquisition Agreement**

Tacoma Water/Curran Road Mutual Water Association

the intersection of East 128<sup>th</sup> street and Bingham Ave;  
 Thence easterly, along the south line of East 128<sup>th</sup> street, a distance of 1770 feet, more or less, to the northeast corner of the following described tract:  
 The east half of the west half of the northwest quarter of the northeast quarter of the northeast quarter of Section 13, Township 19 North, Range 3 East, W.M., EXCEPT the north 30 feet thereof;  
 Thence southerly, along the east line of the above described subdivision, a distance of 630 feet, more or less, to the north line of the Plat of Dogwood Meadow;  
 Thence easterly, along the north line of the south half of the northeast quarter of the northeast quarter of said Section 13, to a point 535 feet east of the west line of the northeast quarter of the northeast quarter of Section 13;  
 Thence southerly, 335 feet, more or less to a point on the south line of the north half of the south half of the northeast quarter of the northeast quarter of Section 13;  
 Thence westerly, 115 feet to the east line of the aforementioned Dogwood Meadow Plat;  
 Thence southerly, 40 feet, more or less, to the northwest corner of Lot 11, Block 2, Plat of Dogwood Meadow, said point being also 114.79 feet west of the northeast corner of said Lot 11;  
 Thence easterly, 700 feet, more or less, along the north line of said Plat of Dogwood Meadow, to a point 50 feet west of the northeast corner of Lot 17, Block 2, Dogwood Meadow;  
 Thence northerly, 40 feet, more or less, to the northwest corner of the following described tract:  
 The east 200 feet of the south half of the south half of the northeast quarter of the northeast quarter of Section 13, EXCEPT the south 290 feet thereof;  
 Thence easterly, parallel with the north line of the Plat of Dogwood Meadow, 133 feet, to the west line of Canyon Road, said point being 67 feet west of the east line of Section 13,  
 Thence southerly, parallel with and 67 feet west of the east line of Section 13, 330 feet, more or less, to the south line of Block 1, Plat of Dogwood Meadow;  
 Thence westerly, along said south line, a distance of 620 feet, more or less, to the northeast corner of the following described tract of land:  
 The east 64.5 feet of the west half of the north half of the north half of the southeast quarter of the northeast quarter of Section 13, Township 19 North, Range 3 East, W.M., EXCEPT the south 135 feet thereof;  
 Thence southerly, a distance of 196 feet, more or less, along the east line of the northwest quarter of the southeast quarter of the northeast quarter of Section 13, to the southeast corner of the above described subdivision;  
 Thence easterly, 20 feet, more or less, to the northwest corner of the following described tract of land:  
 The south 135 feet of the east 660 feet of the north half of the north half of the southeast quarter of the northeast quarter of Section 13, Township 19 North Range 3 East, W.M.;  
 Thence southerly, 135 feet, to the southwest corner of the above described subdivision;  
 Thence westerly, 675 feet, more or less, to the east line of East 50<sup>th</sup> Ave;  
 Thence southerly, along the east line of 50<sup>th</sup> Avenue, 190 feet, more or less, to the northwest corner of the following described tract of land:  
 BEGINNING at the southwest corner of the south half of the north half of the southeast quarter of the northeast quarter of Section 13, Township 19 North, Range 3 East, W.M.;  
 Thence easterly, 180 feet, thence northerly 140 feet, thence westerly 180 feet, thence southerly 140 feet to the point of BEGINNING;  
 EXCEPT the westerly 15 feet thereof, for road;  
 Thence easterly, 165 feet, to the northeast corner of the above described tract of land;  
 Thence southerly 140 feet to the south line of the north half of the southeast quarter of the northeast quarter of said Section 13;  
 Thence easterly, 1070 feet, more or less, along the north line of the south half of the southeast quarter of the northeast quarter of said Section 13, to the west line of Canyon road, said point being 67 feet west of the east line of Section 13, as noted in Pierce County AF No. 200203041105;  
 Thence southerly, along the west line of Canyon Road, 600 feet, more or less to a point 65.3 feet north of the southeast corner of the northeast quarter of Section 13, as noted on Pierce County A.F. No. 200203041103, said corner position being a brass monument at the intersection of East 136<sup>th</sup> street and Canyon Road;  
 Thence southwesterly, 55.63 feet to a point 30 feet north of and 110 feet west of the aforementioned southeast corner of the northeast quarter of Section 13;  
 Thence westerly, a distance of 115 feet;

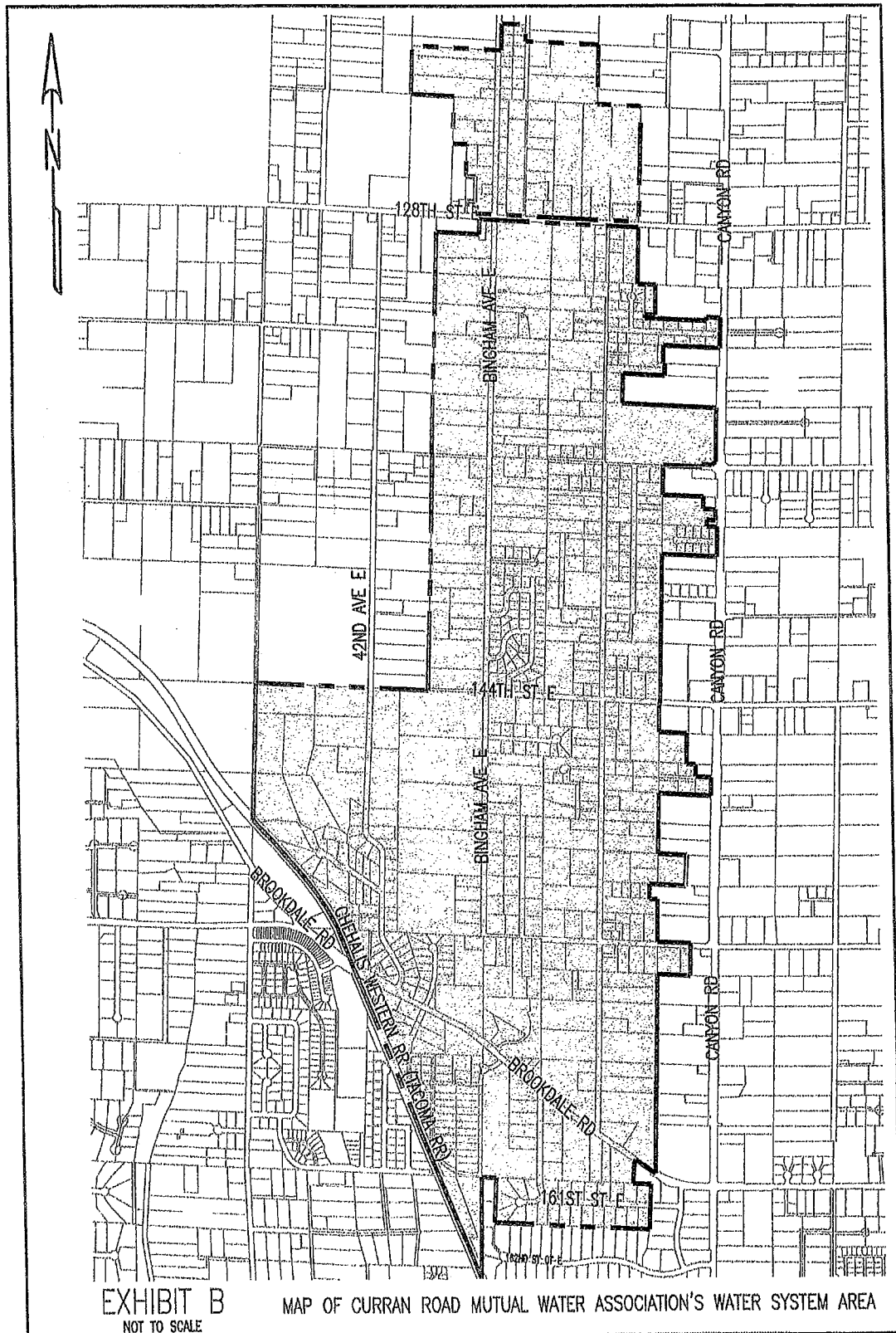
Thence southerly, a distance of 30 feet to a point on the south line of the northeast quarter of Section 13;  
 Thence westerly 436 feet, more or less to a point on the north line of the southeast quarter of Section 13;  
 Thence southerly, 30 feet to the northeast corner of Lot 19, Plat of Evergreen Estates Second Addition, in the southeast quarter of Section 13, Township 19 North, Range 3 East, W.M.;  
 Thence continuing southerly, along the east line of said Plat, 300 feet, more or less, to the north line of the south half of the northeast quarter of the southeast quarter of Section 13;  
 Thence easterly, along said north line, a distance of 462 feet, more or less to a point 200 feet west of the east line of the southeast quarter of Section 13;  
 Thence southerly 135 feet;  
 Thence easterly 140 feet to the west line of Canyon road as per Pierce County ETN 1092461;  
 Thence southerly, along the west line of Canyon Road, 120 feet more or less, to a point 58 feet west of the east line of the southeast quarter of Section 13;  
 Thence westerly 102 feet;  
 Thence southerly, 75 feet to the north line of Capp's Second Addition, in the southeast quarter of Section 13, Township 19 North, Range 3 East, W.M.,  
 Thence easterly, along the north line of said Capps' Second Addition, a distance of 103 feet to the east line of Canyon Road as noted in Pierce County ETN No. 1092461;  
 Thence southerly, along the east line of Canyon Road, a distance of 330.36 feet to a point on the south line of Capp's Second Addition, said point being 52 feet west of the east line of Section 13;  
 Thence westerly, 610 feet, to the southwest corner of Capp's Second Addition, said point being on the east line Evergreen Estates Second Addition;  
 Thence southerly, along the east line of the west half of the northeast quarter of the southeast quarter of said Section 13, a distance of 330 feet, more or less, to the southeast corner of said subdivision;  
 Thence continuing southerly, along the east line of the west half of the southeast quarter of the southeast quarter of Section 13, 1290 feet, more or less, to a point 30 feet north of the south line of Section 13, said point being on the north line of East 144<sup>th</sup> street;  
 Thence westerly, along the north line of 144<sup>th</sup> street, a distance of 1960 feet, more or less, to a point 30 feet north of and 30 feet east of the quarter corner between Sections 13 and 24, Township 19 North, Range 3 East, W.M., said quarter corner being a surface brass monument at the intersection of East 144<sup>th</sup> street and Bingham Ave;  
 Thence westerly, 60 feet to a point 30 feet north of and 30 feet west of said quarter corner;  
 Thence southerly, 30 feet to a point on the south line of the southwest quarter of Section 13;  
 Thence westerly, along said south line of said southwest quarter of Section 13, a distance of 660 feet, more or less, to the southwest corner of the southeast quarter of the southeast quarter of the southwest quarter of Section 13;  
 Thence northerly, 1320 feet, more or less to the northeast corner of the northwest quarter of the southeast quarter of the southwest quarter of Section 13;  
 Thence continuing northerly, 1320 feet, more or less to the northeast corner of the northwest quarter of the northeast quarter of the southwest quarter of Section 13;  
 Thence continuing northerly, 1320 feet more or less to the northwest corner of the northeast quarter of the southeast quarter of the northwest quarter of Section 13;  
 Thence continuing northerly, 1120 feet, more or less to the northwest corner of Parcel 2, Pierce County Short Plat No. 200209165003;  
 Thence easterly 490.15 feet to the southeast corner of Parcel 1 of said Short Plat;  
 Thence northerly, 169.40 feet to the south line of East 128<sup>th</sup> street;  
 Thence easterly, 139 feet, to a point 30 feet south of and 30 feet west of the quarter corner between Sections 12 and 13, Township 19 North, Range 3 East, W.M., said quarter corner being the brass monument at the intersection of East 128<sup>th</sup> street and Bingham Avenue;  
 Thence continuing easterly, 60 feet to the POINT OF BEGINNING.  
 EXCEPT roads.

ALSO BEGINNING at the northwest corner of Section 24, Township 19 North, Range 3 East, W.M., said point being a 2 inch brass disk set in concrete;  
 Thence easterly, along the north line of Section 24, a distance of 2610 feet, more or less to a point 30 feet west of the quarter corner between Section 13 and 24;  
 Thence southerly, a distance of 30 feet;  
 Thence easterly, a distance of 60 feet to a point 30 feet south of and 30 feet east of said quarter corner



between Sections 13 and 24;  
 Thence continuing easterly, along the south line of East 144<sup>th</sup> street, a distance of 1960 feet, more or less, to the northwest corner of Lot 'B' of Pierce County Boundary Line Adjustment No. 200006095004 in the northeast quarter of Section 24, Township 19 North, Range 3 East, W.M.  
 Thence southerly, 302.86 feet to the southwest corner of said Lot 'B';  
 Thence easterly 316.54 feet, to the northeast corner of the west half of tract 196 in Division Four of the Fruitland Garden tracts, in Pierce County;  
 Thence southerly 332.60 feet to the southeast corner of said west half of tract 196;  
 Thence easterly 96.32 feet to the northeast corner of the north 165 feet of the west 200 feet of the east 420 feet of tract 197, except the south 30 feet thereof, in Division Four of the Fruitland Garden Tracts;  
 Thence southerly, 135 feet to the southeast corner of the aforementioned subdivision;  
 Thence easterly, 179 feet to the northeast corner of the south 30 feet of the north 165 feet of said Tract 197, except the east 41 feet thereof, as noted in Pierce County ETN No. 1101472;  
 Thence southerly 197.29 feet to the northeast corner of Emma Estates Condominium as recorded in Pierce County A.F. No. 200704175008;  
 Thence westerly 591.13 feet, to the northwest corner of said Emma Estates;  
 Then southerly, 998.40 feet to the southwest corner of the New View Park Binding Site Plan as recorded under Pierce County A.F. No. 201407035004;  
 Thence westerly, 100.87 feet;  
 Thence southerly, 166.61 feet;  
 Thence easterly, 100.64 feet to the southeast corner of the north 166.61 feet of tract 184 of Division Four of the Fruitland Garden Tracts;  
 Then southerly, 468.19 feet to the southeast corner of tract 185 of said Division Four of the Fruitland Garden Tracts, Pierce County, said point being on the north line of East 152<sup>nd</sup> street;  
 Thence southerly, 60 feet, to the south line of East 152<sup>nd</sup> street;  
 Thence easterly, 375 feet, to the northeast corner of the east 110 feet of the west 375 feet of tract No. 203 in Division Four of the Fruitland Garden Tracts;  
 Thence southerly, 299.30 feet to the southeast corner of the aforementioned subdivision;  
 Thence westerly, 375 feet to the southwest corner of tract No. 203 in Division Four of the Fruitland Garden tracts;  
 Thence southerly 2145 feet, more or less, to the southeast corner of Tract No. 192, in Division Four of the Fruitland Garden Tracts, said point being on the northeasterly line of East Brookdale Road;  
 Thence northwesterly, along the northeasterly line of Brookdale Road, 250 feet, more or less, to a point 60 feet northeasterly of the northwesterly corner of Lot 49 in the Plat of Fox Run, Pierce County;  
 Thence southwesterly, 60 feet to said northwesterly corner of said Lot 49;  
 Thence southerly, 243.87 feet;  
 Thence easterly, 210.00 feet, to the northeast corner of Lot 8, in the Plat of Mont Loma Estates, said point being also 708.76 feet west of the northeast corner of Section 25, Township 19 North, Range 3 East, W.M., as shown on the Plat of Mont Loma Estates, said northeast corner being a surface brass monument at the intersection of Canyon Road and 160<sup>th</sup> street East;  
 Thence southerly, 495 feet, to the southeast corner of Lot 17, in the Plat of Mont Loma Estates;  
 Thence westerly, 1765.5 feet, to the southwest corner of Lot 5;  
 Thence northerly, 495 feet to the northwest corner of Lot 3, in the Plat of Mont Loma Estates;  
 Thence westerly, 165 feet, to the quarter corner between Sections 24 and 25, Township 19 North, Range 3 East, W.M.;  
 Thence southerly, along the east line of the northwest quarter of Section 25, a distance of 1100 feet, more or less, to a point that intersects the centerline of the Tacoma Eastern Railroad;  
 Thence northwesterly, along the centerline of the Tacoma Eastern Railroad, a distance of 5700 feet, more or less, to a point that intersects the west line of the northwest quarter of Section 24, Township 19 North, Range 3 East, W.M.;  
 Thence northerly, along the west line of the northwest quarter of Section 24, a distance of 1520 feet, more or less, to the POINT OF BEGINNING and the TERMINUS of this legal description.  
 EXCEPT roads.

**EXHIBIT B**  
**Map of Curran Road Mutual Water Association's Water System Area**



**EXHIBIT B-1**  
**Summary of System Improvements**  
- To be made by Tacoma Water as System Operator –

- a) Connect Tacoma Water and Curran Road water systems in 42<sup>nd</sup> Avenue East
- b) Construct water main in 161<sup>st</sup> Street East between 53<sup>rd</sup> Avenue East and 48<sup>th</sup> Avenue East, making connection to Tacoma Water main in 53<sup>rd</sup> Avenue East.
- c) Construct water main in 48<sup>th</sup> Avenue East between 161<sup>st</sup> Street East and Brookdale Road East.
- d) Separate southern portion of system by disconnecting feeds from the north.
- e) Install individual pressure reducing valves (PRV's) on services in the southern portion of the northern pressure zone.
- f) Revise connection to Tacoma Water system in the intersection of Canyon Road East and 152<sup>nd</sup> Street East. Revision will connect to Tacoma Water's 669' pressure zone.
- g) Construct water main in 131<sup>st</sup> Street East, between Canyon Road East and 50<sup>th</sup> Avenue East.
- h) Decommission pump station, and revise connection to Tacoma Water pipeline in 128<sup>th</sup> Street East.
- i) Retire 6" asbestos cement water main in Bingham Road East, between 128<sup>th</sup> Street East and 136<sup>th</sup> Street East. Transfer services and hydrants to the 12" ductile iron water main in Bingham Road East.
- j) Construct water main in 50<sup>th</sup> Avenue East, between 128<sup>th</sup> Street East and 131<sup>st</sup> Street East.
- k) Construct water main in 128<sup>th</sup> Street East, between 47<sup>th</sup> Avenue East and 50<sup>th</sup> Avenue East.
- l) Construct water main in 50<sup>th</sup> Avenue East, 131<sup>st</sup> Street East to 152<sup>nd</sup> Street East.
- m) Construct water main in 50<sup>th</sup> Avenue East, south of 152<sup>nd</sup> Street East.
- n) Construct water main in 138<sup>th</sup> Street East cul de sac west of Canyon Road East.
- o) Evaluate 2" and 4" water mains along 50<sup>th</sup> Avenue East, between 128<sup>th</sup> Street East and 152<sup>nd</sup> Street East, and replace where necessary.

- p) Construct water main in 152<sup>nd</sup> Street East, between Bingham Road East and 50<sup>th</sup> Avenue East.
- q) Construct water main in 144<sup>th</sup> Street East, between Bingham Road East and 50<sup>th</sup> Avenue East.
- r) Construct water main in 136<sup>th</sup> Street East, between Bingham Road East and 50<sup>th</sup> Avenue East.
- s) Construct water main in 47<sup>th</sup> Avenue East, north of 152<sup>nd</sup> Street East.
- t) Construct water main in 47<sup>th</sup> Avenue East, north of 144<sup>th</sup> Street East.
- u) Construct water main in 141<sup>st</sup> Street East, between Bingham Road East and 47<sup>th</sup> Avenue East.
- v) Construct water main in 145<sup>th</sup> Street East, east of Bingham Road East.
- w) Construct water main in 139<sup>th</sup> Street Court East, east of Bingham Road East.
- 1. x) Construct water main in Bingham Road East, between 128<sup>th</sup> Street East and 120<sup>th</sup> Street East.
- y) Construct water main in 120<sup>th</sup> Street East, between Bingham Road East and 47<sup>th</sup> Avenue East.
- z) Construct water main in 47<sup>th</sup> Avenue East, between 120<sup>th</sup> Street East and 128<sup>th</sup> Street East.
- aa) Construct water main in 136<sup>th</sup> Street East, between 50<sup>th</sup> Avenue East and 51<sup>st</sup> Avenue East.
- bb) Construct water main in 51<sup>st</sup> Avenue East, between 136<sup>th</sup> Street East and 141<sup>st</sup> Street East.
- cc) Construct water main in 141<sup>st</sup> Street East, between 50<sup>th</sup> Avenue East and 51<sup>st</sup> Avenue East.
- dd) Construct water main in Bingham Road East, 136<sup>th</sup> Street East to 152<sup>nd</sup> Street East.

**EXHIBIT C**  
**Sample Form of Easements**  
**for Water Utilities On Member Premises**

**CITY OF TACOMA**  
**DEPARTMENT OF PUBLIC UTILITIES**  
**EASEMENT NO. XXX**

Reference No. P2011-xxx  
Grantors: xxx  
Grantee: City of Tacoma, Department of Public Utilities, Water  
Division (d.b.a. Tacoma Water)  
Legal Descriptions: xxx  
Tax Parcel Nos.: xxx  
Supersedes: This document supersedes that Easement recorded under  
Pierce County Auditor File No. xxxxx (City of Tacoma,  
Department of Public Utilities, Water Division Easement No. xxxx)

The undersigned (NAME OF CORP / PARTNERSHIP / LLC / TRUST), a (Corporation/Limited Partnership/General Partnership/Domestic Limited Liability Company), organized and existing under the laws of the State of Washington, record owner of the Premises hereinafter described, hereinafter referred to as "Grantors," for good and valuable consideration from the City of Tacoma, Department of Public Utilities, Water Division (d.b.a. Tacoma Water), hereinafter referred to as "Tacoma Water," the receipt of which is hereby acknowledged, does hereby grant unto said Tacoma Water, its successors and assigns, the right and privilege to construct, operate and maintain utilities including, but not limited to, underground utility facilities and all appurtenant equipment aboveground utility facilities and all appurtenant equipment water mains and all appurtenant equipment in, under, over, along and across the following real property situate and being in the County of Pierce and State of Washington, described as follows, to-wit:

(legal description)

Situate in County of \_\_\_\_\_, State of Washington; and as further shown on Exhibit "A" attached hereto and by this reference incorporated herein.

\*Legal Description reviewed for Tacoma Water, Date: \_\_\_\_\_

By Chief Surveyor: \_\_\_\_\_

Together with the right to trim and keep trimmed all vegetation located upon the tract of land above described.

It is agreed that the Grantors and its/their successors shall not construct any permanent structures within the easement area; provided that said easement area may be used for ingress, egress, parking and landscaping purposes to the extent the same shall not unduly interfere with the operation and maintenance of the facilities for which this Easement is granted. However, if the Grantors do construct a permanent structure within the easement area, the Grantee may at any time remove or cause the removal of such structures at the Grantor's/Grantors' cost. In

addition, the Grantee is not responsible for damaging the Grantor's/Grantors' structures within the easement area. For the purposes of the easement, a "structure" includes, but is not limited to, any building, fence, pavement, drain field, pipe, wall, rockery and earthworks.

The Grantors shall at all times provide access to Tacoma Water staff and its contractors to change, repair, renew or remove said equipment or facilities. The Grantors herein further grant to Tacoma Water, its contractors and/or agents, the right to hereafter temporarily enter upon the Grantor's/Grantors' remaining lands where necessary to construct or maintain said facilities.

The Grantor hereby agrees to indemnify, defend and save harmless the Grantee, its officers, employees, agents and volunteers from and against any and all claims, demands, lawsuits, damages, liabilities, losses and expenses (including reasonable attorneys' fees and costs) arising directly or indirectly out of any act or omission of the Grantor, its agents, contractors, licensees or guests and involving the subject matter of this Easement. The foregoing shall expressly apply to any and all actual or alleged injury to persons (including death) and/or damage to property, except to the extent such injury or damage results from the fault of the Grantee, its officers, employees, agents or volunteers. The term "fault" as used herein shall have the meaning set forth in RCW 4.22.015, as that statute may hereafter be amended.

IN WITNESS WHEREOF, I/We have executed this instrument at \_\_\_\_\_ County, Washington, on behalf of (name of Corp/Ptnrshp/LLC/Trust), said company having caused its (corporate/partnership) name and seal to be hereunto subscribed and affixed and these presents to be executed by its officer(s)/managing partner(s)/managing member(s)/Trustee(s) thereunto duly authorized, this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
(type Name & Title here)

\_\_\_\_\_  
(type Name and Title here)

STATE OF WASHINGTON    )  
                                      ) SS  
COUNTY OF PIERCE        )

I certify that I know or have satisfactory evidence that Name of Signor(s) is/are the persons who appeared before me, and said persons acknowledged that he/she/they signed this instrument, and on oath stated that he/she/they was/were authorized to execute the instrument and acknowledged it as the President / Officer / Partner / Managing Member(s) / Trustee(s) of (Company Name/Trust Name) to be the free and voluntary act and deed of such Corporation/Partnership/LLC/Trust for the uses and purposes mentioned in the instrument. Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

Place Notary Seal in Box

Notary Public in and for the  
State of Washington  
Residing in \_\_\_\_\_  
My Commission Expires  
\_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**Accepted:**

\_\_\_\_\_  
Water Division Superintendent

**Reviewed:**

\_\_\_\_\_  
Water Distribution Manager

**Reviewed:**

\_\_\_\_\_  
Water Distribution Engineering

**Form Approved:**

\_\_\_\_\_  
Deputy/Assistant City Attorney

**Reviewed:**

\_\_\_\_\_  
Real Property Services