



RESOLUTION NO. U-10993

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."

22 Approved as to form and legality:

23 
24 Chief Deputy City Attorney

Chair

Secretary

25 _____
26 Clerk

Adopted _____

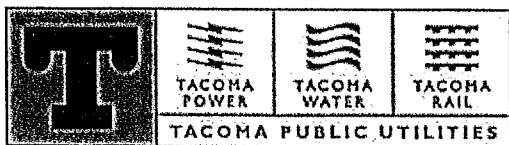


EXHIBIT "A"

RESOLUTION NO.: U-10993

ITEM NO.: #1

MEETING DATE: FEBRUARY 28, 2018

TO: Board of Contracts and Awards

FROM: Jim Sant, Deputy Director for Public Affairs and Communications
Rebekah Anderson, Marketing Communications Manager

COPY: Public Utility Board, Interim Director of Utilities, Board Clerk, SBE Coordinator,
LEAP Coordinator, Samol Hefley, Finance/Purchasing

SUBJECT: Programmatic Digital Marketing
Request for Proposal Specification No. PR17-0426F – February 28, 2018

DATE: February 14, 2018

RECOMMENDATION SUMMARY:

Marketing Communications recommends a contract be awarded to Cox Media Group, Inc. (dba KIRO-TV, INC), Seattle, WA, for programmatic digital marketing implementation, in the amount of \$360,000.00 sales tax not applicable, for an initial contract term of two years with the option to renew for optional two additional one-year renewal periods, for a projected contract amount of \$720,000.00.

BACKGROUND:

TPU requires a qualified technical partner to provision and manage programmatic digital marketing efforts on an ongoing basis within our service territory in order to increase awareness and participation in the utility's programs and services. Programmatic buying allows for better targeting based on context, behaviors and remarketing, and can include static display ads, video and rich media on any device. Programmatic digital advertising refers to web banner ads that are served to Internet users real-time through automation software that matches their demographics and behavior to a target audience.

ISSUE: Marketing Communications will work with vendor overseeing implementation of media buys, creative elements and reporting to ensure KPIs are achieved. Important KPIs will include impressions served, clicks and click-throughs on various devices. Activities will require oversight to ensure segmented objectives are achieved, and budgets adhered to. Adjustments will be made along the way as the timing of internal objectives shift.

ALTERNATIVES: Programmatic digital marketing requires a qualified technical partner with the appropriate tools to manage the digital ecosystem so we are able to leverage all available digital marketing tactics for relevance and efficiencies, and ensure we are not bidding against ourselves in a complex digital environment. The utility is capable of implementing programmatic digital marketing on a small scale working with a variety of partners; however a single qualified partner to handle all utility initiatives will ensure our tactics are working appropriately together to maximize the outcomes. Programmatic digital marketing is desirable due to enhanced capabilities for targeting the right audience, at the right time, with the right message.

COMPETITIVE SOLICITATION:

Request for Proposal Specification No. PR17-0426F was opened November 28, 2017. Nine vendors were invited to participate in addition to normal advertising for the project. Eight submittals were received.



Criteria for selection included general company capabilities, cost value, programmatic digital marketing capabilities, and stewardship/measurability. None of the respondents received any points for SBE.

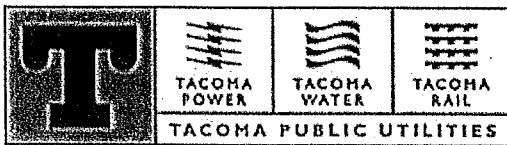
<u>Respondent</u>	<u>Location</u>	<u>Score or Rank</u>
Cox Media Group	Seattle, WA	1st
King 5/Tegna	Seattle, WA	2 nd
Hearst Media Services	Seattle, WA	3 rd
YouConnex Digital Media II, LLC	Tampa, FL	4 th
SEM International	Irvine, CA	5 th
Sinclair Media of Seattle, LLC	Seattle, WA	6 th
National CineMedia, LLC	Centennial, CO	7 th
Q13 Fox / Tribune Digital	Seattle, WA	8 th

CONTRACT HISTORY: New Contract

SUSTAINABILITY: Not Applicable

SBE/LEAP COMPLIANCE: Not Applicable

FISCAL IMPACT:



EXPENDITURES:

Fund Number & Fund Name *	COST OBJECT (CC/WBS/ORDER)	COST ELEMENT	TOTAL AMOUNT
CEP Marketing	562400	5412000	\$132,000.00
Click Marketing	552300	5412000	\$192,000.00
Marketing Communications	572000	5310100	\$ 36,000.00
TOTAL			\$360,000.00

ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED? Yes, for the balance of 2018.

IF EXPENSE IS NOT BUDGETED, PLEASE EXPLAIN HOW THEY ARE TO BE COVERED.

Each biennium, marketing budgets are established. We will work with internal clients to ensure marketing budgets are appropriately allocated, including use of Marketing Communications funds, for digital marketing since the majority of human daily interactions are now taking place on screen. Should budgets not be available, the contract does not require funds are spent.

Jim Sant, Deputy Director for Public Affairs and Communications

APPROVED:

for

Linda McCrea, Interim Director of Utilities/CEO

PR17-0426F
Programmatic Digital Marketing

Cox Media

Company
 Cost
 Programmatic Capabilities
 Stewardship and Measurability
 SBE Questionnaire

	Evaluator 1	Evaluator 2	Evaluator 3	Evaluator 4	Evaluator 5	
		25.00	20.00		22.00	
		25.00	23.00		29.00	
		24.00	18.00		20.00	
		9.50	8.00		9.00	
		0	0		0	
Total:	0.00	83.50	69.00	0.00	80.00	232.50

King 5/Tegna

Company
 Cost
 Programmatic Capabilities
 Stewardship and Measurability
 SBE Questionnaire

	Evaluator 1	Evaluator 2	Evaluator 3	Evaluator 4	Evaluator 5	
		13.00	22.00		23.00	
		20.00	20.00		32.00	
		16.00	20.00		22.00	
		10.00	6.00		7.50	
		0	0		0	
Total:	0.00	59.00	68.00	0.00	84.50	211.50

Hearst Media Services

Company
 Cost
 Programmatic Capabilities
 Stewardship and Measurability
 SBE Questionnaire

	Evaluator 1	Evaluator 2	Evaluator 3	Evaluator 4	Evaluator 5	
		25.00	20.00		19.00	
		25.00	20.00		28.00	
		25.00	15.00		19.00	
		5.00	4.00		5.00	
		0	0		0	
Total:	0.00	80.00	59.00	0.00	71.00	210.00

YouConnex Digital Media

Company
 Cost
 Programmatic Capabilities
 Stewardship and Measurability
 SBE Questionnaire

	Evaluator 1	Evaluator 2	Evaluator 3	Evaluator 4	Evaluator 5	
		19.00	20.00		17.00	
		20.00	15.00		28.00	
		25.00	20.00		18.00	
		10.00	6.00		6.00	
		0	0		0	
Total:	0.00	74.00	61.00	0.00	69.00	204.00

SEM International

Company
 Cost
 Programmatic Capabilities
 Stewardship and Measurability
 SBE Questionnaire

	Evaluator 1	Evaluator 2	Evaluator 3	Evaluator 4	Evaluator 5	
		18.00	23.00		10.00	
		25.00	10.00		27.00	
		24.00	20.00		18.00	
		10.00	8.00		7.00	
		0	0		0	
Total:	0.00	77.00	61.00	0.00	62.00	200.00

Komo/Sinclair

Company
 Cost
 Programmatic Capabilities
 Stewardship and Measurability
 SBE Questionnaire

	Evaluator 1	Evaluator 2	Evaluator 3	Evaluator 4	Evaluator 5	
		21.00	15.00		17.00	
		22.00	15.00		22.00	
		21.00	15.00		20.00	
		8.00	5.00		6.00	
		0	0		0	
Total:	0.00	72.00	50.00	0.00	65.00	187.00

NCM

Company

Cost

Programmatic Capabilities

Stewardship and Measurability

SBE Questionnaire

Total:

Evaluator 1	Evaluator 2	Evaluator 3	Evaluator 4	Evaluator 5
	16.00	15.00		13.00
	18.00	15.00		22.00
	15.00	15.00		12.00
	9.50	4.00		6.00
	0	0		0
0.00	58.50	49.00	0.00	53.00

160.50**Q13 Fox Tribune**

Company

Cost

Programmatic Capabilities

Stewardship and Measurability

SBE Questionnaire

Total:

Evaluator 1	Evaluator 2	Evaluator 3	Evaluator 4	Evaluator 5
	13.50	15.00		14.00
	12.00	15.00		26.00
	9.00	15.00		17.00
	5.00	4.00		7.00
	0	0		0
0.00	39.50	49.00	0.00	64.00

152.50

Programmatic Digital Marketing



Programmatic digital provides opportunities for better targeting due to context, behavior and remarketing.

TACOMA POWER
TACOMA PUBLIC UTILITIES

Programmatic Digital Marketing 2018-2019 Budget

2018	\$174,000
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SERVICES CONTRACT

THIS CONTRACT, made and entered into effective 3/1/2018 by and between the CITY OF TACOMA, a municipal corporation of the State of Washington (hereinafter referred to as the "CITY"), and KIRO-TV, INC., a Delaware state corporation (hereinafter referred to as "CONTRACTOR");

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

1. Scope of Services/Work

The CONTRACTOR agrees to diligently and completely perform the services and/or deliverables related to the facilitation and management of programmatic digital marketing efforts for Tacoma Public Utilities as is described in Exhibit A attached hereto and incorporated herein and as is more generally described in Request for Proposals City of Tacoma Specification No. PR17-0426F ("RFP"). RFP is incorporated herein by reference as if attached.

2. Order of Precedence

To the extent there is any discrepancy or conflict between and/or amongst the terms of this Contract and Exhibit A, Exhibit B and RFP, the controlling terms for this Contract will be interpreted in the following order of precedence, with the first listed being the most controlling, and the last number being the least controlling: Contract, Exhibit A, Exhibit B, RFP.]

3. Changes to Scope of Work.

The CITY shall have the right to make changes within the general scope of services and/or deliverables upon execution in writing of a change order or amendment hereto. If the changes will result in additional work effort by CONTRACTOR, the CITY will agree to reasonably compensate the CONTRACTOR for such additional effort up to the maximum amount specified herein or as otherwise provided by City Code.

4. Term

All services shall be satisfactorily completed on or before February 29, 2020, and this Contract shall expire on said date unless mutually extended in writing by the Parties.

5. Renewals

At CITY's sole option, the Term of this Contract may be renewed for additional one-year periods, not to exceed two renewal periods. CITY will provide written notice of its intent to exercise any renewal options at least 30 days prior to the then existing Term and a written Amendment to this Contract will be mutually executed.

6. Delay

Neither party shall be considered to be in default in the performance of this Contract to the extent such performance is prevented or delayed by any cause which is beyond the reasonable control of the affected party and, in such event, the time for performance shall be extended for a period equal to any time lost as a result thereof. In the event CONTRACTOR is unable to proceed due to a delay solely attributable to CITY, CONTRACTOR shall advise CITY of such delay in writing as soon as is practicable.

7. Compensation

The CITY shall compensate the CONTRACTOR for the services and deliverables performed under this Contract in accordance with Exhibit B Programmatic Digital Marketing 2018-2019 Budget.]

8. Not to Exceed Amount

The total price to be paid by CITY for CONTRACTOR'S full and complete performance of the Scope of Work hereunder shall not exceed \$360,000 without the written consent of the CITY. Said price shall be the total compensation for CONTRACTOR'S performance hereunder including, but not limited to, all work, deliverables, materials, supplies, equipment, subcontractor's fees, and all reimbursable travel and miscellaneous or incidental expenses to be incurred by CONTRACTOR.

In the event the CONTRACTOR incurs cost in excess of the sum authorized for service under this Contract, the CONTRACTOR shall pay such excess from its own funds, and the CITY shall not be required to pay any part of such excess, and the CONTRACTOR shall have no claim against the CITY on account thereof.

9. Payment

CONTRACTOR shall submit monthly invoices for services completed and/or deliverables furnished during the previous month. Upon CITY'S request, CONTRACTOR shall submit necessary and appropriate documentation, as determined by the CITY, for all invoiced services and deliverables.

Payment shall be made through the CITY'S ordinary payment process, and shall be considered timely if made within 30 days of receipt of a properly completed invoice. All payments shall be subject to adjustment for any amounts, upon audit or otherwise, determined to have been improperly invoiced. The CITY may withhold payment to the CONTRACTOR for any services or deliverables not performed as required hereunder until such time as the CONTRACTOR modifies such services or deliverables to the satisfaction of the CITY.

10. Independent Contractor Status

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

11. Services Warranty

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

12. Reliance on CITY Provided Data or Information

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

13. Contract Administration

Julie Jensen, Advertising Strategist within Marketing Communications for the CITY shall have primary responsibility for contract administration and approval of services to be performed by the CONTRACTOR, and shall coordinate all communications between the CONTRACTOR and the CITY.

14. Right to Audit

During the Term of this Contract, and for six (6) years thereafter, the CITY shall have the right to inspect and audit during normal business hours all pertinent books and records of the CONTRACTOR and/or any sub-contractor or agent of CONTRACTOR that performed services or furnished deliverables in connection with or related to the Scope of Work hereunder as reasonably needed by CITY to assess performance, compliance and quality assurance under this Contract or in satisfaction of CITY's public disclosure obligations as applicable.

CONTRACTOR shall, upon three (3) business days of receipt of written request for such inspection and audit from CITY, provide the CITY with, or permit CITY to make, a copy of any work-related books, accounts, records and documents, in whole or in part, as specified in such request. Said inspection and audit shall occur in Pierce County, Washington or such other reasonable location as the CITY selects. The CITY shall bear the cost of any inspection audit requested hereunder, provided, that if an inspection audit in accordance with the foregoing provisions discloses overpricing or overcharges (of any nature) by the CONTRACTOR to the CITY in excess of one percent (1%) of the total contract billings, in addition to making adjustments for the overcharges, the reasonable actual cost of the CITY's audit shall be reimbursed to CITY by CONTRACTOR. Any adjustments or payments that must be made as a result of any audit and inspection hereunder shall be made no later than 90 days from presentation of CITY's findings to CONTRACTOR.

CONTRACTOR shall ensure that the foregoing inspection, audit and copying rights of the CITY are a condition of any subcontract, agreement or other arrangement under which any other person or entity is permitted to perform the Scope of Work under this Contract.

15. Records Retention

The CONTRACTOR shall establish and maintain records in accordance with requirements prescribed by the CITY, with respect to all matters covered by this Contract. Except as otherwise authorized by the CITY, the CONTRACTOR shall retain such records for a period of six years after receipt of the final payment under this Contract or termination of this Contract.

16. Specific Personnel

If before, during, or after the execution of this Contract, CONTRACTOR represents to the CITY that certain personnel would or will be responsible for performing services and deliverables under this Contract, then the CONTRACTOR is obligated to ensure that said personnel perform said Contract services to the maximum extent permitted by law. This Contract provision shall only be waived by written authorization by the CITY, and on a case by case basis.

17. Notices

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

CITY: Name: Julie Jensen Title: Advertising Strategist Address: PO Box 11007 Tacoma, WA 98411 Telephone No.: 253.502.8925 E-mail: Jvljensen@cityoftacoma.org	CONTRACTOR: Name: Brian Elert Title: Account Executive Address: 2807 3rd Avenue . Seattle, WA 98121 Telephone No.: 206.728.2611 E-mail: belert@kirotv.com
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18. Termination

Except as otherwise provided herein, the CITY may terminate this Contract at any time, with or without cause, by giving ten (10) business days written notice to CONTRACTOR. In the event of termination, all finished and unfinished work prepared by the CONTRACTOR pursuant to this Contract shall be provided to the CITY. In the event CITY terminates this Contract due to the CITY's own reasons and without cause due to the CONTRACTOR's actions or omissions, the CITY shall pay the CONTRACTOR the amount due for actual work and services necessarily performed under this Contract up to the effective date of termination, not to exceed the total compensation set forth herein. Termination of this Contract by CITY shall not constitute a waiver of any claims or remaining rights the CITY may have against CONTRACTOR relative to performance hereunder.

19. Suspension

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

20. Taxes

CONTRACTOR is responsible for the payment of all charges and taxes applicable to the services performed under this Contract, and CONTRACTOR agrees to comply with all applicable laws regarding the reporting of income, maintenance of records, and all other requirements and obligations imposed pursuant to applicable law. If the CITY is assessed, made liable, or responsible in any manner for such charges or taxes, the CONTRACTOR holds CITY harmless from such costs, including attorney's fees.

If CONTRACTOR fails to pay any taxes, assessments, penalties, or fees imposed by any governmental body, including by Tacoma City ordinance, and including by a court of law, CITY will deduct and withhold or pay over to the appropriate governmental body those unpaid amounts upon demand by the governmental body. Any such payments shall be deducted from the CONTRACTOR's total compensation.

21. Licenses and Permits

The CONTRACTOR, at its expense, shall obtain and keep in force any and all necessary licenses and permits. The CONTRACTOR shall obtain a business license as required by Tacoma Municipal Code Subtitle 6B.20 and shall pay business and occupation taxes as required by Tacoma Municipal Code Subtitle 6A.30.

22. Indemnification

CONTRACTOR shall indemnify, defend, and hold harmless the CITY, its officials, officers, agents, employees, and volunteers, from any and all claims, demands, damages, lawsuits, liabilities, losses, liens, expenses and costs arising out of the subject matter of this Contract; provided that this provision shall not apply to the extent that damage or injury results from the sole negligence of the CITY, or its officers, agents, or employees. This indemnification shall extend to and include attorneys' fees and the cost of establishing the right of indemnification hereunder in favor of the CITY. This indemnification shall survive the termination of this Contract.

23. Title 51 Waiver

CONTRACTOR specifically assumes potential liability for actions brought by the CONTRACTOR'S own employees against the CITY and, solely for the purpose of this indemnification and defense, the CONTRACTOR specifically waives any immunity under the state industrial insurance law, Title 51 RCW. THE CONTRACTOR RECOGNIZES THAT THIS WAIVER WAS THE SUBJECT OF MUTUAL NEGOTIATION.

24. Insurance

During the course and performance of the services herein specified, CONTRACTOR will maintain the insurance coverage in the amounts and in the manner specified in the City of Tacoma Insurance Requirements as is applicable to the services and deliverables provided under this Contract. The City of Tacoma Insurance Requirements documents is fully incorporated herein by reference.

25. Nondiscrimination

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

26. Conflict of Interest

No officer, employee or agent of the CITY, nor any member of the immediate family of any such officer, employee or agent as defined by City ordinance, shall have any personal financial interest, direct or indirect, in this Contract, either in fact or in appearance. The CONTRACTOR shall comply with all federal, state, and City conflict of interest laws, statutes and regulations. The CONTRACTOR represents that the CONTRACTOR presently has no interest and shall not acquire any interest, direct or indirect, in the program to which this Contract pertains which would conflict in any manner or degree with the performance of the CONTRACTOR'S services and obligations hereunder. The CONTRACTOR further covenants that, in performance of this Contract, no person having any such interest shall be employed. The CONTRACTOR also agrees that its violation of the CITY'S Code of Ethics contained in Chapter 1.46 of the Tacoma Municipal Code shall constitute a breach of this Contract subjecting the Contract to termination.

27. City ownership of Work/Rights in Data and Publications:

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

28. Public Disclosure

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

29. Confidential or Proprietary Records Must be Marked

If CONTRACTOR provides the CITY with records that CONTRACTOR considers confidential or proprietary, CONTRACTOR must mark all applicable pages of said record(s) as "Confidential" or "Proprietary." If CONTRACTOR fails to so mark record(s), then (1) the CITY, upon request, may release said record(s) without the need to satisfy the requirements of subsection 28 above; and (2) the CONTRACTOR expressly waives its right to allege any kind of civil action or claim against the CITY pertaining to the release of said record(s).

30. Duty of Confidentiality

CONTRACTOR acknowledges that unauthorized disclosure of information or documentation concerning the Scope of Work hereunder may cause substantial economic loss or harm to the CITY.

Except for disclosure of information and documents to CONTRACTOR's employees, agents, or subcontractors who have a substantial need to know such information in connection with CONTRACTOR's performance of obligations under this Contract, the CONTRACTOR shall not without prior written authorization by the CITY allow the release, dissemination, distribution, sharing, or other publication or disclosure of information or documentation obtained, discovered, shared or produced pursuant to this Contract.

CONTRACTOR shall inform its employees, agents, and subcontractors of the confidentiality obligations under this Contract and instruct them so as to ensure such obligations are met. If so requested by the CITY, the CONTRACTOR further agrees to require all such individuals and entities performing services pursuant to this Contract to execute a Confidentiality and Non-Disclosure Agreement in a form acceptable to CITY.

This Section shall survive for six (6) years after the termination or expiration of this Contract.

31. Approval for Release of Information Related to Contract

If requested by CITY, CONTRACTOR shall not release any information or documentation concerning the work under this Contract or any part thereof for marketing, advertising, or other commercial activities or publication including, but not limited to, news releases or professional articles without CITY's prior written approval. CONTRACTOR may submit at any time for review and approval a generic abstract describing the component parts of the completed Scope of Services ("Project Abstract"). After receiving written approval of the Project Abstract from the CITY, the CONTRACTOR may make minor insignificant changes to the Project Abstract and use all or parts of the Project Abstract in proposals.

This Section shall survive for six (6) years after the termination or expiration of this Contract.

32. Dispute Resolution

In the event of a dispute pertaining to this Contract, the parties agree to attempt to negotiate in good faith an acceptable resolution. If a resolution cannot be negotiated, then the parties agree to submit the dispute to voluntary non-binding mediation before pursuing other remedies. This provision does not limit the CITY'S right to terminate authorized by this Contract.

33. Miscellaneous Provisions

Governing Law and Venue.

Washington law shall govern the interpretation of this Contract. Pierce County shall be the venue of any mediation, arbitration or litigation arising out of this Contract.

Assignment.

The CONTRACTOR shall not assign, subcontract, delegate, or transfer any obligation, interest or claim to or under this Contract or for any of the compensation due hereunder without the prior written consent of the CITY.

No Third Party Beneficiaries.

This Contract shall be for the sole benefit of the parties hereto, and nothing contained herein shall create a contractual relationship with, or create a cause of action in favor of, a third party against either party hereto.

Waiver.

A waiver or failure by either party to enforce any provision of this Contract shall not be construed as a continuing waiver of such provisions, nor shall the same constitute a waiver of any other provision of this Contract.

Severability and Survival.

If any term, condition or provision of this Contract is declared void or unenforceable or limited in its application or effect, such event shall not affect any other provisions hereof and all other provisions shall remain fully enforceable. The provisions of this Contract, which by their sense and context are reasonably intended to survive the completion, expiration or cancellation of this Contract, shall survive termination of this Contract.

Entire Agreement.

This Contract and the attached Exhibits, as modified herein, contain the entire agreement between the parties as to the services to be rendered hereunder. All previous and contemporaneous agreements, representations or promises and conditions relating to the subject matter of this Contract are superseded hereby. The Parties hereto mutually acknowledge, understand and agree that the terms and conditions set forth herein shall control and prevail over any conflicting terms and conditions stated in any attachments hereto.

Modification.

No modification or amendment of this Agreement shall be effective unless set forth in writing and signed by the Parties.

Authority to enter into this Contract.

The undersigned Contractor representative, by his/her signature below, represents and warrants that he/she is duly authorized to execute this legally binding Contract for and on behalf of Contractor.

For services contracts valued \$25,000 or less the City signature authorizes waiver of competitive solicitation by "Direct Solicitation and Negotiation" of professional and personal services in accordance with Tacoma Municipal Code 1.06.256 and the Purchasing Policy Manual.

IN WITNESS WHEREOF, the Parties hereto have accepted and executed this Contract, as of the Effective Date stated above, which shall be Effective Date for bonding purposes as applicable. The undersigned Contractor representative, by signature below, represents and warrants they are duly authorized to execute this legally binding Contract for and on behalf of Contractor.

CITY OF TACOMA:

Signed:

CONTRACTOR:

Signed:

Name:

Title:

Email:

EXHIBIT "A"

SCOPE OF WORK

Cox Media Group will facilitate and manage programmatic digital advertising efforts for upcoming Tacoma Power Customer Energy Programs (CEP) and Click! Cable TV campaigns primarily, though other TPU divisions/sections may participate from time to time. TPU is embarking on this project to increase awareness and participation in the utility's programs and services.

CONTRACTOR is expected to provide consistent, competitive and optimized media placements and advanced/multi-dimensional targeting, causing TPU to be a highly relevant marketer, delivering the right message to the right audience at the right time, within our geographic coverage area(s) for the products and services we choose to promote. CONTRACTOR will deliver measurable results in brand-safe environments.

TPU serves a finite geographic area, and **it is imperative that digital advertising costs/proposals/purchases are geo-targeted strictly to our geographic coverage area.** TPU services the following zip codes for the Divisions/Sections we are currently interested in promoting. Please note, each TPU Division has a unique footprint.

Click! Cable TV Service Area

Click!

98354 Milton/Fife area (don't serve Milton, only Fife)

98371 Puyallup

98373 Puyallup

98374 Puyallup

98402 Tacoma, North End

98403 Tacoma

98404 Tacoma, East Side

98405 Tacoma

98406 Tacoma

98407 Tacoma, North End

98408 Tacoma, East Side

98409 Tacoma, South West

98416 University of Puget Sound area

98418 Tacoma

98421 Tacoma

98422 NE Tacoma, Browns Point, Dash Point

98424 Fife

98443 Tacoma, Waller Rd

98444 Tacoma - South Side

98445 Tacoma, Parkland

98446 Tacoma, Parkland
98465 Tacoma, 6th Ave
98466 Tacoma, Fircrest, University Place
98467 Tacoma, University Place
98498 Lakewood, Tacoma (exclude American Lake, Fort
Steilacoom)
98499 Lakewood, McChord AFB, Tacoma

* Some we don't cover 100% based on the service area boundary.

**Tacoma Power (Customer Energy Programs) Service Area
Power**

98338 Graham
98371 Puyallup*
98373 Puyallup*
98374 Puyallup*
98375 Puyallup*
98387 Spanaway
98402 Tacoma, North End
98403 Tacoma
98404 Tacoma, East Side
98405 Tacoma
98406 Tacoma
98407 Tacoma, North End
98408 Tacoma, East Side
98409 Tacoma, South West
98418 Tacoma
98421 Tacoma
98422 NE Tacoma, Browns Point, Dash Point
98424 Fife
98443 Tacoma, Waller Rd
98444 Tacoma - South Side
98445 Tacoma, Parkland
98446 Tacoma, Parkland
98465 Tacoma, 6th Ave
98466 Tacoma, Fircrest, University Place
98467 Tacoma, University Place
98498
Lakewood*, Tacoma (exclude American Lake, Fort
Steilacoom)
98499 Lakewood*, McChord AFB, Tacoma
98580 Roy

* These zip codes are not covered 100% by Tacoma Power

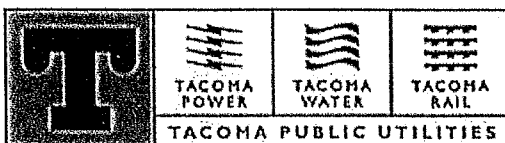


EXHIBIT "A"

RESOLUTION NO.: U-10993
ITEM NO.: #2
MEETING DATE: FEBRUARY 28, 2018

TO: Board of Contracts and Awards
FROM: Jim Sant, Deputy Director for Public Affairs and Communications
Rebekah Anderson, Marketing Communications Manager
COPY: Public Utility Board, Interim Director of Utilities, Board Clerk, SBE Coordinator,
LEAP Coordinator, Samol Hefley, Finance/Purchasing
SUBJECT: Custom Search Engine Marketing
Request for Proposal Specification No. PR17-0425F – February 28, 2018
DATE: February 14, 2018

RECOMMENDATION SUMMARY:

Marketing Communications recommends a contract be awarded to Cox Media Group, Inc. (dba KIRO-TV, INC), Seattle, WA, for custom search engine marketing implementation, in the amount of \$146,400.00 sales tax not applicable, for an initial contract term of two years with the option to renew for optional two additional one-year renewal periods, for a projected contract amount of \$292,800.00.

BACKGROUND:

TPU requires a qualified technical partner to provision and manage paid search marketing (AdWords) efforts on an ongoing basis within our service territory in order to increase awareness and participation in the utility's programs and services.

ISSUE: Marketing Communications will work with vendor overseeing implementation of media buys, creative elements and reporting to ensure KPIs such as cost-per-click, positioning, and click-through-rates are maximized. Activities will require oversight to also ensure segmented objectives are achieved, and budgets adhered to. Adjustments will be made along the way as the timing of internal objectives shift.

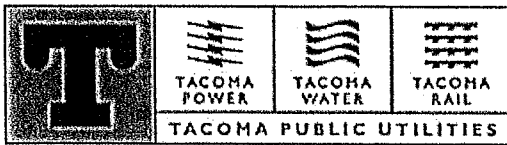
ALTERNATIVES: Search engine marketing done right requires a Google Premier Partner with direct access to Google since it is the primary search engine. Internal staff does not have the same leverage as a qualified partner with direct access to Google. The list of Google Premier Partners is limited. Handling custom search engine marketing activities in-house would require a significant time commitment, with less effective outcomes.

COMPETITIVE SOLICITATION:

Request for Proposal Specification No. PR17-0425F was opened November 28, 2017. Nine companies were invited to bid in addition to normal advertising of the project. Five submittals were received.

Criteria for selection included general company capabilities, cost value, search engine marketing capabilities, and stewardship/measurability. None of the respondents received any points for SBE.

<u>Respondent</u>	<u>Location</u>	<u>Score or Rank</u>
Cox Media Group	Seattle, WA	1 st



King 5/ Tegna	Seattle, WA	2 nd
Hearst Media Services	Seattle, WA	3 rd
Q13 Fox / Tribune Digital	Seattle, WA	4 th
Sinclair Media of Seattle, LLC	Seattle, WA	5 th

CONTRACT HISTORY: New Contract

SUSTAINABILITY: Not Applicable

SBE/LEAP COMPLIANCE: Not Applicable

FISCAL IMPACT:



EXPENDITURES:

FUND NUMBER & FUND NAME *	COST OBJECT (CC/WBS/ORDER)	COST ELEMENT	TOTAL AMOUNT
CEP Marketing	562400	5412000	\$ 50,000
Click Marketing	552300	5412000	\$ 72,000
Marketing Communications	572000	5310100	\$ 24,400
TOTAL			\$146,400.00

ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED? Yes, expenditures are budgeted for balance of 2018.

IF EXPENSE IS NOT BUDGETED, PLEASE EXPLAIN HOW THEY ARE TO BE COVERED.

Each biennium, marketing budgets are established. We will work with internal clients to ensure marketing budgets are appropriately allocated, including use of Marketing Communications funds, for digital marketing since the majority of human daily interactions are now taking place on screen. Should budgets not be available, the contract does not require funds are spent.

Jim Sant, Deputy Director for Public Affairs and Communications

APPROVED:

for

Linda McCrea, Interim Director of Utilities/CEO

Custom Search Engine Marketing

(CSEM = AdWords)

Clickcabletv.com | Click High-Speed Internet | 100 Mbps for \$75.99

 www.clickcabletv.com/fast-internet (253) 502-8900

High performance. Premium speeds. Reliable network. Local service. Shop online.

[Customer Support](#)

[Channel Guide](#)

[Products Overview](#)

[About Us](#)

Energy Saving Products - Make Your Home More Efficient

 www.mytpu.org/Rebate

Save On Heating, Lighting & More.



internet service



Ductless Heat Pump System

www.mytpu.org/Rebate

\$800 Rebate On Ductless Heat Pumps.

Save Up To 50% On Heating Costs.

All Shopping News Images Videos More Settings Tools

About 14,900,000 results (0.62 seconds)

Click High-Speed Internet | 100 Mbps for \$75.99 | clickcabletv.com

 www.clickcabletv.com/fast-internet

High performance. Premium speeds. Reliable network. Local service. Shop online.

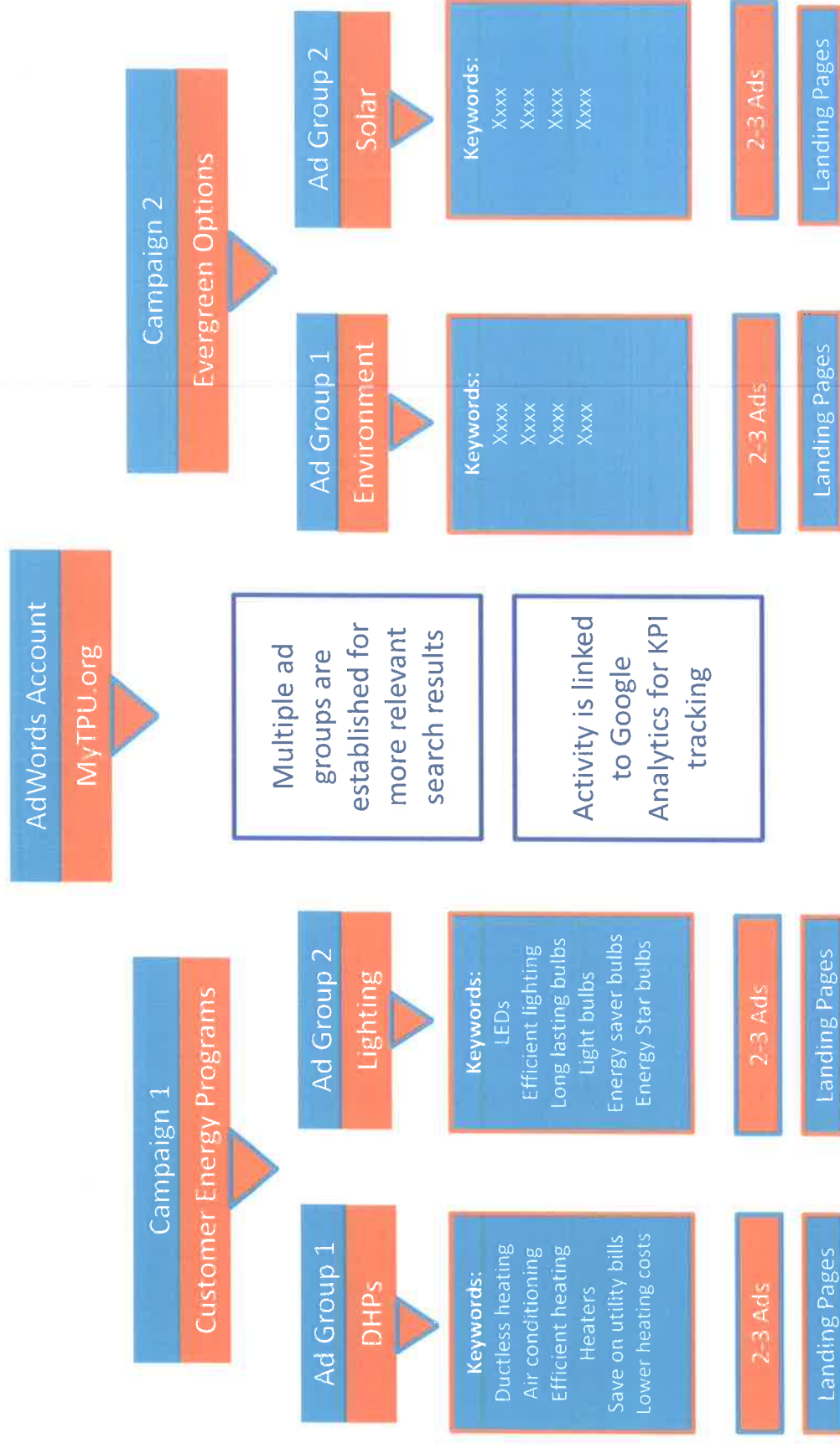
Highlights: Innovative Products, Professional Services

Keyword lists are tied to ad groups; each ad group has formatted ads that serve based on search terms. Keywords might include geo-modifiers, long tail phrases and negative keywords.

TACOMA POWER
TACOMA PUBLIC UTILITIES

Custom Search Engine Marketing

Continued



PR17-0425F
Custom Search Engine Marketing

Cox Media Croup

Company
 Cost
 AdWords (CSEM)
 Stewardship and Measurability
 SBE Questionnaire

	Evaluator 1	Evaluator 2	Evaluator 3	Evaluator 4	Evaluator 5	
		30.00	28.00	25.00	26.00	
		13.50	5.00	11.00	10.00	
		34.00	30.00	30.00	35.00	
		7.50	5.00	6.00	8.50	
		0	0	0	0	
Total:	0.00	85.00	68.00	72.00	79.50	304.50

King 5/TEGNA

Company
 Cost
 AdWords (CSEM)
 Stewardship and Measurability
 SBE Questionnaire

	Evaluator 1	Evaluator 2	Evaluator 3	Evaluator 4	Evaluator 5	
		23.00	28.00	23.00	26.00	
		7.00	5.00	7.00	8.00	
		33.00	30.00	35.00	37.00	
		9.00	5.00	8.00	8.00	
		0	0	0	0	
Total:	0.00	72.00	68.00	73.00	79.00	292.00

Hearst Media Services

Company
 Cost
 AdWords (CSEM)
 Stewardship and Measurability
 SBE Questionnaire

	Evaluator 1	Evaluator 2	Evaluator 3	Evaluator 4	Evaluator 5	
		28.00	25.00	27.00	22.00	
		13.50	5.00	13.00	12.00	
		32.00	25.00	28.00	31.00	
		6.00	6.00	7.00	7.00	
		0	0	0	0	
Total:	0.00	79.50	61.00	75.00	72.00	287.50

Q13 Fox Tribune

Company
 Cost
 AdWords (CSEM)
 Stewardship and Measurability
 SBE Questionnaire

	Evaluator 1	Evaluator 2	Evaluator 3	Evaluator 4	Evaluator 5	
		26.00	25.00	18.00	24.00	
		11.50	5.00	12.00	12.00	
		30.00	30.00	30.00	31.00	
		9.00	7.00	5.00	7.00	
		0	0	0	0	
Total:	0.00	76.50	67.00	65.00	74.00	282.50

Komo/Sinclair

Company
 Cost
 AdWords (CSEM)
 Stewardship and Measurability
 SBE Questionnaire

	Evaluator 1	Evaluator 2	Evaluator 3	Evaluator 4	Evaluator 5	
		23.00	20.00	20.00	24.00	
		7.00	4.00	7.00	7.00	
		33.00	35.00	25.00	30.00	
		9.00	6.00	6.00	7.00	
		0	0	0	0	
Total:	0.00	72.00	65.00	58.00	68.00	263.00

Custom Search Engine Marketing 2018-2019 Budget

RECOMMENDED ADVERTISING SPEND						
Vehicle	Start Date	End Date	Click!	Residential CEP	Contingency	Budget
AdWords	1/1/2018	1/31/2018	\$3,000.00	\$2,100.00	\$1,000	\$6,100
AdWords	2/1/2018	2/28/2018	\$3,000.00	\$2,100.00	\$1,000	\$6,100
AdWords	3/1/2018	3/31/2018	\$3,000.00	\$2,100.00	\$1,000	\$6,100
AdWords	4/1/2018	4/30/2018	\$3,000.00	\$2,100.00	\$1,000	\$6,100
AdWords	5/1/2018	5/31/2018	\$3,000.00	\$2,050.00	\$1,000	\$6,050
AdWords	6/1/2018	6/30/2018	\$3,000.00	\$2,050.00	\$1,000	\$6,050
AdWords	7/1/2018	7/31/2018	\$3,000.00	\$2,100.00	\$1,000	\$6,100
AdWords	8/1/2018	8/31/2018	\$3,000.00	\$2,100.00	\$1,000	\$6,100
AdWords	9/1/2018	9/30/2018	\$3,000.00	\$2,100.00	\$1,000	\$6,100
AdWords	10/1/2018	10/31/2018	\$3,000.00	\$2,100.00	\$1,000	\$6,100
AdWords	11/1/2018	11/30/2018	\$3,000.00	\$2,050.00	\$1,000	\$6,050
AdWords	12/1/2018	12/31/2018	\$3,000.00	\$2,050.00	\$1,000	\$6,050
AdWords	1/1/2019	1/31/2019	\$3,000.00	\$2,100.00	\$1,000	\$6,100
AdWords	2/1/2019	2/28/2019	\$3,000.00	\$2,100.00	\$1,000	\$6,100
AdWords	3/1/2019	3/31/2019	\$3,000.00	\$2,100.00	\$1,000	\$6,100
AdWords	4/1/2019	4/30/2019	\$3,000.00	\$2,100.00	\$1,000	\$6,100
AdWords	5/1/2019	5/31/2019	\$3,000.00	\$2,050.00	\$1,000	\$6,050
AdWords	6/1/2019	6/30/2019	\$3,000.00	\$2,050.00	\$1,000	\$6,050
AdWords	7/1/2019	7/31/2019	\$3,000.00	\$2,100.00	\$1,000	\$6,100
AdWords	8/1/2019	8/31/2019	\$3,000.00	\$2,100.00	\$1,000	\$6,100
AdWords	9/1/2019	9/30/2019	\$3,000.00	\$2,100.00	\$1,000	\$6,100
AdWords	10/1/2019	10/31/2019	\$3,000.00	\$2,100.00	\$1,000	\$6,100
AdWords	11/1/2019	11/30/2019	\$3,000.00	\$2,050.00	\$1,000	\$6,050
AdWords	12/1/2019	12/31/2019	\$3,000.00	\$2,050.00	\$1,000	\$6,050
			\$72,000.00	\$50,000.00	\$24,000.00	\$146,000
						\$73,000
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SERVICES CONTRACT

THIS CONTRACT, made and entered into effective 3/1/2018 by and between the CITY OF TACOMA, a municipal corporation of the State of Washington (hereinafter referred to as the "CITY"), and KIRO-TV, INC., a Delaware state corporation (hereinafter referred to as "CONTRACTOR");

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

1. Scope of Services/Work

The CONTRACTOR agrees to diligently and completely perform the services and/or deliverables described related to the provision and management of custom search engine marketing (CSEM) for Tacoma Public Utilities as is more specifically described in Exhibit A attached hereto and incorporated herein and as is more generally described in City of Tacoma Specification No. RFP PR17-0425F ("RFP"). RFP is incorporated herein by reference as if attached..

2. Order of Precedence

To the extent there is any discrepancy or conflict between and/or amongst the terms of this Contract, Exhibit A, Exhibit B and RFP the controlling terms for this Contract will be interpreted in the following order of precedence, with the first listed being the most controlling, and the last number being the least controlling: Contract, Exhibit A, Exhibit B, RFP.]

3. Changes to Scope of Work.

The CITY shall have the right to make changes within the general scope of services and/or deliverables upon execution in writing of a change order or amendment hereto. If the changes will result in additional work effort by CONTRACTOR, the CITY will agree to reasonably compensate the CONTRACTOR for such additional effort up to the maximum amount specified herein or as otherwise provided by City Code.

4. Term

All services shall be satisfactorily completed on or before February 29, 2020, and this Contract shall expire on said date unless mutually extended in writing by the Parties.

5. Renewals

At CITY's sole option, the Term of this Contract may be renewed for additional one-year periods, not to exceed two renewal periods. CITY will provide written notice of its intent to exercise any renewal options at least 30 days prior to the then existing Term and a written Amendment to this Contract will be mutually executed.

6. Delay

Neither party shall be considered to be in default in the performance of this Contract to the extent such performance is prevented or delayed by any cause which is beyond the reasonable control of the affected party and, in such event, the time for performance shall be extended for a period equal to any time lost as a result thereof. In the event CONTRACTOR is unable to proceed due to a delay solely attributable to CITY, CONTRACTOR shall advise CITY of such delay in writing as soon as is practicable.

7. Compensation

The CITY shall compensate the CONTRACTOR for the services and deliverables performed under this Contract in accordance with Exhibit B Custom Search Engine Marketing 2018-2019 Budget.]

8. Not to Exceed Amount

The total price to be paid by CITY for CONTRACTOR'S full and complete performance of the Scope of Work hereunder shall not exceed \$146,400 without the written consent of the CITY. Said price shall be the total compensation for CONTRACTOR'S performance hereunder including, but not limited to, all work, deliverables, materials, supplies, equipment, subcontractor's fees, and all reimbursable travel and miscellaneous or incidental expenses to be incurred by CONTRACTOR.

In the event the CONTRACTOR incurs cost in excess of the sum authorized for service under this Contract, the CONTRACTOR shall pay such excess from its own funds, and the CITY shall not be required to pay any part of such excess, and the CONTRACTOR shall have no claim against the CITY on account thereof.

9. Payment

CONTRACTOR shall submit monthly invoices for services completed and/or deliverables furnished during the previous month. Upon CITY'S request, CONTRACTOR shall submit necessary and appropriate documentation, as determined by the CITY, for all invoiced services and deliverables.

Payment shall be made through the CITY'S ordinary payment process, and shall be considered timely if made within 30 days of receipt of a properly completed invoice. All payments shall be subject to adjustment for any amounts, upon audit or otherwise, determined to have been improperly invoiced. The CITY may withhold payment to the CONTRACTOR for any services or deliverables not performed as required hereunder until such time as the CONTRACTOR modifies such services or deliverables to the satisfaction of the CITY.

10. Independent Contractor Status

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

11. Services Warranty

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

12. Reliance on CITY Provided Data or Information

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

13. Contract Administration

Julie Jensen, Advertising Strategist within Marketing Communications for the CITY shall have primary responsibility for contract administration and approval of services to be performed by the CONTRACTOR, and shall coordinate all communications between the CONTRACTOR and the CITY.

14. Right to Audit

During the Term of this Contract, and for six (6) years thereafter, the CITY shall have the right to inspect and audit during normal business hours all pertinent books and records of the CONTRACTOR and/or any sub-contractor or agent of CONTRACTOR that performed services or furnished deliverables in connection with or related to the Scope of Work hereunder as reasonably needed by CITY to assess performance, compliance and quality assurance under this Contract or in satisfaction of CITY's public disclosure obligations as applicable.

CONTRACTOR shall, upon three (3) business days of receipt of written request for such inspection and audit from CITY, provide the CITY with, or permit CITY to make, a copy of any work-related books, accounts, records and documents, in whole or in part, as specified in such request. Said inspection and audit shall occur in Pierce County, Washington or such other reasonable location as the CITY selects. The CITY shall bear the cost of any inspection audit requested hereunder, provided, that if an inspection audit in accordance with the foregoing provisions discloses overpricing or overcharges (of any nature) by the CONTRACTOR to the CITY in excess of one percent (1%) of the total contract billings, in addition to making adjustments for the overcharges, the reasonable actual cost of the CITY's audit shall be reimbursed to CITY by CONTRACTOR. Any adjustments or payments that must be made as a result of any audit and inspection hereunder shall be made no later than 90 days from presentation of CITY's findings to CONTRACTOR.

CONTRACTOR shall ensure that the foregoing inspection, audit and copying rights of the CITY are a condition of any subcontract, agreement or other arrangement under which any other person or entity is permitted to perform the Scope of Work under this Contract.

15. Records Retention

The CONTRACTOR shall establish and maintain records in accordance with requirements prescribed by the CITY, with respect to all matters covered by this Contract. Except as otherwise authorized by the CITY, the CONTRACTOR shall retain such records for a period of six years after receipt of the final payment under this Contract or termination of this Contract.

16. Specific Personnel

If before, during, or after the execution of this Contract, CONTRACTOR represents to the CITY that certain personnel would or will be responsible for performing services and deliverables under this Contract, then the CONTRACTOR is obligated to ensure that said personnel perform said Contract services to the maximum extent permitted by law. This Contract provision shall only be waived by written authorization by the CITY, and on a case by case basis.

17. Notices

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

CITY: Name: Julie Jensen Title: Advertising Strategist Address: PO Box 11007 Tacoma, WA 98411 Telephone No.: 253.502.8925 E-mail: Jvljensen@cityoftacoma.org	CONTRACTOR: Name: Brian Elert Title: Account Executive Address: 2807 3rd Avenue . Seattle, WA 98121 Telephone No.: 206.728.2611 E-mail: belert@kirotv.com
---	--

18. Termination

Except as otherwise provided herein, the CITY may terminate this Contract at any time, with or without cause, by giving ten (10) business days written notice to CONTRACTOR. In the event of termination, all finished and unfinished work prepared by the CONTRACTOR pursuant to this Contract shall be provided to the CITY. In the event CITY terminates this Contract due to the CITY's own reasons and without cause due to the CONTRACTOR's actions or omissions, the CITY shall pay the CONTRACTOR the amount due for actual work and services necessarily performed under this Contract up to the effective date of termination, not to exceed the total compensation set forth herein. Termination of this Contract by CITY shall not constitute a waiver of any claims or remaining rights the CITY may have against CONTRACTOR relative to performance hereunder.

19. Suspension

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

20. Taxes

CONTRACTOR is responsible for the payment of all charges and taxes applicable to the services performed under this Contract, and CONTRACTOR agrees to comply with all applicable laws regarding the reporting of income, maintenance of records, and all other requirements and obligations imposed pursuant to applicable law. If the CITY is assessed, made liable, or responsible in any manner for such charges or taxes, the CONTRACTOR holds CITY harmless from such costs, including attorney's fees.

If CONTRACTOR fails to pay any taxes, assessments, penalties, or fees imposed by any governmental body, including by Tacoma City ordinance, and including by a court of law, CITY will deduct and withhold or pay over to the appropriate governmental body those unpaid amounts upon demand by the governmental body. Any such payments shall be deducted from the CONTRACTOR's total compensation.

21. Licenses and Permits

The CONTRACTOR, at its expense, shall obtain and keep in force any and all necessary licenses and permits. The CONTRACTOR shall obtain a business license as required by Tacoma Municipal Code Subtitle 6B.20 and shall pay business and occupation taxes as required by Tacoma Municipal Code Subtitle 6A.30.

22. Indemnification

CONTRACTOR shall indemnify, defend, and hold harmless the CITY, its officials, officers, agents, employees, and volunteers, from any and all claims, demands, damages, lawsuits, liabilities, losses, liens, expenses and costs arising out of the subject matter of this Contract; provided that this provision shall not apply to the extent that damage or injury results from the sole negligence of the CITY, or its officers, agents, or employees. This indemnification shall extend to and include attorneys' fees and the cost of establishing the right of indemnification hereunder in favor of the CITY. This indemnification shall survive the termination of this Contract.

23. Title 51 Waiver

CONTRACTOR specifically assumes potential liability for actions brought by the CONTRACTOR'S own employees against the CITY and, solely for the purpose of this indemnification and defense, the CONTRACTOR specifically waives any immunity under the state industrial insurance law, Title 51 RCW. THE CONTRACTOR RECOGNIZES THAT THIS WAIVER WAS THE SUBJECT OF MUTUAL NEGOTIATION.

24. Insurance

During the course and performance of the services herein specified, CONTRACTOR will maintain the insurance coverage in the amounts and in the manner specified in the City of Tacoma Insurance Requirements as is applicable to the services and deliverables provided under this Contract. The City of Tacoma Insurance Requirements documents is fully incorporated herein by reference.

25. Nondiscrimination

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

26. Conflict of Interest

No officer, employee or agent of the CITY, nor any member of the immediate family of any such officer, employee or agent as defined by City ordinance, shall have any personal financial interest, direct or indirect, in this Contract, either in fact or in appearance. The CONTRACTOR shall comply with all federal, state, and City conflict of interest laws, statutes and regulations. The CONTRACTOR represents that the CONTRACTOR presently has no interest and shall not acquire any interest, direct or indirect, in the program to which this Contract pertains which would conflict in any manner or degree with the performance of the CONTRACTOR'S services and obligations hereunder. The CONTRACTOR further covenants that, in performance of this Contract, no person having any such interest shall be employed. The CONTRACTOR also agrees that its violation of the CITY'S Code of Ethics contained in Chapter 1.46 of the Tacoma Municipal Code shall constitute a breach of this Contract subjecting the Contract to termination.

27. City ownership of Work/Rights in Data and Publications:

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

28. Public Disclosure

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

29. Confidential or Proprietary Records Must be Marked

If CONTRACTOR provides the CITY with records that CONTRACTOR considers confidential or proprietary, CONTRACTOR must mark all applicable pages of said record(s) as "Confidential" or "Proprietary." If CONTRACTOR fails to so mark record(s), then (1) the CITY, upon request, may release said record(s) without the need to satisfy the requirements of subsection 28 above; and (2) the CONTRACTOR expressly waives its right to allege any kind of civil action or claim against the CITY pertaining to the release of said record(s).

30. Duty of Confidentiality

CONTRACTOR acknowledges that unauthorized disclosure of information or documentation concerning the Scope of Work hereunder may cause substantial economic loss or harm to the CITY.

Except for disclosure of information and documents to CONTRACTOR's employees, agents, or subcontractors who have a substantial need to know such information in connection with CONTRACTOR's performance of obligations under this Contract, the CONTRACTOR shall not without prior written authorization by the CITY allow the release, dissemination, distribution, sharing, or other publication or disclosure of information or documentation obtained, discovered, shared or produced pursuant to this Contract.

CONTRACTOR shall inform its employees, agents, and subcontractors of the confidentiality obligations under this Contract and instruct them so as to ensure such obligations are met. If so requested by the CITY, the CONTRACTOR further agrees to require all such individuals and entities performing services pursuant to this Contract to execute a Confidentiality and Non-Disclosure Agreement in a form acceptable to CITY.

This Section shall survive for six (6) years after the termination or expiration of this Contract.

31. Approval for Release of Information Related to Contract

If requested by CITY, CONTRACTOR shall not release any information or documentation concerning the work under this Contract or any part thereof for marketing, advertising, or other commercial activities or publication including, but not limited to, news releases or professional articles without CITY's prior written approval. CONTRACTOR may submit at any time for review and approval a generic abstract describing the component parts of the completed Scope of Services ("Project Abstract"). After receiving written approval of the Project Abstract from the CITY, the CONTRACTOR may make minor insignificant changes to the Project Abstract and use all or parts of the Project Abstract in proposals.

This Section shall survive for six (6) years after the termination or expiration of this Contract.

32. Dispute Resolution

In the event of a dispute pertaining to this Contract, the parties agree to attempt to negotiate in good faith an acceptable resolution. If a resolution cannot be negotiated, then the parties agree to submit the dispute to voluntary non-binding mediation before pursuing other remedies. This provision does not limit the CITY'S right to terminate authorized by this Contract.

33. Miscellaneous Provisions

Governing Law and Venue.

Washington law shall govern the interpretation of this Contract. Pierce County shall be the venue of any mediation, arbitration or litigation arising out of this Contract.

Assignment.

The CONTRACTOR shall not assign, subcontract, delegate, or transfer any obligation, interest or claim to or under this Contract or for any of the compensation due hereunder without the prior written consent of the CITY.

No Third Party Beneficiaries.

This Contract shall be for the sole benefit of the parties hereto, and nothing contained herein shall create a contractual relationship with, or create a cause of action in favor of, a third party against either party hereto.

Waiver.

A waiver or failure by either party to enforce any provision of this Contract shall not be construed as a continuing waiver of such provisions, nor shall the same constitute a waiver of any other provision of this Contract.

Severability and Survival.

If any term, condition or provision of this Contract is declared void or unenforceable or limited in its application or effect, such event shall not affect any other provisions hereof and all other provisions shall remain fully enforceable. The provisions of this Contract, which by their sense and context are reasonably intended to survive the completion, expiration or cancellation of this Contract, shall survive termination of this Contract.

Entire Agreement.

This Contract and the attached Exhibits, as modified herein, contain the entire agreement between the parties as to the services to be rendered hereunder. All previous and contemporaneous agreements, representations or promises and conditions relating to the subject matter of this Contract are superseded hereby. The Parties hereto mutually acknowledge, understand and agree that the terms and conditions set forth herein shall control and prevail over any conflicting terms and conditions stated in any attachments hereto.

Modification.

No modification or amendment of this Agreement shall be effective unless set forth in writing and signed by the Parties.

Authority to enter into this Contract.

The undersigned Contractor representative, by his/her signature below, represents and warrants that he/she is duly authorized to execute this legally binding Contract for and on behalf of Contractor.

For services contracts valued \$25,000 or less the City signature authorizes waiver of competitive solicitation by "Direct Solicitation and Negotiation" of professional and personal services in accordance with Tacoma Municipal Code 1.06.256 and the Purchasing Policy Manual.

IN WITNESS WHEREOF, the Parties hereto have accepted and executed this Contract, as of the Effective Date stated above, which shall be Effective Date for bonding purposes as applicable. The undersigned Contractor representative, by signature below, represents and warrants they are duly authorized to execute this legally binding Contract for and on behalf of Contractor.

CITY OF TACOMA:

Signed:

CONTRACTOR:

Signed:

Name:

Title:

Email:

EXHIBIT "A"

SCOPE OF WORK

During the contract period, Cox Media Group will provision and manage custom search engine marketing (CSEM) efforts for upcoming TPU marketing initiatives, including primarily Tacoma Power Customer Energy Programs (CEP) and Click! Cable TV campaigns, though not necessarily limited to these.

CONTRACTOR is expected to provide consistent/improving and competitive key word targeting and optimized search placements, leading to highly relevant marketing within the CSEM arena, delivering the right message to the right audience at the right time, within our geographic coverage area(s) for the products and services we choose to promote. CONTRACTOR will deliver measurable performance for industry standard KPIs.

TPU serves a finite geographic area, and **it is imperative that digital advertising costs/proposals/purchases are geo-targeted strictly to our geographic coverage area.**

TPU services the following zip codes for the Divisions/Sections we are currently interested in promoting. Please note, each TPU Division has a unique footprint.

Click! Cable TV Service Area

Click!

98354 Milton/Fife (don't serve Milton, only Fife)

98371 Puyallup

98373 Puyallup

98374 Puyallup

98402 Tacoma, North End

98403 Tacoma

98404 Tacoma, East Side

98405 Tacoma

98406 Tacoma

98407 Tacoma, North End

98408 Tacoma, East Side

98409 Tacoma, South West

98416 University of Puget Sound area

98418 Tacoma

98421 Tacoma

98422 NE Tacoma, Browns Point, Dash Point

98424 Fife

98443 Tacoma, Waller Rd

98444 Tacoma - South Side

98445 Tacoma, Parkland
98446 Tacoma, Parkland
98465 Tacoma, 6th Ave
98466 Tacoma, Fircrest, University Place
98467 Tacoma, University Place
98498 Lakewood, Tacoma (don't serve American Lake and
Fort Steilacoom)
98499 Lakewood, McChord AFB, Tacoma

**Tacoma Power (Customer Energy Programs) Service Area
Power**

98338 Graham
98371 Puyallup*
98373 Puyallup*
98374 Puyallup*
98375 Puyallup*
98387 Spanaway
98402 Tacoma, North End
98403 Tacoma
98404 Tacoma, East Side
98405 Tacoma
98406 Tacoma
98407 Tacoma, North End
98408 Tacoma, East Side
98409 Tacoma, South West
98418 Tacoma
98421 Tacoma
98422 NE Tacoma, Browns Point, Dash Point
98424 Fife
98443 Tacoma, Waller Rd
98444 Tacoma - South Side
98445 Tacoma, Parkland
98446 Tacoma, Parkland
98465 Tacoma, 6th Ave
98466 Tacoma, Fircrest, University Place
98467 Tacoma, University Place
98498
Lakewood*, Tacoma (excluding American Lake and
Fort Steilacoom)
98499 Lakewood*, McChord AFB, Tacoma
98580 Roy

* These zip codes are not covered 100% by Tacoma Power



RESOLUTION NO. U-10994

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

4 WHEREAS the Department of Public Utilities, Light Division (d.b.a.
5 "Tacoma Power"), recommends a power service agreement with James
6 Hardie, an existing customer of Tacoma Power that is currently receiving
7 Schedule G services for its industrial services, and, as a result of the
8 company's expansion, requires additional electrical energy, and

9 WHEREAS, James Hardie has constructed a substation to
10 interconnect with Tacoma Power's transmission system to support these
11 increased deliveries, and

12 WHEREAS the new interconnection will make the customer eligible for
13 Schedule High Voltage General ("HVG") service because it will no longer
14 require use of Tacoma Power's distribution system, and

15 WHEREAS under TMC 12.0.225, all new service arrangements under
16 Schedule HVG require a contract for service, Now, Therefore;

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

18 That Tacoma Power's request to execute a power service agreement
19 with James Hardie Building Products, Inc., for High Voltage General service
20 to provide a new electrical service, as described in the backup materials on
21 file with the Clerk of the Board, is hereby approved, and the proper officers of
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the City are authorized to execute any required contract(s) to be developed
and approved by the City Attorney to perform said work.

Approved as to form and legality:

Chair



Chief Deputy City Attorney

Secretary

Clerk

Adopted _____

of February 16, 2018**REQUEST FOR RESOLUTION**Date: February 28, 2018

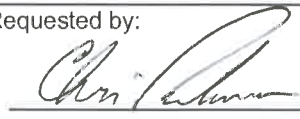
INSTRUCTIONS: File request in the Office of the Director of Utilities as soon as possible but not later than nine working days prior to the Board meeting at which it is to be introduced. Completion instructions are contained in Administrative Policy POL-104.

1. Summary title for Utility Board agenda: (not to exceed twenty-five words)
Power Service Agreement for James Hardie Building Products, Inc.
2. A resolution is requested to: (brief description of action to be taken, by whom, where, cost, etc.)
Approve Power Service Agreements for High Voltage General (HVG) service to James Hardie Building Products, Inc. (James Hardie).
3. Summarized reason for resolution:
With a growing demand for electrical energy and construction of a customer owned substation to interconnect with Tacoma Power's transmission system, James Hardie is now eligible for Schedule HVG service. Under T.M.C.12.06.225, all new service arrangements under Schedule HVG require a contract for service.
4. Attachments:
 - a. Memorandum from Chris Robinson to Linda McCrea dated February 16, 2018.
 - b. Power Service Agreement between Tacoma Power and James Hardie.
5. ☐ Funds available ☒ Proposed action has no budgetary impact
6. Deviations requiring special waivers: None

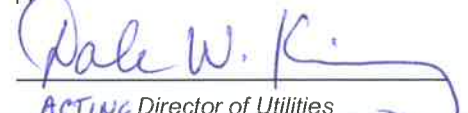
Originated by:


Section Head

Requested by:


Division Head

Approved:


ACTING Director of Utilities



DATE: February 16, 2018
TO: Linda McCrea, Director of Utilities/CEO
FROM: Chris Robinson, Power Superintendent/COO *CR*
SUBJECT: Authority to Execute Contract for HVG service

RECOMMENDATION

Tacoma Power recommends execution of a contract with James Hardie Building Products, Inc. (James Hardie) for Schedule HVG service.

BACKGROUND

James Hardie is an existing customer of Tacoma Power, receiving Schedule G service for its industrial facilities. As the result of expansion of the company's local operations, James Hardie will require additional electrical energy from Tacoma Power. To support these increased deliveries, James Hardie has constructed a substation to interconnect with Tacoma Power's transmission system. The new interconnection will make the customer eligible for Schedule HVG service because it will no longer require use of Tacoma Power's distribution system.

This agreement represents the first contract for Schedule HVG service. Under T.M.C.12.06.225, which was revised last year in Resolution No. U-10909, all new service arrangements under Schedule HVG require a contract for service.

Tacoma Power requests your approval to submit this matter to the Public Utility Board for its consideration.

APPROVED

Linda McCrea
Director of Utilities/CEO

POWER SERVICE AGREEMENT

THIS AGREEMENT, made, entered into, and executed in duplicate, this _____ day of _____, by and between the City of Tacoma, Department of Public Utilities, Light Division, doing business as and hereinafter called "**Tacoma Power**", and **James Hardie Building Products, Inc.**, a corporation organized and existing under and by virtue of the laws of the State of Nevada and authorized to do business in the State of Washington, hereinafter called the "Company". Tacoma Power and the Company are collectively referred to as the "Parties" and each individually as a "Party".

RECITALS

WHEREAS, the Company requires electric energy for its industrial plant facilities in Tacoma Power's service area, and

WHEREAS, Tacoma Power will provide electrical energy to the Company at a Company owned and operated substation that interconnects with the Tacoma Power transmission system by a single Tacoma Power owned and operated delivery facility that is currently under construction and expected to be completed in 2018, and

WHEREAS, until it is connected to the new Company substation and the existing service is reclaimed, the existing Company facility will continue to be served at the current retail point of service under the existing General Rate Schedule, Schedule G.

WHEREAS, pursuant to Tacoma Municipal Code (TMC) Section 12.06.225, a Power Service Agreement with Tacoma Power is required for customers who begin taking service under TMC 12.06.225 after April 16, 2017, and

WHEREAS, the Parties now desire to enter into a Power Service Agreement.

NOW, THEREFORE, for good and valuable consideration, including the mutual covenants set forth in this Agreement, the Parties hereto mutually agree as follows:

Section 1. TERM OF CONTRACT. This Agreement shall be effective at the beginning of the Hour Ending (HE) 01 Pacific Prevailing Time (PPT) on _____ and shall continue in effect until HE 24 PPT on September 30, 2021, except that this Agreement may (a) be shortened in term or terminated in its entirety in the sole reasonable discretion of Tacoma Power if such shortening or termination is necessary to maintain or obtain the exclusion from gross income for federal income tax purposes of the interest on bonds issued by Tacoma Power for electric utility purposes, and (b) be terminated in its entirety in the sole reasonable discretion of Tacoma Power if the existence of this Agreement causes Tacoma Power's issuance of such bonds to be unreasonably burdensome or costly. In the event of such termination, the Superintendent of Tacoma Power may continue to serve Company based on the same terms and conditions set forth herein until such time as the Parties agree to an acceptable replacement contract.

A "Contract Year" shall be defined as at the beginning of the HE 01 PPT of October 1 of each year within the term of the contract and concluding at HE 24 PPT of September 30 of the next succeeding year.

Section 2. AGREEMENT TO SELL AND PURCHASE. Tacoma Power will deliver or

make available at the Point of Delivery hereinafter specified and will sell to the Company, and the Company will purchase and pay for according to Schedule HVG as set forth in Tacoma Municipal Code Section 12.06.225 and as hereafter amended, all electric energy and delivery services used for its operations thereat except as herein provided. The following shall apply to the delivery and purchase of electrical energy and delivery services:

(a) Point of Delivery - Company's Substation on the Company's plant site located at 4615 192nd St E, Tacoma, WA 98446 shall be the Point of Delivery.

(b) Character of Service – The service commitment under this Agreement is limited to a Firm Power requirement for 60 hertz, 3-phase alternating current made available or delivered at a nominal primary voltage of 115,000 volts.

(c) Firm Power – The term "Firm Power" is defined in Section 3 below.

(d) Resale of Power Prohibited - The Company shall use all power delivered by Tacoma Power hereunder solely at said plant site and none shall be delivered or sold to third parties, or used by Company at another location. Use by affiliates or subsidiaries at least 50% owned by the Company (or Company's parent company) at the plant site or abutting thereon shall not be deemed a resale.

(e) Applicable Rates – The Applicable Rate shall be the Schedule HVG rate as set forth in Tacoma Municipal code Section 12.06.225.

Section 3. FIRM POWER DEFINED. "Firm Power" is electric power which Tacoma Power will make available continuously except when the operation of Tacoma Power's facilities is suspended, interrupted, interfered with or curtailed due to causes beyond its control and as further explained in Section 10 herein. The Company shall not increase its consumption of Firm Power by more than 10 average megawatts in a rolling 12-month period. In the event the Company consumes Firm Power in excess of these quantities, Tacoma Power may terminate this Agreement and continue to provide service to the Company under Schedule G as set forth in Tacoma Municipal Code Section 12.06.215.

Section 4. DISPUTE RESOLUTION. All disputes arising under or in connection with this Agreement must be resolved as provided in this Section 4 as the exclusive method or procedure resolving disputes hereunder. Except as set forth herein, no suit at law or in equity based on such dispute may be instituted by any Party except to enforce, modify or vacate an arbitrator's award consistent with this Agreement and R.C.W. Chapter 7.04A *et seq.*

(a) Mediation. The Parties must first mediate any claim, dispute, or controversy (collectively, a "dispute" herein), with a mutually selected mediator, whose efforts will be to assist the Parties to resolve disputed issues through a mediated process of discussion and evaluation of alternative resolutions. The mediation must be scheduled within thirty (30) days of notice and request by either Party, and the mediation will be non-binding and confidential.

(b) Binding Arbitration. If the Parties are unable to resolve any disputed issues through mediation, either Party may initiate binding arbitration, to be held in Tacoma, Washington, for the purpose of resolving a dispute under this Agreement within ninety (90) days after the mediation terminates (as evidenced by notice by any Party to the others that the mediation is terminated). The Parties should attempt to select an arbitrator from Judicial Arbitration and Mediation Services, Inc., American Arbitration Association or any other reputable firm offering similar services, and if no

agreement can be reached, the Presiding Judge of Pierce County Superior Court shall select the arbitrator. Discovery shall be allowed to the same extent and manner permitted by the Washington State Superior Court Civil Rules. The arbitrator has authority to decide any and all issues in dispute, provided that all issues of law shall be subject to review and vacation by application to Superior Court within 30 days of the arbitrator's decision, unless Chapter 7.04A RCW prohibits such review and vacation. It is further provided that either Party shall be entitled to seek injunctive relief prior to and pending arbitration. Except as expressly set forth herein, Chapter 7.04A RCW is applicable to the arbitration.

(c) **Costs.** If a Party is found to have brought any arbitration or litigation proceeding which is determined to be frivolous or without significant merit, or if an arbitration award or (court) judgment is rendered against a Party on substantially all grounds, the opposing Party shall be entitled to recover its reasonable attorneys' fees and all other costs incurred in that action or proceeding as well as any lawsuit instituted to enforce an arbitrator's award, in addition to any other relief to which it may be entitled, to include without limitation its share of the arbitrator's fee (and mediator's fees), and any other amounts incurred in connection therewith. Costs of any successful mediation will be borne by the Parties to such mediation equally. Costs of any unsuccessful mediation will be added to the costs of arbitration and treated as set forth in this Section.

(d) **Litigation.** Notwithstanding the provisions of Section 4(b), for disputes where one Party's liquidated claim aggregates at \$600,000 or greater, either party may choose to terminate participation in arbitration, and/or proceed directly into Pierce County Superior or Federal Court, provided that termination of the arbitration and filing of such legal action in Pierce County Superior or Federal Court must be accomplished within ten business days of receiving notice of the (at least) \$600,000 liquidated amount in the arbitration proceeding pleadings.

(e) **Statute of Limitations.** No demand for arbitration may be made after the date when institution of legal or equitable proceedings based on such dispute would be barred by the otherwise applicable statute of limitations.

(f) **Equitable Remedies for Breach.** Each Party to this Agreement will have the remedies which are available to it for the violation of any of the terms of this Agreement or resolution of any other dispute, which is the subject of arbitration under this Section, including, but not limited to, the equitable remedies of specific performance and/or injunction, which remedies may be awarded by the arbitrator.

(g) **Questions of Arbitrability.** All questions relating to the arbitrability of any dispute must be decided by arbitration in the same manner and with the same effect as all other controversies that may arise hereunder.

Section 5. BILLING. Billing for power made available or delivered under the Agreement shall be rendered monthly by Tacoma Power on or before the tenth day of the succeeding calendar month and at the prescribed rates and under conditions as set forth in this Agreement.

Should Tacoma Power's metering equipment fail, the amount of power delivered or made available will be determined based on the best information available. Said determination shall for billing purposes have the same force and effect as an exact meter reading.

If any billing amount is disputed, the Company will provide written explanation specifying in detail the basis for the dispute and shall pay the portion of the invoice which is not disputed,

no later than the tenth day from the date of the bill. If the disputed billing amount is determined to be correct, or if a different billing amount is determined to be correct, such outstanding billing amount shall be paid within ten (10) calendar days of the determination, with accrued interest, at the lower of 1% per month or the maximum allowed by Washington State law, from the original due date to the date of payment.

Section 6. PAYMENT FOR POWER. All bills shall be payable at the City Treasurer's office within (10) days from the date of the bill; the tenth day shall be the due date, provided however, that if the tenth day be a Saturday, Sunday, or holiday, the following business day shall then be the due date. Failure to receive a bill shall not release the Company from liability for payment. A late payment charge as established by City ordinance shall also be applicable to Company.

Undisputed payments that are in arrears greater than thirty-five days from the date of invoice may result in a written Disconnection Notice. Subsequent failure to satisfy overdue undisputed payment obligations may result in an Event of Default as defined in Section 7.

Section 7. EVENTS OF DEFAULT. An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

- (a) the failure to make, when due, any undisputed payment required pursuant to this Agreement if such failure is not remedied with five (5) Business Days after written Disconnection Notice;
- (b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;
- (c) Company makes an assignment for the benefit of creditors or institutes any proceeding under the Bankruptcy Act (and amendments thereto);
- (d) the failure of the Company to satisfy the creditworthiness/collateral requirements agreed to pursuant to Section 9 hereof;
- (e) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;
- (f) failure to operate under or follow the material terms of this Agreement.

Section 8. REMEDIES UPON AN EVENT OF DEFAULT. If an Event of Default occurs as described in Section 7, the non-defaulting Party shall serve written notice of the default to the Defaulting Party. The Defaulting Party shall have five (5) business days to cure the default, and if the default is not cured within that time period, the non-defaulting Party may either suspend performance or terminate the Agreement. Suspension of service and termination of this Agreement does not release the Defaulting Party from its liability to the other for any loss, damage, claim, cost, charge or expense arising from the Event of Default, provided such failure is not excused by the non-defaulting Party in writing. No waiver by either Party hereto of any one or more defaults by the other in the performance of any provision of the Agreement shall operate or be construed as a waiver of any future default or defaults, whether of a like or of a

different character.

Section 9. CREDIT REQUIREMENTS. Should the Company's creditworthiness, financial responsibility, or performance viability become unsatisfactory to Tacoma Power in Tacoma Power's reasonably exercised discretion with regard to any transaction pursuant to this Agreement, and upon Tacoma Power providing documentation of such condition, then Tacoma Power may require the Company to provide some Performance Assurance (as specified below). Tacoma Power will provide the Company with written notice requesting Performance Assurance in an amount limited to a reasonable estimate of the damages to Tacoma Power, if the Company were to fail to perform its obligations. Upon receipt of such notice the Company shall have five (5) Business Days to remedy the situation by providing such Performance Assurance to Tacoma Power. Performance Assurance shall, at Tacoma Power's sole discretion, consist of, (1) the posting of a Letter of Credit, (2) the posting of other acceptable collateral or security by the Company, or (3) a Guarantee Agreement executed by a creditworthy entity. In the event that the Company fails to provide such Performance Assurance to Tacoma Power within five (5) Business Days of receipt of notice, then an Event of Default under Section 7 will be deemed to have occurred and Tacoma Power will be entitled to the remedies set forth in Section 8 of this Agreement.

Section 10. INTERRUPTION OF SERVICE.

(a) In the event that the Company is unable to use wholly or in part, Firm Power because of circumstances reasonably beyond the control of the Company (including acts of war, natural disasters, strikes, lockouts or unavailability of electric or water service), but excluding business conditions, Tacoma Power, upon request of the Company in writing, shall determine if an adjustment of applicable billing determinants is appropriate. If such an adjustment is appropriate, Tacoma Power may, in its sole discretion, adjust the applicable billing determinants and the Company shall pay for electrical power according to the rate schedule determined by Tacoma Power to be applicable based on the adjusted billing determinants.

(b) Electric service is inherently subject to interruption, suspension, curtailment, failure and fluctuation. Tacoma Power shall have no liability to the Company for any interruption, suspension, curtailment, failure, or fluctuation in service or for any loss or damage caused thereby if such interruption, suspension, curtailment, failure or fluctuation is caused in whole or in part by a force beyond the control of Tacoma Power including but not limited acts of war, natural disasters, strikes, lockouts, droughts, etc. ("Uncontrollable Force"). Such interruption, suspension, curtailment, failure, or fluctuation in service shall not be held to constitute a breach of contract on the part of Tacoma Power, or in any way affect any liability for payment for power made available or for money due on or before the date on which such failure or interference occurred.

Should Tacoma Power's electrical service be subject to an Uncontrollable Force, or should there be a general power shortage throughout the Pacific Northwest so that in the opinion of Tacoma Power, it will be extremely difficult, if not impossible, for Tacoma Power to maintain its power supply for essential domestic and public service without curtailing Firm Power, upon Tacoma Power Superintendent's notification, pursuant to Section 20 of the Agreement, the Company shall reduce its Firm Power to the extent and for such a period as set forth in the notification. Such notice for curtailment shall define the emergency or condition within the notice and may be the result of any of the following: (1) extraordinary weather conditions impacting system supply; (2) insufficient resources due to physical or extraordinary market circumstances; or (3) the existence of any conditions that may lead to declaration or a North American Electric

Reliability Corporation (NERC) Energy Emergency Alert. Tacoma Power shall use best efforts to provide the Company with advance notice of the Firm Power curtailment emergency or condition. No allowance will be made by Tacoma Power for loss of production or of sales by the Company. "Essential domestic and public service" includes but is not limited to necessary service for residential customers, hospitals and other health care facilities, nursing homes, schools, fire, law enforcement stations, utility services and other necessary public services requested for public safety.

(c) Each Party shall notify the other in advance for predetermined suspensions, interruptions or interferences, and as soon as possible in the case of unforeseen difficulties. The Company shall cooperate with Tacoma Power to schedule and allow Tacoma Power to perform all substation maintenance of Tacoma Power-owned equipment. Tacoma Power will attempt to perform substation maintenance to coincide with the Company's planned downtime. Notwithstanding Section 10 (d), predetermined suspensions, interruptions or interferences shall not be considered as a basis for adjusting monthly billings under this Section 10.

(d) Should the events described in subsections (b) and (c) occur, neither Party, including its respective officers, agents or employees shall be liable to the other for damages or for breach of contract, and/or for acts or for omissions resulting in personal or property damage to the other. Interruptions of service totaling less than two (2) hours and occurring within any single 24-hour period of time shall not be considered as a basis for adjusting monthly billings under this section. If Tacoma Power is unable to deliver electrical energy or unable to deliver electrical energy safely due to the condition of Company's equipment and facilities arising from causes within Company's reasonable control, notwithstanding Section 10(a), Tacoma Power is under no obligation to adjust the billing determinants.

Section 11. ADJUSTMENT OF RATES. For the Schedule HVG rates, rate review dates will be the same as for all other customers within this class. Tacoma Power shall provide Company with reasonable (regular or electronic mail or telefax) notice and information pertaining to proposed rate proceedings including Utility Board or City Council study sessions on such matters.

Section 12. SELF-GENERATION. In the event the Company hereafter elects to generate all or a part of its power requirements, it shall give written notice of such intention to Tacoma Power at least twelve (12) months prior to the start of the next succeeding Contract Year. Within the said notice period the Public Utility Board will determine the effect thereof, based on investigation of the facts and finding, and the application of a termination or reduction charge, if any, as provided in Section 16. The Company may, upon compliance with the Public Utility Board requirements based on facts and findings, payment of a termination or reduction charge, compliance with Tacoma Power's generation interconnection standards and requirements, and a mutually agreed to on-line date, then generate and use its own power and the Firm Power shall be appropriately amended or the contract cancelled at the expiration of the above said notice period.

Section 13. LIABILITY.

(a) The Company is responsible for all actions of its employees, agents, contractors and guests who may be injured by any of the equipment located at the Company-owned substation. Prior to maintaining or working with any electrical equipment at or near the substation, Company is responsible for obtaining from Tacoma Power (and verifying) all appropriate clearances and tagging which indicates that the electrical facilities are not

energized. The Company hereby agrees to defend, indemnify and hold harmless Tacoma Power, its officers and employees, agents, contractors and guests from any and all costs and expenses including reasonable attorneys' fees arising from any injuries or alleged injuries, including death, to any person including Company employees, contractors and agents, or damage to or destructions of property which may result from Company's negligence in using the electric power provided pursuant to this Agreement or that occurs at and are due to the Company's negligence in installing or maintaining the Company-owned substation and/or other electrical facilities located on the Company's premises.

(b) Tacoma Power is responsible for providing and maintaining equipment it owns. Tacoma Power hereby agrees to defend, indemnify and hold harmless the Company, its officers and employees, agents, contractors and guests from any and all costs and expenses, including reasonable attorneys' fees, arising from any injuries or alleged injuries, including death, to any person, including Tacoma Power employees, Tacoma Power contractors or agents, or damage to or destruction of property which may result from the negligence of Tacoma Power in delivery of power or in failing to properly install or maintain Tacoma Power-owned facilities. In this regard, it is understood that the Parties may be waiving Title 51 RCW, Industrial Insurance immunity, and this provision has been mutually negotiated. Provided, however, this Agreement is intended to apply only to the Company and Tacoma Power, and it shall not be interpreted to allow an employee to sue his/her employer.

(c) The obligations of the Parties under the Agreement are obligations of the Parties only, and no recourse shall be available against any officer, director, shareholder, member, employee or partner of any Party or any affiliate of a Party.

(d) The Parties agree to comply with all laws that regulate hazardous or toxic substances, as the same are or may be in the future defined by law. In this regard Tacoma Power acknowledges that it will, if legally responsible, clean up hazardous or toxic materials that Tacoma Power causes to be spilled or contaminate Company's premises.

Section 14. REGULATORY CHANGES. Any provision herein declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as "Regulatory Event") will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to reform this Agreement in order to give effect to the original intention of the Parties. If the Parties are unable to reform this Agreement to mutual satisfaction, the Agreement may be terminated under the provisions of Section 16, Early Termination.

Section 15. GOVERNING LAW. Parties agree and stipulate that in the event any arbitration or litigation should occur concerning or arising out of this Agreement, the sole venue of any arbitration or legal action shall be in Pierce County in the State of Washington and the interpretation of the terms of this Agreement shall be governed by the laws of the State of Washington.

Section 16. EARLY TERMINATION OR REDUCTION. The Contract may be cancelled and the power service provided thereunder terminated by the Company for any reason by providing written notice Tacoma Power. In the event of termination, the Company will remain liable for any charges that have accrued or that will accrue under the terms of Schedule HVG, except that Delivery charges that accrue for future periods may be applied to future invoices if the Company elects to take service under an alternative Tacoma Power rate schedule.

Section 17. PUBLIC RECORDS. This Agreement and any documents provided to Tacoma Power hereunder are deemed public records subject to disclosure under the Washington State Public Records Act, Chapter 42.56 RCW (Public Records Act). Tacoma Power may be required, upon request, to disclose this Agreement and any documents related to it unless an exemption under the Public Records Act or other laws applies.

Section 18. LIMITATION OF LIABILITY. Except as otherwise set forth in Sections 10, 13, and 16, neither Party shall be liable to the other, based on tort (including negligence and strict liability), contract or otherwise arising out of or related to the Agreement, for any indirect, special, or consequential damage, or exemplary loss or damage, costs of capital or expenses thereof, loss of profits or revenues or the loss of use thereof, and each Party hereby releases the others from any liability for all such losses and damages. All limitations on each Party's liability contained in the Agreement shall survive the termination of the Agreement. The foregoing limitations on liability and damages shall not apply to a Party's liability and damages arising from gross negligence or willful misconduct.

Section 19. ASSIGNMENT. This Agreement shall inure to the benefit of and be binding upon the respective successors and assignees of the Parties hereto. Provided however that neither this Agreement nor any interest therein shall be transferred or assigned by either Party without prior written consent of the other Party, which consent shall not be unreasonably withheld.

Section 20. NOTICES. Any notice, except notices under Section 10(b), or demand required by this Agreement shall be deemed given when received by fax, electronic mail (with fax and electronic mail being followed with registered or certified original), registered or certified mail and with postage prepaid thereon, addressed as follows:

To Tacoma Power:

Superintendent
Tacoma Power
3628 South 35th Street
Tacoma, WA 98409-3115
Fax No.: (253) 502-8378

To Company:

General Counsel
James Hardie Building Products, Inc.
4615 192nd St E
Tacoma, WA 98446

Either Party, by notice to the other, may hereafter designate a change in its address and addressee.

Notices pursuant to Section 10(b) in the General Terms and Conditions are deemed given when received by fax, electronic mail, or telephone (with fax or written notice confirmation immediately following), excluding voice mail.

Section 21. SECTION HEADINGS. The section headings of this Agreement are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections or the Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement in duplicate, each by the signatures and attest of its duly authorized officers, as of the day and date first above written.

Tacoma Power

Chris Robinson, Superintendent

Andrew Cherullo, Finance Director

Approved as to form:

Deputy City Attorney

James Hardie Building Products Inc.

Joseph Blasko, General Counsel Approved