



RESOLUTION NO. U-11007

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

5 WHEREAS the City of Tacoma, Department of Public Utilities, requested
6 bids/proposals for the purchase of certain materials, supplies, equipment and/or
7 the furnishing of certain services, or proposes to purchase off an agreement
8 previously competitively bid and entered into by another governmental entity, or
9 for the sales of surplus, or desires to increase and/or extend an existing
10 agreement, all as explained by the attached Exhibit "A," which by this reference
11 is incorporated herein, and
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13 WHEREAS in response thereto, bids/proposals (or prices from another
14 governmental agreement) were received, all as evidenced by Exhibit "A," and
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16 WHEREAS the Board of Contracts and Awards and/or the requesting
17 division have heretofore made their recommendations, which may include
18 waiver of the formal competitive bid process because it was not practicable to
19 follow said process, or because the purchase is from a single source, or there is
20 an emergency that requires such waiver, and/or waiver of minor deviations, and
21 in the case of sale of surplus, a declaration of surplus has been made certifying
22 that said items are no longer essential for continued effective utility service, as
23 explained in Exhibit "A," and
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WHEREAS the Director requests authorization, pursuant to TMC 1.06.269 A, to amend contract amounts up to \$200,000 and to approve term extensions and renewals for all items contained in Exhibit "A;" Now, therefore,

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

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

Approved as to form and legality: _____
Chair
Tom C. Marshall _____
Chief Deputy City Attorney Secretary

Clerk Adopted _____

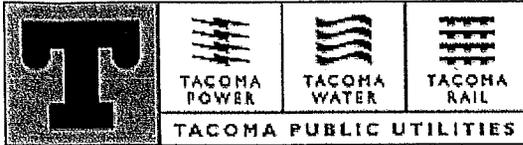


EXHIBIT "A"

RESOLUTION NO.: U-11007

ITEM NO.: #1

MEETING DATE: MAY 23, 2018

TO: Board of Contracts and Awards

FROM: Chris Robinson, Tacoma Power Superintendent/COO
Kimberlie Kerner, Contract Program Manager, Tacoma Power/Transmission and Distribution

COPY: Public Utility Board, Director of Utilities, Board Clerk, and Alex Clark, Finance/Purchasing

SUBJECT: Distribution Wood Poles
Request for Bids No. PT18-0083F – May 23, 2018

DATE: May 11, 2018

RECOMMENDATION SUMMARY:

Tacoma Power recommends a contract be awarded to **McFarland Cascade Holding, Inc., Tacoma, WA**, for the purchase of treated wood poles, on an as needed basis. The recommendation is for a one-year contract term in the amount of \$867,830.06, plus sales tax. Pricing will be firm for the term of the contract.

BACKGROUND:

The contract will provide supply wood poles 35 feet through 60 feet in length. Wood poles are managed by the Power Warehouse as an inventory material. The forecasted usage includes requirements for new construction, maintenance, and relocation of distribution lines operated by Tacoma Power.

ALTERNATIVES: No viable alternative exist.

COMPETITIVE SOLICITATION:

Request for Bids Specification No. PT18-0083F was opened on April 3, 2018. Four companies were invited to bid in addition to normal advertising of the project. One submittal was received.

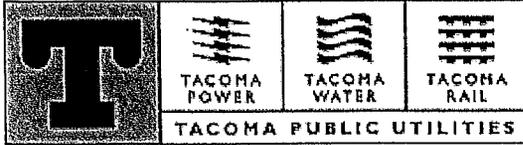
<u>Respondent</u>	<u>Location</u> <i>(city and state)</i>	<u>Submittal</u> <u>Amount</u>
McFarland Cascade Holdings, Inc.	Tacoma, WA	\$867,830.06

Pre-bid Estimate: \$850,000

The recommended award is 2 percent above the pre-bid estimate.

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
Tacoma Power Capital Outlay Budget	n/a	569400	\$867,830.06
TOTAL			\$867,830.06

* General Fund: Include Department

REVENUES: N/A

FISCAL IMPACT TO CURRENT BIENNIAL BUDGET: \$506,234.21

ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED? Yes

Chris Robinson, Power Superintendent/COO

APPROVED:

Linda McCrea, Interim Director of Utilities/CEO

May 23, 2018

MOTION

I hereby move that the following motion be approved:

18-06. That in accordance with the Tacoma City Charter Article IV Section 4.18, the Board appoints _____ to serve as Director of Public Utilities contingent upon the negotiation of an employment contract.



RESOLUTION NO. U-11008

1 A RESOLUTION authorizing execution of a utility installation agreement
2 between Tacoma Power and Horizon Commerce Partners, LLC ("Horizon").

3 WHEREAS Horizon is redeveloping parcels of land including four new
4 office/commercial/residential/parking buildings and three renovated
5 commercial/residential buildings, within the Brewery District in downtown
6 Tacoma, located on both sides of Commerce Street from South 21st to South
7 23rd Street, within the City of Tacoma, Department of Public Utilities, Light
8 Division (dba "Tacoma Power") service territory, and

9 WHEREAS Horizon's redevelopment project requires an underground
10 electrical system to supply new and modified services, a cut over of existing
11 customers' service, and a relocation of the existing overhead power
12 conductors to accommodate the construction of new buildings, and

13 WHEREAS the redevelopment project will be constructed in three
14 phases, and

15 WHEREAS a Utility Installation Agreement is proposed for phase one
16 of the redevelopment project for the installation of new underground
17 distribution and secondary facilities, the modification of overhead facilities on
18 South Commerce Street, and relocation of overhead conductors on South "C"
19 Street to provide working clearances, and

20 WHEREAS phase one of the project will be 100% customer-funded
21 and paid in advance of construction with an estimated project cost not to
22 exceed \$456,000; Now, Therefore;

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

That Tacoma Power's request to execute a utility installation agreement with Horizon Commerce Partners, LLC for phase one of a redevelopment project for an underground electrical system to supply new/modified services, cut over of existing customers' service, and a relocation of the existing overhead power conductors to accommodate the construction of new buildings, as described in the backup materials on file with the Clerk of the Board, in the amount not to exceed \$456,000, funded by the customer in advance of construction, is hereby approved, and that the proper officers of the City are authorized to execute said agreement substantially in the form as on file with the Clerk and as approved by the City Attorney.

Approved as to form and legality:

_____ Chair

Tim C. Maxwell
Chief Deputy City Attorney

_____ Secretary

_____ Clerk

Adopted _____

of May 23, 2018

REQUEST FOR RESOLUTION

Date: May 17, 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)

Tacoma Power requests approval to execute the Utility Installation Agreement with Horizon Commerce Partners, LLC.

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

Tacoma Power requests the Public Utility Board to pass a resolution authorizing Tacoma Power to execute the Phase-one Utility Installation Agreement with Horizon Commerce Partners, LLC. The agreement provides reimbursement of \$456,000.00 for Tacoma Power's equipment, materials and loaded labor to construct the underground electrical system to supply new/modified services and the cut over of existing customers.

Also, to relocate the existing overhead power conductors to accommodate the construction of new buildings.

3. Summarized reason for resolution:

Horizon Commerce Partners LLC is redeveloping multiple lots located on both sides of Commerce St. from S. 21st to S. 23rd St within the Brewery District of downtown Tacoma. Their project consists of four new office/commercial/residential/parking buildings and three renovated commercial/residential buildings.

The Utility Installation Agreement requires approval by the Public Utility Board. This agreement defines the terms for the installation of new underground distribution, modification of overhead distribution, and secondary facilities on Commerce St. Also to move overhead conductors along S. 'C' Street on the existing pole alignment to provide working clearances. The project is to be completed in three phases. Construction is expected to begin in May 2018.

The Phase-one contract is 100% funded by the customer to be paid in advance of construction.

The Customer may be eligible for Tacoma Power's associated 30% credits for primary underground installation costs after the overhead primary power system is removed; see Customer Service Policy section-10.0 B. f. approved with Board Resolution NO. U-11000.

4. Attachments:

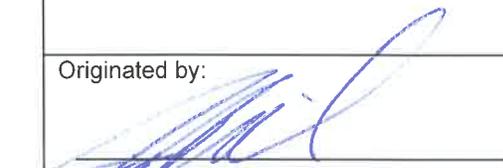
- a. Memo from Chris Robinson to Linda McCrea dated May 17, 2018
- b. Phase-one Utility Installation Agreement between Tacoma Power and Horizon Commerce Partners, LLC
- c. Customer Service Policy 10.0

5. Funds available Proposed action has no budgetary impact

The Tacoma Power project funds are expected to come out of the CBD A&R PWR-00912 in 2018 and the Underground A&R fund 2019/20.

6. Deviations requiring special waivers:

Originated by:


Joseph A. Wilson, PE, Transmission & Distribution Manager

Requested by:


Chris Robinson, Power Superintendent/COO

Approved:


Linda McCrea, Interim Director of Utilities



DATE: May 17, 2018

TO: Linda McCrea, Interim Director of Utilities/CEO

FROM: Chris Robinson, Power Superintendent/COO 

SUBJECT: Utility Installation Agreement between Tacoma Power and Horizon Commerce Partners, LLC
Planned Redevelopment Project

RECOMMENDATION:

Tacoma Power recommends the Public Utility Board approve the Phase-one Utility Installation Agreement between Tacoma Power and Horizon Commerce Partners, LLC for an estimated total of \$456,000.00. This project is planned to be completed in three separate phases, for an estimated project amount of \$1,777,300.00.

EXPLANATION:

Horizon Commerce Partners is redeveloping parcels of land located on Commerce Street from South 21st to South 23rd Street, which is in the Brewery District of downtown Tacoma.

The project consists of constructing four new offices, commercial, residential, and parking buildings and three renovated commercial/residential buildings. Construction is expected to begin in May 2018.

Horizon Partners has chosen to break their project into three construction phases with multiple contracts. The work in phase one has three parts:

- Parts a & b remodel and relocate overhead conductors to accommodate the reconstruction of the 2120 Commerce building.
- Part c. installs underground systems and provides new and modified services to five existing and one new building. Part c. will be for a length much less than the one block or 850 feet addressed in the Customer Service Policy for prepaid overhead to underground primary line conversion. Phase one will not remove overhead primary distribution.

The removal of overhead primary power lines is anticipated to occur with the completion of Phases two & three. According to the Customer Service Policy, the customer may be eligible for Tacoma Power's associated 30% credits for primary underground distribution

installation costs once Tacoma Power has secured assurance that all overhead infrastructures will be converted to underground.

cc: Joseph A. Wilson
Rachel Allen
John Merrell



3628 South 35th Street

Tacoma, Washington 98409-3192

TACOMA PUBLIC UTILITIES

UTILITY INSTALLATION AGREEMENT (CUSTOMER Funded)
~HORIZON COMMERCE PARTNERS Project~

This **UTILITY INSTALLATION AGREEMENT** ("Agreement") with an effective date as of _____ ("Effective Date") is made by and **between Horizon Commerce Partners, LLC**, a Washington State Limited Liability Company (hereinafter referred to as "CUSTOMER"), and the **City of Tacoma, Department of Public Utilities, Light Division**, a municipal corporation of the State of Washington, (hereinafter referred to as "Tacoma Power and/or City"). CUSTOMER and Tacoma Power each may be referred to as a "Party," or collectively as the "Parties".

RECITALS:

WHEREAS, The CUSTOMER is constructing multi-use apartment/commercial buildings on real property it owns between S. 21st and S. 23rd Streets and S. 'C' Street and S. Pacific Ave. in the City of Tacoma and desires the modification, removal of overhead lines, relocation of overhead wires and/or installation of underground electrical facilities located on or affecting the construction sites (the "**Horizon Commerce Partners Project**" and/or "**Project**").

WHEREAS, Tacoma Power is authorized under Washington law to engage in the production, acquisition, transmission, distribution, and sale of electric power and, pursuant to such authority, currently owns and operates electrical transmission and distribution facilities adjacent to and upon the Horizon Commerce Partners Project site.

WHEREAS, The CUSTOMER has requested the rearrangement and modification of Tacoma Power's existing adjacent overhead transmission and distribution lines located in City of Tacoma right-of-ways on S. 'C' St. and S. Commerce St. - from South 21th Street approximately 250ft south. The CUSTOMER has requested Tacoma Power perform underground modification to existing services necessary to accommodate the construction and remodel of buildings. Also the Customer has requested that Tacoma Power temporary reroute power on the north end of Commerce St. at S. 21st St. which allows the de-energizing of overhead power on the frontage of 2120 Commerce St. The Customer has requested that Tacoma Power modify the power service to 2120 Commerce to accommodate the building's expansion and to serve several neighboring buildings.

WHEREAS, the Customer intends to complete their work in three phases. This contract details only Phase-one. Additional contracts will be developed for the remaining phases.

WHEREAS, The Customer has requested to underground existing overhead power lines and for Tacoma Power to provide discounts per "Customer Service Policy 10.0 (Resolution No. U-11000 3/28/18) for prepaid overhead to underground primary line conversions".

WHEREAS, Tacoma Power is prepared to perform the work and services necessary to modify and add its electrical facilities as requested by CUSTOMER, provided that all electrical facilities are designed, constructed, and re-installed as set forth in this Agreement.

WHEREAS, all Tacoma Power performed construction and installation work hereunder, together with all design engineering and inspection services to meet applicable safety and operating requirements, is collectively referred to herein as the "**Tacoma Power Work**" (and is further defined in Section 1.3 f. below). To ensure orderly, timely, and cost-effective performance by Tacoma Power, the CUSTOMER will be required to perform and complete certain incidental Project site preparation work. Said work is referred to herein as the "**CUSTOMER Work**" (and is further defined in Section 1.3 e. below).

WHEREAS, the respective work of the Parties shall be performed per Tacoma Power's engineered design set forth in the "**Design Documents**" (as further defined in Section 1.3 b. below) and shall be solely funded by the CUSTOMER in accordance with the terms of this Agreement. The CUSTOMER will be solely responsible for, and pay, all developmental costs to complete the Horizon Commerce Partners Project including, but not limited to, all time and materials costs incurred by Tacoma Power to perform the Tacoma Power Work and any further design and/or inspection services related to the CUSTOMER Work as specified herein. Such costs specifically include "**Direct Costs**" (as defined in Section 1.3 a. below) and may include further costs for Additional Work per Section 2.1.2 and/or Extra Work per Article 4. Notwithstanding the foregoing, it is understood and agreed that Tacoma Power will own and operate all resulting electric supply system facilities unless expressly noted otherwise herein.

IN CONSIDERATION OF their respective promises set forth herein and the respective benefits to be derived hereunder, the sufficiency of which is mutually acknowledged, the Parties hereby agree as follows:

ARTICLE 1 - SCOPE

1.1 Purpose and Intent: The purpose of this Utility Installation Agreement is to set forth the terms and conditions pursuant to which the Parties will cooperatively undertake, at CUSTOMER's sole expense, all electric utility work and associated equipment and materials needed for the Project and as necessary to meet applicable safety and operating requirements. It is

intended that Tacoma Power will perform work and provide equipment and materials, as specified herein and in the Design Documents attached hereto, including the design, relocation and removal work related to: (i) its existing overhead electric power facilities as necessary and (ii) the installation of underground power for the Horizon Commerce Partners Project as described in **Exhibit "B"**.

1.1.1 In further elaboration of the foregoing, this Agreement and the attached **Exhibits "A" and "B"** (Design Documents) provide for:

- The relocated overhead transmission and distribution conductors along the east side of S. 'C' Street from station 36+38 to 250ft south to provide added clearance to the 2105 S. 'C' St and 2120 buildings.
- Modifying overhead distribution system on S. Commerce St. from S. 21st St. to station 65+15 as required to de-energize the overhead power lines from station 65+15 to 66+45 along the east frontage of 2120 Commerce to allow construction clearance.
- To provide underground power to 2120 Commerce St.
- To provide the modification and installation of underground power services to existing and remodeled buildings on west side of Commerce St. from S. 21st St. to approximately station 65+20.
- The modifications to the buildings on the east side of Commerce St. will require coordination with the Horizon Partners Construction subcontractors. The fees for the individual service modifications to buildings other than 2120 Commerce are not included in this contract.
- CUSTOMER's grant or establishment of all easement rights required by Tacoma Power for the construction, ownership, and operation of all relocated or re-installed power and communication system as required.
- Site clearing, grading, surveying, staking, and access, by the Customer.
- Payment of all procurement and developmental costs incurred and required to accomplish the foregoing.

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

1.3 Definitions:

- a. "Direct Costs" means and includes all costs and expenses incurred by Tacoma Power directly related to the Horizon Commerce Partners Project as provided under this Agreement and shall include, without limitation,
- i. All costs and expenses of materials, equipment, supplies, utilities, consumables, goods and other items used or incorporated in connection with and in furtherance of this Agreement and any taxes, insurance, and interest expenses related thereto, including activity pricing for inspection, engineering, crews and equipment;
 - ii. All labor costs and expenses incurred to date and pursuant to this Agreement for the design, inspection, and construction activities and/or tasks designated to be performed by Tacoma Power hereunder. Such costs are inclusive of payroll benefits and overhead for applicable labor classifications.
 - iii. All cost and expenses incurred to date and during performance of this Agreement for any work performed by City consultants or contractors that pertains to the Horizon Commerce Partners Project and as necessary to undertake and complete the Tacoma Power Work under this Agreement.
- b. "Design Document(s)" means the plans and specifications for the Project and prepared by Tacoma Power in coordination with CUSTOMER and/or the CUSTOMER Contractor pursuant to this Agreement, which include the (i) specifications, standards, and requirements applicable to the CUSTOMER Work attached hereto as **Exhibit "A"**, and (ii) specifications, plans, drawings, and sketches applicable to the Tacoma Power Work attached hereto as **Exhibit "B"**; which Exhibits are, by this reference, fully incorporated herein.
- c. "Inspection Work" means all labor, equipment and material necessary for Tacoma Power to monitor the CUSTOMER Work to ensure conformance with the Design Documents. This work will be performed and completed prior to Tacoma Power commencing any construction related to the Tacoma Power Work. Inspection Work will be performed by Tacoma Power's designated Construction Inspector in coordination with CUSTOMER's Project Manager and includes the following activities:
- Rejection of any Customer Work not in conformance with the Design Documents.
 - Verification that Customer Work is conducted in accordance with the NESC and Tacoma Power T&D Construction Standards.
 - Coordination of power outages.

Direct Costs of all of the foregoing work performed by Tacoma Power shall be pre-paid and/or fully reimbursed by CUSTOMER hereunder.

- d. "Project Manager" mean the respective persons designated by the Parties in Section 5.3 herein to be the point of contact for all design, construction, inspection, and contract related matters under this Agreement.
- e. "CUSTOMER Work" for purposes of this Agreement shall mean Project site preparation in conformance with Exhibit A and includes all clearing, grading, and survey staking as necessary to allow timely relocation of all electrical facilities hereunder.

The work and activities will be utilized in conjunction with the Tacoma Power Work and pertain to all Tacoma Power electrical facilities within the Project Area whether located within City of Tacoma right of way or on private property. The CUSTOMER Work shall not include the Tacoma Power Work that Tacoma Power is expressly required to perform hereunder.

The construction of the vaulted walk on the east side of 2110 Commerce St. such that it conforms with Tacoma Power's design to be utilized as a power vault.

- f. "Tacoma Power Work" means all labor, materials, equipment, services, supplies, overheads, applicable taxes and all other items necessary to relocate, reroute, modify, reconnect and install the power systems and facilities to accommodate the Horizon Commerce Partners Project all as further described and set forth in the Tacoma Power Work Sketches. For purposes of this Agreement, the "Tacoma Power Work Sketches" mean all Tacoma Power prepared documents and drawings to be utilized by Tacoma Power to perform its work and are attached hereto in **Exhibit B** underground and overhead modification drawings for S 'C' St. work sketch and S. Commerce St. work.

The Tacoma Power Work will also include:

- Traffic-control as may be necessary to facilitate such work.
- g. "The City" is used interchangeably with "Tacoma Power" in this document.
- h. "CUSTOMER Contractor" means the General Contractor designated by CUSTOMER to perform the Customer Work or any other activities hereunder for and on behalf of CUSTOMER

- **NOTE:** All references to the “CUSTOMER Contractor” herein shall expressly include and refer to any and all subcontractors acting by and through the CUSTOMER Contractor. Notwithstanding any separate contract executed by CUSTOMER with the CUSTOMER Contractor that may pertain to the Horizon Commerce Partners, CUSTOMER shall be and remain fully bound and responsible hereunder for the proper performance of the CUSTOMER Work, the completion of the Horizon Commerce Partners Project, and the payment of all costs and expense provided for hereunder, all in accordance with the terms and conditions of this Agreement.
- i. “Project Area” means all lands, public and private, where Project electrical work will be performed and includes all areas identified, described or delineated in the Design Documents (**Exhibits A and B**) CUSTOMER, by this reference, fully incorporated herein.

ARTICLE 2 – RESPECTIVE PROJECT OBLIGATIONS

2.1 City Obligations:

2.1.1 Design & Work: Tacoma Power will provide all Design Documents, Inspection Work, and defined Tacoma Power Work noted in the Design Documents. The preparation of Design Documents, Inspection Work, and Tacoma Power Work shall be performed by Tacoma Power per the design requirements set forth in Tacoma Power’s T&D Construction Standards and in the National Electrical Safety Code (NESC). City Inspection Work will be provided as scheduled or required during CUSTOMER and/or the CUSTOMER Contractor’s prosecution of the CUSTOMER Work. It is expressly understood that by performing the Inspection Work Tacoma Power shall not be deemed to have any direct control over the Horizon Commerce Partners Project and/or CUSTOMER Work or to have assumed any duties or liabilities for the full, proper, and lawful prosecution of the Horizon Commerce Partners Project and/or CUSTOMER Work; all of which is and shall remain at all times the sole responsibility of CUSTOMER. All Tacoma Power communications regarding inspection, acceptance, approval, rejection or modification of the Customer Work will be addressed to the CUSTOMER’s Project Manager.

2.1.2 Additional Work: Except as specifically set forth in this Agreement and/or in the Exhibits attached hereto, any additional utility installation work necessary to accommodate the multitude of construction activities involved in the Project shall be subject to additional design, labor, equipment, services, materials and supplies costs. CUSTOMER Contractors shall be responsible for the timely request and coordination of all such additional work. Requests for additional work shall be submitted to Tacoma Power’s Project Manager. The cost of such additional work shall be in addition to the amounts set forth in the **Preliminary**

Cost Estimate, (which is attached hereto as **Exhibit C** and fully incorporated herein by this reference) and CUSTOMER shall be solely responsible for, and shall pay in advance of the work, such cost to Tacoma Power.

2.2 CUSTOMER Obligations:

2.2.1 Work to be Performed: CUSTOMER shall be, at its sole cost and expense, responsible for the full and complete performance of the CUSTOMER Work as specified herein and in **Exhibit A**. The CUSTOMER Work shall comply with all applicable laws and regulations whether or not set forth in **Exhibit A**. In performing the CUSTOMER Work, CUSTOMER shall be responsible for all CUSTOMER Work construction contracting functions including, but not limited to, those related to the CUSTOMER Contractor.

2.2.2 Scheduling: Prior to commencement of any work on the Project including, but not limited to the CUSTOMER Work, CUSTOMER Contractor shall provide a construction schedule to Tacoma Power and shall thereafter timely notify Tacoma Power of scheduling changes related to the Horizon Commerce Partners Project that are expected to materially impact the CUSTOMER Work or Tacoma Power Work schedules. CUSTOMER contractor shall provide weekly progress reports to Tacoma Power and schedule work coordination meetings with Tacoma Power as necessary to allow Tacoma Power to coordinate and timely complete the Inspection Work and Tacoma Power Work. CUSTOMER' Project Manager shall coordinate with Tacoma Power's Project Manager as appropriate, to accomplish desired changes or corrections to Tacoma Power's Inspection Work and/or Tacoma Power Work in the field as necessary to avoid delays to CUSTOMER Work activities. The CUSTOMER Project Manager will handle all communications with the CUSTOMER Contractor.

2.2.3 Property Rights: CUSTOMER shall obtain and furnish, at no cost to Tacoma Power, any access, licenses, easements and/or rights of way upon, over, under and across lands comprising the Horizon Commerce Partners Project as necessary for Tacoma Power to perform and complete the Tacoma Power Work, and shall at all reasonable times provide Tacoma Power and/or its employees, representatives, agents and/or contractors free access to such lands.

- a. CUSTOMER shall further obtain for and/or assign to Tacoma Power all access and use rights, including but not limited to easements reasonably necessary to allow Tacoma Power to operate, maintain, repair, and reconstruct all Horizon Commerce Partners Project electrical facilities in the future. Tacoma Power shall at its sole discretion approve the adequacy of such access and/or property rights, and such approval shall not be unreasonably withheld.
- b. Tacoma Power may agree, in its sole discretion and shall not be obligated, to procure additional access, easements, licenses, and/or

rights of way as reasonably necessary to performance of the Tacoma Power Work on property owned by persons or entities other than CUSTOMER; in which event, all costs incurred by Tacoma Power shall be deemed a Direct Cost hereunder and reimbursed by CUSTOMER. Tacoma Power will not be obligated to commence Tacoma Power Work on any property unless or until approved access and/or property rights have been established.

- c. Per Section 2.2.6 below, CUSTOMER shall be responsible for all surveying and documentation preparation work required to secure and formally establish any and all of the foregoing property rights.

2.2.4 Performance of Work: As further specified herein and in **Exhibit A & B**, CUSTOMER will employ all CUSTOMER Contractor and other persons or entities necessary to perform the CUSTOMER Work. Without limiting the foregoing, CUSTOMER shall be responsible for environmental compliance, permitting, management, control, construction, and inspection necessary to fully and properly complete the CUSTOMER Work.

2.2.5 Work Area: CUSTOMER shall require the CUSTOMER Contractor to coordinate with Tacoma Power's Project Manager to ensure Tacoma Power has accessible and adequate work areas so as to not unreasonably delay or interfere with the performance of the Tacoma Power Work within the Horizon Commerce Partners Project Area. Tacoma Power requires unrestricted access to an area within a 75 foot radius when working at each transmission and/or distribution pole site. There may be times when installing new overhead conductor or removing existing overhead conductor that Tacoma Power will require additional access and/or place restrictions on CUSTOMER's (and/or its contractor's) activity under and in the vicinity of the conductors for the entire length of the transmission and distribution lines relocation site work.

Tacoma Power will require 75 foot linear street clearance adjacent to areas under their construction for the described underground trench and vaulted walk work.

2.2.6 Surveying/Staking and Documentation: CUSTOMER and/or its contractor(s) shall provide all surveying, staking, and elevations identification as requested in writing by Tacoma Power and necessary to allow it to (i) timely complete performance of the Tacoma Power Work, (ii) prepare and complete as-built documentation and drawings for all relocated electrical facilities, and (iii) identify and confirm all easements and other property access rights to be granted to Tacoma Power hereunder have been granted and established within the Horizon Commerce Partners Project Area. Staking shall be completed within five (5) business days of receipt of such request.

2.2.7 Clearing, Grubbing, Grading, and Access Creation: CUSTOMER Contractor shall provide and perform all required clearing, grubbing, grading, and

access creation (road) requested in writing by Tacoma Power as necessary to allow complete performance of the Tacoma Power Work. Clearing, grubbing, grading, and access creation shall be done in a timely manner as to not unreasonably delay or interfere with the Tacoma Power Work.

2.2.8 Electrical Service Cancellations: CUSTOMER Contractor shall timely submit to Tacoma Power service cancellation requests for all service property located within the Horizon Commerce Partners Project Area and/or impacted by the Horizon Commerce Partners Project so as not to unreasonably delay or interfere with the Tacoma Power Work. For service properties not owned or controlled by CUSTOMER, CUSTOMER will contact service customers and coordinate service cancellation requests by the customer as necessary to ensure that all required service cancellation requests are timely received by Tacoma Power to avoid delay of the Tacoma Power Work.

2.2.9 Coordination with other Utilities: CUSTOMER Contractor shall coordinate with other utilities to ensure the Tacoma Power Work is not unreasonably delayed or interfered with.

2.3 Schedule of Work:

2.3.1 Schedule for Horizon Commerce Partners Project: Prior to commencement of any Customer Work that may impact performance of the Tacoma Power Work, CUSTOMER shall provide Tacoma Power with any proposed CUSTOMER and/or contractor(s) schedule(s) that may impact or be dependent upon the Tacoma Power Work.

- a. The Parties will, in good faith, develop and agree upon a schedule for the Tacoma Power Work including any significant staging, notice, or other requirements ("Schedule of Work"). The Schedule of Work shall be in writing and reflect the following:
 - Tacoma Power estimates 60 days of work for its forces.
 - For scheduling purposes, this work is expected to be on a straight time basis. Though some overtime schedules will be required to accommodate the power outage impacts to existing customers in the work zone.
 - Weather conditions may impede this work plan.
 - Emergency operations will take precedence on Tacoma Power's work force commitments.
 - The transmission system work on S. 'C' St. must be scheduled. There are several projects occurring during the Customer's preferred time that may not be available to de-energize this line, therefore delays may occur.
 - Tacoma Power's work schedule and priorities will be developed in coordination with the CUSTOMER Project Manager.

- Permits, as applicable to the Customer Work, must be obtained by the CUSTOMER or its contractor(s) before finalizing the Schedule of Work.

b. CUSTOMER and/or its contractor(s) will administer the Customer Work and other Project activities in accordance with the agreed upon Schedule of Work and the respective Project Managers shall timely notify the other of any scheduling changes that are expected to materially impact the timely performance and completion of work by either Party.

2.4 Changes to Design Documents:

2.4.1 In the event Tacoma Power submits a written change in **Exhibit A** or **Exhibit B** after commencement of the CUSTOMER Work, CUSTOMER shall have five (5) business days following receipt to review and approve any such submittal; which approval shall not be unreasonably withheld. Should CUSTOMER not approve the change as submitted, CUSTOMER shall provide written comments to Tacoma Power specifying the reasons for non-approval.

2.4.2 In the event CUSTOMER requests a change in **Exhibit A** after commencement of the CUSTOMER Work, CUSTOMER shall provide Tacoma Power with written notice specifying the basis and scope of such proposed change. Within five (5) business days following receipt of such notice, Tacoma Power shall review such request and either (i) approve such change and modify **Exhibit A** accordingly, which approval shall not be unreasonably withheld, or (ii) provide written comments to CUSTOMER.

2.4.3 All proposed or actual changes to **Exhibit A** requested by CUSTOMER which result in a cost increase over the **Preliminary Cost Estimate (Exhibit C)** shall be paid solely by CUSTOMER. All proposed or actual changes to Exhibit A requested by Tacoma Power that result in such cost increase shall be governed by **Article 4** below. The Parties agree to work cooperatively to timely resolve any disputes arising out of the review process for changes to **Exhibit A**, using the process set forth below in **Article 8**.

ARTICLE 3 – PAYMENT OBLIGATIONS OF CUSTOMER

3.1 Payment:

CUSTOMER agrees that it shall be responsible for payment of all of the Tacoma Power's actual Direct Costs, as defined herein, related or attributable to the Horizon Commerce Partners Project. CUSTOMER's payment obligation for the total estimate costs of the Tacoma Power Phase-one Work to be performed hereunder is **\$456,000.00** as more fully described in the **Preliminary Cost Estimate (Exhibit C)**. The Preliminary Cost Estimate set forth in Exhibit C may be

modified based on: (i) the procedures for changes to the Design Documents and/or adjustment of costs as provided in Section 2.4 above, and/or (ii) extra work as provided in Article 4 below. Said payment obligation is based on a preliminary estimate of Tacoma Power's total costs for labor, materials, and equipment to be performed and furnished by Tacoma Power hereunder and represents the Parties' best estimates of the Direct Costs likely to be incurred by Tacoma Power under this Agreement. Actual payments required under this Agreement shall be based on actual work performed and materials provided under this Agreement. In the event it is determined that the scope of work for which Tacoma Power is responsible hereunder has been accomplished for a lesser amount than identified in this Agreement, CUSTOMER shall only pay for actual Direct Costs (See also Section 3.7 below regarding refunds).

3.2 Invoices & deposits: Upon mutual execution of this Agreement, the CUSTOMER shall immediately tender to Tacoma Power an initial payment in the total amount of **\$456,000.00**. Said Initial Deposit represents advance payment of the estimated long lead time material costs and installation work to complete the Phase-one work. The remaining phase(s) of the project will be covered under a separate contract(s). These charges represent what Tacoma Power reasonably expects to incur as specified in the Preliminary Cost Estimate (Exhibit C) for this Project.

The CUSTOMER has previously provided Tacoma Power with non-refundable Design Deposits of \$50,000.00. This fee was tendered in two \$25,000.00 payments, one in November 2013 and one in February 2017. The fore mentioned \$456,000.00 is in addition to the \$50,000.00 deposits which have been exhausted in providing engineering services to date.

Subject to the terms and conditions of this Agreement, Tacoma Power will invoice any Direct Costs in excess of the Preliminary Cost Estimate (and prior Design Deposit) if and as actually incurred and CUSTOMER shall, within thirty (30) days of receipt of each such invoice, fully reimburse Tacoma Power for such further Direct Costs. It is agreed that advance payment is a condition of Tacoma Power's performance hereunder and it will not begin actual construction activities or perform any other Tacoma Power Work until CUSTOMER has paid the Initial Payment amount specified per this Section 3.2. It is further understood and agreed that Tacoma Power may cease performance hereunder if any invoiced amount is not paid within thirty (30) days following issuance.

3.3. Records: Tacoma Power shall, in accordance with its standard processes and procedures, keep records of the Direct Costs using a work order accounting system.

3.4 Invoices shall be mailed to:

Horizon Commerce Partners, LLC

c/o Horizon Partners NW, Inc.
Attn: Accounts Payable
2125 Commerce St., Suite 200
Tacoma, WA 98402

3.5 Payment: Except for the Initial Payment, which will be invoiced and is due upon execution of this Agreement, CUSTOMER shall fully pay each invoice submitted by the City within 30 calendar days of receipt of the invoice. **Checks are to be made payable to the "Treasurer, City of Tacoma" and shall be sent with a cover letter referencing the project name and Tacoma Power's Project Manager. Mail checks to:**

City of Tacoma
Department of Public Utilities, Power Division
Attn: Kim Kerner, Management Analyst II
3628 South 35th Street
Tacoma, WA 98409-3192

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

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

3.6 Contested charges: CUSTOMER may contest a charge for any Tacoma Power Work detailed in an invoice within 30 days of receipt of such invoice by providing written notice to Tacoma Power specifying the charges and/or documentation in dispute. Upon receipt of such notice, Tacoma Power will investigate items contested and make appropriate amendments to the invoice, if necessary. If warranted, Tacoma Power will arrange a meeting between the Parties to discuss CUSTOMER concerns as specified in its written notice. The Parties shall attempt to resolve all disputes within 30 days of the date of notice of a contested invoice. At or before the end of said period, CUSTOMER shall submit any outstanding items to Dispute Resolution as provided in **Article 8**. It is further agreed that at the time of a final audit, all required adjustments will be made and reflected in a final payment. Interest shall not accrue on the contested part of any billing until mutually resolved. CUSTOMER will not unreasonably contest any bill.

3.7 Refund: At the end of the Horizon Commerce Partners Project the actual Direct Costs incurred by Tacoma Power will be compared with the estimated

costs, invoice payments, and remaining minimum deposited amount. If an overpayment to Tacoma Power exists then a refund will be made to CUSTOMER within 60 days.

3.8. Discounts: Tacoma Power's "Customer Service Policy 10.0 (Resolution No. U-11000 3/28/18)" for "Prepaid overhead to underground primary line conversions" allows a discount to be refunded to the Customer. The refunds may follow each construction phase when applicable. The final accounting must be provided by the Customer and Tacoma Power to compute any resulting discounts. In all cases the agreed to underground equipment must have been installed and the overhead power lines/poles must have been removed to trigger the discount payment for that phase of the project. Discount payments will be made to CUSTOMER within 60 days of receiving the complete & relevant Customer costs and invoice documentation. The customer can request that the discount payment be credited to the next phase of the project. Any discount payments shall be calculated and paid in accordance with Tacoma Power's Customer Service Policy.

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

In the event a written request to audit is received, the recipient Party agrees to cooperate fully with the auditor or independent auditor chosen, retained, and paid by the requesting Party. In the event the audit determines that CUSTOMER has paid Tacoma Power in excess of the amounts properly due hereunder, Tacoma Power will promptly refund the excess amount to CUSTOMER. In the event the audit determines that Tacoma Power has incurred costs for its design, Inspection Work, and/or the Tacoma Power Work that exceeds payment made by CUSTOMER, CUSTOMER shall promptly pay Tacoma Power the amount owed. In the event the Parties cannot agree on the results of the audit, or upon a method of refund or payment, the disagreement shall be dealt with in accordance with the Dispute Resolution provisions of **Article 8** below.

ARTICLE 4 - EXTRA WORK

In the event either Party identifies additional work, other than additional work due to unforeseen conditions, that require an increase over the Preliminary Cost Estimate for the Tacoma Power Work as set forth in **Exhibit C**, the Party asserting such additional work will provide written notice thereof to the other

Party. The Parties agree to negotiate in good faith to modify this Agreement to authorize any increased payment resulting from such additional work. For additional costs due to unforeseen conditions, CUSTOMER shall be responsible for and pay such costs.

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

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

ARTICLE 5 – PROJECT ADMINISTRATION AND REPRESENTATIVES

5.1 It is acknowledged that CUSTOMER, by and through the CUSTOMER Contractor, shall be responsible for all administrative activities required for the Project except as expressly agreed otherwise hereunder. It is further acknowledged that such administrative activities shall ensure all CUSTOMER Work is completed to Tacoma Power standards and that in no event shall performance of Inspection Work by Tacoma Power personnel result in delegation to, or assumption by, Tacoma Power of any duty to complete and pay for such work or of any other obligation or responsibility of CUSTOMER hereunder.

5.2 Permits: Except as otherwise specifically provided herein, CUSTOMER shall be responsible, at its sole expense, for acquiring all necessary permits, including but not limited to construction easements, or other governmental approvals necessary to perform and complete the Horizon Commerce Partners Project. Tacoma Power shall not be responsible for securing any permits or easements for the prosecution of the CUSTOMER Work. The Parties agree that CUSTOMER may assign responsibility to the CUSTOMER Contractors for obtaining any permits necessary for performance of the CUSTOMER Work.

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

5.3.1 Tacoma Power's Project Manager- All Project related work, including correspondence with Tacoma Power, review and approval of changes to Design Documents, scheduling, participation, and other activities related to the

CUSTOMER Work and the Tacoma Power Work shall be coordinated through said Project Manager.

Rich Barrutia
Tacoma Power
Project Manager
3628 South 35th Street
Tacoma WA, 98409-3192
(253) 502-8541 Office
Rbarrutia@cityoftacoma.org

5.3.2 CUSTOMER'S Project Manager- All Horizon Commerce Partners Project related work including, but not limited to, CUSTOMER Work and Tacoma Power Work correspondence with CUSTOMER regarding the administration of this Agreement shall be coordinated through said Project Manager. The issuance of approved changes to the Design Documents will be handled by the CUSTOMER Project Manager before Notice to Proceed is issued.

Jack Trainor
Horizon Partners Northwest
Vice President of Development
2125 Commerce St., Suite 200, Tacoma, WA 98402
1-775-771-6533 CELL
jack@horizonpartnersnw.com

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

5.5 Notices: Except for routine day to day communications, which may be given electronically by email, all notices which may be or are requested to be given pursuant to this Agreement shall be in writing and be deemed given when personally delivered, or when deposited in the United States mail, postage prepaid, and marked registered or certified mail, return receipt requested, and addressed to the parties at the following addresses unless otherwise provided for herein:

To: Tacoma Power

Rich Barrutia
Project Manager
3628 South 35th Street
Tacoma WA, 98409-3192
Phone (253) 502-8541,
Rbarruti@cityoftacoma.org

To: CUSTOMER

Jack Trainor
Vice President Development
2125 Commerce St., Ste 200
Tacoma, WA 98402
Phone: 775-771-6533
Jack@horizonpartnersnw.com

Either Party may change the address to which notices shall be sent by providing written notice of such change to the other Party.

ARTICLE 6 - INSPECTION AND ACCEPTANCE OF PROJECT WORK

6.1 Timely Inspection/Approvals. In coordination with the **CUSTOMER** Project Manager and as the work progresses, Tacoma Power shall be invited to conduct reasonable and timely inspection of each stage of the **CUSTOMER** Work. **CUSTOMER** Contractor shall give at least two (2) business days' prior notice to Tacoma Power of when work items are scheduled to be performed and are ready for Inspection Work. As stages are completed, Tacoma Power will provide approvals or rejections pursuant to the process in Section 6.2.

6.2 Sequencing of Inspections/Approvals/Acceptance. The **CUSTOMER** Work will be conducted in stages that require inspections and approvals from Tacoma Power before the **CUSTOMER** Contractor proceeds with the next stage of the **CUSTOMER** Work and/or before Tacoma Power proceeds with certain Tacoma Power Work. The sequence of inspections, approvals and final acceptance is as follows:

- (a) Inspections. Tacoma Power will provide regular inspection activities as coordinated with **CUSTOMER** Project Manager via regular communications. If Tacoma Power discovers that the particular elements of the **CUSTOMER** Work were not performed, or installed per **Exhibit A**, then Tacoma Power shall give prompt notice to the Project Manager of said defect(s) and what work remains to be done. Tacoma Power shall endeavor to complete its inspections and notice of approval or rejection in less than two (2) business days. **CUSTOMER** and/or the **CUSTOMER** Contractor will direct all applicable sub-contractors to, promptly re-perform or make repairs to the **CUSTOMER** Work as necessary to fully comply with **Exhibit A**. Following its inspection and approval, Tacoma Power shall be allowed to use and operate the completed stage of the **CUSTOMER** Work as part of its utility system.
- (b) Final Inspection. At the completion of all the **CUSTOMER** Work, the Project Manager will schedule a final inspection with Tacoma Power's Project Manager & Tacoma Power's Construction Inspector, and Tacoma Power shall have five (5) working days after receipt of written notice from **CUSTOMER** Contractor to accept or reject the completed **CUSTOMER** Work ("Final Inspection"). If Tacoma Power discovers that the particular stage or element of the **CUSTOMER** Work was not performed or installed per **Exhibit A**, then Tacoma Power shall give prompt written notice to the **CUSTOMER** Project Manager of said defect(s) and what work remains to be done. Upon receipt of such notice, the **CUSTOMER** Contractor will, directly or through its sub-contractor(s), promptly re-perform or make

repairs to the **CUSTOMER** Work as necessary to fully comply with **Exhibit A**, unless it is reasonably demonstrated that the specified defects are the direct result of actions or omissions by Tacoma Power.

- (c) Final Acceptance. After Tacoma Power has connected the **CUSTOMER** Work to its utility system, Tacoma Power will be asked to provide its Final Acceptance of the **CUSTOMER** Work. Tacoma Power's final acceptance of **CUSTOMER**, work shall occur only when Tacoma Power is satisfied that (i) all such work is completed in accordance with **Exhibit A**, and (ii) all items indicated on Tacoma Power Inspector's punch list have been completed. Upon such final acceptance, Tacoma Power's Project Manager shall provide written notice thereof to **CUSTOMER** Project Manager.

Nothing in Tacoma Power's inspection, approval, or acceptance of the **CUSTOMER** Work shall reduce or waive **CUSTOMER** Contractor's responsibility for performance and full and proper completion of **CUSTOMER** Work.

6.3 Warranties and Performance Bond.

- (a) Warranties. **CUSTOMER** fully warrants the **CUSTOMER** Work, which warranty shall include all contractor and manufacturer's warranties it obtains and/or may assert in connection with said work. **CUSTOMER**, or the **CUSTOMER** Contractor as applicable, will assign all rights under said warranties to the Tacoma Power with respect to all electrical facilities of the **CUSTOMER** Work that support or are included in the meter –switch room.
- (b) Bonds. To ensure full and complete satisfaction of its obligations hereunder, **CUSTOMER** or the **CUSTOMER** Contractor shall obtain and furnish to Tacoma Power a performance bond for the cost of the **CUSTOMER** Work directly related to electrical facilities, together with the estimated additional Direct Costs Tacoma Power may reasonably incur in the event of a significant default hereunder. Such bond shall:
- (1) be in the amount of not less than \$150,000.;
 - (2) name the City of Tacoma, Department of Public Utilities, Light Division, as the sole obligee thereunder;
 - (3) be in a form acceptable to the Tacoma Power's legal counsel; and
 - (4) be delivered to Tacoma Power prior to commencement of any Tacoma Power Work, or within five (5) business days following the Effective Date of this Agreement, which ever shall first occur.

6.4 Ownership/Use. Tacoma Power shall own all power supply and distribution facilities installed pursuant to this Agreement up to the demarcation points identified in the Design Documents specifically including, but not limited to, the conduits and vaults installed as the result of the **CUSTOMER** Work. **CUSTOMER** shall own and be solely responsible for all Project electrical facilities on the customer side of said demarcation points;

provided that Tacoma Power will be given exclusive access to any such facilities while under construction. Upon receiving notice of final acceptance and approval from Tacoma Power Construction Inspector, **CUSTOMER** shall transfer control of the completed **CUSTOMER** Work to Tacoma Power for its use, occupancy, operation and maintenance. Tacoma Power shall thereafter install equipment, cabling, and other miscellaneous fixtures and devices.

Tacoma Power will be responsible for the operation and maintenance of said Utility meters and components, switchgear, conduits, vaults, pad mounted equipment and primary power cables.

ARTICLE 7 - LEGAL RELATIONS

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

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

own negligence. CUSTOMER agrees that its obligations under this indemnification Section extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents and/or by the CUSTOMER Contractor or their employees, agents or sub-contractors.

7.3 For purposes of the indemnification provisions set forth in this Article 7, each Party hereby waives, with respect to the other only, any immunity that would otherwise be available against such claims under the industrial insurance provisions of Title 51 RCW. EACH PARTY EXPRESSLY RECOGNIZES THAT THIS WAIVER WAS THE SUBJECT OF MUTUAL NEGOTIATION. Such waiver shall not, however, be construed as establishing any independent right or cause of action by employees of CUSTOMER against it or by employees of Tacoma Power against it. In the event of any claims, demands, actions and lawsuits, the indemnifying Party upon prompt notice from the indemnified Party shall assume all costs of defense thereof, including reasonable legal fees incurred by the indemnified Party, and of all resulting judgments that may be obtained against the indemnified Party. In the event that a Party incurs attorney fees, costs or other legal expenses to enforce the provisions of this Section, all such fees, costs and expenses shall be recoverable by the prevailing Party. This indemnification shall survive the termination of this Agreement.

7.4 Insurance:

7.4.1 CUSTOMER Coverages. CUSTOMER or the CUSTOMER Contractor that will perform the CUSTOMER Work shall not commence work under this Agreement until all required insurance has been obtained and such insurance has been approved by the City. It is CUSTOMER responsibility to ascertain that all contractors including, but not limited to, the CUSTOMER Contractor (and each of its affiliated sub-contractors that participate in performance of CUSTOMER Work), shall have the insurance as required by this Agreement at all times during performance of the CUSTOMER Work. The insurance coverages required herein shall be maintained and effective at all times any such work is being performed.

- a. Workers Compensation Insurance. CUSTOMER shall, at all times during the life of this Agreement, fully comply with all of the terms and conditions of the laws of the State of Washington pertaining to Workers' Compensation together with any and all amendments and supplements thereto and any and all regulations promulgated there-under. In the event any of the CUSTOMER Work herein is sublet, CUSTOMER shall require the CUSTOMER Contractor, and all other contractors and sub-contractors performing work on the Project, other than Tacoma Power, to fully comply with all of the terms and conditions of the laws of the State of Washington pertaining to Workers' Compensation. For persons engaged in employment who are not within the mandatory coverage of the state Workers' Compensation laws, CUSTOMER shall provide and

shall cause the CUSTOMER Contractor and each and every other said contractor and subcontractor to provide compensation insurance (including self-insurance if it otherwise meets all requirements of state Workers' Compensation laws), satisfactory to the City, at least equivalent to the benefits provided for covered employment under state Workers' Compensation laws.

- b. Public Liability and Property Damage Insurance. CUSTOMER shall procure and maintain during the life of this Agreement, a policy of commercial general liability insurance, with an insurance carrier authorized to do business in the State of Washington. The policy shall be approved as to form and content by the Tacoma City Attorney and shall protect the City from liability imposed by law for damages suffered by any persons arising out of or resulting from acts or omissions in the performance of this Agreement: (1) for bodily injury or death resulting therefrom caused by accidents or occurrences resulting from any act or omission by CUSTOMER, the CUSTOMER Contractor, and their respective employees, agents, and other contractors in the performance of the Agreement, and (2) for injury to, or destruction of, any property, including property of the City, and including loss of use. The policy or policies shall include coverage for claims for damages because of bodily injury or death or property damage arising out of the ownership, maintenance or use of any motor vehicle, including hired or non-owned vehicles. The City of Tacoma, Department of Public Utilities, Power Division shall be designated in said policy as a primary additional named insured and shall be given 30 days written notice of cancellation, nonrenewal, or material change in the coverage provided. Said insurance shall be on a Commercial General Liability form with coverages to include Blanket Contractor, Broad Form Property Damage, Personal Injury, Protective Liability and Employers Liability. Limits shall be at \$1,000,000 per occurrence, \$2,000,000 aggregate and for contracts in excess of \$500,000 the minimum coverage limits include Umbrella Excess Liability of \$5,000,000. CUSTOMER shall further furnish CGL policy coverage provisions or endorsements specifying that the City's insurance is excess to any other collectible insurance. CUSTOMER shall furnish evidence of the amount of any deductible or self-insured retention under the CGL policy or policies, which amount shall be subject to approval by the City Attorney's Office for the City of Tacoma if the amount of the deductible or self-insured retention exceeds \$20,000. The City may require CUSTOMER to furnish evidence of its ability to pay the amount of any deductible or self-insured retention. If the policy provides for a deductible or self-insured retention, CUSTOMER shall be solely responsible for paying the amount of the deductible or self-insured retention toward the cost of any claim under the policy. If CUSTOMER fails to maintain such insurance, the City, at its discretion, may obtain equivalent substitute

insurance coverage and be entitled to full reimbursement and payment of its costs thereof. Nothing herein contained shall be in any manner construed as limiting the extent to which CUSTOMER or its contractor(s) may be held liable or responsible for payment of damages resulting from their operations.

- c. Builder's Risk: CUSTOMER and the CUSTOMER Contractor shall be expected to protect and insure from loss for any tools and equipment owned or rented by CUSTOMER and/or the CUSTOMER Contractor, and each of their respective sub-contractors, employees or agents. Until the CUSTOMER Work is completed and finally accepted by the City, all construction is at the sole risk of CUSTOMER and no acceptance of payment by the City shall constitute acceptance of the CUSTOMER Work or relieve CUSTOMER of responsibility to deliver to the City the completed CUSTOMER Work as required by this Agreement.
- d. Proof of Insurance Coverage: CUSTOMER shall furnish and file with the City, within ten business days of the Effective Date of this Agreement, a certificate of insurance coverage together with policy endorsements verifying the insurance coverage types and limits required herein. An up-to-date certificate of insurance must be on file with the City throughout the term of this Agreement. The City may, at the time the Agreement is executed or at any other time, require CUSTOMER to furnish and file with the City a certified true copy of the insurance policy or policies, together with a letter from the insurance carrier verifying that the premium has been paid for the period indicated. The policy or policies shall be approved as to form and content by the City Attorney.

ARTICLE 8 - DISPUTE RESOLUTION

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

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

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

8.2.2 Level Two – An executive officer of CUSTOMER or designee and the Superintendent of Tacoma Power or his designee shall meet to discuss and attempt to resolve the dispute in a timely manner.

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

8.4 Venue: Venue for any alternative dispute proceedings and/or legal action shall be in Pierce County, Washington.

ARTICLE 9 – MISCELLANEOUS PROVISIONS

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

9.2 Agency or Employee Relationship: No joint venture or partnership is formed as a result of this Agreement. No employees, agents or subcontractors of one Party shall be deemed, or represent themselves to be, employees of any other Party. In performing work and services pursuant to this Agreement, CUSTOMER, its employees, consultants, agents, and representatives shall be acting as agents of CUSTOMER and shall not be deemed or construed to be employees or agents of the City in any manner whatsoever. CUSTOMER shall not hold itself out as, nor claim to be, an officer or employee of the City and will not make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the City. CUSTOMER shall be solely responsible for any claims for wages or compensation by the respective employees, contractors, sub-contractors, agents, and representatives of CUSTOMER and the CUSTOMER Contractor, and shall defend, indemnify and hold the City harmless, from these claims. In performing work and services pursuant to this Agreement, the City, its, employees, consultants, agents, and representatives shall be acting as agents of the City and shall not be deemed or construed to be employees or agents of CUSTOMER in any manner whatsoever.

9.3 Entire Agreement: This Agreement and the Exhibits attached hereto constitute the entire agreement and understanding between CUSTOMER and the

City relating to the subject matter contained herein. There are no restrictions, promises, representations, warranties, covenants or undertakings, oral or otherwise, except those expressly set forth or referenced herein.

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

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

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

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

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

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

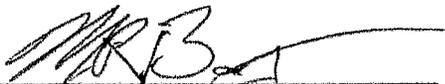
9.10 Authorization To Execute Agreement: The undersigned, by their respective signatures below, represent and warrant that they are each duly authorized to execute this legally binding Agreement for and on behalf of the Party for whom they have signed. CUSTOMER through its undersigned representative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

Horizon Commerce Partners, LLC
A Washington Limited Liability
Company

City of Tacoma
Department of Public Utilities

By Horizon Partners Northwest, Inc
Its Managing Member

Approved:

By 
Mike Bartlett
CEO

By _____
Linda McCrea
Interim Director of Public Utilities

By  NA
Jack Trainor
Vice President of Development

By _____
Chris Robinson
Power Superintendent/COO

Approved:

Finance Manager

Approved as to Form:

Deputy City Attorney

Exhibit A

Phase-one Customer Work

The Customer's contractor is to complete:

- a. The CUSTOMER's City of Tacoma approved civil street and sidewalk plans for the Phase-one work permits WO17-0025 & WO18-0054.
- b. The other associated dry utility service plans.
- c. The construction of the power vault on the east side of 2120 Commerce St. in Tacoma. For items c. thru e. ref: Tacoma Power's preliminary drawing UP409 (revision 4/25/18).
- d. The construction of the Joint Utility trench, conduits and vaults associated dry utilities within the Phase-one work approximately from S. 21st to project station 64+15.
- e. The excavation and installation of conduit to interconnect and/or modify the power systems supporting the existing buildings.

The Customer is to complete:

Legally combine parcels 2102, 2104 & 2120 Commerce. The Customer must legally combine parcels 2102, 2104 and 2120 in order to be eligible for one master electrical panel location with ganged unit meters. The Customer shall provide copies of the recorded legal documents to Tacoma Power's Project Manager demonstrating that the parcels have been combined before electrical services will be connected to these addresses. Otherwise each separate address or parcel must have a separate service via the right-of-way.

Exhibit B

Phase-one Tacoma Power Work

Once the Customer provides payment, and this agreement signed by an authorized Customer Representative, then Tacoma Power will seek Utility Board approval. The payments and signed contract must be ready two weeks prior to the next board meeting to be placed upon that meeting's agenda. After the Utility Board approves the contract then the project will be scheduled for Tacoma Power's construction which usually require another two-week period.

Tacoma Power's items are defined by:

- a. Ref: Tacoma Power work sketch W/O# 10000111579. Construct a temporary overhead power line from South 21st Street to project station 67+17. The temporary line will serve power to 2102 & 2104 Commerce and 2120 Commerce. De-energize the overhead power lines between project stations 65+15 to 66+45 abutting the 2120 building's eastside. This increases electrical working clearance to support the building's construction. To remove power pole # 12683 located mid building next to 2120 Commerce. To modify the primary power feed to 2106 & 2108 Pacific.
- b. Ref: Tacoma Power W/O# 10000111826. This work will occur on the east side of South 'C' Street from station 36+38 to approximately 250ft south. To relocate the overhead power conductors from the property side to the street side of the existing/new power poles. This will provide additional electrical working clearance for constructing added floors onto 2120 Commerce. **This portion of the work will require scheduling transmission and Distribution system outages. These scheduled outages are only available April thru September and are contingent upon other planned and unplanned line outages.**
- c. Ref: NP2470-1, 2, 6, 7 and 9 preliminary (revision 4/16/18). A subset of the project to provide permanent electrical underground conductors, transformer, switch and appurtenances in ducts and vaults. The Phase-one work limits are approximately from project station 64+87 (power vault 53258J) through power vault 50218V and power vault 53267J on to station 66+50.

Exhibit C

Project Cost Estimate

CUSTOMER shall be solely responsible for funding and paying (including reimbursement to Tacoma Power if invoiced) Direct Costs for the Tacoma Power Work, which includes all costs and expense of materials, equipment, labor, and other work supplied and performed by Tacoma Power associated with the Phase-one work items on the Horizon Commerce Partners Project. See Exhibit B for a detailed description.

The Preliminary Cost Estimate for the Tacoma Power phase-one work is:

a. Reroute overhead power and de-energize section on east side of 2120 Commerce St.	\$ 57,000.00
b. Transmission and Distribution wire relocate to west side of the poles near 2120 Commerce	\$ 45,000.00
c. Install permanent Phase-one of the designed power system providing the permanent upgrade service for 2120, 2102 & 2104 Commerce.	\$334,000.00
New Design deposit	\$20,000.00
Estimated Construction Total	\$456,000.00