



RESOLUTION NO. U-11080

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
5 agreements.

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

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

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



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:

23 *[Signature]*
24 Chief Deputy City Attorney

Chair

Secretary

25 _____
26 Clerk

Adopted _____

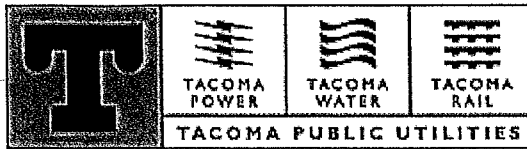


EXHIBIT "A"

RESOLUTION NO.:

U-11080

ITEM NO.:

M 1
27.1

MEETING DATE:

6-26-19

TO: Board of Contracts and Awards
FROM: Chris McMeen, Deputy Water Superintendent *CM*
Martha Lantz, Deputy City Attorney
Jason Moline, Professional Engineer, Tacoma Water / Supply *JM*
COPY: Public Utility Board, Director of Utilities, Board Clerk, SBE Coordinator, LEAP
Coordinator, and Jessica Tonka, Finance/Purchasing
SUBJECT: Legal Services Agreement for Tacoma Water
Direct Negotiation Waiver, Ariba ID SR1785027566 - June 26, 2019
DATE: June 3, 2019

RECOMMENDATION SUMMARY:

Tacoma Water requests a waiver of competitive procurement procedures and recommends that a contract be awarded to Van Ness Feldman LLP, Seattle, WA, for legal services, in the amount of \$200,001, plus any applicable taxes.

BACKGROUND:

ISSUE: We are requesting authorization for an estimated \$40,000 per year over a 5 year period as needed for providing advice and consultation about Tacoma Water's water rights. This is intended to be an on-call contract to utilize the expertise of an established outside counsel resource. Depending on future circumstances, some of the funds may remain unspent if Tacoma Water deems these unnecessary.

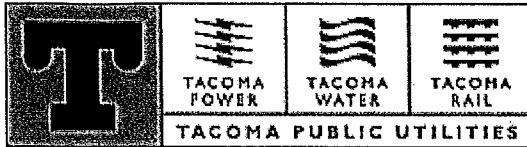
ALTERNATIVES: None, see also associated Authorization of Direct Negotiation memo (in Ariba) dated May 17, 2019. Van Ness Feldman, and specifically attorney Adam Gravley, have considerable experience specific to water rights law. We would like to continue to utilize their expertise to complement our own internal Legal staff.

COMPETITIVE ANALYSIS: Tacoma Water requests approval for direct solicitation and negotiation of a professional services contract pursuant to TMC 1.06.256. Van Ness Feldman has previously supplied outstanding legal services to Tacoma Water and Tacoma Power, and due to their familiarity with our water system and related agreements, we believe it is in the best interests of Tacoma Water and the City that competitive solicitation be waived.

CONTRACT HISTORY: New contract.

SBE/LEAP COMPLIANCE: Not applicable

FISCAL IMPACT:



EXPENDITURES:

FUND NUMBER & FUND NAME *	COST OBJECT (CC/WBS/ORDER)	COST ELEMENT	TOTAL AMOUNT
4600 Water Utility Current Fund	CC 584101	S.O. 90014851	\$200,001
TOTAL			\$200,001

REVENUES:

FUNDING SOURCE	COST OBJECT (CC/WBS/ORDER)	COST ELEMENT	TOTAL AMOUNT
4600 Water Utility Current Fund	CC 584101	S.O. 90014851	\$200,001
TOTAL			\$200,001

FISCAL IMPACT TO CURRENT BIENNIAL BUDGET: \$80,000

ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED? Yes

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

Scott Dewhirst, Water Superintendent

APPROVED:

Jackie Flowers, Director of Utilities

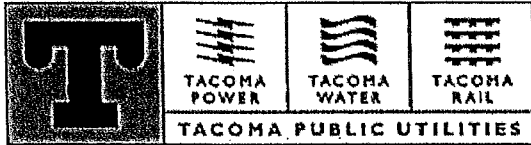


EXHIBIT "A"

RESOLUTION NO.: U-11080

ITEM NO.: #2

MEETING DATE: JUNE 26, 2019

TO: Board of Contracts and Awards
FROM: Tony Lindgren, P.E., Tacoma Water Distribution Engineering Division Manager
Matt Hubbard, P.E., Tacoma Water Distribution Engineering Principal Engineer
COPY: Public Utility Board, Director of Utilities, Board Clerk, SBE Coordinator, LEAP
Coordinator, and Alex Clark, Finance/Purchasing
SUBJECT: Increase and extend the contract for On-Call Hydraulic Modeling Support for
Tacoma Water
Architectural and Engineering (A&E) Roster, Contract #4600013416 –
June 26, 2019
DATE: June 10, 2019

RECOMMENDATION SUMMARY:

Tacoma Water requests approval to increase Contract No. 4600013416, to Murraysmith Inc, Tacoma, WA, by \$151,154, plus any applicable taxes, for continued on-call hydraulic modeling support on a time and materials basis. This increase will bring the contract to a cumulative total of \$323,630, plus any applicable taxes. Additionally, the contract expiration date will be extended to April 1, 2020.

BACKGROUND:

This contract provides professional engineering services to complete on-call hydraulic modeling tasks until a new hydraulic modeling engineer is hired in Distribution Engineering, anticipated Q3 2019.

Work under this contract includes hydraulic modeling to support Tacoma Water's regular engineering analysis and design work. Specific tasks include routine fire flow modeling, water main sizing, maintenance support to answer water system operational hydraulic questions, and Capital Improvement Project modeling to answer "what if" scenarios regarding system changes. This contract provides technical training sessions overlapping with the first 6 months of the new engineer's employment to ensure sufficient knowledge transfer to the new employee.

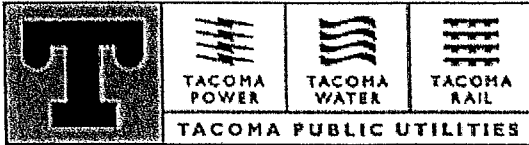
ISSUE: The purpose of this contract is to provide on-call professional engineering services to maintain business operations until a new hydraulic modeling engineer is hired and trained. These services are vital to operating and maintaining the water system.

ALTERNATIVES: Utilizing an engineering consulting firm is the preferred interim solution due to internal engineering resource constraints. The identified firm has completed existing contract tasks with expertise and efficiency, and we are confident of their ability to continue performing the necessary work.

COMPETITIVE SOLICITATION:

This contract was originally awarded to Murraysmith Inc, as a result of a Statement of Qualifications review from the A&E Roster in August 2018.

The contractor has agreed to increase the contract on a time and materials basis, as specified in the additional scope of work, attached, under the same terms and conditions as the original contract.



This vendor was originally selected in June 2018 from a review of three vendors (Murraysmith Inc, RH2 Engineering Inc, and Carollo Engineers Inc) who submitted their qualifications through the A&E Roster solicitation process. The vendor was determined to be the most qualified as reviewed by a three member selection committee based on the vendor's prior experience providing similar on-call hydraulic modeling services.

CONTRACT HISTORY: The original contract was administratively approved by Jackie Flowers, Director of Utilities, effective August 1, 2018 in the amount of \$172,476 and an expiration date of January 31, 2019.

Amendment No.1, also administratively approved, extended the contract expiration date to September 1, 2019 (original scope and fees remained the same).

Amendment No. 2, will continue existing on-call scope, add hydraulic modeling training for new staff, add fees to cover these expenses, and extend the expiration date until April 1, 2020.

SBE/LEAP COMPLIANCE: Not applicable.

FISCAL IMPACT:

EXPENDITURES:

FUND NUMBER & FUND NAME	COST OBJECT (CC/WBS/ORDER)	COST ELEMENT	TOTAL AMOUNT
Tacoma Water 4600 Operating Fund	582100 Distribution Engineering	5310100 Professional Services	\$151,154
TOTAL	-	-	\$151,154

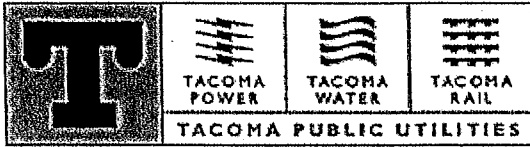
REVENUES:

FUNDING SOURCE	COST OBJECT (CC/WBS/ORDER)	COST ELEMENT	TOTAL AMOUNT
Not applicable.			
TOTAL			

FISCAL IMPACT TO CURRENT BIENNIAL BUDGET: \$151,154

ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED? Yes.

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



A handwritten signature in black ink, appearing to read 'S. Dewhirst', is positioned above the name Scott Dewhirst.

Scott Dewhirst, Water Superintendent

APPROVED:

A handwritten signature in black ink, appearing to read 'Jackie Flowers', is positioned above the name Jackie Flowers.

Jackie Flowers, Director of Utilities

AMENDMENT NO. 2 TO CONTRACT CW2225761

THIS AMENDMENT is made and entered into effective as of July 1, 2019 ("Effective Date"), by and between the CITY OF TACOMA, a municipal corporation of the State of Washington (hereinafter called the "CITY") and MURRAYSMITH INC, a Licensed Engineering Corporation (hereinafter called the "CONTRACTOR").

WHEREAS effective August 1, 2018 CITY and the CONTRACTOR entered into a Contract ("Contract") for hydraulic modeling services as described in Exhibit A to the Contract, to be provided on an on call basis, in the amount of \$172,476 and with a termination date of January 31st, 2019, and

WHEREAS effective January 31, 2019 in recognition of CITY's ongoing need for services under the Contract CITY and CONTRACTOR entered into Amendment No. 1 to the Contract for the purposes of extending the termination date to September 1, 2019, and

WHEREAS in recognition of CITY's continuing need for services under the Contract the parties wish to again amend the Contract to supplement the scope of work to include the services and deliverables set forth in Exhibit A-1 and to extend the termination date to April 1, 2020, add scope, and add associated fees in the amount of \$151,154.

NOW, THEREFORE, in consideration of the mutual promises and obligations hereinafter set forth, the parties agree as follows:

1. The Contract termination date is extended from September 1, 2019 to April 1st, 2020.
2. The Contract scope authorized under Exhibit A to the Contract is supplemented to include services and deliverables set forth in h the Amended Scope of Work, attached hereto and incorporated herein as Exhibit A-1.
3. The Contract fee is increased in the amount of \$151,154 in accordance with the Amended Scope of Work, Exhibit A-1.
4. All other terms and conditions of the Contract remain the same.

Should this Amendment be executed after the Effective Date noted above all terms and conditions herein shall operate retroactively to Effective Date.

IN WITNESS WHEREOF, the Parties hereto have accepted and executed this Amendment, 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 Amendment for and on behalf of Contractor.

CITY OF TACOMA:

CONTRACTOR:

By:

By:

(City of Tacoma use only - blank lines are intentional)

Director of Finance: _____

City Attorney (approved as to form): _____

Approved By: _____

Approved By: _____

Approved By: _____

Approved By: _____

Approved By: _____

Approved By: _____

Approved By: _____

Approved By: _____

TACOMA WATER ON-CALL HYDRAULIC MODELING ASSISTANCE SCOPE OF WORK AMENDMENT 2

Background

Tacoma Water is currently using an Innovyze InfoWater hydraulic model which is used for analyzing the water distribution system. Murraysmith has supported Tacoma Water staff by providing on-call hydraulic modeling support since August 2018. Tacoma Water is working to add new staff to conduct more of this work internally, but is in need of continuing support until this staff member is hired and fully integrated. Tacoma Water has requested Murraysmith provide continuing support as requested as well as support training efforts for the hydraulic model.

The proposed scope of work outlined below develops the framework to achieve this goal on an as-requested basis.

Overview

The items defined herein for modeling services consist of the following major tasks:

1. Project Management
2. Hydraulic Model Training
3. Hydraulic Modeling On-Call Services

Scope of Services

1 Project Management and Coordination

This task provides for project management and coordination of the Murraysmith team through completion of all tasks.

1.1 Monthly Progress Reports and Invoices.

This task will prepare and submit electronic monthly invoices for review and approval by Tacoma Water. Each invoice shall include the following information:

- Billing period (start and end date) included in the invoice
- Description of work accomplished in each work breakdown structure (WBS)/contract task for the billing period
- Name, billing rate and hours for each resource that worked on each task

- Percent spent vs. percent completed (by task if appropriate to the project)
- Potential out-of-scope work items.

Report status of project work activities, data needs and issues requiring City input through project status e-mails and phone calls to City Project Manager.

1.2 Quality Assurance/Quality Control.

Perform in-house quality assurance reviews of all deliverables.

Provided by Tacoma Water:

- Timely review and processing of consultant invoices
- Project Team contact information

Assumptions:

- The total length of this phase of the project is estimated to be up to nine (9) months.
- Anticipated notice to proceed will be on or about July 1, 2019.

Consultant Deliverables:

- Up to 20 bi-weekly email project status reports.
- Up to nine (9) months of progress reports and invoices.

2 Hydraulic Model Training

Provide training to City Staff on use of the hydraulic model and provide written materials that document operating procedures and best practices for City use.

2.1 Training Workshop:

Three (3) days of on-site training and preparing training materials are included as part of the project. Training will focus in three areas; software functionality, maintaining the hydraulic model, and City specific analysis including, but not limited to fire flow modeling and capital improvement project (CIP) modeling. The training may be held consecutively or broken up into half or full day sessions to best meet the City's needs.

2.2 As-Needed Remote Assistance:

This task assumes as-needed remote assistance from Murraysmith staff to help answer questions or other follow up tasks via phone and video conferences. For budgeting purposes, up to 28 hours of support is assumed.

Provided by Tacoma Water:

- Review of workshop agenda and topics.
- Meeting room and equipment for workshop.
- Computer access for City workshop attendees.

Assumptions:

- One (1) Murraysmith staff will lead each training session.
- Remote assistance will be conducted via phone, email and video conferences (Skype, or similar) on an as-requested basis up to the approved budget amount.
- Workshops will take place over up to a two-month period.

Consultant Deliverables:

- A training agenda and some resource materials will be provided to the City outlining the subject matter.

3. *Hydraulic Modeling On-Call Services:*

Work under this task includes providing hydraulic modeling support on an as-requested basis to support ongoing operations of the Tacoma Water engineering and business functions. Based on our past level of effort and understanding of Tacoma Water's desire and timeline for conducting more hydraulic modeling work with in-house staff, the budget for this task is based on the following assumptions:

1. approximately 20 to 30 hours per week of on-call hydraulic modeling services from July 1, 2019 through September 30, 2019; and
2. approximately 15 to 20 hours per week of on-call hydraulic modeling services from October 1, 2019 through March 31, 2020.

Work will be tracked according to each subtask, but the budget for this task is considered to be available to work on individual work requests from Tacoma Water.

3.1. *Fire flow modeling*

Perform fire flow modeling in support of customer water availability requests.

3.2. *Main sizing*

Perform hydraulic modeling for main sizing within the distribution system.

3.3. Maintenance support

Provide modeling support to answer system operations questions such as taking facilities out of service for maintenance. Typical concerns are flow reversals, velocity changes, water availability and adequacy, pressures, water age, and meeting other City water supply criteria.

3.4. Capital Improvement Program Support

In support of the Capital Improvement Program, conduct “What if” scenarios for changing system conditions. Such as, the effect of changing set points, assist in determining the need for and sizing of new facilities, or the effect of retiring existing facilities.

Provided by Tacoma Water:

- Written work requests.
- Responses to requests for information pertaining to the work requests.

Assumptions:

- Hydraulic modeling work will be completed at Murraysmith offices.
- Requests for information or clarifications will be reviewed and resolved by Tacoma Water staff promptly, within three (3) business days.
- Murraysmith will provide on-call support within the limits of the identified budget. Additional requests will require an amendment to the identified budget.

Consultant Deliverables:

- Written responses via emails, technical memoranda and graphics summarizing results of hydraulic modeling tasks.
- Telephone correspondences to review or clarify hydraulic modeling tasks.

Budget

Tasks 1 and 2 in this scope of work will be completed on a time and materials basis with a not to exceed amount as indicated in the attached fee estimate. Work under Task 3 will be completed on a time and materials basis as authorized by Tacoma Water up to the amount shown in the attached fee estimate. If additional effort is required, a contract amendment will be required.

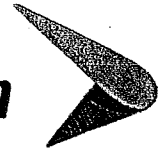
Estimated Schedule

It is anticipated work will begin in July of 2019 and extend on an as-requested basis until March 31, 2020.

As each analysis can differ significantly depending on a number of variables and the exact details of the request, Murraysmith will work to meet Tacoma Water's target turnaround time of five (5) business days whenever feasible, with specific timelines to be established at the time each request is received.

On-Call Hydraulic Modeling Support - Amendment 2
Tacoma Water
PROPOSED FEE ESTIMATE

	LABOR CLASSIFICATION (HOURS)						Estimated Fees				
	Principal Engineer VI	Professional Engineer VI	Professional Engineer V	Professional Engineer III	Engineering Designer II	Hours	Labor	Cost	Expenses	GIS Units \$10/hr	Total
Task 1 - Project Management and Coordination											
Task 1.1 - Monthly Progress Reports and Invoicing		9	4			17	\$ 3,266	\$ 898	\$ -		\$ 3,266
Task 1.2 - Quality Assurance / Quality Control (QA/QC)	12	40	40			132	\$ 25,280	\$ 7,006	\$ -		\$ 25,280
Task 1 Subtotal	12	49	44	0	0	149	\$ 28,546	\$ 7,904	\$ -		\$ 28,546
Task 2 - Hydraulic Model Training											
Task 2.1 - Training Workshop		12	48			60	\$ 10,728	\$ 2,928	\$ 700		\$ 11,668
Task 2.2 - As-Needed Remote Assistance		8	20			28	\$ 5,100	\$ 1,405	\$ -		\$ 5,200
Task 2 Subtotal	0	20	68	0	0	88	\$ 15,828	\$ 4,333	\$ 700		\$ 16,868
Task 3 - Hydraulic Modeling On-Call Services											
Task 3.1 - Fire flow modeling		8	90		72	170	\$ 27,222	\$ 7,083	\$ -		\$ 28,922
Task 3.2 - Main sizing			60	10	48	118	\$ 18,564	\$ 4,794	\$ -		\$ 19,740
Task 3.3 - Maintenance support		12	60	14	48	134	\$ 21,852	\$ 5,736	\$ -		\$ 23,196
Task 3.4 - Capital Improvement Program support		12	90	24	72	198	\$ 31,902	\$ 8,334	\$ -		\$ 33,882
Task 3 Subtotal	0	32	300	48	240	620	\$ 99,540	\$ 25,947	\$ -	\$ 6,200	\$ 105,740
TOTAL - ALL TASKS	12	101	412	48	240	857	\$ 143,514	\$ 38,183	\$ 700	\$ 6,200	\$ 151,154



2019 SCHEDULE OF CHARGES

Personnel:

Labor will be invoiced by staff classification at the following hourly rates, which are valid from January 1, 2019 to December 31, 2019. After this period, the rates are subject to adjustment.

<u>Billing Classification</u>	<u>2019 Rates</u>
Principal Engineer VI	260
Principal Engineer V	251
Principal Engineer IV	245
Principal Engineer III	234
Principal Engineer II	226
Principal Engineer I	218
Professional Engineer IX	210
Engineering Designer IX	202
Professional Engineer VIII	200
Engineering Designer VIII	192
Professional Engineer VII	191
Engineering Designer VII	183
Professional Engineer VI	180
Engineering Designer VI	173
Professional Engineer V	171
Engineering Designer V	164
Professional Engineer IV	160
Engineering Designer IV	160
Professional Engineer III	154
Engineering Designer III	154
Engineering Designer II	141
Engineering Designer I	135
Technician IV	150
Technician III	137
Technician II	120
Technician I	105
Administrative III	112
Administrative II	104
Administrative I	91

Project Expenses:

Expenses incurred in-house that are directly attributable to the project will be invoiced at actual cost. These expenses include the following:

CADD Hardware/Software	\$18.00/hour
Modeling and GIS Hardware/Software	\$10.00/hour
Mileage	Current IRS Rate
Postage and Delivery Services	At Cost
Printing and Reproduction	At Cost
Travel, Lodging and Subsistence	At Cost

Outside Services:

Outside technical, professional, and other services will be invoiced at actual cost-plus 10 percent to cover administration and overhead.

AMENDMENT NO. 1 TO CONTRACT CW2225761

THIS AMENDMENT is made and entered into effective as of January 31st, 2019 ("Effective Date"), by and between the CITY OF TACOMA, a municipal corporation of the State of Washington (hereinafter called the "CITY") and MURRAYSMITH INC, a Licensed Engineering Corporation (hereinafter called the "CONTRACTOR").

WHEREAS effective August 1st, 2018 CITY and the CONTRACTOR entered into a Contract ("Contract") for hydraulic modeling services, in the amount of \$172,476 and with a termination date of January 31st, 2019, and

WHEREAS in recognition of CITY's ongoing need for services under the Contract the parties wish to amend the Contract to extend the termination date to September 1st, 2019.

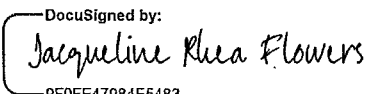
NOW, THEREFORE, in consideration of the mutual promises and obligations hereinafter set forth, the parties agree as follows:

1. The Contract termination date is extended from January 31st, 2019 to September 1st, 2019.
2. All other terms and conditions of the Contract remain the same.

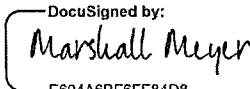
Should this Amendment be executed after the Effective Date noted above all terms and conditions herein shall operate retroactively to Effective Date.

IN WITNESS WHEREOF, the Parties hereto have accepted and executed this Amendment, 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 Amendment for and on behalf of Contractor.

CITY OF TACOMA:

By: 
9F0FE47984E5483...

CONTRACTOR:

By: 
E604A6BF6FF84D8...

SERVICES CONTRACT

THIS CONTRACT, made and entered into effective 8/1/2018 by and between the CITY OF TACOMA, a municipal corporation of the State of Washington (hereinafter referred to as the "CITY"), and **MURRAYSMITH INC.**, (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 provision of on-call hydraulic modeling assistance as is described in Exhibit A, Scope of Work and Fees, attached hereto and incorporated herein.

2. 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.

3. On Call Contracts

If the services and deliverables performed under this Contract are on an on call or as assigned basis, service and deliverables may be assigned by Task Authorization or Statements of Work.

4. Term

All services shall be satisfactorily completed on or before January 31, 2019 and this Contract shall expire on said date unless mutually extended in writing by the Parties.

5. 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.

6. Compensation

The CITY shall compensate the CONTRACTOR for the services and deliverables performed under this Contract in accordance with the Scope of Work and Fees presented in Exhibit A.

7. 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 \$172,476.00 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.

8. Payment

CONTRACTOR shall submit Monthly invoices for services completed and/or deliverables furnished during the invoice period. 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.

9. 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.

10. 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.

11. 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.

12. Contract Administration

Tacoma Water Engineer and Project Manager, Matt Hubbard, as primary contact 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.

13. 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.

14. Records Retention

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

15. 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.

16. 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: Matt Hubbard Title: Engineer Address: 3628 South 35 th Street Tacoma, WA 98409 Telephone No.: (253) 502-8501 E-mail: mjhubbard@cityoftacoma.org	CONTRACTOR: Name: Marshall Meyer Title: Senior Engineer Address: 1145 Broadway Plaza, Suite 1010 Tacoma, WA 98402 Telephone No.: (253) 219-8906 E-mail: masrhall.meyer@murraysmith.us
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17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

It is expressly agreed that with respect to design professional services performed by CONTRACTOR herein, CONTRACTOR's duty of indemnification, including the duty and cost to defend, against liability for damages arising out of such services or out of bodily injury to persons or damage to property shall, as provided in RCW 4.24.115 apply only to the extent of CONTRACTOR's negligence.

22. 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.

23. 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 (Exhibit B). The City of Tacoma Insurance Requirements documents is fully incorporated herein by reference.

24. 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.

25. 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.

26. 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.

27. 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 herein to mark all content considered to be confidential or proprietary, 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.

28. 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 notice requirements 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).

29. 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.

30. 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.

31. 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.

32. 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.

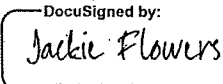
Authority to enter into this Contract.

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.

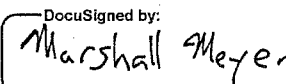
For service contracts valued \$25,000 or less the City signature authorizes waiver of competitive solicitation by "Direct Solicitation and Negotiation" of professional and personal services in accordance with Tacoma Municipal Code 1.06.256 and the Purchasing Policy Manual..

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:

By: 
9F0FE47984E5483...

CONTRACTOR:

By: 
E604A6BF6FF84D8...

TACOMA WATER ON-CALL HYDRAULIC MODELING ASSISTANCE SCOPE OF WORK

Background

Tacoma Water is currently using an Innovyze InfoWater hydraulic model which is used for analyzing the water distribution system. Tacoma Water has staff that operates the hydraulic model, but due to changing staffing availability and workload, is in need of on-call technical assistance to update and operate the model.

The proposed scope of work outlined below develops the framework to achieve this goal on an as-needed basis.

Overview

The items defined herein for modeling services consist of the following major tasks:

1. Project Management
2. GIS Fire Flow Layer Development
3. Hydraulic Modeling On-Call Services

Scope of Services

1 Project Management and Coordination

This task provides for project management and coordination through completion of all tasks.

1.1 Kick-off Meeting

A kick-off meeting will be held at Tacoma Water offices to introduce Murraysmith and Tacoma Water staff, review the scope of work and discuss communication protocols.

1.2 Hydraulic Model Orientation:

Under this task the data files, configuration, and operating parameters of Tacoma Water's existing hydraulic model will be reviewed and confirmed. The purpose of this task is to develop a level of understanding of the hydraulic model and system operation to allow it to be used by Murraysmith staff.

1.3 Monthly Progress Reports and Invoices.

This task will prepare and submit electronic monthly invoice for review and approval by Tacoma Water. Each invoice shall include the following information:

- Billing period (start and end date) included in the invoice
- Description of work accomplished in each work breakdown structure (WBS)/contract task for the billing period
- Name, billing rate and hours for each resource that worked on each task
- Percent spent vs. percent completed (by task if appropriate to the project)
- Potential out-of-scope work items.

Report status of project work activities, data needs and issues requiring City input through bi-weekly project status e-mails and phone calls to City Project Manager.

1.4 Quality Assurance/Quality Control.

Perform in-house quality assurance reviews of all deliverables.

Provided by Tacoma Water:

- Timely review and processing of consultant invoices
- Project Team contact information
- Host kick-off meeting

Assumptions:

- The total length of this phase of the project is estimated to be up to six (6) months.
- Anticipated notice to proceed will be on or about July 18, 2018.
- Kickoff meeting will be attended by up to two (2) Murraysmith staff

Consultant Deliverables:

- Up to 13 bi-weekly email project status reports.
- Up to six (6) months of progress reports and invoices

2 GIS Fire Flow Layer Development

Develop a data layer to be used by Tacoma Water permitting staff, that shows available fire flow information under current conditions based on hydraulic model results.

2.1 Hydraulic Model Scenarios:

Under this task the data files, configuration and operating parameters of Tacoma Water's existing hydraulic model will be reviewed and updated to include a subset of scenarios representing system

conditions for fire flow analyses to be conducted in different pressure zones. These fire flow parameters will be used to run batch fire flow simulations and generate the data for the GIS layer to be delivered under this task.

2.2 Develop GIS Layer:

Develop a GIS layer that includes a model node for every hydrant in the water system, and contains available fire flow information, including design flow (to maintain system service pressures above 20 psi), residual pressure at hydrant during design flow, and static pressure. This will be used by Tacoma Water permit counter staff as a basic fire flow reference. There are approximately 10,000 hydrants in the system and approximately 68,000 nodes (including hydrants), across 52 pressure zones in the hydraulic model. The available fire flows will be reported at the model node nearest the fire hydrant's physical location. These reported values are understood to be similar to the approach currently used by Tacoma Water, but can vary from actual flows through the hydrant depending on the actual demand conditions, hydrant lateral lengths and field conditions of the actual water system assets.

2.2.1 Run batch fire flow analyses.

Run the batch fire flows for each scenario developed and export information to a combined file to be used in developing the GIS data layer.

2.2.2 Compile results into GIS data layer.

Develop a point GIS data layer that includes points for each fire hydrant location. Each point will have attribute data for the available fire flow predicted in the model and which fire flow scenario was used for the analysis.

Provided by the City:

- Latest calibrated hydraulic model in InfoWater format.
- Water system background GIS files such as pressure zones, facility locations, etc.
- GIS data layer for each hydrant location.

Assumptions:

- The hydraulic model will be updated to include up to 12 modeling scenarios to conduct batch fire flow analyses.
- Updated modeling scenarios will be based on the working scenario, currently used by Tacoma Water staff with minimal changes to tank level and PRV settings only.
- Model currently has all hydrant locations included as a GIS layer, but nodes are not yet identified; these nodes will be identified and used to develop the GIS data layer.

- Current model is calibrated and in good working order.
- The available fire flows will be reported at the model node nearest the fire hydrant's physical location. These reported values are understood to be similar to the approach currently used by Tacoma Water, but can vary from actual flows through the hydrant depending on the actual demand conditions, hydrant lateral lengths and field conditions of the actual water system assets.

Consultant Deliverables:

- GIS shapefile or geodatabase with available fire flow and residual and static pressures for each fire hydrant location.

3. Hydraulic Modeling On-Call Services:

Work under this task includes providing approximately 20 to 30 hours per week of on-call hydraulic modeling services on an as-needed basis to support ongoing operations of the Tacoma Water engineering and business functions. Work anticipated under this task includes, but is not limited to the following activities.

3.1. Fire flow modeling

Perform fire flow modeling in support of customer water availability requests; although it is difficult to accurately predict the number and timing of these requests, the proposed budget assumes 5 hours/week will be spent on this subtask.

3.2. Main sizing

Perform hydraulic modeling for main sizing within the distribution system; although it is difficult to accurately predict the number and timing of these requests, the proposed budget assumes 3 hours/week will be spent on this subtask.

3.3. Maintenance support

Provide modeling support to answer system operations questions such as taking facilities out of service for maintenance. Typical concerns are flow reversals, velocity changes, water availability and adequacy, pressures, water age, and others. Although it is difficult to accurately predict the number and timing of these requests, the proposed budget assumes 5 hours/week will be spent on this subtask.

3.4. Capital Improvement Program Support

In support of the Capital Improvement Program, conduct "What if" scenarios for changing system conditions. Such as, the effect of changing set points, assist in determining the need for and sizing of new facilities, or the effect of retiring existing facilities. Although it is difficult to accurately

predict the number and timing of these requests, the proposed budget assumes 15 hours/week will be spent on this subtask.

Provided by the City:

- Written work requests.
- Responses to requests for information pertaining to the work requests.

Assumptions:

- Hydraulic modeling work will be completed at Murraysmith offices.
- Requests for information or clarifications will be reviewed and resolved by Tacoma Water staff promptly, within three (3) business days.
- Murraysmith will provide on-call support within the limits of the identified budget. Additional requests will require an amendment to the identified budget.

Consultant Deliverables:

- Written responses via emails, technical memoranda and graphics summarizing results of hydraulic modeling tasks.
- Telephone correspondences to review or clarify hydraulic modeling tasks.

Budget

Tasks 1 and 2 in this scope of work will be completed on a time and materials basis with a not to exceed amount as indicated in the attached fee estimate. Work under Task 3 will be completed on a time and materials basis as authorized by Tacoma Water up to the amount shown in the attached fee estimate. If additional effort is required, a contract amendment will be required.

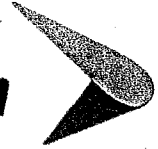
Estimated Schedule

It is anticipated work will begin in July of 2018 and extend on an as-needed basis until January 31, 2019.

As each analysis can differ significantly depending on a number of variables and the exact details of the request, Murraysmith will work to meet Tacoma Water's target turnaround time of five (5) business days whenever feasible, with specific timelines to be established at the time each request is received.

On-Call Hydraulic Modeling Support
Tacoma Water
PROPOSED FEE ESTIMATE

	LABOR CLASSIFICATION (HOURS)						ESTIMATED FEES			
	Principal Engineer V \$735	Professional Engineer VIII \$190	Professional Engineer IV \$152	Engineering Designer II \$134	Technician IV \$143	Administrative II \$99	Hours	Labor	Expenses	Total
Task 1 - Project Management and Coordination										
Task 1.1 - Kick-off Meeting							0	\$ -	\$ -	\$ -
Task 1.2 - Hydraulic Model Orientation		4	6				10	\$ 1,672	\$ -	\$ 1,672
Task 1.3 - Monthly Progress Reports and Invoicing		20	20	40			80	\$ 12,200	\$ 800	\$ 13,000
Task 1.4 - Quality Assurance / Quality Control (QA/QC)		6	4				10	\$ 1,748	\$ -	\$ 1,748
	12	30	40				82	\$ 14,648	\$ -	\$ 14,648
Task 1 Subtotal	12	60	70	40	0	0	182	\$ 30,268	\$ 800	\$ 31,068
Task 2 - GIS Fire Flow Layer Development										
Task 2.1 - Hydraulic Model Scenarios		8	20	26			0	\$ -	\$ -	\$ -
Task 2.2 - Develop GIS Layer		2	4	16	4		54	\$ 8,044	\$ 460	\$ 8,504
	0	10	24	42	4	0	26	\$ 3,704	\$ 200	\$ 3,904
Task 2 Subtotal	0	10	24	42	4	0	80	\$ 11,748	\$ 660	\$ 12,408
Task 3 - Hydraulic Modeling On-Call Services										
Task 3.1 - Fire flow modeling		8	20	130		2	0	\$ -	\$ -	\$ -
Task 3.2 - Main sizing		8	8	78		2	160	\$ 22,178	\$ 1,500	\$ 23,678
Task 3.3 - Maintenance support		16	20	130		2	96	\$ 13,386	\$ 860	\$ 14,246
Task 3.4 - Capital Improvement Program support		16	40	390		2	168	\$ 23,698	\$ 1,500	\$ 25,198
	0	48	88	728	0	8	448	\$ 61,578	\$ 4,300	\$ 65,878
Task 3 Subtotal	0	48	88	728	0	8	872	\$ 120,840	\$ 8,160	\$ 129,000
TOTAL - ALL TASKS	12	118	182	810	4	8	1,134	\$ 162,856	\$ 9,620	\$ 172,476



2018 SCHEDULE OF CHARGES

Personnel:

Labor will be invoiced by staff classification at the following hourly rates, which are valid from January 1, 2018 to December 31, 2018. After this period, the rates are subject to adjustment.

Principal Engineer VI	\$248.00
Principal Engineer V	\$239.00
Principal Engineer IV	\$233.00
Principal Engineer III	\$223.00
Principal Engineer II	\$215.00
Principal Engineer I	\$208.00
Professional Engineer IX	\$200.00
Engineering Designer IX	\$192.00
Professional Engineer VIII	\$190.00
Engineering Designer VIII	\$183.00
Professional Engineer VII	\$182.00
Engineering Designer VII	\$174.00
Professional Engineer VI	\$171.00
Engineering Designer VI	\$165.00
Professional Engineer V	\$163.00
Engineering Designer V	\$156.00
Professional Engineer IV	\$152.00
Engineering Designer IV	\$152.00
Professional Engineer III	\$147.00
Engineering Designer III	\$147.00
Engineering Designer II	\$134.00
Engineering Designer I	\$129.00
Technician IV	\$143.00
Technician III	\$130.00
Technician II	\$114.00
Technician I	\$100.00
Administrative III	\$107.00
Administrative II	\$99.00
Administrative I	\$87.00

Project Expenses:

Expenses incurred in-house that are directly attributable to the project will be invoiced at actual cost. These expenses include the following:

CADD Hardware/Software	\$18.00/hour
Modeling and GIS Hardware/Software	\$10.00/hour
Mileage	Current IRS Rate
Postage and Delivery Services	At Cost
Printing and Reproduction	At Cost
Travel, Lodging and Subsistence	At Cost

Outside Services:

Outside technical, professional and other services will be invoiced at actual cost plus 10 percent to cover administration and overhead.



Exhibit B: CITY OF TACOMA INSURANCE REQUIREMENTS

The Contractor (Contractor) shall obtain and maintain the minimum insurance set forth below. By requiring such minimum insurance, the City of Tacoma (City) shall not be deemed or construed to have assessed the risk that may be applicable to Contractor under this Contract. Contractor shall assess its own risks and, if it deems appropriate and /or prudent, maintain greater limits and/or broader coverage.

1. GENERAL REQUIREMENTS

The following General Requirements apply to Contractor and to Subcontractor(s) of every tier performing services or activities pursuant to the terms of this Contract. Contractor acknowledges and agrees to the following insurance requirements applicable to Contractor and Contractor's Subcontractor(s):

- 1.1. City reserves the right to approve or reject the insurance provided based upon the insurer, terms and coverage, the Certificate of Insurance, and/or endorsements.
- 1.2. The insurance must be written by companies licensed in the State of Washington pursuant to RCW 48 with an (A-) VII or higher in the A.M. Best's Key Rating Guide www.ambest.com.
- 1.3. Contractor shall keep this insurance in force during the entire term of the Contract and for thirty (30) calendar days after completion of all work required by the Contract, unless otherwise provided herein.
- 1.4. Policies of Insurance, *such as Commercial General Liability or Commercial Auto Liability or Marine General Liability or Aircraft General liability or Excess Liability*, required under this Contract that name City as Additional Insured shall:
 - 1.4.1. Be considered primary and non-contributory for all claims.
 - 1.4.2. Contain a "Severability of Insureds", "Separation of Interest", or "Cross Liability" provision and a "Waiver of Subrogation" clause in favor of City.
- 1.5. A Waiver of Subrogation in favor of City for General Liability and Automobile Liability.
- 1.6. Insurance limits shown below may be written with an excess policy that follows the form of an underlying primary liability policy or an excess policy providing the required limit.
- 1.7. Insurance policy(ies) shall be written on an "occurrence" form, except for Professional Liability/Errors and Omissions, Pollution Liability, and Cyber/Privacy and Security.
- 1.8. If coverage is approved and purchased on a "Claims-Made" basis, Contractor warrants continuation of coverage, either through policy renewals or by the purchase of an extended reporting period endorsement as set forth below.
- 1.9. Contractor shall provide City notice of any cancellation or non-renewal of this required insurance within 30 calendar days.
- 1.10. Contractor shall not begin work under the Contract until the required insurance has been obtained and approved by City.
- 1.11. Contractor shall not allow any insurance to be cancelled or lapse during any term of this Contract, otherwise it shall constitute a material breach of the Contract, upon which City may, after giving five (5) business day notice to Contractor to correct the breach, immediately



Exhibit B: CITY OF TACOMA INSURANCE REQUIREMENTS

terminate the Contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith; with any sums so expended to be repaid to City by Contractor upon demand, or at the sole discretion of City, offset against funds due Contractor from City.

- 1.12. Contractor shall be responsible for all premiums, deductibles and self-insured retentions. All deductibles and self-insured retained limits shall be shown on the Certificates of Insurance. Any deductible or self-insured retained limits in excess of Ten Thousand Dollars (\$10,000) must be approved by City Risk Management Division.
- 1.13. Insurance coverages specified in this Contract are not intended and will not be interpreted to limit the responsibility or liability of Contractor or Subcontractor(s).
- 1.14. City reserves the right to review insurance requirements during any term of the Contract and to require that Contractor make reasonable adjustments when the scope of services has been expanded.
- 1.15. All costs for insurance shall be incidental to and included in the unit or lump sum prices of the Contract and no additional payment will be made by City to Contractor.
- 1.16. City, including its officers, elected officials, employees, agents, and authorized volunteers, and any other entities, as required by the Contract, shall be named as additional insured(s) by endorsement for all liability insurance policies set forth below (EXCEPT Professional Liability). No specific person or department should be identified as the additional insured.
- 1.17. Contractor shall deliver a Certificate of Insurance for each policy of insurance meeting the requirements set forth herein when Contractor delivers the signed Contract for the work to City. Contractor shall deliver copies of any applicable Additional Insured, Waiver of Subrogation, and primary and non-contributory endorsements. Contract or Permit number and the City Department must be shown on the Certificate of Insurance.
- 1.18. Failure by City to identify a deficiency in the insurance documentation provided by Contractor or failure of City to demand verification of coverage or compliance by Contractor with these insurance requirements shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

2. **SUBCONTRACTORS**

It is Contractor's responsibility to ensure that each subcontractor obtain and maintain adequate liability insurance coverage. Contractor shall provide evidence of such insurance upon City's request.

3. **REQUIRED INSURANCE AND LIMITS**

The insurance policies shall provide the minimum coverages and limits set forth below. Providing coverage in these stated minimum limits shall not be construed to relieve Contractor from liability in excess of such limits.

3.1. Commercial General Liability (CGL) Insurance

The CGL insurance policy must provide limits not less than One Million Dollars (\$1,000,000) each occurrence and Two Million Dollars (\$2,000,000) annual aggregate.

The CGL policy shall be written on an Insurance Services Office (ISO) form CG 00 01 (04-13) or its equivalent. Products and Completed Operations shall be maintained for a period of one year following final acceptance of the work. The CGL policy shall be endorsed to include:



Exhibit B: CITY OF TACOMA INSURANCE REQUIREMENTS

- 3.1.1 A per project aggregate policy limit.
- 3.1.2 Contractual Liability-Railroad using ISO form CG 24 17 (10-01) or equivalent if Contractor is performing work within fifty (50) feet of a City railroad right of way.
- 3.1.3 City as additional insured using ISO form endorsements CG 20 10 (04-13) and CG 20 37 (04-13) or equivalent for ongoing and completed operations, or using ISO form endorsement CG 20 26 (04-13) or equivalent for Facility Use Agreements. Neither additional insured provisions within an insurance policy form, nor blanket additional insured endorsements will be accepted in lieu of the endorsements specified herein.

3.2 Commercial Automobile Liability (CAL) Insurance

Contractor shall obtain and keep in force during the term of the Contract, a policy of CAL insurance coverage, providing bodily injury and property damage coverage for owned (if any), non-owned, hired, or leased vehicles.

Contractor must also maintain an MCS 90 endorsement or equivalent and a CA 9948 endorsement or equivalent if "Pollutants" are to be transported. CAL policies must provide limits not less than One Million Dollars (\$1,000,000) each accident for bodily injury and property damage. Must use ISO form CA 0001 or equivalent.

3.3 Workers' Compensation

Contractor shall comply with Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington, as well as any other similar coverage required for this work by applicable federal laws of other states.

3.4 Employers' Liability (EL) (Stop-Gap) Insurance

Contractor shall maintain EL coverage with limits not less than One Million Dollars (\$1,000,000) each employee, One Million Dollars (\$1,000,000) each accident, and One Million Dollars (\$1,000,000) policy limit.

3.5 Professional Liability Insurance (PLI) or Errors and Omissions (E&O)

Contractor and/or its subcontractor shall maintain PLI or E&O covering acts, errors and omissions arising out of the professional services under this contract. Such policy must provide minimum limits of One Million Dollars (\$1,000,000) per claim and Two Million Dollars (\$2,000,000) aggregate. If the policy limit includes the payment of claims or defense costs, from the policy limit, the per claim limit shall be Two Million Dollars (\$2,000,000). If the scope of such design-related professional services includes work related to pollution conditions, the PLI policy shall include Pollution Liability coverage. If provided on a "claims-made" basis, such coverage shall be maintained by policy renewals or an extended reporting period endorsement for not less than three years following the end of the Contract.

3.6 Other Insurance

Other insurance may be deemed appropriate to cover risks and exposures related to the scope of work or changes to the scope of work required by City. The costs of such necessary and appropriate insurance coverage shall be borne by Contractor.

4. CONTRACTOR



Exhibit B: CITY OF TACOMA INSURANCE REQUIREMENTS

As used herein, "Contractor" shall be the Supplier(s) entering a Contract with City, whether designated as a Supplier, Contractor, Vendor, Proposer, Bidder, Respondent, Seller, Merchant, Service Provider, or otherwise.

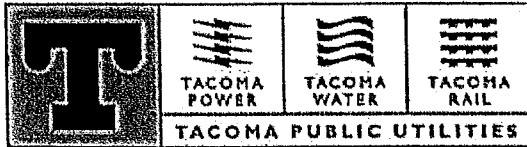


EXHIBIT "A"

RESOLUTION NO.: U-11080

ITEM NO.: #3

MEETING DATE: 6-26-19

TO: Board of Contracts and Awards
FROM: Jim Sant, Deputy Director, Public Affairs & Communications,
Dan Drennan, Manager of Market Development
COPY: Public Utility Board, Director of Utilities; Board Clerk, SBE Coordinator, LEAP
Coordinator, and Samol Hefley, Finance/Purchasing
SUBJECT: Market Strategies International (MSI) for \$490,000 over 4 years –
SR1673075269
Requested Utility Board
DATE: June 26, 2019

RECOMMENDATION SUMMARY:

TPU Public Affairs & Communications requests a waiver of competitive procurement procedures and recommends that a contract be awarded to Market Strategies International, Portland, OR, for customer experience and satisfaction tracking research services, in the amount of \$490,000 for a 4 year term, plus any applicable taxes.

BACKGROUND:

Public Affairs & Communications completed an RFP process in 2014 to identify a firm to develop a customer satisfaction tracking program, as well as conduct studies to assess customer perceptions of various organization performance measures, communications, and programs. MSI was selected because of their expertise in customized market research, in-depth utility industry knowledge, full in-house data collection, research sciences department, and robust utility benchmarking capabilities that are offered by only two national firms.

ISSUE:

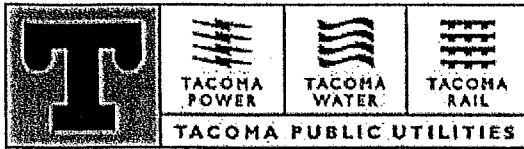
MSI worked with TPU to create a tailored satisfaction tracking program for both residential and commercial customers. The customer satisfaction tracking serves as a key performance indicator for all of the divisions as well as the Public Utility Board to assess performance and emerging customer needs. If TPU were to select another research vendor, the tracking program would need to be redeveloped and historical performance and benchmarking data would likely not be included in the new reporting.

ALTERNATIVES:

Public Affairs & Communications could conduct another RFP process; however, MSI is one of two primary research companies that offer nationwide benchmarking across a broad sample of utilities, and therefore, the alternative options are extremely limited. In addition, reporting would not include historical trending data provided by the current research vendor, which utility leadership has become dependent upon for reporting purposes.

COMPETITIVE ANALYSIS:

An RFP process was conducted in 2014 to select a vendor to provide quantitative and qualitative research services to TPU. Among those who submitted proposals, MSI was the only



vendor that offered tailored research capabilities and benchmarking across a broad sample of utilities.

MSI has been providing research services to TPU for 5 years, including historical trending data that is used for TPU's Key Performance Indicators (KPIs) and utility performance benchmarking. Customer assessments and evaluations are used to measure the performance of TPU to determine priorities for organizational actions and investments in operations, training, communications, and product/service offerings or improvements. MSI has over 90 utility clients nationally and provides research services to many comparable utilities, including several in the region. As a result of its utility clients, MSI has a competitive advantage in that it is able to provide extensive benchmarking rankings which help identify areas for improvement and inform key strategic decisions regarding customer experience improvements. In addition, MSI has in-depth utility industry knowledge, full in-house data collection capabilities, and a research sciences department; thus, they are able to provide a continuity of service as well as impactful results. Moreover, MSI is a recognized leader and expert in providing customized market research for the utility industry. There are extremely few vendors that offer this level of industry expertise and tailored services. TPU leadership has placed customer experience and value as a strategic imperative, and MSI's services are critical to ensure representative customer input regarding utility performance and areas for improvement are included in ongoing strategic initiatives.

CONTRACT HISTORY: New Contract

SBE/LEAP COMPLIANCE: Not Applicable

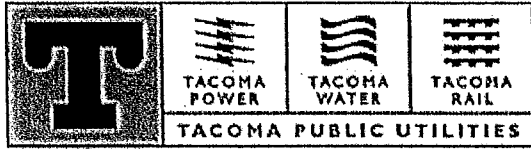
FISCAL IMPACT:

EXPENDITURES:

FUND NUMBER & FUND NAME *	COST OBJECT (CC/WBS/ORDER)	COST ELEMENT	TOTAL AMOUNT
4700 Power	572000	Prof Services	\$490,000
TOTAL			

REVENUES:

FUNDING SOURCE	COST OBJECT (CC/WBS/ORDER)	COST ELEMENT	TOTAL AMOUNT
TOTAL			



FISCAL IMPACT TO CURRENT BIENNIAL BUDGET:

ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED? Yes

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

A handwritten signature in black ink, appearing to read 'Jim Sant', is written over the 'N/A' response.

Jim Sant, Utilities Deputy Director

APPROVED:

A handwritten signature in black ink, appearing to read 'Jackie Flowers', is written over the 'APPROVED:' text.

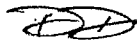
Jackie Flowers / Director of Utilities



City of Tacoma

Date: March 29, 2019

To: Jackie Flowers, Director of Utilities/CEO

From: Dan Drennan
Market Development Manager/Public Affairs and Communications 

Subject: Authorization of Direct Negotiation for Professional Services and Personal Services over \$25,000

For your review and recommendation.

In accordance with TMC 1.06.256 (B), Public Affairs and Communications requests a waiver of the competitive solicitation process and authorization to directly negotiate with **Market Strategies International (MSI)**, for tailored primary market research studies, including surveys, focus groups, and in-depth interviews that provide insight into the behaviors and motivators that impact customer experience, utility operations, and program decisions, for an amount of \$490,000 over 4 years, plus applicable sales tax.

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

EXPLANATION: Market Strategies International will assist with market research project design and execution, including: methodology, sampling, questionnaire development, survey programming, fieldwork, data processing, analysis, and reporting.

JUSTIFICATION FOR DIRECT NEGOTIATION:

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

MSI has been providing research services to TPU for 5 years, including historical trending data that is used for TPU's Key Performance Indicators (KPIs) and utility performance benchmarking. MSI has over 90 utility clients nationally and provides research services to many comparable utilities, including several in the region. As a result of its utility clients, MSI has a competitive advantage in that it is able to provide extensive benchmarking rankings which help identify areas for improvement and inform key strategic decisions regarding customer experience improvements. In addition, MSI has in-depth utility industry knowledge, full in-house data collection capabilities, and a research sciences department; thus, they are able to provide a continuity of service, as well as impactful results. Moreover, MSI is a recognized leader and expert in providing customized market research for the utility industry. There are extremely few vendors that offer this level of industry expertise and tailored services. TPU leadership has placed customer experience and value as a strategic imperative, and MSI's services are critical to ensure representative customer input regarding utility performance and areas for improvement are included in ongoing strategic initiatives.



City of Tacoma

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

No.

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

An RFP process was conducted in 2014 to select a vendor to provide quantitative and qualitative research services to TPU. Among those who submitted proposals, MSI was the only vendor that offered tailored research capabilities and benchmarking across a broad sample of utilities.

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

MSI will work with TPU to identify the best methodology possible given the budget parameters. For example, online data collection will be used more frequently over time to keep costs as low as possible.

FUNDING: Funds for this purchase are available in the Public Affairs' Market Development budget.

SBE COMPLIANCE: The Department/Division has checked the City of Tacoma Small Business Enterprise (SBE) website for opportunities to contract with SBE firms on Date Completed. Choose an item.

PROJECT COORDINATOR: Holly Lucht, Market & Business Research Analyst, Market Development, 253.441.4830.

MASTER SERVICES AGREEMENT

THIS AGREEMENT, dated this _____ day of _____, 2019 ("Effective Date"), is between ESCALENT, INC., with offices at 17430 College Parkway, Livonia, MI 48152 ("Escalent") and Tacoma Public Utilities with offices at 3628 S 35th St, Tacoma, WA, US, 98409 ("Client") to confirm the terms and conditions upon which ESCALENT will perform consulting services (the "Services") for Client.

1. **Consulting Services.** All Services provided by ESCALENT will be pursuant to a PROJECT ORDER in the form attached as Exhibit A (a "Project Order") that is issued by Client to ESCALENT and is accepted by ESCALENT. Client shall in each Project Order specify the following: a description of the Services and all work products to be delivered by ESCALENT pursuant to the Services (the "Deliverables"); specifications for the Services and Deliverables; a projected timetable for the Services, including, if applicable any milestones or deadlines for the Deliverables (the "Deadlines"); the fees (the "Fees") payable to ESCALENT for those Services; any additional duties or responsibilities of Client in connection with the Project Order; and any other terms consistent with this Agreement. If the specified terms are acceptable to ESCALENT, ESCALENT will sign and deliver that Project Order to Client and, upon such delivery, ESCALENT and Client will be legally bound to proceed as specified in that Project Order. If the specified terms are not acceptable to ESCALENT, ESCALENT and Client will negotiate in good faith to attempt to resolve any differences regarding those terms and, if they are able to do so, Client will revise and Client and ESCALENT will sign the Project Order and, upon such signing, ESCALENT and Client will be legally bound to proceed as specified in that revised Project Order. ESCALENT will not be legally obligated to provide and Client will not be legally obligated to accept and pay for any Services that are not included in a Project Order that is not signed by both Client and ESCALENT.

2. **Compensation.**

(a) Client will pay to ESCALENT the Fees for the Services and Deliverables that are specified in each signed Project Order. In the event that during performance of the Project Order, ESCALENT determines that the budget for the Fees will be exceeded, ESCALENT shall confer with Client regarding the increased budget and secure Client's prior written approval before proceeding further with the Project Order. The total amount of compensation under this Agreement may not exceed \$490,000 without written approval of Client in the form of a mutually executed amendment hereto.

(b) Client will reimburse ESCALENT for all reasonable out-of-pocket expenses incurred by ESCALENT personnel for expenditures identified in the Project Order which are required to perform that Project Order (the "Reimbursable Expenses"). Reimbursable Expenses shall conform to the following guidelines:

(i) Airline travel will be limited to coach class fares and no first class or business class travel shall be used unless explicitly approved by Client. Costs of ground transportation, parking, etc. for airline travel will be reimbursed at actual incurred costs, including any reasonable gratuities.

(ii) Auto expenses will be reimbursed at the current IRS mileage standard per mile plus any tolls. If the parties agree to arrange for a rental car as specified in the Project Order, actual costs will be reimbursed.

(iii) Lodging will be reimbursed at standard, single room rates using reasonably priced facilities.

(iv) Meals will be reimbursed at actual out-of-pocket expenses, including any reasonable gratuities. Daily meals shall not exceed \$30 per day per person unless otherwise authorized by Client.

(v) All expense charges shall be based on actual out-of-pocket expenses. No "service" charge shall be applied. ESCALENT shall provide copies of all original receipts.

(c) In the event that a Project Order is terminated prior to completion, Client shall pay ESCALENT the Fees for Services performed, on a prorated basis, and shall pay ESCALENT for all Reimbursable Expenses incurred by ESCALENT through the date of termination. In no event shall such amounts exceed the amount that would have been payable to ESCALENT, had Project Order not been terminated.

(d) ESCALENT will issue invoices to Client for Fees and Reimbursable Expenses under a Project Order at the times specified in that Project Order and Client will pay each such invoice within thirty (30) days after receipt. Any invoice not paid when due will bear interest from its due date to the date of payment at the rate of 8% per annum.

3. **Review and Delivery of Reports, Etc.** During the course of performing each Project Order, ESCALENT personnel will be available for telephone and/or in-person consultation to Client as is reasonable and necessary to keep Client advised of the progress of Project Order and will provide Client with communications, reports and data (collectively "Interim Reports") as Client may reasonably request. Within thirty (30) days following completion of each Project Order, ESCALENT shall furnish Client with a written summary report, in such detail as Client may reasonably specify, setting forth the processes, results and all of the data generated by the Project Order (collectively "Final Report").

4. **Acceptance Procedures.** Upon delivery of any Deliverable to the Client, ESCALENT shall provide Client with a notice of delivery specifying the Deliverable provided and the date of delivery (a "Delivery Notice"). Client will have a period of fifteen (15) days following the date of delivery (an "Acceptance Period") to examine the Deliverable and to determine whether it is in substantial accordance with the specifications in the applicable Project Order. During the Acceptance Period, Client shall either notify ESCALENT of its acceptance of the Deliverable (a "Notice of Acceptance") or provide ESCALENT with notice of any deficiencies that cause the Deliverable not to be in substantial accordance with the applicable specifications (a "Notice of Deficiencies"). If Client delivers a Notice of Deficiencies, ESCALENT shall use commercially reasonable efforts to cure any deficiencies described in such Notice of Deficiencies and re-deliver the Deliverable to Client with a new Delivery Notice. Client shall have a new Acceptance Period to examine the Deliverable to determine whether ESCALENT has cured the deficiencies listed in Client's Notice of Deficiencies. This process shall be repeated until the Deliverable is accepted or is deemed to have been accepted by Client. The date of acceptance shall be the date that Client provides a Notice of Acceptance to ESCALENT or, in the case of deemed acceptance, on the date that the Acceptance Period expires.

5. **Scheduling.** A Project Order will specify Deadlines for achieving specified Services and delivering the specified Deliverables. If ESCALENT fails (or appears likely to fail) to meet a Deadline for any reason not attributable to the actions or inactions of Client (which includes, without limitation, a change of scope of the Project Order at Client's initiative), ESCALENT shall immediately notify Client and shall provide additional personnel or other resources, as reasonably requested by Client (and at no additional charge to Client) to complete the Project Order in as timely a manner as possible.

6. **Term and Termination.**

(a) This Agreement shall be effective for a four (4) year term (through Q2 2023). Notice of Client's intent to exercise renewal option(s) will be provided in writing no later than thirty (30) days prior to the expiration of the then existing term.

(b) Either party may terminate this Agreement at any time without cause by delivering written notice to the other party at least thirty (30) days prior to the effective date of termination. Upon termination, no further Project Orders shall be issued by Client or accepted by ESCALENT. Such termination shall not, however, affect the rights and obligations of Client and ESCALENT under any previously issued and accepted Project Orders, the termination of which shall be subject to Sections 6(c) or (d).

(c) Client may terminate any Project Order at any time without cause by delivering written notice to the other party at least thirty (30) days prior to the effective date of termination. Upon such termination, ESCALENT shall as of the effective date discontinue any further Services under that Project Order and shall invoice Client for the Fees for Services performed and Reimbursable Expenses incurred through the effective date of termination.

(d) Either party may terminate this Agreement, and all Project Orders outstanding under this Agreement, immediately if the other party breaches any material provision of this Agreement or a signed Project Order and does not remedy that breach within fifteen (15) days after the non-breaching party delivers written notice identifying such breach and demanding such remedial action.

7. **Warranties/Representations.** ESCALENT warrants and represents that:

(a) ESCALENT will perform all Services in a competent and professional manner using reasonable skill and care.

(b) For a period of one year after the date of Client's acceptance of each Deliverable, that Deliverable will materially conform to the specifications in the applicable Project Order. In the event any Deliverables fail to conform to those specifications, Client shall provide written notice to ESCALENT within the applicable one-year period detailing such non-conformity, and ESCALENT shall replace such Deliverable or re-perform the Services to the extent reasonably necessary to remedy such nonconformance without any additional cost to Client. If ESCALENT and Client together determine that replacement of the non-conforming Deliverables is not commercially practical, then ESCALENT will refund Client the monies paid for the non-conforming Deliverable.

(c) ESCALENT is not a party to any contract with any third party which prohibits ESCALENT from performing the Services to be provided under this Agreement and/or ESCALENT's ability to fulfill the terms of this Agreement.

(d) The Deliverables that will be provided to Client under this Agreement will not violate or infringe upon any copyright, patent, or trade secret, or other intellectual property right of any third party.

(e) At the time of delivery to Client, no Deliverable will, to ESCALENT's knowledge, contain any computer virus or other similar harmful, malicious or hidden program, code or data.

Except as otherwise provided herein, ESCALENT makes no other warranties and disclaims all other warranties, whether express, implied, or statutory, with regard to the services or deliverables, including, without limitation, all warranties of merchantability and fitness for a particular purpose and warranties arising from course of dealing or usage of trade. ESCALENT's liability for any breach of its warranty is limited to remediation, replacement or refund as provided above and in no event will ESCALENT be liable for any direct, indirect, incidental or consequential damages resulting from such breach.

8. **Confidential Information.** During the term of this Agreement and for a period of seven (7) years thereafter, ESCALENT shall not disclose or use any of Client's Confidential Information (as defined below) except as permitted in this Agreement or in writing by Client. Confidential Information shall include all information disclosed to ESCALENT by Client and all information developed by ESCALENT in the performance of its Services under any signed Project Order, except any portion of such information which:

(a) is known to ESCALENT on a non-confidential basis before receipt from Client, as evidenced by ESCALENT's written records;

(b) is disclosed to ESCALENT after receipt from Client by a third party who has a right to make such disclosure in a non-confidential manner; or

(c) is or becomes part of the public domain through no fault of ESCALENT.

Nothing in this Agreement shall be construed to restrict ESCALENT from disclosing Client's Confidential Information as required by law, including the Washington State Public Records Act, chapter 42.56.RCW, or court order or other governmental order or request, provided in each case that ESCALENT shall timely inform Client and use all reasonable efforts to limit the disclosure and maintain the confidentiality of such Confidential Information to the extent possible. In addition, ESCALENT shall permit Client to attempt to limit such disclosure by appropriate legal means. Upon completion of ESCALENT's Services under this Agreement, or the termination or expiration of this Agreement, ESCALENT shall return to Client of all of Client's Confidential Information, including but not limited to business cards, computer hardware and software, marketing and sales data, customer lists, points of contact, financial data, project lists, training materials, detail bags, reports, memoranda, notes, plans, and all other data owned by Client, regardless of the method of storage or retrieval. ESCALENT shall ensure by separate confidentiality agreements that all other personnel, employees, agents and independent contractors performing Services under this Agreement shall comply with the provisions of this Section.

9. **Inventions and Intellectual Property.** Any and all inventions, discoveries and innovations, documents, materials, software (including source code), information and deliverables (whether copyrightable or not), directly and proximately conceived or developed by ESCALENT in the performance of its Services under this Agreement (the "Work Product") shall be promptly disclosed to Client and shall be the sole property of Client and shall not be copied, reproduced or otherwise used by ESCALENT except as permitted in this Agreement or in writing by Client. At Client's request and expense, ESCALENT shall execute such documents and take such other steps as Client deems necessary or appropriate to obtain, vest, confirm or record ownership of all right, title and interest in the foregoing in Client's name, including without limitation patent, trademark and copyright ownership. If any copyright exists in any work of authorship representing Work Product, such work shall be deemed, to the extent legally permitted, as a work made for hire as that term is used in the Copyright Act of 1976. ESCALENT shall retain ownership of any of its own methodology used in connection with its Services hereunder. If any Work Product includes materials previously developed or copyrighted by ESCALENT and not originated or developed under this Agreement, ESCALENT agrees to grant and hereby grants to Client a nonexclusive fully paid royalty free license to use and copy such materials, including the right to grant sublicenses.

10. **Presentations and Publications.** ESCALENT shall not present or publish, nor submit for publication, any Work Product resulting from ESCALENT's Services under this Agreement without Client's prior written approval.

11. **No Publicity.** Neither party shall use the name of the other party in any publicity, advertising or announcement without the consenting party's prior written approval.

12. **Compliance.** In the performance of Services under this Agreement, ESCALENT will comply with all applicable federal, state and local laws, regulations and guidelines. ESCALENT shall also comply with Client policies while on Client's premises. Upon request by any properly authorized officer or employee of the FDA, ESCALENT shall permit such officer or employee, at reasonable times, to have access to and copy and verify any records and reports in ESCALENT's possession or under ESCALENT's custody or control relating to any Project Order and shall submit such records or reports (or copies thereof) upon FDA request, to the FDA.

13. **Independent Contractor-Consultant Relationship.** ESCALENT's status under this Agreement is that of an independent contractor. For the purposes of this Agreement, any individual who is assigned by ESCALENT to perform any part of the Services will stand in an employer-employee relationship with ESCALENT; and is considered ESCALENT Personnel ("ESCALENT Personnel"). All ESCALENT Personnel shall be employees of ESCALENT and shall not be deemed employees, agents, partners or joint venturers of Client for any purpose whatsoever. Neither ESCALENT nor any ESCALENT Personnel shall have any authority to bind or act on behalf of Client. This Agreement shall not entitle ESCALENT or any ESCALENT Personnel to participate in any benefit plan or program for employees of Client and ESCALENT and ESCALENT Personnel hereby waive any and all rights they may have to participate in any such plans or programs. This Agreement specifically excludes worker's compensation coverage and ESCALENT and ESCALENT Personnel hereby waive any and all rights they may have to be covered under Client worker's compensation policies. ESCALENT shall take all steps necessary to

ensure that all ESCALENT Personnel are paid all wages due them in accordance with applicable law. ESCALENT will ensure maintenance of all necessary personnel and payroll records for ESCALENT Personnel, including a Form I-9 "Employment Eligibility Verification" in compliance with the Immigration Reform and Control Act of 1986 for each; computation of their wages and withholding of applicable Federal, State, and local taxes and Federal FICA payments; remittance of employee withholdings to the proper governmental authorities and employer contributions for Federal FICA and Federal and State unemployment insurance payments; payment of net wages and fringe benefits, if any, directly to the ESCALENT Personnel; and insurance coverage for liability and workers' compensation insurance coverage covering the ESCALENT Personnel.

14. **Assignment.** ESCALENT may not assign this Agreement or any interest herein, or delegate any of ESCALENT's duties hereunder, to any third party without Client's prior written consent, which consent is within Client's sole discretion to grant or withhold. Any attempted assignment or delegation without such consent shall be null and void.

15. **Debarment.** ESCALENT warrants and represents that ESCALENT has never been, is not currently, and, during the term of this Agreement, will not become:

(a) an individual who has been debarred by the FDA pursuant to 21 U.S.C. §335a (a) or (b) ("Debarred Individual") from providing services in any capacity to a person that has an approved or pending drug product application, or an employer, employee or partner of a Debarred Individual, or

(b) a corporation, partnership or association that has been debarred by the FDA pursuant to 21 U.S.C. §335a (a) or (b) ("Debarred Entity") from submitting or assisting in the submission of any abbreviated drug application, or an employee, partner, shareholder, member, subsidiary or affiliate of a Debarred Entity.

ESCALENT further warrants and represents that no Debarred Individual or Debarred Entity has performed or rendered, or will perform or render, any services or assistance relating to activities taken pursuant to this Agreement. ESCALENT further warrants and represents that ESCALENT has no knowledge of any circumstances which may affect the accuracy of the foregoing warranties and representations, including, but not limited to, FDA investigations of, or debarment proceedings against, ESCALENT or any person or entity performing services or rendering assistance relating to activities taken pursuant to this Agreement, and ESCALENT will immediately notify Client if ESCALENT become aware of any such circumstances during the term of this Agreement.

16. **Indemnification.** Each party agrees to indemnify the other and its employees, directors, officers and agents and hold them harmless against any liability, judgment, demand, action, suit, loss, damage, cost and other expense, including but not limited to reasonable attorney's fees and court costs, (collectively, a "Liability") resulting from any third party claims made or proceedings brought against the other party to the extent such Liability results from the wrongful acts or omissions of the indemnifying party.

17. **Applicable Law.** This Agreement is being made under and shall be interpreted in accordance with the laws of the State of Washington.

18. **Entire Agreement.** This 6-page document, together with ESCALENT's responsive proposal and with each Project Order issued by Client and signed and accepted by ESCALENT, constitute the entire agreement between Client and ESCALENT with respect to the subject matter of this Agreement and those Project Orders. Neither this Agreement nor any issued and accepted Project Order may be cancelled or amended except as specifically provided in this Agreement or pursuant to a further written agreement between Client and ESCALENT.

19. **Retroactive.** Should this Agreement be executed after Effective Date, all terms and conditions herein shall operate retroactively to such Effective Date.

(Signature page to follow)

ESCALENT, INC.

By: _____

Name: Sharna F. Morelli
Typed or Printed

Title: CIO/CAO

Date: _____

TACOMA PUBLIC UTILITIES

By: _____

Name: _____
Typed or Printed

Title: Director of Utilities/CEO

Date: _____

By: _____

Name: _____
Typed or Printed

Title: Deputy Director of Public Affairs and
Communications

Date: _____

By: _____

Name: _____
Typed or Printed

Title: Director of Finance, City of Tacoma

Date: _____

Approved as to Form

By: _____

Title: Deputy City Attorney

Date: _____

EXHIBIT A

PROJECT ORDER #1

This Project Order is issued under MASTER SERVICES AGREEMENT, dated as of this _____ day of _____, 2019, (the "Agreement") between Escalent, Inc. ("ESCALENT") and Tacoma Public Utilities ("Client"). This Project Order, as amended, modified, or supplemented, includes the terms and conditions of the Agreement, which are incorporated by this reference.

BACKGROUND

Under the terms of this Project Order, Client is ordering and ESCALENT agrees to provide specific services associated with market research in support of customer satisfaction and retention, program uptake, satisfaction and retention, and other topics.

PROJECT ORDER

1. PROJECT SCOPE.

a. Scope of Effort

During this contract, which spans the calendar years 2019 – 2022 and Q2 2023, ESCALENT consultants will deliver a number of projects for TPU. Below is a list of budgeted projects. However, actual project scope may be adjusted to respond to evolving TPU needs or priorities or in response to incremental learning from one program phase to another.

Outlined below are ten custom market research projects anticipated to be conducted over the period from Q2 2019 through Q2 2023. TPU's Residential Customer Satisfaction Tracking Survey is conducted annually. The Small-Medium Business Customer Satisfaction Tracking, Residential Communications, and Residential Products and Services surveys are conducted biannually (every two years).

- **2019 - 2022** Residential Customer Satisfaction Tracking Survey (Annual)
- **2019 and 2021** Residential Communications Survey (Biannual)
- **2020 and 2022** Residential Products & Services Survey (Biannual)
- **2021 and Q1 2023** SMB Biannual Customer Satisfaction Tracking Survey (Biannual)

Specific study related scope and effort is outlined below:

ANNUAL RESIDENTIAL CUSTOMER SATISFACTION TRACKING SURVEY 2019–2022

RESEARCH OBJECTIVES

Tacoma Public Utilities' Residential Customer Satisfaction Survey has been conducted annually since 2014 in order to:

- Monitor trends of customer satisfaction, favorability and performance measures to determine priorities for company actions and investments in operations, training, communications, and product and service offerings.
- Provide actionable guidance to help the company plan programs and initiatives that will be effective in strengthening customer relationships

- Give TPU employees easy access to specific, direct feedback that can be used to identify customer preferences and concerns, plan responses, and monitor performance and progress over time.
- Compare TPU's results to Market Strategies' national energy utility customer satisfaction benchmarking database.

METHODOLOGY

The current plan is to continue with multimode (telephone and web) data collection:

- **Phone Survey:**
 - **n=400** telephone interviews conducted via customer's landline or cell phone, in proportion to the landline/cell phone distribution of the TPU Residential customer population based on the main contact phone number designated by the customer
 - Quotas set by TPU Customer Type in proportion to the TPU Residential customer population distribution: *Power, Water, Environmental Services, Power Only Single-Family, Power Only Multi-Family, Water Only, and Power and Water Only.*
- **Web Survey:**
 - **n=1000+** self-administered web surveys.
 - Since we don't want to exclude any customer from completing the web survey, there will be no specified quotas via web.
 - We will send email invitations to all five Customer Types in proportion to the TPU Residential customer population distribution.
 - All who respond will be allowed to complete the survey. (We do not want to turn any customers away from the survey due to quotas being filled.)
 - Data will be weighted by Customer Type (and potentially demographic variables) to match the TPU Residential customer population distribution.

QUESTIONNAIRE

This estimate assumes the 2019 -2022 questionnaire will be similar in content and structure to the 2018 Residential Customer Satisfaction survey, averaging approximately 20 minutes in length via phone and 13 minutes in length via web, with up to four coded open-end questions. (All open-ends and other/specify question responses will be cleaned and coded.)

DELIVERABLES

- Draft and Final questionnaires
- Sample processing and management
- Phone (n=400) and web (n=1000+) data collection, including drawing incentives for web survey (\$1000 incentive budget per survey)
- Up to four banner tabulations
- Coding and edited verbatims with tackdem for open-ended questions
- Access to Market Strategies' online portal which serves as a central hub for all project activities and documents, and provides 24/7 interactive access to survey data that is updated in near real-time throughout data collection.

- Data files (Excel, SPSS and/or SAS)
- National and Peer Group Benchmarking against Market Strategies' National Energy Utility Benchmarking Database.
- PowerPoint presentation covering key measures, trends, and benchmarking

BI-ANNUAL SMALL-MEDIUM BUSINESS CUSTOMER SATISFACTION TRACKING SURVEY, 2021 AND Q1 2023

RESEARCH OBJECTIVES

Tacoma Public Utilities' Small Medium Business Customer Satisfaction Survey has been conducted biannually since 2017 in order to:

- Monitor trends of customer satisfaction, favorability and performance measures to determine priorities for company actions and investments in operations, training, communications, and product and service offerings.
- Provide actionable guidance to help the company plan programs and initiatives that will be effective in strengthening customer relationships
- Give TPU employees easy access to specific, direct feedback that can be used to identify customer preferences and concerns, plan responses, and monitor performance and progress over time.
- Compare TPU's results to Market Strategies' national energy utility customer satisfaction benchmarking database.

METHODOLOGY

Given a limited number of eligible and valid Small-Medium Business customer email addresses on file, data collection for TPU's Small-Medium Business Customer Satisfaction Survey is conducted via phone with live interviewers:

- **Phone Survey:**
 - **n=200** telephone interviews conducted via customer's landline or cell phone, in proportion to the landline/cell phone distribution of the TPU Small-Medium Business customer population based on the main contact phone number designated by the customer
 - Quotas set by TPU Customer Type in proportion to the TPU Residential customer population distribution: *Power and Water, Power Only, and Water Only*.
 - Business customers were screened and qualified as being a TPU Small-Medium Business power and / or water customer, and the person responsible for their business location's decisions about energy / water usage and / or interactions with TPU.

QUESTIONNAIRE

This estimate assumes the 2021 and 2023 questionnaire will be similar in content and structure to the 2019 Small-Medium Business Customer Satisfaction survey, averaging approximately 20 minutes in length via phone with up to four coded open-end questions. (All open-ends and other/specify question responses will be cleaned and coded.)

DELIVERABLES

- Draft and Final questionnaires
- Sample processing and management
- Phone (n=200) data collection
- Up to four banner tabulations
- Coding and edited verbatims with tackdem for open-ended questions
- Access to Market Strategies' online portal which serves as a central hub for all project activities and documents, and provides 24/7 interactive access to survey data that is updated in near real-time throughout data collection.
- Data files (Excel, SPSS and/or SAS)
- National and Peer Group Benchmarking against Market Strategies' National Energy Utility Benchmarking Database.
- PowerPoint presentation covering key measures, trends, and benchmarking

BI-ANNUAL RESIDENTIAL COMMUNICATIONS SURVEY 2019, 2021

RESEARCH OBJECTIVES

Tacoma Public Utilities' Residential Communications Survey is conducted to measure:

- Desired level of engagement with TPU
- Recall and Readership of TPU Bill Inserts and Newsletters
- Interest in Topics Related to TPU Services
- Information Sources and Preferred Channels for Communications from TPU

METHODOLOGY

Data collection is conducted via a web survey of TPU Residential customers:

- **Web Survey:**
 - n=1000+ self-administered web surveys.
 - Since we don't want to exclude any customer from completing the web survey, there will be no specified quotas via web.
 - We will send email invitations to all five Customer Types in proportion to the TPU Residential customer population distribution.
 - All who respond will be allowed to complete the survey. (We do not want to turn any customers away from the survey due to quotas being filled.)
 - Data will be weighted by Customer Type (and potentially demographic variables) to match the TPU Residential customer population distribution.

QUESTIONNAIRE

This estimate assumes the 2019 and 2021 questionnaire will be similar in content and structure to the 2016 Residential Communications Survey (conducted via phone), averaging approximately 13 minutes in length via web, with up to four coded open-end questions. (All open-ends and other/specify question responses will be cleaned and coded.)

DELIVERABLES

- Draft and Final questionnaires
- Sample processing and management
- Web (n=1000+) data collection, including drawing incentives for web survey (\$1000 incentive budget per survey)
- Up to four banner tabulations
- Coding and edited verbatims with tackdem for open-ended questions
- Access to Market Strategies' online portal which serves as a central hub for all project activities and documents, and provides 24/7 interactive access to survey data that is updated in near real-time throughout data collection.
- Data files (Excel, SPSS and/or SAS)
- PowerPoint presentation covering key measures and trends

BI-ANNUAL RESIDENTIAL PRODUCTS AND SERVICES SURVEY 2020, 2022

RESEARCH OBJECTIVES

Tacoma Public Utilities' Residential Products and Services Survey is conducted to measure:

- Desired level of engagement with TPU
- Interest in DR programs Interest in AMI-enabled products and services
- Attitudes and preferences regarding renewables, community solar, and EVs
- Interest in water management tools, landscaping information, and water system tours
- Preferred channel for various tasks
- Payment preferences

METHODOLOGY

Data collection is conducted via a web survey of TPU Residential customers:

- **Web Survey:**
 - n=1000+ self-administered web surveys.
 - Since we don't want to exclude any customer from completing the web survey, there will be no specified quotas via web.
 - We will send email invitations to all five Customer Types in proportion to the TPU Residential customer population distribution.
 - All who respond will be allowed to complete the survey. (We do not want to turn any customers away from the survey due to quotas being filled.)
 - Data will be weighted by Customer Type (and potentially demographic variables) to match the TPU Residential customer population distribution.

QUESTIONNAIRE

This estimate assumes the 2020 and 2022 questionnaire will be similar in content and structure to the 2018 Residential Products and Services Survey (all conducted via web), averaging approximately 14 minutes in length via web, with up to four coded open-end questions. (All open-ends and other/specify question responses will be cleaned and coded.)

DELIVERABLES

- Draft and Final questionnaires
- Sample processing and management
- Web (n=1000+) data collection, including drawing incentives for web survey (\$1000 incentive budget per survey)
- Up to four banner tabulations
- Coding and edited verbatims with tackdem for open-ended questions
- Access to Market Strategies' online portal which serves as a central hub for all project activities and documents, and provides 24/7 interactive access to survey data that is updated in near real-time throughout data collection.
- Data files (Excel, SPSS and/or SAS)
- PowerPoint presentation covering key measures and trends

b. Assumptions

For all quantitative studies Escalent will provide:

- A kickoff meeting via teleconference or in person at TPU's Tacoma office, if desired.
- Regular status updates and project reviews as requested by TPU to ensure timelines and deliverables are meeting expectations.
- All questionnaire development in consultation with TOU.
- Survey programming and testing.
- All data collection (telephone and online), conducted in house.
- Coding and editing of open-end verbatim responses.
- Access to Escalents' online portal which serves as a central hub for all project activities and documents, and provides 24/7 interactive access to survey data that is updated in near real-time throughout data collection.
- Up to four sets of cross-tabulations each including up to 25 banner points for survey data for each quantitative survey. (We can provide additional cross-tabs as needed.)
- Fully labeled SPSS, SAS and/or Excel data files.
- Draft and final PowerPoint reports, with TPU's review.
- A final presentation of results for each project in person at TPU's Tacoma office, if desired.

For all projects described in this document:

- TPU will provide all sample records including primary contact phone number and email address (for residential customers who have provided an email address to TPU) via Market Strategies secure portal.
 - At the conclusion of each survey, Market Strategies will provide to TPU a disposition report for all records indicating which records were used, the outcome, and any "do not contact" requests received.
- Market Strategies will be responsible for developing all respondent pre-notification mailings, and email invitations and reminders, and respondent technical support.
- Market Strategies will be responsible for all providing all cash incentives to web survey respondents as indicated in the individual project descriptions (\$1000 drawing incentive budget per project).

c. **Project Activities and Deliverables**

The key project activities and deliverables are listed as scope of effort and assumptions above.

2. **PROJECT SCHEDULE:**

The project will be performed during the calendar years 2019 – 2022 and Q1 2023 as requested. Project deliverables will be completed and delivered as outlined above and in accordance with the attached work plan.

3. **LOCATION of SERVICES:**

All services are to be delivered to TPU in Tacoma, Washington.

4. **PERSONNEL:** ESCALENT agrees to assign the following individuals to perform work under this Service Agreement, and lead others on the ESCALENT team as needed.

- a. **James Kandell (Industry Expert / Execution Lead):** James is an Analytics Manager / Lead Analyst with the Energy Division at Escalent, and is based in our Portland, OR office. James has worked in the market research industry for nearly 15 years. He is experienced in managing custom, full-service, quantitative and qualitative market research projects in a wide array of industries, including utilities, public services, insurance, and technology.

Prior to joining Escalent, James worked as a project manager at DHM Research, a leader in public policy research in the Pacific Northwest, providing consultation for private, public, and non-profit clients with planning and decision-making. James received his Master's degree in Educational Research and Evaluation in 2005 from Ohio University.

- b. **Kevin Dixon (Engagement Lead):** Kevin is a Senior Analyst with the Energy Division at Escalent, and is based in Salem, OR. With more than seven years of experience designing and executing custom research in the energy industry, he has experience across numerous projects for energy utility clients focusing on satisfaction tracking and driver modeling, dynamic pricing, communication, appliance saturation/end-use, and gas safety. Kevin also manages the Escalent Energy Utility Benchmarking database.

Prior to joining Escalent in 2012, Kevin was a Summa Cum Laude graduate from Western Oregon University with a Bachelor of Science in Psychology.

- c. **Chris Montaglione (Industry Expert / Executive Contact):** Chris is the Managing Director of the Energy Division with Escalent and is based in our Livonia, MI headquarters. Chris has over 30 years' experience conducting strategic quantitative and qualitative research engagements with executives and staff at Fortune 500 companies across all industry sectors and has spent the past 11 years working exclusively with clients in the Energy Utility industry.

5. **PRICE AND PAYMENT:**

- a. Price. \$466,000

The total investment across all ten custom market research projects outlined in this document is summarized below:

2019 Residential Customer Satisfaction Tracking Survey	\$63,000
2019 Residential Communications Survey	\$29,000
2019 TOTAL BUDGET (Q2-Q4)	\$92,000
2020 Residential Customer Satisfaction Tracking Survey	\$64,000
2020 Residential Products and Services Survey	\$30,000
2020 TOTAL BUDGET	\$94,000
2021 Small-Medium Business Customer Satisfaction Tracking Survey	\$42,000
2021 Residential Customer Satisfaction Tracking Survey	\$65,000
2021 Residential Communications Survey	\$31,000
2021 TOTAL BUDGET	\$138,000
2022 Residential Customer Satisfaction Tracking Survey	\$66,000
2022 Residential Products and Services Survey	\$32,000
2022 TOTAL BUDGET	\$98,000
2023 Small-Medium Business Customer Satisfaction Tracking Survey	\$44,000
2023 TOTAL BUDGET (through Q2)	\$44,000
TOTAL BUDGET: 2019 Q2 through 2023 Q2 (four years)	\$466,000

- b. Payment. ESCALENT will invoice Client according to a schedule to be determined with TPU.

6. **CHANGE MANAGEMENT:**

The scope change request process will be the vehicle for communicating change. Either party may initiate a change request. Both parties must review the proposed change and either approve or reject it prior to the initiation of the change. Only the following individuals are authorized to make and/or approve changes.

Escalent: Chris Montaglione

Client:

ESCALENT, INC.

By: _____
Name: Sharna F. Morelli
Title: CAO/CIO
Date: _____

TACOMA PUBLIC UTILITIES

By: _____
Name: _____
Title: _____
Date: _____



RESOLUTION NO. U-11081

1
2 A RESOLUTION relating to employment, authorizing execution of a collective
3 bargaining agreement between the City and the International
4 Brotherhood of Electrical Workers ("IBEW"), Local 483, Water Division
5 Unit.

6 WHEREAS the City of Tacoma and the International Brotherhood of
7 Electrical Workers ("IBEW"), Local 483, Water Division Unit, have negotiated
8 a proposed Collective Bargaining Agreement, and

9 WHEREAS the proposed Agreement covers approximately 129
10 employees for a three-year period retroactive from January 1, 2019, through
11 December 31, 2021, and outlines wages for the covered period, and

12 WHEREAS the proposed Agreement includes changes to the journey
13 level wage rates, and all wage rates not expressed as a percentage of
14 journey level, as follows: (1) all employees employed as of January 1, 2019,
15 shall receive an increase in wages retroactively for 2019 by 3 percent; (2) an
16 increase in wages for 2020 by 3 percent; (3) an increase in wages for 2021 by
17 2.5 percent, and

18 WHEREAS it now appears in the best interest of the City that the
19 proposed Collective Bargaining Agreement negotiated by said union and the
20 City be approved; Now, therefore,

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

22 That said proposed Collective Bargaining Agreement between the City
23 of Tacoma and the International Brotherhood of Electrical Workers, Local
24 483, Water Division Unit, is approved and the Council of the City of Tacoma is
25 requested to concur in the approval and pass an implementing pay and
26



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compensation ordinance, and authorize the proper officers of the City to execute said Agreement substantially in the form on file, as approved by the City Attorney, by its terms to remain in full force and retroactive from January 1, 2019, through December 31, 2021.

Approved as to form and legality:

_____ Chair

R. C. Ray
Chief Deputy City Attorney

_____ Secretary

_____ Clerk

Adopted _____

of June 26, 2019

REQUEST FOR RESOLUTION

Date June 14, 2019

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)

Authorizing approval of a collective bargaining agreement negotiated between the City of Tacoma and the International Brotherhood of Electrical Workers, Local 483, Tacoma Water Division Unit.

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

This resolution recommends approval of the 2019-2021 Collective Bargaining Agreement between the International Brotherhood of Electrical Workers, Local 483, Tacoma Water Division Unit, on behalf of the employees represented by said Union.

The agreement covers approximately 129 budgeted, full-time equivalent positions. The agreement is anticipated to be scheduled for consideration by the City Council as a Resolution on July 9, 2019.

3. Summarized reason for resolution:

The resolution will recommend the execution and implementation of the 2019-2021 Collective Bargaining Agreement negotiated with the between the City of Tacoma and the International Brotherhood of Electrical Workers, Local 483, Tacoma Water Division Unit, on behalf of those employees represented by said union.

4. Attachments:

- a. Collective Bargaining Agreement
- b. Financial Impact Memorandum
- c. Letter from Jackie Flowers, Director of Utilities/CEO

5. ☐ Funds available ☐ Proposed action has no budgetary impact6. Deviations requiring special waivers: ☐ None

Originated by:

Section Head

Requested by:



Human Resources Director

Approved:



Director of Utilities



TACOMA PUBLIC UTILITIES

3628 South 35th Street

Tacoma, Washington 98409-3192

June 14, 2019

To the Chairman and Members of the Public Utility Board

And

To the Mayor and Members of the City Council

The Management Negotiating Team recommends adoption of the proposed 2019-2021 collective bargaining agreement negotiated between the City of Tacoma and the International Brotherhood of Electrical Workers, Local 483, Water Division Unit. The agreement covers 129 budgeted, full-time positions, and is anticipated to be considered by the City Council as a resolution on July 9, 2019.

The agreement covers three years, and provides for a wage increase in each year of the agreement. Effective January 1, 2019 the journey level wage rate, and all wage rates not expressed as a percentage of journey level, will increase retroactively by 3 percent. Effective January 1, 2020, the journey level wage rate and all wage rates not expressed as a percentage of journey level shall increase by 3 percent. Effective January 1, 2021, the journey level wage rate and all wage rates not expressed as a percentage of journey level shall increase by 2.5 percent.

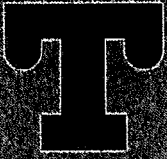
Other changes to the agreement include removing the CDL requirement for the classification of Water Service Mechanic positions in Water Quality; adding language to Article 2 – Union Recognition to reflect changes required by law; and adding language clarifying the article on non-discrimination. The agreement also adds standard language regarding time off and benefits to Appendix B.

It is recommended that the Public Utility Board and the City Council take the necessary approving action.

Very truly yours,

Jackie Flowers
Director of Utilities/CEO





TACOMA PUBLIC UTILITIES
3628 South 35th Street
Tacoma, Washington 98409-3192

To: Katie Johnston, Budget Manager
From: Jim Sant, Deputy Director for Administration, Management Services
Date: May 23, 2019
Subject: Fiscal Impact of the International Brotherhood of Electrical Workers (IBEW), Local 483 – Water Unit – 2019-2021 Successor Agreement

Background:

A Tentative Agreement has been reached between the City of Tacoma and the IBEW, Local 483 – Water unit for a new successor collective bargaining agreement for the years 2019-2021.

Financial Impact:

This agreement is for a three year term, 2019-2021, and consists of 129 employees in 22 classifications within Tacoma Water.

- Effective January 1, 2019, the journey level wage rate and all wage rates not expressed as a percentage of journey level, will be increased by three percent (3.0%). All employees covered by this agreement that were employed as of January 1, 2019 shall receive the aforementioned wage increase retroactively.
- Effective January 1, 2020, the journey level wage rate and all wage rates not expressed as a percentage of journey level, will be increased by three percent (3.0%).
- Effective January 1, 2021, the journey level wage rate and all wage rates not expressed as a percentage of journey level, will be increased by two and one half percent (2.5%).

Year	Incremental Increase
2019	\$330,610.52
2020	\$345,318.08
2021	\$294,135.44

The wage adjustments for 2019 and 2020 are included in the 2019-2020 Adopted Biennial Budget.

Concur:

Jackie Flowers, Director of Utilities, CEO

2019-2021

AGREEMENT

By and Between

the

CITY OF TACOMA

and

LOCAL NO. 483

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

WATER DIVISION UNIT

TABLE OF CONTENTS

2019-2021

LOCAL 483

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS
WATER DIVISION UNIT

PREAMBLE.....	2
ARTICLE 1 - TERM OF AGREEMENT.....	2
ARTICLE 2 - UNION RECOGNITION.....	3
ARTICLE 3 - MANAGEMENT RIGHTS.....	4
ARTICLE 4 - STRIKES AND LOCKOUTS.....	5
ARTICLE 5 – DEFINITIONS.....	5
ARTICLE 6 - LABOR-MANAGEMENT COMMITTEE.....	6
ARTICLE 7 - NON-DISCRIMINATION.....	7
ARTICLE 8 - GRIEVANCE PROCEDURE.....	7
ARTICLE 9 - TEMPORARY VACANCIES.....	9
ARTICLE 10 - SELECTION OF PERSONNEL.....	11
ARTICLE 11 - SAFETY STANDARDS.....	14
ARTICLE 12 - HOURS OF WORK.....	14
ARTICLE 13 - WORK RULES.....	18
ARTICLE 14 – BENEFITS.....	21
ARTICLE 15 - WAGE SCALES.....	21
ARTICLE 16 – DISCIPLINE.....	21
ARTICLE 17 - SAVING CLAUSE.....	23
APPENDIX A.....	25
APPENDIX B.....	29
Index to Addendums.....	38
Index to Letters of Understanding.....	38

2019-2021

AGREEMENT
By and Between

CITY OF TACOMA
and
LOCAL #483
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS
WATER DIVISION UNIT

PREAMBLE

For the purpose of maintaining cordial relations between the Department of Public Utilities of the City of Tacoma, hereinafter designated as the "Department" and the party of the first part, and the Local #483, International Brotherhood of Electrical Workers, hereinafter designated as the "Union" the party of the second part, the parties hereto do hereby enter into, establish and agree to the following conditions of employment.

The Department and the Union acknowledge our mission to protect the public health of the people of Tacoma and our service area; to assure the reliability and quality of the water we provide; and to honor our customers and ourselves by the quality of service we provide. The Department and the Union state our common goal to make Tacoma and its water service area a better place to live.

The Department and the Union have a common and sympathetic interest in the water industry. Therefore, a working system and harmonious relations are necessary to improve the relationship between the Department, the Union, and the public. All will benefit by adjusting any differences by rational common sense methods. The accomplishment of the Water Division's mission and goals can only be achieved if represented and unrepresented employees work together as a team. We must respect each other's roles, ideas and work.

The Department shall not be required to take any action under this Agreement which is in violation of federal or state law, City Charter or the ordinances of the City of Tacoma.

The Union and Department agree that all employees will individually and collectively perform efficient work and service; and that we will avoid and discourage waste of materials, time and labor, and that we will use our influence and our best efforts to protect the property of the Department and our customers and to prevent loss wherever possible; and that we will cooperate in promoting and advancing the welfare of our customers and employees at all times.

ARTICLE 1 - TERM OF AGREEMENT

This Agreement shall remain in full force and effect from January 1, 2019, up to and including December 31, 2021, provided that, if either party desires to terminate the agreement on the anniversary date of December 31, 2021 (three years), written notice of such intent must be given to the other party sixty (60) days in advance of that date. It is understood that this

Agreement shall be subject to such changes or modifications during its term as may be mutually agreed by the parties hereto; provided, the parties agree to reopen any necessary articles and sections of this Agreement in order to fulfill bargaining obligations as described in Article 3, related to a departmental reorganization that will be initiated and executed on, or before December 31, 2021. The bargaining shall include union position and proposals related to these articles and sections.

The parties agree to meet to discuss the Operator in Training program.

The City will remove the requirement for the Water Service Mechanic to hold and maintain a Commercial Driver's License for Water Quality positions.

ARTICLE 2 - UNION RECOGNITION

Section 2.1 The parties recognize that certain provisions of Article 2 are unenforceable as a result of the Janus v. AFSCME US Supreme Court decision, and agree to meet and confer following ratification of this Agreement to negotiate a mutually agreeable replacement for the current Article 2.

Section 2.2 Union Recognition. The Union shall be the exclusive bargaining agent in all matters of wages, hours, and working conditions in the application of the Agreement to the classifications in the Department now listed and later added to the classifications in Appendix A.

Section 2.3 It shall be a condition of employment that all employees of the Department, covered by this Agreement who are members of the Union (or who, in lieu thereof, pay each month a service charge equivalent to regular union dues to the Union as a contribution towards the administration of the Agreement) on the effective date of this Agreement shall remain members or shall continue to pay said service charge. It shall also be a condition of employment that all employees covered by this Agreement and hired on or after the effective date shall, on the thirtieth (30th) day following the beginning of such employment, become and remain members in the Union, or in lieu thereof pay an amount equal to the regular initiation fee and each month a service charge equivalent to regular union dues to the Union as a contribution towards the administration of this Agreement. Provided: Objections to joining the Union which are based on either bona fide religious tenets or teachings of a church or religious body of which such employee is a member will be observed. Any such employee shall pay an amount of money equivalent to regular union dues and initiation fees to a non-religious charity or to another charitable organization mutually agreed upon by the employee affected and the bargaining representative to which such employee would otherwise pay the dues and initiation fees. Such payments shall be made to a charity having offices in Pierce County and the payment shall be made to said office. The employee shall furnish written proof to the Union that such payment has been made. If the employee and the bargaining representative do not reach agreement on such matter, the Public Employment Relations Commission shall designate the charitable organization.

Section 2.4 The Union agrees that membership in the Union shall not be denied or terminated for any reason other than the failure of an employee covered by this Agreement to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership in the Union.

Section 2.5 The Department agrees to deduct from the paycheck of each employee who has so authorized it, the regular initiation fees and monthly dues uniformly required of members of the Union or in lieu thereof the monthly service charge. The Department shall not be required to make any deductions from employee's paycheck except as authorized by the employee or by law. The amounts deducted shall be transmitted monthly on behalf of the employees involved. Authorization by the employee shall be on a form approved by the parties hereto and may be revoked by the employee upon request and the Union so notified. The performance of this function is recognized as a service to the Union by the Department. There shall be no retroactive deduction of union dues.

Section 2.6 The Union agrees that the Department shall not terminate the employment of any employee under the security clause provisions of this Agreement until written notification is received from the Union that an employee has failed to pay the required dues, or service charge, or provide proof of an alternative payment based on religious tenets, as provided herein above.

Section 2.7 The Union further agrees that in the event that the Department undertakes to terminate an employee's tenure pursuant to this Article, the Union will indemnify and hold the Department harmless should such employee file a claim for position and be successful in prosecuting the same and thus obtain a judgment for past due wages and agree to pay said judgment or claim together with all costs assessed therein, including attorney fees, if any. The Union's obligation to indemnify and hold the Department harmless, as described above, would be limited and restricted only to the situation where the employee's successful claim for position is due to the Union's illegal request to the Department for termination of said employee's tenure.

Section 2.8 Leave for Business Manager. The Director will approve granting of leave of absence without pay for the period covered by this Agreement without loss of civil service status and/or without loss of continued accrual of seniority, and aggregate City service or tenure status for all purposes to no more than two employees of the City who are members of the Union and whom the Union may desire to have act as its business manager to be locally engaged in the business of the Union.

Section 2.9 Shop Stewards and Union Bulletin Boards. The Union shall furnish the Human Resources Director with an up-to-date list of Shop Stewards, and shall keep such list current. Shop Stewards shall be permitted to devote a reasonable amount of time during normal working hours, without loss of pay, for the investigation, presentation and settlement of employee grievances.

ARTICLE 3 - MANAGEMENT RIGHTS

The Union recognizes the prerogative of the Department to operate and manage its affairs in all respects in accordance with its lawful mandate, and the powers or authority which the Department has not specifically abridged, delegated, or modified by this Agreement are retained by the Department. Examples shall include the right to hire, promote, direct the employee workforce, discipline employees for just cause up to and including discharge, determine operating hours, and to take actions required in the event of a (major) emergency. Provided, however, that the above items shall not be in conflict with City ordinances, personnel rules or this Agreement.

Except as provided by this Article or elsewhere in this Agreement, the Union retains the right to bargain the decision and the impacts of the decision that affects hours, wages and working conditions.

ARTICLE 4 - STRIKES AND LOCKOUTS

It is recognized that the Department is engaged in a public service requiring continuous operation, and it is agreed that recognition of such obligation of continuous service during the term of this Agreement is imposed upon both the Department and the Union.

The Union will not authorize a strike, work stoppage, or slowdown, and the Department will not engage in a lockout during the term of this Agreement. The Union will take every reasonable means within its power to induce employees engaged in strike, work stoppage, or slowdown, in violation of this Agreement, to return to work; but the Union, its officers, representatives, or affiliates shall not be held responsible for any strike, work stoppage, or slowdown which the Union, its officers, representatives, or affiliates shall have expressly forbidden or declared in violation hereof. Every attempt shall be made to settle all disputes or controversies arising under this Agreement under the grievance procedure and/or arbitration procedures provided for herein.

ARTICLE 5 - DEFINITIONS

Section 5.1 Craft Representative. A Union member designated by the Union as such.

Section 5.2 Work Seventy-Five (75) Feet Above the Ground. All employees when working seventy-five (75) feet or higher above ground on poles, trees, towers, or other structures, shall be paid at the straight-time rate in addition to their regular pay for the time worked; provided, however, any combination of such rates under any circumstances shall not be more than three times the employee's regular straight-time rate; provided further, that this provision shall not apply to employees when working on such towers or structures when, in the opinion of the Director of Utilities, no exceptional hazard exists.

Section 5.3 Non-Shift Employee. An employee working a basic workweek of five (5) eight (8) hour days, or mutually agreed alternative, Monday through Friday.

Section 5.4 Eight (8) Hour Day. Eight (8) consecutive hours exclusive of the thirty (30) minute lunch period.

Section 5.5 Shift Worker. An employee working in one of the following classifications: Water Treatment Plant Supervisor, Water Treatment Plant Operator, Water Control Station Operator, and Watershed Inspector.

Section 5.6 Lead Worker. An employee designated to lead a permanent crew or assigned a similar scope of responsibilities.

Section 5.7 Standby. When any employee is required and agrees to hold themselves subject to call for emergency work at any time outside of their regular work shift, it is to be at the agreed to standby rate.

Section 5.8 Reporting Headquarters. Reporting headquarters are the Water Operations Center, McMillin Operations Building and Green River Operations Center. The Distribution crews, Wells crews and WCC Operators use the Water Operations Center as their reporting headquarters. The Gravity crew and McMillin Distribution crew use the McMillin Operations Building as their reporting headquarters. WQ crews use both the Green River Operations Center and Water Operations Center as their reporting headquarters. This definition is used with regard to filling temporary vacancies and has no relationship with the location of a crew's supervision.

Section 5.9 Trading Positions. Any exchange of positions between employees in the same classification but in different sections or reporting headquarters must be carried out within the bid procedures as outlined in this contract.

Section 5.10 Emergency/Non-Scheduled Overtime. Non-Scheduled hours worked before or after the regular shift, when an employee is called out from home or on continuation of the employee's regular shift.

Section 5.11 Scheduled Overtime. Work that is performed outside the employee's regularly scheduled shift to include weekends for which the employee received notice prior to the end of the regular shift on the preceding work day.

Section 5.12 Work in Pipe. All employees when working inside a pipe shall be paid an additional five percent (5%) of their regular base rate for hours spent working in the pipe. For purposes of this section, work in pipe shall be defined as work performed fully inside an installed pipe.

Section 5.13 Shop Steward. Union member appointed by the Business Manager.

Section 5.14 Grievance. An alleged violation of an Article of this Agreement.

Section 5.15 Labor Management Committee. A committee composed of an equal number of representatives of the Department/Division and of the Union as provided in Article 6.

ARTICLE 6 - LABOR-MANAGEMENT COMMITTEE

A Labor/Management committee composed of four (4) representatives each from the Department and from the Union shall be established. Their respective choice of representatives is recognized, however, each party shall notify the other party of any change in representatives. In the interest of continuity, every effort will be made for the representatives to remain for the term of this contract and may be re-appointed.

The Labor/Management Committee shall be advisory in nature. It is formed to foster a relationship of mutual respect, open communications, responsible issue resolution and to discuss items of mutual concern.

The Department and Union agree to hold Labor-Management meetings as necessary. These meetings will be called upon request of either party to discuss contract or non-contract issues affecting employees covered by this agreement. Subjects for discussion of Labor Management meetings during the term of this Agreement shall be as agreed by the parties. The Union shall be permitted to designate members and/or stewards to assist its Union Representatives in such meetings. The purpose of Labor-Management meetings is to deal with matters of general concern to the Union and Management in a timely and efficient manner.

The Labor/Management Committee shall designate subcommittees for grievances, exam reviews and other purposes as necessary.

ARTICLE 7 - NON-DISCRIMINATION

Section 7.1 Pursuant to RCW 41.56 there shall be no discrimination against union members, union officers, or union activity.

Section 7.2 Neither the Department nor the union shall discriminate against any employee covered by this agreement in a manner which would violate any applicable federal, state and local regulations and or laws because of but not limited to race, color, national origin, ancestry, religion, sex, age, marital status, sexual orientation, gender identity, marital or veteran status or disability that does not prevent proper performance of the job. The Union and Management shall work cooperatively to assure the achievement of equal employment opportunity.

Section 7.3 It is mutually agreed that there shall be no unlawful harassment.

Section 7.4 If an otherwise reasonable accommodation is requested, pursuant to the Americans With Disabilities Act, and the Washington Law against Discrimination, which would result in or require a violation of any provision of this contract, or recognized work rule adopted by the parties pursuant to this contract, the Department may propose a written amendment and the Union agrees to consider the proposal and respond in writing, either agreeing to the same, proposing a modification which would make the amendment acceptable, or explaining why the modification cannot be made.

ARTICLE 8 - GRIEVANCE PROCEDURE

Section 8.1 Grievance Timelines.

- A. To be valid, a grievance must be submitted in writing and/or electronic mail within thirty-five (35) calendar days of the alleged violation by the grieving party. Copies of all grievances shall be sent to the Human Resources Director or his/her designee.
- B. The time limitations in this Article may be adjusted by mutual agreement, in writing, between the Union and the Department. Failure by the non-grieving party to comply with any time limitations as provided in this Article shall constitute a right of the grieving party to proceed to the next Step without waiting. Failure of the grieving party to comply with any of the foregoing time limitations shall constitute resolution of the grievance.

- C. Submissions will be considered timely under this Article if they are received by 5:00 p.m. on the last day called for under an applicable time limit.

Section 8.2 It is the goal of both the Union and the Department to settle problems at the lowest possible level in a cooperative, objective, problem-solving method. To this end, every effort will be made by both parties to resolve problems at the lowest level. Initially, the employee is advised to discuss the potential grievance with the shop steward. The employee and/or shop steward may choose to meet with the immediate supervisor to determine if the issue can be resolved or take the matter directly to their Union representative. Further contacts shall follow this procedure:

Step 1 If the grievance is not resolved through informal discussions, then it shall be reduced to writing and/or electronic mail specifying the section or sections violated, relevant facts, and the proposed remedy and shall be presented to the immediate supervisor no later than thirty-five (35) calendar days from first knowledge of alleged incident outlined above. The parties will meet to discuss the grievance, and the immediate supervisor will respond in writing to the employee, shop steward and the Union office of the proposed resolution within fourteen (14) calendar days of this meeting.

Step 2 If the grievance is not resolved at Step 1, it shall be presented to the section manager, with copies to the Union, within fourteen (14) calendar days of the decision rendered at Step 1. The section manager shall (within fourteen (14) calendar days) render a decision in writing and/or electronic mail to the employee and the Union.

Step 3 If the Union or the employee is not satisfied with the response, then within fourteen (14) calendar days of receipt of the section manager's answer, the grievance will be submitted to the Superintendent. Grievances relating to matters other than employee discipline shall be addressed at the next quarterly Labor/Management Committee or grievance subcommittee meeting or mutually agreed to special meeting.

The Labor/Management Committee shall report its finding in writing to the Superintendent and the Union Business Manager within fourteen (14) calendar days of the conclusion of the review. Within fourteen (14) calendar days following submission of the Step 2 grievance or following receipt of the Labor/Management Committee's recommendation, whichever is later, the Superintendent will render to the employee and the Union the decision, and reason for it, in writing.

Step 4 If the Union or the employee is not satisfied with the response, then within fourteen (14) calendar days of receipt of the Superintendent's answer, the employee (or designated representative) will forward the grievance to the Utilities Director for possible resolution. The Utilities Director (after consultation with the Superintendent, the Human Resources Director and Union Business Manager) shall submit his/her answer in writing within fourteen (14) calendar days after personal receipt of the grievance.

Step 5 Grievances not resolved under the above steps shall be referred to arbitration only by the Union, on its own behalf or on behalf of one or more employees,

by giving notice of its intention to arbitrate within twenty-one (21) calendar days following completion of the steps listed in the aforementioned sections. A list of five (5) arbitrators shall be requested from the Public Employment Relations Commission. Both parties shall meet and each shall strike a name until one (1) arbitrator is selected. Should the parties fail to arrive at the selection of an arbitrator, the Public Employment Relations Commission shall be asked to appoint one. Any decision by the arbitrator shall be final and binding upon both parties. Each party is responsible for the costs of its representatives, attorneys and all costs related to the development and presentation of their respective cases in arbitration. In the event that the Department unsuccessfully challenges an arbitrator's decision in court, or the Union is forced to file an action in court to compel compliance with an arbitrator's award, the Union may seek recovery of attorneys' fees incurred by the court action to the extent such recovery is permitted under RCW 49.48.030. All other expenses incident to the arbitration shall be divided equally. The arbitrator shall have no power to render a decision that will add to, subtract from, or alter, change or modify this Agreement; and his power shall be limited to an interpretation or application of this Agreement and application of appropriate remedies.

ARTICLE 9 - TEMPORARY VACANCIES

Section 9.1 In the absence of a journey, lead worker or supervisor, Department management may, at its discretion, set up employees in a lower classification to the temporarily vacant position. The term set-up is used to describe the practice of advancing an individual to a position of greater pay and responsibility during the temporary absence of the incumbent occupying the higher position. Employees ranking highest on existing Civil Service list shall be assigned to those vacancies which are expected to provide the longest time in set up status. Such vacancies, when filled, shall be filled in the following manner:

- (1.) From a layoff register,
- (2.) From an existing Civil Service eligible list for said position,
- (3.) By appointing the employee with the longest permanent length of service in the next in line lower classification.

Overall seniority shall be considered only when other factors stated above are equal.

Section 9.2 Set ups for Vacancies:

Eligibility will be determined as defined by Section 9.1.

A scheduled vacancy is any vacancy for which two (2) or more full working days advanced notice is provided.

An unscheduled vacancy is any vacancy for which advance notice of less than two (2) full working days is provided.

- A. A vacancy of four (4) consecutive working days or less, scheduled or unscheduled, will be filled from the reporting headquarters and section in which the vacancy occurs.
- B. A scheduled vacancy of five (5) consecutive working days or longer will be filled without regard to reporting headquarters or section.
- C. If at any time during an unscheduled vacancy it is apparent that the absence will last more than a total of five (5) days, it shall be considered a scheduled vacancy and any set-up resulting from that absence shall be offered to the first available person, as defined in Section 9.1, Division wide, after one (1) day preparation time.

Section 9.3 It is an absent employee's responsibility to notify his/her supervisor as soon as possible regarding:

- A. The anticipated duration of an unscheduled vacancy.
- B. Any changes in the anticipated duration of either a scheduled or unscheduled vacancy.

Section 9.4 In the event of a water quality chemical feed-related emergency which occurs outside of normal working hours, the Department may vary from the normal emergency call out procedures in order to more effectively respond to the public health risk and to utilize personnel with the specialized training necessary to effectively respond to chemical feed emergencies. In the event of potentially complex chemical feed related emergencies requiring emergency call out, the Water Quality Section chemical feed maintenance specialist will be called. If the specialist is not available, call out preference will be given to employees who have completed the training approved by the Water Quality Section Manager. Call out of employees with chemical feed training will be based on their position on the standby list and will rotate among employees with the required training.

Section 9.5 Notwithstanding anything contained herein, the Department need not consider the request of the employee who does not possess the knowledge, skill, adaptability or physical ability required for the job on which the application is made.

Section 9.6 An employee placed on a temporary assignment to a higher classification shall receive the rate of pay for the higher classification to the next full hour, with a minimum of two (2) hours in any one day, unless otherwise specified in this Agreement. An employee set up to a higher classification shall be paid at the setup rate for meetings and trainings, as long as the employee is required to remain responsible for the duties of the higher classification and no setup is required to backfill the work while the employee is in the meeting or training.

Employees who are temporarily assigned to a vacancy that lasts sixteen (16) business days or longer will receive the higher classification rate of pay for all hours worked (including time spent in meetings and approved training) after the first fifteen (15) business days of the assignment.

Section 9.7 The above provisions shall govern when not inconsistent with the Personnel Rules contained in Chapter 1.24 of the Tacoma Municipal Code. For all other purposes, the seniority provisions in the Personnel Rules contained in Chapter 1.24 of the Tacoma Municipal Code shall be applied.

Section 9.8 Employees may exercise their right of refusal for a set-up or promotion to temporary or permanent opportunity without fear of reprisal. Employees may elect to sign a

waiver from being asked for a specific job or opportunity if they have no interest for said position, or are obligated to other work commitments. The employee shall maintain the right to rescind any such waiver upon request.

Employees who have not signed a waiver and who have refused three set-ups to a temporary job opportunity (refusal due to pre-scheduled absences excluded) within the same classification, within a sixty (60) day calendar period, need not be considered for that temporary job until they reestablish their interest as noted.

Note: After the sixty (60) calendar day period, tracked or calculated from the first refusal date, the refusing employee can notify the supervisor in writing that they again wish to be reconsidered for such temporary opportunities.

Section 9.9 Irrespective of the other sections of Article 9, Water Service Workers, Water Plant Maintenance Workers or Water Utility Workers may be set up to temporary assignments as lead. A list will be maintained for individuals interested in set-ups to temporary vacancies. Qualified candidates will be selected from the list as determined by the supervision/management.

In the event there are not enough designated leads to fill the necessary assignments, the selection for such temporary assignments will be made in the following order:

1. Existing Water Service Workers/Water Plant Maintenance Workers, whichever is appropriate, by seniority.
2. Rank Order from the current Water Service Worker/Water Plant Maintenance Worker Civil Service list (if any).
3. JATC graduated Water Utility Workers by seniority.

Section 9.10 Temporary Assignments. Employees and their positions when assigned for more than five (5) consecutive work days to report directly to different reporting headquarters than they have bid to, or when less than two (2) working days notice is provided regarding assignment to different reporting headquarters, shall receive, in addition to their regular compensation, ten dollars (\$10) per work day for the duration of their temporary assignment. This provision does not apply to employees attending previously scheduled training, or driving a City owned vehicle, or the JATC rotations which are covered under Appendix A, Application of Rates, Subsection C.

ARTICLE 10 - SELECTION OF PERSONNEL

Section 10.1 In selecting personnel for regular positions, the Department will abide by the rules and regulations set forth in Chapters 1.12 and 1.24 of the Tacoma Municipal Code.

Section 10.2 Bid Procedure.

- A. Bid Positions. Whenever a regular permanent position is to be filled, prior to requisitioning from the Civil Service employment list established for the particular classification, employees in that classification may bid for said vacancy based on seniority in the class. The senior bidder will be assigned to the vacant position, if he/she

possesses the necessary qualifications to perform the duties of the job. No more than one such assignment per six month period per employee shall be permitted.

This procedure does not apply to bidding between construction supervisors for Utility Workers assigned to Water Distribution Operations in town.

When bid opportunities arise, the Division will post an announcement of the opportunity in all crew locations. The announcement will show the name of a supervisor or office staff who will be the holder of the sign-up sheet for the bid opportunity. Interested individuals will have five days to contact the holder of the list and to sign the list in the presence of the holder. The signing of the list by an eligible individual will constitute a bid for the position.

Where direct contact for signing is impracticable, (i.e., prospective bidder is off work or temporarily relocated), the designated sign-up sheet holder shall accept direct verbal confirmation and shall maintain a record verifying date and nature of contact and name of bidder.

- B. Bid Process. A position qualifies for the bid procedure whenever a regular permanent position is to be filled prior to requisitioning from the Civil Service employment list. Applied rate positions will be filled using the interest list process as described below. However, the Locator position will be filled using the bid process.

Employees bidding for an open position must currently hold that Civil Service classification in order to bid for the position.

Apprentices will be rotated in accordance with guidelines set forth by Tacoma Water's J.A.T.C. program.

In order to expedite the bid process, supervisors may ask employees (in order of seniority) if they are interested in the open position. This type of inquiry shall be made for each open position before hiring from the Civil Service employment list.

Employees may bid to reporting headquarters in addition to supervising desks within those headquarters (i.e., desks within Distribution).

Positions bid under this process will be awarded by seniority.

An employee may only bid into one position every six (6) months.

Section 10.3 Interest List Procedure.

- A. Interest List. In order to provide a defined process to fill applied rate positions, an interest list will be established. Applied rate positions do not have a Civil Service job code. However, the locator position has been identified as an applied rate position that will be filled using the bid process.
- B. Interest List Process. When an applied rate position is open, an interest list will be posted for a minimum of 10 working days.

Employees interested in the position must sign the interest list during the posting period. In the event any employee is not selected for a job in the proper line of seniority, the Department shall, upon written request of the Union, submit in writing to the Union the reason for the choice.

Employees who hold an applied rate position will be allowed to bid for the open position before Management hires from the interest list.

The only difference between an interest list and a bid list is that positions awarded from an interest list are not awarded by seniority unless all other qualifications are equal. A bid list is awarded by seniority.

Section 10.4 Break-in Period. An employee assigned or promoted to a position who has had no previous experience in that position shall be given a reasonable break-in period with an employee in that position. A controversy concerning the reasonableness of the break-in period shall be referred to the Labor-Management Committee.

Section 10.5 Standby.

- A. Eligibility for Standby. In order to be considered eligible for Distribution standby, employees must live no further than 40 minutes' drive from the Water Distribution Building. Drive time will be calculated from eligible employees' permanent residence of record to the Water Distribution Building using a website that provides mapping or directions information. In order to be considered eligible for Supply standby, In Town Supply employees must live (permanent residence) no further than 40 minutes' drive from the Water Distribution Building. Gravity standby employees must live no further than 40 minutes' drive from McMillin using a website that provides mapping or directions information.
- B. Reassignment of Standby Responsibilities. When an eligible employee is regularly scheduled to be on standby and cannot fulfill the obligation of the schedule, the following process will be followed to distribute standby in a fair and equitable manner:
 - 1. With approval by the standby supervisor, two individuals may trade standby weeks or days equally, to accommodate themselves. It shall be the responsibility of both parties to notify their standby supervisors of the date or dates prior to the trade. If an equal trade day-for-day cannot be accomplished, then the standby shall be assigned as described below. The individuals making the trade shall be responsible for notifying the office staff by the Wednesday preceding the weekend to insure timecards are ready. If the office is not notified the standby person will be responsible to complete his or her own timecard.
 - 2. If a standby person has relinquished the standby assignment, the supervisor shall proceed through the standby list, excluding the personnel currently holding a standby rotation. A list of employees who are interested and eligible for standby time shall be established on a volunteer basis. Seniority will be used in determining an individual's ranking on list. Employees who have permanently relinquished their standby reserve the right to regain it at a later time, but must wait for an opening on the list and be eligible. There are no bumping rights.

ARTICLE 11 - SAFETY STANDARDS

All state and local laws governing the health and safety of employees shall be observed. Safety rules as promulgated by the Department of Labor and Industries of the State of Washington, and as amended from time to time, are hereby adopted and incorporated as a part of this Agreement as if fully set forth herein.

ARTICLE 12 - HOURS OF WORK

NON-SHIFT EMPLOYEES (Sections 12.1 – 12.5)

Section 12.1 Eight (8) Hour Day. Eight (8) hours exclusive of the lunch period shall constitute a day's work. Normal hours of work shall be from 8:00 a.m. to 4:30 p.m. local time, allowing the thirty (30) minutes for lunch. For purposes of this Article, the normal workday shall be considered to start at 12 midnight and the FLSA workweek shall begin at 12:01 a.m. Monday. Absent emergency conditions, when job requirements make it necessary to establish work hours other than the above, they may be temporarily established by twenty-four (24) hours' notice. Alternate schedules will not be established such that an employee will receive less than his/her standard number of straight time hours.

Section 12.2 Notwithstanding 12.1, an exception to the normal shift (e.g., 4/10's, 9/80's) may be made by mutual agreement between the employee and management. Such changes shall be considered temporary and will include normal breaks and a thirty (30) minute lunch period. No such changes shall violate work week provisions or overtime as outlined under the Fair Labor Standards Act. Either party (employee or management) may cancel this temporary change with ten (10) days' written notice to the other party.

Section 12.3 Five (5) Day Week. Five (5) days of eight (8) hours each, Monday through Friday, shall constitute a regular workweek of forty (40) hours.

Section 12.4 Supervisors. Supervisors will work with each other as well as their immediate supervisors to develop individual flex schedules. Mutually agreed upon changes in the schedules to meet special needs may occur from time to time. The supervisors shall coordinate with the on-call supervisor to handle any situations that may arise within their section during their absence. Time off due to flexed schedules shall be recognized as official time off. Supervisors will not be held accountable for situations that may arise during their time off. Supervisors shall coordinate their workload and assure that it is not necessary to set-up an additional individual to cover their absence due to flex time. Supervisors working an adjusted work day must flex their hours within the same workweek. With the approval of their manager, the Supervisor shall be compensated at the overtime rate for any unused flex hours.

Section 12.5 Overtime.

- A. All work performed in excess of the employee's scheduled shift or forty (40) hours of regular time per week shall be paid for at the proper overtime rate of one and one-half (1-1/2) times the regular rate. Compensatory time in lieu of cash payment for overtime worked may be authorized and/or used in accordance with the Tacoma Municipal Code 1.12.080. Compensatory time may only be earned with prior approval from the Division Superintendent or his/her designee. All compensatory time shall be utilized or paid out in

the year in which it was earned. Employees shall have the option of converting their compensatory time to cash, use as time off (with supervisory approval) or contribute to their deferred compensation plan in accordance with the rules and guidelines of said plan. Any unused compensatory time will be paid out as cash at the end of the year in which it is earned. All use of compensatory time shall be in compliance with the Fair Labor Standards Act or qualify for its exemptions. An employee called to perform overtime work shall be paid from the time he/she reports to the work headquarters or the job site, as the case may be.

- B. Fatigue Time. An employee who works at least eighteen (18) continuous hours and has less than six (6) hours before the start of their next regular scheduled shift may opt to report to work no later than four (4) hours into the next shift. The employee will be compensated at the straight-time rate for the first four (4) hours of their shift. An employee who has worked at least eighteen (18) continuous hours and works past the start of their regular scheduled shift will be compensated at the straight-time rate for four (4) hours after being relieved from duty by their supervisor. Should the employee choose to take the remaining balance of the shift off they must use accrued sick leave, PTO or vacation to cover that balance. Should the employee choose to take one full shift off, they must use accrued sick leave, PTO or vacation for the remainder of their shift.
- C. All work performed outside the scheduled work hours on Sundays, and Thanksgiving and Christmas Days shall be paid at two (2) times the regular rate.
- D. A minimum of two (2) hours' overtime pay shall (only once in a calendar day) be allowed for work outside the employee's regular shift unless the employee reports for work less than two (2) hours before the beginning of his/her regular shift, or continues after his/her regular shift.
- E. All overtime shall be from an established seniority list within each section, on a voluntary basis, by classification. In the event volunteers are not available, the Department retains the right to assign employees from the overtime list, in the inverse order of seniority. When overtime immediately precedes or follows the regular workday, the assigned crew shall prevail. On jobs not finished by a crew on Friday night, the same crew shall be used if ordered to work on that particular job on the immediate weekend. The Supervisor shall have the discretion to redeploy a crew which is currently working overtime to address another separate emergency. In the event that an after-hours emergency requires assembling a new construction crew, the oversight of the crew shall be offered to the stand-by employee first.
- F. In the event that an overtime opportunity has been assigned incorrectly, resulting in an employee working overtime hours which should have been worked by another employee, the Department will create an equivalent overtime opportunity that will be assigned outside the normal assignment process to replace the missed opportunity. Such overtime work shall be of a nature that will not harm a more senior employee. The replacement overtime opportunity will be scheduled by mutual agreement. Absent unusual circumstances, the replacement overtime opportunity will be scheduled within three (3) months or the time shall be forfeited unless both parties mutually agree to extend the timelines. This Section will provide the exclusive remedy to correct overtime assignment errors made in good faith. It will not be used to intentionally bypass agreed assignment procedures.

- G. When in an on-call status, a Water Service Supervisor shall be compensated for 1 (one) hour at the overtime rate for the first emergency call not requiring a return to headquarters or the work site. Subsequent calls after the first hour of paid time shall be paid at the overtime rate for the actual time spent to handle the call. During on-call status, a phone log will be maintained by the on-call employee.

SHIFT PERSONNEL (Sections 12.6 – 12.10)

Section 12.6 Shift Premium. Employees working a night shift shall receive an additional three (3) percent compensation for all hours worked on said shift. Employees working overtime on a night shift shall receive the shift differential along with their overtime pay according to the FLSA.

Section 12.7 Standard Shift.

- A. Green River Treatment Plant Operators and Supervisors. The parties have agreed to a shift design providing for 24-hour coverage by operators and supervisors at the Headworks Water Treatment Plant as described in a Letter of Understanding dated October 8, 2014 titled Headworks 24- Hour Shift Implementation. If changes to this standard shift are contemplated, the Department will notify the Union prior to implementation of the new shifts and bargain the decision and the impacts of the decision to change shifts.
- B. Water Control Center Operator. The parties have agreed to a shift design providing for 24-hour coverage by operators at the Water Control Center as described in a Letter of Understanding dated January 1, 2013 and revised August 16, 2013 titled Water Control Center 24-Hour Shift Implementation. If changes to this standard shift are contemplated, the Department will notify the Union prior to implementation of the new shifts and bargain the decision and the impacts of the decision to change shifts.
- C. Watershed Inspectors. Watershed Inspectors shall be scheduled to work ten (10) days on duty, followed by four (4) days off duty. The standard shift will be eight (8) hours in length. The FLSA workweek for purposes of calculating overtime will begin at 12:01 a.m. Saturday. If changes to this standard shift are contemplated, the Department will notify the Union prior to the implementation of the new shifts and bargain the decision and impacts of the decision to change shifts.

Section 12.8 Holidays.

- A. Holiday Pay. Shift employees will receive holiday pay as provided in Section 1.12.200 of the Tacoma Municipal Code and the Joint Labor Agreement for City observed holidays, regardless of whether they are scheduled to work on the day the holiday is observed by the City.
- B. Premium for Regular Work on a Holiday. Employees working their regular schedule on a holiday shall record regular time for such hours and will receive, in addition to their regular rate of pay, the following holiday premiums:

Pay equal to one (1) times their hours worked for hours worked on Thanksgiving or Christmas Day.

Pay equal to one-half (1/2) times their hours worked for work on all other City-observed holidays.

- C. Alternate Dates for Holiday Premium. For the following four holidays, the holiday premium pay described in paragraph B above will be paid for the following dates and not the City recognized holiday:

New Years Day—January 1st of each year
Independence Day—July 4th of each year
Veteran's Day—November 11th of each year
Christmas Day—December 25th of each year

Section 12.9 Time Off.

- A. An employee shall be entitled to take time off from his/her regularly scheduled shifts equal to his/her earned vacation. All time off and vacation time shall be scheduled in accordance with Section 14.2, and shall require at least ten (10) days' advance notice, except under circumstances as determined by the Department.
- B. An employee may take his/her earned vacation during his/her regular off-duty time.

Section 12.10 Overtime.

- A. Shift employees called back to work from scheduled days off shall receive overtime compensation at one and one-half (1.5) times the regular rate of pay, except as provided below. For the purposes of Sections 12.6 through 12.10, a day on which the employee is not scheduled to begin a regular shift is a calendar day off.

Employees called to work a shift beginning on their second calendar day off, or any day after their second calendar day off during a block of scheduled consecutive days off, shall receive two (2) times the regular straight time rate of pay.

Compensatory time in lieu of cash payment for overtime worked may be authorized and/or used in accordance with the Tacoma Municipal Code 1.12.080. Compensatory time may only be earned with prior approval from the Superintendent or his/her designee. All compensatory time shall be utilized or paid out in the year in which it was earned. Employees shall have the option of converting their compensatory time to cash, use as time off (with supervisory approval) or contribute to their deferred compensation plan in accordance with the rules and guidelines of said plan. Any unused compensatory time will be paid out as cash at the end of the year in which it is earned. All use of compensatory time shall be in compliance with the Fair Labor Standards Act or qualify for its exemptions.

- B. Shift employees called to work a shift on a day off that falls on a City-recognized holiday will be compensated at one and one-half (1.5) times their regular rate of pay, except for overtime worked on Thanksgiving Day and/or Christmas Day (Dec. 25th) or as defined in Sec. 12.10.A above, which shall be compensated at two (2) times the regular rate.
- C. A minimum of two (2) hours' overtime pay shall be allowed for work outside the employee's regular shift unless the employee reports for work less than two (2) hours before beginning his/her regular shift or continues after his/her regular shift.

- D. Relief employees shall not work more than five (5) shifts during their basic workweek of seven (7) consecutive days without overtime compensation.
- E. Shift employees called back from scheduled time off shall be permitted to fill the vacant position until such time as the shift can be filled at the straight-time rate of pay.
- F. The following applies to overtime work performed by permanent staff at their normal assigned work locations. When no relief employees are available to work at the straight time rate, temporary vacancies shall be filled by calling an employee whose permanent classification is the same as the one in which the vacancy occurs. In filling such vacancies priority shall be given to employees available to work at the time and one-half rate before calling an employee available at the double time rate. The Department will attempt to distribute overtime in an equitable manner as provided herein. Records of overtime will be made available to the Union upon request. In the event that an overtime opportunity has been assigned incorrectly, resulting in an employee working overtime hours which should have been worked by another employee, the Department will create an equivalent overtime opportunity that will be assigned outside the normal assignment process to replace the missed opportunity. Such overtime work shall be of a nature that will not harm a more senior employee. The replacement overtime opportunity will be scheduled by mutual agreement. Absent unusual circumstances, the replacement overtime opportunity will be scheduled within three (3) months or the time shall be forfeited unless both parties mutually agree to extend the timelines. This Section will provide the exclusive remedy to correct overtime assignment errors made in good faith. It will not be used to intentionally bypass agreed assignment procedures.
- G. When job duties are assigned on an overtime basis to Local 483 Water Department employees and those duties do not clearly fall within a job classification or section, the Water Department shall assign the overtime to an employee in a section or unit that performs related work in that area or on the equipment within that area. If no one is available per the procedures described above, department seniority will apply.
- H. Fatigue Time. A twelve (12) hour employee who works at least nineteen (19) continuous hours and has less than six (6) hours before the start of their next regular scheduled shift may opt to report to work no later than the mid point of that shift. The employee will be compensated at the straight-time rate for the first half of their shift. Should the employee choose to take one full shift off, they must use accrued sick leave, PTO or vacation for the remainder of their shift. A twelve (12) hour employee who has worked at least nineteen (19) continuous hours and who works past the start of their regular scheduled shift will be compensated at the straight-time rate for six (6) hours after being relieved from duty by their supervisor. Should the employee choose to take the remaining balance of the shift off, they must use accrued sick leave, PTO or vacation to cover that balance.

ARTICLE 13 - WORK RULES

Section 13.1 Working Rules. Working rules as agreed upon between the Department and the Union shall be established governing working conditions and requirements of each craft consistent with the provisions of existing personnel and compensation rules and regulations contained in Chapter 1.24 and Chapter 1.12 of the Tacoma Municipal Code.

Section 13.2 Work at Special Rates.

- A. All work seventy-five (75) feet or higher above ground shall be compensated in accordance with Section 5.2.
- B. All work inside pipe shall be compensated in accordance with Section 5.12.

Section 13.3 Board and Lodging. Board and lodging shall be furnished for all employees sent temporarily out of their normal work area for a period exceeding twenty-four (24) hours. This rule does not apply to noonday meals when employees start from and return to headquarters each day.

Section 13.4 Meal Periods. A thirty (30) minute meal period will be provided not less than three (3) nor more than five (5) hours after beginning work.

Section 13.5 Meal Allowance

- A. When employees work overtime, the Department shall compensate for the cost of all meals at the dollar equivalent of six-tenths (0.6) hours of the 100% rate.
- B. Scheduled Overtime. When employees are working scheduled overtime the first meal allowance will be paid at two (2) hours past the end of their normally scheduled work day and at four (4) hour intervals thereafter. (For example: 8-hour employee meal paid at 10 hours, 10-hour employee meal paid at 12 hours, 12-hour employee meal paid at 14 hours). When an employee's work continues past their normally scheduled shift this shall be considered a continuation of shift and shall have a meal compensation paid at the first two (2) hours of work and every four (4) hours thereafter.
- C. Call-outs. When an employee is not notified prior to the end of their regular shift on the preceding work day and is called to perform emergency or unscheduled overtime work he/she is eligible for a meal allowance after each four (4) hours of overtime work.
- D. Unscheduled Overtime Adjacent to a Regular Shift. An employee working non-scheduled overtime including call-outs at least two (2) hours before or beyond his/her regular shift and at four (4) hour intervals shall be eligible for a meal allowance. Meal allowances will not be paid during the regular work shift.

Section 13.6 Clothing Allowance. All permanent, temporary, or project employees who are in a classification covered by this collective bargaining agreement shall receive the dollar equivalent of five (5) hours of the 100% rate for a clothing allowance. In addition, each eligible employee shall receive a boot allowance of seven (7) hours of the 100% rate. This amount shall be paid on the employee's regular pay check in the first pay period of November. The employer will no longer provide any clothing or boots to any employees covered by this Agreement.

Eligible employees are those who currently hold permanent, temporary, or project status. Employees who are separated or are no longer bargaining unit members prior to the first pay period of November will forfeit the credit.

Section 13.7 Bulletin Boards. The Department shall furnish and maintain in a suitable place in each work area a bulletin board to be used by the Union. The Union shall limit its posting of notices and bulletins to such bulletin boards.

Section 13.8 Training. The parties to this Agreement recognize the need to have fully qualified personnel employed in the various classifications of the Department. To this end it is agreed to cooperate on all training and upgrading programs deemed necessary to achieve this goal.

- A. When weather conditions do not permit field work and crews are confined to the shop areas, the Department agrees to utilize this time for familiarization with new equipment, first aid, or other pertinent training, insofar as practicable.

Section 13.9 It is the policy of the City of Tacoma to pay employees on a bi-weekly basis. On those occasions when payday falls on a holiday, the policy of the City is to pay the employees on the preceding day.

Section 13.10 In the event a discrepancy should occur in an employee's pay check, the Department shall forthwith take steps to adjust the error, which in most instances will be reflected in the check of the following pay period.

Section 13.11 When a job to be done has been given to an individual or a crew and, after inspecting or attempting to do the job, it has been turned back unfinished, the reason for turning it back must be put in writing by the person so doing. Special note must be made of extraordinary hazards and this information must be given to all persons or crews that are later required to do the same job.

Section 13.12 A Water Service Worker assigned to lead shall be eligible to transfer or demote to other positions covered under this Agreement with wages at or below the lead rate.

Section 13.13 Water Works Certification. Employees in positions with mandatory Washington State Water Works Operator Certification Requirements, as described in Chapter 246-292 WAC, will be reimbursed by the Department for fees charged by the State of Washington – Department of Health for the required certifications. Employees in the following classifications are eligible: Water Control Station Operator, Water Treatment Plant Operator, Water Treatment Plant Supervisor, and Water Quality Specialist. In addition to these mandatory certifications, employees in the Water Quality Specialist classification are eligible for reimbursement costs for the Backflow Assembly Tester certification, and employees in the Water Service Supervisor classification are eligible for reimbursement costs for the Water Distribution Manager certification.

With prior approval by the manager or designee, employees shall be reimbursed for the costs of maintaining a non-mandatory certification in circumstances in addition to those described above where the certification is related to the employee's job duties and of value to the Department.

Section 13.14 Work Efficiency. The Department will make every possible effort consistent with work load, manpower needs and efficient operation to assign employees to work within proper jurisdictional lines. Employees will take on incidental tasks for which they are capable and qualified, which occur in the normal performance of their duties and which will improve the effectiveness of the division, section, or crews, even though such incidental tasks may be outside their job description. This provision is not intended to work employees in higher classifications without receiving appropriate compensation.

ARTICLE 14 - BENEFITS

Section 14.1 Joint Labor Agreement. The parties are participants in a Joint Labor Agreement, through which they have determined the amount of and basic rules regarding vacation leave, holidays, sick leave, personal time off and other benefits. Provisions of the Joint Labor Agreement governing these benefits are attached in Appendix B, which shall independently expire on December 31, 2019 or with the expiration of the Joint Labor Agreement, whichever comes first. Appendix B shall be automatically updated and replaced in its entirety with any changes to the provisions of the Joint Labor Agreement during the term of this Agreement as long as both parties remain signatories to the Joint Labor Agreement. Should a party choose not to sign on to a future Joint Labor Agreement, the provisions in Appendix B shall be "status quo" for the year following the expiration of the 2019 Joint Labor Agreement.

Items covered by Appendix B may be grieved through this Agreement, except those items challenging the interpretation or application of the Joint Labor Agreement provisions which may be grieved only through the grievance procedure included in the Joint Labor Agreement.

Section 14.2 Vacation Selection. Vacation requests shall be turned in prior to April 1 of each year. Assignment of vacations shall be based on seniority in the classification. All requests received after April 1 will be considered based on available openings. Supervisors will make a good faith effort to respond to all requests received prior to April 1 by April 14, and to respond to requests received on or after April 1 within fourteen (14) calendar days of the request.

ARTICLE 15 - WAGE SCALES

Section 15.1 All work performed shall be compensated for as provided in Chapter 1.12 of the Tacoma Municipal Code. Employees may request to have the Union present to advise on an overpayment of compensation. The Union will receive notification on all overcompensation instances.

Section 15.2 Employees in those classifications represented by the Union shall be paid in accordance with the wage rates specified in Appendix A attached hereto.

ARTICLE 16 - DISCIPLINE

Section 16.1 Employees may be disciplined or discharged for just cause and with due process, in conformance with Sections 1.24.930, .940, .950, .951, and .955 of the Tacoma Municipal Code. The discipline will be based on the severity of the offense and prior record of discipline.

Section 16.2 Investigations.

- A. Union Representation. Employees are entitled, at their request, to have Union representation during any interview conducted by the Department that the employee reasonably believes may result in discipline of the employee. An employee may also have a Union representative at a meeting to discuss potential disciplinary action. The Department will make a good faith effort to inform the employee of the rights described in this paragraph. An employee who waives the right shall acknowledge such in writing.

- B. Administrative Leave. The Department may, at its discretion, place employees on paid administrative leave during disciplinary investigations. Employees on paid administrative leave must remain reachable by phone and available to return to reporting headquarters within a reasonable time if required. Paid administrative leave is not discipline and is not subject to the grievance procedure.

Section 16.3 Pre-disciplinary Procedure.

- A. Notice of Intent to Discipline. If the Department intends to impose discipline that involves a loss of pay or termination of employment, the Department shall inform the employee of the intended discipline in writing. The written notice shall describe the event or conduct with sufficient particularity to permit the employee to understand the reason for the intended discipline.
- B. Pre-Disciplinary Meeting. The Department will schedule a Pre-Disciplinary Meeting to permit the employee to respond to a notice of intent to discipline. At the beginning of any Pre-Disciplinary Meeting, the Department will describe its intended discipline and the general reasons for issuing the intended discipline. The Department shall make a copy of all documents in its possession and relevant to the alleged violation available to the employee and the Union representative five (5) days prior to the Pre-Disciplinary Meeting if possible. Where this is not possible, the Department and the Union will reach a mutual agreement on the continuance of the Pre-Disciplinary Meeting or other remedy fair to both parties.

Section 16.4 The employee and the employee's Union representative shall have the right to inspect the contents of the personnel file maintained by the Department as well as any files which were used as part of the disciplinary process.

Section 16.5 No disciplinary document may be placed in the personnel file without the employee having first been notified of said document and given a copy. The notification requirement shall be satisfied if the document is mailed to the employee's last known address. The employee shall be required to sign a written reprimand or other disciplinary action acknowledging that they have read the contents of the document. An employee who disagrees with the content of any letter of reprimand added to the personnel file shall have the opportunity to place a rebuttal statement in the personnel file, which shall be signed by the employee.

Section 16.6 Appeals of Discipline.

- A. Letters of reprimand, written and oral warnings, notices of performance concerns, and suspensions of two (2) days or less shall not be subject to the grievance procedure.
- B. A suspension of three (3) days may be processed through Step Four of the grievance process only.
- C. A suspension of four (4) days or more, a dismissal or a disciplinary reduction in rank or pay may be processed under the grievance procedure of the Agreement or submitted to Civil Service Board, if it falls under Civil Service Board jurisdiction. Should the employee elect to use the Civil Service Board procedure to appeal a disciplinary action, the employee irrevocably waives the right to appeal through the grievance procedure.

Similarly, should the employee elect to use the grievance process, the employee irrevocably waives the right to appeal through the Civil Service Board procedure.

Section 16.7 The parties agree that the procedural violations of this article will not be subject to the grievance procedure.

Section 16.8 The Department and the Union recognize the intent of a "letter of reprimand" is for the purpose of modifying inappropriate behavior. Said actions shall state, in writing to the employee and the Union, the reason(s) for such action. The Department agrees that all disciplinary actions and letters of reprimand are considered grieved if used to support a suspension, discharge, or demotion and will be subject to "Just Cause".

Section 16.9 All letters of reprimand, suspension and/or discharges must be issued within sixty (60) calendar days of the incident or within sixty (60) days of when the Department had knowledge of an incident. The Union will be notified of an ongoing investigation which is anticipated to exceed this time frame. All timeframes can be extended upon mutual agreement by the parties.

ARTICLE 17 - SAVING CLAUSE

Should any part hereof or any provision herein contained be rendered or declared invalid by reason of any existing or subsequently enacted legislation or by any decree of a court of competent jurisdiction, such invalidation of such part or portion of this Agreement shall not invalidate the remaining portions thereof, and the remaining parts or portions remain in full force and effect.

EXECUTED THIS _____ DAY OF _____, 2019.

City of Tacoma

Local 483, International Brotherhood of
Electrical Workers, Water Division Unit

Jackie Flowers
Director of Public Utilities

Alice A. Philips
Business Manager

Dylan Carlson
Senior Labor Relations Manager

Elizabeth Pauli
City Manager

Andy Cherullo
Finance Director

Approved as to Form:

Deputy City Attorney

Attest:

City Clerk

APPENDIX A

Local 483 IBEW, Water Division Bargaining Unit

Effective January 1, 2019, the journey level wage rate (100% below), and all wage rates not expressed as a percentage of journey level, will be increased by three percent (3.0%). All employees covered by this agreement that were employed as of January 1, 2019 shall receive the aforementioned wage increase retroactively.

Effective January 1, 2020, the journey level wage rate (100% below), and all wage rates not expressed as a percentage of journey level, will be increased by three percent (3.0%).

Effective January 1, 2021, the journey level wage rate (100% below), and all wage rates not expressed as a percentage of journey level, will be increased by two and one half percent (2.5%).

<u>Code</u>	<u>Title</u>	<u>Percent of Journey</u>	<u>2019 Rate</u>
5110	Water Treatment Plant Supervisor		46.41
5109	Water Control Station Operator		39.79
5225	Water Meter Repair Worker		
	First 6 months	95.70%	33.29
	Thereafter	100.00%	34.79
	E*	103.00%	35.83
5226	Water Meter Repair Worker, Lead	115.00%	40.02
5108	Water Plant Maintenance Worker		
	First 6 months		35.20
	Thereafter		36.78
	D*		40.01
5070	Water Pumps & Storage Supervisor		46.41
1999	Water Quality Specialist		
	Step 1		33.26
	Step 2		34.92
	Step 3		36.67
	Step 4		38.50

		Step 5	40.43
5305	Water Service Mechanic		
		First year	37.78
		Thereafter	39.67
5065	Water Service Supervisor		46.41
5061	Water Service Worker		
		First 6 months	95.70% 33.29
		Thereafter	100.00% 34.79
		C*	103.00% 35.83
		D*	115.00% 40.01
		H*	118.00% 41.05
5112	Water Treatment Plant Operator		41.53
5060	Water Utility Worker (Hired after 1/1/87)		
	First year		26.26
		Thereafter	27.57
		Step 1 Training	79.25% 27.57
		Step 2 Training	82.75% 28.79
		Step 3 Training	84.25% 29.31
		Step 4 Training	85.75% 29.83
		Step 5 Training	86.75% 30.18
		G*	31.09
		A*	81.00% 28.18
2155	Watershed Inspector		
	First 6 months		33.26
		7th through 18th month	34.92
		19th through 30th month	36.67
		31st through 42nd month	38.50
		Thereafter	40.43

*See Applied Rate section

Application of Rates

- A. A Water Utility Worker operating a jackhammer shall receive 81% of the Water Service Worker rate, with a four (4) hour minimum, for all hours so assigned.
- B. A Water Utility Worker in the Apprenticeship rotation shall receive \$10.00 per day travel expenses during the first twenty (20) working days of his/her rotation to McMillin and the Headworks.
- C. A Water Service Worker assigned as a Locator shall receive 103% of the Water Service Worker rate for those hours so assigned.
- D. A Water Service Worker or Water Plant Maintenance Worker assigned as a Lead will receive 115% of the Water Service Worker rate for all hours so assigned.
- E. A Water Meter Repair Worker assigned as a crew chief and supervising a Heavy Equipment Operator will receive 103% of the Water Meter Repair Worker rate for all hours so assigned.
- F. All employees required to serve in a standby capacity outside regular working hours, shall receive in addition to any overtime compensation earned, \$3.00 per hour standby pay for each hour such employee is in a standby status. An employee shall not receive standby pay for overtime hours worked.
- G. A Water Utility Worker who has completed a JATC-approved Water Quality course and is assigned to a Flush Truck shall receive 103% of the top step Water Utility Worker rate for all hours so assigned.
- H. An employee in a classification at journey level or above designated as the division Safety Coordinator shall receive 118% of the Water Service Worker rate.
- I. A Water Service Mechanic shall receive an amount equal to the percentages set forth below when certified by management as satisfying the criteria of the three specialty areas of WABO welding certification, Electrical and Telemetry, or Water Quality (see Addendum #1).
 - 4% Certification pay when a Mechanic fulfills the Water Quality classes or the WABO training or Electrical/Telemetry classes;
 - 8% Certification pay when a Mechanic fulfills either the Water Quality classes or the WABO training and the Electrical/Telemetry classes.
- J. Water Treatment Plant Operators shall receive the following for maintaining the following Water Treatment Plant Operator certifications issued by the State of Washington, Department of Health, Water Works Operator Certification per Chapter 246-292 WAC.

Level 4: 5% certification pay
- K. Water Treatment Plant Supervisors shall receive the following for maintaining the following Water Treatment Plant Operator certifications issued by the State of Washington, Department of Health, Water Works Operator Certification per Chapter 246-292 WAC.

Level 4: 5% certification pay

- L. A Water Utility Worker will be paid at the 95.7% rate of pay for the first 1040 hours of set up time in a specific classification and at the 100% rate of pay for all set up hours in that classification thereafter. In the event that a Water Utility Worker is promoted to a permanent Water Service Worker, Water Plant Maintenance Worker or Water Meter Repair Worker position the hours worked in a set up capacity in that specific classification shall be applied to the six (6) month first (1st) step for that classification as listed in Appendix A. A Water Utility Worker with over 1040 hours set up time in a specific classification upon promotion shall move directly into the step 2 rate of pay for that classification.

Longevity Pay

All of the above classifications shall receive longevity pay as per Ordinance 20938 as follows:

- 1% of base pay with aggregate service 5 through 9 years of service
- 2% of base pay with aggregate service 10 through 14 years of service
- 3% of base pay with aggregate service 15 through 19 years of service
- 4% of base pay with aggregate service 20 or more years of service

APPENDIX B

Local 483 IBEW, Water Division Bargaining Unit

This Appendix expires independently from the collective bargaining agreement to which it is attached. The following text is contained in the Joint Labor Agreement for the period 2019:

3.4 Payroll Deduction.

- 3.4.1 **Union Dues.** As evidence of its recognition of employee membership in unions and organizations affiliated with the Joint Labor Committee and other bona fide unions and employees organizations and professional societies, the City of Tacoma agrees that upon written authority given to it by any member of the Union or other representative organization, it will deduct from the wages payable by the employer to such member, in the manner provided by law, such amounts as such member shall authorize, as dues to the organization, and transmit such dues to the organization. The City shall be given one full pay period advance notice of all dues changes. There shall be no retroactive deduction of dues.
- 3.4.2 **Voluntary Contribution to Labor Funds, Committees or Subsidiary Organizations.** The City will deduct from the pay of each employee, each month, the amount the employee wishes to voluntarily contribute to a fund, committee or subsidiary organization maintained or established by a labor organization; provided that the employee has submitted a written original authorization form signed by the employee to the City's Payroll Department, and further provided that a minimum of twenty-five (25) employees have authorized a contribution to the same fund, committee or organization. The first deduction will take effect at the end of the month following the City's receipt of sufficient authorization forms. The deduction will occur once per month on the second pay period of the month.

ARTICLE 18 - ~~ARTICLE 6~~ - ENUMERATION OF BENEFITS

- 6.1. **Domestic Partners.** The City will make available to domestic partners benefits, including insurance, paid leave and statutory Family and Medical Leave, on the same basis that those benefits are provided to employee spouses. Domestic partners will be recognized if the domestic partnership is registered with or recognized by the State of Washington pursuant to RCW 26.60; provided, that the City will continue to recognize domestic partnerships on file with the City as of December 31, 2016, until the participating employee's separation from employment or dissolution of the domestic partnership, whichever occurs first.
- 6.2. **Medical Insurance.** The City of Tacoma and the Joint Labor Committee have negotiated and put in effect medical insurance programs which will continue in effect for the duration of this Agreement. During the term of this Agreement, the City will provide medical insurance to employees and their eligible dependents through the plans described in Appendix A.
 - 6.2.1 **Eligibility.** Permanent, project, appointive, and temporary pending exam employees and their dependents are eligible for coverage beginning on the

first day of the calendar month following the date of hire, unless the date of hire is also the first working day of the calendar month, in which case benefits eligibility begins on the date of hire. All other temporary employees and their dependents are eligible for coverage beginning on the first day of the calendar month following 60 days of continuous employment from the date of hire.

- 6.2.2 Default Options.** If permanent, project, appointive and temporary pending exam employees fail to enroll or waive medical coverage within the required enrollment period, the employee will be enrolled automatically in the City's default medical plan. The default plan shall be the Regence BlueShield PPO Plan. If a temporary employee fails to timely enroll or waive coverage, the employee will be determined to have waived coverage, until such time as they enroll pursuant to a qualifying life event or an open enrollment period.
- 6.2.3 City Payment of Claims/Premiums.** Except as provided below, the City will pay the claims or premiums (according to the plan selected by the employee) associated with the medical insurance selected by the employee and eligible dependents from the City's Health Care Trust. The City will not use reserve funds for purposes other than paying costs associated with the maintenance and administration of its health insurance plans without the express negotiation and consent of the Joint Labor Committee.
- 6.2.4 Employee Contributions to Premiums.** Employees selecting employee-only coverage will contribute \$40 per month towards the premium costs of medical insurance. Employees insuring dependents will contribute \$80 per month towards the premium costs of medical insurance. In addition to these amounts, part-time employees will be responsible for the remainder of the premium cost of the plan they have selected after the City has made a prorated contribution toward the cost of the plan based on the percentage that the part-time employee's FTE actual hours compensated in the previous month bears to full-time (40 hours per week). Employees will be eligible for benefits based on assigned work schedule. The work schedule shall be determined monthly, for pay periods in the upcoming month. Such schedules will be rounded up to the nearest four (4) hour increment.
- 6.2.5 Wellness Credit.** Employees participating in wellness will receive a \$20 per month credit toward their premium contribution for medical insurance coverage under the Regence PPO Plan or Kaiser Permanente HMO Plan, or a \$40 per month credit toward their premium contribution for coverage under the Regence HDHP/HSA Plan. Employees in a temporary status are not eligible to receive the credit.
- 6.2.6 Contributions to HSA Accounts.** Employees who select the Regence HDHP/HSA Plan will receive the following annual contributions to a health savings account. Contributions will be deposited on a monthly basis. Employees may contribute to their own accounts up to the maximum dollar value permitted by applicable law.

- a. Employees Who Participate in Wellness – \$1250 per year for employees selecting employee-only coverage; \$2500 per year for employees insuring one or more dependents.
 - b. Employees Who Do Not Participate in Wellness – \$500 per year for employees selecting employee-only coverage; \$1000 per year for employees insuring one or more dependents.
- 6.3** Dental and Vision Insurance. The City will provide dental and vision insurance to employees and eligible dependents according to the terms of its insurance plans. The City will not make changes to its dental or vision insurance plans during the term of this Agreement without first bargaining with the Joint Labor Committee. The City will pay the full premium cost for dental and vision insurance for employees and eligible dependents.
- 6.4** Dual Coverage. No City employee or eligible dependent may be insured under more than one City medical, dental, or vision insurance plan. Employees whose spouses/domestic partners/children up to age 26 are eligible for medical insurance benefits through the City will share the costs of insurance as follows:
 - 6.4.1** Employees Choosing the Same Plan – One spouse/domestic partner will be placed on the other's medical, dental, or vision insurance, and the primary spouse/domestic partner will pay the appropriate premium cost for family coverage.
 - 6.4.2** Employees Choosing Different Plans – If spouses/domestic partners elect coverage under different plans, they may not provide coverage to their spouse/domestic partner on their medical, dental, or vision insurance plan. Each employee will pay the appropriate cost share (individual or family) depending on whether they include children on their plan.
 - 6.4.3.** Children up to Age 26 – Benefit-eligible employees whose parents are City employees must elect coverage in their name (paying the applicable premium contribution) or coverage as a dependent on their parent's plan (with no premium contribution), but may not receive coverage under two medical, dental or vision insurance plans.
- 6.5** Opt Out With Proof of Insurance. Subject to any applicable legal restrictions imposed by the Employer's medical, dental and vision insurance providers, full-time and part-time employees may choose to opt out of the Employer provided medical, dental and/or vision insurance. To be eligible to opt out of the medical, dental and/or vision insurance, full-time permanent, project, appointive, and temporary pending exam employees shall be required to: (i) provide the Employer with written proof of alternative medical, dental and vision insurance coverage; and (ii) notify the Employer in writing within thirty-one (31) calendar days if he/she should lose their alternative medical, dental and vision coverage.
- 6.6** Vacations shall be as provided in Section 1.12.220 of the Tacoma Municipal Code. This section provides in part for the following:

- 6.6.1** Full-time employees shall accrue vacation leave hours for each biweekly pay period pursuant to the following schedule:

Completed Years of Aggregate Service	Accrued Hours per Pay Period	Hours of Vacation Leave
Completion of years 0, 1, 2, 3	3.69	96
Completion of years 4, 5, 6, 7	4.60	120
Completion of years 8, 9, 10, 11, 12, 13	5.22	136
Completion of years 14, 15, 16, 17, 18	6.14	160
Completion of 19 years	6.45	168
Completion of 20 years	6.76	176
Completion of 21 years	7.07	184
Completion of 22 years	7.38	192
Completion of 23 years	7.69	200
Completion of 24 years	8.00	208
Completion of 25 years	8.31	216
Completion of 26 years	8.62	224
Completion of 27 years	8.93	232
Completion of 28 years or more	9.24	240

Employees vacation accrual rates shall be established as of January 1 of each calendar year and shall be based on the rate applicable to the number of years of aggregate service the employee will complete within that calendar year.

- 6.6.2** Part time employees will accrue vacation on a pro-rated basis according to the percentage their FTE bears to full-time
- 6.6.3** Employees accrue vacation in each pay period in which they are in a paid status. An eligible employee shall accrue vacation based on the above schedule beginning from the date of their appointment.
- 6.6.4** Vacation accrual balances shall not exceed an amount equal to two (2) years' accrual at the employee's then-current accrual rate
- 6.6.5** Vacation leave may not be taken without the prior approval of the appointing authority and may not be taken in the pay period in which it was earned. Vacation leave shall be scheduled so as to meet the operating requirements of the City and, as far as practicable, the preferences of the employees. Authorized vacation time may be used in increments of one tenth (1/10) of an hour.
- 6.6.6** For the purposes of this Section, permanent employees of the Municipal Belt Line Railway who are assigned to the extra board will be considered as full-time employees.

6.7 Sick allowance with pay shall be as provided in Section 1.12.230 - 1.12.232 of the Tacoma Municipal Code. This section provides in part the following:

6.7.1 Each regularly employed full-time employee, including temporary employees, shall accrue sick leave at the rate of 3.69 hours for each biweekly pay period in which he or she has been in a paid status. There is no limit to the number of sick leave days an employee may accrue. Part-time employees shall accrue sick leave on a prorated basis according to the percentage their FTE bears to full-time.

6.7.2 An employee separated from service due to death or retirement for disability or length of service is compensated to the extent of twenty five percent (25%) of his/her sick leave accruals. An employee separated in good standing from service for any other reason who has a minimum of ten (10) days accrual, is compensated to the extent of ten percent (10%) of his/her sick leave accruals, up to a maximum accrual of one hundred twenty (120) days.

6.7.3 Permissible uses of sick leave are described in Tacoma Municipal Code Sections 1.12.230 – 1.12.232.

6.8 Personal Time Off shall be as provided in Section 1.12.248 of the Tacoma Municipal Code. This section provides in part for the following:

6.8.1 Employees enrolled in the Personal Time Off (PTO) Plan shall accrue PTO hours for each bi-weekly pay period pursuant to the following schedule. Employees receive PTO in lieu of vacation and sick leave

Completed Years of Aggregate Service	Hours per Year	Hours per Pay Period
Completion of years 0, 1, 2, 3	144	5.54
Completion of years 4, 5, 6, 7	168	6.46
Completion of years 8, 9, 10, 11, 12, 13	184	7.08
Completion of years 14, 15, 16, 17, 18	208	8.00
Completion 19 years	216	8.31
Completion of 20 years	224	8.62
Completion of 21 years	232	8.92
Completion of 22 years	240	9.23
Completion of 23 years	248	9.54
Completion of 24 years	256	9.85
Completion of 25 years	264	10.15
Completion of 26 years	272	10.46
Completion of 27 years	280	10.77
Completion of 28 years or more	288	11.08

6.8.2 Employees shall accrue PTO on a prorated basis according to the percentage their FTE bears to full-time. Employees' PTO accrual rates shall

be established as of January 1 of each calendar year and shall be based on the rate applicable to the number of years of aggregate service the employee will complete within that calendar year. An employee may accrue a maximum of 960 hours of PTO.

- 6.9** On-the-job injury shall be as provided in Section 1.12.090 of the Tacoma Municipal Code. That section provides in part:
- 6.9.1** In the case of a disability covered by State Industrial Insurance or Worker Compensation, the first three (3) calendar days shall be paid at the regular normal pay and charged to earned leave, in the event the time loss is less than fifteen (15) calendar days.
 - 6.9.2** For one-hundred-twenty (120) working days, the City will pay a supplement payment such that State payment plus City supplement equals eighty-five percent (85%) of regular normal pay.
 - 6.9.3** Pursuant to Ordinance 27753, adopted November 18, 2008, after the payment and use of the one hundred twenty (120) working days, the employee may request to use accumulated sick leave and/or planned time off (PTO) balances to supplement the time loss pay such that the combination of the supplement and the time loss pay equals eighty-five percent (85%) of the employee's normal wage (the employee's rate at the time of injury plus any longevity pay to which the employee is eligible). If the employee elects to use paid sick leave and/or PTO the election will continue until such balances are exhausted or until the employee returns to work. Hours deductions from the employee's PTO or sick leave balances shall be determined by dividing the supplement by the employee's regular hourly wage. Example: Assume a supplement amount of \$596 dollars is necessary to bring the total to 85%. If the employee's regular wage is assumed to be \$23.84, the deduction from sick leave and/or PTO would be $\$596/\$23.84=25$ hours.
 - 6.9.4** Any employee who becomes disabled prior to completing thirty (30) working days' employment with the City, shall receive the compensation disability allowance for a maximum of thirty (30) working days.
 - 6.9.5** The above does not apply to Police and Fire commissioned hired prior to October 1, 1977, however, such employees shall have on-the-job injury claims charged against their sick leave accruals in the same manner as other employees of the City.
 - 6.9.6** For the purposes of this Section, regular normal pay shall be that rate of the classification in which he/she was working in on the date of injury.
- 6.10** Group Life Insurance shall be as provided in Section 1.12.096 of the Tacoma Municipal Code. The City will pay one hundred percent (100%) of the cost of premiums for those employees electing to participate. The amount of insurance an employee may purchase is based on his/her annual salary rounded to the next highest \$1,000 of coverage.

6.11 Longevity pay may be provided to employees of member unions pursuant to the terms of Ordinance 20938, which reads in part as follows:

6.11.1 Regular, probationary, and appointive employees who through union agreement have elected the option of longevity pay shall receive additional compensation based on a percentage of their base rate of pay received for the class in which they are currently being paid. No application of rate may be used in computing longevity pay.

6.11.2 Eligible employees shall receive longevity pay in accordance with the following schedule:

- | | |
|--|--------------|
| (a) From 5 through 9 years aggregate service | 1% per month |
| (b) From 10 through 14 years aggregate service | 2% per month |
| (c) From 15 through 19 years aggregate service | 3% per month |
| (d) 20 years or more aggregate service | 4% per month |

6.11.3 Eligibility for longevity pay shall be determined by the length of aggregate City service and will be paid to an employee at the first of the calendar year in which any of the above stipulated periods of aggregate service will be completed.

6.12 Holidays shall be as provided in Section 1.12.200 of the Tacoma Municipal Code. This section provides in part that the following and such other days as the City Council, by resolution, may fix, are holidays for all regularly employed full-time employees of the City and shall be granted to employees or days off in lieu thereof.

- (e) New Year's Day (January 1)
- (f) Martin Luther King Day (third Monday in January)
- (g) Presidents' Day (third Monday in February)
- (h) Memorial Day (last Monday in May)
- (i) Fourth of July
- (j) Labor Day (first Monday in September)
- (k) Veterans' Day (November 11)
- (l) Thanksgiving Day (fourth Thursday in November)
- (m) The day immediately following Thanksgiving Day
- (n) Christmas Day (December 25)

6.12.1 A full-time employee shall receive eight (8) hours of holiday pay for each holiday listed above, provided he/she is in a paid status on both the entire regularly scheduled workday immediately preceding the holiday and the entire regularly scheduled workday following the holiday.

6.12.2 In addition to the days listed above, eligible employees shall receive two (2) additional eight (8) hour paid floating holidays per calendar year for which time off shall be mandatory. Floating holidays may not be carried over from one calendar year to the next, and may not be converted to cash in any circumstances. To be eligible for these floating holidays, employees must have been or scheduled to be continuously employed by the City for four (4) months as a full-time or part-time regular, probationary, or appointive employee during the calendar year of entitlement. An employee hired into a

part time status shall receive holiday pay on a prorated basis on the hours that he/she is hired to work.

6.12.3 Full time employees working alternate schedules who are normally scheduled to work more than eight (8) hours on a day observed as a holiday may use vacation leave, personal time off, compensatory time, or leave without pay at the employee's option to make up the difference between the employee's normally scheduled shift and the eight (8) hours of holiday pay.

6.12.4 Unpaid Holidays. Employees will be granted two (2) unpaid holidays per calendar year for a reason of faith or conscience or an organized activity conducted under the auspices of a religious denomination, church, or religious organization. The employee will select the days on which to take the unpaid holiday(s) after consultation with his or her supervisor as provided by City policy. To the extent reasonably possible, employees should submit leave requests with at least thirty (30) calendar days' notice. Employees may elect to use accrued vacation leave, PTO, compensatory time or floating holidays to remain in paid status on a requested holiday to the extent that such leave is available on the requested date under applicable policies, procedures and/or collective bargaining agreements governing the use of paid leave. An unpaid holiday requested pursuant to City policy will not be denied unless the employee's absence would impose an undue hardship on the City, as defined by applicable rule or regulation.

6.13 The City shall contribute up to \$3.00 per month for long term disability coverage for all permanent non-commissioned City employees.

6.14 The City will maintain an Internal Revenue Service Code Section 125 flexible benefits plan. The City shall pay the monthly per participant administrative fee. Employees cannot utilize this plan for Long Term Disability premium payments. Employees who participate in the City medical plan will be eligible to participate in the Section 125 flexible benefits plan. The maximum annual allowable employee contribution for medical reimbursement shall be based on IRS regulations. At the end of each year any unspent monies in employee flexible benefits accounts will revert to the Labor/Management Health Care Trust Account.

6.15 Wellness

6.15.1 Wellness Committee. The parties will maintain a Labor Management Health Care Committee (aka Wellness Committee) during the term of the Agreement to discuss and address issues regarding the City's insurance programs and wellness program. The Wellness Committee will be comprised of four (4) City and four (4) Labor representatives. The Committee will:

- a. Develop monthly or bimonthly newsletters to help educate and encourage the City employees.
- b. Review all Health Trust Fund/Flex Account balances monthly.
- c. Review experience reports monthly.

6.15.2 Wellness Funds. The City and Tacoma Joint Labor Committee will establish a budget amount to fund activities associated with its Wellness Program using the Health Care Flex Account. Expenditures of such budgeted funds will be reviewed and approved by the Wellness Committee.

6.15.3 Participation. To receive the benefits associated with participating during each year of the Agreement, employees must complete participation requirements established by the Wellness Committee.

6.16 The City will amend its FMLA policy to remove the requirement that parents of a newborn, newly adopted or newly placed foster child share a combined twelve (12) weeks of family medical leave to care for the new child. The revised policy will permit each parent to use up to twelve (12) weeks of available family medical leave for the care of a healthy newborn or placement of an adopted or foster child, provided that the City may require the parents to stagger their use of leave if granting leave to both simultaneously will unduly disrupt City operations.

Index to Addendums

Addendum #

1 Water Service Mechanic Requirements for Applied Rate

Index to Letters of Understanding

LOU #	Title	Date
1	Headworks 24-Hour Shift Implementation	10/8/14
2	Water Control Center 24-Hour Shift Implementation	1/14/15

Index to Letters of Concurrence

Letter #

1	Apprenticeship Rotation	3/20/02
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**Addendum #1
Water Service Mechanic
Requirements to Qualify for Applied Rate (I)**

This Appendix describes the certifications and educational requirements associated with the applied rates described in Paragraph I of Appendix A. In general, to receive one of the applied rates described in Appendix A, a Water Service Mechanic must a) complete the required specialized training, including any training during non-working hours, b) demonstrate specific skills and abilities in the specialized field, and c) maintain proficiency in the specialty area, including maintenance of any required licenses or cards. A mechanic meeting the requirements of one of the three fields may be called upon to use those skills as may be required by the Department.

To the extent that the requirements below identify particular community college courses, a mechanic may be permitted substitute a similar course or an on-line version of a course where the specified course is no longer offered or is not otherwise available. Any such course substitution must be approved in advance by the Superintendent or designee. Mechanics completing a community college course specified below (or an approved alternative) may request reimbursement of a portion of the tuition and book costs according to the requirements of the City of Tacoma's Tuition Reimbursement Policy.

Welding Certification: Obtain Certified Welder Card covering "field all position welding" from the Washington Association of Building Officials in structural or piping welding. Classes and exams are available at Bates Technical College. Maintain certification thereafter. Mechanics who obtain certification will be required to be able to perform difficult or complex welding assignments, including lifting devices, pipeline, pipe fitting and pipe tap welding, and structural welding including bridges, water tanks and buildings, and shop fabrication. Although most welding for Tacoma Water does not require certification, the attainment of WABO certification provides consistent documentation of a welder's ability to uniformly produce high quality welds under difficult conditions. Alternate certifications will not be accepted in place of WABO certification.

Electrical and Telemetry: Complete Tacoma Power's *Basic Electricity* class, the courses titled "WTECH187 Drawings and Manuals", and "WTECH 188 Water and Wastewater Electrical" at Green River Community College, and a minimum of 40 hours of in-house training on Tacoma Water facilities. The in-house training will typically be hands-on training which will enable the mechanic to become familiar with Tacoma Water's equipment and procedures. This training may be conducted by other experienced mechanics, engineers, equipment vendors, or other experts. Subjects will include items such as are listed in the examples below.

Mechanics in this specialty area will be required to be able to perform basic electrical work on equipment below 600 volts which does not require an electrician's license, plus basic electrical work on telemetry equipment which does not require the expertise of a communications shop technician. Examples include connecting and disconnecting motor power leads, cleaning motor control center components, conducting megger tests on motors, taking resistance, voltage and amperage readings, measuring and calculating wire-to-water pump efficiencies, measuring power factors, visually checking for damaged electrical equipment, calibrating chart recorders, checking for blown instrumentation and telemetry fuses, reading and interpreting recorder error codes, visually checking for damaged electronic boards, adjusting phase monitor relays, and changing pump control setpoints on timer/counter access modules.

Water Quality: Complete the courses titled "WTECH 182 Pumps and Pumping Systems", "WTECH 184 Disinfection and Chemical Feed Systems", "WTECH 187 Drawings and Manuals", and "WTEC 188 Water and Wastewater Electrical" at Green River Community College, and a minimum of 40 hours of in-house training on Tacoma Water facilities. The in-house training will typically be hands-on training which will enable the mechanic to become familiar with Tacoma Water's equipment and procedures. This training may be conducted by other experienced mechanics, engineers, equipment vendors, or other experts. Subjects will include items such as are listed in the examples below.

Mechanics in this area may be required to install, troubleshoot, rebuild and maintain chemical feed pumps and online monitoring equipment, effectively use drawings and manuals, check for blown instrumentation and telemetry fuses, take resistance, voltage and amperage readings, read and interpret recorder error codes, and visually check for damaged electronic boards.

Typical Green River Community College courses are 3 hours per week for a 10 week period. With departmental approval, alternative courses in the Electrical & Telemetry and Water Quality fields, covering the same material as the courses specified above, and requiring a similar amount of time to complete, may be substituted.

LETTER OF UNDERSTANDING
between
IBEW, Local 483
and
Water Division, Department of Public Utilities

Headworks 24-Hour Shift Implementation
Originally Signed: May 28, 2008
Date Revised: October 8, 2014

PREAMBLE

Tacoma Water and IBEW Local 483 mutually desire to integrate new Operators into the rotating schedule to enhance safe and reliable operation of the new and existing treatment facilities.

Tacoma Water and IBEW Local 483 mutually understand and agree that actual operating experience will be necessary to fully assess the operating schedule needs of the Green River Filtration Facility, and agree, upon the request of either party, to reopen this Letter of Understanding at any time.

1. Shift Design

Attached is the 24-hour shift schedule set in place by this Letter of Understanding. This schedule supersedes Sections 12.5 and 12.6 of the parties' current Collective Bargaining Agreement for Headworks Water Treatment Plant Operator and Supervisor positions and the Letter of Understanding dated February 28, 2008. All Water Treatment Plant Operator day and night shifts will rotate on an equivalent time basis.

2. Operator Shift Schedule Definitions & Rotation:

The workgroup will be divided in two teams of four who shall rotate through three day shift positions, and one night shift position. From time to time, for purposes of cross training and work management, team members may be assigned to one or the other team. As a matter of regulatory compliance, there must be a minimum of one WTPO Level 3 certified operator on duty at all times.

For purposes of operator rotations, the day operators will be called D1, D2, & D3, and the night shift operator will be N1. Standard shift rotation on each team will be D1 to D2, D2 to N1, N1 to D3, D3 to D1. The rotation shall occur every four weeks. Shift rotation may require modification in the event one operator is absent, or during periods of training of new operators.

The standard operating schedule will include three operators working a 12-hour shift (6 AM to 6 PM) on six days each pay period. On a seventh day (Tuesday), the D1 operator will work a 12-hour day (6 AM to 6 PM), and the D2 and D3 operators will work staggered 8-hour shifts. Operator D2 Tuesday shift shall be 6 AM – 2 PM, and Operator D3 shift shall be 10 AM to 6 PM).

3. Duty Operator, Shift Change & meal period:

During each standard operating shift, one operator shall be defined as the Duty Operator. This will typically be the D1 Operator. This operator will have the responsibility to collect all relevant

operating information at shift end, and transfer that to the oncoming Duty Operator to provide a smooth transition from shift to shift. The Duty Operator ending his/her shift shall receive a minimum of 0.1 hours of overtime at shift change to facilitate information exchange.

When serving in the capacity of covering a regularly scheduled Water Treatment Plant Operator shift, Water Treatment Plant Operators and the Water Treatment Plant Supervisor will be in a paid status during their meal period. Due to the nature of their work and specific shift responsibilities, they must be available to address plant issues.

4. Absence Coverage:

Operators will from time to time be absent due to sick leave or vacation. During absences due to sick leave, it is sometimes the case that little advance notice is available. Response to cover affected shifts, when required, shall use the following principles:

- Absence coverage, when required, will first attempt to use Operators on a like schedule. Like schedule shall be defined as days or nights. For the purpose of this definition a shift shall end on the last day the employee works the assigned shift hours. The employee's new shift shall start on the first day off before their new shift starts.
- Available Operators will be those currently working a like schedule (day or night). A current day shift Operator or the Water Treatment Plant Supervisor may be considered for night shift coverage if the Off-Duty Night Shift Operator is unavailable.
- Shift extensions may be required in cases where relief operators cannot be reached, or extraordinary work requirements exist. A shift of 18-hours will be the operational maximum, short of a significant emergency.
- All Water Treatment Plant Operators and the Water Treatment Plant Supervisor at the Green River Water Treatment Facility are considered Shift Workers, amending the definition of Shift Worker in Section 5.5 of the Collective Bargaining Agreement.

5. Specific Absence Coverage Plan:

In all cases the Plant Manager (or his /her designee) must be notified, and if none of the sequential options are available, he/she determines the plan of action. In cases where Overtime (OT) is anticipated, it is noted below:

Day Shift – Short Term absence (less than 4 days)

The Day shift schedule is identified in Section 2 above. In the event of operator absence, and additional staffing is required:

1. If D1 is absent, on the first day, D2 shall assume the D1 shift, and D3 will work their regularly scheduled shift. If additional coverage is required, D3 may be requested to extend to a 12 hour shift (Tuesday only). On the second day of absence for D1, D2 or D3 will assume the D1 shift, in order of seniority. The remaining operator will work their regularly scheduled shift. If additional coverage is required, the remaining operator may be requested to extend to a 12 hour shift (applicable Tuesday only - OT).

If D2 or D3 are absent, remaining Operators (D1 and D2 or D3, whichever is present) will work their regularly scheduled shift. If additional coverage is required, the remaining D2 or D3 operator may be requested to extend to a 12 hour shift (applicable Tuesday only - OT).

2. Operators from the Team scheduled off shall be offered an opportunity to a full or partial shift in order of seniority (OT).
3. Supervisor will cover shift extension (OT)

Day Shift – Long Term absence (4 days or more)

1. In the event one Day Shift operator is out on an extended absence, one of the remaining two will work their regularly schedule 12 hour shifts and one shall work a 12 hour shift on Tuesday, unless one of the remaining two is the D1 operator. If the D1 operator has a planned absence, D2 or D3 will assume the D1 shift, in order of seniority. The remaining operator will work their standard shift. If additional coverage is required, the remaining operator may be requested to extend to a 12 hour shift (applicable Tuesday only - OT).
2. Operators from the Team scheduled off shall be offered an opportunity to a full or partial shift in order of seniority (OT).
3. Shift rotations will continue to follow the sequence outlined in Section 2.

Night Shift – Short Term absence

There is only a single regularly scheduled Operator on Night shift, and any absence will require staffing adjustment for coverage. In the event the scheduled Night Operator calls in sick, or fails to report for duty, the Supervisor will be contacted, and:

1. The D1 operator will remain on duty until a replacement can be found. The D1 Operator may offer that OT to the D2 operator or D3 operator in order of seniority.
2. The Night operator from Team currently off duty will be called and offered the opportunity to complete the shift (OT)
3. Day Operators from the Team scheduled off shall be offered an opportunity to a full or partial shift in order of seniority (OT). The operator will be eligible provided the shift does not follow or precede a regularly scheduled shift.
4. Supervisor may cover shift (OT)

Night Shift – Long Term absence (4 days or more)

1. The Night Operator from Team currently off duty will be offered OT for the first four days.
2. The D2 Operator will be transitioned to Night Shift earlier than the planned rotation to assure coverage.

6. Vacation Coverage.

Due to the critical function of the Green River Headworks, vacation planning must be carefully

planned and coordinated. Trades for shifts will not be allowed without approval of the Supervisor. In general, vacations requested during periods when assigned to the night shift will not be approved.

7. **Overtime considerations.**

Except as otherwise provided for in this LOU, seniority in section shall determine the order of offering overtime assignments.

In cases where there are no volunteers for overtime for a Water Treatment Plant Operator shift that requires coverage, temporary vacancies shall be filled by calling an employee in the Water Treatment Plant Operator or Water Treatment Plant Supervisor classification in inverse order of seniority.

The Fair Labor Standards Act work week for Water Treatment Plant Operators covered under this LOU will be 2 PM Saturday to 2 PM Saturday.

Signed by:

Alice A. Phillips, IBEW Local 483 Business Manager 10/14/14
William Gaines, Utilities Director/CEO
Linda A McCrea, Superintendent
Joy St. Germain, HR Director

LETTER OF UNDERSTANDING
between
IBEW, Local 483
and
Water Division, Department of Public Utilities
Water Control Center 24-Hour Shift Implementation
Date Jan 1, 2013
Revised August 16, 2013
Revised January 14, 2015

Tacoma Water has requested, and IBEW Local 483 has agreed, to open the sections of the Collective Bargaining Agreement (CBA) that deal specifically with the Water Control Station Operator's hours of work and overtime assignments. Based on that request the following was agreed to by the parties.

In addition, this Letter of Understanding (LOU) shall remain in effect as part of the current Collective Bargaining Agreement and shall remain in full force and effect until mutually agreed to otherwise.

Section 12.5 Shift Personnel Work Week shall be modified as follows:

Section 12.5 – Work Week: For the purpose of this Article, the normal workweek shall consist of seven (7) consecutive shifts of twelve (12) hours of work for each shift, followed by seven (7) consecutive days off. Employees working the night shift shall receive an additional three (3) percent compensation for all hours worked on said shift. Employees working overtime on a night shift shall receive the shift differential along with their overtime pay according to the FLSA.

Section 12.7 - Standard Shift, Control Station Operator

- A. The standard shift shall be seven (7) days on, followed by seven (7) days off.
- B. For purposes of calculating overtime, the work period will begin at 10:00 p.m. Monday and end at 9:59 p.m. Monday.
- C. Day shift hours of work shall be 6:00 a.m. to 6:00 p.m. The rotation change shall begin Friday at 6:00 a.m.
- D. Night shift hours of work shall be 6:00 p.m. to 6:00 a.m. The rotation change shall begin Friday at 6:00 p.m.
- E. Water Control Station Operators shall receive a minimum of 0.1 hours of overtime at shift change for the arriving operator to facilitate information exchange.

Upon execution of this LOU the patrol shift will be terminated.

Water Control Station Operators shall normally be restricted to no more than eighteen (18) consecutive hours of work within a twenty-four (24) hour period. Exception to this provision will be allowed under emergency conditions or by mutual agreement.

Water Control Station Operators shall be permitted to keep a bank of compensatory time of no more than forty-eight (48) hours to be used to supplement the eight (8) hour holiday, floating

holiday or incentive days. If compensatory time is not used vacation time may be used to supplement eight (8) hour holiday pay. Unused compensatory time will be paid out in accordance with Section 12.10 of the agreement.

It is recognized by both parties that any work in excess of the Fair Labor Standards Act (FLSA) shall be paid out as overtime.

In cases where there are no volunteers for coverage for a Water Control Station Operator shift, the shift shall be filled by calling an employee in the Water Control Station Operator classification in inverse order of seniority.

Due to the critical function of the Water Control Center, vacations must be carefully planned and coordinated. Advance notice of known future absences shall be communicated to the Supervisor or his/her designee for approval, as soon as feasible. For all vacancy coverage the following order shall be used:

Monday through Friday Day Shift:

1. Set-up Operators
2. Off duty Operators
3. On duty Operators

Night Shift, Saturday, Sunday or City Observed Holiday:

1. Off duty Operators
2. On duty Operators
3. Set-up Operators (two separate six-hour shifts may be used for night shift)

Scheduled leave of seven (7) days or more (two shifts of six (6) hours each may be used to transition into and out of the coverage period, as below):

1. Set-up Operators
2. Off duty Operators
3. On duty Operators

In general, vacations requested during periods when another Operator is also on vacation, will not be approved, unless coverage is arranged forty-eight (48) hours prior to the time off. Coverage must be approved by the Supervisor or his/her designee.

If shift coverage has been offered per the above guidelines and should no Operator want or be capable of filling the full shift, two shifts of six (6) hours each may be used.

All overtime for off duty Operators shall be administered as follows:

- Off duty Operators shall be offered overtime in order of least overtime worked in a calendar year, based on the last payroll. The list shall be reset to zero (0) on January 1st of each year and restarted in the order of seniority.
- All overtime for set up Operators shall be administered as defined in Section 9.1 of the collective bargaining agreement.

Current Water Station Control Operators who are demoted in lieu of layoff as a result of this LOU will be eligible for consideration should a vacancy occur in the Water Service Worker, Water Plant Maintenance Worker, Water Service Mechanic or Water Meter Repair Worker classification, for a period of two years.

The parties agree to meet within six months of the date of signing to review this Letter of Understanding.

Signed by:

Alice A. Phillips, IBEW Local 483 Business Manager
William Gaines, Utilities Director/CEO
Linda A McCrea, Superintendent
Joy St. Germain, HR Director

Letter of Concurrence
Subject: Apprenticeship Rotation

IBEW Local 483 and Tacoma Water Department concur that, for the purposes of overtime call out, Apprentices who are temporarily assigned to another section for training (rotation) shall maintain their position on the overtime list in Distribution regardless of their section (rotation) assignment. This letter Concurrence shall apply to apprentices who are on rotation only.

Original signed by:

Concur: Ray West Date: 3/13/2002
For Tacoma Water

Concur: Alice A. Phillips Date: 3/12/2002
For IBEW Local 483



RESOLUTION NO. U-11082

1 A RESOLUTION related to collective bargaining; authorizing the execution of
2 a Letter of Agreement between the City of Tacoma and the
3 Washington State Council of County and City Employees, Local 120,
4 for a replacement of Article 4 of the 2017-2019 Collective Bargaining
5 Agreement.

6 WHEREAS the City of Tacoma and the Washington State Council of
7 County and City Employees, Local 120 ("Union") have negotiated a Letter of
8 Agreement ("Agreement"), and

9 WHEREAS the Agreement provides for a replacement of Article 4 in
10 the 2017-2019 Collective Bargaining Agreement which will read as follows:

ARTICLE 4 – UNION MEMBERSHIP DUES

11 **Section 4.1** The City agrees to deduct from the paycheck of
12 each employee, who has so authorized it, the initiation fees,
13 monthly dues, and assessments uniformly required of members
14 of the Union. An employee may, on written request, also have
15 deducted from their pay such other items as may be mutually
16 agreed between the Union and the City. The amounts deducted
17 shall be transmitted monthly to the Union on behalf of the
18 employees involved. New Employees' initiation fee may be
19 incrementally deducted as specified in the authorization. Union
20 payroll deduction authorization cards submitted to the City and
21 received by the payroll office will have deductions beginning no
22 later than the second payroll cycle following receipt of the
23 authorization card. The City will honor the terms and conditions
24 of each employee's duly executed payroll deduction
25 authorization card irrespective of the employee's membership
26 status. The Union agrees to refund to the City any amounts
paid to it in error on account of the provisions of the Section
upon presentation of proper evidence thereof. There shall be
no retroactive deduction of union dues.

Upon receipt of a new, original payroll deduction authorization,
the City will make a copy available to the Union electronically
within two weeks.

Section 4.2 Employees may cancel their payroll deduction by
written notice to the City and the Union in accordance with the



1 terms and conditions of their duly executed payroll deduction
2 authorization card. The cancellation will become effective no
3 later than the second payroll cycle after receipt of the
4 confirmation from the Union that the terms of the employee's
5 duly executed payroll deduction authorization card regarding
6 cancellation have been met.

7 **Section 4.3** The Union agrees to indemnify and save the City
8 harmless from any and all claims, demands, suits or other forms
9 of liability that arise against the City for or on account of
10 compliance with this Article and any and all issues related to the
11 deduction of dues and fees. In all such cases, the City's
12 reasonable attorney's fees will be paid by the Union. If
13 requested by the Union in writing, the City will surrender any
14 such claim, demand or suit or other form of liability ("Claim") to
15 the Union for defense and resolution. The Union shall not
16 concede, settle, compromise, or resolve any Claim without the
17 prior written approval of the City.

18 **Section 4.4** Upon request, the City will furnish to the Union a
19 roster and pay status of current bargaining unit employees. It is
20 understood that this tabulation will be used by the Union for the
21 sole purpose of compiling the Union dues formula that the Union
22 will not divulge any information from the subject tabulation to
23 any other person or agency.

24 **Section 4.5** The City will inform new bargaining unit
25 employees of the Union's exclusive representation status.
26 Consistent with R.C.W. 41.56.037, the City will provide union
access to new employees entering the bargaining unit within
ninety (90) days of hire. The City will allow the Union thirty (30)
minutes to meet with such individuals during work hours and at
their usual worksite or a mutually agreed upon location.

WHEREAS it now appears in the best interest of the City that the
Agreement negotiated by said Union and the City be approved; Now,
Therefore,



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

That said Letter of Agreement between the City of Tacoma and the Washington State Council of County and City Employees, Local 120, is approved, and the Council of the City of Tacoma is requested to concur in the approval of the replacement of Article 4 of the 2017-2019 Collective Bargaining Agreement, and authorize the proper officers of the City to execute said Letter of Agreement substantially in the form on file and as approved by the City Attorney.

Approved as to form and legality:

[Signature]
Chief Deputy City Attorney

Chair

Secretary

Clerk

Adopted _____

of June 26, 2019

REQUEST FOR RESOLUTION

Date June 14, 2019

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)

Authorizing approval of a letter of agreement negotiated between the City of Tacoma and the Washington State Council of County and City Employees, Local 120.

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

This resolution recommends approval of a Letter of Agreement between the Washington State Council of County and City Employees, Local 120, on behalf of the employees represented by said Union.

The agreement is anticipated to be scheduled for consideration by the City Council as a Resolution on July 9, 2019.

3. Summarized reason for resolution:

The resolution will recommend the execution and implementation of the Letter of Agreement negotiated with the between the City of Tacoma and the Washington State Council of County and City Employees, Local 120, on behalf of those employees represented by said union.

4. Attachments:

- a. Collective Bargaining Agreement
- b. Financial Impact Memorandum
- c. Letter from Jackie Flowers, Director of Utilities/CEO

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

6. Deviations requiring special waivers: ☐
None

Originated by:

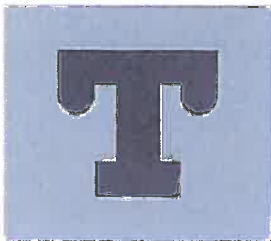
Section Head

Requested by:

Human Resources Director

Approved:

Director of Utilities



TACOMA PUBLIC UTILITIES

3628 South 35th Street

Tacoma, Washington 98409-3192

June 14, 2019

To the Chairman and Members of the Public Utility Board

And

To the Mayor and Members of the City Council

The Management Negotiating Team recommends adoption of the proposed Letter of Agreement as negotiated by and between the City of Tacoma and the Washington State Council of County and City Employees, Local 120. The Letter of Agreement is anticipated to be considered by the City Council as a resolution on July 9, 2019.

The Letter of Agreement provides that the language of Article 4, Union Membership and Dues, will be replaced in its entirety to reflect the legal requirements of the *Janus v. AFSCME Council 31* court case to read as written in the Letter of Agreement.

It is recommended that the Public Utility Board and the City Council take the necessary approving action.

Very truly yours,

Jackie Flowers
Director of Utilities/CEO



**Letter of Agreement
By and Between
CITY OF TACOMA
and
LOCAL NUMBER 120 OF THE WASHINGTON STATE COUNCIL OF COUNTY AND
CITY EMPLOYEES, AFSCME, AFL-CIO**

Subject: Addressing Impacts to Union Membership and Dues

The City of Tacoma and Local 120 hereby enter into this Letter of Understanding for the purpose of addressing the impacts of the *Janus v. AFSCME Council 31* court case.

Agreement:

Now, therefore, the Local 120 and the City of Tacoma hereby agree that Article 4 of the 2017-2019 Collective Bargaining Agreement will be replaced in its entirety to read:

ARTICLE 4 – UNION MEMBERSHIP AND DUES

Section 4.1 The City agrees to deduct from the paycheck of each employee, who has so authorized it, the initiation fees, monthly dues, and assessments uniformly required of members of the Union. An employee may, on written request, also have deducted from their pay such other items as may be mutually agreed between the Union and the City. The amounts deducted shall be transmitted monthly to the Union on behalf of the employees involved. New Employees' initiation fee may be incrementally deducted as specified in the authorization. Union payroll deduction authorization cards submitted to the City and received by the payroll office will have deductions beginning no later than the second payroll cycle following receipt of the authorization card. The City will honor the terms and conditions of each employee's duly executed payroll deduction authorization card irrespective of the employee's membership status. The Union agrees to refund to the City any amounts paid to it in error on account of the provisions of this Section upon presentation of proper evidence thereof. There shall be no retroactive deduction of union dues.

Upon receipt of a new, original payroll deduction authorization, the City will make a copy available to the Union electronically within two weeks.

Section 4.2 Employees may cancel their payroll deduction by written notice to the City and the Union in accordance with the terms and conditions of their duly executed payroll deduction authorization card. The cancellation will become effective no later than the second payroll cycle after receipt of the confirmation from the Union that the terms of the employee's duly executed payroll deduction authorization card regarding cancellation have been met.

Section 4.3 The Union agrees to indemnify and save the City harmless from any and all claims, demands, suits or other forms of liability that arise against the City for or on account of compliance with this Article and any and all issues related to the deduction of dues and fees. In all such cases, the City's reasonable attorney's fees will be paid by the Union. If requested by the Union in writing, the City will surrender any such claim, demand or suit or other form of liability ("Claim") to the Union for defense and resolution. The Union shall not concede, settle, compromise, or resolve any Claim without the prior written approval of the City.

Section 4.5 The City will inform new bargaining unit employees of the Union's exclusive representation status. Consistent with R.C.W. 41.56.037, the City will provide union access to new employees entering the bargaining unit within ninety (90) days of hire. The City will allow the Union thirty (30) minutes to meet with such individuals during work hours and at their usual worksite or a mutually agreed upon location.

For WSCCCE Local 120

Staff Representative
Date

Elizabeth Pauli
City Manager

Date

Dylan Carlson
Senior Labor Relations Manager

Approved as to form:

Cheryl Comer
Deputy City Attorney



RESOLUTION NO. U-11083

A RESOLUTION authorizing Tacoma Power to enter into an Energy Imbalance Market ("EIM") Implementation Agreement with the California Independent System Operation ("CAISO").

WHEREAS the City of Tacoma, Department of Public Utilities ("TPU"), Light Division (d.b.a. "Tacoma Power"), has completed a detailed business case analysis for joining the California Independent System Operation ("CAISO") Energy Imbalance Market ("EIM"), and

WHEREAS the CAISO EIM is an extension of the CAISO real-time bulk power centralized trading market, to balancing authorities outside of CAISO's operational footprint, and

WHEREAS the benefits of joining the EIM and becoming an EIM Entity are both financial and operational, including helping to reliably and economically integrate new variable renewable energy resources into the electrical grid, and

WHEREAS, for Tacoma Power to successfully implement and properly maintain participation in the EIM, it will need to invest in new data systems, hire employees, and reorient its real-time activities to be compatible with the highly automated and rapidly moving process of the EIM, and

WHEREAS, overall, EIM implementation is estimated to cost Tacoma Power between \$14 and \$18 million over three years and require ongoing estimated expenditures of approximately \$2.1 to \$4 million with an estimated gross annual benefit between \$2 to \$10 million, and

WHEREAS, as an initial step towards joining the CAISO EIM, Tacoma Power is seeking approval of an EIM Implementation Agreement with CAISO,




1 with a fixed fee of \$150,000, payable in \$25,000 increments to CAISO, upon
2 completion of specified milestones, and

3 WHEREAS, even though the Tacoma Public Utilities' Director has
4 authority to execute contracts under \$200,000, Tacoma Power is seeking Board
5 authorization for the Director to execute the EIM Implementation Agreement
6 given the scope and expense associated with CAISO EIM participation by
7 Tacoma Power, as detailed above and in the attached memo; Now, Therefore,
8
9 BE IT RESOLVED BY THE PUBLIC UTILITY BOARD OF THE CITY OF TACOMA:

10 That the Public Utility Board hereby authorizes the Director to execute an
11 EIM Implementation Agreement with the California Independent System
12 Operator ("CAISO") for a cost not to exceed \$150,000, plus applicable taxes, in
13 a form as approved by the City Attorney.

14 Approved as to form and legality:

15 
16 _____
Chief Deputy City Attorney

Chair

Secretary

17 _____
18 Clerk

Adopted _____



Board Action Memorandum

TO: Jackie Flowers, Director of Utilities
COPY: Charleen Jacobs, Director and Board Offices
FROM: Chris Robinson, Power Superintendent/COO
MEETING DATE: June 26, 2019
DATE: June 14, 2019

SUMMARY: We recently completed the Tacoma Power Business Case for joining the California Independent System Operator (CAISO) Energy Imbalance Market (EIM). It includes a detailed cost/benefit/risk analysis. Because this analysis identifies likely net benefits from Tacoma Power participating in the EIM, as well as mitigation of likely risks to the utility, it supports the recommendation that Tacoma Power join the CAISO EIM. This would be accomplished by the utility first executing an EIM implementation agreement with the CAISO. This agreement would obligate Tacoma Power to pay the CAISO a total of \$150,000 over an 18 to 24-month period, payable in \$25,000 increments after the completion of each of 6 EIM implementation milestones that will be specified in the Agreement. Consequently, we are requesting authorization for the Director, on behalf of Tacoma Power, to enter into an EIM Implementation Agreement with the CAISO.

BACKGROUND: The CAISO EIM is an extension, to balancing authorities (BAs) outside of CAISO's operational footprint, of the CAISO real-time bulk power centralized trading market. As a BA in the Western Interconnection, Tacoma Power has the ability to join the EIM and become an EIM Entity. Many others throughout the West have already elected to join the EIM, finding both financial and operational benefits from being part of a centralized market that dispatches least cost resources to serve load. Perhaps the most promising aspect of joining the EIM is its ability to help reliably and economically integrate new variable renewable energy resources into the electrical grid.

Over time, as others have elected to join, Tacoma Power has recognized a change in the manner in which wholesale energy is transacted and this presents a significant risk to the utility that we can best mitigate by joining the EIM. For now, those changes have been limited to declines in real-time market liquidity, but we foresee other risks emerging should the EIM expand into other market horizon timeframes.

For Tacoma Power to successfully implement and properly maintain its ongoing participation in the EIM, it will need to invest in new data systems, hire new personnel, and reorient its real-time activities to be compatible with the highly automated and rapidly moving process of the EIM. Because EIM participation affects Tacoma Power's Transmission and Distribution function, as well as its Resource Operations and Marketing function, these costs will be considerable.

Fortunately, Tacoma Power's modeling of the anticipated benefits of EIM participation appear to show that it will likely be able to recoup its incremental costs. These benefits stem from the ability of Tacoma Power to leverage the flexibility of its hydroelectric generation resources to provide energy to the EIM when it is most valued, and to receive energy from the EIM when it is least valued.

To estimate the value of participating in the EIM, Tacoma Power constructed a model that simulates how its generation would have been redispatched into the EIM. It also limits Tacoma Power's generation resource



Board Action Memorandum

availability to participate in the EIM based on historic hydrological conditions and resource outage schedules. We believe it provides a credible estimate of the financial benefits of Tacoma Power's participation in the EIM for the studied timeframe January 17, 2015 through September 30, 2018.

On the cost side, in order for Tacoma Power to successfully implement and properly maintain its ongoing participation in the CAISO EIM, it will need to make significant investments in two major areas of the utility. The first area is Tacoma Power's BA operations function within Transmission & Distribution, principally the System Dispatch organization. Enhancements there will enable us to provide CAISO with required system visibility and enable Tacoma Power to appropriately respond to CAISO's 5 and 15-minute market dispatch instructions on a generator specific basis. Second, Resource Operations & Trading within Power Management will have to reorient its real-time trading to a centralized market framework. This means its marketing and hydrological objectives will need to be met through a series of highly granular and short duration bids to submit and to later reconcile with the CAISO. Both areas will require new personal and automation to accomplish this data intensive interaction.

Overall, EIM implementation is expected to cost Tacoma Power between \$14 to \$18 million over 3 years (from June 2019 until April 2022), and require ongoing expenditures of approximately \$2.1 to \$4.0 million per year to maintain participation. EIM participation would produce a gross benefit of from \$2 to \$10 million per year.

To assess the combined costs and benefits of EIM participation, Tacoma Power conducted a simulation of different financial outcomes of EIM participation. The results of the simulation show a 71% probability of a positive 10-year net present value (NPV) for Tacoma Power participation in the EIM. It also estimates a small average NPV of \$1.9 million over the same period and outcomes ranging from as low as -\$7.9 million to a maximum of \$11.5 million.

EIM Implementation Agreement

An EIM implementation agreement is negotiated with the CAISO once an entity formally decides to join the EIM. The agreement includes a fixed fee (\$150,000 for Tacoma Power) that covers the CAISO implementation costs. The implementation fee is payable according to the multiple milestones that are linked to the project schedule that is included in the agreement. A party may withdraw from the agreement at any time without further obligation.

The CAISO files the executed EIM implementation agreement at the Federal Energy Regulatory Commission (FERC), which launches the project according to the agreed upon schedule, at which time the CAISO and Tacoma Power will issue a joint press release announcing Tacoma Power's decision to join the EIM. The implementation agreement governs the activities that occur during the integration phase leading to EIM participation, and terminates upon project completion. The joint project plan and schedule will commence after execution of the implementation agreement. The work is broken down into several tracks: project management, agreements, stakeholder processes, full network model integration, system integration, and operations training and readiness.



Board Action Memorandum

ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED? No.

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

Staff believes the cost of the Implementation agreement can be offset with budget reductions in other areas. For the full implementation costs in the current biennium, staff will be looking for offsets in the current budget, but may seek approval of a mid-biennium budget adjustment if that seems infeasible.

IF THE ACTION REQUESTED IS APPROVAL OF A CONTRACT, INCLUDE LANGUAGE IN RESOLUTION AUTHORIZING \$200,000 INCREASE IN ADMINISTRATIVE AUTHORITY TO DIRECTOR? No.

ATTACHMENTS: Tacoma Power Energy Imbalance Market (EIM) Business Case – June 14, 2019

CONTACT: Shirley Eshbach, Senior Policy Advisor, 253.502.8560
Supervisor: Clay Norris
Presenter at podium: Todd Lloyd



TACOMA POWER

ENERGY IMBALANCE MARKET (EIM) BUSINESS CASE

JUNE 14, 2019

Executive Summary

This paper summarizes the Tacoma Power business case for joining the California Independent System Operator (CAISO) Energy Imbalance Market (EIM). The EIM is an extension, to balancing authorities (BAs) outside of CAISO's operational footprint, of the CAISO real-time bulk power centralized trading market. As a western BA, Tacoma Power has the ability to join the EIM and become an EIM Entity. Many others throughout the west have already elected to join finding both financial and operational benefits from being part of a centralized market that dispatches least cost resources to serve load, with perhaps the most promising aspect of joining the EIM being its ability to help reliably and economically integrate new variable renewable energy resources into the electrical grid.

As others have elected to join, Tacoma Power has recognized a change in the manner in which wholesale energy is transacted and this presents a significant risk to the utility that we can best mitigate by joining the EIM. For now, those changes have been limited to declines in real-time market liquidity, but we foresee other risks emerging should the EIM expand into other market horizon timeframes.

For Tacoma Power to successfully implement and properly maintain its ongoing participation in the EIM, it will need to invest in new data systems, hire new personnel, and reorient its real-time activities to be compatible with the highly automated and rapidly moving process of the EIM. Because EIM participation affects Tacoma Power's Transmission and Distribution function as well as its Resource Operations and Marketing, these costs will be considerable.

Fortunately, Tacoma Power's modeling of the anticipated benefits of EIM participation appear to show that it will likely be able to recoup its incremental costs. These benefits stem from the ability of Tacoma Power to leverage the flexibility of its hydroelectric generation resources to provide energy to the EIM when it is most valued, and to receive energy from the EIM when it is least valued.

Because the analysis underlying this paper identifies likely net benefits in participating in the EIM as well as mitigation of likely risks to the utility, it recommends that Tacoma Power join the CAISO EIM. What follows is a more thorough discussion of that analysis.

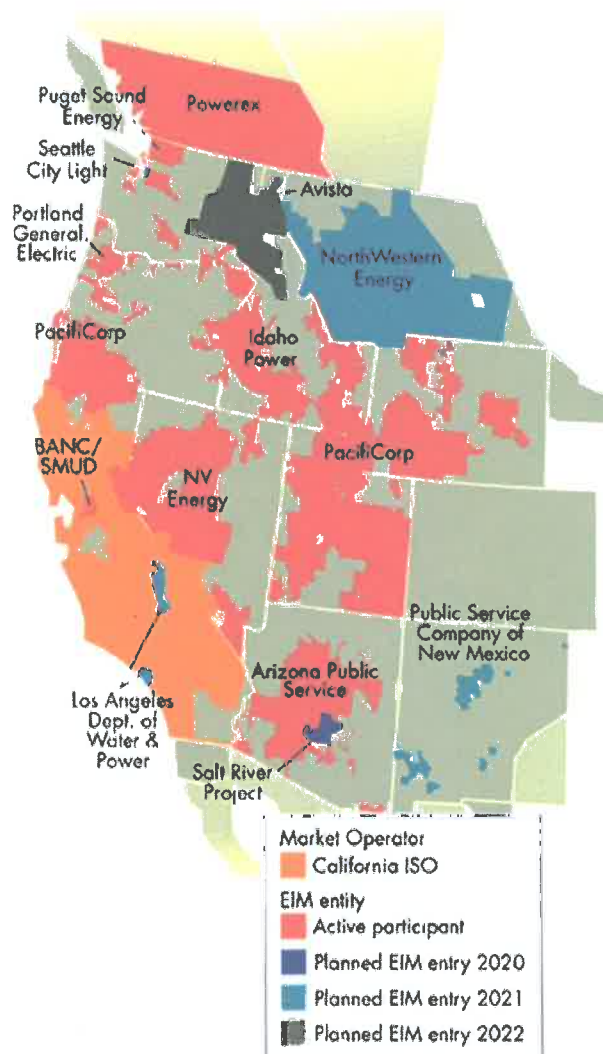
Contents

Executive Summary	1
EIM Business Case	3
EIM Overview	3
Analysis of Tacoma Power Participation in EIM.....	6
Real-time Market Risks of Tacoma Power not participating in EIM	6
Day-Ahead Market Risks of Tacoma Power not participating in EIM	7
Benefits of EIM Participation	9
Costs of EIM Participation	11
EIM Cost-Benefit Analysis & Simulation.....	12
Conclusion and Recommendation	15
Appendix A – EIM Market Operation	16
Appendix B – CAISO EIM Governance	18
Appendix C – Roadmap and Implementation Timeline	20

EIM Business Case

EIM Overview

The California Independent System Operator (CAISO) Energy Imbalance Market (EIM) is an extension of the CAISO real-time bulk power centralized trading market to balancing authorities (BAs)¹ outside of CAISO's operational footprint. A BA that has successfully completed all the complex tasks necessary to participate in the EIM is referred to as an EIM Entity. EIM automatically finds the lowest-cost energy to serve customer demand by evaluating and accepting real-time bids of generators offering their supply into the centralized market. In short, it provides EIM entities with an ability to transact real-time energy through a centralized and highly automated operation. This improves the balancing of supply and demand within time intervals as short as five and fifteen-minutes.



Real-time energy trading represents one of three important market timeframes in which electrical energy is transacted. Historically, it could be thought of as the trading of power for the next hour, where at least in theory, it could be transacted as late as 20 minutes prior to the start of the hour. Day-ahead and term trading represent the two other important timeframes for trading power. As the name suggests, day-ahead involves the trading of power on the business day prior to it being used. Whereas term trading is generally regarded as a catchall for transactions originating prior to day-ahead trading and can encompass timeframes as long as years or as short as days, but is typically performed in monthly increments. As currently designed, EIM only effects real-time trading; however, as discussed later in this paper, EIM may be expanded someday into the day-ahead market.

Prior to development of the EIM and outside of the CAISO's operational footprint, real-time energy was transacted bilaterally. This means that trading was arranged between two entities, one buying and one selling, typically by telephone and it generally entailed transactions lasting for one hour in duration. Within CAISO, however,

¹ A balancing authority is defined as "the responsible entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a Balancing Authority Area, and supports Interconnection frequency in real time." Each balancing authority is registered with the North American Electric Reliability Corporation (NERC) to perform this function and as such is subject to the mandatory reliability standards issued by NERC.

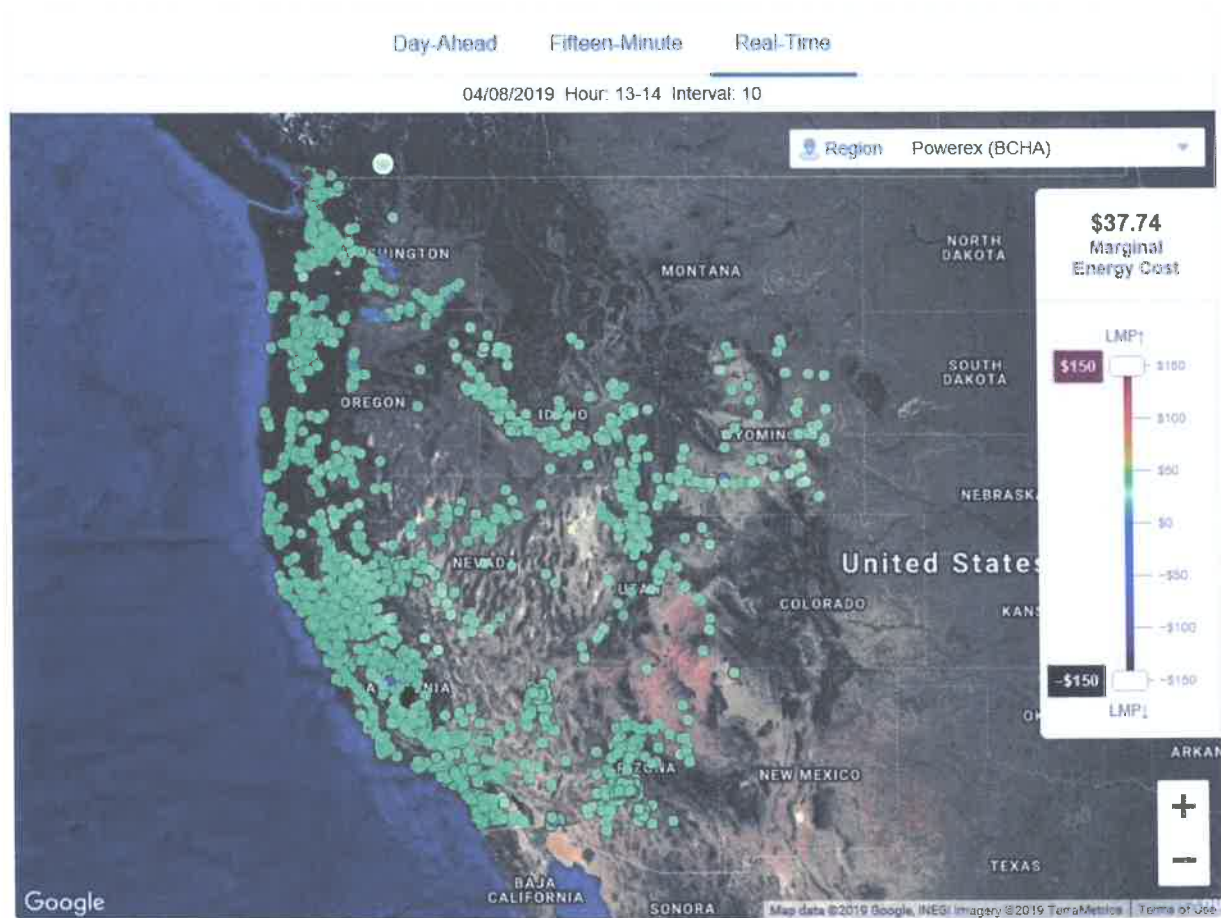
real-time and day-ahead trading occurs through a centralized and automated market that optimizes the purchase and sale bids of all market participants. Centralized market operation allows participants to buy and sell power with the market operator having visibility into the real-time needs, capabilities, and limits of the transmission system within the market footprint. This coordinated operation allows for improved reliability, and a more efficient resource dispatch across a larger, more diverse footprint than that of just two utilities transacting bilaterally.

To expand on the capabilities of its centralized energy trading system, the CAISO launched the EIM in 2014 in partnership with PacifiCorp. It has since grown to include nine EIM Entities, with six more committed to join by April, 2022 (EIM Entity implementation occurs annually on April 1st). Further expansion is anticipated, with the Bonneville Power Administration (BPA) indicating that it will likely join the EIM in April, 2022.

Becoming an EIM Entity is a very significant undertaking that typically, though not always, requires at least two years to accomplish. At a high level, it involves two major activities to put in place the systems, personnel, and practices necessary to participate in a real-time centralized market. First, an EIM Entity must enable the CAISO to have granular visibility of the entity's loads, resources, and condition of its transmission system so that it may assess the entity's capabilities. Second, the entity needs to accelerate and automate its marketing function to a point where it can keep pace with EIM's 5 and 15-minute bidding and dispatch framework. Where being an EIM Entity is unique and differs from being part of a centralized market operation is that EIM Entities participate voluntarily, maintain operational control over their resource and transmission assets, and remain responsible for all mandatory reliability functions, including balancing their loads and resources. In principle, any EIM Entity must be capable of meeting its own load service and reliability obligations without reliance on the EIM. To keep discussion of the EIM at a conceptual level, this paper will omit many of the specific details of how participation in the EIM works; however, more information on this topic can be found in Appendix A.

EIM is characterized by two essential features. The first is EIM's selection of the lowest cost resources to serve load, commonly referred to as economic dispatch. The second is that the EIM is security constrained which means that, in the EIM market runs, it does not violate the physical capabilities of the transmission system within the EIM footprint. This is accomplished by utilizing bid ranges from voluntarily offered participating resources to arrive at a market dispatch solution that obeys the real-time constraints of CAISO's full network transmission model. This results in CAISO calculating locational marginal prices (LMPs) on which EIM transactions are settled. In the picture below, each dot represents an individual location where an LMP is calculated in the EIM, and the color of the dot indicates its prevailing price for the indicated time interval.

Example of LMP Prices in the EIM



Because of its ability to coordinate resource operation across large and diverse geographic footprints, EIM unquestionably provides some measure of benefit for EIM entities above what they could realize in a strictly bilateral energy trading environment. And this coordination and diversity is particularly helpful for entities seeking to integrate variable renewable resources into their resource portfolios. Since its inception, the CAISO has calculated both financial benefits and renewable resource curtailments avoided as the result of the EIM. As of the end of 2018, this amounts to approximately \$565 million in gross benefits and a reduction in curtailed renewable generation for the CAISO BA equal to 757,862 MWh.² While this calculated EIM benefit is the cost saving of the EIM dispatch compared with a counterfactual without EIM dispatch, we caution that this is not necessarily the same as the financial benefit that would actually accrue to ratepayers as the result of EIM participation. In the following sections, we'll describe what we anticipate Tacoma Power's benefit would likely have been over similar historical time horizons.

² <https://www.westerneim.com/Pages/About/QuarterlyBenefits.aspx>

Analysis of Tacoma Power Participation in EIM

Tacoma Power has actively monitored development of the EIM since the market formed in 2014, paying attention to how we would be impacted and how we could participate in a manner that would produce benefit for Tacoma Power customers. Since 2016, Tacoma Power has estimated the gross financial benefits of having its generation resources participate in the market. In parallel with that analysis, the utility also began to consider the costs associated with participation. Facilitated by the sharing of experiences by EIM Entities that had successfully joined the market, Tacoma Power also received new insights about how important features of the market design affect the benefits Tacoma Power would be able to achieve through participation. This investigation has culminated with the development of an EIM Implementation Roadmap for Tacoma Power's participation in CAISO's EIM, authored by Utilicast, a consulting firm that has worked with a number of other utilities during their EIM implementation process of becoming EIM Entities. A draft timeline for the steps Tacoma Power would have to execute prior to joining the EIM appears in Appendix C.

Process of Assessing Tacoma Power's Participation in the EIM

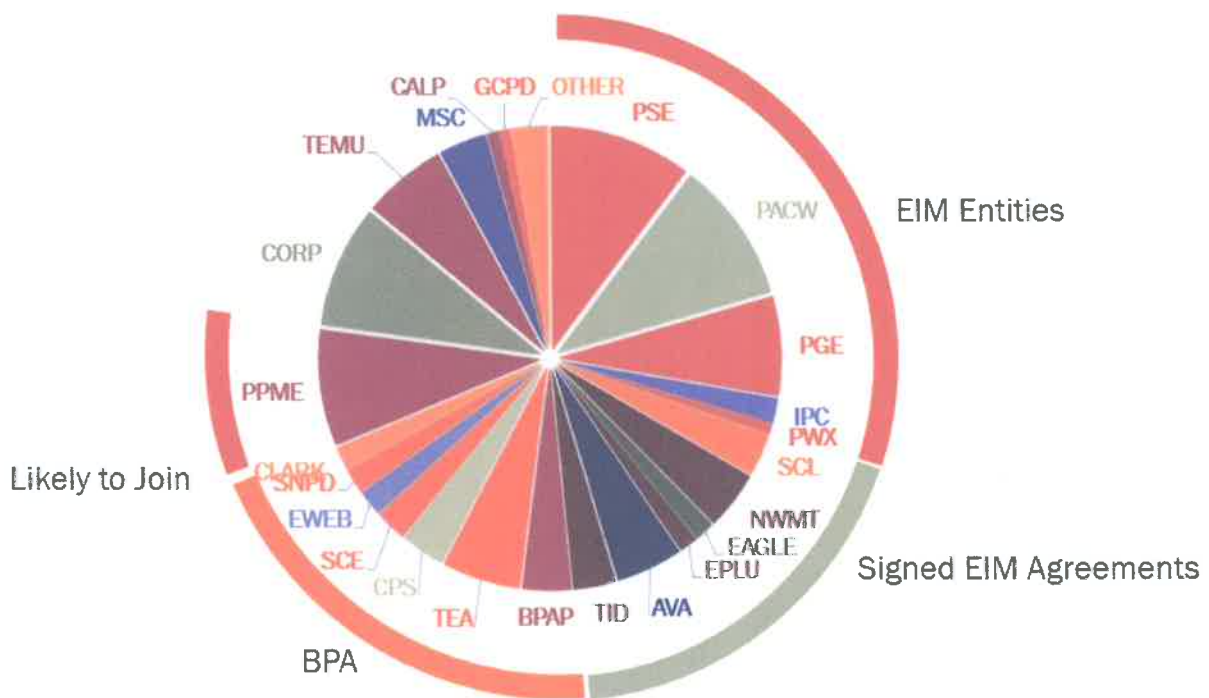


Real-time Market Risks of Tacoma Power not participating in EIM

The primary risk to Tacoma Power of not participating in the CAISO EIM is the potential loss of bilateral real-time trading opportunities. The real-time energy market, though not large in energy or dollar terms when compared to the other markets in which Tacoma Power trades, is very important to the function of Tacoma Power. It enables the utility to meet its reliability obligations by being able to make last-minute purchases and sales of energy. This is particularly important for Tacoma Power's balancing responsibilities, which can become particularly challenging during unforeseen changes in load and even generation that can result from, for example, the early arrival of a significant weather system. The real-time market also provides an opportunity for Tacoma Power to maximize the value of its surplus energy and flexible generation assets, like selling surplus energy at prices that exceed those values trading in the day-ahead market. Having an efficient market requires a number of buyers and sellers. Historically, Tacoma Power has transacted with a broad set of diverse entities in the bilateral real-time market that include investor owned utilities (IOU's), public power entities, independent power producers (IPPs), and other marketers. However, with the continued expansion of the EIM, **Tacoma Power has noted a significant decline in the real-time bilateral trading with EIM Entities.** Trading volumes with IOUs PacifiCorp and Portland General Electric (PGE), historically Tacoma Power's largest real-time counterparties, have dramatically declined since those entities joined the CAISO EIM. Increasingly real-time transactions are now comprised of public power entities and IPP wind generators that are located in BPA's BA. We anticipate that once BPA joins the CAISO EIM beginning in 2022, transactions with those

entities will largely disappear as well. Only a sliver of entities that Tacoma Power has historically transacted with remain out of the CAISO EIM for the foreseeable future. A graphical depiction of this breakdown appears below.

Total Real-Time Volume by Counterparty Last 5 Years



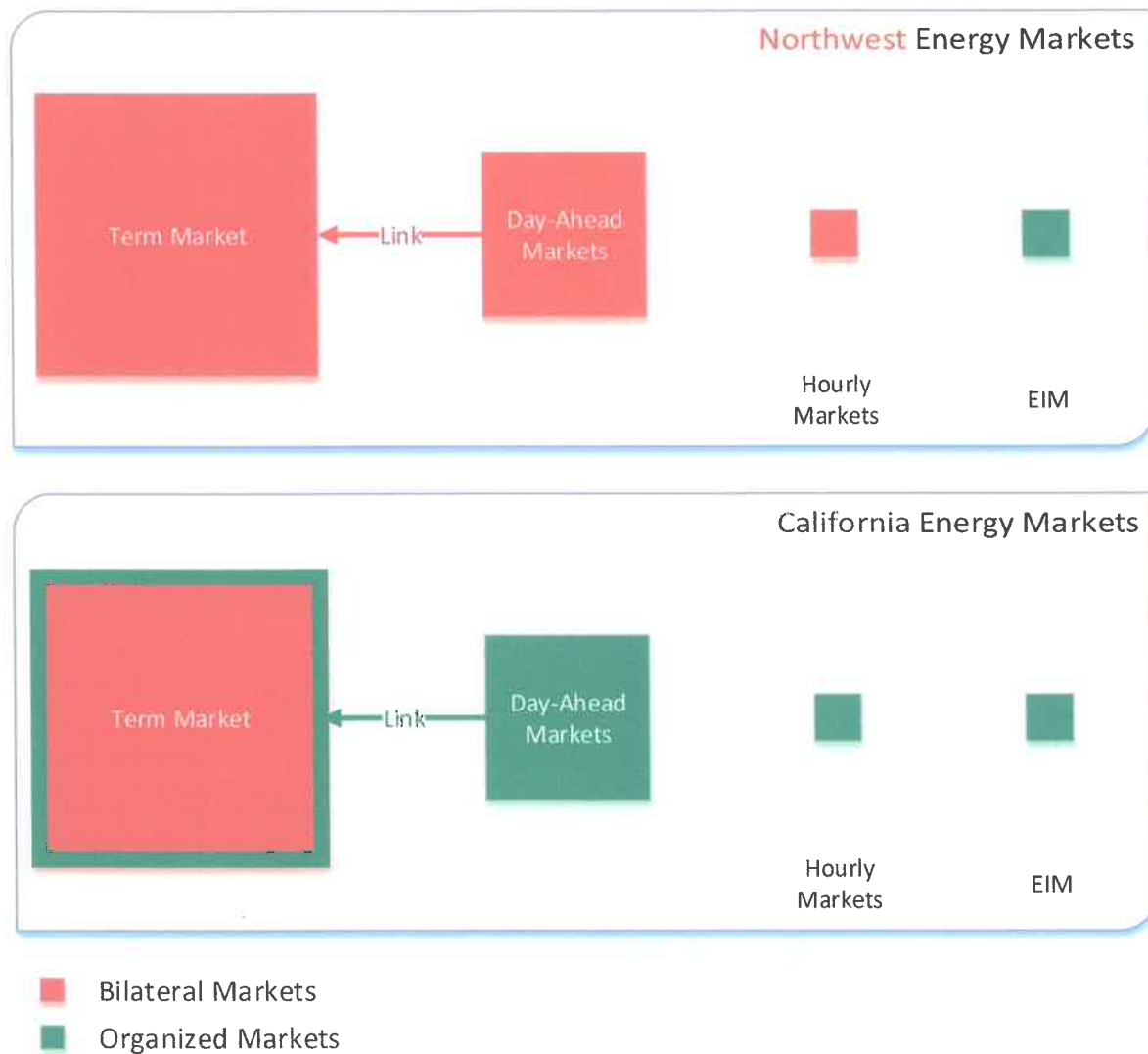
Day-Ahead Market Risks of Tacoma Power not participating in EIM

A second significant risk of non-participation is the possibility of CAISO implementing an Extended Day-Ahead Market (EDAM) for EIM market participants. In 2018, CAISO initiated discussions with the EIM Entities to extend CAISO's day-ahead market to EIM Entities. This would allow EIM participants to take advantage of the CAISO's centralized least cost resource dispatch in the day-ahead market, likely reducing those entities participation in the day-ahead bilateral market. While still not fully defined, some elements of the EDAM design are known, like the requirement for entities participating in EDAM to retain their integrated resource planning and reliability responsibilities. However, the key consequence of EDAM for Tacoma Power is that it could see declines in day-ahead bilateral trading with EIM Entities participating in an EDAM, similar to declines Tacoma Power has experienced with the real-time bilateral market.

If EDAM is implemented as the principal means of trading day-ahead energy for EIM Entities, it could substantially redefine how energy is transacted in the western United States. This is because day-ahead trading involves significantly larger volumes of energy and money than the real-time market. Also, day-ahead trading is conceptually linked to term (*aka* forward market) energy trading. By and large, market participant expectations for term transactions stem from expectations of how the day-ahead market will

subsequently perform. As a result, how the EDAM is designed could have profound financial implications for active participants in the western wholesale energy markets. For illustration purposes, the following chart shows the relative size of the various markets and the linkage between the day-ahead and term markets. It also goes on to show the impact of moving to a CAISO based framework for EDAM design.

Illustration of Relative Market Magnitude



The central concern with EDAM design is whether it will provide appropriate compensation to hydroelectric generators, like Tacoma Power, that offer their resources into the market. Within the community of Northwest hydroelectric utilities, it is generally accepted that hydroelectric resources provide a number of beneficial attributes to load serving entities. This includes energy, capacity, flexibility, storage, environmental attributes, and reliability services. Yet, the CAISO's EIM and day-ahead central market rules appear to recognize and assign a value only to the energy attribute. If replicated in EDAM, this market design would impair the value of Tacoma Power's resources for the foreseeable future. However, designing compensation mechanisms for northwest hydroelectric generators is not explicitly within the CAISO's mission "to ensure efficient use and reliable operation of the electric transmission facilities of those transmission owners that have transferred operational control of those facilities to the Corporation,"³ which are principally the three major investor owned utilities operating in California, Pacific Gas & Electric, Southern California Edison, and San Diego

Energy	✓
Capacity	✗
Flexibility	✗
Storage	✗
Environmental Attributes	✗
Reliability Services	✗

Gas & Electric. One of the main obstacles to overcome in advocating for EDAM design that appropriately compensates the attributes of hydroelectric generation in EDAM is the California-centric governance structure of the CAISO. For more on how CAISO's EIM is governed, please refer to Appendix B of this paper. However, we believe that Tacoma Power can best advocate for a more favorable EDAM design for hydroelectric resources when it is an active participant in CAISO's various markets (including the EIM) and stakeholder processes.

Benefits of EIM Participation

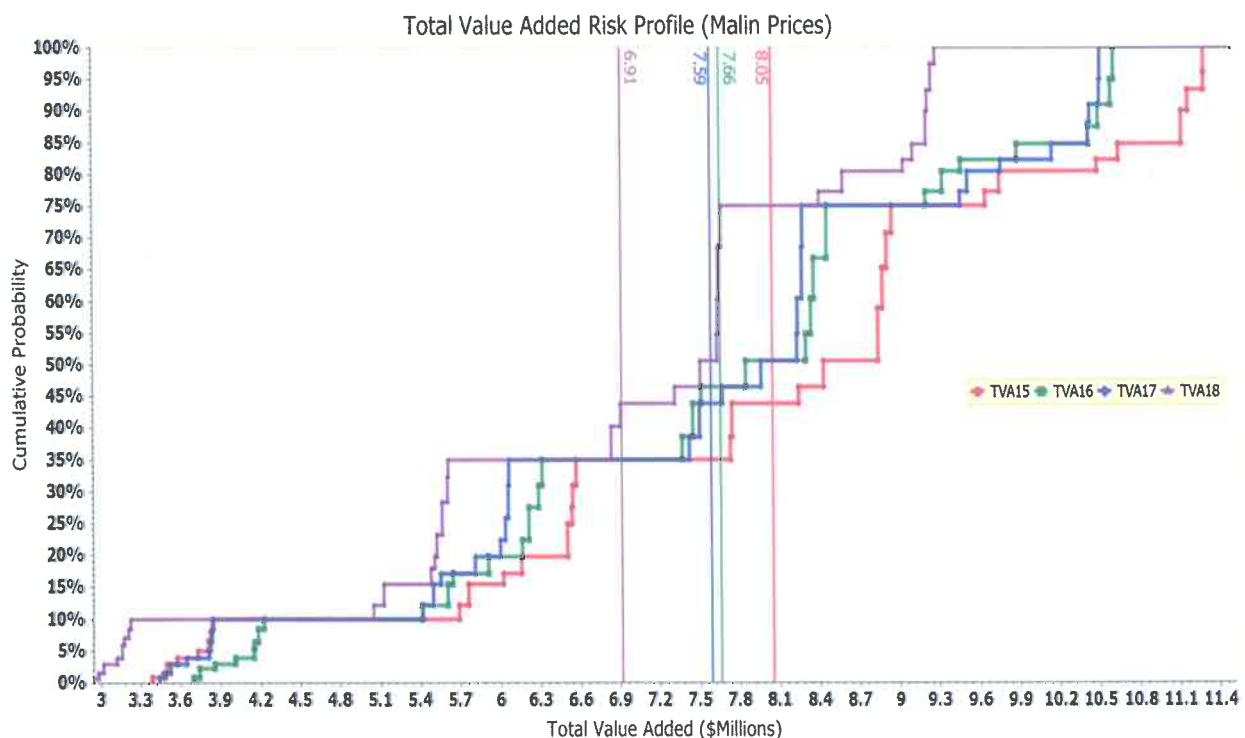
Tacoma Power anticipates that it will realize gross financial benefits from participation in the EIM. The primary source of these benefits stems from the inherent flexibility of Tacoma Power's hydroelectric resources to vary their energy output, enabling Tacoma Power to selectively buy and sell energy at advantageous times. The EIM may also allow Tacoma Power to take advantage of price differences between markets. Historically, Tacoma Power has been able to realize value from differences between two markets, for example by selling into the day-ahead market and purchasing energy in the real-time market when prices dip sufficiently below the average day-ahead sale price. With EIM participation, Tacoma Power should be able to further expand Tacoma Power's ability to take advantage of price differences between markets.

To estimate the value of participating in the EIM, Tacoma Power constructed a model that simulates how its generation would have been redispatched into the EIM. The model creates a dynamic bid curve using historical wholesale market prices both inside and outside of the EIM. It also limits Tacoma

³ Article 2, Section 1, AMENDED & RESTATED BYLAWS OF CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION, a California nonprofit public benefit corporation, http://www.caiso.com/Documents/ISOCorporateBylaws_amendedandrestated_.pdf

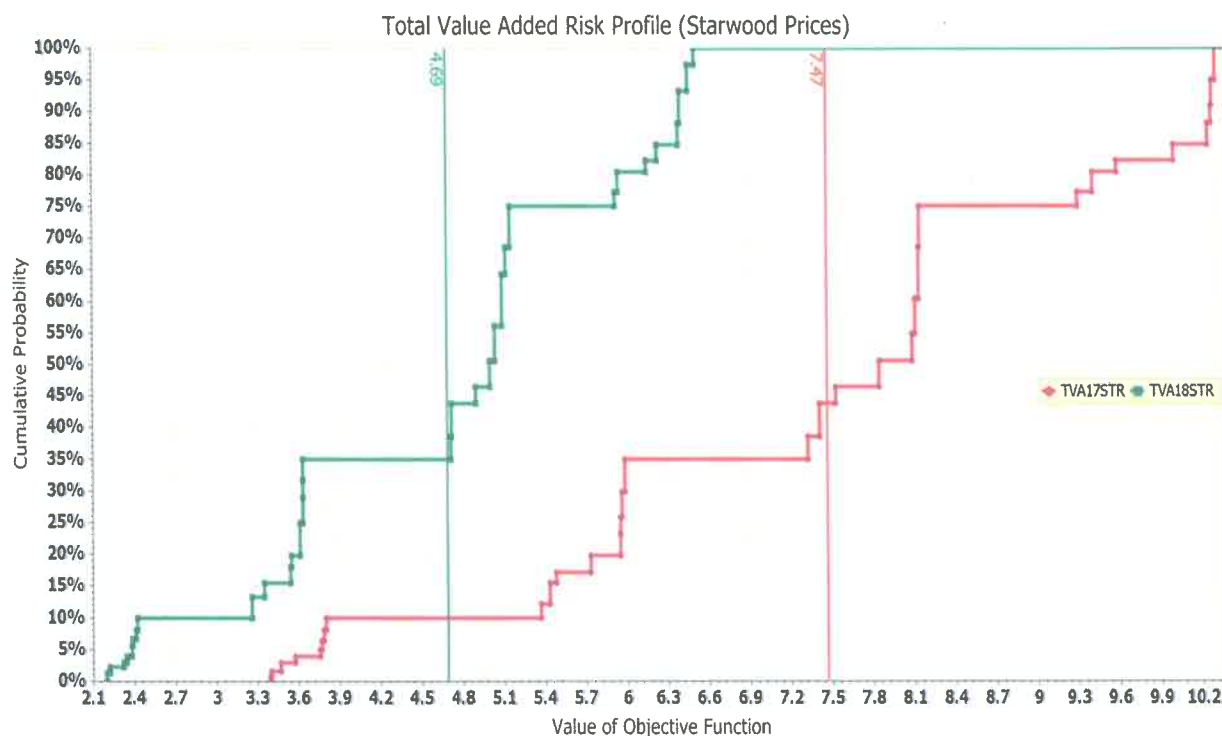
Power's generation resource availability to participate in the EIM based on historic hydrological conditions and resource outage schedules. While not all potential considerations could be taken into consideration, such as the effect of Tacoma Power's EIM participation on the historical LMPs, we believe it provides a credible estimate of the financial benefits of Tacoma Power's participation in the EIM for the studied timeframe January 17, 2015 to September 30, 2018.

In order to expand on the usefulness of this simulation, Tacoma Power used the decision programming language (DPL) software product to consider a range of different simulation outcomes based on different possible uncertainties. DPL enables a user to assign probabilities to uncertainties and to relate those uncertainties to model results. This allows Tacoma Power to take into account possible changes that could dramatically alter the value Tacoma Power could realize through EIM participation, including changes in market price volatility and potential new binding transmission constraints. It effectively enables Tacoma Power to see each gross financial benefit of a decision tree where outcomes branch with each considered risk factor. The graph below shows varying levels of gross financial benefits for each year, 2015 (TVA15) through 2018 (TVA18). The values appearing next to vertical lines identify the median annual financial benefit of EIM participation, ranging from \$6.91 million in 2018 to \$8.05 million in 2015.



Below, a second graph was constructed which uses the Starwood LMP point. Starwood is a substation in the Puget Sound Energy (PSE) service territory to which Tacoma Power's transmission system interconnects. Because of its close proximity, this LMP likely presents the most accurate representation of market prices that Tacoma Power would experience when participating in the EIM. However, because PSE did not become an EIM Entity until October 2016, no pricing data was available for the simulation prior to this date. In the graph above, Tacoma Power used the Malin price point. While this

point is useful because it is located essentially where the CAISO and PacifiCorp (the original EIM Entities) connect, it is geographically removed from Tacoma Power. The DPL analysis of the Starwood LMP point produced estimated financial benefits for Tacoma Power of \$7.47 million in 2017 and \$4.69 million in 2018 (through September).



Costs of EIM Participation

In order for Tacoma Power to successfully implement and properly maintain its ongoing participation in the CAISO EIM, it will need to make significant investments in two major areas of the utility. The first area is Tacoma Power's BA operations function within Transmission & Distribution, principally the System Operations organization. Improvements there will enable us to provide CAISO with required system visibility and enable Tacoma Power to appropriately respond to CAISO's 5 and 15-minute market dispatch instructions on a generator specific basis. Second, Resource Operations & Trading within Power Management will have to reorient its real-time trading to a centralized market framework. This means that its marketing and hydrological objectives will need to be met through a series of highly granular and short duration bids to submit and to later reconcile with CAISO. Both areas will require new personnel and automation to accomplish this data intensive interaction. Overall, EIM implementation is expected to cost Tacoma Power between \$14 to \$18 million over 3 years (from June 2019 until April 2022), and require ongoing expenditures of approximately \$2.1 to \$4.0 million per year to maintain participation.

Initially, most of the costs associated with EIM implementation stem from staffing, consulting services, and new software and data systems. This will likely include between \$5.9 and \$6.5 million for ten to eleven new full time employees (FTE), \$3.5 million for consulting services, and new software systems

that should cost between \$2.3 and \$4.3 million that will also include \$500k for an energy management system (EMS) add-on module. Following the implementation stage, on-going software licensing charges should fall between \$380K and \$950K per year. To some extent, these system and software expenditures may represent inevitable investments that the utility will need to make as the industry continues to become more data intensive with central coordination and automated process; however, some expenditures like the CAISO \$400k annual market operator administrative fees, will be EIM specific.

The final major category of anticipated EIM expense is metering. Revenue quality metering is required to assure market participants that they are being fairly compensated for their generation and not overpaying for the contributions of other market participants. Tacoma Power's cost for metering upgrades to a revenue quality should range between \$400,000 and \$1.2 million. The most likely scenario of \$400,000 is for meter replacement. If the scope of the upgrade expanded to include new power and current transformers (PT and CT), Tacoma Power would have to expend approximately \$1.2 million.

Once we have completed the implementation phase, Tacoma Power will require 7 to 10 new permanent FTEs to support our ongoing participation in the CAISO EIM. These new FTEs will support new tasks, duties and tools in both System Operations, Resource Operations & Trading and Utility Technology Services. Such duties will include hydroelectric generation optimization, bid analysis, financial settlements, reliability tasks required to participate in the EIM (unit outage and operating constraints, transmission constraints, reserves.), ongoing support of new software tools and other EIM duties.

EIM Cost-Benefit Analysis & Simulation

To assess the combined costs and benefits of EIM participation, Tacoma Power conducted a simulation of different financial outcomes of EIM participation using Oracle Corporation's Crystal Ball software. Similar to the analysis performed with DPL to simulate different annual EIM benefits, the program is capable of showing the effects of varying certain cost and benefit parameters.

With respect to EIM costs, the simulation considered three scenarios: low, expected, and high cases. Each is displayed below and represents different implementation and on-going cost projections. The program then cast expected costs into a continuous triangular distribution that assumes actual cost outcomes could occur anywhere in between and including the discrete scenarios.

IMPLEMENTATION COSTS (Over 2.5 Years through April 2022)

	Low	Expected	High
Software Systems - Procurement Cost	\$ 2,275,000	\$ 3,275,000	\$ 4,275,000
Consulting Services	\$ 3,159,000	\$ 3,510,000	\$ 5,265,000
Metering	\$ 400,000	\$ 800,000	\$ 1,200,000

Staff

Implementation Headcount	8	10	11
Cost per Person	\$ 211,500	\$ 235,000	\$ 282,000

ON-GOING COSTS (per year)

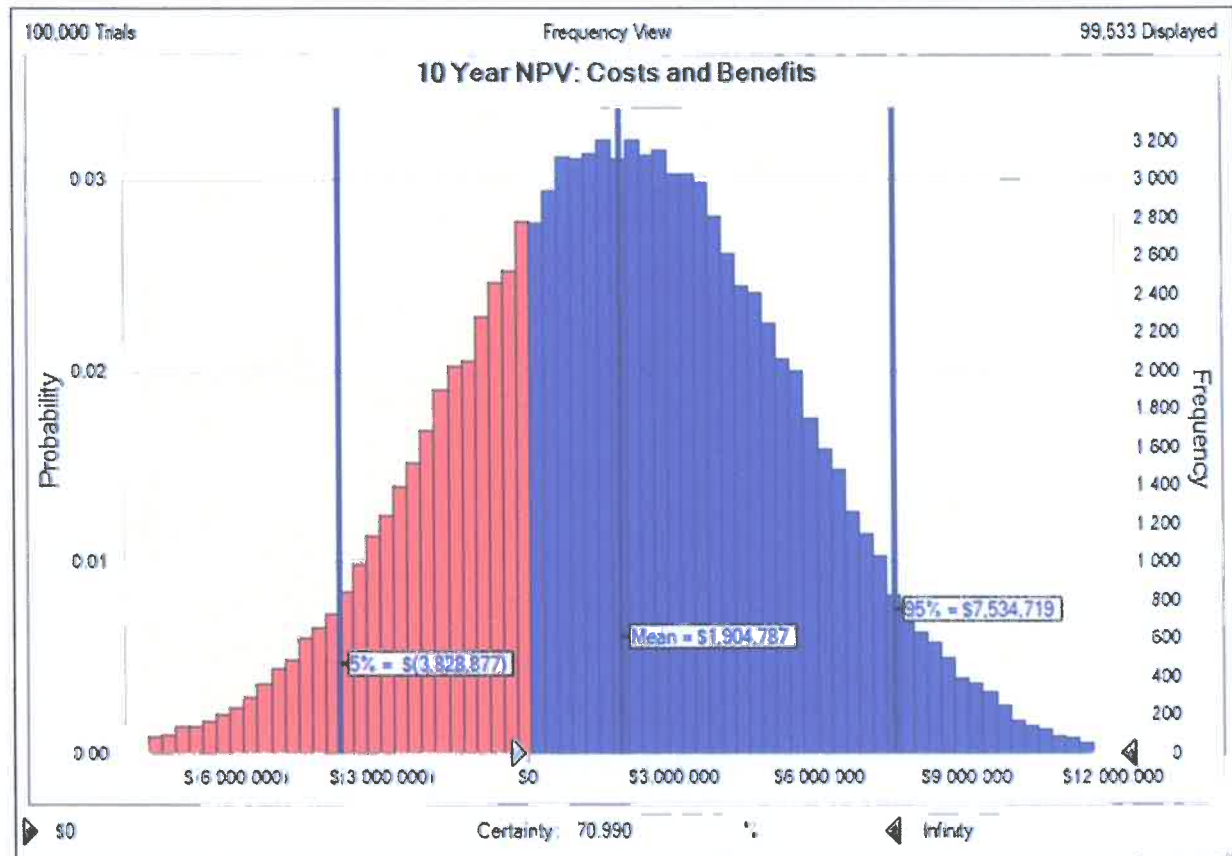
	Low	Expected	High
Software Systems - Ongoing/License Fees	\$ 380,000	\$ 665,000	\$ 950,000
CAISO Administrative Fee		\$ 400,000	

Staff

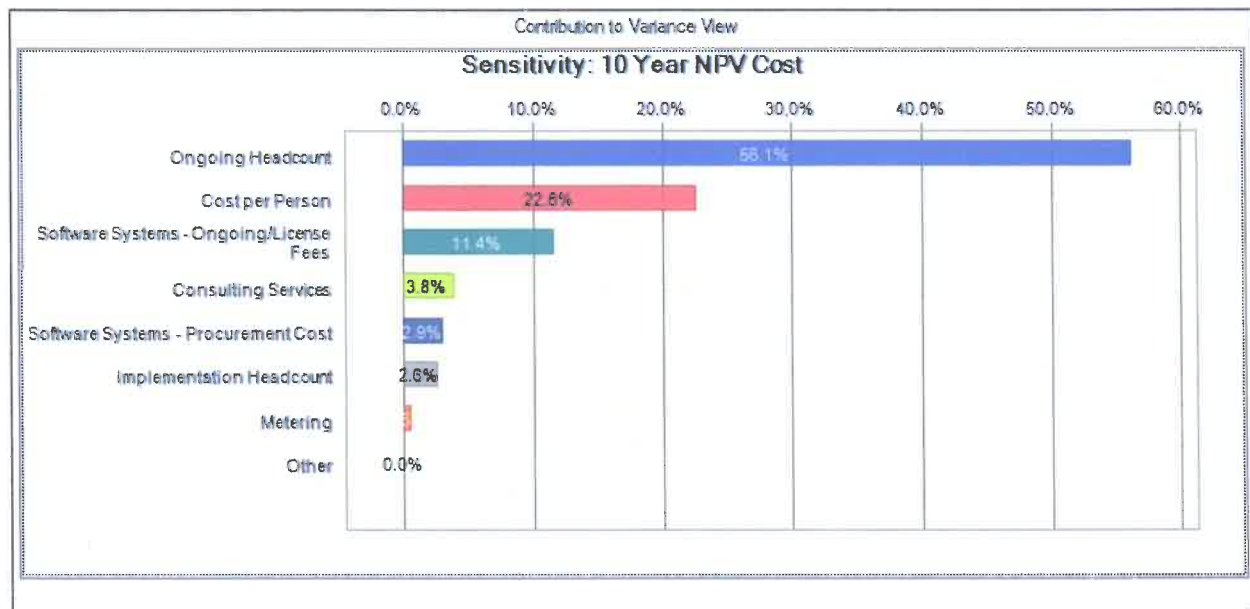
Ongoing Headcount	5	8	10
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Tacoma Power followed a similar approach in simulating the benefits of EIM participation. It began with the redispatch model described above for calendar years 2017 and 2018. As was done with the cost simulation, the program cast annual values into a triangular distribution of outcomes surrounding the average values generated by DPL for the Starwood LMP point. The results of the simulation appear below. It shows a 71% probability of a positive 10-year net present value (NPV) for Tacoma Power participation in the EIM. It also estimates a small average NPV of \$1.9 million over the same period and outcomes ranging from as lows as -\$7.9 million to a maximum of \$11.5 million.

Distribution of Annual Financial Outcomes from EIM Participation



Perhaps the key takeaway of conducting an analysis through Crystal Ball is the ability of the program to highlight the elements where cost variability has the most significant impact on the long-term financial success of Tacoma Power's EIM participation. As depicted by the chart below, on-going personnel costs, especially number of incremental personnel required to support EIM operations represent the most important sensitivity to the business case for joining the EIM. Cost for implementation consulting services, software procurement, and even implementation headcount are less important and each contribute less than 4% to overall variability, while cost variability related to metering becomes almost inconsequential in the broader picture.



Conclusion and Recommendation

Based on the analysis and findings above, it is recommended that Tacoma Power join the CAISO EIM. This would be accomplished by the utility first executing an EIM Implementation Agreement with the CAISO. It would also require that Tacoma Power begin hiring the EIM implementation team, starting with an EIM Program Manager, and procuring the necessary consulting services and software systems. Procedurally, we believe this can occur through the Public Utility Board providing authorization for a project of limited duration.

Appendix A – EIM Market Operation

In order to accomplish its real-time market solutions and resource dispatches, the EIM requires participants to engage in a series of rapid, repetitive, and data intensive interactions. EIM Entities and owners of EIM Participating Resources interact/communicate with the CAISO by becoming CAISO-certified scheduling coordinators (SCs). EIM Entity SCs supply base schedules to inform CAISO of how the EIM Entity plans to meet its forecasted load, net of forecasted variable resources. EIM Participating Resource SCs submit bids on which they are willing to adjust the energy output of their EIM Participating Resources. Occasionally generation and transmission outages occur and need to be reported by the EIM Entity SC. EIM Entity SCs must also establish transmission interface limits that define how much energy can be scheduled between BAs participating in the EIM.

The CAISO processes all of these inputs using its full network model, which analyzes transmission and generation resources to find the least cost energy to serve demand. It enables CAISO to clear the EIM in both 5 and 15-minute market intervals. The first is the fifteen-minute market (FMM). The second is the real-time dispatch (RTD), which runs for every 5-minute interval. The results of both market intervals are the calculation of Locational Marginal Prices (LMP), which illustrate energy prices at various locations across the EIM footprint.

In addition to the FMM and RTD, CAISO operates several other processes as part of the EIM. Some processes occur at the top of the hour, and others run every 5 minutes or 15 minutes. Most of these processes are outside of the scope of this paper, but two important processes merit some discussion. The CAISO's market power mitigation process and resource sufficiency tests are applied to assure that market prices remain competitive and that enough generation exists to meet demand as it changes in real-time.

The CAISO performs resource sufficiency evaluations to test that, going in to the hour, the EIM Entities have enough generation to cover the load forecast in their individual BAs. It also checks to see if there is enough capacity to meet potential imbalances, which includes the ability of the EIM Entity to ramp its own generation resources to meet those imbalances. Resource sufficiency helps ensure EIM Entities do not lean on each other to meet their individual reliability obligations. If the EIM Entity passes the resource sufficiency tests, it will have access to other EIM resources to meet its load and uncertainty for the next operating hour. If the EIM Entity fails the resource sufficiency evaluation for the next operating hour, then incremental EIM transfers during the hour will not be allowed in the direction of the failure. EIM participants do have an opportunity to view these results prior to the hour, and to adjust their base schedules to meet these resource sufficiency requirements.

The CAISO also performs locational market power mitigation if transmission constraints enable one entity or a small group of entities to determine market prices within an isolated geographic area. To ensure that prices remain competitive, the market power mitigation process operates by replacing bids of entities determined to have market power with a default value or an unconstrained locational marginal price, whichever is higher. Historically, this approach has been controversial for EIM Entities offering hydroelectric generation into the market because they struggled to demonstrate a marginal cost on which to base a default energy bid; however, these concerns appear to have been largely

addressed with recent enhancements to market power mitigation that have occurred through CAISO's stakeholder process.

To help illustrate how the EIM process and interactions occur, a summary timeline of major EIM activities for each operating hour appears below.

Timeline for Major EIM Activities Prior to an Operating Hour

Time	Actions
T-75	By T-75 minutes (or 1 hour and 15 minutes prior to the start of the operating hour), <ul style="list-style-type: none"> • Base schedules must be submitted by EIM Entity SCs; and • Participating Resource SCs must submit all economic bids and self-schedules. The market closes and the CAISO begins running the initial resource sufficiency evaluations.
T-60	The CAISO publishes: <ul style="list-style-type: none"> • The results of the resource sufficiency evaluations. • An updated load forecast. EIM participants use this to check their generation base schedules and ensure that they are still balanced.
T-55	Deadline for the SC for participating resources or for the EIM Entity to submit revised base schedules in response to the updated load forecast and initial resource sufficiency evaluations.
T-45	The CAISO runs the resource sufficiency evaluations again and publishes the results.
T-40	Deadline for the EIM Entity SC to submit any final adjustments to base schedules.
T-37	The first market run of the fifteen-minute market (FMM) occurs. There will be three additional market runs to cover the remainder of the hour.
T-22.5	The CAISO publishes results from the first market run of the FMM. Participating Resource SCs learn the MW quantity and price at which their bids cleared the market.
T-20	Deadline for E-Tags submission. E-Tags represent the energy accounting mechanism by which energy is scheduled across a transmission system and is delivered from one BA to another.
T-7.5	The first run of the 5-minute real-time dispatch market (RTD) occurs and schedules are adjusted accordingly. There will be 11 additional RTD market runs to cover the remainder of the hour.

Appendix B – CAISO EIM Governance

The CAISO is governed by the California Independent System Operator Corporation Board of Governors (Board) and has adopted Corporate Governance Principles⁴ that include the following:

The Board is responsible for governance and stewardship of the ISO, while the day-to-day operations are delegated to, and the responsibility of, management...The size and selection of the Board are governed by state statute. The Board is composed of five governors, all of whom are appointed by the Governor of the State of California and confirmed by the California Senate. ISO business is conducted by its employees, managers, and officers, under the direction of the President and Chief Executive Officer and the oversight of the Board.

The Board's role is to confirm and maintain corporate direction, to annually review and approve management's strategic plans and the ISO operating and capital budgets (as recommended by the President and Chief Executive Officer), define limitations, and monitor performance against objectives and limitations. In fulfilling this role, the Board will regularly review corporate objectives to ensure they remain responsive to the changing business environment in which the ISO operates.

The Board, using its independent judgment, is responsible for balancing commercial and public policy objectives to ensure that the ISO is operated in a sound commercial manner, while at the same time fulfilling the public policy responsibilities assigned to it as a California nonprofit public benefit corporation created under state law. In fulfilling its responsibilities, the Board should also consider the interests that employees, customers, and stakeholders, such as governmental authorities, market participants, vendors and communities, may have in the ISO.

While the interests of Tacoma Power and other similarly situated public Northwest based hydroelectric utilities are considered by the Board through CAISO's stakeholder processes, which are robust, the mission of CAISO is California focused. The purpose of the CAISO "is to ensure efficient use and reliable operation of the electric transmission facilities of those transmission owners that have transferred operational control of those facilities to the [CAISO]."⁵ And as described in the paper above, those entities are overwhelmingly comprised of California-based IOUs.

⁴ California ISO Corporate Governance Principles Version # 3.5,
<http://www.caiso.com/Documents/CorpGovernancePrinciples.pdf>.

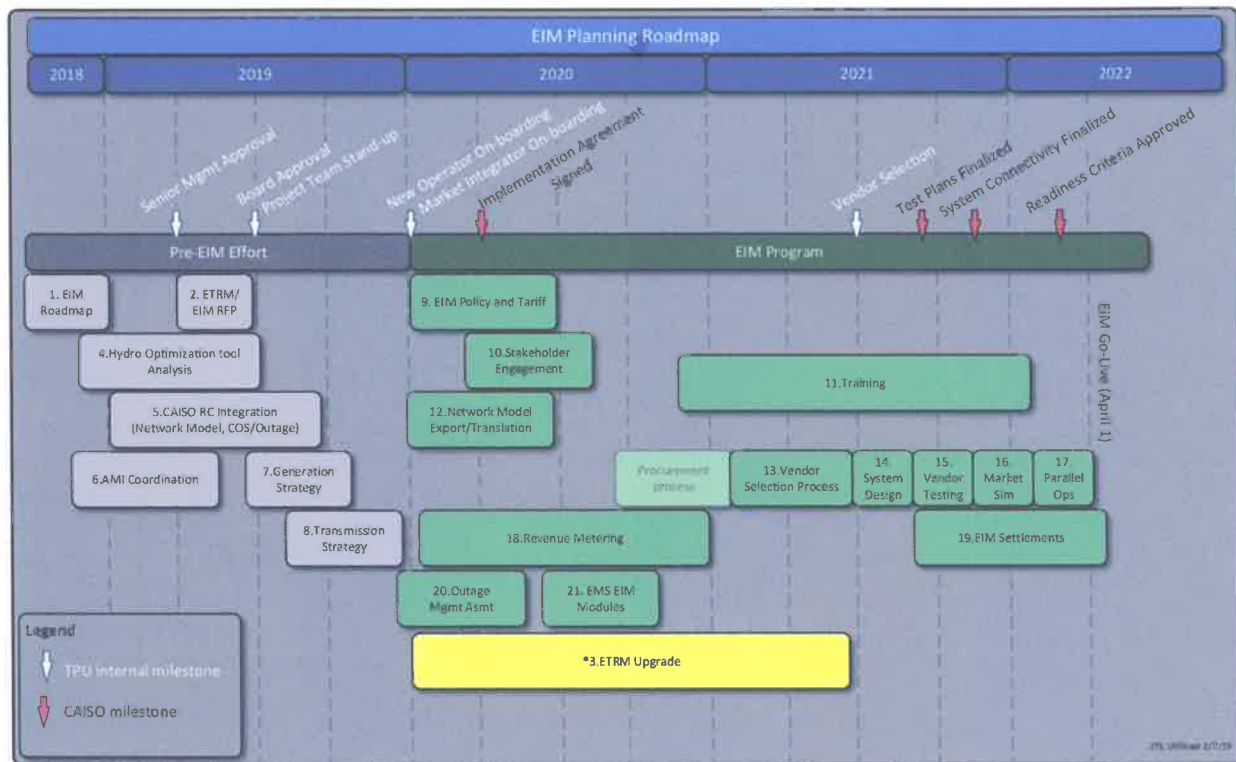
⁵ Article 2, Section 1, AMENDED & RESTATED BYLAWS OF CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION, a California nonprofit public benefit corporation,
http://www.caiso.com/Documents/ISOCorporateBylaws_amendedandrestated_.pdf

Recognizing that the EIM extends to entities outside of California, an EIM Governing Body was formed to include stakeholders from outside of the state. It is comprised of five members, and has received delegated levels of authority from the Board. However, this delegation does not include final authority over EIM design changes that effect CAISO's tariff. That authority remains with the Board.

Along with the EIM Governing Body, there are two other features that function to influence the governance of the EIM. The first is the body of state regulators (BOSR), a group of representatives from various state commissions that have regulatory oversight of investor owned utilities operating within their states. These representatives hold periodic meetings and may express a common position in a CAISO stakeholder process or to the Board. The second is the EIM Regional Issues Forum, which is organized by ten self-selected sector liaisons that facilitate input and participation from respective sectors on the topics and content not currently part of an ongoing ISO stakeholder process. Tacoma Power, working through other similarly situated utilities and trade organizations, has been working within these channels to engage the CAISO.

Appendix C – Roadmap and Implementation Timeline

Below is project timeline for Tacoma Power's implementation of EIM as set out in the Roadmap document prepared by Tacoma Power's contractor, Utilicast.





RESOLUTION NO. U-11084

1 A RESOLUTION approving the establishment of an Energy Imbalance Market
2 Project in Tacoma Power, as a special project of limited duration, and
3 designating general salary classifications and benefits for persons
4 employed on the project, pursuant to Tacoma Municipal Code Sections
5 1.12.140, 1.12.155, 1.24.187, 1.24.980-986, 1.30.300 and Section 6.1(h)
6 of the Tacoma City Charter.

7 WHEREAS the City of Tacoma, Department of Public Utilities ("TPU"),
8 Light Division (d/b/a "Tacoma Power"), requests approval to establish an
9 Energy Imbalance Market Project ("Project"), as a special project of limited
10 duration for a three-year period, once an implementation agreement has been
11 finalized, to include hiring up to 4 project employees for Tacoma Power, and

12 WHEREAS the goal of the Project is to implement the new processes,
13 applications, technologies, and integrations needed to successfully interact with
14 the California Independent System Operator ("CAISO"); and add new
15 technology and processes; and

16 WHEREAS funds for the Project are currently not included in the budget
17 for Tacoma Power, but staff believes implementation costs can be offset with
18 budget reductions in other areas, and

19 WHEREAS, pursuant to the provisions of Section 1.12.155 of the
20 Tacoma Municipal Code, employees who are not regular employees, and are
21 hired as special project employees, are paid as provided for by ordinance or
22 resolution of the City Council, and

23 WHEREAS, it is in the best interest of the City of Tacoma to establish the
24 Project as a special project of limited duration; Now, Therefore,
25
26



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

Section 1. That the Project is hereby approved and established as a special project of limited duration through December 31, 2024, and the appropriate officers of the City are authorized to take such action as necessary to implement this Program, including hiring up to 4 special project employees.

Section 2. That in accordance with the applicable provisions of TMC 1.12.140 and 1.12.155, the salaries and classes set forth in the Compensation Plan for regular City employees shall be applied, contingent upon funding, to similar project positions of the Project.

Section 3. That in accordance with TMC 1.24.187 and 1.30.300, employees who have been hired or may be hired for positions expected to be of limited duration shall be designated unclassified special project employees as of the date of hire.

Section 4. That those special project employees who have been hired, or may be hired to work on the special project, as identified in this resolution, shall receive benefits, all in accordance with and pursuant to the provisions of the compensation plan of the City of Tacoma. They shall be given a one-time binding and irrevocable election to participate in the City's Retirement System, pursuant to the retirement provisions of TMC 1.30.300.

Section 5. That, because the positions to be filled pursuant to this resolution are of a temporary nature and are unique in that they pertain only to the aforementioned special project, they are deemed temporary positions, and persons so employed in such positions shall have no claim to further or



1 continued employment with the City after cessation of such special project or
2 after cessation of activities funded by said programs, except pursuant to their
3 obtaining status as regular City employees under the provisions of the Tacoma
4 Municipal Code, or pursuant to further action of the City Council, relating to this
5 special project.

6 Section 6. That the term of this special project shall not exceed the
7 expiration of December 31, 2024, unless extended by appropriate action.

8 Approved as to form and legality:

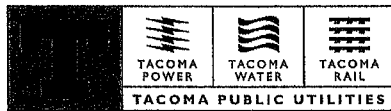
9 *[Signature]*
10 Chief Deputy City Attorney

Chair _____

Secretary _____

11 _____
12 Clerk

Adopted _____



Board Action Memorandum

TO: Jackie Flowers, Director of Utilities
COPY: Charleen Jacobs, Director and Board Offices
FROM: Chris Robinson, Power Superintendent/COO
MEETING DATE: June 26, 2019
DATE: June 14, 2019

SUMMARY: As described in the Board Action Memorandum, dated June 14, 2019, requesting authorization for the Director to enter into an Energy Imbalance Market (EIM) Implementation Agreement with the California Independent System Operator (CAISO), a business case for joining the EIM has been completed. In accordance with TMC, Tacoma Power is also requesting to designate the EIM Project as a "Special Project of Limited Duration" allowing for the addition of staff to support key project phases and deliverables.

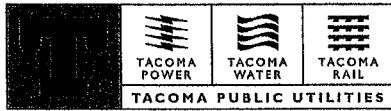
BACKGROUND: The Board Action Memorandum, dated June 14, 2019, requesting authorization for the Director to enter into an EIM Implementation Agreement fully describes the justification for joining the CAISO EIM.

The EIM Project will require significant effort across Tacoma Power to implement the new processes, applications, technologies, and integrations needed to successfully interact with the CAISO EIM. The implementation phase is expected to last approximately 3 years with a targeted go-live date of April 2022. The implementation team will be comprised of project staff, consultants, and permanent full-time employees (FTEs). Many of the implementation team will continue to support and operate the program in the post go-live environment.

The implementation team is projected to require hiring up to 11 new FTEs, including up to 4 project employees. As we further define the team's responsibilities it is anticipated that the project staff may include the following roles:

- Program Manager; This role provides for the program management for the implementation of the EIM project including coordinating and managing chartered cross-functional project work groups, contract and vendor management, assigning and reviewing the work of vendors and technical staff, budget management, and project reporting.
- Operational Technology Support Engineer; This role will be responsible for oversight of the integration of EIM software with existing energy trading systems, test management, and identifying and resolving issues,
- Energy Management System (EMS) Support Engineer; This role will be responsible for integration of EIM software with the EMS system, assuring regulatory compliance standards are followed, test management, and identifying and resolving issues.
- Settlements and Billing Analyst; This role will be responsible for developing business processes for account settlements with the EIM, coordinating SAP integration issues, and testing and training business users on settlement software and tools.

Designating the EIM Project as a "Special Project of Limited Duration" will allow us to determine skill sets and fill positions that are necessary for only the 3-year implementation period.



Board Action Memorandum

ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED? No.

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

Staff believes the cost of the Implementation agreement can be offset with budget reductions in other areas. For the full implementation costs in the current biennium, staff will be looking for offsets in the current budget, but may seek approval of a mid-biennium budget adjustment if that seems infeasible.

IF THE ACTION REQUESTED IS APPROVAL OF A CONTRACT, INCLUDE LANGUAGE IN RESOLUTION AUTHORIZING \$200,000 INCREASE IN ADMINISTRATIVE AUTHORITY TO DIRECTOR? No.

ATTACHMENTS:

CONTACT: Todd Lloyd, Power Section Assistant Manager II, 253.502.8342
Supervisor: Clay Norris
Presenter at podium: Todd Lloyd



RESOLUTION NO. U-11085

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

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

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

WHEREAS in June 2017, Tacoma Rail extended the servicing contract with Amendment No. 1, through Resolution No. 10934, to July of 2019, and

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

WHEREAS Tacoma Rail and BNSF anticipate the services and payments under the contract to continue for the foreseeable future, and

WHEREAS the extension is for a period of two years with the option for mutually agreed additional one-year extensions for the duration of the period Tacoma Rail will provide the services under the contract and not limited to a maximum amount in revenues received by Tacoma Rail; Now, therefore,

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

That the extension for the locomotive servicing contract between Tacoma Rail and the BNSF Railway Company, for a period of two years with the option for additional one-year extensions for the duration of the period



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Tacoma Rail will provide the services under the contract, is hereby approved
and the proper officers are authorized to execute said agreement substantially
in a form as approved by the City Attorney.

Approved as to form and legality:

Z C Randall
Chief Deputy City Attorney

Chair

Secretary

Clerk

Adopted _____



Board Action Memorandum

TO: Jackie Flowers, Director of Utilities
COPY: Charleen Jacobs, Director and Board Offices
FROM: Dale W. King, Rail Superintendent *Dale W. King*
MEETING DATE: June 26, 2019
DATE: May 17, 2019

SUMMARY: Tacoma Rail requests authorization to extend an agreement with the BNSF Railway Company to provide daily locomotive inspections and services on an "as needed" basis.

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

In July of 2013, Tacoma Rail entered into a pilot program to provide inspections, servicing and running repairs on BNSF unit oil train locomotives destined to Tacoma Rail. In August of 2014, through Resolution U-10717, the Tacoma Public Utility Board approved a contract to provide servicing and inspections for all BNSF locomotives destined to Tacoma Rail with a term of three years. In June of 2017, through Resolution U-10934, the Tacoma Public Utility Board approved Amendment No. 1 which extended the locomotive servicing contract to July of 2019.

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

ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED? Yes.

IF THE ACTION REQUESTED IS APPROVAL OF A CONTRACT, INCLUDE LANGUAGE IN RESOLUTION AUTHORIZING \$200,000 INCREASE IN ADMINISTRATIVE AUTHORITY TO DIRECTOR? Yes.

ATTACHMENTS:

Amendment No. 2 to BNSF Off Property Locomotive Repair Agreement
Amendment No. 1 to BNSF Off Property Locomotive Repair Agreement
BNSF Off Property Locomotive Repair Agreement – Contract BF10006298

CONTACT: Alan Matheson, Asst. Superintendent, 253-502-8934
Dale King, Superintendent, 253-502-8894
Presenter: Kari Halliday, Mechanical Manger, 396-3285 kari.halliday@ci.tacoma.wa.us



Contract Number: BF10006298
Amendment Number: 2

AMENDMENT 2

This Amendment 2 (the "Amendment") is entered into as of June 21, 2019, by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("BNSF"), and **CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, BELTLINE DIVISION D/B/A TACOMA RAIL ("Provider")**.

WHEREAS, BNSF and Provider are parties to the Off Property Locomotive Repair Agreement, dated August 1, 2014, BNSF Contract Number BF10006298 (together with any and all modifications, supplements and amendments thereto, the "Agreement"); and

WHEREAS, the parties desire to amend the Agreement.

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

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

- 4) **TERM AND TERMINATION**

This Agreement shall be effective as of the Effective Date and shall remain in effect thereafter until July 13, 2021, with the mutual option to extend, unless earlier terminated by either party giving not less than ninety (90) days' written notice to the other party. BNSF may terminate this Agreement at any time on ten (10) days' written notice in the event that BNSF determines that the services provided by Provider are Substandard. "Substandard" for purposes of this Agreement means such services are not in accordance with commonly-accepted standards in the railroad industry. Either party may terminate this Agreement in the event there is any breach of the terms and conditions of this Agreement and such breach remains uncured after a period of at least ten (10) days following the receipt of written notice from the non-breaching party. However, no termination or cancellation hereof shall release either party from any liability or obligation under this Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of such termination or cancellation.

- 2) The parties may execute multiple counterparts of this Amendment, each of which will be deemed an original and all of which together will constitute one and the same instrument. The parties may exchange counterpart signatures by facsimile or electronic transmission (including



Contract Number: BF10006298

Amendment Number: 2

PDF and TIF formats) and the same shall constitute delivery of this Amendment with respect to the delivering party.

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

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

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

BNSF RAILWAY COMPANY

(Signature)

Jackie Flowers
(Name Printed)

Director of Utilities
(Title)

(Signature)

(Name Printed)

(Title)

Dale W. King, Rail Superintendent

Andrew Cherullo, City Finance Director

Approved as to form:

Martina P. Lantz

Deputy City Attorney



Contract Number: BF10006298
Amendment Number: 2

AMENDMENT 2

This Amendment 2 (the "Amendment") is entered into as of June 21, 2019, by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("BNSF"), and **CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, BELTLINE DIVISION D/B/A TACOMA RAIL** ("Provider").

WHEREAS, BNSF and Provider are parties to the Off Property Locomotive Repair Agreement, dated August 1, 2014, BNSF Contract Number BF10006298 (together with any and all modifications, supplements and amendments thereto, the "Agreement"); and

WHEREAS, the parties desire to amend the Agreement.

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

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

- 4) **TERM AND TERMINATION**

This Agreement shall be effective as of the Effective Date and shall remain in effect thereafter until July 13, 2021, with the mutual option to extend, unless earlier terminated by either party giving not less than ninety (90) days' written notice to the other party. BNSF may terminate this Agreement at any time on ten (10) days' written notice in the event that BNSF determines that the services provided by Provider are Substandard. "Substandard" for purposes of this Agreement means such services are not in accordance with commonly-accepted standards in the railroad industry. Either party may terminate this Agreement in the event there is any breach of the terms and conditions of this Agreement and such breach remains uncured after a period of at least ten (10) days following the receipt of written notice from the non-breaching party. However, no termination or cancellation hereof shall release either party from any liability or obligation under this Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of such termination or cancellation.

- 2) The parties may execute multiple counterparts of this Amendment, each of which will be deemed an original and all of which together will constitute one and the same instrument. The parties may exchange counterpart signatures by facsimile or electronic transmission (including



Contract Number: BF10006298

Amendment Number: 2

PDF and TIF formats) and the same shall constitute delivery of this Amendment with respect to the delivering party.

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

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

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

BNSF RAILWAY COMPANY

(Signature)

Jackie Flowers

(Name Printed)

Director of Utilities

(Title)

(Signature)

(Name Printed)

(Title)

Dale W. King, Rail Superintendent

Andrew Cherullo, City Finance Director

Approved as to form:

Martina P. Lantry

Deputy City Attorney



Contract Number: BF10006298
Amendment Number: 1

AMENDMENT 1

This Amendment 1 (the "Amendment") is entered into as of June 30, 2017, by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("BNSF"), and **CITY OF TACOMA, WASHINGTON**, D/B/A City of Tacoma, Department of Public Utilities, Beltline Division - Tacoma Rail ("Provider").

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

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

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

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



Contract Number: BF10006298

Amendment Number: 1

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

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

4) **TERM AND TERMINATION**

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

- 3) The parties may execute multiple counterparts of this Amendment, each of which will be deemed an original and all of which together will constitute one and the same instrument. The parties may exchange counterpart signatures by facsimile or electronic transmission (including PDF and TIF formats) and the same shall constitute delivery of this Amendment with respect to the delivering party.
- 4) Except as amended herein, the terms and conditions of the Agreement remain in effect. Capitalized terms not defined herein have the same meaning as set forth in the Agreement.

(Signature page follows)



Contract Number: BF10006298
Amendment Number: 1

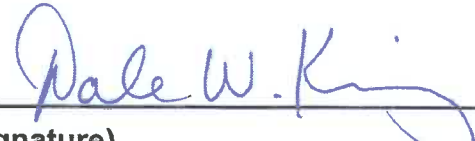
BNSF and Provider have caused this Amendment to be entered into on the date stated in the introductory clause.

CITY OF TACOMA, WASHINGTON


(Signature)


William A. Gaines
(Name Printed)

Director of Utilities/CEO
(Title)



(Signature)

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

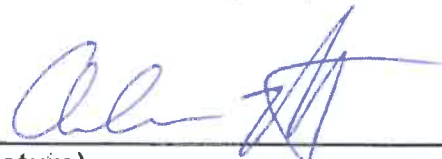

(Signature)

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

Approved as to form:


Deputy City Attorney

BNSF RAILWAY COMPANY


(Signature)

Andrew Manthei
(Name Printed)
Director SS&S
(Title)



Contract Number: BF10006298
Amendment Number: 1

Exhibit B

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

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

Hostling-

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

Distributed Power-

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



COPY

ORIGINAL

Contract Number: BF10006298

OFF PROPERTY LOCOMOTIVE REPAIR AGREEMENT

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

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

1) SCOPE OF SERVICES

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

2) COMPENSATION AND BILLING

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



Contract Number: BF10006298

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

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

3) NOTICES

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

If to BNSF:

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



Contract Number: BF10006298

With a copy to:

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

If to Provider:

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

4) TERM AND TERMINATION

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

5) RELEASE OF LIABILITY AND INDEMNITY

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



Contract Number: BF10006298

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

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



Contract Number: BF10006298

6) INSURANCE

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

- (i) Commercial General Liability insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$10,000,000 each occurrence and an aggregate limit of at least \$ 10,000,000 but in no event less than the amount otherwise carried by the contract holder. Coverage must be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:
- Bodily Injury and Property Damage
 - Personal Injury and Advertising Injury
 - Fire legal liability
 - Remove any limitation and/or exclusion regarding property in the Provider's care, custody and control.

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

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

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

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

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

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

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

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



Contract Number: BF10006298

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

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

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

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

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

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



Contract Number: BF10006298

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



Contract Number: BF10006298

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

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

7) SALES AND OTHER TAXES

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



Contract Number: BF10006298

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

8) CONFIDENTIALITY; TAX TREATMENT EXCEPTION

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



Contract Number: BF10006298

Records Act or other laws applies. In the event Provider receives a request for such disclosure, determines in its legal judgment that no applicable exemption to disclosure applies, Provider agrees to provide BNSF ten (10) days written notice of impending release. Should legal action thereafter be initiated by BNSF to enjoin or otherwise prevent such release, all expense of any such litigation shall be borne by BNSF, including any damages, penalties, attorney's fees or costs awarded by reason of having opposed disclosure. Provider shall not be liable for any release where notice was provided and BNSF took no action to oppose the release of information. Notice of any proposed release of information pursuant to Chapter 42.56 RCW, shall be provided to BNSF according to the "Notices" provision herein.

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

9) RECORDS

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

10) DELAY

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

11) INDEPENDENT CONTRACTOR STATUS

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



Contract Number: BF10006298

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

12) ASSIGNMENT OR SUBCONTRACTING

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

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

13) COMPLIANCE WITH LAWS

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

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



Contract Number: BF10006298

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

14) LIENS

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

15) GENERAL PROVISIONS

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



Contract Number: BF10006298

respective heirs, legal representatives, successors and assigns.

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

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

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

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

g) **Performance and Guarantees.**

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

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

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



Contract Number: BF10006298

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

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

16) PROPRIETARY INFORMATION

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



Contract Number: BF10006298

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

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

17) BACKGROUND INVESTIGATIONS

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

18) INABILITY TO CONTRACT

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

19) TERMS AND CONDITIONS OF THIS AGREEMENT CONTROL

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



Contract Number: BF10006298

20) **DISPUTE RESOLUTION**

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



Contract Number: BF10006298

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

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

Dale W. King
(Signature)

DALE W. KING
(Name Printed)

SUPERINTENDENT
(Title)

BNSF RAILWAY COMPANY

Blaine Rozas
(Signature)

Blaine Rozas
(Name Printed)

Director - Strategic Sourcing
(Title)

COPY

~~ORIGINAL~~



Contract Number: BF10006298

Exhibit A

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

Work:

Locomotive Maintenance and Inspection-

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



Contract Number: BF10006298

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

Work Report:

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



Contract Number: BF10006298

Exhibit B

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

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

Hostling-

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

Distributed Power-

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

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