



RESOLUTION NO. U-11226

1 A RESOLUTION related to Tacoma Power authorizing a master interagency
2 agreement for activities conducted under contract by the Washington
Department of Fish and Wildlife (WDFW).

3 WHEREAS the City of Tacoma, Department of Public Utilities, Light
4 Division, (d.b.a. "Tacoma Power"), requests the authorization of a master
5 interagency agreement for activities such as the hatchery operations at
6 Cushman and Cowlitz Hydroelectric Projects, and the Skagit and George
7 Adams hatcheries (owned by other entities), as well Cushman and Cowlitz
8 River monitoring and evaluation, which includes Tacoma Cowlitz Falls Fish
9 Facilities, kokanee plants into Alder Lake and other trout stocking activities,
10 conducted under contract by the WDFW, totaling \$9.9 million, from January
11 2021 through June 2022, and
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14 WHEREAS this funding will fulfill FERC license requirements to operate
15 and evaluate the hatcheries, to monitor the salmonid recovery plan in the
16 Cowlitz River, and other activities at the Cushman and Nisqually Projects as
17 mitigation for Tacoma Power's hydroelectric projects, and
18

19 WHEREAS a majority of the work covered by this agreement is related to
20 WDFW's operation of the Cowlitz Trout and Salmon Hatcheries, facilities that
21 grow roughly 8 million juvenile salmon and steelhead annually to meet Tacoma
22 Power's Cowlitz fish production obligation, and staff recommend continuing this
23 relation at this time to minimize risk to fish health and Tacoma's ability to meet
24 FERC license requirements, and
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WHEREAS the master agreement utilizes an annual task order format
1 with a separate task order budget and schedule of deliverables for specific
2 activities which allows Tacoma Power to successfully and efficiently negotiate
3 annual task orders with WDFW, and results in greater accountability and clarity
4 between Tacoma and WDFW and has allowed the program to adjust to the
5 changing conditions associated with fisheries programs and budgets, Now,
6 Therefore,
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8 BE IT RESOLVED BY THE PUBLIC UTILITY BOARD OF THE CITY OF TACOMA:
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10 That Tacoma Power's master interagency agreement for activities
11 conducted under contract by the Washington State Department of Fish and
12 Wildlife, for expenditures totaling \$9.9 million, from January 2021 through June
13 2022, substantially in the form as on file in the Office of the Clerk of the Board is
14 hereby approved and the proper officers of the City of Tacoma are authorized to
15 execute the master interagency agreement.
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17 Approved as to form:

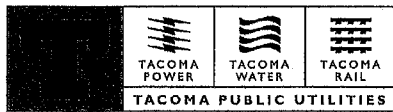
18 /s/
19 Chief Deputy City Attorney

20
21 Clerk

Chair

Secretary

Adopted



Board Action Memorandum

TO: Jackie Flowers, Director of Utilities

COPY: Charleen Jacobs, Director and Board Offices;
Chris Mattson, Generation Manager;
Keith Underwood, Natural Resources Manager;
Eric Shoblom, Cowlitz Fish Facilities Manager

FROM: Chris Robinson, Power Superintendent

MEETING DATE: December 9, 2020

DATE: November 23, 2020

SUMMARY: Tacoma Power is requesting the Public Utility Board to authorize a master interagency agreement for activities conducted under contract by the Washington Department of Fish and Wildlife (WDFW). This agreement includes authorization for expenditures totaling \$9.9 million from January 2021 through June 2022. These funds cover activities such as the hatchery operations at Tacoma's Cushman and Cowlitz Hydroelectric Projects, and the Skagit and George Adams hatcheries (owned by other entities), as well as Cushman and Cowlitz River monitoring and evaluation activities, which includes Tacoma's Cowlitz Falls Fish Facilities, kokanee plants into Alder Lake and other trout stocking activities. Approval of this master agreement and the accompanying funding will fulfill Federal Energy Regulatory Commission (FERC) license requirements to operate and evaluate the hatcheries, to monitor the salmonid recovery plan in the Cowlitz River and other activities at the Cushman and Nisqually projects as mitigation for Tacoma Power's hydroelectric projects.

BACKGROUND: Tacoma Power contracts with WDFW to conduct various fisheries and wildlife mitigation activities. Those activities are required under Tacoma's FERC license articles for hydro project operation. Beginning in 1968 the City of Tacoma contracted WDFW to operate the Cowlitz Fish Hatcheries. Since then, and as our FERC obligations have evolved, the City has continued to contract with WDFW to assist in meeting our regulatory requirements related to fish and wildlife.

The latest and existing agreement with WDFW expires on December 31, 2020. Tacoma Power has been in discussion with WDFW since May 2020 regarding terms and conditions for the next agreement. The pandemic and furloughs within Washington State agencies have delayed these discussions and as a result delayed this matter before the Public Utility Board. Therefore, Tacoma Power is seeking approval for an 18 month agreement and will return to the board for a more extended agreement.

This master agreement utilizes an annual task order format with a separate task order budget and schedule of deliverables for specific activities. This new system, implemented four years ago under the existing agreement, has allowed Tacoma Power to successfully and efficiently negotiate annual task orders with WDFW. This has resulted in greater accountability and clarity between Tacoma and WDFW and has allowed the program to adjust to the changing conditions associated with fisheries programs and budgets. Tacoma Power's fisheries programs go through extensive annual reviews with regulatory committees and stakeholders that frequently result in mandated changes to the programs.



Board Action Memorandum

The task order system with this master agreement has been instrumental in providing the flexibility to respond to those changes and has provided for more timely and efficient invoicing and budget development. For 2021, task orders are estimated to total \$6,500,000.

A majority of the work covered by this agreement is related to the operation of the Cowlitz Trout and Salmon Hatcheries, facilities that grow roughly 8 million juvenile salmon and steelhead annually. WDFW has operated these facilities on behalf of Tacoma Power since their inception, 52 years ago. As a result, Tacoma Power has grown to depend on WDFW to meet our Cowlitz fish production obligation and staff recommend continuing this relation at this time. Changing the hatchery operator will initially increase risk to fish health and therefore Tacoma's ability to meet FERC license requirements. The current pandemic heightens this risk to an intolerable level.

Recent contract history is as follows: On March 13, 2013 the Public Utility Board authorized Resolution U-10610 for a one-year contract with WDFW to operate the Cowlitz Hatchery Complex and perform biological monitoring and evaluation activities. On February 12, 2014, the Public Utilities Board authorized Resolution U-10674 for a one-year contract with WDFW to operate the Cowlitz Hatchery Complex and perform biological monitoring and evaluation activities. On March 11, 2015 the Public Utilities Board authorized Resolution U-10758 for a two-year master contract with WDFW to operate the Cowlitz Hatchery Complex and perform biological evaluations. This 2-year authorization began piloting a task order system and totalled \$12 million. On January 26th, 2017 the Public Utility Board authorized Resolution U-10902 for a four-and-one-half-year master contract extension through 2020 in the amount of \$33.5 million. To date \$31,330,591 has been spent on that contract.

ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED? Yes.

Funding has been earmarked in the 2021-2022 O&M budget. All efforts under this contract are FERC requirements and therefore continue to be included in budget forecasts.

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

Explain how expenditures are to be covered and if budget modifications are required. **N/A**

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

ATTACHMENTS: List any attachments (contracts, policies, agreements, etc.).

CONTACT:

Project contact: Keith Underwood, Tacoma Power, Natural Resources Manager, 253-502-8196 or Eric Shoblom, Tacoma Power, Cowlitz Fish Facilities Manager, 253-779-7566

Supervisor: Chris Mattson, Tacoma Power, Generation Manager, 253-502-8098 or Keith Underwood, Tacoma Power, Natural Resources Manager, 253-502-8196

Presenter: Eric Shoblom, Tacoma Power, Cowlitz Fish Facilities Manager, 253-779-7566.

INTERAGENCY AGREEMENT
BETWEEN
WASHINGTON STATE DEPARTMENT OF FISH AND WILDLIFE
AND
TACOMA POWER

This Interagency Agreement (hereinafter referred to as "Agreement") made and entered into as of the 1st day of January, 2021 ("Effective Date"), by and between the Washington State Department of Fish and Wildlife, a Washington state agency (hereinafter referred to as "WDFW"), and the City of Tacoma, a Washington state municipal corporation, by and through Tacoma Public Utilities, Light Division dba Tacoma Power (hereinafter referred to as "Tacoma Power" or "CITY").

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

1. PURPOSE

The Agreement defines the commitment, expectations, roles and relationships for WDFW to provide technical and operational support services to Tacoma Power, including but not limited to, hatchery operations, fish production, fish health, fish marking, fish tagging, fish and habitat monitoring and evaluation studies, fish collections and transport, facilities maintenance and operations, and other natural resource technical support services. Additionally, the Agreement defines the expectation that TPU provide information and biological data to WDFW to fulfill WDFW's obligations as the State of Washington's fish and wildlife resource management agency.

2. MASTER AGREEMENT

The terms and conditions of this Agreement are considered a Master Agreement, governing the specific services and deliverables to be conducted under this Agreement. Services and Deliverables will be assigned on an as needed basis by uniquely numbered Task Orders.

3. TASK ORDERS

- A. WDFW shall diligently and completely perform services and deliverables as assigned by Task Orders properly issued under this Agreement.

- B. Task Orders will be uniquely numbered and issued in a format that is substantially similar to that shown at Exhibit A to this Agreement. CITY and WDFW Project Managers will be identified in each Task Order.
- C. When requested in writing by CITY, WDFW shall provide a Proposal to perform a Task Order and such Proposal will include at a minimum a scope of services, work breakdown structure that includes project milestones and deliverables, schedule and detailed budgets. The CITY will review the Proposal and enter into negotiations with WDFW to execute a mutually agreeable Task Order.

Budgets will be detailed in each Task Order and will include, as applicable, costs for materials, equipment, labor (inclusive of benefits and other labor costs) by hour and position (detailed per employee per hour, not based on FTE percentage), incidentals, travel, vehicle mileage, subcontractor services and an indirect rate.

- D. Task Orders shall be fully enforceable upon signature by the Generation/Natural Resources Manager and by WDFW's Designated Task Order Authorization Representative named in this Agreement. No payment will be made under a Task Order until it is fully executed by both parties. Fully executed Task Orders will be incorporated into this Agreement by reference.
- E. At CITY's sole discretion, Task Orders authorizing WDFW to operate CITY owned facilities, such as the Cowlitz Salmon Hatchery and the Cowlitz Trout Hatchery may include a mutually negotiated and agreed upon Operating Agreement further defining roles and responsibilities. For facilities where on-station housing in CITY owned facilities is provided, such as Cowlitz Salmon Hatchery and Cowlitz Trout Hatchery, a mutually negotiated and agreed upon Operating Agreement will specifically define roles and responsibilities of the CITY and expectations for WDFW personnel occupying such housing. Any Operating Agreement will be incorporated by reference as an Exhibit to the executed Task Order and will be reviewed and updated at least annually and more often at CITY's or WDFW's request.
- F. Task Order deliverables such as scientific reports requiring CITY's approval shall contain a minimum of one review period by the CITY based on a mutually agreeable schedule or no more than thirty (30) days prior to the deliverable due date. During the review period, the CITY may provide comments regarding deficiencies of the deliverable, which must be addressed in the final deliverable. If there is disagreement over the

completion or content of a deliverable, the issue will be resolved according to the Dispute Resolution provisions of this Agreement.

- G. Approved Task Order budgets may only be altered by mutual agreement in writing following receipt of a Change Request form contained in this Agreement and signed or otherwise approved by the Generation/Natural Resources Manager and WDFW's Designated Task Order Authorization Representative named in this Agreement.
- H. If there is a requested task order that conflicts with the Agreement, the Agreement must first be amended before that task order may be negotiated.

4. TERM AND PERIOD OF PERFORMANCE

- A. This Agreement is effective as of Effective Date set forth above and will terminate the later of June 30, 2022 or delivery of all outstanding deliverables as authorized by Task Orders issued during the term of this Agreement.
- B. At CITY's sole option, the term of this Agreement may be extended in writing by the parties in the form of an Amendment to this Agreement.
- C. Neither party shall be considered to be in default in the performance of this Agreement or any fully executed Task Order to the extent such performance is prevented or delayed by a cause which is beyond the reasonable control of the affected party and which could not have been prevented by the affected party's exercise of prudence, diligence and care. In such event, the time for performance may be extended for a period equal to any time lost as a direct result of the event causing the delay or inability to perform. In the event WDFW is unable to proceed due to a delay solely attributable to CITY, WDFW shall advise CITY of such delay in writing as soon as is practicable. Any dispute regarding whether the cause of the delay is beyond the reasonable control of the affected party will be resolved according to the Dispute Resolution provisions of this Agreement.

5. CHANGE REQUEST AND AMENDMENT PROCESS

- A. Any requested deviations or changes to scope, schedule, deliverables or budget shall be communicated directly to the Project Manager named within the Task Order using the Change Request form attached to this Agreement, with the exception that operational or other circumstances beyond WDFW's reasonable control requiring an immediate deviation to scope, schedule, deliverables or budget may occur prior to submission of a

Change Request but must be communicated in writing using the Change Request form to the Project Manager named in the Task Order as soon as is practicable, but no later than five working days from the deviation.

- B. Agreed upon changes to Task Order scope and schedule shall be documented by signatures of Task Order Project Managers on a completed Change Request Form.
- C. Agreed upon permanent increases to a Task Order budget shall be documented by signatures of the Generation/Natural Resources Manager and by WDFW's Designated Task Order Authorization Representative on a completed Change Request Form.
- D. Changes to the terms and conditions of this Interagency Agreement will be documented in the form of an Amendment to this Agreement signed by all Parties.

6. COMPENSATION AND PAYMENT

- A. WDFW shall submit monthly invoices in a time and materials format, for services completed and deliverables furnished during the previous month. If an individual invoice cannot be submitted timely in the month following the month in which the services are performed or deliverables furnished, such invoice must be submitted no more than 60 days after the services are completed or deliverables furnished. Invoices shall be submitted through the ARIBA system (unless otherwise specified in the Task Order). At CITY discretion, invoices received after 60 days will be subject to a withholding penalty of 3% of the total invoice amount.
- B. Each invoice shall reference the uniquely numbered Task Order for which payment is requested. WDFW shall submit necessary and appropriate documentation for all invoiced services and deliverables including the monthly payroll report and invoice reports detailed to the sub-sub object level.
- C. Unless otherwise specified in an individual Task Order, and regardless of a Task Order termination date, WDFW shall provide a cost estimate for all active Task Orders through December 31st of any calendar year, no later than December 1st of the same calendar year to facilitate CITY year-end accounting closeout process. Tacoma shall provide a form letter to WDFW to prompt the generation of the estimate no later than 3 weeks prior to the estimate due date.

- D. Unless otherwise specified in an individual Task Order, and regardless of a Task Order termination date, WDFW shall provide invoices for all active Task Orders, to include all charges incurred, but not yet invoiced through December 31st of any calendar year, no later than January 31st to facilitate CITY year-end accounting closeout process. For Task Orders with performance periods that continue beyond the end of the calendar year, WDFW may charge for previous calendar year costs in the following January and February Invoices. WDFW will exercise due diligence to ensure costs are invoiced in the year for which they are incurred with only exceptional circumstances allowing invoices reflecting costs incurred during the previous year.
- E. Payment to WDFW shall be made through the CITY's ARIBA payment process, and shall be considered timely if made within thirty (30) days of receipt of a properly completed, undisputed invoice. The CITY may withhold payment to the WDFW for any services or deliverables not performed as required hereunder or per the associated Task Order until such time as the WDFW modifies such services or deliverables to the satisfaction of the CITY or the issue is resolved according to the Dispute Resolution provisions of this Agreement.
- F. All payments shall be subject to adjustment for any amounts, upon audit or otherwise, determined to have been improperly invoiced.

7. COMMUNICATIONS AND ACKNOWLEDGEMENTS

- A. WDFW and CITY are fully committed to working with each other throughout the Term of this Agreement, and agree to communicate regularly with each other at all times. One of the goals of regular communication is to avoid or minimize disputes, differences of opinion arising in connection with this Agreement or any fully executed Task Order, and to the extent that disputes may arise, to minimize public blame being placed on either party by the other.
- B. Any news releases, informational communications or other significant media directly related to a Task Order which is prepared by one party shall acknowledge the other and, to the extent practicable the parties will coordinate with one another before publishing or releasing substantive public communications.
- C. Continuous improvement. It is recognized that both parties operate within dynamic environments. Improving operations and thereby results requires an intentional effort. WDFW and the CITY agree to operate from a

continuous improvement vantage and commit to strategies to support this ideology within the Task Orders.

- D. Annually during the month of January, or as soon as possible thereafter, Tacoma and WDFW will hold a meeting attended by management, points of contact and support personnel as deemed necessary by the Parties. The purpose of this meeting is to exercise a continuous improvement strategy. Tacoma is responsible for scheduling the meeting and creating the agenda. Anticipated agenda items include effective communication, Task Order development and execution, performance criteria attainment and other items.

8. DAMAGES

- A. The Parties agree that in certain cases it may be difficult to determine or quantify monetary damages or other losses, harm or injury (losses) which may be incurred by either Party as a result of the failure to perform, comply, or maintain compliance, with the provisions of a fully executed Task Order, and further acknowledge and agree that either Party may be entitled to a remedy as a result. The Parties shall work together to determine the value of losses and work to find a remedy to the satisfaction of both Parties; including but not limited to monetary damages, specific performance, injunctive or other agreed upon relief. If the parties cannot agree to the remedy for any loss, then any claim for damages or other relief shall follow the Dispute Resolution section under this Agreement. Both Parties agree that values and remedies shall be consistent with fully executed Task Orders and the potential of risk should be identified in Task Orders if known at the time they are developed. Failure to identify a risk in a Task Order does not preclude any remedy under this section.

9. LOSSES AND INCIDENT REPORTS

- A. Incident reports shall be prepared by CITY or prepared by WDFW and submitted to CITY to document instances where WDFW is unable to meet specified Task Order deliverables or where WDFW caused damage or loss to Tacoma properties or facilities while working under a Task Order. Incident reports shall be prepared or submitted no later than 5 business days from the date of discovery of occurrence.
- B. Incident reports must include the following information: Date and Time of incident, nature and impact of incident to Task Order deliverable, estimated financial impact and method of calculation, a description of the incident response, involved personnel, proposal to ensure incident does not recur.

- C. Except as otherwise stated in a mutually negotiated and agreed upon Operating Agreement, when an incident report specifically includes damage to CITY owned facilities or housing (beyond normal wear and tear and excluding maintenance and repair necessarily performed by CITY to keep its asset in safe working order) the report must include an inventory of damaged, lost or stolen items, and a plan to replace or reimburse CITY for such items.

10. DISPUTE RESOLUTION

- A. Except as may otherwise be stated in a duly authorized Task Order, in the event of a dispute pertaining to this Agreement or an individual Task Order, the parties agree to attempt to negotiate in good faith an acceptable resolution.
- B. Every attempt shall be made by both parties to resolve disputes arising from the implementation of this Agreement including disputes regarding individual Task Orders at a technical level. In the event a dispute cannot be resolved at a technical level, the dispute shall be elevated through the appropriate levels of authority, up to and including the Director of the WDFW and the Superintendent of Tacoma Power, for resolution. In the event that the matter remains unresolved, either party may obtain the services of a professional mediator. The mediator shall be chosen by agreement of both parties, but the party requesting the services shall cover the costs, unless the parties agree otherwise.
- C. If dispute resolution is not successful, any party may seek administrative or judicial relief to enforce this Agreement or resolve the dispute. In the event of a contradiction between this Agreement and actions mandated by the Federal Energy Regulatory Commission (Commission, or FERC), the Commission mandate shall be the primary directive.
- D. This provision does not limit the CITY's rights to terminate this Agreement.

11. INDEPENDENT CONTRACTOR STATUS

- A. Unless otherwise specified herein or in a Task Order, or in a Task Order amendment WDFW shall provide at its sole expense all materials, labor, equipment and other necessities to perform its duties under a Task Order. All services and deliverables provided under this Agreement shall be furnished by WDFW as an independent Contractor, and nothing herein contained shall be construed to create a relationship of employer/employee or master/servant.

No payroll or employment taxes of any kind shall be withheld or paid by the CITY with respect to payments to WDFW. 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 WDFW's status as an independent Contractor hereunder, no workers' compensation insurance has been or will be obtained by the CITY on account of WDFW. WDFW 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 WDFW agrees to hold the CITY harmless from those costs, including attorney's fees.

12. FACILITIES AND EQUIPMENT

- A. WDFW is solely responsible for the conduct of its officials, officers, agents, employees, subcontractors and volunteers while on CITY owned property, in CITY owned facilities, including CITY owned housing and in the use of CITY owned equipment in the performance of this Agreement and its associated Task Orders.
- B. Any Equipment purchased with CITY funds shall remain the property of the CITY. Equipment costing greater than \$3,000 shall receive a CITY inventory number and label. There shall be no WDFW inventory labels placed on CITY equipment. Task Orders may specify equipment inventory and turnover requirements in further detail.
- C. All work sites and vehicles owned, leased, or otherwise arranged by CITY shall display a Tacoma Power logo, to be provided by the CITY. If WDFW so chooses, this logo may be accompanied by a WDFW logo. The size and location of each logo should be such that neither party is more prominent than the other.

13. INSPECTION AND APPROVALS

- A. Except as may be stated in a Task Order (including any mutually negotiated and agreed upon Operating Agreement that is incorporated into a Task Order), CITY employees, agents or contractors may without notice, perform physical observation of CITY's facilities (other than residences) occupied or operated by the WDFW and/or to witness WDFW operations or performance. Formal audits of either party shall require 24 hours advance notice to the other party. Residential access shall follow the WDFW Collective Bargaining Agreement language for hatchery employees. Where the Collective Bargaining Agreement is silent, the

mutually negotiated and agreed upon Operating Agreement may specify additional procedures.

- B.** Whenever a Scope of Work or a fully executed Task Order requires or permits approval by the CITY, it is understood to be approval solely for the purposes of conforming to the requirements of the Scope of Work or Task Order and not acceptance of any professional or other responsibility for the work. Such approval does not relieve the WDFW of responsibility for exercising the degree of skill and care required by customarily accepted good practices and procedures followed by others rendering the same or similar type of service, nor does such approval relieve WDFW from complying with the standard of performance or laws, regulations, industry standards, or from liability for damages caused by negligent acts, errors, omissions, noncompliance with industry standards, or the willful misconduct of WDFW or its subcontractors.
- C.** By delivery of completed work, WDFW certifies that the work conforms to the requirements of this Agreement, to the requirements of any fully executed Task Order and all applicable federal, state and local laws.

14. CONTRACT ADMINISTRATION AND NOTICES

- A. Keith Underwood, Natural Resources Manager for the CITY, shall have primary responsibility for contract administration and approval of services to be performed by the WDFW, and shall coordinate all communications between the WDFW and the CITY.
- B. 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 below addresses.

CITY	WDFW
Eric Shoblom Tacoma Power/Generation 3628 South 35 th Street Tacoma, WA 98409	Eric Kinne Washington Department of Fish & Wildlife PO Box 43150. Olympia, WA 98504-3150 AND Bryce Glaser WDFW Region 5 Office 5525 S 11 th St Ridgefield WA 98642
Phone: 253-779-7566	Phone: Eric Kinne: 360-902-2418 AND Bryce Glaser: 360-906-6765
E-mail: eshoblom@cityoftacoma.org	E-mail: Eric.Kinne@dfw.wa.gov AND Bryce.Glaser@dfw.wa.gov

- C. Task Order Execution Signatory is:

CITY	WDFW
Keith Underwood Natural Resources Manager Tacoma Power/Generation 3628 South 35 th Street Tacoma, WA 98409	Jeffrey R. Hugdahl Contracts & Purchasing Manager Washington Department of Fish & Wildlife PO Box 43135 Olympia, WA 98504-3135
Phone: 253-502-8196	Phone: (360) 902-2230
E-mail: kunderwood@cityoftacoma.org	E-mail: Jeffrey.Hugdahl@dfw.wa.gov

15. REPORTING AND RIGHT TO AUDIT

- A.** In addition to reporting requirements contained in this Agreement or in a fully executed Task Order, WDFW shall, at such times and in such form as the CITY may reasonably require, furnish the CITY with periodic status reports pertaining to the services undertaken pursuant to this Contract.
- B.** Upon CITY's request, WDFW shall make available to CITY all accounts, records, and documents related to the performance of this Agreement or a fully executed Task Order for CITY's inspection, auditing, or evaluation during normal business hours as needed by CITY to assess performance, compliance, and/or quality assurance under this Agreement or in satisfaction of CITY's public disclosure requests as applicable. This right to audit shall survive the termination of this Agreement and shall survive completion of all fully executed Task Orders.

16. RECORDS RETENTION

The WDFW shall establish and maintain records in accordance with requirements prescribed by the CITY, with respect to all matters related to the performance of this Agreement or a Task Order. Except as otherwise authorized by the CITY, the WDFW 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.

17. TERMINATION AND SUSPENSION

- A.** The CITY or WDFW may terminate this Agreement or any Task Order(s) incorporated into this Agreement at any time, with or without cause, by giving thirty (30) business days' written notice to WDFW or the CITY, respectively. In the event of termination, all finished and unfinished work prepared by the WDFW pursuant to this Agreement shall be provided to the CITY. In the event CITY terminates this Agreement or Task Order(s) due to the CITY's own reasons and without cause due to the WDFW's actions or omissions, the CITY shall pay the WDFW the amount due for and undisputed actual work and services necessarily performed under this Contract up to the effective date of termination.
- B.** The CITY may suspend this Agreement or Task Order(s), at its sole discretion, upon seven (7) business days' written notice to the WDFW. Such notice shall indicate the anticipated period of suspension. Any reimbursement for expenses incurred due to the suspension shall be limited to the WDFW's reasonable expenses and shall be subject to verification. The WDFW shall resume performance of services under this Contract without delay when the suspension period ends.

- C. Termination or suspension of this Agreement or Task Order(s) by CITY shall not constitute a waiver of any claims or remaining rights the CITY may have against WDFW relative to performance hereunder.

18. TAXES, LICENSES, PERMITS AND FEES

- A. WDFW acknowledges that it is responsible for the payment of all charges and taxes applicable to the services performed under this Contract, and the WDFW 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 WDFW agrees to hold the CITY harmless from such costs, including attorney's fees.
- B. In the event the WDFW fails to pay any taxes, assessments, penalties, or fees imposed by any governmental body, including a court of law, then the WDFW authorizes the CITY to deduct and withhold or pay over to the appropriate governmental body those unpaid amounts upon demand by the governmental body. It is agreed that this provision shall apply to taxes and fees imposed by City ordinance. Any such payments shall be deducted from the WDFW's total compensation.
- C. WDFW, at its expense, unless otherwise described in a Task Order, shall obtain and keep in force any and all necessary licenses and permits as may be required by law to complete a Task Order. No work may proceed without such permits in place and all work must be performed in compliance with such permits.

19. COMPLIANCE WITH THE LAW

WDFW will comply with all laws, ordinances or governmental rules or regulations to which it is subject, including, but not limited to federal, state and local safety regulations; safety, training and licensing requirements of WDFW employees, all required environmental permits and any and all other permits, authorizations, laws, orders of governmental authorities, rules or regulations of any kind that are referred to in this Agreement or any fully executed Task Order or are required for the conduct of WDFW's business and its performance of this Agreement or any fully executed Task Order.

20. CONFLICT OF INTEREST

WDFW shall comply with all federal, state, and City conflict of interest laws, statutes, and regulations

21. INDEMNIFICATION

- A. To the fullest extent permitted by law, each party shall indemnify and hold harmless the other party from and against all claims, suits and/or actions arising from any negligent or intentional act or omission of that party's employees, agents and/or authorized subcontractor(s) while performing this Agreement. .
- B. WDFW specifically assumes potential liability for actions brought by the WDFW's own employees against the CITY and, solely for the purpose of this indemnification and defense, the WDFW specifically waives any immunity under the state industrial insurance law, Title 51 RCW. The WDFW recognizes that this waiver was the subject of mutual negotiation. To the fullest extent permitted by law, each party agrees to indemnify, defend and hold harmless the other respective party from all claims for monetary damages, litigation and/or judgments arising from any and all acts of their respective employees, officials, agents, contractors and representatives related to any activity, use or action taken pursuant to this Agreement. Where a third party claim is alleged to be premised upon the concurrent actions of the parties, the parties agree to be responsible for the actions of their respective officials, employees and agents.

22. INSURANCE

WDFW is an agency of the State of Washington and, as such, is self-insured.

23. NONDISCRIMINATION

WDFW will comply with all federal, state, and City laws and policies regarding non-discrimination and equal employment opportunities. The WDFW 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 WDFW with any of the non-discrimination provisions of this Contract, the CITY shall be deemed to have cause to terminate this Agreement, in whole or in part.

24. CITY OWNERSHIP OF WORK/RIGHTS IN DATA AND PUBLICATIONS

To the extent that WDFW creates any Work subject to the protections of the Copyright Act (Title 17 U.S.C) in its performance of this Agreement or any

fully executed Task Order, WDFW agrees to the following: the Work has been specially ordered and commissioned by CITY. WDFW 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, WDFW 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 WDFW's creation of the Work. WDFW 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 WDFW pursuant to this Agreement and associated Task Order deliverables shall be owned by CITY and subject to the terms of this sub-section. Any computer code, scripts, files, databases or other analytical tools developed by WDFW outside of this Agreement and associated Task Order deliverables will remain the property of WDFW. In these cases, assumptions and/or input values necessary to reproduce summary data, estimates, tables, figures or plots will be provided with corresponding references. To the maximum extent permitted by law, WDFW waives all moral rights in the Work. Any scientific report or other professional document prepared for publication or otherwise intended for public distribution as part of this Agreement and associated Task Order deliverables shall be reviewed and approved by the CITY prior to distribution. The rights granted hereby to CITY shall survive the expiration or termination of this Agreement.

25. DATA SHARING

As the manager of the State of Washington's Fish and Wildlife resources, WDFW requires access to biological data collected by CITY under its various programs (i.e., FHMP, HGMPs, etc.) to evaluate status and trends of fish and wildlife populations. CITY agrees to make raw and summarized fish data generated or collected during monitoring and evaluation activities available to WDFW in a mutually agreed to format. Examples of this data include, but are not limited to the following: live and dead salmonid counts, redd counts, morphological data from sampled fish, numbers of fish tagged, transport locations, numbers transported, and Cowlitz Barrier Dam Separator and Cowlitz Falls Fish Facility enumeration and marking data. The CITY and WDFW will strive to develop common, standardized data sets that meet both Parties' needs.

26. PUBLIC DISCLOSURE

Both parties are public entities subject to RCW 42.56 the Washington state Public Records Act. This Contract and documents provided by one Party to the other Party hereunder are deemed public records subject to disclosure. Neither party shall release any record that would, in the judgment of the party, be subject to an exemption from disclosure under the Public Records Act, without first providing notice to the other party within ten business days of receipt of the request. The parties will discuss appropriate action to be taken, including release of the requested information, seeking a protective order, or other action prior to release of the records. Should one party choose to seek a protective order, it shall do so at its sole expense.

27. CONSTRUCTION WITH OTHER REQUIREMENTS

No term, condition or provision of this Agreement shall overrule, supersede or otherwise displace any term, condition or provision of Tacoma Power's FERC license or any associated settlement or other agreements related to Tacoma Power's FERC license (collectively, FERC license requirements). In the event of a conflict or discrepancy between this Agreement, inclusive of any fully executed Task Order, the FERC license requirements are controlling.

28. MISCELLANEOUS PROVISIONS

- A. Governing Law and Venue. Washington State 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.
- B. Assignment. The WDFW 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.
- C. 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.
- D. 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.
- E. 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.

- G. 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.
- H. Modification. No modification or amendment of this Agreement shall be effective unless set forth in writing and signed by the parties.
- I. Authority to enter into this Contract. The undersigned WDFW 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 WDFW.

IN WITNESS WHEREOF the parties hereto have accepted and executed this
Contract as of the Effective Date first written above.

CITY OF TACOMA

WDFW

Jackie Flowers
Director of Utilities

WDFW
Signatory

Chris Robinson
Power Superintendent

Title

Chris Mattson
Generation Manager

Tax ID

Andy Cherullo
Finance Director

Approved as to Form:

Martha Lantz
Deputy City Attorney

EXHIBIT "A"**TASK ORDER****SCOPE OF SERVICES****WDFW**

Project Title:	
CITY Contract No.:	
CITY Task Order No.:	
CITY Project Manager:	Email/Phone:
WDFW Project Manager:	Email/Phone:
Performance Period	
Effective Date:	Expiration Date:

This Task Order (TO) is governed by the INTERAGENCY AGREEMENT BETWEEN WASHINGTON STATE DEPARTMENT OF FISH AND WILDLIFE AND TACOMA POWER referenced above (the "Agreement") and all Services must be performed in accordance with the terms of the Agreement and this TO.

SCOPE OF SERVICES

[Draft to be completed by WDFW or CITY]

BUDGET

[Draft to be completed by WDFW or CITY]

TASK DESCRIPTION	LABOR	SUPPLIES	TRAVEL	EQUIP.	TASK TOTALS
Task No. 1					
Task No. 2					
Task No. 3					
PROJECT TOTALS:					

SCHEDULE WITH MILESTONES

[Draft to be completed by WDFW or CITY]

DELIVERABLES

[To be specified by the CITY]

PERFORMANCE PERIOD

- **Effective Date:** [Upon signature of both Parties]
- **Expiration Date:** [Anticipated completion of services]

PAYMENTS AND INVOICES

The fee for services under this TO shall not exceed \$_____ as detailed in the budget section above. Payments for Services will be on a time and materials basis and will be made in accordance with the Agreement.

SUBCONTRACTS

- ☐ For these services, the WDFW shall be allowed to subcontract as approved in writing by the CITY's Project Manager.
- ☐ For these services, the WDFW shall NOT be allowed to subcontract.

SPECIAL CONDITIONS

[List any Task Order requirements (i.e., in addition to requirements in the Contract) which are specifically applicable and unique for the delivery of services in this Scope of Services.]

COMMUNICATION PLAN

[To be completed by WDFW or CITY]

WDFW'S PROJECT MANAGER/E-MAIL/PHONE: Name / Email / Phone

CITY'S PROJECT MANAGER/E-MAIL/PHONE: Name / Email / Phone

Except as set forth in this Task Order, all other terms of the Agreement remain in full force and effect. The Services applicable under this Task Order are authorized by the parties as of the date(s) set forth below.

CITY OF TACOMA:

Tacoma Power, Generation

By:

WDFW:

By:

Authorized Signature Date
Signed

Keith Underwood

Printed Name

Natural Resources Manager

Title

Project Manager

By:

Authorized Representative Signature Date
Signed

Printed Name

Title

Project Manager

By:

Authorized Signature Date
Signed

Printed Name

Authorized Representative Signature Date
Signed

Printed Name

EXHIBIT "B"
CHANGE REQUEST FORM
Change Request [XX]: ["Title" of the change]

Project: [Name of Project]
Task Order Number:
Project Manager: [Project Manager Name]
Date Submitted: [MM/DD/YYYY]
Functional area to change: [Choose: Scope/Schedule/Budget]

Summary

[Brief description of the change, circumstances leading to the required change, etc.]

Consequences/Risks

[Description of the impact of this change on the project and any potential risks surrounding the change]

Scope Change

Before Change	After Change
[Task #] - [describe scope of service before change – should agree with current SOW, but further detail may be required]	[describe new scope of service – if change affects more than one task/sub-task, list all changes in separate rows]

Cost/Resource Change

Task	Before Change	This Change	After Change
[Master Task #]	\$(XXX)	\$(YY)	\$(XXX+YY)
[Sub-Task #a]			
[Sub-Task #b]			
Total:	\$(ZZZ)	\$(ZZ)	\$(ZZZZ)

Schedule Change

Task	Completion Date	
	Before Change	After Change
[Master Task #]	[MM/DD/YYYY]	[MM/DD/YYYY]

Approval

Approvals for changes to scope and/or schedule to be authorized by program managers.
Approvals for changes to budget to be authorized by Task Order signatories.

CITY OF TACOMA:

Tacoma Power, Generation

By:

Authorized Signature Date Signed

Keith Underwood

Printed Name

Natural Resources Manager

Title

Project Manager

By:

Authorized Signature Date Signed

Printed Name**WDFW:**

By:

Authorized Representative Signature Date
Signed

Printed Name

Title

Project Manager

By:

Authorized Representative Signature Date
Signed

Printed Name