



## RESOLUTION NO. U-11318

1 A RESOLUTION authorizing execution of a utility installation agreement  
2 between Tacoma Power and Amazon.Com Services LLC ("Amazon").

3 WHEREAS Amazon is leasing and developing a cold-storage warehouse  
4 in Fredrickson, Washington to support Amazon's grocery delivery business, and

5 WHEREAS this project is projected to consume up to 10MWs of power  
6 at peak and is projected to consume approximately 3MWs of power on average,  
7 and

8 WHEREAS the proposed utility installation agreement is required in  
9 order to install the equipment and facilities necessary, in the short term, to allow  
10 for the warehouse to operate at full capacity until a substation can be  
11 constructed, and

12 WHEREAS the Amazon project will therefore be completed in two  
13 phases, the first phase, the proposed utility installation agreement for short-term  
14 service, and the second phase, a future utility installation agreement for a  
15 customer funded substation, and

16 WHEREAS the customer funded substation will provide service beyond  
17 the short term service period, and

18 WHEREAS the first phase utility installation agreement for short-term  
19 service will be 100% customer funded with a deposit of \$2,432,000, and

20 WHEREAS the deposit includes the estimated project cost plus a  
21 contingency that allows Amazon to allocate an approved project cost while still  
22 allowing the project to move forward in the event of incurred costs over the  
23 initial estimate; Now, therefore,  
24  
25  
26



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

That Tacoma Power's request to execute a utility installation agreement for short-term service with Amazon.Com Services LLC, to install the equipment and facilities necessary for short-term electrical service to Amazon's cold storage project as described in the back-up materials on file with the Clerk of the Board, in the amount of \$2,432,000, to be funded by the customer in advance of construction, is hereby approved, and that the proper officers of the City are authorized to execute said agreement substantially in the form as on file with the Clerk and as approved by the City Attorney.

Approved as to form:

\_\_\_\_\_  
Chair

/s/  
\_\_\_\_\_  
Chief Deputy City Attorney

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
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:** April 27, 2022  
**DATE:** April 14, 2022

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### STRATEGIC DIRECTIVE ALIGNMENT (select as many that apply):

Please indicate which of the Public Utility Board's Strategic Directives is supported by this action.

- |   |   |
|---|---|
| <input type="checkbox"/> SD1 – Equity & Inclusion       | <input type="checkbox"/> SD8 – Telecom                            |
| <input type="checkbox"/> SD2 – Financial Sustainability | <input checked="" type="checkbox"/> SD9 – Economic Development    |
| <input type="checkbox"/> SD3 – Rates                    | <input type="checkbox"/> SD10 – Government Relations              |
| <input type="checkbox"/> SD4 – Stakeholder Engagement   | <input type="checkbox"/> SD11 – Decarbonization/Electric Vehicles |
| <input type="checkbox"/> SD5 – Environmental Leadership | <input type="checkbox"/> SD12 – Employee Relations                |
| <input type="checkbox"/> SD6 – Innovation               | <input type="checkbox"/> SD13 – Customer Service                  |
| <input type="checkbox"/> SD7 – Reliability & Resiliency | <input type="checkbox"/> SD14 – Resource Planning                 |

**SUMMARY:** This request is for the Public Utility Board to authorize Tacoma Power to enter into agreement with Amazon.Com Services LLC in the form of a "Utility Installation Agreement – Short-Term Service". Which provides the terms and conditions under which electric service facilities will be designed and installed for the Short-Term Service for the Amazon cold storage facility, located in Spanaway, WA. This includes all on-site infrastructure plus additional upgrades to the distribution system to support the additional load.

Amazon.com will pre-pay Tacoma Power's costs in the amount of \$2,432,000, which includes a 33% contingency. The contingency is included to ensure that Tacoma Power does not exceed the pre-paid amount. Unspent funds will either be funded or applied to the future Utility Installation Agreement discussed below.

A future Utility Installation Agreement that will provide the terms and conditions for the engineering, planning, design, and installation of a new CUSTOMER funded substation ("Utility Installation Agreement – Substation") which will provide service beyond the period of the Short-Term Service.

### BACKGROUND:

Amazon.com Services is leasing and developing a cold-storage warehouse greater than 800,000 square-feet in Frederickson Washington to support their grocery delivery business. This project is projected to provide 1,600 jobs and consume up to 10MWs of power at peak and is projected to consume approximately 3MWs of power on average. It is located on 34th Ave E and 204th St E in Pierce County within a building owned by Logistics Pro Company (LPC).

This contract covers infrastructure required to power to the facility in the short term to allow them to operate the warehouse at full capacity until a substation can be constructed. This is necessary to meet Amazon's schedule and avoid delaying operation until the substation to be completed due to the long lead times to acquire substation equipment and construction. Included is all infrastructure necessary to operate the warehouse and connect to the existing system, including transformers, switchgear and underground



## Board Action Memorandum

conductor, as well as upgrades to off-site, including switches and underground lines, to provide capacity for a load of this size.

Amazon.com will pre-pay Tacoma Power's estimated cost and be responsible for actual costs. The estimated cost for Tacoma Power's portion of the work is \$1,829,000. To ensure that Tacoma Power's actual costs do not exceed the pre-paid amount, Tacoma Power and Amazon.com have mutually agreed that Amazon.com will pre-pay and additional 33% contingency in the amount of \$603,000. The total deposit amount is \$2,432,000, which will be pre-paid by Amazon.com. Unspent funds will be carried forward to a follow-on agreement, which is discussed further below, or refunded to Amazon.com.

This agreement also contains language that will require a signed contract, with a deposit for the full cost of construction plus contingency prior to the energization of the site for a distribution substation on the property serving the Amazon, as well as transmission and distribution lines necessary to connect the new substation into the system. The follow on agreement is anticipated to be brought to the Public Utility Board before the end of 2022.

Prior to this agreement, a contract was executed with Amazon.com in the amount of \$500,000, which included funds for preliminary engineering and long-lead procurement for the short term service and for Tacoma Power to perform a facilities study that will inform the follow on agreement for the distribution substation described previously.

### **ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED? No**

#### **IF THE EXPENSE IS NOT BUDGETED, PLEASE EXPLAIN HOW IT IS TO BE COVERED.**

The contract will be prepaid by the customer in its entirety plus contingency. Any unused deposit will be refunded or applied to following agreements.

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

#### **ATTACHMENTS:**

Amazon – TPU Short Term Power Installation Contract

#### **CONTACT:**

Aba Frimpong; Power Engineer II; (253) 502-8306

Supervisor's Name: John Martinson; Power Supervisor III

Presenter (if different from primary contact):

Additional staff requiring a Zoom presentation link: John Merrell, Keil Drescher, Chad Edinger

**UTILITY INSTALLATION AGREEMENT – SHORT-TERM SERVICE (Customer  
Funded)**  
~Amazon Project~

This **UTILITY INSTALLATION AGREEMENT – SHORT-TERM SERVICE** (“Agreement”) with an effective date as of \_\_\_\_\_, 2022 (“Effective Date”) is made by and between, **Amazon.Com Services LLC**, a Delaware corporation (hereinafter referred to as “CUSTOMER”), and the **City of Tacoma, Department of Public Utilities, Light Division**, a municipal corporation of the State of Washington, (hereinafter referred to as “Tacoma Power and/or City”). CUSTOMER and Tacoma Power each may be referred to as a “Party” or collectively as the “Parties”.

**RECITALS**

**WHEREAS**, CUSTOMER and/or its landlord is performing site improvements to ready warehouse space for use as a facility (“Facility”) on LPC Building 5 property, 3138 200<sup>th</sup> Street East, that Customer leases and operates in unincorporated Pierce County (“Cold Storage Project”);

**WHEREAS**, CUSTOMER has requested that Tacoma Power provide in excess of 10 MW to the Facility by May 2022;

**WHEREAS**, Tacoma Power completed a System Impact Study that determined that in order to serve the planned load, Tacoma Power would need to construct a CUSTOMER funded substation;

**WHEREAS**, the typical construction timeline to build a new substation is two years after contract signing, well past CUSTOMER’S deadline, therefore, in order to provide service by CUSTOMER’S deadline, Tacoma Power is willing to provide a short-term plan of service (“Short-Term Service”) for the Facility;

**WHEREAS**, in order to provide said Short-Term Service, Tacoma Power must upgrade and extend distribution lines and install facilities and appurtenance necessary to provide the service until the substation can be built;

**WHEREAS**, Tacoma Power, therefore, intends to provide the power system design and installation work for the Facility, in multiple contract phases as follows:

1. This “Utility Installation Agreement – Short-Term Service” which provides the terms and conditions under which electric service facilities will be designed and installed for the Short-Term Service for the Facility;
2. A future Utility Installation Agreement that will provide the terms and conditions for the engineering, planning, design, and installation of a new CUSTOMER funded substation (“Utility Installation Agreement – Substation”) which will provide service beyond the period of the Short-Term Service;

**WHEREAS**, in order to receive the proposed Short-Term Service, CUSTOMER wishes to connect the Facility to Tacoma Power's electrical system and has requested Tacoma Power to perform certain utility installation work and related services as necessary to do so;

**WHEREAS**, Tacoma Power is prepared to provide electrical service to the Facility and to perform said utility installation work and related services;

**WHEREAS**, certain installation and relocation work necessary to provide the Short-Term Service to the Facility will involve Tacoma Power owned and operated utility facilities between 200<sup>th</sup> Street East 204<sup>th</sup> Street East as well as between 30<sup>th</sup> Ave East and 34<sup>th</sup> Ave East, located within unincorporated Pierce County right-of-way;

**WHEREAS**, the Short-Term Service for the Facility further necessitates the construction of a new 12.5kV/7.2kV overhead and underground distribution circuit from Tacoma Power owned and operated utility facilities on 34<sup>th</sup> Ave and 200<sup>th</sup> Street to and for the Customer service premises at 3138 200<sup>th</sup> St E.;

**WHEREAS**, all such installation, relocation and construction work, together with related design engineering and inspection services to meet applicable safety and operating requirements, is collectively referred to herein as the "**Tacoma Power Work**" (as further defined in Article 1.3 h. below) and in the Exhibits to this Agreement;

**WHEREAS**, to arrange for the orderly and timely installation of utility facilities for the Facility, CUSTOMER is responsible to complete performance of certain underground utilities structure work, on-site, that includes installation of electrical conduits -and pre-cast concrete vaults compatible with the Tacoma Power Work. Said work, referred to herein as the "**Civil Work**" (as further defined in Article 1.3 f. below) will be performed by and through CUSTOMER's separately contracted construction and/or electrical contractor(s), and their authorized sub-contractors, per Tacoma Power's engineered design set forth in "**Design Documents**" (as further defined in Article 1.3 b. below).

**WHEREAS**, CUSTOMER will be solely responsible for, and pay, all developmental costs to complete the Project including, but not limited to, all time and materials costs incurred by Tacoma Power to perform the Tacoma Power Work and further design and inspection services related to the CUSTOMER Work as specified in and pursuant to this Agreement. Such costs specifically include "**Direct Costs**" (as defined in Article 1.3 a. below) and may include further costs for additional and/or extra work as provided for herein. Notwithstanding the foregoing, it is understood and agreed that Tacoma Power will own and operate all resulting electric supply system facilities unless expressly noted otherwise herein

**WHEREAS**, Tacoma will perform and provide a customer-funded facilities study which will be used to develop and execute the future "Utility Installation Agreement – Substation".

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

## **ARTICLE 1 - SCOPE**

**1.1 Purpose and Intent.** The purpose of this Agreement is to set forth the terms and conditions pursuant to which the Parties will cooperatively undertake, at CUSTOMER's sole expense, all electric utility work and associated equipment and materials needed for the Project and as necessary to meet applicable safety and operating requirements. It is intended that Tacoma Power will perform work and provide equipment and materials, as specified herein and in the Design Documents attached hereto, including the design, installation, relocation or conversion, construction and inspection work related to: (i) its existing overhead and underground electric power facilities as necessary to provide a power supply system for the Facility and (ii) portions of a new electrical distribution system to and within said Facility.

**1.1.1** It is intended that CUSTOMER, by and through the CUSTOMER Contractor, will perform work and provide equipment and materials, as specified herein ~~including~~ including the underground utility structure construction and related management activities necessary for the installation of underground vaults and conduits for the Project work, equipment, materials, and design and/or inspection coordination~~ing~~.

**1.1.2** In further elaboration of the foregoing, this Agreement and the attached Exhibits provide for:

- On-site work
  - All on-site Tacoma Power distribution additions / improvements will be designed with 15kV utility class underground cable, and PVC conduit & pre-cast concrete vault systems, with above grade (pad-mounted) 12,470V-480/277V transformers, 15kV Class switchgear, and associated appurtenances.
  - Tacoma Power shall work with CUSTOMER to define the specific placement and installation requirements of these systems.
- The on-site requirements to serve the Facility will require the installation by Tacoma Power of
  - Additional four (4) 2500 kVA Pad-Mount 12,470V 480/277V Transformers
  - minimum of five (5) Pad-mount 15kV Switchgear
  - Underground 15kV Cable and associate terminations.
- Off-site work
  - Off-site Tacoma Power distribution work is conceptually identified as overhead line construction utilizing wood poles, conductors, and equipment mounted on or attached to the poles. This does not preclude

the possible installation of underground distribution facilities as related to this Project. A majority of the work will be within public rights of way. However, Project facilities may need to be installed within third party private property, including property not owned or leased by CUSTOMER. Additional property rights may need to be granted to Tacoma Power using Tacoma Power's approved form. Private property rights may be required for guy assemblies, pole placement, and possibly wire overhangs. The CUSTOMER will be solely responsible for cost and effort necessary to acquire said property rights. The said property rights will be conveyed on a form to be provided by Tacoma Power.

Tacoma Power will configure Frederickson & Canyon Substations to allow for emergency use of a 115 kV/12.5 kV mobile substation

Tacoma Power shall assume ownership and operation of all primary power facilities including Project installed PVC conduit and pre-cast concrete vaults; and Tacoma Power installed metering equipment, current transformers, pad mount transformers, and cabling following completion of all electrical work for the Project and upon final acceptance by Tacoma Power

Payment of all procurement and developmental costs incurred and required to accomplish the foregoing.

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

**1.3 Definitions.**

- a. "Direct Costs" shall mean and include all costs and expenses incurred by Tacoma Power directly related to the performance of the Tacoma Power Work for the Project as provided under and in accordance with this Agreement and shall include, without limitation,
  - i. All costs and expenses of materials, equipment, supplies, utilities, consumables, goods and other items used or incorporated in connection with and in furtherance of this Agreement and any taxes, and insurance related thereto, including costs for inspection, engineering, crews and equipment;
  - ii. All labor costs and expenses incurred to date and pursuant to this Agreement for the design, inspection, and construction activities and/or tasks designated to be performed by Tacoma Power hereunder. Such costs are inclusive of payroll benefits and overhead for applicable labor classifications.
  - iii. All cost and expenses incurred to date and during performance of this Agreement for any work performed by City consultants or contractors



that pertains to the Project and as necessary to undertake and complete the Tacoma Power Work under this Agreement.

A contingency amount is included in the Preliminary Cost Estimate, Exhibit C, to accommodate costs in excess of the estimates.

- b. "Design Document(s)" means the plans and specifications for the Project and prepared by Tacoma Power in coordination with CUSTOMER and/or the CUSTOMER Contractor pursuant to this Agreement, which include the (i) specifications, standards, and requirements applicable to the CUSTOMER Work attached hereto as **Exhibit "A"**, and (ii) specifications, plans, drawings, and sketches applicable to the Tacoma Power Work attached hereto as **Exhibit "B"**; which Exhibits are, by this reference, fully incorporated herein.
- c. "Field Representative(s)" means the person(s) identified by Tacoma Power as having inspection authority or whom direct Tacoma Powers field forces for construction activity.
- d. "Inspection Work" means all labor, equipment and material necessary for Tacoma Power to monitor the CUSTOMER Work to ensure conformance with the Design Documents. Duties of this Inspection Work, which will be performed by Tacoma Power's designated Construction Inspector, include:
  - ☐ monitoring of electrical conduit duct and vault system construction,
  - ☐ approving or rejecting materials for conformance with Design Documents through the Resident Engineer,
  - ☐ rejecting work not in conformance with the Design Documents through the Resident Engineer,
  - ☐ confirming proofing tests for new electrical conduit duct and vault system,
  - ☐ verifying the CUSTOMER Work is conducted in accordance with the NESC and Tacoma Power T&D Construction Standards,
  - ☐ coordinating power outages,
  - ☐ generating punch lists ahead of final acceptance, and
  - ☐ recording as-built information.

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

- e. "Project Manager" mean the respective persons designated by the Parties in Section 5.3 herein to be the point of contact for design and contract changes and/or updates.
- f. "CUSTOMER Work" for purposes of this Agreement shall mean the underground utility structure installation work for which CUSTOMER is responsible hereunder and generally includes all site preparation, surveying, excavation, inspection coordination, and construction work necessary to fully and properly install electrical vaults and conduit per the Design Documents,

together with all costs and expenses required and/or incurred in connection therewith. Such work includes all construction and administrative activities related to and in any way connected with the electrical work performed by the CUSTOMER Contractor for the Project.

All of the foregoing work and activities will be utilized in conjunction with the Tacoma Power Work and pertain to all Tacoma Power electrical facilities within the Project Area and/or impacted by the Project whether located within the Unincorporated Pierce County, or on private property all as described in the Design Documents (**Exhibit "A & B"**). The CUSTOMER Work shall not include the Tacoma Power Work that Tacoma Power is expressly required to perform hereunder.

- g. "Resident Engineer" means the representative designated by CUSTOMER after notice to proceed who will be the point of contact regarding all Project related construction under this Agreement.
- h. "Tacoma Power Work" means all labor, materials, equipment, services, supplies, overheads, applicable taxes and all other items necessary to relocate, reroute, modify and reconnect the power systems and facilities to accommodate the Project all as further described and set forth in the Tacoma Power Work Sketches. For purposes of this Agreement, the "Tacoma Power Work Sketches" mean all Tacoma Power prepared preliminary documents and drawings that may be utilized by Tacoma Power to develop a final design and that are attached hereto in **Exhibit B**, but may also be included in **Exhibit A**.
- i. "The City" is used interchangeably with "Tacoma Power" in this document.
- j. "CUSTOMER Contractor" means the General Contractor and/or Electrical Contractors designated by CUSTOMER to prosecute the Project and to perform the CUSTOMER Work hereunder for and on behalf of CUSTOMER.
  - **NOTE:** Notwithstanding any separate contract executed by **CUSTOMER** with a **CUSTOMER** Contractor that may pertain to the Project, **CUSTOMER** shall be and remain fully bound and responsible for its obligations and duties hereunder.
- k. "Project Area" means all lands, public and private, where Project electrical work will be performed and includes all areas identified, described or delineated in the Design Documents (**Exhibits A and B**) and/or in the drawings, by this reference, fully incorporated herein.
- l. "Project" as used in this Agreement, refers to the installation work described herein necessary to provide the Short-Term Service for the Facility, as described in the Recitals and in this Agreement.

## ARTICLE 2 – RESPECTIVE PROJECT OBLIGATIONS

### 2.1 City Obligations:

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

**2.1.2 Inspection Work:** As detailed more specifically in Section 6.2, Tacoma Power agrees to provide Inspection of **CUSTOMER** Contractor's work during the performance of the **CUSTOMER** Work including, but not limited to, installation of the vaults and ducts. Such Inspection Work shall be for the exclusive purpose of confirming said performance complies with the Design Documents including, but not limited to, the agreed upon drawings and Tacoma Power standards therein. **CUSTOMER's** Resident Engineer is to schedule the Inspection Work. Tacoma Power shall perform such inspections in such manner as not to unreasonably delay or interfere with **CUSTOMER** Contractor performance of the **CUSTOMER** Work. Tacoma Power shall not be responsible for any costs or claims based on delay caused by **CUSTOMER** Contractor and/or their sub-contractor(s).

**2.1.3 Coordination of Service modifications:** Certain electrical facility modifications and installations are required and may be impacted by labor, equipment procurement, and/or temporary outage scheduling. Tacoma Power's Project Manager will notify **CUSTOMER** Contractor to coordinate any necessary service outages, cut-overs, and metering energization. Notwithstanding such notice, the **CUSTOMER** Contractor shall remain primarily responsible for timely coordination of all Customer Work. Tacoma Power must complete some equipment modifications in advance of the modification of the electrical system. These modifications are contingent upon equipment shipments and the scheduling of an outage to the Facility. Once these modifications are complete then **CUSTOMER** and/or the **CUSTOMER** Contractor shall provide Tacoma Power's Project Manager a three week advanced coordination period and a one week advanced notice of scheduling the cut over of the service to the new metering location.

**2.1.4 Temporary Outages and New Service Coordination:** Subject to Section 2.1.3, Tacoma Power will coordinate all temporary outages with its customers if and when required to perform and complete the Tacoma Power Work. It is understood and

agreed that the Tacoma Power Work involves installation of infrastructure capable of accommodating new and/or increased electrical services to the Facility and that energization of such new services will be coordinated by and with the **CUSTOMER Contractor**.

## **2.2 CUSTOMER Obligations:**

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

**2.2.2 Scheduling:** Prior to commencement of any work on the Project including, but not limited to the **CUSTOMER Work**, **CUSTOMER Contractor** shall provide a construction schedule to Tacoma Power and shall thereafter timely notify Tacoma Power of scheduling changes related to the Project that are expected to materially impact the **CUSTOMER Work** or Tacoma Power Work schedules. **CUSTOMER contractor** shall provide weekly progress reports to Tacoma Power and schedule work coordination meetings with Tacoma Power as necessary to allow Tacoma Power to coordinate and timely complete the Inspection Work and Tacoma Power Work. With respect to issues of which it is or reasonably should be aware, **CUSTOMER's Resident Engineer** shall coordinate with Tacoma Power's Field Representative or Project Manager, as appropriate, to accomplish desired changes or corrections to Tacoma Power's Inspection Work and/or Tacoma Power Work in the field as necessary to avoid delays to **CUSTOMER Work** activities. The **CUSTOMER** will handle all communications with the **CUSTOMER Contractor**. Scheduling obligations are more specifically set forth in Section 2.3, and to the extent there are any conflicts between Section 2.3 and this Section 2.2.2, Section 2.3 will govern and control.

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

- A. **CUSTOMER** shall further obtain for and/or assign to Tacoma Power all access and use rights, including but not limited to easements reasonably necessary to allow Tacoma Power to operate, maintain, repair, and reconstruct all Project electrical facilities in the future. Tacoma Power shall at its sole discretion approve the adequacy of such access and/or use rights, and such approval shall not be unreasonably withheld.

- B. Tacoma Power may agree, in its sole discretion and shall not be obligated, to procure additional access, easements, licenses, and/or rights of way as reasonably necessary to performance of the Tacoma Power Work on property owned by persons or entities other than **CUSTOMER** or its landlord; in which event, all costs incurred by Tacoma Power shall be deemed a Direct Cost hereunder and reimbursed by **CUSTOMER**. Tacoma Power will not be obligated to commence Tacoma Power Work on any property unless or until approved access and/or property rights have been established. Tacoma Power will not take any action pursuant to this Section 2.2.3.B that would result in any additional cost absent the prior written authorization from the **CUSTOMER** Project Manager.
- C. Per Section 2.2.6 below, **CUSTOMER** shall be responsible for all surveying and documentation preparation work required to secure and formally establish any and all of the foregoing property rights.

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

**2.2.5 Work Area:** **CUSTOMER** shall require the **CUSTOMER** Contractor to coordinate with Tacoma Power "Project Manager" and "Field Representative" to ensure Tacoma Power has accessible and adequate work areas so as to not unreasonably delay or interfere with the performance of the Tacoma Power Work within the Project Area.

**2.2.6 Surveying/Staking and Documentation:** **CUSTOMER** Contractor shall provide all surveying, staking, and elevations identification as requested in writing by Tacoma Power as necessary to allow complete performance of the Tacoma Power Work within the Project Area. Staking shall be completed within five (5) business days of receipt of such notice.

At the conclusion of the Project, **CUSTOMER** shall perform and complete surveying work, and prepare as-built documentation and drawings based thereon, for all Project electrical facilities and utility installations as necessary to (i) identify and establish easements and other property access rights granted to Tacoma Power hereunder. Such surveying, documentation, and drawings shall include, but not be limited to, all conduits, vaults, cabling, pad mounted equipment, and Secondary Service Box (SSB) equipment installations.

**2.2.7 Clearing & Grubbing:** **CUSTOMER** Contractor shall provide and perform all required clearing and grubbing requested in writing by Tacoma Power as necessary to allow complete performance of the Tacoma Power Work. Clearing and grubbing shall

be done in a timely manner as to not unreasonably delay or interfere with the Tacoma Power Work.

**2.2.8** [Intentionally omitted.]

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

**2.2.10 Customer Funded Substation:** In order to establish permanent service to the Facility, the CUSTOMER or its landlord shall fund a new substation that Tacoma Power will build, own, and operate. See Section 6.2(d)

**2.2.11 Load Shedding:** Until completion of the customer funded substation, the customer shall be prepared to shed load as directed by Tacoma Power. As a condition of the short-term service, Tacoma Power may prioritize load shedding at the Facility over other Tacoma Power customers. This subsection will survive termination or expiration of this Agreement. The details of this will be addressed by a protocol developed between the parties before energization.

**2.3 Schedule of Work**

**2.3.1 Schedule for Cold Storage Project, CUSTOMER Work and/or Tacoma Power's Work.** Prior to commencement of any **CUSTOMER** Work or any work on the Cold Storage Project that may impact the Tacoma Power Work, **CUSTOMER** shall provide to Tacoma Power the **CUSTOMER** Contractor's proposed schedule(s) for the completion of the **CUSTOMER** Work and other Cold Storage Project work that may impact or be dependent upon the Tacoma Power Work.

A. The Parties will, in good faith, develop and agree upon a schedule of work for the Tacoma Power Work including schedule stages and milestones, notice requirements or other schedule-related issues ("Schedule of Work"), which shall be attached and incorporated into this Agreement as **Exhibit D**. The Schedule of Work shall consider and reflect the following:

- ☐ For scheduling purposes, this work is expected to be on a straight time basis.
- ☐ Weather conditions may impede this work plan.
  - Equipment and material supply chain delays that may impact either the CUSTOMER or Tacoma Power work schedule
- ☐ Emergency operations will take precedence on Tacoma Power's work force commitments.
- ☐ Tacoma Power's work schedule and priorities will be developed in coordination with the **CUSTOMER** Project Manager.
- ☐ Permits must be obtained by the **CUSTOMER** Contractor before setting the Schedule of Work.

- B. **CUSTOMER** Contractor will administer its construction work and activities in accordance with the agreed upon Schedule of Work and timely notify Tacoma Power of any scheduling changes related to the Project that are expected to materially impact the **CUSTOMER** Work and/or Tacoma Power's Work. **CUSTOMER**' Resident Engineer shall coordinate with Tacoma Power's Project Manager as necessary to avoid delays to **CUSTOMER** Contractor performance.
- C. Following commencement of the **CUSTOMER** Work, Tacoma Power shall timely notify **CUSTOMER** Project Engineer in writing of any changes in the schedule of Tacoma Power Work that are expected to impact the **CUSTOMER** Work and **CUSTOMER** Contractor shall exercise good faith efforts to incorporate such changes into its construction schedules to minimize any delay or adverse impacts.

**2.3.2** The Schedule of Work shall incorporate the construction tasks to be performed by **CUSTOMER** Contractor for Tacoma Power, which will include work on existing and new underground facilities as described in **Exhibit A** and **B**, and/or avoid delay to Tacoma Power Work.

## **2.4 Changes to Design Documents.**

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

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

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

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

### **3.1 Payment.**

**CUSTOMER** agrees that, except as otherwise specifically provided herein, it shall be responsible for payment of all of the City's actual Direct Costs, as defined herein, related or attributable to the Project. **CUSTOMER's** payment obligation for Tacoma Power's design, Inspection Work, and Tacoma Power Work to be performed hereunder is estimated at **\$2,432,000**, as more fully described in the Preliminary Cost Estimate (Exhibit C). The Preliminary Cost Estimate set forth in Exhibit C may be modified as provided for in (i) the procedures for changes to the Design Documents and/or adjustment of costs as provided in Section 2.4, or (ii) Article 4 of this Agreement. Said payment obligation is based on a preliminary estimate of the cost for Tacoma Power design, Inspection Work, and Tacoma Power Work to be performed hereunder and reflects the Parties' best estimates of the Direct Costs that may be incurred by Tacoma Power under this Agreement. A contingency amount is included in the Preliminary Cost Estimate to accommodate costs in excess of the estimates. Actual payments required under this Agreement shall be based on actual work performed and materials provided under this Agreement.

If Tacoma Power determines that Direct Costs will likely exceed the total advance payments amount of **\$2,432,000**, Tacoma Power will provide timely notice to **CUSTOMER** that a contract amendment and additional funds shall be required which will include a high-level scope, cost, and schedule. Tacoma Power and **CUSTOMER** hereby acknowledge that a contract amendment and additional funds will be required before actual Direct Costs exceed the total advance payments amount and that failure or inability to execute a contract amendment or make additional funds available in a timely manner could result in schedule delays. Furthermore, Tacoma Power, in its sole discretion, reserves the right to cease all work on the Project if, and at any time after, actual Direct Costs exceed 80% of the total advance payments. Tacoma Power will work into the last 20% of the deposit if Tacoma Power estimates the deposit will adequately cover the remaining work. This paragraph does not apply to Direct Costs for which **CUSTOMER** is not responsible under the terms of this Agreement.

### **3.2 Invoices & deposits.**

Within thirty (30) days after the occurrence of the mutual execution of this Agreement, Tacoma Power's enrollment in **CUSTOMER's** payment system, and **CUSTOMER's** receipt of an invoice for **\$2,432,000**, **CUSTOMER** shall tender an Initial Payment to Tacoma Power in the total amount of **\$2,432,000**. This Initial Payment represents pre-payment of estimated Direct Costs as outlined in the Preliminary Cost Estimate (Exhibit C). It is agreed that Tacoma Power will not begin actual construction activities associated with the Tacoma Power Work beyond temporary power until the Initial Payment has been paid and Tacoma Power may cease performance hereunder if any invoiced amount is not paid within thirty (30) days following issuance.

3.2.1 The terms and conditions of this contract supersede and take precedence over any conflicting terms and conditions associated with the Customer's payment system.

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



**3.4** Invoices shall be submitted through CUSTOMER's payment system and emailed to Matt Ho: [hoamatt@amazon.com](mailto:hoamatt@amazon.com), Kimberly Matras: [kmmatras@amazon.com](mailto:kmmatras@amazon.com), and Justin Raaf: [Justraaf@amazon.com](mailto:Justraaf@amazon.com).

**3.5 Payment.** CUSTOMER shall fully pay through its payment system each invoice submitted by the City within 30 calendar days of receipt of the invoice.

Tacoma Power will provide instructions for the electronic transfer of funds in lieu of making payment by check, if requested by CUSTOMER.

In the event CUSTOMER fails to pay any monies to the City as and when due hereunder, CUSTOMER shall pay interest on such uncontested unpaid sum from thirty (30) calendar days after the date due at an annual rate equal to twelve percent (12%) per annum, or the maximum rate permitted by law, whichever is less. Upon five business days' written notice to CUSTOMER that it has failed to pay an uncontested amount when due, and provided CUSTOMER does not cure such default within that five business day period, Tacoma Power reserves the right to suspend performance hereunder, including but not limited to construction activities, for non-payment.

**3.6 Intentionally left blank.**

**3.7 Refund.** Upon completion of the Project, the Direct Costs actually incurred by Tacoma Power and authorized under this Agreement will be compared with the total amount(s) actually paid by CUSTOMER based upon the Initial Payment and all other payment(s) for Direct Costs. If an overpayment to Tacoma Power exists then a refund will be made to CUSTOMER within 30 days. If an underpayment to Tacoma Power exists then CUSTOMER shall tender such amount within 60 days after receipt of an invoice from Tacoma Power for such amount.

**3.8 Audit.** During the progress of the Parties work under this Agreement and for a period not less than two (2) years from the date of final payment to the City, the records and accounts pertaining to the Parties' work under this Agreement and accounting therefore are to be kept available for inspection and audit by either Party. Copies of all records, accounts documentation or other data pertaining to the Project will be made available for inspection, copying, or audit upon written request by either Party. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until all litigation, claim or audit finding has been resolved even though such litigation, claim or audit continues past the two-year retention period.

In the event a written request to audit is received, the recipient Party agrees to cooperate fully with the auditor or independent auditor chosen, retained, and paid by the requesting Party. In the event the audit determines that CUSTOMER has paid Tacoma Power in excess of the amounts properly due hereunder, Tacoma Power will promptly refund the excess amount to CUSTOMER. In the event the audit determines that

Tacoma Power has incurred costs for its design, Inspection Work, and/or the Tacoma Power Work that exceeds payment made and required to be made by **CUSTOMER**, **CUSTOMER** shall promptly pay Tacoma Power the amount owed. In the event the Parties cannot agree on the results of the audit, or upon a method of refund or payment, the disagreement shall be dealt with in accordance with the Dispute Resolution provisions of **Article 8** below.

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

In the event either Party identifies additional utility installation or other work that requires an increase over the Preliminary Cost Estimate for the Tacoma Power Work as set forth in **Exhibit C**, the Party asserting such additional work will provide written notice thereof to the other Party. The Parties agree to negotiate in good faith to modify this Agreement to authorize any increased payment resulting from such additional work. The **CUSTOMER** Project Manager is the only person authorized to request and/or approve additional work on behalf of **CUSTOMER** and Tacoma Power will not proceed with any additional work unless it is set forth in a written document and signed by the **CUSTOMER** Project Manager. For cumulative changes less than \$500,000 Customer shall be responsible for and pay all such costs for said work to Tacoma Power. For cumulative changes in excess of \$500,000, the cost for the additional work will be decremented to the extent said work results from or is necessitated by the negligent acts or omissions of Tacoma Power or anyone that performs any aspect of Tacoma Power Work

#### **ARTICLE 5 – PROJECT ADMINISTRATION AND REPRESENTATIVES**

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

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

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

**5.3.1 Tacoma Power's Project Manager** shall be **Aba Frimpong** All Project related work, including correspondence with Tacoma Power, review and approval of changes to Design Documents, scheduling, participation, and other activities related to the **CUSTOMER** Work and the Tacoma Power Work shall be coordinated through said Project Manager.

**Aba Frimpong**- Project Manager  
Tacoma Power  
3628 South 35<sup>th</sup> Street  
Tacoma WA, 98409-3192  
(253) 502-8306 Office & (253) 389-8939 Mobile

**5.3.2 CUSTOMER Project Manager** shall be **Matt Ho until the permit is issued and then Justin Raaf.**

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

**Matt Ho**  
Pre-Construction Manager | Global Specialty Fulfillment  
[hoamatt@amazon.com](mailto:hoamatt@amazon.com) | 949.637.4033 (m)

**Justin Raaf**  
GSF Construction Manager  
[justraaf@amazon.com](mailto:justraaf@amazon.com)  
303-827-4690

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

## **5.4 Field Representatives**

**5.4.1 Tacoma Power's Designated Field Representative.** Upon its receipt of **CUSTOMER's** Notice to Proceed, Tacoma Power shall designate a Field Representative in writing to **CUSTOMER**. The Field Representative will be present to assure that Tacoma Power standards are followed, to coordinate any work with Tacoma Power's dispatch office, to assure proper as built documentation is recorded, and to communicate with Tacoma Power's Project Manager.

**5.4.2 CUSTOMER Resident Engineer.** **CUSTOMER** designates as its Resident Engineer the following: TBD

Upon issuance of Notice to Proceed, **CUSTOMER** shall designate its Resident Engineer as its field representative. The Resident Engineer will be in control of the construction site and handle all scheduling, inspection, approval, change orders and other construction activities relating to the work under this Agreement. All communications between Tacoma Power and the **CUSTOMER** Contractors shall be made through the Resident Engineer.

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

**To Tacoma Power:**

**Aba Frimpong**

Project Manager  
3628 South 35<sup>th</sup> Street  
Tacoma WA, 98409-3192  
(253) 389-8939 Cell

**With a copy to:**

John Martinson  
Power Supervisor  
Tacoma Power, T&D  
3628 South 35<sup>th</sup> Street  
Tacoma WA, 98409-3192  
(253) 502-8296

**To CUSTOMER:**

Matt Ho  
Pre-Construction Manager | Global Specialty Fulfillment  
hoamatt@amazon.com | 949.637.4033 (m)

Lance Guerzon  
Lance.Guerzon@ryancompanies.com  
480-215-7858  
110th Avenue NE  
Suite 100  
Bellevue, WA 98004

**With a copy to:**

Raaf, Justin <[justraaf@amazon.com](mailto:justraaf@amazon.com)>

Dave Koehler <[Dave.Koehler@RyanCompanies.com](mailto:Dave.Koehler@RyanCompanies.com)>

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

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

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

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

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

reasonably demonstrated that the specified defects are the direct result of actions or omissions by Tacoma Power.

- (c) Final Acceptance. After Tacoma Power has connected the **CUSTOMER** Work to its utility system, Tacoma Power will be asked to provide its Final Acceptance of the **CUSTOMER** Work. Tacoma Power's final acceptance of **CUSTOMER** work shall occur only when Tacoma Power is satisfied that (i) all such work is completed in accordance with **Exhibit A**, and (ii) all items indicated on Tacoma Power Inspector's punch list have been completed. Upon such final acceptance, Tacoma Power's Project Manager shall provide written notice thereof to **CUSTOMER** Project Manager.
- (d) Utility Installation Agreement – Substation. Prior to Tacoma Power energizing the short-term service for the Facility, **CUSTOMER** or its landlord shall enter into a "Utility Installation Agreement –Substation" for substation and transmission line design, procurement, and construction, which shall include the **CUSTOMER**'s or its landlord's obligation to provide Tacoma Power with permanent and temporary property rights, including unencumbered fee simple rights to one acre of square real property, which in Tacoma Power's sole opinion, is sufficient to adequately construct, operate and maintain said substation and transmission lines. Further, the **CUSTOMER** or its landlord will be solely responsible for all costs associated with acquiring said property rights, and the property rights will be conveyed on a form to be provided by Tacoma Power.

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

### 6.3 Warranties.

Warranties. **CUSTOMER** warrants the **CUSTOMER** Work shall be performed in a good and workmanlike manner, and said warranty shall include all contractor and manufacturer's warranties it obtains and/or may assert in connection with said work. **CUSTOMER**, or the **CUSTOMER** Contractor as applicable, will assign all rights under said warranties to Tacoma Power with respect to all electrical facilities of the **CUSTOMER** Work that support or are included in the meter-switch room.

**6.4 Ownership/Use.** Tacoma Power shall own all power supply and distribution facilities installed pursuant to this Agreement up to the demarcation points identified in the Design Documents specifically including, but not limited to, the conduits and vaults installed as the result of the **CUSTOMER** Work. **CUSTOMER** shall own and be solely responsible for all Project electrical facilities on the customer side of said demarcation points; provided that Tacoma Power will be given access to any such facilities while under construction. Upon receiving notice of final acceptance and approval from Tacoma Power Construction Inspector, **CUSTOMER** shall transfer control of the completed **CUSTOMER** Work to Tacoma Power for its use, occupancy, operation and

maintenance. Tacoma Power shall thereafter install equipment, cabling, and other miscellaneous fixtures and devices.

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

## **ARTICLE 7 - LEGAL RELATIONS**

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

**7.2 Indemnification by CUSTOMER.** To the extent permitted by law, **CUSTOMER** shall protect, defend, indemnify, and save harmless the City, and its officers, officials, employees, and agents, while acting within the scope of their employment, from any and all third party claims, demands, judgments, damages, or liability of any kind including injuries to persons or damages to property, including reasonable attorney's fees and costs incurred in connection therewith, which arise out of, or in any way result from, or are connected to, or are due to the negligent acts or omissions of **CUSTOMER**, the **CUSTOMER** Contractor, and/or their respective officers, employees, agents or contractors in performing the **CUSTOMER** Work under this Agreement. The foregoing defense, indemnification and hold harmless provisions shall not apply to the extent the claim, suit, or action for injuries, death, or damages is caused by the negligence or misconduct of the City, its employees, agents and/or contractors. **CUSTOMER** agrees that its obligations under this indemnification section extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents and/or by the **CUSTOMER** Contractor or their employees, agents or sub-contractors.

**7.3** For purposes of the indemnification provisions set forth in this Article 7, each Party hereby waives, with respect to the other only, any immunity that would otherwise be available against such claims under the industrial insurance provisions of Title 51 RCW. EACH PARTY EXPRESSLY RECOGNIZES THAT THIS WAIVER WAS THE SUBJECT OF MUTUAL NEGOTIATION. Such waiver shall not, however, be construed as establishing any independent right or cause of action by employees of **CUSTOMER**



against it or by employees of Tacoma Power against it. In the event of any claims, demands, actions and lawsuits, the indemnifying Party upon prompt notice from the indemnified Party shall assume all costs of defense thereof, including legal fees incurred by the indemnified Party, and of all resulting judgments that may be obtained against the indemnified Party. In the event that a Party incurs attorney fees, costs or other legal expenses to enforce the provisions of this section, all such fees, costs and expenses shall be recoverable by the prevailing Party. This indemnification shall survive the termination of this Agreement.

## **7.4 Insurance.**

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

- (a) Workers Compensation Insurance. **CUSTOMER** shall, at all times during the life of this Agreement, fully comply with all of the terms and conditions of the laws of the State of Washington pertaining to Workers' Compensation together with any and all amendments and supplements thereto and any and all regulations promulgated there-under. In the event any of the **CUSTOMER** Work herein is sublet, **CUSTOMER** shall require the **CUSTOMER** Contractor, and all other contractors and sub-contractors performing work on the Project, other than Tacoma Power, to fully comply with all of the terms and conditions of the laws of the State of Washington pertaining to Workers' Compensation. For persons engaged in employment who are not within the mandatory coverage of the state Workers' Compensation laws, **CUSTOMER** shall provide and shall cause the **CUSTOMER** Contractor and each and every other said contractor and subcontractor to provide compensation insurance (including self-insurance if it otherwise meets all requirements of state Workers' Compensation laws), satisfactory to the City, at least equivalent to the benefits provided for covered employment under state Workers' Compensation laws.
- (b) Public Liability and Property Damage Insurance. **CUSTOMER** shall procure and maintain during the life of this Agreement, a policy of commercial general liability insurance, with an insurance carrier authorized to do business in the State of Washington. The policy shall be approved as to form and content by the Tacoma City Attorney and shall protect the City from liability imposed by law for damages suffered by any persons arising out of or resulting from acts or omissions in the performance of this Agreement: (1) for bodily injury or death resulting therefrom caused by accidents or occurrences resulting from any act or omission by **CUSTOMER**, the **CUSTOMER** Contractor, and their respective employees, agents, and other contractors in the performance of the Agreement, and (2) for



injury to, or destruction of, any property, including property of the City, and including loss of use. The policy or policies shall include coverage for claims for damages because of bodily injury or death or property damage arising out of the ownership, maintenance or use of any motor vehicle, including hired or non-owned vehicles. The City of Tacoma, Department of Public Utilities, Power Division shall be designated in said policy as a primary additional named insured and shall be given 30 days written notice of cancellation, nonrenewal, or material change in the coverage provided. Said insurance shall be on a Commercial General Liability form with coverages to include Blanket Contractor, Broad Form Property Damage, Personal Injury, Protective Liability and Employers Liability. Limits shall be at \$1,000,000 per occurrence, \$2,000,000 aggregate and for contracts in excess of \$500,000 the minimum coverage limits include Umbrella Excess Liability of \$5,000,000. **CUSTOMER** shall further furnish CGL policy coverage provisions or endorsements specifying that the City's insurance is excess to any other collectible insurance. **CUSTOMER** shall furnish evidence of the amount of any deductible or self-insured retention under the CGL policy or policies, which amount shall be subject to approval by the City Attorney's Office for the City of Tacoma if the amount of the deductible or self-insured retention exceeds \$20,000. The City may require **CUSTOMER** to furnish evidence of its ability to pay the amount of any deductible or self-insured retention. If the policy provides for a deductible or self-insured retention, **CUSTOMER** shall be solely responsible for paying the amount of the deductible or self-insured retention toward the cost of any claim under the policy. If **CUSTOMER** fails to maintain such insurance, the City, at its discretion, may obtain equivalent substitute insurance coverage and be entitled to full reimbursement and payment of its costs thereof. Nothing herein contained shall be in any manner construed as limiting the extent to which **CUSTOMER** or its contractor(s) may be held liable or responsible for payment of damages resulting from their operations.

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

the premium has been paid for the period indicated. The policy or policies shall be approved as to form and content by the City Attorney.

## **ARTICLE 8 - DISPUTE RESOLUTION**

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

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

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

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

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

**8.4 Venue.** Venue for any legal action shall be in King County, Washington. Venue for any mediation or other form of alternative dispute resolution shall be in Pierce County, Washington.

## **ARTICLE 9 – MISCELLANEOUS PROVISIONS**

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

**9.2 Agency or Employee Relationship.** No joint venture or partnership is formed as a result of this Agreement. No employees, agents or subcontractors of one Party

shall be deemed, or represent themselves to be, employees of any other Party. In performing work and services pursuant to this Agreement, **CUSTOMER**, its employees, consultants, agents, and representatives shall be acting as agents of **CUSTOMER** and shall not be deemed or construed to be employees or agents of the City in any manner whatsoever. **CUSTOMER** shall not hold itself out as, nor claim to be, an officer or employee of the City and will not make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the City. **CUSTOMER** shall be solely responsible for any claims for wages or compensation by the respective employees, contractors, sub-contractors, agents, and representatives of **CUSTOMER** and the **CUSTOMER** Contractor, and shall defend, indemnify and hold the City harmless, from these claims. In performing work and services pursuant to this Agreement, the City, its, employees, consultants, agents, and representatives shall be acting as agents of the City and shall not be deemed or construed to be employees or agents of **CUSTOMER** in any manner whatsoever.

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

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

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

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

**9.7 Force Majeure.** Neither Party hereto shall be liable to the other Party for any failure to perform an obligation set forth herein to the extent such failure is caused by

war, act of terrorism, supply chain delays or disruptions, pandemic, or an act of nature, provided that such Party has (i) made and is making all reasonable efforts to perform such obligation and minimize any and all resulting delay, loss or damage, and (ii) given the other Party written notice of such failure within five (5) days after its onset. Tacoma Power shall restore service after storms before returning to scheduled work according to Tacoma Powers standards and policies. Tacoma Power shall not incur any liability for storm related schedule delays if it returns to scheduled work as soon as reasonably possible under the circumstances.

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

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

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

**METROPOLITAN  
TACOMA**

**DISTRICT OF CITY OF TACOMA  
DEPARTMENT OF PUBLIC UTILITIES**

By

Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By

Jackie Flowers,  
Utilities Director/CEO

Approved:

Approved:

\_\_\_\_\_

By \_\_\_\_\_

Legal Counsel for **CUSTOMER**

Chis Robinson  
Power Superintendent/COO

Approved:

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Finance Director

Approved as to Form:

---

Deputy City Attorney

## **Exhibit A CUSTOMER Work**

**Conceptual Design Documents attached:**  
Site Plans for Ducts and Vaults (Figure 1)

### **CUSTOMER's Responsibility:**

**The CUSTOMER is responsible for furnishing the primary trench and maintaining the trench throughout all phases of construction. The CUSTOMER is to provide a 5/8-inch minus crushed rock, compacted pad at all the vault locations, complete the backfill after the utility systems are installed, and provide the sand for shading the gas pipe when required.**

- a. The CUSTOMER shall be responsible to have the primary civil (trench, conduit, and vaults) system and secondaries installed by a qualified electrical contractor licensed in the State of Washington under Chapter 19.28 RCW. All work must be completed in accordance with Tacoma Power's design, construction, and inspection standards.
- b. If the CUSTOMER or agent fails to properly install the civil system in accordance with Tacoma Power's drawings, standards, and as directed by Tacoma Power's T&D Construction Inspector, then that portion will be replaced, relocated, or revised by the CUSTOMER at the CUSTOMER's expense. Failure to make all corrections as specified by Tacoma Power will result in the CUSTOMER paying for any costs incurred by Tacoma Power to make the corrections before service is provided. All secondary work must be inspected by a Tacoma Power Electrical Inspector.
- c. Clearances from padmounted transformers to structures are measured from the nearest metal portion of the transformer to the structure or structure's overhang. The clearance from a building and/or overhang must be four (4) feet if the building has noncombustible walls and/or overhang (brick, concrete, steel, or stone) and eight (8) feet if the building has combustible walls and/or overhang. No doors, windows, stairways or other openings may be located within eight (8) feet of any transformer. A three (3) foot side clearance between the transformer and a driveway is required. This is measured from the outside of the transformer vault lid. Some of the lots may require an adjustment to the building placement to provide adequate clearance to our structures. See Standard A-UG-1200 for more details.
- d. The CUSTOMER agrees to convey to Tacoma Power all required easements for our construction and maintenance of the electrical system. A "For Construction" print will not be issued until all required easements have been conveyed to Tacoma Power.

- e. The CUSTOMER shall be responsible to contact and coordinate the construction activities with the other utilities (i.e., natural gas, telephone, and cable).
- f. The CUSTOMER shall be responsible to have a licensed engineer or land surveyor provide for all property surveys, including setting and maintaining temporary wooden hubs for lot or building site corners and establishing and maintaining finished elevations along Tacoma Power's underground electrical distribution system trench, and at structure locations. Tacoma Power will not be held responsible for the replacement of said corners that may be obliterated or lost during construction. Elevations at all breaks in grade along the trench and at all structure locations shall be marked on one print of the electrical layout and returned to Tacoma Power for construction purposes. Tacoma Power shall be notified in writing of any changes in elevations or plat layouts prior to installation of the underground distribution system. If any changes are made after Tacoma Power's facilities have been installed, the cost of relocating or revising Tacoma Power's facilities will be charged to the CUSTOMER. Any deviation due to inadequate depth of coverage, as required by State Safety Codes, shall be at the CUSTOMER's expense.
- g. The CUSTOMER shall provide an all-weather access road to each structure (i.e., pole, transformer, junction box, switchgear, etc.). Access to transformers and structures will be on roadways rated for truck traffic suitable for Tacoma Power line construction vehicles.

#### **CUSTOMER Contractor's Responsibility:**

After the "For Construction" drawing has been released by Tacoma Power, the CUSTOMER Contractor will be required to furnish and install the following in accordance with Tacoma Power's design, construction, and inspection standards:

**Items listed below must be inspected and approved by Tacoma Power's T&D Construction Inspector. Call (253) 381-3023, 24-hours prior to any work being done.**

- (a) Prior to any construction, the CUSTOMER Contractor shall contact the Tacoma Power's Project Manager to schedule a pre-construction meeting.
- (b)
- (c) The primary trench and conduit in accordance with Standard C-UG-1300. The conduit shall be Schedule 40 PVC gray electrical type or as shown on the Tacoma Power drawing. If the trench is more than four (4) feet deep, shoring will be required.
- (d) Four (4) internally grounded, concrete transformer vaults (No. 774 per Standard C-UG-2000) according to Standards A-UG-1200 and C-UG-1700 for three-phase transformers for site excavation and vault specifications, with location as shown on Tacoma Power's drawing.

- (e) Four (4) concrete switchgear vaults (No. 810 per standard C-UG-2000) according to Standards A-UG 1505 for switchgear and vault specifications, with location as shown on Tacoma Power's drawing.
- (f) Two (2) concrete Manhole vaults (No. 814 per standard C-UG-2000) with location as shown on Tacoma Power's drawing.
- (g) Six (6) concrete Manhole vaults (No. 687 per standard C-UG-2000) with location as shown on Tacoma Power's drawing.
- (h) Four (4) Ten (10) feet of 6" Schedule 80 PVC conduit on standoff brackets and one (1) Schedule 40 PVC or rigid steel elbow, as directed by Tacoma Power's T&D Construction Inspector, according to Standard C-UG-1200 at Tacoma Power's terminal poles. The risers are to be sized and installed as shown on the Tacoma Power provided drawing.
- (i) Guard posts shall be installed at transformer locations according to Standard C-UG-1400. The transformers will not be installed until an acceptable transformer guard is installed. Consult with Tacoma Power's T&D Construction Inspector for guard post requirements.
- (j) Proof primary conduit using a Tacoma Power approved mandrel after backfill. The conduit is to be fished and swabbed by the CUSTOMER upon completion of the installation. Proving shall then be demonstrated with Tacoma Power's authorized T&D Construction Inspector present. After proving that the conduit is free from obstruction, the CUSTOMER shall leave a 1/8-inch diameter polypropylene fish cord in the conduit.
- (k) Obtain an electrical permit for any secondary work from Tacoma Power's Electrical Inspection Office. Call (253) 502-8277 for permit fees and other required information.
- (l) For services above 400 amps, an Electrical Plan Review Application and set of electrical plans must be submitted to Tacoma Power's Electrical Inspection Office for review prior to beginning electrical construction. Where inspections are performed by Tacoma Power prior to plan approval, electrical materials or equipment may be required to be re-installed to meet the requirements of Tacoma Municipal Code chapter 12.06A once plan review is complete. Call (253) 502-8277 for Plan Review Application and submission questions.
- (m) The CUSTOMER Contractor is responsible for all secondary conduits and cables from the transformers (or from the service boxes)-to the service point on each building, and data conduit as specified by Tacoma Power for remote meter reading, system automation or other Tacoma Power data needs. Any secondary cables pulled after the transformer is set will be done with the transformer in place at an additional fee. Installation of secondary conduit is to be inspected by



the Electrical Inspection Office before backfill of the trench. Call (253) 502-8277, 24-hours prior to construction for inspection scheduling.

Obtain a copy of the following Tacoma Power Standards prior to construction: A-UG-1200, C-UG-1100, C-UG-1200, C-UG-1300, C-UG-1400, C-UG-1700, and C-UG-2000.

Tacoma Power Construction Standards can be found at website:

<https://www.mytpu.org/building-remodeling/permits/electrical-permitting/electrical-construction-standards/>

The CUSTOMER Contractor is responsible to have a copy of this Agreement and the standards available on the construction site.

# Project Agreement



## Exhibit B Tacoma Power Work

### Design Document attached-

- ☐ Tacoma Power, Conceptual Design Document Figure 2

### Tacoma Power's Responsibility (ONSITE):

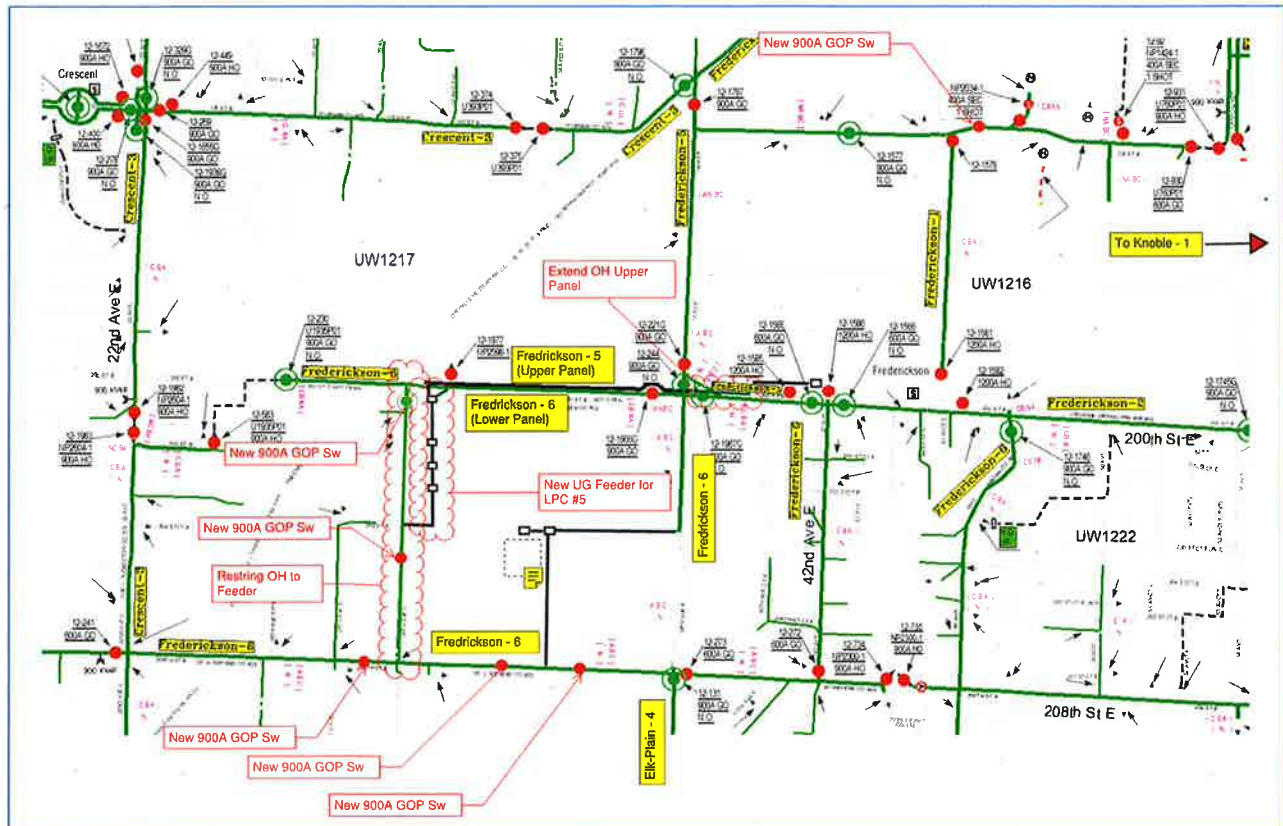
Tacoma Power will prepare a preliminary drawing for this Project showing where the electrical facilities are to be installed. Preparation of this drawing will begin upon receipt of the payment and this Agreement signed by an authorized person. Depending on the workload, lead-time until release of this drawing for review may take up to **six weeks**. Two copies of the preliminary drawing with a cover letter will be sent to the CUSTOMER and other joint trench utilities for review and comments. After full payment has been received, all required easements have been conveyed, and the preliminary drawings that were sent for review and comments have been returned to Tacoma Power, a "**For Construction**" drawing will be issued. A **two-week** period will be required to schedule construction after the "For Construction" drawing is issued, and then the following will be provided by Tacoma Power:

- a. Install one new distribution pole.
- b. Frame poles and complete the terminal pole risers.
- c. (4) Four three-phase, 2,500kVA, 480Y/277 volt padmount transformers on the CUSTOMER-supplied concrete vaults providing 4-wire service. The AIC at the transformer secondary bushings is 56700 amps.
- d. (4) Four padmount switchgear on the CUSTOMER-supplied concrete vaults.
- e. All necessary primary cables and terminations, all secondary terminations at the transformers
- f. (4) Four three-phase CT meters for 3,000 amp secondary services.
- g. All other necessary overhead and underground facilities for providing electrical service.

**Tacoma Power's Responsibility (OFFSITE):**  
**Conceptual Design Documents attached-**

- ☐ Tacoma Power, Drawing

Figure 2:



**Exhibit C**  
**Preliminary Cost Estimate**

**CUSTOMER**, in accordance with the terms of this Agreement, is to reimburse Tacoma Power for all supplied materials associated with the "Project" for the entire cost of the Tacoma Power Work.

**Advance Payment- Utility Installation Agreement Short-Term Service Final Design and Construction**

Mobile Substation*	\$ 150,000
Onsite distribution*	\$ 533,000
Offsite distribution upgrades*	\$ 1,146,000
33% Contingency Subtotal	\$ 603,000
<b>Total</b>	<b>\$ 2,432,000</b>

\* 14.2% external overhead billing included in estimate

## **Exhibit D**

### **Schedule of Work**

The schedule is to be determined and added when developed in coordination with the Project Team.

