



## RESOLUTION NO. U-11527

1 A RESOLUTION related to Tacoma Power, authorizing the acceptance of a  
2 \$2,875,000 grant award from the Washington State Department of  
3 Commerce for the provision of earmarked grant funds for the Tacoma  
4 Power Grid, including authorizing the execution of two grant agreements,  
5 one for autonomous reclosers and one for a feasibility study for a Virtual  
6 Power Plant, both collectively for the implementation of the grant award.

7 WHEREAS Department of Public Utilities, Light Division (d/b/a "Tacoma  
8 Power") requests authorization to accept a grant award from the Washington  
9 State Department of Commerce for the provision of earmarked grant funds for  
10 the Tacoma Power Grid implemented through two grant agreements; one for  
11 the installation of autonomous reclosers, and the other for a feasibility study of a  
12 Virtual Power Plant, and

13 WHEREAS in 2024, Tacoma Power began planning to install  
14 autonomous reclosers to improve system resiliency and reliability, and

15 WHEREAS a Tacoma Public Utilities Government Affairs Advisor worked  
16 with Representative Mena of Legislative District 29 to earmark \$2,875,000 in  
17 funds in the 2025/2026 state budget -- \$2,450,000 allocated for the installation  
18 of autonomous reclosers and \$425,000 allocated for a VPP Feasibility Study,  
19 and

20 WHEREAS while these two projects are funded through one grant award  
21 of earmarked grant funds from the State, they will be implemented through two  
22 separate agreements due to the nature of the work, and

23 WHEREAS the autonomous recloser portion of the work will upgrade  
24 and automate portions of Tacoma Power's distribution grid to improve reliability  
25 and resilience, and  
26



WHEREAS by prioritizing areas with greater vulnerability to significant challenges during outages, the goal is to advance equity by directing enhanced reliability and resiliency where they will have the greatest impact, and

WHEREAS Tacoma Power will establish processes and procedures for operating and maintaining these devices, and

WHEREAS Tacoma Power will, as necessary, engage with the community to inform and educate about the project and its benefits to their power service, and

WHEREAS for the Virtual Power Plant ("VPP") portion of this work, Tacoma Power will perform a feasibility study on deploying a VPP in our service area, and

WHEREAS these systems will help meet energy needs, reduce the need to upgrade infrastructure, and play a critical role in future decarbonization efforts, and

WHEREAS Tacoma Power plans to use the grant funding to retain a consultant to perform this feasibility study, which will guide future VPP investments as appropriate; Now, therefore,

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

That the Department of Public Utilities, Light Division is authorized to accept a grant award from the Washington State Department of Commerce for \$2,875,000 in earmarked funds for the Tacoma Power Grid and, concurrent with this approval, the proper officers of the City are authorized to execute two separate grant agreements, substantially in the form on file with the Clerk of the



Board, with the final form approved by the City Attorney's Office, for the  
implementation of said grant award.

Approved as to form:

Chair

/s/

Chief Deputy City Attorney

Secretary

Adopted

Clerk



## Board Action Memorandum

**TO:** Jackie Flowers, Director of Utilities  
**COPY:** Charleen Jacobs, Director and Board Offices  
**FROM:** Chris Robinson, Power Superintendent  
**MEETING DATE:** Requested Board April 23, 2025  
**DATE:** April 8, 2025

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### **GUIDING PRINCIPLE ALIGNMENT (select as many that apply):**

Please indicate which of the Public Utility Board's Guiding Principle(s) is supported by this action.

- |  |  |
|--|--|
| <input type="checkbox"/> GP1 – Diversity, Equity, Inclusion, Belonging | <input type="checkbox"/> GP8 – Telecom               |
| <input checked="" type="checkbox"/> GP2 – Financial Sustainability     | <input type="checkbox"/> GP9 – Economic Development  |
| <input checked="" type="checkbox"/> GP3 – Rates                        | <input type="checkbox"/> GP10 – Government Relations |
| <input type="checkbox"/> GP4 – Stakeholder Engagement                  | <input type="checkbox"/> GP12 – Employee Relations   |
| <input type="checkbox"/> GP5 – Environmental Sustainability            | <input type="checkbox"/> GP13 – Customer Service     |
| <input checked="" type="checkbox"/> GP6 – Innovation                   | <input type="checkbox"/> GP14 – Resource Planning    |
| <input checked="" type="checkbox"/> GP7 – Reliability & Resiliency     |  |

**SUMMARY:** Washington State Commerce has awarded Tacoma Power with earmarked funds to install autonomous reclosers that improve system resiliency, reliability and reduce outage times for customers, as well as to study the feasibility of implementing a Virtual Power Plant (VPP) within our service territory that would allow us to meet local energy needs at lower costs than upgrading and/or installing new infrastructure. Commerce will issue these funds through two contractual agreements between now and the end of 2026. Our recommendation is that the Public Utility Board approve these agreements so Tacoma Power can accept these funds and support our rate payers.

**BACKGROUND:** In 2024, Tacoma Power began planning to install autonomous reclosers to improve system resiliency and reliability. A Tacoma Public Utilities Government Affairs Advisor worked with Representative Mena of Legislative District 29 to earmark \$2,875,000 in funds in the 2025/2026 state budget for this work. Additionally, they allocated \$425,000 of this funding for a VPP Feasibility Study. While these two projects are going to be funded through one bucket of earmarked funds from the State, they will be implemented through two separate agreements due to the different nature of the work.

The autonomous recloser portion of the work will upgrade and automate portions of our distribution grid to improve reliability and resilience. We will purchase 30 automated recloser devices, installing them on lower-reliability and lower equity distribution feeder pairs. This will significantly strengthen our grid management capabilities, reducing outage restoration times and improving key reliability metrics. By prioritizing areas with greater vulnerability, we aim to advance equity by directing enhanced reliability and resiliency where they can have the greatest impact. These communities may face more significant challenges during outages and thus stand to benefit most from improved infrastructure and support. Additionally, we will establish processes and procedures for operating and maintaining these devices. As appropriate, we will engage the community to inform and educate them about the project and its benefits to their power service.



## Board Action Memorandum

For the Virtual Power Plant (VPP) portion of this work, Tacoma Power will perform a feasibility study on deploying a VPP in our service area. A VPP is a network of decentralized, medium-scale power-generating units, flexible power consumers, and storage systems controlled by a utility operator. These systems help meet energy needs, reduce the need to upgrade infrastructure, and play a critical role in future decarbonization efforts. Tacoma Power plans to use grant funding to retain a consultant to perform this feasibility study, which will guide future VPP investments as appropriate.

### **ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED? Yes**

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

N/A

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

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

- Power Grid: Virtual Power Plant Contract – Contract between Washington State Department of Commerce and Tacoma Power for funding a Virtual Power Plant Feasibility Study
- Ethics in Service Compliance Certification for the Power Grid: Virtual Power Plant Feasibility Study
- Debarment Certification for the Power Grid: Virtual Power Plant Feasibility Study
- Power Grid: DA Autonomous Reclosers - Contract between Washington State Department of Commerce and Tacoma Power for funding installation of Autonomous Reclosers
- Ethics in Service Compliance Certification for the Power Grid: DA Autonomous Reclosers Contract
- Debarment Certification for the Power Grid: DA Autonomous Reclosers Contract

### **CONTACT:**

Primary Contact: Seema Ghosh, Manager, Power Systems Engineering, 253.290.0441

Supervisor's Name: John Nierenberg, Assistant Section Manager, Power Utility, 253.502.8931

Presenter (if different from primary contact): N/A



## Department of Commerce

## Energy Division 42.52 RCW Compliance Certification

**Applicant Name: Tacoma Power**

**Project Name: Power Grid: Autonomous Reclosers**

### 42.52 RCW Compliance Certification

Pursuant to Chapter 42.52 RCW, the Ethics in Public Service Act, any current (or within the past 24 months) employees or governing board members who are, who have been employed by the State of Washington, must be indicated below. Include the name, job title, and separation date, if any.

☐ Currently, or within the past 24 months, there are/have been no employees or governing board members who were employed by the State of Washington.

☒ Currently, or within the past 24 months, there are/have been the following employees or governing board members who were employed by the State of Washington.

☐ Currently, or within the past 24 months, there are/have been no conflict or bias with an existing program employee.

Name: **William Bridges** Title: **Staff Coordinator & Senior Counsel State Senate Committee Services** Separation Date: **Still employed**

Name: **Jessica Cho** Title: **Engineering Project Manager, Senior • Power T&D Projects & Standards** Separation Date: **Still employed**

If a determination is made that a conflict of interest exists, or that requested information was withheld, I understand my organization may be disqualified for further consideration for award of funding.

On behalf of **Tacoma Power** I certify that this organization complies with 42.52 RCW, the Ethics in Public Service Act.

DocuSigned by:  
  
Signature

04/07/2025

Date

Jackie Flowers

Director of Utilities

Print Name

Title



## Department of Commerce

## Energy Division 42.52 RCW Compliance Certification

**Applicant Name: Tacoma Power**

**Project Name: Power Grid: Virtual Power Plant Feasibility Study**

### 42.52 RCW Compliance Certification

Pursuant to Chapter 42.52 RCW, the Ethics in Public Service Act, any current (or within the past 24 months) employees or governing board members who are, who have been employed by the State of Washington, must be indicated below. Include the name, job title, and separation date, if any.

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Name: **William Bridges** Title: **Staff Coordinator & Senior Counsel State Senate Committee Services** Separation Date: **Still employed**

If a determination is made that a conflict of interest exists, or that requested information was withheld, I understand my organization may be disqualified for further consideration for award of funding.

On behalf of **Tacoma Power**, I certify that this organization complies with 42.52 RCW, the Ethics in Public Service Act.

DocuSigned by:  
  
Signature

04/07/2025

Date

Jackie Flowers

Director of Utilities

Print Name

Title

**Debarment, Suspension, Ineligibility or Voluntary Exclusion Certification Form**

ORGANIZATION NAME	City of Tacoma, Department of Public Utilities, Light Division		Doing business as (DBA): Tacoma Power	
ADDRESS	3628 S 35 <sup>th</sup> St Tacoma, WA 98409	Applicable Procurement or Solicitation #, if any:	WA Uniform Business Identifier (UBI): 278012338	Federal Employer Tax Identification #: 91-6001283
This certification is submitted as part of a request to contract.				

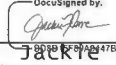
**Instructions For Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions**

**READ CAREFULLY BEFORE SIGNING THE CERTIFICATION.** Federal regulations require contractors and bidders to sign and abide by the terms of this certification, without modification, in order to participate in certain transactions directly or indirectly involving federal funds.

- By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
- The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- The prospective lower tier participant shall provide immediate written notice to the department, institution or office to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
- The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable CFR, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under applicable CFR, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.
- Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business activity.
- Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under applicable CFR, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions**

The prospective lower tier participant certifies, by submission of this proposal or contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this form.

Awardee Signature:  Date: 04/07/2025  
 Print Name and Title: Jackie Flowers Director of utilities  
 Contract Number: 25-92601-157



# **FEDERAL DEBARMENT, SUSPENSION INELIGIBILITY and VOLUNTARY EXCLUSION**

## **(FREQUENTLY ASKED QUESTIONS)**

### **What is “Debarment, Suspension, Ineligibility, and Voluntary Exclusion”?**

These terms refer to the status of a person or company that cannot contract with or receive grants from a federal agency.

In order to be debarred, suspended, ineligible, or voluntarily excluded, you must have:

- had a contract or grant with a federal agency, and
- gone through some process where the federal agency notified or attempted to notify you that you could not contract with the federal agency.
- Generally, this process occurs where you, the contractor, are not qualified or are not adequately performing under a contract, or have violated a regulation or law pertaining to the contract.

### **Why am I required to sign this certification?**

You are requesting a contract or grant with the Washington State Department of Commerce. Federal law (Executive Order 12549) requires the Department of Commerce ensure that persons or companies that contract with The Department of Commerce are not prohibited from having federal contracts.

### **What is Executive Order 12549?**

Executive Order 12549 refers to Federal Executive Order Number 12549. The executive order was signed by the President and directed federal agencies to ensure that federal agencies, and any state or other agency receiving federal funds were not contracting or awarding grants to persons, organizations, or companies who have been excluded from participating in federal contracts or grants. Federal agencies have codified this requirement in their individual agency Code of Federal Regulations (CFRs).

### **What is the purpose of this certification?**

The purpose of the certification is for you to tell The Department of Commerce in writing that you have not been prohibited by federal agencies from entering into a federal contract.

### **What does the word “proposal” mean when referred to in this certification?**

Proposal means a solicited or unsolicited bid, application, request, invitation to consider or similar communication from you to The Department of Commerce.

### **What or who is a “lower tier participant”?**

Lower tier participants means a person or organization that submits a proposal, enters into contracts with, or receives a grant from The Department of Commerce, OR any subcontractor of a contract with The Department of Commerce. If you hire subcontractors, you should require them to sign a certification and keep it with your subcontract.

### **What is a covered transaction when referred to in this certification?**

Covered Transaction means a contract, oral or written agreement, grant, or any other arrangement where you contract with or receive money from The Department of Commerce. Covered Transaction does not include mandatory entitlements and individual benefits.

## **Sample Debarment, Suspension, Ineligibility, Voluntary Exclusion Contract Provision**

**Debarment Certification.** The Contractor certifies that the Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Contract by any Federal department or agency. If requested by The Department of Commerce, the Contractor shall complete a Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion form. Any such form completed by the Contractor for this Contract shall be incorporated into this Contract by reference.

**Debarment, Suspension, Ineligibility or Voluntary Exclusion Certification Form**

ORGANIZATION NAME	City of Tacoma, Department of Public Utilities, Light Division		Doing business as (DBA): Tacoma Power	
ADDRESS	3628 S 35 <sup>th</sup> St Tacoma, WA 98409	Applicable Procurement or Solicitation #, if any:	WA Uniform Business Identifier (UBI): 278012338	Federal Employer Tax Identification #: 91-6001283
This certification is submitted as part of a request to contract.				

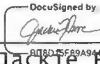
**Instructions For Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions**

**READ CAREFULLY BEFORE SIGNING THE CERTIFICATION.** Federal regulations require contractors and bidders to sign and abide by the terms of this certification, without modification, in order to participate in certain transactions directly or indirectly involving federal funds.

- By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
- The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
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**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions**

The prospective lower tier participant certifies, by submission of this proposal or contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this form.

Awardee Signature:  Date: 04/07/2025  
 Print Name and Title: Jackie Flowers Director of Utilities  
 Contract Number: 25-92601-162

# **FEDERAL DEBARMENT, SUSPENSION INELIGIBILITY and VOLUNTARY EXCLUSION**

## **(FREQUENTLY ASKED QUESTIONS)**

### **What is “Debarment, Suspension, Ineligibility, and Voluntary Exclusion”?**

These terms refer to the status of a person or company that cannot contract with or receive grants from a federal agency.

In order to be debarred, suspended, ineligible, or voluntarily excluded, you must have:

- had a contract or grant with a federal agency, and
- gone through some process where the federal agency notified or attempted to notify you that you could not contract with the federal agency.
- Generally, this process occurs where you, the contractor, are not qualified or are not adequately performing under a contract, or have violated a regulation or law pertaining to the contract.

### **Why am I required to sign this certification?**

You are requesting a contract or grant with the Washington State Department of Commerce. Federal law (Executive Order 12549) requires the Department of Commerce ensure that persons or companies that contract with The Department of Commerce are not prohibited from having federal contracts.

### **What is Executive Order 12549?**

Executive Order 12549 refers to Federal Executive Order Number 12549. The executive order was signed by the President and directed federal agencies to ensure that federal agencies, and any state or other agency receiving federal funds were not contracting or awarding grants to persons, organizations, or companies who have been excluded from participating in federal contracts or grants. Federal agencies have codified this requirement in their individual agency Code of Federal Regulations (CFRs).

### **What is the purpose of this certification?**

The purpose of the certification is for you to tell The Department of Commerce in writing that you have not been prohibited by federal agencies from entering into a federal contract.

### **What does the word “proposal” mean when referred to in this certification?**

Proposal means a solicited or unsolicited bid, application, request, invitation to consider or similar communication from you to The Department of Commerce.

### **What or who is a “lower tier participant”?**

Lower tier participants means a person or organization that submits a proposal, enters into contracts with, or receives a grant from The Department of Commerce, OR any subcontractor of a contract with The Department of Commerce. If you hire subcontractors, you should require them to sign a certification and keep it with your subcontract.

### **What is a covered transaction when referred to in this certification?**

Covered Transaction means a contract, oral or written agreement, grant, or any other arrangement where you contract with or receive money from The Department of Commerce. Covered Transaction does not include mandatory entitlements and individual benefits.

## **Sample Debarment, Suspension, Ineligibility, Voluntary Exclusion Contract Provision**

**Debarment Certification.** The Contractor certifies that the Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Contract by any Federal department or agency. If requested by The Department of Commerce, the Contractor shall complete a Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion form. Any such form completed by the Contractor for this Contract shall be incorporated into this Contract by reference.



Capital Agreement with

Tacoma Power

through

Energy Division

Local Emission Reduction Projects

Contract Number:  
25-92601-162

For

Power Grid: Autonomous Reclosers

Dated: Wednesday, January 1, 2025

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## Face Sheet

Contract Number: 25-92601-162

### Energy Division, Energy Programs in Communities Local Emission Reduction Projects

<b>1. Contractor</b> City of Tacoma, Department of Public Utilities, Light Division 3628 S 35 <sup>th</sup> St Tacoma, WA 98409		<b>2. Contractor Doing Business As (as applicable)</b> Tacoma Power	
<b>3. Contractor Representative</b> Jacob Brettrager T&D Protection & Controls, Power Systems Engineer, PE jrbrettrager@cityoftacoma.org		<b>4. COMMERCE Representative</b> Bryce Davis Program Manager (206) 613-7664 bryce.davis@commerce.wa.gov	
<b>5. Contract Amount</b> \$2,376,500	<b>6. Funding Source</b> Federal: <input type="checkbox"/> State: <input checked="" type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	<b>7. Start Date</b> January 1, 2025	<b>8. End Date</b> December 31, 2026
<b>9. Federal Funds (as applicable)</b> N/A		<b>Federal Agency:</b> N/A	
<b>10. Tax ID #</b> 91-6001283		<b>11. SWV #</b> SWV0000318-68	<b>12. UBI #</b> 278-012-338
<b>13. UEI #</b> YUWKM2N6N4G4			
<b>14. Contract Purpose</b> Tacoma Power will install Autonomous Reclosers to reduce outages and increase reliability. We will purchase and install 30 automated recloser devices on 35 high-voltage comparatively lower reliability distribution feeders pairs that will significantly enhance our ability to manage our distribution grid, shorten outage restoration times, and improve electric energy reliability metrics for many of our feeders serving lower equity areas – low-income and vulnerable customers in our service territory. We will also establish processes and procedures for operating and maintaining these devices going forward. As appropriate, we will engage the community to inform and educate them about the work being done in their area and the improvements being made to their power service.			
COMMERCE, defined as the Department of Commerce, and Contractor acknowledge and accept the terms of this Contract and attachments and have executed this Contract on the date below to start as of the date and year referenced above. The rights and obligations of both parties to this Contract are governed by this Contract and the following other documents incorporated by reference: Contractor Terms and Conditions including Attachment "A" – Scope of Work, Attachment "B" – Budget, Attachment "C" – Reporting, and Attachment "D" – Proviso.			
<b>FOR CONTRACTOR</b>  Jackie Flowers, Director of Utilities  Date		<b>FOR COMMERCE</b>  Jennifer Grove, Assistant Director, Energy Division  Date  <b>APPROVED AS TO FORM ONLY BY ASSISTANT ATTORNEY GENERAL APPROVAL ON FILE</b>	

## **DECLARATIONS**

The Washington State Department of Commerce (Commerce) has been appropriated funds by the Washington State Legislature to provide grants to promote Washington's commitment to equitable, clean energy development.

### **CLIENT INFORMATION**

Legal Name: Tacoma Power  
Agreement Number: 25-92601-162  
Award Year: 2024  
State Wide Vendor Number: SWV0000318-68

### **PROJECT INFORMATION**

Project Title: Power Grid: Autonomous Reclosers  
Project Address: Multiple  
Project City:  
Project State:  
Project Zip Code:

### **GRANT INFORMATION**

Grant Amount: \$2,376,500  
Earliest Date for Reimbursement: Contract Start Date  
Time of Performance: January 1, 2025 – December 31, 2026

## **Program Specific Terms and Conditions**

As identified herein, notwithstanding General & Specific Terms and Conditions SECTIONS, the following Program Specific Terms and Conditions take precedence over any similarly referenced Special or General Terms and Conditions:

### **1. BILLING AND COMPENSATION FOR PERFORMANCE BASED CONTRACT (Replaces Special Terms and Conditions #3 Billing Procedures and Payment)**

COMMERCE will pay Contractor not more often than monthly upon acceptance of services provided and receipt of properly completed invoices for completed milestones, which shall be submitted to the Representative for COMMERCE.

The Contractor shall provide the Representative of COMMERCE a signed electronic Invoice A19 form that includes the contract number referenced on the declarations page.

The invoices shall describe and document, to COMMERCE's satisfaction, a description of the work performed and the milestone number(s) achieved.

The Contractor is required to maintain documentation to support invoiced costs and cost share obligations. The Contractor shall make these documents available to COMMERCE if requested.

COMMERCE will pay Contractor the amounts set forth in Attachment B upon full completion of each milestone. Upon full completion of each Milestone, Contractor will provide an invoice and any required supporting documentation to the Representative of COMMERCE. Except as may be agreed by COMMERCE in its discretion, COMMERCE shall only be obligated to make payments upon demonstration of completion of all Deliverables within a given Milestone. However, it is acknowledged that in the event one or two Deliverables of a Milestone is unduly delayed (more than 3 months) due to circumstances outside Contractor's control, COMMERCE may, in its sole discretion, reasonably negotiate with Contractor regarding paying for those Deliverables of such Milestones that are completed.

Payment shall be considered timely if made by COMMERCE within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Contractor.

COMMERCE may, in its sole discretion, terminate the Contract or withhold payments claimed by the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term or condition of this Contract.

No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by COMMERCE.

### **INVOICES AND END OF FISCAL YEAR**

Invoices are due on the 20th of the month following the provision of services.

Final invoices for a state fiscal year may be due sooner than the 20th and Commerce will provide notification of the end of fiscal year due date.

The contractor must invoice for all expenses from the beginning of the contract through June 30, regardless of the contract start and end date.

### **DUPLICATION OF BILLED COSTS**

The Contractor shall not bill COMMERCE for services performed under this Agreement, and COMMERCE shall not pay the Contractor, if the Contractor is entitled to payment or has been or will be paid by any other source, including grants, for that service.

### **DISALLOWED COSTS**

The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.

## **2. INSURANCE (Replaces Special Terms and Conditions Section #6 Insurance)**

Each party certifies that it is self-insured under the State's or local government self-insurance liability program, and shall be responsible for losses for which it is found liable.

## **3. SUBCONTRACTING (Replaces General Terms and Conditions #37 Subcontracting)**

The Grantee may only subcontract work contemplated under this Contract if it provides written notification to COMMERCE of any subcontractors who will be performing work under this Grant Agreement. The written notice must provide the names and address of the subcontractor with a brief description of which tasks within the Grantee Scope of Work (Attachment A) that will be undertaken by the subcontractor(s).

The Grantee shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, COMMERCE in writing may to the extent allowed by applicable law: (a) require the Grantee to amend its subcontracting procedures as they relate to this Contract; (b) prohibit the Grantee from subcontracting with a particular person or entity; or (c) require the Grantee to rescind or amend a subcontract.

Every subcontract shall bind the Subcontractor to follow all applicable terms of this Contract. The Grantee is responsible to COMMERCE if the Subcontractor fails to comply with any applicable term or condition of this Contract. The Grantee shall appropriately monitor the activities of the Subcontractor to assure fiscal conditions of this Contract. In no event shall the existence of a subcontract operate to release or reduce the liability of the Grantee to COMMERCE for any breach in the performance of the Grantee's duties.

Every subcontract shall include a term that COMMERCE and the State of Washington are not liable for claims or damages arising from a Subcontractor's performance of the subcontract.

All reference to the Grantee under this clause shall also include Grantee's employees, agents or subcontractors.

## **4. COPYRIGHT (Replaces General Terms and Conditions #13 COPYRIGHT)**

Provided that the deliverables required under the Scope of Work are produced in substantial compliance with the Project Timeline and Milestones COMMERCE disclaims any ownership interest in all other Materials produced under this Contract, and "Work Product" including, without limitation, document, data, studies, surveys, drawings, maps, photographs and any objects or source code for any software developed pursuant to or in connection with this Contract, as well as any copyrights, patents, trade secrets, trademarks or other intellectual property developed for or in connection with this Contract, shall be exclusively owned by and be the exclusive property of Grantee and/or its Subcontractors (as determined between Grantee and its Subcontractors).

Notwithstanding the foregoing, COMMERCE shall have a nonexclusive, royalty-free, irrevocable license and right to translate, reproduce, sublicense on the terms set forth herein, prepare derivative works, publicly perform, and publicly display the Project Reports (as defined below).

"Project Reports" mean the project implementation reports and other information required to be submitted by Grantee to COMMERCE under the Scope of Work herein. Project Reports will not contain Confidential Information or Work Product.

## **5. TERMINATION PROCEDURES (Replaces General Terms and Conditions #42 TERMINATION PROCEDURES)**

Commerce shall pay to the contractor the agreed upon price, if separately stated, for completed work and services accepted by Commerce, and the amount agreed upon by the contractor and Commerce for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by Commerce, and (iv) the protection and preservation of property, unless the termination is for default, in which case the authorized representative shall determine the extent of the liability of Commerce. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. Commerce may withhold from any amounts due the contractor such sum as the authorized representative determines to be necessary to protect Commerce against potential loss or liability.

The rights and remedies of Commerce provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the authorized representative, the contractor shall, except to the extent contractor desired to continue work for its own account and when communicated in writing to Commerce:

1. Stop work under the contract on the date, and to the extent specified, in the notice;
2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;
3. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the authorized representative to the extent the authorized representative may require, which approval or ratification shall be final for all the purposes of this clause;
4. Transfer title to Commerce and deliver in the manner, at the times, and to the extent directed by the authorized representative any property which, if the contract had been completed, would have been required to be furnished to Commerce;
5. Complete performance of such part of the work as shall not have been terminated by the authorized representative; and
6. Take such action as may be necessary, or as the authorized representative may direct, for the protection and preservation of the property related to this contract, which is in the possession of the contractor and in which Commerce has or may acquire an interest.

## **6. TREATMENT OF ASSETS (Replaces General Terms and Conditions #43 TREATMENT OF ASSETS)**

The parties do not anticipate that Commerce will furnish property (other than the state funds granted herein) to contractor for use in contractor's performance under this Contract; provided, however, that title to any other property that may be so furnished by Commerce shall remain in Commerce.

- A. Any property of Commerce furnished to the contractor shall, unless otherwise provided herein or approved by Commerce, be used only for the performance of this contract.
- B. The contractor shall be responsible for any loss or damage to property of Commerce that results from the negligence of the contractor or which results from the failure on the part of the contractor to maintain and administer that property in accordance with sound management practices.
- C. If any Commerce property is lost, destroyed or damaged, the contractor shall immediately notify Commerce and shall take all reasonable steps to protect the property from further damage.
- D. The contractor shall surrender to Commerce all property of Commerce prior to settlement upon completion, termination or cancellation of this contract

All reference to the contractor under this clause shall also include contractor's employees, agents or subcontractors

## **Special Terms and Conditions**

### **1. CONTRACT MANAGEMENT**

The Representative for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Contract.

The Representative for COMMERCE and their contact information are identified on the Face Sheet of this Contract.

The Representative for the Contractor and their contact information are identified on the Face Sheet of this Contract.

### **2. ACKNOWLEDGEMENT OF CLIMATE COMMITMENT ACT FUNDING**

If this Agreement is funded in whole or in part by the Climate Commitment Act, Grantee agrees that any website, announcement, press release, and/or publication (written, visual, or sound) used for media-related activities, publicity, and public outreach issued by or on behalf of Grantee which reference programs or projects funded in whole or in part with Washington's Climate Commitment Act (CCA) funds under this Grant, shall contain the following statement:

"The Power Grid: Autonomous Reclosers is supported with funding from Washington's Climate Commitment Act. The CCA supports Washington's climate action efforts by putting cap-and-invest dollars to work reducing climate pollution, creating jobs, and improving public health. Information about the CCA is available at [www.climate.wa.gov](http://www.climate.wa.gov)."

The Grantee agrees to ensure coordinated Climate Commitment Act branding on work completed by or on behalf of the Grantee. The CCA logo must be used in the following circumstances, consistent with the branding guidelines posted at [CCA brand toolkit](#), including:

- A. Any project related website or webpage that includes logos from other funding partners;
- B. Any publication materials that include logos from other funding partners;
- C. Any on-site signage including pre-during Construction signage and permanent signage at completed project sites; and
- D. Any equipment purchased with CCA funding through a generally visible decal.

### **3. COMPENSATION**

COMMERCE shall pay an amount not to exceed \$2,376,500 for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Work. Contractor's compensation for services rendered shall be in accordance with Attachment A, Scope of Work, and Attachment B, Budget.

#### **EXPENSES**

Contractor shall receive reimbursement for travel and other expenses as identified below or as authorized in advance by COMMERCE as reimbursable. The maximum amount to be paid to the Contractor for authorized expenses shall not exceed \$10,000, which amount is included in the Contract total above.

Such expenses may include airfare (economy or coach class only), other transportation expenses, and lodging and subsistence necessary during periods of required travel. Contractor shall receive compensation for travel expenses at current state travel reimbursement rates.

### **4. BILLING PROCEDURES AND PAYMENT (Replaced by Program Specific Terms and Conditions #1 BILLING AND COMPENSATION FOR PERFORMANCE BASED CONTRACT)**

~~COMMERCE will pay Contractor upon acceptance of services provided and receipt of properly completed invoices, which shall be submitted to the Representative for COMMERCE not more often than monthly nor less than quarterly.~~

~~The invoices shall describe and document, to COMMERCE's satisfaction, a description of the work performed, the progress of the project, and fees. The invoice shall include the Contract Number~~

~~If expenses are invoiced, provide a detailed breakdown of each type. A receipt must accompany any single expenses in the amount of \$50.00 or more in order to receive reimbursement. Payment shall be considered timely if made by COMMERCE within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Contractor.~~

~~COMMERCE may, in its sole discretion, terminate the Contract or withhold payments claimed by the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term or condition of this Contract.~~

~~No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by COMMERCE.~~

#### **Invoices and End of Fiscal Year**

~~Invoices are due on the 20th of the month following the provision of services.~~

~~Final invoices for a state fiscal year may be due sooner than the 20th and Commerce will provide notification of the end of fiscal year due date.~~

~~The Contractor must invoice for all expenses from the beginning of the contract through June 30, regardless of the contract start and end date.~~

#### **Duplication of Billed Costs**

~~The Contractor shall not bill COMMERCE for services performed under this Agreement, and COMMERCE shall not pay the Contractor, if the Contractor is entitled to payment or has been or will be paid by any other source, including grants, for that service.~~

#### **Disallowed Costs**

~~The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.~~

~~COMMERCE may, in its sole discretion, withhold ten percent (10%) from each payment until acceptance by COMMERCE of the final report (or completion of the project, etc.).~~

### **5. SUBCONTRACTOR DATA COLLECTION**

Contractor will submit reports, in a form and format to be provided by Commerce and at intervals as agreed by the parties, regarding work under this Contract performed by subcontractors and the portion of Contract funds expended for work performed by subcontractors, including but not necessarily limited to minority-owned, woman-owned, and veteran-owned business subcontractors. "Subcontractors" shall mean subcontractors of any tier.

### **6. HISTORICAL OR CULTURAL ARTIFACTS**

Prior to approval and disbursement of any funds awarded under this Contract, Contractor shall complete the requirements of Governor's Executive Order 21-02, where applicable, or Contractor shall complete a review under Section 106 of the National Historic Preservation Act, if applicable.



Contractor agrees that the Contractor is legally and financially responsible for compliance with all laws, regulations, and agreements related to the preservation of historical or cultural resources and agrees to hold harmless COMMERCE and the state of Washington in relation to any claim related to such historical or cultural resources discovered, disturbed, or damaged as a result of the project funded by this Contract.

In addition to the requirements set forth in this Contract, Contractor shall, in accordance with Governor's Executive Order 21-02 coordinate with Commerce and the Washington State Department of Archaeology and Historic Preservation ("DAHP"), including any recommended consultation with any affected tribe(s), during Project design and prior to construction to determine the existence of any tribal cultural resources affected by Project. Contractor agrees to avoid, minimize, or mitigate impacts to the cultural resource as a continuing prerequisite to receipt of funds under this Contract.

The Contractor agrees that, unless the Contractor is proceeding under an approved historical and cultural monitoring plan or other memorandum of agreement, if historical or cultural artifacts are discovered during construction, the Contractor shall immediately stop construction and notify the local historical preservation officer and the state's historical preservation officer at DAHP, and the Commerce Representative identified on the Face Sheet. If human remains are uncovered, the Contractor shall report the presence and location of the remains to the coroner and local enforcement immediately, then contact DAHP and the concerned tribe's cultural staff or committee.

The Contractor shall require this provision to be contained in all subcontracts for work or services related to the Scope of Work attached hereto.

In addition to the requirements set forth in this Contract, Contractor agrees to comply with RCW 27.44 regarding Indian Graves and Records; RCW 27.53 regarding Archaeological Sites and Resources; RCW 68.60 regarding Abandoned and Historic Cemeteries and Historic Graves; and WAC 25-48 regarding Archaeological Excavation and Removal Permit.

Completion of the requirements of Section 106 of the National Historic Preservation Act shall substitute for completion of Governor's Executive Order 21-02.

In the event that the Contractor finds it necessary to amend the Scope of Work the Contractor may be required to re-comply with Governor's Executive Order 21-02 or Section 106 of the National Historic Preservation Act.

## 7. INSURANCE (Replaced by Program Specific Terms and Conditions #2 INSURANCE)

~~The Contractor shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the State should there be any claims, suits, actions, costs, damages or expenses arising from any loss, or negligent or intentional act or omission of the Contractor or Subcontractor, or agents of either, while performing under the terms of this Contract. Failure to maintain the required insurance coverage may result in termination of this Contract.~~

~~The insurance required shall be issued by an insurance company authorized to do business within the state of Washington. Except for Professional Liability or Errors and Omissions Insurance, the insurance shall name the state of Washington, its agents, officers, and employees as additional insureds under the insurance policy. All policies shall be primary to any other valid and collectable insurance. The Contractor shall provide COMMERCE thirty (30) calendar days' advance notice of any insurance cancellation, non-renewal or modification.~~

~~The Contractor shall submit to COMMERCE within fifteen (15) calendar days of the Contract start date OR a written request by COMMERCE, a certificate of insurance which outlines the coverage and limits defined in this insurance section. During the term of the Contract, if required or requested, the Contractor shall submit renewal certificates not less than thirty (30) calendar days prior to expiration of each policy required under this section.~~

~~The Contractor shall provide, at COMMERCE's request, copies of insurance instruments or certifications from the insurance issuing agency. The copies or certifications shall show the insurance coverage, the designated beneficiary, who is covered, the amounts, the period of coverage, and that COMMERCE will be provided thirty (30) days' advance written notice of cancellation.~~

~~The Contractor shall provide insurance coverage that shall be maintained in full force and effect during the term of this Contract, as follows:~~

~~**Commercial General Liability Insurance Policy.** Provide a Commercial General Liability Insurance Policy, including contractual liability, written on an occurrence basis, in adequate quantity to protect against legal liability arising out of contract activity but no less than \$1,000,000 per occurrence. Additionally, the Contractor is responsible for ensuring that any Subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.~~

~~**Cyber Liability Insurance.** The Contractor shall maintain Cyber Liability Insurance. The Contractor shall maintain minimum limits of no less than \$1,000,000 per occurrence to cover all activities by the Contractor and licensed staff employed or under contract to the Contractor. The state of Washington, its agents, officers, and employees need not be named as additional insureds under this policy.~~

~~**Automobile Liability.** In the event that performance pursuant to this Contract involves the use of vehicles, owned or operated by the Contractor or its Subcontractor, automobile liability insurance shall be required. The minimum limit for automobile liability is \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.~~

~~**Professional Liability, Errors and Omissions Insurance.** The Contractor shall maintain Professional Liability or Errors and Omissions Insurance. The Contractor shall maintain minimum limits of no less than \$1,000,000 per occurrence to cover all activities by the Contractor and licensed staff employed or under contract to the Contractor. The state of Washington, its agents, officers, and employees need not be named as additional insureds under this policy.~~

~~**Fidelity Insurance.** Every officer, director, employee, or agent who is authorized to act on behalf of the Contractor for the purpose of receiving or depositing funds into program accounts or issuing financial documents, checks, or other instruments of payment for program costs shall be insured to provide protection against loss:~~

- ~~A. The amount of fidelity coverage secured pursuant to this Contract shall be \$100,000 or the highest of planned reimbursement for the Contract period, whichever is lowest. Fidelity insurance secured pursuant to this paragraph shall name COMMERCE as beneficiary.~~
- ~~B. Subcontractors that receive \$10,000 or more per year in funding through this Contract shall secure fidelity insurance as noted above. Fidelity insurance secured by Subcontractors pursuant to this paragraph shall name the Contractor as beneficiary.~~

## 8. FRAUD AND OTHER LOSS REPORTING

Contractor shall report in writing all known or suspected fraud or other loss of any funds or other property furnished under this Contract immediately or as soon as practicable to the Commerce Representative identified on the Face Sheet.

## 9. ORDER OF PRECEDENCE

In the event of an inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable federal and state of Washington statutes and regulations
- Attachment D – Proviso
- Program Specific Terms and Conditions
- Special Terms and Conditions
- General Terms and Conditions
- Attachment A – Scope of Work

- Attachment B – Budget
- Attachment C – Reporting

## **General Terms and Conditions**

### **1. DEFINITIONS**

As used throughout this Contract, the following terms shall have the meaning set forth below:

- A. "Authorized Representative" shall mean the Director and/or the designee authorized in writing to act on the Director's behalf.
- B. "COMMERCE" shall mean the Washington Department of Commerce.
- C. "Contract" or "Agreement" or "Grant" means the entire written agreement between COMMERCE and the Contractor, including any Exhibits, documents, or materials incorporated by reference. E-mail or Facsimile transmission of a signed copy of this contract shall be the same as delivery of an original.
- D. "Contractor" shall mean the entity identified on the face sheet performing service(s) under this Contract, and shall include all employees and agents of the Contractor.
- E. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).
- F. "State" shall mean the state of Washington.
- G. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this Contract under a separate contract with the Contractor. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.

### **2. ALLOWABLE COSTS**

Costs allowable under this Contract are actual expenditures according to an approved budget up to the maximum amount stated on the Contract Award or Amendment Face Sheet.

### **3. ALL WRITINGS CONTAINED HEREIN**

This Contract contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto.

### **4. AMENDMENTS**

This Contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

### **5. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35**

The Contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

6. **APPROVAL**

This contract shall be subject to the written approval of COMMERCE's Authorized Representative and shall not be binding until so approved. The contract may be altered, amended, or waived only by a written amendment executed by both parties.

7. **ASSIGNMENT**

Neither this Contract, nor any claim arising under this Contract, shall be transferred or assigned by the Contractor without prior written consent of COMMERCE.

8. **ATTORNEYS' FEES**

Unless expressly permitted under another provision of the Contract, in the event of litigation or other action brought to enforce Contract terms, each party agrees to bear its own attorneys' fees and costs.

9. **CODE REQUIREMENTS**

All construction and rehabilitation projects must satisfy the requirements of applicable local, state, and federal building, mechanical, plumbing, fire, energy and barrier-free codes. Compliance with the Americans with Disabilities Act of 1990 28 C.F.R. Part 35 will be required, as specified by the local building Department.

10. **CONFIDENTIALITY/SAFEGUARDING OF INFORMATION**

A. "Confidential Information" as used in this section includes:

- i. All material provided to the Contractor by COMMERCE that is designated as "confidential" by COMMERCE;
- ii. All material produced by the Contractor that is designated as "confidential" by COMMERCE; and
- iii. All Personal Information in the possession of the Contractor that may not be disclosed under state or federal law.

B. The Contractor shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Contractor shall use Confidential Information solely for the purposes of this Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of COMMERCE or as may be required by law. The Contractor shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Contractor shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Contract whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The Contractor shall make the changes within the time period specified by COMMERCE. Upon request, the Contractor shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Contractor against unauthorized disclosure.

C. Unauthorized Use or Disclosure. The Contractor shall notify COMMERCE within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

11. **CONFORMANCE**

If any provision of this contract violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

12. **CONFLICT OF INTEREST**

Contractor must maintain and comply with written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. Contractor must comply with the following minimum requirements:

- A. No employee, officer, or agent may participate in the selection, award, or administration of a contract if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the Contractor may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts and must comply with RCW 39.26.020. However, Contractor may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the Contractor.
- B. If the Contractor has a parent, affiliate, or subsidiary organization that is not a state, local government, or federally recognized tribe, the Contractor must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the Contractor is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

13. **COPYRIGHT** (Replaced by Program Specific Terms and Conditions #4 COPYRIGHT)

~~Unless otherwise provided, all Materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by COMMERCE. COMMERCE shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the Contractor hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to COMMERCE effective from the moment of creation of such Materials.~~

~~"Materials" means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. "Ownership" includes the right to copyright, patent, register and the ability to transfer these rights.~~

~~For Materials that are delivered under the Contract, but that incorporate pre-existing materials not produced under the Contract, the Contractor hereby grants to COMMERCE a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that the Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to COMMERCE.~~

~~The Contractor shall exert all reasonable effort to advise COMMERCE, at the time of delivery of Materials furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Contract. The Contractor shall provide COMMERCE with prompt written notice of each notice or claim of infringement received by the Contractor with respect to any Materials delivered under this Contract. COMMERCE shall have the right to modify or remove any restrictive markings placed upon the Materials by the Contractor.~~

14. **DISALLOWED COSTS**

The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.

**15. DISPUTES**

Except as otherwise provided in this Contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the Director of COMMERCE, who may designate a neutral person to decide the dispute.

The request for a dispute hearing must:

- be in writing;
- state the disputed issues;
- state the relative positions of the parties;
- state the Contractor's name, address, and Contract number; and
- be mailed to the Director and the other party's (respondent's) Contract Representative within three (3) working days after the parties agree that they cannot resolve the dispute.

The respondent shall send a written answer to the requestor's statement to both the Director or the Director's designee and the requestor within five (5) working days.

The Director or designee shall review the written statements and reply in writing to both parties within ten (10) working days. The Director or designee may extend this period if necessary by notifying the parties.

The decision shall not be admissible in any succeeding judicial or quasi-judicial proceeding.

The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this Contract shall be construed to limit the parties' choice of a mutually acceptable alternate dispute resolution (ADR) method in addition to the dispute hearing procedure outlined above.

**16. DUPLICATE PAYMENT**

Contractor certifies that work to be performed under this contract does not duplicate any work to be charged against any other contract, subcontract, or other source.

**17. GOVERNING LAW AND VENUE**

This Contract shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

**18. INDEMNIFICATION**

To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the state of Washington, COMMERCE, agencies of the state and all officials, agents and employees of the state, from and against all claims for injuries or death arising out of or resulting from the performance of the contract. "Claim" as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or the destruction of tangible property including loss of use resulting therefrom.

The Contractor's obligation to indemnify, defend, and hold harmless includes any claim by Contractor's agents, employees, representatives, or any subcontractor or its employees.

The Contractor's obligation shall not include such claims that may be caused by the sole negligence of the State and its agencies, officials, agents, and employees. If the claims or damages are caused by or result from the concurrent negligence of (a) the State, its agents or employees and (b) the Contractor, its subcontractors, agents, or employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Contractor or its subcontractors, agents, or employees.

The Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the state and its agencies, officers, agents or employees.

**19. INDEPENDENT CAPACITY OF THE CONTRACTOR**

The parties intend that an independent contractor relationship will be created by this Contract. The Contractor and its employees or agents performing under this Contract are not employees or agents of the state of Washington or COMMERCE. The Contractor will not hold itself out as or claim to be an officer or employee of COMMERCE or of the state of Washington by reason hereof, nor will the Contractor make any claim of right, privilege or benefit which would accrue to such officer or employee under law. Conduct and control of the work will be solely with the Contractor.

**20. INDUSTRIAL INSURANCE COVERAGE**

The Contractor shall comply with all applicable provisions of Title 51 RCW. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, COMMERCE may collect from the Contractor the full amount payable to the Industrial Insurance Accident Fund. COMMERCE may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by COMMERCE under this Contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Contractor.

**21. LAWS**

The Contractor shall comply with all applicable laws, ordinances, codes, regulations and policies of local, state, and federal governments, as now or hereafter amended.

**22. LICENSING, ACCREDITATION AND REGISTRATION**

The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Contract.

**23. LIMITATION OF AUTHORITY**

Only the Authorized Representative or Authorized Representative's designee by writing (designation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract.

**24. LOCAL PUBLIC TRANSPORTATION COORDINATION**

Where applicable, Contractor shall participate in local public transportation forums and implement strategies designed to ensure access to services.

**25. NONDISCRIMINATION**

**A. Nondiscrimination Requirement.** During the term of this Agreement, GRANTEE, including any subcontractor, shall not discriminate on the bases enumerated at RCW 49.60.530(3). In addition, GRANTEE, including any subcontractor, shall give written notice of this nondiscrimination requirement to any labor organizations with which GRANTEE, or subcontractor, has a collective bargaining or other agreement.

The funds provided under this Agreement shall not be used to fund religious worship, exercise, or instruction. No person shall be required to participate in any religious worship, exercise, or instruction in order to have access to the facilities funded by this Agreement.

**B. Obligation to Cooperate.** GRANTEE, including any subcontractor, shall cooperate and comply with any Washington state agency investigation regarding any allegation that GRANTEE, including any subcontractor, has engaged in discrimination prohibited by this Agreement pursuant to RCW 49.60.530(3).

**C. Default.** Notwithstanding any provision to the contrary, COMMERCE may suspend GRANTEE, including any subcontractor, upon notice of a failure to participate and cooperate with any state agency investigation into alleged discrimination prohibited by this Contract, pursuant to RCW

49.60.530(3). Any such suspension will remain in place until COMMERCE receives notification that GRANTEE, including any subcontractor, is cooperating with the investigating state agency. In the event GRANTEE, or subcontractor, is determined to have engaged in discrimination identified at RCW 49.60.530(3), COMMERCE may terminate this Agreement in whole or in part, and GRANTEE, subcontractor, or both, may be referred for debarment as provided in RCW 39.26.200. GRANTEE or subcontractor may be given a reasonable time in which to cure this noncompliance, including implementing conditions consistent with any court-ordered injunctive relief or settlement agreement.

D. Remedies for Breach. Notwithstanding any provision to the contrary, in the event of Agreement termination or suspension for engaging in discrimination, GRANTEE, subcontractor, or both, shall be liable for contract damages as authorized by law including, but not limited to, any cost difference between the original Grant and the replacement or cover Grant and all administrative costs directly related to the replacement Grant, e.g., cost of the competitive bidding, mailing, advertising and staff time, which damages are distinct from any penalties imposed under Chapter 49.60, RCW. GRANTEE may also be required to repay grant funds pursuant to Section 31 (Recapture) of the General Terms & Conditions if the Agreement is terminated based on a violation of the nondiscrimination requirement. COMMERCE shall have the right to deduct from any monies due to GRANTEE or subcontractor, or that thereafter become due, an amount for damages GRANTEE or subcontractor will owe COMMERCE for default under this provision.

## 26. PAY EQUITY

The Contractor agrees to ensure that "similarly employed" individuals in its workforce are compensated as equals, consistent with the following:

- A. Employees are "similarly employed" if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed;
- B. Contractor may allow differentials in compensation for its workers if the differentials are based in good faith and on any of the following:
  - i. A seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels.
  - ii. A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience that is: Consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential.
  - iii. A bona fide regional difference in compensation level must be: Consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential.

This Contract may be terminated by the Department, if the Department or the Department of Enterprise Services determines that the Contractor is not in compliance with this provision.

## 27. POLITICAL ACTIVITIES

Political activity of Contractor's employees and officers are limited by the State Campaign Finances and Lobbying provisions of Chapter 42.17A RCW and the Federal Hatch Act, 5 USC 1501 - 1508.

No funds may be used for working for or against ballot measures or for or against the candidacy of any person for public office.

## 28. PREVAILING WAGE LAW

The Contractor certifies that all contractors and subcontractors performing work on the Project shall comply with state Prevailing Wages on Public Works, Chapter 39.12 RCW, as applicable to the

Project funded by this contract, including but not limited to the filing of the "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" as required by RCW 39.12.040. The Contractor shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and shall make such records available for COMMERCE's review upon request.

## 29. PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

The funds provided under this Contract shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such funds or any other approval or concurrence under this Contract provided, however, that reasonable fees or bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

## 30. PUBLICITY

The Contractor agrees not to publish or use any advertising or publicity materials in which the state of Washington or COMMERCE's name is mentioned, or language used from which the connection with the state of Washington's or COMMERCE's name may reasonably be inferred or implied, without the prior written consent of COMMERCE.

## 31. RECAPTURE

In the event that the Contractor fails to perform this Contract in accordance with state laws, federal laws, and/or the provisions of this Contract, COMMERCE reserves the right to recapture funds in an amount to compensate COMMERCE for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by the Contractor of funds under this recapture provision shall occur within the time period specified by COMMERCE. In the alternative, COMMERCE may recapture such funds from payments due under this Contract.

## 32. RECORDS MAINTENANCE

The Contractor shall maintain books, records, documents, data and other evidence relating to this contract and performance of the services described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract.

The Contractor shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the contract, shall be subject at all reasonable times to inspection, review or audit by COMMERCE, personnel duly authorized by COMMERCE, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

## 33. REGISTRATION WITH DEPARTMENT OF REVENUE

If required by law, the Contractor shall complete registration with the Washington State Department of Revenue.

## 34. RIGHT OF INSPECTION

At no additional cost all records relating to the Contractor's performance under this Contract shall be subject at all reasonable times to inspection, review, and audit by COMMERCE, the Office of the State Auditor, and federal and state officials so authorized by law, in order to monitor and evaluate performance, compliance, and quality assurance under this Contract. The Contractor shall provide access to its facilities for this purpose.

**35. SAVINGS**

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to normal completion, COMMERCE may suspend or terminate the Contract under the "Termination for Convenience" clause, without the ten business day notice requirement. In lieu of termination, the Contract may be amended to reflect the new funding limitations and conditions.

**36. SEVERABILITY**

The provisions of this contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the contract.

**37. SUBCONTRACTING (Replaced by Program Specific Terms and Conditions #3 SUBCONTRACTING)**

~~The Contractor may only subcontract work contemplated under this Contract if it obtains the prior written approval of COMMERCE.~~

~~If COMMERCE approves subcontracting, the Contractor shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, COMMERCE in writing may: (a) require the Contractor to amend its subcontracting procedures as they relate to this Contract; (b) prohibit the Contractor from subcontracting with a particular person or entity; or (c) require the Contractor to rescind or amend a subcontract.~~

~~Every subcontract shall bind the Subcontractor to follow all applicable terms of this Contract. The Contractor is responsible to COMMERCE if the Subcontractor fails to comply with any applicable term or condition of this Contract. The Contractor shall appropriately monitor the activities of the Subcontractor to assure fiscal conditions of this Contract. In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to COMMERCE for any breach in the performance of the Contractor's duties.~~

~~Every subcontract shall include a term that COMMERCE and the State of Washington are not liable for claims or damages arising from a Subcontractor's performance of the subcontract.~~

**38. SURVIVAL**

The terms, conditions, and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive.

**39. TAXES**

All payments accrued on account of payroll taxes, unemployment contributions, the Contractor's income or gross receipts, any other taxes, insurance or expenses for the Contractor or its staff shall be the sole responsibility of the Contractor.

**40. TERMINATION FOR CAUSE**

In the event COMMERCE determines the Contractor has failed to comply with the conditions of this contract in a timely manner, COMMERCE has the right to suspend or terminate this contract. Before suspending or terminating the contract, COMMERCE shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days, the contract may be terminated or suspended.

In the event of termination or suspension, the Contractor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

COMMERCE reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged

compliance breach and pending corrective action by the Contractor or a decision by COMMERCE to terminate the contract. A termination shall be deemed a "Termination for Convenience" if it is determined that the Contractor: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence.

The rights and remedies of COMMERCE provided in this contract are not exclusive and are, in addition to any other rights and remedies, provided by law.

**41. TERMINATION FOR CONVENIENCE**

Except as otherwise provided in this Contract, COMMERCE may, by ten (10) business days' written notice, beginning on the second day after the mailing, terminate this Contract, in whole or in part. If this Contract is so terminated, COMMERCE shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination.

**42. TERMINATION PROCEDURES (Replaced by Program Specific Terms and Conditions #5 TERMINATION PROCEDURES)**

~~Upon termination of this contract, COMMERCE, in addition to any other rights provided in this contract, may require the Contractor to deliver to COMMERCE any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.~~

~~COMMERCE shall pay to the Contractor the agreed-upon price, if separately stated, for completed work and services accepted by COMMERCE, and the amount agreed upon by the Contractor and COMMERCE for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by COMMERCE, and (iv) the protection and preservation of property, unless the termination is for default, in which case the Authorized Representative shall determine the extent of the liability of COMMERCE. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. COMMERCE may withhold from any amounts due the Contractor such sum as the Authorized Representative determines to be necessary to protect COMMERCE against potential loss or liability.~~

~~The rights and remedies of COMMERCE provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.~~

~~After receipt of a notice of termination, and except as otherwise directed by the Authorized Representative, the Contractor shall:~~

- ~~A. Stop work under the contract on the date, and to the extent specified, in the notice;~~
- ~~B. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;~~
- ~~C. Assign to COMMERCE, in the manner, at the times, and to the extent directed by the Authorized Representative, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case COMMERCE has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;~~
- ~~D. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Authorized Representative to the extent the Authorized Representative may require, which approval or ratification shall be final for all the purposes of this clause;~~
- ~~E. Transfer title to COMMERCE and deliver in the manner, at the times, and to the extent directed by the Authorized Representative any property which, if the contract had been completed, would have been required to be furnished to COMMERCE;~~
- ~~F. Complete performance of such part of the work as shall not have been terminated by the Authorized Representative; and~~

- G. ~~Take such action as may be necessary, or as the Authorized Representative may direct, for the protection and preservation of the property related to this contract, which is in the possession of the Contractor and in which COMMERCE has or may acquire an interest.~~

43. **TREATMENT OF ASSETS** (Replaced by Program Specific Terms and Conditions #6  
TREATMENT OF ASSETS)

~~Title to all property furnished by COMMERCE shall remain in COMMERCE. Title to all property furnished by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in COMMERCE upon delivery of such property by the Contractor. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in COMMERCE upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by COMMERCE in whole or in part, whichever first occurs.~~

- A. ~~Any property of COMMERCE furnished to the Contractor shall, unless otherwise provided herein or approved by COMMERCE, be used only for the performance of this contract.~~
- B. ~~The Contractor shall be responsible for any loss or damage to property of COMMERCE that results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.~~
- C. ~~If any COMMERCE property is lost, destroyed or damaged, the Contractor shall immediately notify COMMERCE and shall take all reasonable steps to protect the property from further damage.~~
- D. ~~The Contractor shall surrender to COMMERCE all property of COMMERCE prior to settlement upon completion, termination or cancellation of this contract.~~
- E. ~~All reference to the Contractor under this clause shall also include Contractor's employees, agents or Subcontractors.~~

44. **WAIVER**

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing and signed by Authorized Representative of COMMERCE.

**Attachment A: Scope of Work**

Organization Legal Name: Tacoma Public Utilities

Project Name: Power Grid: Distribution Automation (DA) Autonomous Reclosers

Site Address: 3628 S 35th St, Tacoma, WA 98409 (Tacoma Power address, Autonomous Reclosers at various locations in service territory)

Serving electric utility: Tacoma Power

Grant Amount: \$2,376,500

**Purpose:**

This agreement is one (1) of two (2) contracts signed and executed under this appropriation. The other is agreement #25-92601-157, "Power Grid: Virtual Power Plant Feasibility Study".

This project will upgrade and automate portions of our distribution grid for reliability/resilience improvements. For the Autonomous Recloser work, we will purchase and install 30 automated recloser devices on comparatively lower reliability distribution feeder pairs that will significantly enhance our ability to manage our distribution grid, shorten outage restoration times, and improve reliability metrics including some feeders serving lower equity areas – low-income and vulnerable customers. We will also establish processes and procedures for operating and maintaining these devices going forward. As appropriate, we will engage the community to inform and educate them about the work being done in their area and the improvements being made to their power service.

**Objective:** Increase resiliency in lower reliability and vulnerable communities.

**Major Components:** List major equipment to be installed across project sites.

Quantity	Make and Model	Equipment Description
30	S&C IntelliRupter	Autonomous reclosers (with loop restoration)

**Description of Major Cost Components:** (Additional space for descriptions as needed, can also include diagrams)

Autonomous reclosers (with loop restoration) – Tacoma Power plans to utilize the full \$2,376,500 state funds for purchasing, developing new-to-Tacoma Power standards, integrating, installing, and commissioning 30 S&C IntelliRupters, accessories and associated hardware required for use.

**Permits Required:**

<input type="checkbox"/> Electrical	<input type="checkbox"/> Building	<input type="checkbox"/> Land use
<input type="checkbox"/> SEPA	<input type="checkbox"/> NEPA	<input checked="" type="checkbox"/> Other (please specify): Right of Way Permits per line



Work to be completed: (Align 1:1 with budget milestones, deliverables and deliverable descriptions)

Milestones	Deliverables	Deliverable Description (Work to be completed)	Expected Completion
<b>A: Project Development, Design and Contracting</b> (project schedule, diagram(s), and contracts with subcontractors)	Develop Autonomous Recloser (AR) Schemes	Develop "3-2" and "2-2" loop restoration schemes.	September 2025
	Protection & Control Guidelines	Develop standard pickups for midpoint and feeder tie loop reclosers.	
	Installation & Integration Standards	Develop typical pole framing standard, electronic points list.	
	Finalize AR Next Feeder Pair Locations	Quarterly location selection (revolving).	
<b>B: Contracting and Procurement</b> (procurement for equipment and any work you plan to subcontract)	30 S&C IntelliRupter Autonomous Reclosers	Execute purchase order with S&C	December 2026
	Other Hardware	Use from warehouse and procure backfill (revolving).	
<b>C: Equipment Delivery, Installation and Construction, and Commissioning</b> (approval from electrical authority to go live, operations and maintenance manual, system acceptance test report, etc.)	IntelliRupter Deliveries	Six batches of IntelliRupters	December 2026
	Autonomous Recloser Feeder Pair Deployment	Install & Commission on two feeder pairs (4-6 IntelliRupters per pair)	
<b>D: Analytics and Monitoring</b> (completed fact sheet, and story of impact, additional verifications, community engagement, and tax credit information)	Narrative	Communicate the project narrative with a Fact Sheet based on the Commerce-provided template and at least one other mode of story-telling	December 2026

## Attachment B: Budget

All funding is subject to continued legislative authorization and re-appropriation where applicable.

Milestones (A-D)	Deliverable(s)	Deliverable Verification	Expected Completion Date	Percent of Grant	\$ Amount of Grant
<b>A: Project Development, Design and Contracting</b>			September-'25	4.1%	\$97,000
Develop Autonomous Recloser Schemes	Develop Protection & Control Guidelines	Autonomous recloser schemes			
	Develop Installation & Integration Standards	Copy of Protection & Control Guideline documents			
	Finalize Next Feeder Pair Locations	Standards documents			
		Documented list of locations			
<b>B: Procurement</b>			December-'26	1.8%	\$43,650
30 S&C IntelliRupter Autonomous Reclosers		Purchase order			
	Other Hardware	Purchase order			
<b>C: Equipment Delivery, Installation, Construction, Integration &amp; Commissioning</b>			December-'26	93.9%	\$2,231,000
IntelliRupter Delivery	Autonomous Recloser Feeder Pair Deployment	Proof of delivery or photos of delivered equipment			
		Commissioning report			
<b>D: Analytics &amp; Monitoring</b>			December-'26	0.2%	\$4,850
Narrative		Communicate the project narrative with a Fact Sheet based on the Commerce-provided template and at least one other mode of story-telling			
<b>TOTALS:</b>				<b>100.0%</b>	<b>\$2,376,500</b>
<b>TOTAL AWARD VALUE:</b>					<b>\$2,376,500.00</b>



## **Attachment C: Reporting**

The Contractor must provide quarterly written reports and/or host a regular quarterly video and/or phone call with COMMERCE for project update purposes. Phone contact should cover current status of the project and any barriers that are potentially affecting the project schedule.

The Contractor shall provide a quarterly report to COMMERCE, no later than 15 days after the end of each quarter. The template report form will be provided by Commerce. The report should describe the project activity that occurred during the quarter, including but not limited to:

- A narrative summarizing project activities, risks and issues mitigated, and lessons learned;
- The project milestones met to date and anticipated in the subsequent quarter (such as through a project Gantt Chart schedule provided quarterly showing actual progress to date along with the baseline schedule developed at project kickoff etc.); and,
- Any additional metrics required from the capital budget proviso, legislature, governor's office, or COMMERCE.
- Quarterly updated invoice projection sheet for grant expenditures. Commerce will provide the invoice projection sheet;

A final report and fact sheet will be submitted to Commerce. Commerce will provide the fact sheet template and may request the fact sheet be updated as conditions warrant.

### **Quarterly Reports Submission Deadlines**

Quarter 1	April 15
Quarter 2	July 15
Quarter 3	October 15
Quarter 4	January 15

## **Attachment D: Proviso**

NEW SECTION. Sec. 1035. FOR THE DEPARTMENT OF COMMERCE

Sec. 1025. 2023 c 474 s 1035 (uncodified) is amended to read as follows:  
Local Emission Reduction Projects (91002184)

The appropriations in this section are subject to the following conditions and limitations:  
(1) The appropriations in this section are provided solely for the following list of projects:

16	Tacoma Power Grid	\$ 2,875,000
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(2) The department may not expend funding for a project in this section unless and until the nonstate share of that project's costs have been either expended or firmly committed, or both, in an amount sufficient to complete the project or a distinct phase of the project. This requirement does not apply to projects where a share of the appropriation is for design costs only.

(3) Prior to receiving funding, grant recipients must demonstrate that the project site is under control for a minimum of 10 years, either through ownership or a long-term lease. This requirement does not apply to grants for preconstruction activities or grants in which the sole purpose is to purchase real property that does not include a construction or renovation component.

(4) In contracts for grants authorized under this section, the department must include provisions that require that capital improvements be held by the grantee for a specified period of time appropriate to the amount of the grant and that facilities be used for the express purpose of the grant. If the department finds the grantee to be out of compliance with provisions of the contract, the grantee shall repay to the state general fund the principal amount of the grant plus interest calculated at the rate of interest on state of Washington general obligation bonds issued most closely to the date of authorization of the grant.

5(a) This section takes effect January 1, 2025. (b) If the climate commitment account or the natural climate solutions account is repealed as of December 30, 2024, then this section is null and void on December 31, 2024.

Up to three percent of the appropriation in this section is for the department to administer the grant program.



Capital Agreement with

Tacoma Power

through

Energy Division  
Local Emission Reduction Projects

Contract Number:  
25-92601-157

For

Power Grid: Virtual Power Plant Feasibility Study

Dated: Wednesday, January 1, 2025

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## Face Sheet

Contract Number: 25-92601-157

### Energy Division, Energy Programs in Communities Local Emission Reduction Projects

<b>1. Contractor</b> City of Tacoma, Department of Public Utilities, Light Division 3628 S 35 <sup>th</sup> St Tacoma, WA 98409		<b>2. Contractor Doing Business As (as applicable)</b> Tacoma Power	
<b>3. Contractor Representative</b> Seema Ghosh T&D Innovation and Asset Management, Manager 253-290-0441 sghosh@cityoftacoma.org		<b>4. COMMERCE Representative</b> Bryce Davis Program Manager (206) 613-7664 bryce.davis@commerce.wa.gov P.O. Box 42525 1011 Plum St Olympia, WA 98504-2525	
<b>5. Contract Amount</b> \$412,250	<b>6. Funding Source</b> Federal: <input type="checkbox"/> State: <input checked="" type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	<b>7. Start Date</b> January 1, 2025	<b>8. End Date</b> December 31, 2026
<b>9. Federal Funds (as applicable)</b> N/A		<b>Federal Agency:</b> ALN N/A	
<b>10. Tax ID #</b> 91-6001283	<b>11. SWV #</b> SWV0000318-68	<b>12. UBI #</b> 278-012-338	<b>13. UEI #</b> YUWKM2N6N4G4
<b>14. Contract Purpose</b> Tacoma Power would like to explore the feasibility of deploying a Virtual Power Plant (VPP) in our service area. A VPP is a network of decentralized, medium-scale power-generating units, flexible power consumers, and storage systems controlled by a utility operator. VPPs can be used to meet energy needs locally, minimize the need to upgrade infrastructure, and is critical for future decarbonization efforts. Tacoma Power plans to use grant funding to retain a consultant to perform this feasibility study. The study will inform future Tacoma Power investments in a VPP as appropriate.			
COMMERCE, defined as the Department of Commerce, and Contractor acknowledge and accept the terms of this Contract and attachments and have executed this Contract on the date below to start as of the date and year referenced above. The rights and obligations of both parties to this Contract are governed by this Contract and the following other documents incorporated by reference: Contractor Terms and Conditions including Attachment "A" – Scope of Work, Attachment "B" – Budget, Attachment "C" – Reporting, and Attachment "D" – Proviso.			
<b>FOR CONTRACTOR</b>  _____ Chris Robinson, Chief Operating Officer  _____ Date		<b>FOR COMMERCE</b>  _____ Jennifer Grove, Assistant Director, Energy Division  _____ Date  <b>APPROVED AS TO FORM ONLY BY ASSISTANT ATTORNEY GENERAL APPROVAL ON FILE</b>	

## **DECLARATIONS**

The Washington State Department of Commerce (Commerce) has been appropriated funds by the Washington State Legislature to provide grants to promote Washington's commitment to equitable, clean energy development.

### **CLIENT INFORMATION**

Legal Name: Tacoma Power  
Agreement Number: 25-92601-157  
Award Year: 2024  
State Wide Vendor Number: SWV0000318-68

### **PROJECT INFORMATION**

Project Title: Power Grid: Virtual Power Plant Feasibility Study  
Project Address: Study area is across Pierce County

### **GRANT INFORMATION**

Grant Amount: \$412,250  
Earliest Date for Reimbursement: Contract Start Date  
Time of Performance: January 1, 2025 – December 31, 2026

## **Program Specific Terms and Conditions**

As identified herein, notwithstanding General & Specific Terms and Conditions SECTIONS, the following Program Specific Terms and Conditions take precedence over any similarly referenced Special or General Terms and Conditions:

### **1. BILLING AND COMPENSATION FOR PERFORMANCE BASED CONTRACT (Replaces Special Terms and Conditions #3 Billing Procedures and Payment)**

COMMERCE will pay Contractor not more often than monthly upon acceptance of services provided and receipt of properly completed invoices for completed milestones, which shall be submitted to the Representative for COMMERCE.

The Contractor shall provide the Representative of COMMERCE a signed electronic Invoice A19 form that includes the contract number referenced on the declarations page.

The invoices shall describe and document, to COMMERCE's satisfaction, a description of the work performed and the milestone number(s) achieved.

The Contractor is required to maintain documentation to support invoiced costs and cost share obligations. The Contractor shall make these documents available to COMMERCE if requested.

COMMERCE will pay Contractor the amounts set forth in Attachment B upon full completion of each milestone. Upon full completion of each Milestone, Contractor will provide an invoice and any required supporting documentation to the Representative of COMMERCE. Except as may be agreed by COMMERCE in its discretion, COMMERCE shall only be obligated to make payments upon demonstration of completion of all Deliverables within a given Milestone. However, it is acknowledged that in the event one or two Deliverables of a Milestone is unduly delayed (more than 3 months) due to circumstances outside Contractor's control, COMMERCE may, in its sole discretion, reasonably negotiate with Contractor regarding paying for those Deliverables of such Milestones that are completed.

Payment shall be considered timely if made by COMMERCE within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Contractor.

COMMERCE may, in its sole discretion, terminate the Contract or withhold payments claimed by the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term or condition of this Contract.

No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by COMMERCE.

### **INVOICES AND END OF FISCAL YEAR**

Invoices are due on the 20th of the month following the provision of services.

Final invoices for a state fiscal year may be due sooner than the 20th and Commerce will provide notification of the end of fiscal year due date.

The contractor must invoice for all expenses from the beginning of the contract through June 30, regardless of the contract start and end date.

### **DUPLICATION OF BILLED COSTS**

The Contractor shall not bill COMMERCE for services performed under this Agreement, and COMMERCE shall not pay the Contractor, if the Contractor is entitled to payment or has been or will be paid by any other source, including grants, for that service.

### **DISALLOWED COSTS**

The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.

**2. INSURANCE (Replaces Special Terms and Conditions Section #6 Insurance)**

Each party certifies that it is self-insured under the State's or local government self-insurance liability program, and shall be responsible for losses for which it is found liable.

**3. SUBCONTRACTING (Replaces General Terms and Conditions #37 Subcontracting)**

The Grantee may only subcontract work contemplated under this Contract if it provides written notification to COMMERCE of any subcontractors who will be performing work under this Grant Agreement. The written notice must provide the names and address of the subcontractor with a brief description of which tasks within the Grantee Scope of Work (Attachment A) that will be undertaken by the subcontractor(s).

The Grantee shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, COMMERCE in writing may to the extent allowed by applicable law: (a) require the Grantee to amend its subcontracting procedures as they relate to this Contract; (b) prohibit the Grantee from subcontracting with a particular person or entity; or (c) require the Grantee to rescind or amend a subcontract.

Every subcontract shall bind the Subcontractor to follow all applicable terms of this Contract. The Grantee is responsible to COMMERCE if the Subcontractor fails to comply with any applicable term or condition of this Contract. The Grantee shall appropriately monitor the activities of the Subcontractor to assure fiscal conditions of this Contract. In no event shall the existence of a subcontract operate to release or reduce the liability of the Grantee to COMMERCE for any breach in the performance of the Grantee's duties.

Every subcontract shall include a term that COMMERCE and the State of Washington are not liable for claims or damages arising from a Subcontractor's performance of the subcontract.

All reference to the Grantee under this clause shall also include Grantee's employees, agents or subcontractors.

**4. COPYRIGHT (Replaces General Terms and Conditions #13 COPYRIGHT)**

Provided that the deliverables required under the Scope of Work are produced in substantial compliance with the Project Timeline and Milestones COMMERCE disclaims any ownership interest in all other Materials produced under this Contract, and "Work Product" including, without limitation, document, data, studies, surveys, drawings, maps, photographs and any objects or source code for any software developed pursuant to or in connection with this Contract, as well as any copyrights, patents, trade secrets, trademarks or other intellectual property developed for or in connection with this Contract, shall be exclusively owned by and be the exclusive property of Grantee and/or its Subcontractors (as determined between Grantee and its Subcontractors).

Notwithstanding the foregoing, COMMERCE shall have a nonexclusive, royalty-free, irrevocable license and right to translate, reproduce, sublicense on the terms set forth herein, prepare derivative works, publicly perform, and publicly display the Project Reports (as defined below).

"Project Reports" mean the project implementation reports and other information required to be submitted by Grantee to COMMERCE under the Scope of Work herein. Project Reports will not contain Confidential Information or Work Product.

**5. TERMINATION PROCEDURES (Replaces General Terms and Conditions #42 TERMINATION PROCEDURES)**

Commerce shall pay to the contractor the agreed upon price, if separately stated, for completed work and services accepted by Commerce, and the amount agreed upon by the contractor and Commerce for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by Commerce, and (iv) the protection and preservation of property, unless the termination is for default, in which case the authorized representative shall determine the extent of the liability of Commerce. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. Commerce may withhold from any amounts due the contractor such sum as the authorized representative determines to be necessary to protect Commerce against potential loss or liability.

The rights and remedies of Commerce provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the authorized representative, the contractor shall, except to the extent contractor desired to continue work for its own account and when communicated in writing to Commerce:

1. Stop work under the contract on the date, and to the extent specified, in the notice;
2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;
3. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the authorized representative to the extent the authorized representative may require, which approval or ratification shall be final for all the purposes of this clause;
4. Transfer title to Commerce and deliver in the manner, at the times, and to the extent directed by the authorized representative any property which, if the contract had been completed, would have been required to be furnished to Commerce;
5. Complete performance of such part of the work as shall not have been terminated by the authorized representative; and
6. Take such action as may be necessary, or as the authorized representative may direct, for the protection and preservation of the property related to this contract, which is in the possession of the contractor and in which Commerce has or may acquire an interest.

**6. TREATMENT OF ASSETS (Replaces General Terms and Conditions #43 TREATMENT OF ASSETS)**

The parties do not anticipate that Commerce will furnish property (other than the state funds granted herein) to contractor for use in contractor's performance under this Contract; provided, however, that title to any other property that may be so furnished by Commerce shall remain in Commerce.

- A. Any property of Commerce furnished to the contractor shall, unless otherwise provided herein or approved by Commerce, be used only for the performance of this contract.
- B. The contractor shall be responsible for any loss or damage to property of Commerce that results from the negligence of the contractor or which results from the failure on the part of the contractor to maintain and administer that property in accordance with sound management practices.
- C. If any Commerce property is lost, destroyed or damaged, the contractor shall immediately notify Commerce and shall take all reasonable steps to protect the property from further damage.
- D. The contractor shall surrender to Commerce all property of Commerce prior to settlement upon completion, termination or cancellation of this contract

All reference to the contractor under this clause shall also include contractor's employees, agents or subcontractors.

## **Special Terms and Conditions**

### **1. CONTRACT MANAGEMENT**

The Representative for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Contract.

The Representative for COMMERCE and their contact information are identified on the Face Sheet of this Contract.

The Representative for the Contractor and their contact information are identified on the Face Sheet of this Contract.

### **2. ACKNOWLEDGEMENT OF CLIMATE COMMITMENT ACT FUNDING**

If this Agreement is funded in whole or in part by the Climate Commitment Act, Grantee agrees that any website, announcement, press release, and/or publication (written, visual, or sound) used for media-related activities, publicity, and public outreach issued by or on behalf of Grantee which reference programs or projects funded in whole or in part with Washington's Climate Commitment Act (CCA) funds under this Grant, shall contain the following statement:

"The Power Grid: Virtual Power Plant Feasibility Study is supported with funding from Washington's Climate Commitment Act. The CCA supports Washington's climate action efforts by putting cap-and-invest dollars to work reducing climate pollution, creating jobs, and improving public health. Information about the CCA is available at [www.climate.wa.gov](http://www.climate.wa.gov)."

The Grantee agrees to ensure coordinated Climate Commitment Act branding on work completed by or on behalf of the Grantee. The CCA logo must be used in the following circumstances, consistent with the branding guidelines posted at [CCA brand toolkit](#), including:

- A. Any project related website or webpage that includes logos from other funding partners;
- B. Any publication materials that include logos from other funding partners;
- C. Any on-site signage including pre-during Construction signage and permanent signage at completed project sites; and
- D. Any equipment purchased with CCA funding through a generally visible decal.

### **3. COMPENSATION**

COMMERCE shall pay an amount not to exceed \$412,250 for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Work. Contractor's compensation for services rendered shall be in accordance with Attachment A, Scope of Work, and Attachment B, Budget.

#### **EXPENSES**

Contractor shall receive reimbursement for travel and other expenses as identified below or as authorized in advance by COMMERCE as reimbursable. The maximum amount to be paid to the Contractor for authorized expenses shall not exceed \$10,000, which amount is included in the Contract total above.

Such expenses may include airfare (economy or coach class only), other transportation expenses, and lodging and subsistence necessary during periods of required travel. Contractor shall receive compensation for travel expenses at current state travel reimbursement rates.

4. **BILLING PROCEDURES AND PAYMENT (Replaced by Program Specific Terms and Conditions #1 BILLING AND COMPENSATION FOR PERFORMANCE BASED CONTRACT)**

~~COMMERCE will pay Contractor upon acceptance of services provided and receipt of properly completed invoices, which shall be submitted to the Representative for COMMERCE not more often than monthly nor less than quarterly.~~

~~The invoices shall describe and document, to COMMERCE's satisfaction, a description of the work performed, the progress of the project, and fees. The invoice shall include the Contract Number \_\_\_\_\_. If expenses are invoiced, provide a detailed breakdown of each type. A receipt must accompany any single expenses in the amount of \$50.00 or more in order to receive reimbursement. Payment shall be considered timely if made by COMMERCE within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Contractor.~~

~~COMMERCE may, in its sole discretion, terminate the Contract or withhold payments claimed by the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term or condition of this Contract.~~

~~No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by COMMERCE.~~

Invoices and End of Fiscal Year

~~Invoices are due on the 20th of the month following the provision of services.~~

~~Final invoices for a state fiscal year may be due sooner than the 20th and Commerce will provide notification of the end of fiscal year due date.~~

~~The Contractor must invoice for all expenses from the beginning of the contract through June 30, regardless of the contract start and end date.~~

Duplication of Billed Costs

~~The Contractor shall not bill COMMERCE for services performed under this Agreement, and COMMERCE shall not pay the Contractor, if the Contractor is entitled to payment or has been or will be paid by any other source, including grants, for that service.~~

Disallowed Costs

~~The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.~~

~~COMMERCE may, in its sole discretion, withhold ten percent (10%) from each payment until acceptance by COMMERCE of the final report (or completion of the project, etc.).~~

5. **SUBCONTRACTOR DATA COLLECTION**

Contractor will submit reports, in a form and format to be provided by Commerce and at intervals as agreed by the parties, regarding work under this Contract performed by subcontractors and the portion of Contract funds expended for work performed by subcontractors, including but not necessarily limited to minority-owned, woman-owned, and veteran-owned business subcontractors. "Subcontractors" shall mean subcontractors of any tier.

6. **HISTORICAL OR CULTURAL ARTIFACTS**

Prior to approval and disbursement of any funds awarded under this Contract, Contractor shall complete the requirements of Governor's Executive Order 21-02, where applicable, or Contractor shall complete a review under Section 106 of the National Historic Preservation Act, if applicable.

Contractor agrees that the Contractor is legally and financially responsible for compliance with all laws, regulations, and agreements related to the preservation of historical or cultural resources and agrees to hold harmless COMMERCE and the state of Washington in relation to any claim related to such historical or cultural resources discovered, disturbed, or damaged as a result of the project funded by this Contract.

In addition to the requirements set forth in this Contract, Contractor shall, in accordance with Governor's Executive Order 21-02 coordinate with Commerce and the Washington State Department of Archaeology and Historic Preservation ("DAHP"), including any recommended consultation with any affected tribe(s), during Project design and prior to construction to determine the existence of any tribal cultural resources affected by Project. Contractor agrees to avoid, minimize, or mitigate impacts to the cultural resource as a continuing prerequisite to receipt of funds under this Contract.

The Contractor agrees that, unless the Contractor is proceeding under an approved historical and cultural monitoring plan or other memorandum of agreement, if historical or cultural artifacts are discovered during construction, the Contractor shall immediately stop construction and notify the local historical preservation officer and the state's historical preservation officer at DAHP, and the Commerce Representative identified on the Face Sheet. If human remains are uncovered, the Contractor shall report the presence and location of the remains to the coroner and local enforcement immediately, then contact DAHP and the concerned tribe's cultural staff or committee.

The Contractor shall require this provision to be contained in all subcontracts for work or services related to the Scope of Work attached hereto.

In addition to the requirements set forth in this Contract, Contractor agrees to comply with RCW 27.44 regarding Indian Graves and Records; RCW 27.53 regarding Archaeological Sites and Resources; RCW 68.60 regarding Abandoned and Historic Cemeteries and Historic Graves; and WAC 25-48 regarding Archaeological Excavation and Removal Permit.

Completion of the requirements of Section 106 of the National Historic Preservation Act shall substitute for completion of Governor's Executive Order 21-02.

In the event that the Contractor finds it necessary to amend the Scope of Work the Contractor may be required to re-comply with Governor's Executive Order 21-02 or Section 106 of the National Historic Preservation Act.

7. **INSURANCE (Replaced by Program Specific Terms and Conditions #2 INSURANCE)**

~~The Contractor shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the State should there be any claims, suits, actions, costs, damages or expenses arising from any loss, or negligent or intentional act or omission of the Contractor or Subcontractor, or agents of either, while performing under the terms of this Contract. Failure to maintain the required insurance coverage may result in termination of this Contract.~~

~~The insurance required shall be issued by an insurance company authorized to do business within the state of Washington. Except for Professional Liability or Errors and Omissions Insurance, the insurance shall name the state of Washington, its agents, officers, and employees as additional insureds under the insurance policy. All policies shall be primary to any other valid and collectable insurance. The Contractor shall provide COMMERCE thirty (30) calendar days' advance notice of any insurance cancellation, non-renewal or modification.~~

~~The Contractor shall submit to COMMERCE within fifteen (15) calendar days of the Contract start date OR a written request by COMMERCE, a certificate of insurance which outlines the coverage and limits defined in this insurance section. During the term of the Contract, if required or requested, the Contractor shall submit renewal certificates not less than thirty (30) calendar days prior to expiration of each policy required under this section.~~

~~The Contractor shall provide, at COMMERCE's request, copies of insurance instruments or certifications from the insurance issuing agency. The copies or certifications shall show the insurance coverage, the designated beneficiary, who is covered, the amounts, the period of coverage, and that COMMERCE will be provided thirty (30) days' advance written notice of cancellation.~~

~~The Contractor shall provide insurance coverage that shall be maintained in full force and effect during the term of this Contract, as follows:~~

~~**Commercial General Liability Insurance Policy.** Provide a Commercial General Liability Insurance Policy, including contractual liability, written on an occurrence basis, in adequate quantity to protect against legal liability arising out of contract activity but no less than \$1,000,000 per occurrence. Additionally, the Contractor is responsible for ensuring that any Subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.~~

~~**Cyber Liability Insurance.** The Contractor shall maintain Cyber Liability Insurance. The Contractor shall maintain minimum limits of no less than \$1,000,000 per occurrence to cover all activities by the Contractor and licensed staff employed or under contract to the Contractor. The state of Washington, its agents, officers, and employees need not be named as additional insureds under this policy.~~

~~**Automobile Liability.** In the event that performance pursuant to this Contract involves the use of vehicles, owned or operated by the Contractor or its Subcontractor, automobile liability insurance shall be required. The minimum limit for automobile liability is \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.~~

~~**Professional Liability, Errors and Omissions Insurance.** The Contractor shall maintain Professional Liability or Errors and Omissions Insurance. The Contractor shall maintain minimum limits of no less than \$1,000,000 per occurrence to cover all activities by the Contractor and licensed staff employed or under contract to the Contractor. The state of Washington, its agents, officers, and employees need not be named as additional insureds under this policy.~~

~~**Fidelity Insurance.** Every officer, director, employee, or agent who is authorized to act on behalf of the Contractor for the purpose of receiving or depositing funds into program accounts or issuing financial documents, checks, or other instruments of payment for program costs shall be insured to provide protection against loss:~~

- ~~A. The amount of fidelity coverage secured pursuant to this Contract shall be \$100,000 or the highest of planned reimbursement for the Contract period, whichever is lowest. Fidelity insurance secured pursuant to this paragraph shall name COMMERCE as beneficiary.~~
- ~~B. Subcontractors that receive \$10,000 or more per year in funding through this Contract shall secure fidelity insurance as noted above. Fidelity insurance secured by Subcontractors pursuant to this paragraph shall name the Contractor as beneficiary.~~

## 8. **FRAUD AND OTHER LOSS REPORTING**

Contractor shall report in writing all known or suspected fraud or other loss of any funds or other property furnished under this Contract immediately or as soon as practicable to the Commerce Representative identified on the Face Sheet.

## 9. **ORDER OF PRECEDENCE**

In the event of an inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable federal and state of Washington statutes and regulations
- Attachment D – Proviso
- Program Specific Terms and Conditions
- Special Terms and Conditions
- General Terms and Conditions
- Attachment A – Scope of Work

- Attachment B – Budget
- Attachment C – Reporting



## **General Terms and Conditions**

### **1. DEFINITIONS**

As used throughout this Contract, the following terms shall have the meaning set forth below:

- A. "Authorized Representative" shall mean the Director and/or the designee authorized in writing to act on the Director's behalf.
- B. "COMMERCE" shall mean the Washington Department of Commerce.
- C. "Contract" or "Agreement" or "Grant" means the entire written agreement between COMMERCE and the Contractor, including any Exhibits, documents, or materials incorporated by reference. E-mail or Facsimile transmission of a signed copy of this contract shall be the same as delivery of an original.
- D. "Contractor" shall mean the entity identified on the face sheet performing service(s) under this Contract, and shall include all employees and agents of the Contractor.
- E. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).
- F. "State" shall mean the state of Washington.
- G. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this Contract under a separate contract with the Contractor. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.

### **2. ALLOWABLE COSTS**

Costs allowable under this Contract are actual expenditures according to an approved budget up to the maximum amount stated on the Contract Award or Amendment Face Sheet.

### **3. ALL WRITINGS CONTAINED HEREIN**

This Contract contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto.

### **4. AMENDMENTS**

This Contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

### **5. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35**

The Contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

### **6. APPROVAL**

This contract shall be subject to the written approval of COMMERCE's Authorized Representative and shall not be binding until so approved. The contract may be altered, amended, or waived only by a written amendment executed by both parties.

### **7. ASSIGNMENT**

Neither this Contract, nor any claim arising under this Contract, shall be transferred or assigned by the Contractor without prior written consent of COMMERCE.

### **8. ATTORNEYS' FEES**

Unless expressly permitted under another provision of the Contract, in the event of litigation or other action brought to enforce Contract terms, each party agrees to bear its own attorneys' fees and costs.

### **9. CODE REQUIREMENTS**

All construction and rehabilitation projects must satisfy the requirements of applicable local, state, and federal building, mechanical, plumbing, fire, energy and barrier-free codes. Compliance with the Americans with Disabilities Act of 1990 28 C.F.R. Part 35 will be required, as specified by the local building Department.

### **10. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION**

A. "Confidential Information" as used in this section includes:

- i. All material provided to the Contractor by COMMERCE that is designated as "confidential" by COMMERCE;
- ii. All material produced by the Contractor that is designated as "confidential" by COMMERCE; and
- iii. All Personal Information in the possession of the Contractor that may not be disclosed under state or federal law.

B. The Contractor shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Contractor shall use Confidential Information solely for the purposes of this Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of COMMERCE or as may be required by law. The Contractor shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Contractor shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Contract whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The Contractor shall make the changes within the time period specified by COMMERCE. Upon request, the Contractor shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Contractor against unauthorized disclosure.

C. Unauthorized Use or Disclosure. The Contractor shall notify COMMERCE within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

### **11. CONFORMANCE**

If any provision of this contract violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

## 12. CONFLICT OF INTEREST

Contractor must maintain and comply with written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. Contractor must comply with the following minimum requirements:

- A. No employee, officer, or agent may participate in the selection, award, or administration of a contract if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the Contractor may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts and must comply with RCW 39.26.020. However, Contractor may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the Contractor.
- B. If the Contractor has a parent, affiliate, or subsidiary organization that is not a state, local government, or federally recognized tribe, the Contractor must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the Contractor is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

## 13. COPYRIGHT (Replaced by Program Specific Terms and Conditions #4 COPYRIGHT)

~~Unless otherwise provided, all Materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by COMMERCE. COMMERCE shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the Contractor hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to COMMERCE effective from the moment of creation of such Materials.~~

~~"Materials" means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. "Ownership" includes the right to copyright, patent, register and the ability to transfer these rights.~~

~~For Materials that are delivered under the Contract, but that incorporate pre-existing materials not produced under the Contract, the Contractor hereby grants to COMMERCE a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that the Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to COMMERCE.~~

~~The Contractor shall exert all reasonable effort to advise COMMERCE, at the time of delivery of Materials furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Contract. The Contractor shall provide COMMERCE with prompt written notice of each notice or claim of infringement received by the Contractor with respect to any Materials delivered under this Contract. COMMERCE shall have the right to modify or remove any restrictive markings placed upon the Materials by the Contractor.~~

## 14. DISALLOWED COSTS

The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.

## 15. DISPUTES

Except as otherwise provided in this Contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the Director of COMMERCE, who may designate a neutral person to decide the dispute.

The request for a dispute hearing must:

- be in writing;
- state the disputed issues;
- state the relative positions of the parties;
- state the Contractor's name, address, and Contract number; and
- be mailed to the Director and the other party's (respondent's) Contract Representative within three (3) working days after the parties agree that they cannot resolve the dispute.

The respondent shall send a written answer to the requestor's statement to both the Director or the Director's designee and the requestor within five (5) working days.

The Director or designee shall review the written statements and reply in writing to both parties within ten (10) working days. The Director or designee may extend this period if necessary by notifying the parties.

The decision shall not be admissible in any succeeding judicial or quasi-judicial proceeding.

The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this Contract shall be construed to limit the parties' choice of a mutually acceptable alternate dispute resolution (ADR) method in addition to the dispute hearing procedure outlined above.

## 16. DUPLICATE PAYMENT

Contractor certifies that work to be performed under this contract does not duplicate any work to be charged against any other contract, subcontract, or other source.

## 17. GOVERNING LAW AND VENUE

This Contract shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

## 18. INDEMNIFICATION

To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the state of Washington, COMMERCE, agencies of the state and all officials, agents and employees of the state, from and against all claims for injuries or death arising out of or resulting from the performance of the contract. "Claim" as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or the destruction of tangible property including loss of use resulting therefrom.

The Contractor's obligation to indemnify, defend, and hold harmless includes any claim by Contractor's agents, employees, representatives, or any subcontractor or its employees.

The Contractor's obligation shall not include such claims that may be caused by the sole negligence of the State and its agencies, officials, agents, and employees. If the claims or damages are caused by or result from the concurrent negligence of (a) the State, its agents or employees and (b) the Contractor, its subcontractors, agents, or employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Contractor or its subcontractors, agents, or employees.

The Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the state and its agencies, officers, agents or employees.

19. **INDEPENDENT CAPACITY OF THE CONTRACTOR**

The parties intend that an independent contractor relationship will be created by this Contract. The Contractor and its employees or agents performing under this Contract are not employees or agents of the state of Washington or COMMERCE. The Contractor will not hold itself out as or claim to be an officer or employee of COMMERCE or of the state of Washington by reason hereof, nor will the Contractor make any claim of right, privilege or benefit which would accrue to such officer or employee under law. Conduct and control of the work will be solely with the Contractor.

20. **INDUSTRIAL INSURANCE COVERAGE**

The Contractor shall comply with all applicable provisions of Title 51 RCW. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, COMMERCE may collect from the Contractor the full amount payable to the Industrial Insurance Accident Fund. COMMERCE may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by COMMERCE under this Contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Contractor.

21. **LAWS**

The Contractor shall comply with all applicable laws, ordinances, codes, regulations and policies of local, state, and federal governments, as now or hereafter amended.

22. **LICENSING, ACCREDITATION AND REGISTRATION**

The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Contract.

23. **LIMITATION OF AUTHORITY**

Only the Authorized Representative or Authorized Representative's designee by writing (designation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract.

24. **LOCAL PUBLIC TRANSPORTATION COORDINATION**

Where applicable, Contractor shall participate in local public transportation forums and implement strategies designed to ensure access to services.

25. **NONDISCRIMINATION**

A. Nondiscrimination Requirement. During the term of this Agreement, GRANTEE, including any subcontractor, shall not discriminate on the bases enumerated at RCW 49.60.530(3). In addition, GRANTEE, including any subcontractor, shall give written notice of this nondiscrimination requirement to any labor organizations with which GRANTEE, or subcontractor, has a collective bargaining or other agreement.

The funds provided under this Agreement shall not be used to fund religious worship, exercise, or instruction. No person shall be required to participate in any religious worship, exercise, or instruction in order to have access to the facilities funded by this Agreement.

B. Obligation to Cooperate. GRANTEE, including any subcontractor, shall cooperate and comply with any Washington state agency investigation regarding any allegation that GRANTEE, including any subcontractor, has engaged in discrimination prohibited by this Agreement pursuant to RCW 49.60.530(3).

C. Default. Notwithstanding any provision to the contrary, COMMERCE may suspend GRANTEE, including any subcontractor, upon notice of a failure to participate and cooperate with any state agency investigation into alleged discrimination prohibited by this Contract, pursuant to RCW

49.60.530(3). Any such suspension will remain in place until COMMERCE receives notification that GRANTEE, including any subcontractor, is cooperating with the investigating state agency. In the event GRANTEE, or subcontractor, is determined to have engaged in discrimination identified at RCW 49.60.530(3), COMMERCE may terminate this Agreement in whole or in part, and GRANTEE, subcontractor, or both, may be referred for debarment as provided in RCW 39.26.200. GRANTEE or subcontractor may be given a reasonable time in which to cure this noncompliance, including implementing conditions consistent with any court-ordered injunctive relief or settlement agreement.

D. Remedies for Breach. Notwithstanding any provision to the contrary, in the event of Agreement termination or suspension for engaging in discrimination, GRANTEE, subcontractor, or both, shall be liable for contract damages as authorized by law including, but not limited to, any cost difference between the original Grant and the replacement or cover Grant and all administrative costs directly related to the replacement Grant, e.g., cost of the competitive bidding, mailing, advertising and staff time, which damages are distinct from any penalties imposed under Chapter 49.60, RCW. GRANTEE may also be required to repay grant funds pursuant to Section 31 (Recapture) of the General Terms & Conditions if the Agreement is terminated based on a violation of the nondiscrimination requirement. COMMERCE shall have the right to deduct from any monies due to GRANTEE or subcontractor, or that thereafter become due, an amount for damages GRANTEE or subcontractor will owe COMMERCE for default under this provision.

26. **PAY EQUITY**

The Contractor agrees to ensure that "similarly employed" individuals in its workforce are compensated as equals, consistent with the following:

- A. Employees are "similarly employed" if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed;
- B. Contractor may allow differentials in compensation for its workers if the differentials are based in good faith and on any of the following:
  - i. A seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels.
  - ii. A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience that is: Consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential.
  - iii. A bona fide regional difference in compensation level must be: Consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential.

This Contract may be terminated by the Department, if the Department or the Department of Enterprise Services determines that the Contractor is not in compliance with this provision.

27. **POLITICAL ACTIVITIES**

Political activity of Contractor's employees and officers are limited by the State Campaign Finances and Lobbying provisions of Chapter 42.17A RCW and the Federal Hatch Act, 5 USC 1501 - 1508.

No funds may be used for working for or against ballot measures or for or against the candidacy of any person for public office.

28. **PREVAILING WAGE LAW**

The Contractor certifies that all contractors and subcontractors performing work on the Project shall comply with state Prevailing Wages on Public Works, Chapter 39.12 RCW, as applicable to the

Project funded by this contract, including but not limited to the filing of the "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" as required by RCW 39.12.040. The Contractor shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and shall make such records available for COMMERCE's review upon request.

**29. PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION**

The funds provided under this Contract shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such funds or any other approval or concurrence under this Contract provided, however, that reasonable fees or bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

**30. PUBLICITY**

The Contractor agrees not to publish or use any advertising or publicity materials in which the state of Washington or COMMERCE's name is mentioned, or language used from which the connection with the state of Washington's or COMMERCE's name may reasonably be inferred or implied, without the prior written consent of COMMERCE.

**31. RECAPTURE**

In the event that the Contractor fails to perform this Contract in accordance with state laws, federal laws, and/or the provisions of this Contract, COMMERCE reserves the right to recapture funds in an amount to compensate COMMERCE for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by the Contractor of funds under this recapture provision shall occur within the time period specified by COMMERCE. In the alternative, COMMERCE may recapture such funds from payments due under this Contract.

**32. RECORDS MAINTENANCE**

The Contractor shall maintain books, records, documents, data and other evidence relating to this contract and performance of the services described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract.

The Contractor shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the contract, shall be subject at all reasonable times to inspection, review or audit by COMMERCE, personnel duly authorized by COMMERCE, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

**33. REGISTRATION WITH DEPARTMENT OF REVENUE**

If required by law, the Contractor shall complete registration with the Washington State Department of Revenue.

**34. RIGHT OF INSPECTION**

At no additional cost all records relating to the Contractor's performance under this Contract shall be subject at all reasonable times to inspection, review, and audit by COMMERCE, the Office of the State Auditor, and federal and state officials so authorized by law, in order to monitor and evaluate performance, compliance, and quality assurance under this Contract. The Contractor shall provide access to its facilities for this purpose.

**35. SAVINGS**

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to normal completion, COMMERCE may suspend or terminate the Contract under the "Termination for Convenience" clause, without the ten business day notice requirement. In lieu of termination, the Contract may be amended to reflect the new funding limitations and conditions.

**36. SEVERABILITY**

The provisions of this contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the contract.

**37. SUBCONTRACTING (Replaced by Program Specific Terms and Conditions #3 SUBCONTRACTING)**

~~The Contractor may only subcontract work contemplated under this Contract if it obtains the prior written approval of COMMERCE.~~

~~If COMMERCE approves subcontracting, the Contractor shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, COMMERCE in writing may: (a) require the Contractor to amend its subcontracting procedures as they relate to this Contract; (b) prohibit the Contractor from subcontracting with a particular person or entity; or (c) require the Contractor to rescind or amend a subcontract.~~

~~Every subcontract shall bind the Subcontractor to follow all applicable terms of this Contract. The Contractor is responsible to COMMERCE if the Subcontractor fails to comply with any applicable term or condition of this Contract. The Contractor shall appropriately monitor the activities of the Subcontractor to assure fiscal conditions of this Contract. In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to COMMERCE for any breach in the performance of the Contractor's duties.~~

~~Every subcontract shall include a term that COMMERCE and the State of Washington are not liable for claims or damages arising from a Subcontractor's performance of the subcontract.~~

**38. SURVIVAL**

The terms, conditions, and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive.

**39. TAXES**

All payments accrued on account of payroll taxes, unemployment contributions, the Contractor's income or gross receipts, any other taxes, insurance or expenses for the Contractor or its staff shall be the sole responsibility of the Contractor.

**40. TERMINATION FOR CAUSE**

In the event COMMERCE determines the Contractor has failed to comply with the conditions of this contract in a timely manner, COMMERCE has the right to suspend or terminate this contract. Before suspending or terminating the contract, COMMERCE shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days, the contract may be terminated or suspended.

In the event of termination or suspension, the Contractor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

COMMERCE reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged

compliance breach and pending corrective action by the Contractor or a decision by COMMERCE to terminate the contract. A termination shall be deemed a "Termination for Convenience" if it is determined that the Contractor: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence.

The rights and remedies of COMMERCE provided in this contract are not exclusive and are, in addition to any other rights and remedies, provided by law.

#### 41. TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Contract, COMMERCE may, by ten (10) business days' written notice, beginning on the second day after the mailing, terminate this Contract, in whole or in part. If this Contract is so terminated, COMMERCE shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination.

#### 42. TERMINATION PROCEDURES (Replaced by Program Specific Terms and Conditions #5 TERMINATION PROCEDURES)

Upon termination of this contract, COMMERCE, in addition to any other rights provided in this contract, may require the Contractor to deliver to COMMERCE any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

COMMERCE shall pay to the Contractor the agreed-upon price, if separately stated, for completed work and services accepted by COMMERCE, and the amount agreed upon by the Contractor and COMMERCE for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by COMMERCE, and (iv) the protection and preservation of property, unless the termination is for default, in which case the Authorized Representative shall determine the extent of the liability of COMMERCE. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. COMMERCE may withhold from any amounts due the Contractor such sum as the Authorized Representative determines to be necessary to protect COMMERCE against potential loss or liability.

The rights and remedies of COMMERCE provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the Authorized Representative, the Contractor shall:

- A. Stop work under the contract on the date, and to the extent specified, in the notice;
- B. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;
- C. Assign to COMMERCE, in the manner, at the times, and to the extent directed by the Authorized Representative, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case COMMERCE has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- D. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Authorized Representative to the extent the Authorized Representative may require, which approval or ratification shall be final for all the purposes of this clause;
- E. Transfer title to COMMERCE and deliver in the manner, at the times, and to the extent directed by the Authorized Representative any property which, if the contract had been completed, would have been required to be furnished to COMMERCE;
- F. Complete performance of such part of the work as shall not have been terminated by the Authorized Representative; and

- G. Take such action as may be necessary, or as the Authorized Representative may direct, for the protection and preservation of the property related to this contract, which is in the possession of the Contractor and in which COMMERCE has or may acquire an interest.

#### 43. TREATMENT OF ASSETS (Replaced by Program Specific Terms and Conditions #6 TREATMENT OF ASSETS)

Title to all property furnished by COMMERCE shall remain in COMMERCE. Title to all property furnished by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in COMMERCE upon delivery of such property by the Contractor. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in COMMERCE upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by COMMERCE in whole or in part, whichever first occurs.

- A. Any property of COMMERCE furnished to the Contractor shall, unless otherwise provided herein or approved by COMMERCE, be used only for the performance of this contract.
- B. The Contractor shall be responsible for any loss or damage to property of COMMERCE that results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.
- C. If any COMMERCE property is lost, destroyed or damaged, the Contractor shall immediately notify COMMERCE and shall take all reasonable steps to protect the property from further damage.
- D. The Contractor shall surrender to COMMERCE all property of COMMERCE prior to settlement upon completion, termination or cancellation of this contract.
- E. All reference to the Contractor under this clause shall also include Contractor's employees, agents or Subcontractors.

#### 44. WAIVER

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing and signed by Authorized Representative of COMMERCE.

### **Attachment A: Scope of Work**

Organization Legal Name: Tacoma Public Utilities

Project Name: Power Grid: Virtual Power Plant Feasibility Study

Site Address: 3628 S 35th St, Tacoma, WA 98409

Serving electric utility: Tacoma Power

Grant Amount: \$412,250

#### **Purpose:**

This agreement is one (1) of two (2) contracts signed and executed under this appropriation. The other is agreement #25-92601-162, "Power Grid: Autonomous Reclosers".

This funding will also allow Tacoma Power to perform a feasibility study on deploying a Virtual Power Plant in our service area. A VPP is a network of decentralized, medium-scale power-generating units, flexible power consumers, and storage systems controlled by a utility operator. VPPs can be used to meet energy needs locally, minimize the need to upgrade infrastructure, and are critical for future decarbonization efforts. Tacoma Power plans to use grant funding to retain a consultant to perform this feasibility study. The study will inform future Tacoma Power investments in a VPP as appropriate.

**Objective:** Investigate the value and applicability of a VPP for Tacoma Power's system.

**Work to be completed:** (Align 1:1 with budget milestones, deliverables and deliverable descriptions)

Milestones	Deliverables	Deliverable Description (Work to be completed)	Expected Completion
<b>A: Planning</b>	Draft solicitation for Consultant	Solicitation	July 2025
<b>A: Contracting</b>	Consultant Selection	Select Consultant to perform Study	September 2025
	Execute Contract with Consultant	Contract executed with consultant to perform VPP Feasibility Study	
<b>B: Final Documentation</b>	Draft Report	Consultant submits draft feasibility study for review	June 2026
	Final Report	Tacoma Power approves final report from consultant	

### **Attachment B: Budget**

All funding is subject to continued legislative authorization and re-appropriation where applicable.

Milestone	Deliverable(s)	Deliverable Verification	Expected Completion Date	Percent of Grant	\$ Amount of grant
<b>A: Contracting and Planning</b>			June-'25	47.1%	\$194,000
	VPP Feasibility Study: Consultant Selection	Selection process documents, notification of winning bidder			
	VPP Feasibility Study: Execute Contract with Consultant	Copy of the Contract			
<b>C: Final Documentation</b>			June-'26	52.9%	\$218,250
	VPP Feasibility Study: Draft Report	Draft feasibility report			
	VPP Feasibility Study: Final Report	Final feasibility report			
	Narrative	Communicate the project narrative with a Fact Sheet based on the Commerce-provided template and at least one other mode of story-telling			
<b>Total</b>				<b>100.0%</b>	<b>\$412,250</b>
<b>TOTAL AWARD AMOUNT:</b>					<b>\$412,250.00</b>

## Attachment C: Reporting

The Contractor must provide quarterly written reports and/or host a regular quarterly video and/or phone call with COMMERCE for project update purposes. Phone contact should cover current status of the project and any barriers that are potentially affecting the project schedule.

The Contractor shall provide a quarterly report to COMMERCE, no later than 15 days after the end of each quarter. The template report form will be provided by Commerce. The report should describe the project activity that occurred during the quarter, including but not limited to:

- A narrative summarizing project activities, risks and issues mitigated, and lessons learned;
- The project milestones met to date and anticipated in the subsequent quarter (such as through a project Gantt Chart schedule provided quarterly showing actual progress to date along with the baseline schedule developed at project kickoff etc.); and,
- Any additional metrics required from the capital budget proviso, legislature, governor's office, or COMMERCE.
- Quarterly updated invoice projection sheet for grant expenditures. Commerce will provide the invoice projection sheet;

A final report and fact sheet will be submitted to Commerce. Commerce will provide the fact sheet template and may request the fact sheet be updated as conditions warrant.

### **Quarterly Reports Submission Deadlines**

Quarter 1	April 15
Quarter 2	July 15
Quarter 3	October 15
Quarter 4	January 15

## Attachment D: Proviso

NEW SECTION. Sec. 1035. FOR THE DEPARTMENT OF COMMERCE

Sec. 1025. 2023 c 474 s 1035 (uncodified) is amended to read as follows:  
Local Emission Reduction Projects (91002184)

The appropriations in this section are subject to the following conditions and limitations:

(1) The appropriations in this section are provided solely for the following list of projects:

16	Tacoma Power Grid	\$ 2,875,000
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(2) The department may not expend funding for a project in this section unless and until the nonstate share of that project's costs have been either expended or firmly committed, or both, in an amount sufficient to complete the project or a distinct phase of the project. This requirement does not apply to projects where a share of the appropriation is for design costs only.

(3) Prior to receiving funding, grant recipients must demonstrate that the project site is under control for a minimum of 10 years, either through ownership or a long-term lease. This requirement does not apply to grants for preconstruction activities or grants in which the sole purpose is to purchase real property that does not include a construction or renovation component.

(4) In contracts for grants authorized under this section, the department must include provisions that require that capital improvements be held by the grantee for a specified period of time appropriate to the amount of the grant and that facilities be used for the express purpose of the grant. If the department finds the grantee to be out of compliance with provisions of the contract, the grantee shall repay to the state general fund the principal amount of the grant plus interest calculated at the rate of interest on state of Washington general obligation bonds issued most closely to the date of authorization of the grant.

5)(a) This section takes effect January 1, 2025. (b) If the climate commitment account or the natural climate solutions account is repealed as of December 30, 2024, then this section is null and void on December 31, 2024.

Up to three percent of the appropriation in this section is for the department to administer the grant program.