



## RESOLUTION NO. U-11592

1 A RESOLUTION related to the Department of Public Utilities, Light Division;  
2 authorizing the execution of a utility installation agreement with the  
Washington Department of Social and Health Services.

3 WHEREAS the Department of Public Utilities, Light Division (d/b/a  
4 “Tacoma Power”) seeks authorization execute a utility installation agreement  
5 with the Washington Department of Social and Health Services (“DSHS”) to  
6 perform the engineering design and construction for electric utility upgrades  
7 necessary to serve the new forensic hospital on the Western State Hospital  
8 Campus in the City of Lakewood, WA (the “Hospital”), and  
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10 WHEREAS DSHS is constructing an expansion to the Hospital that  
11 includes 350 beds to care for forensic patients, and  
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13 WHEREAS the total facility load will be approximately 7.8 MW, most of  
14 which will be served by the Hospital’s new on-site solar generation, and  
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16 WHEREAS the new facility represents approximately 3.2 MW of new  
17 load on Tacoma Power’s distribution system, requiring upgrades, and  
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19 WHEREAS supporting this additional load involves upsizing the  
20 distribution lines serving the Hospital, and  
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22 WHEREAS due to the size of the Hospital’s onsite generation, the  
23 project scope includes upgrading relays at two existing substations to allow for  
24 remote shut-off of circuit breakers in response to fault conditions and installing  
25 recloser switches at the points of interconnection, thereby protecting Tacoma  
26 Power’s equipment and maintaining system stability, and



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WHEREAS the proposed installation is a customer-funded project in the amount of \$2,089,947; Now, Therefore,

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

That Tacoma Power’s request to execute a utility installation agreement with Washington State Department of Social and Health Services, for the engineering design and construction for electric utility upgrades to serve the Western State Hospital Campus, as described in the backup materials on file with the Clerk of the Board, in an amount not to exceed \$2,089,947, to be funded by the customer in advance of construction, is hereby approved, with administrative authority authorized by the Director, per TMC 1.06.269 A, to amend contracts up to \$500,000, including term extension and contract renewals, and the proper officers of the City are authorized to execute said agreement substantially in the form as on file with the Clerk of the of Board and as approved by the City Attorney’s Office.

Approved as to form:

_____	_____
/s/	Chair
Chief Deputy City Attorney	Secretary
_____	Adopted _____
Clerk	



## Board Action Memorandum

**TO:** Jackie Flowers, Director of Utilities  
**COPY:** Charleen Jacobs, Director and Board Offices  
**FROM:** Tosha Siebert, Transmission & Distribution Section Manager  
**MEETING DATE:** March 11, 2026  
**DATE:** February 19, 2026

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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.

- Customer and Community
- Resource Sustainability and Stewardship
- Employees and Culture

**SUMMARY:** Tacoma Power seeks authorization to enter into a Utility Installation Agreement with Washington State Department of Social and Health Services (DSHS). This agreement will allow Tacoma Power to perform the engineering design and construction for electric utility upgrades necessary to serve the new forensic hospital on the Western State Hospital (WSH) Campus in the City of Lakewood, WA. The cost is estimated to be \$2,089,947, which will be paid for by DSHS.

**BACKGROUND:** DSHS is constructing an expansion to WSH with 350 beds to care for forensic patients. The total facility load will be approximately 7.8 MW, most of which will be served by WSH's new on-site solar generation. The new facility represents approximately 3.2 MW of new load on Tacoma Power's distribution system, requiring upgrades. Supporting this additional load involves upsizing the distribution lines serving WSH. Due to the size of WSH's onsite generation, the project scope includes upgrading relays at two existing substations to allow for remote shut off of circuit breakers in response to fault conditions and installing recloser switches at the points of interconnection, thereby protecting Tacoma Power's equipment and maintaining system stability.

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

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

All direct costs associated with this contract will be paid in advance by DSHS in its entirety. Any unused deposit will be refunded.

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

**ATTACHMENTS:** Western State New Forensic Hospital Utility Installation Agreement

### **CONTACT:**

Primary Contact: Jessica Cho; Project Manager; (253) 981-2376

Supervisor's Name: Ali Polda; Projects & Standards, Manager; (206) 502-8124

**UTILITY INSTALLATION AGREEMENT (Customer Funded)**  
~Western State New Forensic Hospital~

This **UTILITY INSTALLATION AGREEMENT** ("Agreement") with an effective date as of March \_\_\_\_, 2026 ("**Effective Date**") is made by and between **Washington State Department of Social and Health Services**, a department of Washington State government, (hereinafter referred to as "DSHS"), and the **City of Tacoma, Department of Public Utilities, Light Division**, a municipal corporation of the State of Washington, (hereinafter referred to as "**Tacoma Power**" and/or "**City**"). DSHS and Tacoma Power each may be referred to as a "Party," or collectively as the "Parties".

**RECITALS:**

**WHEREAS**, DSHS is expanding Western State Hospital by constructing a new forensic hospital (the "**Facility**") and adding on-site solar generation on property it owns and operates in the City of Lakewood ("**Western State New Forensic Hospital Project**");

**WHEREAS**, the added Facility load will be approximately 7.8 MW, to be served by approximately 6 MW of on-site solar generation;

**WHEREAS**, DSHS has requested Tacoma Power provide approximately 3.2 MW to serve the net increase in connected electrical load for Western State New Forensic Hospital Project;

**WHEREAS**, Tacoma Power has completed a System Impact Study dated July 3, 2025 (the "**Impact Study**") and determined modifications to distribution line and to protection and controls are required for the interconnection;

**WHEREAS**, Tacoma Power is authorized under Washington law to engage in the production, acquisition, transmission, distribution, and sale of electric power;

**WHEREAS**, DSHS wishes to energize its new facility by connecting to Tacoma Power's electrical system in addition to on-site solar generation, and has requested Tacoma Power perform utility installation work and related services as necessary to do so. Tacoma Power is prepared to perform said utility installation work and related services, provided that all new and modified facilities required for such new electrical service are designed, constructed, and completed as set forth in this Agreement;

**WHEREAS**, the Western State New Forensic Hospital Project necessitates upgrades to existing 12.5 kV distribution lines, upgrades to the current electromechanical relays at Custer and McNeil substations, and installation of one recloser at each of the primary service points located within the Western State Hospital Campus "**Project Area**" (as further defined in Article 1.3 k. below). All such installation and construction work, together with related design engineering and inspection services to meet applicable safety and

operating requirements, is collectively referred to herein as the "**Tacoma Power Work**" (as further defined in Article 1.3 h. below) and in the Exhibits to this Agreement;

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

**WHEREAS**, DSHS will be solely responsible for, and pay, all developmental costs to complete the Western State New Forensic Hospital Project including, but not limited to, all time and materials costs incurred by Tacoma Power to perform the Tacoma Power Work and further design and inspection services related to the DSHS Work as specified in and pursuant to this Agreement. Such costs specifically include "**Direct Costs**" (as defined in Article 1.3 a. below) and may include further costs for Additional Work per Article 2.4 and/or Extra Work per Article 4. Notwithstanding the foregoing, it is understood and agreed that Tacoma Power will own and operate all resulting electric supply system facilities unless expressly noted otherwise herein.

**AGREEMENT:**

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

**1 ARTICLE 1 – SCOPE**

**1.1 Purpose and Intent.**

The purpose of this Utility Installation Agreement is to set forth the terms and conditions pursuant to which the Parties will cooperatively undertake, at DSHS's sole expense, all electric utility work and associated equipment and materials needed for the Western State New Forensic Hospital Project and as necessary to meet applicable safety and operating requirements. It is intended that Tacoma Power will perform work and provide equipment and materials, as specified herein and in the Design Documents attached hereto, including the design, installation, relocation or conversion, construction and inspection work related to: existing overhead and underground electric power facilities as necessary to provide a power supply system for the Western State New Forensic Hospital Project. It is intended that DSHS, by and through the DSHS Contractor, will perform work and provide equipment and materials, as specified herein and per the Design Documents attached hereto, including (i) the underground utility structure construction and

related management activities necessary for the installation of underground vaults and conduits for the revised electrical distribution system to and within the Western State New Forensic Hospital Project, and (ii) all other Western State Hospital Campus – Project work, equipment, materials, and design and/or inspection coordination not specified to be performed or provided by Tacoma Power.

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

- Upgrading the existing 12.5 kV overhead and underground distribution system serving Western State Hospital Campus to increase capacity for the proposed load.
- Upgrading the existing electromechanical relays at Custer and McNeil substations which serve Western State Hospital Campus infrastructure.
- Installation of a recloser at each primary service point.
- Payment of all procurement and developmental costs incurred and required to accomplish the foregoing.

## 1.2 Incorporation of Recitals.

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

## 1.3 Definitions.

- a. "Direct Costs" shall mean and include all costs and expenses incurred by Tacoma Power directly related to the Western State New Forensic Hospital Project as provided under this Agreement and shall include, without limitation,
- i. All costs and expenses of materials, equipment, supplies, utilities, consumables, goods and other items used or incorporated in connection with and in furtherance of this Agreement and any taxes, insurance, and interest expenses related thereto, including activity pricing for inspection, engineering, crews and equipment and the City's Utilities Gross Earnings Tax;
  - ii. All labor costs and expenses incurred to date and pursuant to this Agreement for the design, inspection, and construction activities and/or tasks designated to be performed by Tacoma Power hereunder. Such costs are inclusive of payroll benefits and overhead for applicable labor classifications.

iii. All costs and expenses incurred to date and during performance of this Agreement for any work performed by City consultants or contractors that pertains to the Western State New Forensic Hospital Project and as necessary to undertake and complete the Tacoma Power Work under this Agreement.

b. "Design Document(s)" means the plans and specifications for the Western State New Forensic Hospital Project as prepared by Tacoma Power in coordination with DSHS and/or the DSHS Contractor pursuant to this Agreement, which include the (i) specifications, standards, and requirements applicable to the DSHS Work, and (ii) specifications, plans, drawings, and sketches applicable to the Tacoma Power Work.

- i. These Design Documents must be sufficiently developed and agreed upon by the parties PRIOR to contract execution.
- ii. At this time, the attached Exhibit A and Exhibit B are still in PRELIMINARY DRAFT form.
- iii. DSHS and its Contractor must promptly review, comment and/or supplement the attached draft of Exhibit A to ensure the updated version attached at the time the contract is executed will be sufficient to serve as the Design Document contemplated by this definition.
- iv. Sufficient Design Documents at time of contract execution will promote accuracy of the Preliminary Cost Estimate specified in Exhibit C and in Section 3.1.

c. "Field Representative(s)" means the person(s) identified by Tacoma Power as having inspection authority or whom direct Tacoma Power's field forces for construction activity.

d. "Inspection Work" means all labor, equipment and materials necessary for Tacoma Power to monitor the DSHS Work to ensure conformance with the Design Documents. Duties of this Inspection Work, which will be performed by Tacoma Power's designated Field Representative, include:

- monitoring of electrical conduit duct and vault system construction,
- approving or rejecting materials for conformance with Design Documents through the Resident Engineer,
- rejecting work not in conformance with the Design Documents through the Resident Engineer,

- confirming proofing tests for new electrical conduit duct and vault system,
  - verifying the DSHS Work is conducted in accordance with the NESC and Tacoma Power T&D Construction Standards,
  - coordinating power outages,
  - generating punch lists ahead of final acceptance, and
  - recording as-built information.
- e. "Project Manager" means the respective persons designated by the Parties in Section 5.3 herein to be the point of contact for design and contract changes and/or updates.
- f. "DSHS Work" for purposes of this Agreement shall mean the underground utility structure installation work for which DSHS is responsible hereunder and generally includes all site preparation, surveying, excavation, inspection coordination, and construction work necessary to fully and properly install conduit per the Design Documents, together with all costs and expenses required and/or incurred in connection therewith. Such work includes all construction and administrative activities related to and in any way connected with the electrical work performed by the DSHS Contractor and otherwise necessary to successfully complete the Western State Hospital Project.

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

- g. "Resident Engineer" means the representative designated by DSHS after notice to proceed who will be the point of contact regarding all Western State Hospital Project related construction under this Agreement.
- h. "Tacoma Power Work" means all labor, materials, equipment, services, supplies, overheads, applicable taxes and all other items necessary to modify and reconnect the power systems and facilities to accommodate the Western State Hospital Project all as further described and set forth in the Tacoma Power Work Sketches. For purposes of this Agreement, the "Tacoma Power Work Sketches" mean all Tacoma Power prepared documents and drawings to be utilized by Tacoma Power to perform its work.

- i. "The City" is used interchangeably with "Tacoma Power" in this document.
- j. "DSHS Contractor" means the Consultant, General Contractor, and/or Electrical Contractor designated by DSHS to prosecute the Western State Hospital Project and to perform the DSHS Work hereunder for and on behalf of DSHS
- **NOTE:** All references to the "DSHS Contractor" herein shall expressly include and refer to any and all subcontractors acting by and through the DSHS Contractor. Notwithstanding any separate contract executed by DSHS with the DSHS Contractor that may pertain to the Western State New Forensic Hospital Project, DSHS shall be and remain fully bound and responsible hereunder for the proper performance of the DSHS Work, the completion of the Western State Hospital Project, and the payment of all costs and expense provided for hereunder, all in accordance with the terms and conditions of this Agreement.
- k. "Project Area" means all lands, public and private, where Western State New Forensic Hospital Project electrical work will be performed and includes all areas identified, described or delineated in the Design Documents (**Exhibits A and B**).

## 2 ARTICLE 2 – RESPECTIVE PROJECT OBLIGATIONS

### 2.1 City Obligations.

- 2.1.1 Design & Work:** Tacoma Power will provide all Design Documents, Inspection Work, and defined Tacoma Power Work noted in the Design Documents. The preparation of Design Documents, Inspection Work, and Tacoma Power Work shall be performed by Tacoma Power per the design requirements set forth in Tacoma Power's T&D Construction Standards and in the National Electrical Safety Code (NESC). City Inspection Work will be provided as scheduled or required during DSHS and/or the DSHS Contractor's prosecution of the DSHS Work. It is expressly understood that by performing the Inspection Work Tacoma Power shall not be deemed to have any direct control over the Western State Hospital Project and/or DSHS Work or to have assumed any duties or liabilities for the full, proper, and lawful prosecution of the Western State Hospital Project and/or DSHS Work; all of which is and shall remain at all times the sole responsibility of DSHS. All Tacoma Power communications regarding inspection, acceptance, approval, rejection or modification of the DSHS Work will be addressed to the DSHS Resident Engineer, or Project Manager.
- 2.1.2 Inspection Work:** Tacoma Power agrees to provide Inspection of DSHS Contractor's work during the performance of the DSHS Work including, but not limited to, installation of the vaults and ducts. Such Inspection Work shall be for the exclusive purpose of confirming said performance complies with

the Design Documents including, but not limited to, the agreed upon drawings and Tacoma Power standards therein. DSHS's Resident Engineer is to schedule the Inspection Work in such manner as not to unreasonably delay or interfere with DSHS Contractor performance of the DSHS Work; Provided, that Tacoma Power shall not be responsible for any costs or claims based on delay attributable to DSHS Contractor and/or their sub-contractor(s).

**2.1.3 Coordination of Service Modifications:** Certain electrical facility modifications and installations are required and may be impacted by labor, equipment procurement, and/or temporary outage scheduling. Tacoma Power's Project Manager will notify DSHS Contractor to coordinate any necessary service outages, cut-overs, and metering energization. Notwithstanding such notice, the DSHS Contractor shall remain primarily responsible for timely coordination of all Western State Hospital Project utility installation work.

**2.1.4 Temporary Outages and New Service Coordination:** Subject to Section 2.1.3, Tacoma Power will coordinate all temporary outages with its customers if and when required to perform and complete the Tacoma Power Work. It is understood and agreed that the Tacoma Power Work involves installation of infrastructure capable of accommodating new and/or increased electrical services to the Western State Hospital Project and that energization of such new services will be coordinated by and with the DSHS Contractor.

**2.1.5 Additional Work:** Except as specifically set forth in this Agreement and/or in the Exhibits attached hereto, any additional utility installation work necessary to accommodate the multitude of construction activities involved in the Western State Hospital Project shall be subject to additional design, labor, equipment, services, materials and supplies costs. DSHS Contractors shall be responsible for the timely request and coordination of all such additional work. Requests for additional work shall be submitted to Tacoma Power's Project Manager and processed as a change order. The cost of such additional work shall be in addition to the amounts set forth in the **Preliminary Cost Estimate**, (which is attached hereto as **Exhibit C** and fully incorporated herein by this reference) and DSHS shall be solely responsible for, and shall pay, such cost to Tacoma Power.

## 2.2 DSHS Obligations.

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

to the DSHS Contractor.

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

**2.2.3 Property Rights:** No property rights are anticipated for the Western State New Forensic Hospital Project. However, if property rights are determined necessary, DSHS shall obtain and furnish, at no cost to Tacoma Power, any access, licenses, easements and/or rights of way upon, over, under and across lands comprising the Western State New Forensic Hospital Project as necessary for Tacoma Power to perform and complete the Tacoma Power Work, and shall at all reasonable times provide Tacoma Power and/or its employees, representatives, agents and/or contractors free access to such lands.

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

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

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

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

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

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

At the conclusion of the Western State New Forensic Hospital Project, DSHS shall perform and complete surveying work, and prepare as-built documentation and drawings based thereon, for all Western State New Forensic Hospital Project electrical facilities and utility installations as necessary to (i) identify and establish easements and other property access rights granted to Tacoma Power hereunder, and (ii) enable Tacoma Power to obtain further formal easement or property access rights as set forth in Section 2.2.3 above. Such surveying, documentation, and drawings shall include, but not be limited to, all conduits, vaults, cabling, pad mounted equipment, and SSB equipment installations.

**2.2.7 Clearing & Grubbing:** DSHS Contractor shall provide and perform all required clearing and grubbing requested in writing by Tacoma Power as necessary to allow complete performance of the Tacoma Power Work. Clearing and grubbing shall be done in a timely manner as to not unreasonably delay or interfere with the Tacoma Power Work.

**2.2.8 Electrical Service Cancellations:** DSHS Contractor shall timely submit to Tacoma Power service cancellation requests for all service property located within the Western State Hospital Project Area and/or impacted by the Western State Hospital Project so as not to unreasonably delay or interfere

with the Tacoma Power Work. For service properties not owned or controlled by DSHS, DSHS will contact service customers and coordinate service cancellation requests by the customer as necessary to ensure that all required service cancellation requests are timely received by Tacoma Power to avoid delay of the Tacoma Power Work.

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

### 2.3 SCHEDULE OF WORK.

#### 2.3.1 Schedule for Western State New Forensic Hospital Project, DSHS Work and/or Tacoma Power's Work

Prior to commencement of any DSHS Work or any work on the Western State New Forensic Hospital Project that may impact the Tacoma Power Work, DSHS shall provide to Tacoma Power the DSHS Contractor's proposed schedule(s) for the completion of the DSHS Work and other Western State New Forensic Hospital Project work that may impact or be dependent upon the Tacoma Power Work.

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

- Tacoma Power estimates 17 months of work for its forces.
- For scheduling purposes, this work is expected to be on a straight time basis.
- Weather conditions may impede this work plan.
- Emergency operations will take precedence on Tacoma Power's work force commitments.
- Tacoma Power's work schedule and priorities will be developed in coordination with the DSHS Project Manager.
- Permits must be obtained by the DSHS Contractor before setting the Schedule of Work.

B. DSHS Contractor will administer its construction work and activities in

accordance with the agreed upon Schedule of Work and timely notify Tacoma Power of any scheduling changes related to the Western State New Forensic Hospital Project that are expected to materially impact the DSHS Work and/or Tacoma Power's Work. DSHS's Resident Engineer shall coordinate with Tacoma Power's Project Manager as necessary to avoid delays to DSHS Contractor performance.

C. Following commencement of the DSHS Work, Tacoma Power shall timely notify DSHS Project Engineer in writing of any changes in the schedule of Tacoma Power Work that are expected to impact the DSHS Work, and DSHS Contractor shall exercise good faith efforts to incorporate such changes into its construction schedules to minimize any delay or adverse impacts.

2.3.2 The Schedule of Work shall incorporate the Construction Tasks to be performed by DSHS Contractor for Tacoma Power, which will include work on existing and new underground facilities as described in **Exhibit A** and **B**, in order to maintain continuous electrical service to Tacoma Power customers and/or avoid delay to Tacoma Power Work.

#### 2.4 Changes to Design Documents.

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

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

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

### 3 ARTICLE 3 – PAYMENT OBLIGATIONS OF DSHS

#### 3.1 Payment.

DSHS agrees that it shall be responsible for payment of all of the City's actual Direct Costs, as defined herein, related or attributable to the Western State New Forensic Hospital Project. DSHS's payment obligation for Tacoma Power's design, Inspection Work, and Tacoma Power Work to be performed hereunder is estimated at **\$2,089,947.00**, as more fully described in the **Preliminary Cost Estimate (Exhibit C)**. The Preliminary Cost Estimate set forth in **Exhibit C** may be modified based on (i) the procedures for changes to the Design Documents and/or adjustment of costs as provided in Section 2.4, or (ii) **Article 4** of this Agreement. Said payment obligation is based on a preliminary estimate of the cost for Tacoma Power design, Inspection Work, and Tacoma Power Work to be performed hereunder and reflects the Parties' best estimates of the Direct Costs that may be incurred by Tacoma Power under this Agreement. Actual payments required under this Agreement shall be based on actual work performed and materials provided under this Agreement. In the event it is determined that the scope of work for which Tacoma Power is responsible hereunder has been accomplished for a lesser amount than identified in this Agreement, DSHS shall only pay for actual Direct Costs.

#### 3.2 Invoices & Deposits.

Upon mutual execution of this Agreement, Tacoma Power shall provide an invoice to DSHS (c/o Accounts Payable) and DSHS shall tender an Initial Payment to Tacoma Power in the total amount of **\$2,089,947.00** for the estimated design engineering and equipment deposits. Subject to the terms and conditions of this Agreement, DSHS shall, within thirty (30) days of receipt of any further invoices, reimburse Tacoma Power for any Direct Costs incurred in excess of said Preliminary Cost Estimate. It is agreed that Tacoma Power will not begin actual construction activities associated with the Tacoma Power Work until the Initial Payment has been paid and Tacoma Power may cease performance hereunder if any invoiced amount is not paid within thirty (30) days following issuance.

#### 3.3 Records.

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

#### 3.4 Invoice Mailing Address.

Invoices shall be mailed to:

Department of Social and Health Services  
Office of Capital Programs

Attn: Seth Fisher / OCP Fiscal Unit  
1115 S. Washington St.  
Mail Stop:45848  
Olympia, Washington 98504-5848

### 3.5 Payment.

Except for the Initial Payment, which will be invoiced and is due upon execution of this Agreement, DSHS shall fully pay each invoice submitted by the City within 30 calendar days of receipt of the invoice. Checks shall be made payable to the Treasurer, City of Tacoma and shall be mailed to:

City of Tacoma  
Department of Public Utilities, Power Division  
T&D Business & Financial Management  
3628 South 35<sup>th</sup> Street  
Tacoma, WA 98409-3192  
Reference: W/O# TBD

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

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

### 3.6 Contested Charges.

DSHS may contest a charge for any Tacoma Power Work detailed in an invoice within 30 days of receipt of such invoice by providing written notice to Tacoma Power specifying the charges and/or documentation in dispute. Upon receipt of such notice, Tacoma Power will investigate items contested and make appropriate amendments to the invoice, if necessary. If warranted, Tacoma Power will arrange a meeting between the Parties to discuss DSHS concerns as specified in its written notice. The Parties shall attempt to resolve all disputes within 30 days of the date of notice of a contested invoice. At or before the end of said period, DSHS shall submit any outstanding items to Dispute Resolution as provided in **Article 8**.

It is further agreed that at the time of a final audit, all required adjustments will be made and reflected in a final payment. Interest shall not accrue on the contested part of any billing until mutually resolved. DSHS will not unreasonably contest any bill.

### 3.7 Refund.

At the end of the Western State New Forensic Hospital Project, the actual Direct Costs incurred by Tacoma Power will be compared with the estimated costs. If an overpayment to Tacoma Power exists, then a refund will be made to DSHS within 60 days.

### 3.8 Audit.

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

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

## 4 ARTICLE 4 – EXTRA WORK

In the event either Party identifies additional work, other than additional work due to unforeseen conditions, that require an increase over the Preliminary Cost Estimate for the Tacoma Power Work as set forth in **Exhibit C**, the Party asserting such additional work will provide written notice thereof to the other Party. The Parties agree to negotiate in good faith to modify this Agreement to authorize any increased payment resulting from such additional work. For additional costs due to unforeseen conditions, DSHS shall be responsible for and pay such costs.

Actual or proposed cost increases of less than \$10,000.00 (ten thousand dollars) over the amount set forth in **Exhibit C** will not require formal approval by DSHS to

be chargeable by, and paid to, the City. Any necessary authorization(s) for payment shall be processed in a timely manner to avoid delaying work by Tacoma Power and/or the DSHS Contractor.

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

## 5 ARTICLE 5 – PROJECT ADMINISTRATION AND REPRESENTATIVES

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

### 5.2 Permits.

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

### 5.3 Administration.

The following designated Project Managers shall be responsible for administering the joint and cooperative undertaking of the Western State New Forensic Hospital Project as described herein:

5.3.1 Tacoma Power's Project Manager shall be **Jessica Cho**. All Western State New Forensic Hospital Project related work, including correspondence with Tacoma Power, review and approval of changes to Design Documents, scheduling, participation, and other activities related to the DSHS Work and the Tacoma Power Work shall be coordinated through said Project Manager.

Jessica Cho, Project Manager  
Tacoma Power

3628 South 35<sup>th</sup> Street  
Tacoma, WA 98409-3192  
Mobile: (253) 281-9376 / Office: (253) 502-8122  
[JCho@Tacoma.gov](mailto:JCho@Tacoma.gov)

5.3.2 DSHS's Project Manager shall be **Seth Fisher**. All Western State New Forensic Hospital Project related work including, but not limited to, DSHS Work and Tacoma Power Work correspondence with DSHS regarding the administration of this Agreement shall be coordinated through said Project Manager. The issuance of approved changes to the Design Documents will be handled by the DSHS Project Manager before Notice to Proceed is issued.

Seth Fisher, Construction Project Coordinator  
Washington State Department of Social and Health Services  
Office of Capital Programs  
1115 S. Washington St.  
Mail Stop:45848  
Olympia, Washington 98504-5848  
Phone: (564) 669-3665  
[Seth.Fisher@dshs.wa.gov](mailto:Seth.Fisher@dshs.wa.gov)

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

### 5.4 Field Representatives.

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

5.4.2 DSHS Resident Engineer. DSHS designates as its Resident Engineer the following: TBD

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

### 5.5 Notices.

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

**To Tacoma Power:**

Jessica Cho, Project Manager  
Tacoma Power  
3628 South 35<sup>th</sup> Street  
Tacoma, WA 98409-3192  
Mobile: (253) 281-9376 / Office: (253) 502-8122  
[JCho@tacoma.gov](mailto:JCho@tacoma.gov)

**With a copy to:**

John Merrell, Transmission & Distribution Engineering Manager  
Tacoma Power  
3628 South 35<sup>th</sup> Street  
Tacoma WA 98409-3192  
(253) 502-8714  
[JMerrell@tacoma.gov](mailto:JMerrell@tacoma.gov)

**To DSHS:**

Seth Fisher, Construction Project Coordinator  
Washington State Department of Social and Health Services  
Office of Capital Programs  
1115 S. Washington St.  
Mail Stop:45848  
Olympia, Washington 98504-5848  
Phone: (564) 669-3665  
[Seth.Fisher@dshs.wa.gov](mailto:Seth.Fisher@dshs.wa.gov)

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

## 6 ARTICLE 6 – INSPECTION AND ACCEPTANCE OF PROJECT WORK

### 6.1 Timely Inspection/Approvals.

In coordination with the DSHS Resident Engineer and as the work progresses, Tacoma Power shall be invited to conduct reasonable and timely inspection of each stage of the DSHS Work. DSHS Contractor shall give at least two (2) business days' prior notice to Tacoma Power of when work items are scheduled to be performed

and are ready for Inspection Work. As stages are completed, Tacoma Power will provide approvals or rejections pursuant to the process in Section 6.2.

### 6.2 Sequencing of Inspections/Approvals/Acceptance.

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

- (a) Inspections. Tacoma Power will provide regular inspection activities as coordinated with DSHS Resident Engineer via regular communications. If Tacoma Power discovers that the particular elements of the DSHS Work were not performed, or installed per **Exhibit A**, then Tacoma Power shall give prompt notice to the Resident Engineer of said defect(s) and what work remains to be done. Tacoma Power shall endeavor to complete its inspections and notice of approval or rejection in less than two (2) business days. DSHS and/or the DSHS Contractor will direct all applicable sub-contractors to, promptly re-perform or make repairs to the DSHS Work as necessary to fully comply with **Exhibit A**. Following its inspection and approval, Tacoma Power shall be allowed to use and operate the completed stage of the DSHS Work as part of its utility system.
- (b) Final Inspection. At the completion of all the DSHS Work, the Resident Engineer will schedule a final inspection with Tacoma Power's Project Manager & Tacoma Power's Field Representative, and Tacoma Power shall have five (5) working days after receipt of written notice from DSHS Contractor to accept or reject the completed DSHS Work ("Final Inspection"). If Tacoma Power discovers that the particular stage or element of the DSHS Work was not performed or installed per **Exhibit A**, then Tacoma Power shall give prompt written notice to the Resident Engineer of said defect(s) and what work remains to be done. Upon receipt of such notice, the DSHS Contractor will, directly or through its sub-contractor(s), promptly re-perform or make repairs to the DSHS Work as necessary to fully comply with **Exhibit A**, unless it is reasonably demonstrated that the specified defects are the direct result of actions or omissions by Tacoma Power.
- (c) Final Acceptance. After Tacoma Power has connected the DSHS Work to its utility system, Tacoma Power will be asked to provide its Final Acceptance of the DSHS Work. Tacoma Power's final acceptance of DSHS work shall occur only when Tacoma Power is satisfied that (i) all such work is completed in accordance with **Exhibit A**, and (ii) all items indicated on Tacoma Power Field Representative's punch list have been completed. Upon such final acceptance, Tacoma Power's Project Manager shall provide written notice thereof to DSHS Project Manager.

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

### 6.3 Warranties.

DSHS fully warrants the DSHS Work, which warranty shall include all contractor and manufacturer's warranties it obtains and/or may assert in connection with said work. DSHS, or the DSHS Contractor as applicable, will assign all rights under said warranties to Tacoma Power with respect to all electrical facilities of the DSHS.

### 6.4 Ownership/Use.

Tacoma Power shall own all power supply and distribution facilities installed pursuant to this Agreement up to the demarcation points identified in the Design Documents specifically including, but not limited to, the conduits and vaults installed as the result of the DSHS Work. DSHS shall own and be solely responsible for all Western State New Forensic Hospital Project electrical facilities on the customer side of said demarcation points; provided that Tacoma Power will be given exclusive access to any such facilities while under construction. Upon receiving notice of final acceptance and approval from Tacoma Power Field Representative, DSHS shall transfer control of the completed DSHS Work to Tacoma Power for its use, occupancy, operation and maintenance. Tacoma Power shall thereafter install equipment, cabling, and other miscellaneous fixtures and devices.

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

## 7 ARTICLE 7 – LEGAL RELATIONS

### 7.1 Indemnification by City.

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

respective officers, employees, agents or contractors. Where such claims, suits, or actions result from concurrent negligence of the Parties, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the indemnifying Party's own negligence. The City agrees that its obligations under this indemnification section extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents.

### 7.2 Indemnification by DSHS.

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

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

### 7.4 Insurance.

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

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

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

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

a letter from the insurance carrier verifying that the premium has been paid for the period indicated. The policy or policies shall be approved as to form and content by the City Attorney.

- (e) Self-Insured Entities. If DSHS self-insures its liability for bodily injury and/or property damage to third parties, DSHS will maintain a fully funded self-insurance program for the protection and handling of the liabilities assumed under this Agreement. DSHS will provide a letter of self-insurance executed by an authorized agent and DSHS shall provide evidence of such self-insurance funding and, by letter, commit its self-insurance program to the minimum amounts required herein.

## **8 ARTICLE 8 – DISPUTE RESOLUTION**

### **8.1 Preventing Conflicts.**

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

### **8.2 Resolving Disputes Through Negotiation.**

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

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

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

### **8.3 Failure to Resolve Dispute Through Best Efforts.**

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

### **8.4 Venue.**

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

## **9 ARTICLE 9 – MISCELLANEOUS PROVISIONS**

### **9.1 Termination.**

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

### **9.2 Agency or Employee Relationship.**

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

### **9.3 Entire Agreement.**

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

### **9.4 Severability.**

In the event that any term, covenant, condition, or provision of this Agreement, or

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

#### **9.5 Amendments.**

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

#### **9.6 Rights and Remedies.**

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

#### **9.7 Force Majeure.**

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

#### **9.8 Transfer/Assignment.**

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

#### **9.9 Benefits.**

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

#### **9.10 Authorization to Execute Agreement.**

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

WASHINGTON STATE DEPARTMENT  
OF SOCIAL AND HEALTH SCIENCES

CITY OF TACOMA  
DEPARTMENT OF PUBLIC UTILITIES

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

By \_\_\_\_\_  
Jackie Flowers,  
Utilities Director / CEO

Approved:

By \_\_\_\_\_  
Chris Robinson,  
Power Superintendent / COO

Approved:

\_\_\_\_\_  
Finance Director

Approved:

\_\_\_\_\_  
Deputy City Attorney

EXHIBITS:

EXHIBIT A – DSHS WORK

In further elaboration of the DSHS Work described and defined in this Agreement, DSHS agrees that it and the DSHS Contractor, as designated by DSHS, shall be responsible for and shall fully and timely complete the following work, services and activities:

- I. Provide generation control and protection settings to Tacoma Power for review.
- II. Construction of DSHS's onsite generation.
- III. Troubleshooting DSHS's onsite generation or confirming correct switching operation on the DSHS side.
- IV. Coordinate electrical inspections and commissioning of customer-owned generation with Tacoma Power.
- V. Provide as-built drawings, operating instructions and other relevant materials prior to energizing the new interconnection.
- VI. Obtain all necessary electrical permitting.

**EXHIBIT B – TACOMA POWER WORK**

Tacoma Power Work includes:

**I. Distribution Lines**

Reconductor the overhead and underground distribution system:

- A. Custer-1, existing overhead line will be upgraded by reconductoring to 477 AAC, approximately 200 feet.
- B. McNeil-3, existing underground line will be upgraded by reconductoring to 350 Kcmil, approximately 100 feet.
- C. This work will also involve replacing and modifying distribution poles, cross arms and associated equipment, as needed.

**II. Protection and Controls**

Upgrade protection systems for generation interconnection:

- A. Feeder relays will be upgraded at McNeil Substation on McNeil-3 and at Custer Substation on Custer-1.
- B. Reclosers will be installed at the points of interconnection.
- C. Equipment necessary for transfer-trip will be installed at McNeil Substation and at Custer Substation.
- D. Review transmission reclosing and modify as necessary including alternative transmission sources.
- E. Feeder protection will be configured to send direct transfer-trip signals via transfer-trip modules as follows:
- F. Review Customer’s generation control and protection settings and participate in Customer commissioning of customer-owned generation as determined necessary by Tacoma Power subject matter experts.

Electrical inspections are excluded from the Tacoma Power Work described above.

**EXHIBIT C – PRELIMINARY COST ESTIMATE**

DSHS is to reimburse Tacoma Power for all supplied materials associated with the Western State Hospital Project for the entire cost of Tacoma Power’s Work.

The Preliminary Cost Estimate for the Tacoma Power Work is:

Description	Estimate
Distribution Reconductoring	\$497,000
Protection System Upgrades	\$780,000
<b>Subtotal</b>	<b>\$1,277,000</b>
Contingency (30%)	\$383,100
<b>Subtotal</b>	<b>\$1,660,100</b>
Recovery Taxes at 9.25% (effective rate 10.193%)*	\$169,211
External Overhead Billing Rate (15.7%)	\$260,636
<b>TOTAL</b>	<b>\$2,089,947</b>

\*Includes City of Tacoma Gross Earnings Tax and B&O Tax.

**EXHIBIT D – SCHEDULE OF WORK**

Preliminary Schedule of Work

