TACOMA POWER

REQUEST FOR PROPOSAL

CUSHMAN FLOATING SURFACE COLLECTOR
DOWNSTREAM MIGRANT SMOLT EVALUATION

SPECIFICATION NO. PG14-0665F
CITY OF TACOMA

REQUEST FOR PROPOSALS

NO. PG14-0665F

TACOMA POWER

CUSHMAN PROJECT

CUSHMAN FLOATING SURFACE COLLECTOR
DOWNSTREAM MIGRANT SMOLT EVALUATION

CITY OF TACOMA
DEPARTMENT OF PUBLIC UTILITIES
TACOMA POWER

William A. Gaines, Director of Utilities/CEO        Theodore C. Coates, Power Superintendent/COO

Date: Tuesday, December 9, 2014

Each proposal to be enclosed in a sealed envelope bearing the superscription, “Cushman Floating Surface Collector Downstream Migrant Smolt Evaluation”
The City of Tacoma is accepting SEALLED PROPOSALS for the above solicitation. Submittals will be received and time stamped only at the Purchasing Division, located in the Tacoma Public Utilities Administration Building North, Main Floor, 3628 South 35th Street, Tacoma, WA 98409.

Proposals will be received until 11:00 a.m., Pacific Time, Tuesday, January 6, 2015, at which time they will be recorded and forwarded to a Selection Advisory Committee for evaluation. Proposals are not typically opened and read aloud.

An electronic copy of the complete solicitation documents may be viewed and obtained by accessing the City of Tacoma Purchasing website at www.TacomaPurchasing.org. A list of vendors registered for this solicitation is also available at the website. After 1:00 p.m. the day of bid opening, the names of vendors submitting proposals are posted to the website for public viewing.

A pre-proposal meeting will be held at the Cushman Hydro Project office located at N. 21451 Highway 101 Shelton, Washington 98584, on Tuesday, December 16, 2014, 1:30-3:00 p.m. The purpose of the pre-bid meeting is to answer questions about this solicitation and any special or technical requirements.

**Project Scope:** The project will evaluate effectiveness of the Cushman Floating Surface Collector.

**Estimate:** $1.9M: $900K Year 1; $500K Option Years 2 and 3.

Additional information regarding the specifications may be obtained by contacting Joe Parris, Senior Buyer, by email to jparris@cityoftacoma.org.

City of Tacoma protest policy, located at www.tacomapurchasing.org, specifies procedures for protests submitted prior to and after submittal deadline.

**Meeting sites are accessible to persons with disabilities. Reasonable accommodations for persons with disabilities can be arranged with 48 hours advance notice by calling 253-502-8468.**
CITY OF TACOMA

DEPARTMENT OF PUBLIC UTILITIES

TACOMA POWER

CUSHMAN PROJECT

REQUEST FOR PROPOSAL

NO. PG14-0665F

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DOWNSTREAM MIGRANT SMOLT EVALUATION

December 9, 2014
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I. INTRODUCTION

The City of Tacoma, Department of Public Utilities, Light Division (dba Tacoma Power) is soliciting Requests for Proposal (RFP) from qualified firms for services to provide Tacoma Power with a smolt evaluation study of downstream migrant fish in Lake Cushman. The purpose of the evaluation study is to assist in describing performance measures for the Floating Surface Collector (FSC). Responses to this proposal will consider the selected consultant for the 2015 study year and two optional study years.

Responses to this RFP must include a discussion of the intended procedures in addressing the tasks within the project scope.

II. BACKGROUND

In July 2012, Tacoma Power (Tacoma) filed the Fish Passage Monitoring Plan for upstream and downstream fish passage associated with the Cushman Hydroelectric Project License P-460. Included in the plan are sections to, “(1) measure fish survival through the reservoir, fishways and transport mechanisms; (2) assess compliance with survival and performance standards for effective passage; and (3) inform the implementation of Articles 414 and 415.” Information gathered under this plan will be used to modify Tacoma’s passage measures based on the information developed pursuant to this plan and on recommendations of the Fish and Habitat Committee (FHC), after Federal Energy Regulatory Commission (Commission, or FERC) notification and approval.

The Cushman FSC is scheduled to be installed and operational for the spring of 2015. The Cushman Hydroelectric Project License and Fish Passage Monitoring Plan describe that coho will be used to test annually for the term of the amended license. Other species will also be monitored as they are introduced and become numerically sufficient. Performance standards that will be measured include System Survival (SS) and Fish Collection Efficiency (FCE).

- SS is the percentage of a marked group of smolts released near the upstream end of Lake Cushman that is successfully collected by the FSC and safely passed downstream of the Project. The SS goal is 95 percent and the minimum compliance standard is 75 percent.

- FCE will be measured by the percent of fish that are recaptured at the FSC after crossing the “start line” and that survive passage to the release location downstream of Cushman Dam No. 2. The start line is delineated by a point 360 feet upstream from the dam and radiating in an arc terminating at each arm of the FSC guide nets (Appendix A, Figure 3). The FCE standard is 95 percent collection and survival.

Tacoma and the FHC proposed studies necessary to evaluate these performance standards in the Fish Passage Monitoring Plan (Appendix A, Section 1.3). On August 23, 2012, the Commission issued its Order modifying and approving the Fish Passage Monitoring Plan (Article 416). Both the SS and FCE performance standards involve an annually adaptable mark-recapture study design. This RFP involves tasks to:

1) Provide database support for FCE and SS performance standards;

2) Measure FCE by assisting in the development of study designs, leading installation effort, collecting data, and assisting in writing reports for acoustic telemetry associated with the FCE performance standard;

3) Provide analytical and statistical support during study design, study implementation, and report writing.
III. PROJECT SCOPE

STUDY OBJECTIVES:
The evaluation will need to address the following objectives.

A. CUSHMAN FSC SMOLT STUDY

1. Create Database for the Performance Standards as they Relate to Covariates
   a. System Survival: the percentage of a marked group of smolts released near the upstream end of Lake Cushman that is successfully collected by the FSC and safely passed downstream of the Cushman Project.
   b. Fish Collection Efficiency: the percentage of a tagged group of smolts detected at the “start line” and successfully collected in the FSC and safely passed downstream of the Cushman Project.
   c. Some covariates that will be considered include reservoir level, turbine discharge, river inflows, temperature, DO, TDG, turbidity, pH, conductivity, zooplankton density, predator density, outmigration timing, etc.

2. Measure Fish Capture Efficiency (FCE)
   a. Conduct a study to determine the percentage of tagged group of coho smolts detected at the “start line” and successfully collected in the FSC, and safely passed downstream of the Cushman Project.
      1) Use multiple release groups of PIT tagged fish to estimate FCE.
      2) Subsample each release group with active tagged fish to estimate percentage entering the zone of influence (i.e., crossing the “start line”).
   b. Provide general information associated with reservoir behavior patterns in active tagged fish (i.e., if not immediately collected in FSC).

3. Provide Analytical and Statistical Support
   a. Provide statistical support during study setup to evaluate statistical rigor.
   b. Provide analytical support to provide weekly updates of study progress in order to assist in understanding FSC performance and study methods.
      1) Work with Tacoma to develop weekly database management protocols which will assist in early detection of problems with the study or the collector.
   c. Provide analytical and statistical support during report writing.
      1) Draft and final reports and presentations per the schedule in Section V.

4. Study Methods
   a. Estimate the FCE of coho at the Cushman FSC using a combination of PIT and active tag techniques.
   b. Study fish to be a combination of hatchery origin smolt and natural-origin fry collected in the North Fork Skokomish River during the summer and fall of 2014, and reared in net pens in Lake Kokanee until implanted with PIT and active tags and released into Lake Cushman.
      1) Study plan will to account for differences in results between hatchery origin and natural origin smolt released for the study.
c. Study period to include 90 percent of the population outmigration run timing based on the similar western Washington populations.

d. Study to utilize radio or acoustic tag technology as determined by Tacoma Power and selected contractor.

e. Study methodology to characterize hydraulic zone of influence at Floating Surface Collector entrance to denote “start line” for Fish Capture Efficiency. Multiple release groups of PIT tagged fish with subgroups of active tagged fish will be used to calculate FCE based on the proportion entering the hydraulic zone of influence. An alternative study design may be considered.

f. The annual sample size (number of tags) for the performance metrics is to be set to achieve a 90 percent confidence level with a standard error of approximately +/- 5 percent.

   1) The annual level of precision was selected based upon an assumed recapture efficiency of 90 percent, which is below the 95 percent FCE Performance Standard goal. Results from annual studies may be used to adjust required sample sizes higher or lower to achieve desired statistical rigor.

g. Provide staffing plan for implanting active tags in study fish. Contractor will either; 1) conduct implants, 2) train Tacoma Power technical staff to provide flexibility for daily release schedule considerations, or 3) staff the task with a combination of Tacoma and contractor staff. The contractor will include a quality control/quality assurance program to ensure tag surgery, placement, and retention meets industry protocols and standards, and will ensure that the study design accounts for bias associated with individual surgeons.

h. Conduct an independent statistical review of the proposed study approach and sample sizes to ensure achieving the study precision goals of plus or minus five percent.

1 FCE – As defined in the Cushman Settlement Agreement for the Floating Surface Collector means FCE is the percentage of a tagged (radio, acoustic, or PIT) group of smolts detected at the log boom (approximately 360 feet upstream of the dam) or at another location in the forebay to be determined by the Fisheries and Habitat Committee and are successfully collected in the FSC and safely passed downstream of the Cushman Project.

IV. WORK PLAN

The purpose of the contract awarded as a result of this RFP is to develop a work plan with Tacoma Power’s Natural Resources staff that will assure that the information needed to complete this study meets the required objectives and schedule and remains within budget.

Tacoma Power will assign a project manager to coordinate the project team and City staff and be accountable for schedules and budget. Tacoma Power’s contract manager will be responsible to set clear definitions of duties and organization of the selected firm(s)/team. The selected consultant will be part of the project team, along with Tacoma Power staff, and will assist in developing project schedules and design parameters.

V. SCHEDULE

The schedule for this proposal as follows:

- Advertise RFP: December 9, 2014
- Pre-proposal meeting: December 16, 2014
- Proposal due: January 6, 2015
• Open proposals
• Selection Advisory Committee (SAC) recommendation/contract negotiations
• Public Utility Board approval
• Finalize contract
• Notice to proceed with identified tasks
• Draft annual report to Tacoma Power
• Final annual report to Tacoma Power
• Optional study year 1
• Optional study year 2

January 6, 2015
January 6 – January 16
January 28, 2015
February 4, 2015
February 11, 2015
October 31, 2015
December 31, 2015
January – December 2016
January – December 2017

This is a tentative schedule only and may be altered at the sole discretion of the City.

VI. DELIVERABLES

A. EVALUATIONS
1. The Consultant will need supplies and equipment in place by the first week in May 2015 in order to evaluate out-migrating coho.
2. Tacoma will provide a work area for holding and tagging specimen fish at the Cushman sorting facility or surrounding environs.
3. Tacoma will coordinate the use of onsite facilities and equipment at Cushman Dam as requested by the contractor.
4. Tacoma will assist in the procurement of or coordination of a power supply for any receivers or other equipment needed for study sites as defined by selected contractor in the proposal.
5. The Consultant will specify recommended vendor, make and model of active tags, receivers, antennas, and cabling required for the evaluation. Tacoma will purchase this equipment either through consultant contract or third party vendor, and will supply to the contractor. Consultant should provide pricing for both options.
6. The Consultant will provide all necessary surgical supplies for tag placement.

B. REPORTS

The Consultant shall provide the following work and products under this contract:

1. Weekly summary statistics including but not limited to: estimates of System Survival, Fish Capture Efficiency, travel time, and residence time by release group;
2. Draft annual report, including a PowerPoint presentation, of the findings by scheduled date;
3. Final annual report completed by scheduled date.
4. Reports shall be delivered to Tacoma Power at the following address:
   Generation/Natural Resources
   3628 South 35th Street
   Tacoma WA  98409
   ATTN: Matt Bleich
   mbleich@cityoftacoma.org

C. TACOMA POWER SUPPORT

Tacoma Power shall provide the following in support of the Consultant’s work:
1. Access to Floating Surface Collector, Lake Cushman, and the Sorting Facility at Cushman Dam No. 2.

2. Access to Cushman Dam No. 1, Cushman Dam No. 2, entry into the Boat Restricted zones of Cushman Dams No. 1 or 2, or locations downstream of Cushman Dams No. 1 or 2 on the Skokomish River should be requested in the Contractor’s Proposal.

3. Staff considered necessary to the execution of the work and that are requested in the Contractor’s Proposal.

4. Project data such as PIT tag reader downloads, water residence time, water quality data associated with Lake Cushman (temperature, DO, pH, conductivity, etc.).

**VII. PRE-PROPOSAL MEETING and PRE-SUBMITTAL QUESTIONS**

A pre-proposal meeting will be held on Tuesday, December 16, 2014, 1:30-3:00 p.m. at the Cushman Hydro Project office located at N. 21451 Highway 101 Shelton, Washington 98584. Proposers are strongly encouraged to attend.

Questions from prospective proposers may be submitted in writing via e-mail by 2:00 p.m., Friday, December 26, 2014, to Joseph Parris, Senior Buyer, at jparris@ci.tacoma.wa.us. No additional questions will be accepted after this time and date. The City will not be responsible for unsuccessful submittals.

Responses to questions will be posted on the Purchasing website at www.TacomaPurchasing.org on or about 5:00 p.m. on Monday, December 29, 2014. It is the responsibility of the proposer to check the website. The City reserves discretion to group similar questions to provide a single answer or not to respond when the information is confidential. These answers are not considered an addendum.

**VIII. RFP REVISIONS**

All revisions to this RFP will be in the form of written addenda, and no oral revision should be relied upon by any proposer for any purpose. In the event it becomes necessary to revise any part of the RFP, an addendum will be posted to the website at www.TacomaPurchasing.org and notification will be sent to the firms registered as bid holders.
IX. COSTS TO PREPARE PROPOSAL

The City will not be liable for any costs incurred by the proposer in preparation of a proposal submitted in response to this RFP, in the conduct of a presentation, or any other activities related to responding to this RFP.

X. PUBLIC DISCLOSURE

All materials submitted in response to this RFP, except for proprietary information, become the property of the City.

Proprietary information in a proposer’s submittal must be designated clearly, bound separately as an appendix, and labeled with the words, “Proprietary Information.” Appropriate references to this information must appear in the body of the proposal. An entire proposal marked “Proprietary Information” will not be accepted.

Proposers should be aware that the City is required by law to make its records available for public inspection with certain exceptions. See Revised Code of Washington, Chapter 42.56. It is the City’s belief that this legal obligation would not require the disclosure of proprietary, descriptive literature that contains valuable designs, drawings, or documentation. However, the proposer, by submission of materials marked “proprietary,” acknowledges and agrees that the City will not have obligation or liability to the proposer in the event that the City is required to disclose these materials.

XI. PROPOSAL SUBMITTAL

All interested parties shall submit one (1) original, four (4) hard copies, and one (1) electronic copy (CD-ROM or flash drive) of their proposal. All proposals are required to be delivered to the address below by 11:00 a.m. on or before Tuesday, January 6, 2014.

Proposers are strongly encouraged to use recycled/recyclable products and print on both sides of the paper whenever appropriate. Plastic or vinyl binders, color displays, promotional materials, etc., are not necessary. Use of three-ring binders is not acceptable.

Submit proposals to:
Tacoma Public Utilities
Purchasing Division / Attention: Joe Parris
BID PROPOSAL, RFP No. PG14-0665F
3628 South 35th Street
Tacoma, Washington 98409-3192

Clearly mark the specification number PG14-0665F and name “Downstream Migrant Smolt Survival Study” on the outside of the delivery package.

XII. CONSULTANT SELECTION PROCESS

Evaluation Criteria. Evaluation of responses to this RFP will be performed by a Selection Advisory Committee (SAC) consisting of Tacoma Power employees. The RFPs will be evaluated and ranked based on the following guidelines (100 possible points).

A. Firm’s past experience with similar projects and/or technology (minimum of 5 similar projects) (20 points).
B. Understanding of the project, scope of work, and preliminary ideas presented by the consultant. Description and justification of proposed methodology and suitability for Lake Cushman and Cushman Floating Surface Collector (15 points).

C. Resume and experience of principle investigator to be committed to working on the project (minimum of 10 years’ experience) (15 points).

D. Resumes and experience of key support staff identified to be committed to working on the project. Submit resumes only for those individuals who would be directly involved in this project and clearly indicate which staff will lead individual phases and tasks detailed herein (10 points).

E. Ability to meet the schedule indicated in Section V–Schedule, or suggestions to improve upon the proposed schedule (5 points).

F. Company location and ability to respond to emergencies, general inquiries, and site visits (5 points).

G. Direct billing rates for each staff level (5 points).

H. Response to specific questions included in Section XIV-B (5 points).

I. Estimated hours to conduct the tasks identified for each of the separate project phases (10 points).

J. Compliance with the specification and completeness of proposal (10 points).

Interviews or oral presentations are not necessarily a required part of this request. However, it is anticipated that interviews may be required of selected finalists. Interviews will be held at the discretion of the committee.

After the firm (or individual) is selected by the City, all other proposers will be notified.

The City has the option to: 1) reject any or all proposals, 2) issue subsequent RFPs, or 3) request that further information be presented by the proposers in order to complete evaluations.

The Purchasing Division will issue a Notice of Non-Selection to all proposers not selected for further selection or contract award at the time the finalist(s) is selected and prior to negotiations and/or award recommendation.

A contract will be negotiated with the selected firm(s) and then presented to the Public Utility Board for approval. If a contract cannot be negotiated, the City reserves the right to begin negotiations with other proposers.

NOTE: It is intended that a contract will be awarded for all potential phases and tasks anticipated; however, separate Notices to Proceed (NTP) will be issued for population studied. It is anticipated that NTP will be issued upon award of the contract.

XIII. GENERAL REQUIREMENTS

The performance of the described tasks must be fully coordinated with identified Tacoma Power employees once the scope and timing of each contract task is clarified and a Notice to Proceed is issued on that task.

When a consultant firm is selected under this RFP, representatives from the firm and the project manager from Tacoma Power will meet to prepare the final contract terms, the compensation to be provided, and will enter into an agreement for the work. The following provisions will apply.
A. Cost/Schedule Control: By the tenth (10th) of each month, a report detailing the work performed and the cost of the work for the previous month, along with a comparison to estimated expenditures and work progress, shall be submitted. A Gantt chart or other scheme will be utilized by the consultant to track the overall project schedule and costs.

B. Compensation: The overall contract and each Notice to Proceed for subtasks shall contain a not-to-exceed clause, which cannot be exceeded without written approval from Tacoma Power. All work shall be billed on a time and material basis with rates agreed to in the contract provisions up to that maximum price. Maximum prices are intended as caps to protect the City and are not to be treated as automatic billing limits. Consultants shall include in their proposal billing rates for the various disciplines expected to be involved with this project.

C. Change Orders: Whenever it becomes apparent that a change in the scope of work is required, the consultant shall notify Tacoma Power and define the additional scope of work and estimated expenses prior to doing the work. The consultant and the City shall negotiate an agreement on the changed scope of work.

D. Sub-Consultants: Tacoma Power reserves the right to approve any subconsultant used to perform work under this Request for Proposal or to negotiate a contract with its preferred team of consultants.

E. Drawings: All new drawings created by the consultant or by manufacturers shall be electronically created using AutoCAD Version 2010. Drawings shall utilize Tacoma Power AutoCAD Drawing and Layering Standards, which will be provided to the consultant should drawings be required. If the consultant is modifying an existing Tacoma Power drawing that is on AutoCAD, all modifications shall be made on AutoCAD using the same criteria as new drawings.

F. Contract: Any resulting contract will be subject to the standard requirements, terms, and conditions of the City of Tacoma covering such contracts. Attached is a copy of Tacoma Power’s standard consultant contract (Appendix E). Please indicate with your proposal which terms and conditions your firm would take issue with including proposed language.

G. Standard Terms and Conditions: The Standard Terms and Conditions are included in this RFP and shall become part of any contract as a result of this RFP.

XIV. PROPOSAL GUIDELINES

Those firms who want to be considered must provide in their proposals the specific information requested below. To facilitate the evaluation process, organize your firm’s proposal according to the following subjects and limit the proposal to 20 pages, exclusive of resumes and affirmative action forms.

PROPOSAL FORMAT:

A. Statement of Qualification - Firm or Individual: Describe the general experience and expertise your firm has had with similar work.

B. Scope of Work - Separately describe specific experience your firm has with work identified in Section III – Project Scope. Also discuss ideas and methods your firm would propose to be included in phases and tasks included in Sections III and IV. Answers to questions detailed below should be included in your discussion of each of these tasks as applicable.
1. List technology specifically planned to be used on this project.
2. List any additional studies completed that would aid in providing data for this project.
3. What additional tasks would your firm recommend be done beyond those listed in Section III – Project Scope?

C. **Project Management/Staff:** Give the names and relevant background and experience of the key personnel who would be directly involved in tasks listed in the Scope of Work covered by this RFP. Describe the approach your firm would use in dealing with these tasks. Additional resume and credential information should be included in a separate section of the proposal.

D. **Preliminary Ideas:** Based on the conceptual plan, current interests and needs, and other information that may be obtained by the consultant, provide preliminary conceptual ideas on the proposed work plan. Information and ideas presented in the proposal or during the selection process will be available for use by the City as the City deems appropriate. Please provide a quote for services necessary to meet the objectives of the evaluation. If multiple tag/receiver technologies are proposed, please present a cost comparison with the proposal.

E. **Fees and Charges:** Prepare a billing schedule showing the various staff (for example, engineer, technician, inspector, etc.) hours required to complete tasks as outlined. Include the hourly billing rate for each job category and a quotation of any fee multipliers used. Also list any other charges (for example: mileage, reproduction, etc.) that will be billed to Tacoma Power and the multipliers that will be used. If multiple tag/receiver technologies are proposed, please present a cost comparison with the proposal. Proposer should exercise reasonable care in project estimate, as it will be a factor in the proposal evaluation.

F. **Diversity:** Tacoma Power values diversity in the workforce of those who contract with the City. Tacoma Power recognizes and appreciates that individuals are different and that diversity is an advantage. Tacoma Power encourages any Consultant contracting with Tacoma Power to do the same.

G. **Ability to Actively Pursue the Proposed Work:** A statement that clearly states the ability to accept responsibility for completing the proposed services in view of the firm’s current and projected workload, and the aggressive schedule required for this project. **NOTE:** A firm can submit on any or all of the scopes of work listed, but if available staff limits how much work can be conducted concurrently, it should be noted.

H. The remainder of the proposal may be structured as desired by the consultant and should include:

1. Any suggestions as to a change in the scope of work, tasks, schedule, or additional studies recommended.
2. A listing and qualifications of any sub-consultants who may be used during the work or that the consultant recommends be included in the team. Subconsultant markup shall be included.
3. Responses and completion of any appendices in proposal.

I. **Signature Page (Appendix B).**
RESPONSE:

Respondents agree to provide 60 days for acceptance from the submittal deadline.

All submittals will be reviewed by the City to determine compliance with the requirements and instructions specified in this RFP. The Respondent is specifically notified that failure to comply with any part of this RFP may result in rejection of the submittal as non-responsive. The City reserves the right, in its sole discretion, to waive irregularities deemed to be immaterial.

The final selection, if any, will be that proposal which, after review of submissions and potential interviews, in the sole judgment of the City best meets the requirements set forth in this RFP.
APPENDIX A

Fish Passage Monitoring Plan
Chapter 1 – Downstream
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Appendix A – License Article 416 Fish Passage Monitoring Plan

Appendix B – Summary of Agency Comments and Tacoma Responses

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INTRODUCTION

This plan is prepared in compliance with the requirements of the amended license for the Cushman Hydroelectric Project No. 460. The Fish Passage Monitoring Plan (FPMP) is required under amended License Article 416.

On July 15, 2010, the Federal Energy Regulatory Commission (FERC) issued an amended license for the Cushman Hydroelectric Project, FERC Project No. 460, to the City of Tacoma, Department of Public Utilities, Light Division (Tacoma). License Article 416 requires Tacoma to submit a Fish Passage Monitoring Plan for Commission approval within 24 months after issuance of the amended license. The plan is to be developed in consultation with the Fisheries and Habitat Committee (FHC), and submitted to the National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (USFWS), and the Bureau of Indian Affairs (BIA) for comment and approval prior to filing with the Commission by July 15, 2012.

As stated in the Amended Cushman Hydroelectric Project License, the purposes of the FPMP are to: (1) measure fish survival through the reservoir, fishways and transport mechanisms; (2) assess compliance with survival and performance standards for effective passage; and (3) inform the implementation of Articles 414 and 415. Information gathered under this plan will be used to modify Tacoma’s passage measures based on the information developed pursuant to this plan, and on recommendations of the Fisheries and Habitat Committee, after Commission notification and approval.

The FPMP includes two sections (Downstream Juvenile Passage and Upstream Fish Passage) including subsections for each monitoring requirement. The entire text of License Article 416 is found in Appendix A. Within each sub-section is an implementation schedule, a schedule for providing preliminary data to the FHC, an agency consultation record, and a schedule for reporting to FERC.

Each monitoring sub-section contains the following:

- Introduction
- License Article pertinent to sub-section
- Methods
- Reporting and Consultation

PROJECT DESCRIPTION

The Cushman Hydroelectric Project consists of two dams and impoundments on the North Fork of the Skokomish River with associated power tunnels, penstocks, powerhouses, and a 26.8-mile-long primary transmission system.

The Dam No. 1 development consists of a 260-foot-high concrete arch dam that impounds Lake Cushman; a 9.6-mile-long storage reservoir with a 4,058-acre surface area and a 453,350 acre-foot storage capacity at full pool (elevation 738 feet Cushman datum); a spillway with two radial gates; a power intake upstream of the dam; a 17-foot-diameter, 540-foot-long power tunnel; and two 10-foot-diameter, 150-foot-long penstocks. Powerhouse No. 1, located approximately 600 feet downstream from the dam, contains two single runner, vertical shaft Francis turbines with a
hydraulic capacity of 2,800 cfs and a total installed generating capacity of about 50 megawatts (MW). A switchyard abuts the powerhouse and two 115-kilovolt (kV) primary transmission lines extend approximately 5.0 miles to the Dam No. 2 development.

The Dam No. 2 development consists of a 230-foot-high concrete arch dam approximately two miles downstream of Dam No. 1, which impounds Lake Kokanee; a 128-acre lake with a gross storage capacity of 7,300 acre-feet at full pool (elevation 480 feet Cushman datum); a gated spillway structure abutting the dam; a power intake; a 2.5-mile-long, 17-foot-diameter pressure tunnel; a steel surge tank; and three 12-foot-diameter, 1,350-foot-long steel penstocks. Powerhouse No. 2 contains three turbine-generator units for a total installed capacity of 81 MW and a maximum hydraulic capacity of approximately 3,000 cfs. From a switchyard adjacent to Powerhouse No. 2, two 115-kV transmission lines extend approximately 20.8 miles from Powerhouse No. 2 to Tacoma Power’s Vaughn Tap.

The Fish Passage Monitoring Plan is defined by two geographic regions: 1) upstream adult passage monitoring requirements, from downstream of Little Falls to their point of disposition either to hatchery facilities, holding net pens, or release into Lake Cushman; and 2) downstream juvenile fish passage, from near the upper end of Lake Cushman through the Floating Surface Collector (FSC), and through the juvenile release location downstream of Cushman Dam No. 2 (Figure 1).
Figure 1. Cushman Article 416 Fish Passage Monitoring Plan study area.
Article 416. Fish Passage Monitoring Plan

The licensee shall implement the following Fish Passage Monitoring Plan, in consultation with the Fisheries and Habitat Committee. The purposes of this plan are to: (1) measure fish survival through the reservoir, fishways and transport mechanisms; (2) assess compliance with survival and performance standards for effective passage; and (3) inform the implementation of Articles 414 and 415. The licensee shall modify its passage measures based on the information developed pursuant to this plan and on recommendations of the Fisheries and Habitat Committee, after Commission notification and approval. The Fish Passage Monitoring Plan shall include a schedule for implementing the plan consistent with this article and for consulting with the Fisheries and Habitat Committee regarding the monitoring results.

Within 24 months after issuance of the amended license, the licensee shall file with the Commission for approval the Fish Passage Monitoring Plan. The licensee shall develop the plan in consultation with the Fisheries and Habitat Committee, and seek approval of the National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), and the Bureau of Indian Affairs (BIA). The licensee shall allow a minimum of 30 days for members of the Fisheries and Habitat Committee to comment and make recommendations before submitting the plan for approval to NMFS, FWS, and BIA. When filing the plan with the Commission, the licensee shall include documentation of consultation; copies of comments and recommendations; and specific descriptions of how comments and recommendations from Fisheries and Habitat Committee members are accommodated by the licensee’s plan. If the licensee does not adopt a recommendation, the filing shall include the licensee’s reasons based on project-specific information. If the licensee files the Fish Passage Monitoring Plan without first obtaining the approval of NMFS, FWS and BIA, the licensee shall include specific reasons for doing so.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall commence when the licensee is notified by the Commission that the filing is approved. Upon Commission approval the licensee shall implement the plan, including any changes required by the Commission.

The licensee shall file with the Commission, by June 30 of each year, an annual report fully describing the monitoring efforts of the previous calendar year. The Fisheries and Habitat Committee shall have at least 30 days to review and comment on the draft report prior to filing with the Commission. The licensee shall provide copies of the annual report to the Fisheries and Habitat Committee.

The Fisheries and Habitat Committee may modify methods and frequencies of data collection if the Fisheries and Habitat Committee determines that: (a) there is a more appropriate or preferable method or site to use than that described in the individual elements of the Fish Passage Monitoring Plan; or (b) monitoring may be reduced or terminated because the relevant ecological resource objective has been met or no change in resource response is expected. The licensee shall notify the Commission prior to making any such changes.
The following guidelines shall be used in developing and implementing the Fish Passage Monitoring Plan: (a) monitoring and studies shall be relevant to the project license; (b) monitoring and studies shall be chosen and conducted so that they provide useful information for project management decisions or establishing compliance with license conditions; and (c) monitoring and studies shall be cost-effective in meeting the specific purpose of the monitoring activity.
1. DOWNSTREAM JUVENILE PASSAGE

Cushman License Article 416, Section 1.1, includes provisions for measurement of downstream smolt survival through the reservoir and through the FSC, and for measuring fish collection efficiency (FCE) at the FSC. The purposes of this monitoring program are to characterize and quantify smolt survival through the reservoir from a point near the upstream end of Lake Cushman through the last point of contact at Cushman Dam No. 2; determine the performance of the FSC and its components; and determine compliance with the performance standards described in Section 6 of License Article 414. This plan describes an approach to collecting survival and FCE data that will directly inform future FHC discussions regarding FSC performance, operations, and adaptive management. The study protocols proposed for long-term monitoring in this study plan were selected for their demonstrated repeatability in previous studies conducted in comparable Pacific Northwest systems.

For each parameter described in the study plan, a brief discussion of its application is provided and general monitoring protocols that will be used to quantify temporal changes in that parameter are discussed. The monitoring program outlined in this plan contains sufficient detail to illustrate the type of monitoring that will occur during the amended license term. Study goals and the plans used to achieve those goals will be reviewed on an annual basis by the FHC based upon the available data. Recommendations for the study plan for each subsequent year will be included in the annual reports.

1.1 LICENSE ARTICLE TEXT

The full text of the License Article 416 Section 1.1 is:

1.1.1 Methods

The licensee shall measure downstream passage survival through the fishway by releasing marked groups of smolts from a point just upstream of the juvenile fishway (FSC) through the last point of contact, which is either stress relief ponds or a prospective release pond at the base of Cushman Dam No. 2. The licensee shall measure downstream passage survival through the reservoir by releasing marked groups of smolts near the upstream end of Lake Cushman and enumerating their recapture at the FSC. Marks may include, but not be limited to, freeze brands, pit tags, radio tags, and acoustic tags. The licensee shall monitor passage success of each species that is collected at the FSC in numbers large enough to yield statistical significance, as determined by the Fisheries and Habitat Committee.

1.1.2 Frequency

The licensee shall monitor downstream passage annually for the term of the amended license using marked groups of juvenile coho salmon. Other species that are numerically sufficient (described above) shall also be monitored, at least twice during the start-up years of the FSC, and then for 2 years every 10 years thereafter. The licensee shall monitor Fish Collection Efficiency (FCE) every 5 years during Phase Two for the duration of the amended license and any subsequent annual licenses.
The full text from License Article 414 Section 6 performance standards is:

6.1 System Survival Standard (SS)

SS is the percentage of a marked group of smolts released near the upstream end of Lake Cushman that is successfully collected by the FSC and safely passed downstream of the Cushman Project. The SS goal is 95 percent, and the minimum compliance standard SS is 75 percent.

6.2 Fish Collection Efficiency Standard (FCE)

FCE is the percentage of a tagged (radio, acoustic, or PIT) group of smolts detected at the log boom (approximately 360 feet upstream of the dam) or at another location in the forebay to be determined by the Fisheries and Habitat Committee and are successfully collected in the FSC and safely passed downstream of the Cushman Project. The FCE standard is 95 percent collection and survival. Success, for the purposes of FSC development, is attained when either of the Performance Standards is demonstrated and verified. Notwithstanding demonstration and verification of FCE being achieved, the licensee shall continue to implement non-attraction flow measures to improve fish passage until the SS Performance Standard is achieved. In addition, throughout the term of the amended license and any subsequent annual licenses, the licensee shall use reasonable efforts to achieve the SS goal of 95 percent, provided those efforts are likely to improve SS.

1.2 BACKGROUND INFORMATION

1.2.1 PREVIOUS STUDIES

The only study conducted in Lake Cushman which provides data directly applicable to measurements of System Survival (SS) and FCE is a radio telemetry study conducted in 2008 (Meridian and LGL 2008). The study consisted of the release and detection of 90 juvenile coho within Lake Cushman in April and May. These results indicated that release groups ranged in success in reaching the forebay from 17% - 81% depending on release location and release date. Results also indicated that coho entering the forebay tended to approach along the shores rather than mid channel. Median travel time of fish arriving in the forebay was 15.8 days (3.3 minimum, 24.0 maximum) and 2.1 days (1.0 minimum, 27.5 maximum) for fish released 5.0 miles and 1.0 mile upstream of the forebay, respectively.

1.3 MONITORING METHODS

1.3.1 SYSTEM SURVIVAL (SS)

An annually adaptable mark-recapture study design will be employed each year the FSC is in operation to monitor SS from a location in the upper end of Lake Cushman through the release location downstream of Cushman No. 2 Dam. The adaptability of this plan is further described in the Diagnostic Evaluation section below; however, each of the variables described below (i.e., sample size, release location, stock used for evaluation, release strategy, release timing, etc.) are among the potential factors that will be considered by the FHC on an annual basis following the initial 3 years of data collection.
Initially, the test fish release location in the upper end of Lake Cushman will be mid channel, downstream of the historic logged limit (i.e., just downstream from the outlet of Dry Creek, at approximately river mile [RM] 26.4) as shown in Figure 2. Hatchery raised juvenile coho age 1+ will be used as an annual indicator species for the SS Performance Standard and measured at a 90% confidence level with a standard error of approximately +/- 5%, per License Article 414, Section 3.1. Fish will be marked with Full Duplex PIT-tags following methods documented by Prentice et al. (1990), or other marking techniques deemed appropriate by the FHC. In the first year of evaluation, PIT-tags will be implanted in 2,060 juvenile coho during cold weather periods and in advance of release to circumvent handling/marking impacts on outmigration behavior. Test fish will be transferred from the hatchery to the forebay in late March, where they will reside in net pens until their release date (Table 1). Releases will be spaced equally across a 6 week anticipated coho outmigration season, in addition to 1 extra week at the beginning and end of this period (8 weeks total), with weekly releases (n=200) in order to characterize the outmigration window for the annual hatchery test groups. Sample sizes are based on an assumed recapture efficiency of 85% which is the midpoint of the 75%-95% SS Performance Standard range. Assuming this rate of recapture at the statistical rigor defined, 191 fish will be required per release group (rounded up to n=200). After the first and subsequent studies, the sample size will be adjusted to meet precision goals based on observed data.

Concurrent with each release recapture event, a pre-defined (10% of release population) sample (n=20) of PIT-tagged control fish will be exposed to an identical procedure (i.e., PIT-tagged in the hatchery, moved to the same net pens, removed from the net pens, weighed, measured, and examined for health metrics). An additional 300 fish will be added to the implantation group to provide a randomized release sample as well as to account for potential tagging, holding, or transportation mortality prior to release.

Test fish will be randomly selected from the net pens, interrogated with a mobile PIT-tag system, and placed into a holding pen for release. Fish will be acclimated in the release pen for a period of 24 hours prior to release in order to account for the effects of handling and transportation.

Recaptured test fish interrogated at the Cushman FSC will be weighed, measured, and visually inspected for descaling and other physical health metrics. The detection process will occur continuously using a PIT-tag reader installed on the FSC. Interrogation of individual fish will occur in accordance with the transportation schedule that will be determined by the FHC in the Operations and Maintenance Plan.

Effects of handling and transportation will be monitored by holding groups of 100 fish for 48 hours following processing at the sorting facility juvenile handling table, matching water quality and density characteristics of the smolt recovery and receiving tanks, and noting mortalities or abnormal behaviors after each 24 hour period. This protocol will be conducted every 2 weeks of the collection season for the first 3 years of operation, and reported to the FHC. Facility modifications will be made as necessary, based upon results, and coordinated with the FHC.
Figure 2. Release location for measurement of System Survival Performance Standard.
Table 1. Year 1 PIT-tag release schedule for System Survival Performance Standard in Lake Cushman.

<table>
<thead>
<tr>
<th>Week</th>
<th>SS release</th>
<th>Control Examination</th>
</tr>
</thead>
<tbody>
<tr>
<td>May – Week 1</td>
<td>n = 200</td>
<td>n = 20</td>
</tr>
<tr>
<td>May – Week 2</td>
<td>n = 200</td>
<td>n = 20</td>
</tr>
<tr>
<td>May – Week 3</td>
<td>n = 200</td>
<td>n = 20</td>
</tr>
<tr>
<td>May – Week 4</td>
<td>n = 200</td>
<td>n = 20</td>
</tr>
<tr>
<td>June – Week 1</td>
<td>n = 200</td>
<td>n = 20</td>
</tr>
<tr>
<td>June – Week 2</td>
<td>n = 200</td>
<td>n = 20</td>
</tr>
<tr>
<td>June – Week 3</td>
<td>n = 200</td>
<td>n = 20</td>
</tr>
<tr>
<td>June – Week 4</td>
<td>n = 200</td>
<td>n = 20</td>
</tr>
<tr>
<td>Total</td>
<td>n = 1600</td>
<td>n = 160</td>
</tr>
</tbody>
</table>

The outfall location immediately downstream of the adult fish facility will be visually inspected prior to the beginning of each juvenile fish passage period, under turbine operations expected during the outmigration. The inspection will insure appropriate depth and velocity at the discharge location, and will determine whether eddies and backwater areas in the tailrace indicate that migration delays or predator fish holding opportunities may be a concern. If the FHC consensus is uncertain of the exit conditions based on these visual observations, a small sample (n=20) of radio or PIT-tagged fish will be released through the outfall and monitored as they move downstream past retired USGS Gauge 12058800 (approximately midway between Cushman Dam No. 2 and Little Falls).

Other juvenile anadromous salmonids (e.g., sockeye, Chinook, and steelhead) will be measured for SS using similar methodology as described above, as the reintroduction and supplementation programs build populations to sufficient sizes to conduct tests at the prescribed statistical rigor and meet ESA requirements. Species other than coho will be measured for SS during the first two seasons of their availability and then for 2-year periods every 10 years, per License Article 416, Section 2.1.

1.3.2 FISH CAPTURE EFFICIENCY (FCE)

Similar to and concurrent with the SS evaluations, an annually adaptable mark-recapture study design will be employed to measure Fish Capture Efficiency (FCE). The purpose of the FCE Performance Standard is to determine the efficiency with which outmigrating juvenile salmonids enter the FSC once they are in close proximity (i.e., within the zone of influence). FCE will be measured annually for coho during Phase One of the FSC development (9-13 years) or until the performance standard is met for 3 consecutively averaged years, and then every fifth year after the performance standard is met. FCE will be measured by the percent of fish that are recaptured at the FSC after crossing the “start line” and survive passage to the release location downstream of Cushman No. 2. The start line is delineated by a point 360 feet upstream from the dam and radiating in an arc terminating at each arm of the FSC guide nets (Figure 3). This is consistent with the maximum zone of influence described by Computational Fluid Dynamics modeling (Tacoma Power et al. 2011), as well as Section 6.2 of License Article 414.
Figure 3. Fish Capture Efficiency release location and detection points.
Hatchery raised juvenile coho age 1+ will be used as an indicator species for the FCE metric and measured at a 90% confidence level with a standard error of approximately +/- 5%, per License Article 414, Section 3.1. Fish will be marked with Full Duplex PIT-tags following the same methods described above. PIT-tags will be implanted in 1,280 juvenile coho in late January to minimize the impacts of handling/marking on outmigration behavior. Test fish will be transferred from the hatchery to the forebay in late March, where they will reside in net pens until their release following the schedule described in Table 2. Releases will be spaced equally across a 6 week anticipated coho outmigration season, in addition to 1 extra week at the beginning and end of this season (8 weeks total), with weekly releases (n=120) in order to characterize the outmigration window for the annual hatchery test groups. The release location will be approximately 0.25 miles upstream from the dam in order to allow fish to distribute in the water column prior to encountering the FSC (Figure 3). Sample sizes are based on a conservative assumed recapture efficiency of 90% which is below the 95% FCE Performance Standard goal. Assuming this rate of recapture at the statistical rigor defined, 120 fish will be required per release group. After the first and subsequent studies, the sample size will be adjusted to meet precision goals based on observed data.

**Table 2. Year 1 release schedule for Fish Collection Efficiency Performance Standard measured in Lake Cushman.**

<table>
<thead>
<tr>
<th>Week</th>
<th>FCE release</th>
<th>Acoustic Tag Release</th>
<th>PIT-Tag Control</th>
<th>Acoustic Tag Control</th>
</tr>
</thead>
<tbody>
<tr>
<td>May – Week 1</td>
<td>n = 120</td>
<td>n = 30</td>
<td>n = 12</td>
<td>n = 3</td>
</tr>
<tr>
<td>May – Week 2</td>
<td>n = 120</td>
<td>n = 30</td>
<td>n = 12</td>
<td>n = 3</td>
</tr>
<tr>
<td>May – Week 3</td>
<td>n = 120</td>
<td>n = 30</td>
<td>n = 12</td>
<td>n = 3</td>
</tr>
<tr>
<td>May – Week 4</td>
<td>n = 120</td>
<td>n = 30</td>
<td>n = 12</td>
<td>n = 3</td>
</tr>
<tr>
<td>June – Week 1</td>
<td>n = 120</td>
<td>n = 30</td>
<td>n = 12</td>
<td>n = 3</td>
</tr>
<tr>
<td>June – Week 2</td>
<td>n = 120</td>
<td>n = 30</td>
<td>n = 12</td>
<td>n = 3</td>
</tr>
<tr>
<td>June – Week 3</td>
<td>n = 120</td>
<td>n = 30</td>
<td>n = 12</td>
<td>n = 3</td>
</tr>
<tr>
<td>June – Week 4</td>
<td>n = 120</td>
<td>n = 30</td>
<td>n = 12</td>
<td>n = 3</td>
</tr>
<tr>
<td>Total</td>
<td>n = 960</td>
<td>n = 240</td>
<td>n = 96</td>
<td>n = 24</td>
</tr>
</tbody>
</table>

Each release group will be paired with a group of 30 fish surgically implanted with acoustic transmitters and PIT-tags using procedures modified from Adams et al. (1998) and McComas et al. (2007). This sample size represents the same assumed recapture efficiency (90%) and confidence level (90%), but increases the standard error to +/- 10%. The acoustic tags will be used to denote the percent of each release group which reaches the zone of influence (an arc approximately 360 feet upstream from the dam terminating on the guide net arms) which will be used to denote the “start line.” That percentage will be applied to the remaining portion of each PIT-tag release group to incorporate as the denominator in the FCE Performance Standard metric. Each of these release groups will also be paired with a control examination of 15 fish. An additional 200 fish will be added to the implantation group to provide a randomized release sample, as well as to account for potential tagging, holding, or transportation mortality prior to release.
Test fish will be randomly selected from the net pens, interrogated with a mobile PIT-tag system, and placed into the release pen. Fish will be acclimated in the release pen for a period of 24 hours prior to release.

Recaptured test fish interrogated at the Cushman FSC will be weighed, measured, and visually inspected for descaling and other physical health metrics. The detection process will occur on a daily basis using a PIT-tag reader installed on the Lake Cushman FSC. Interrogation of individual fish will occur in accordance with the transportation schedule, which is still to be determined by the FHC in the Operations and Maintenance Plan.

Concurrent with each release-recapture event, a pre-defined sample (n=12) of PIT-tagged control fish will be exposed to an identical procedure (i.e., PIT-tagged in the hatchery, moved to the net pens, removed from the net pens, weighed, measured, and examined for health metrics). Additionally, a pre-defined sample (n=3) of dummy tagged fish will be paired with each acoustic tag group and held in net pens for the duration of the maximum tag life to observe for handing and tagging effects.

1.3.3 EXTENUATING FACTORS

Extenuating Factors were part of the consideration when the minimum performance standards of 75 and 95% were set for SS and FCE, respectively. Pursuant to License Article 414 Section 3.1, if NMFS, USFWS, and BIA believe that one or more Extenuating Factors is likely the cause of the FSC not meeting performance standards, then NMFS, USFWS, and BIA may approve continued operation of the collector at 250 cfs until such factors are addressed. Fish survival and migration success may be affected by factors not associated with FSC performance, which could render inaccurate the estimates of SS or FCE as defined in section 6 of article 414. Specifically, certain Extenuating Factors may lead to unwarranted or incorrect FSC modifications if not identified and thoroughly evaluated when estimating SS and FCE. The following describes initial concerns that may affect SS and FCE. As information is collected during evaluation of the FSC, the FHC will consider how Extenuating Factors that are not solely project caused effects should be considered by NMFS, USFWS and BIA in their assessment of SS and FCE.

Coho is the primary test subject in the early years of estimating FSC success. The coho population that historically inhabited Lake Cushman prior to dam creation may no longer exist. The hope is that introducing the Lower North Fork population will allow for the re-expression of life history traits that were previously successful and that this coho population will exhibit strong affinity to migrate through a lake and actively seek lake outlets. However, this response is uncertain, and may require many generations before successful adaptations are again demonstrated. Two Extenuating Factors which could be expressed to higher levels than anticipated are residualism and predation. Acknowledgement of these or other Extenuating Factors may be warranted, pursuant to the schedule and process identified in License Article 414, section 3.1, paragraph 4 when addressing SS and FCE.

RESIDUALISM

In populations of anadromous salmonids, some individuals do not migrate to saltwater and instead residualize (e.g., kokanee, residual coho and residual Chinook salmon) (Groot and Margolis 1991). For example, Foerster and Ricker (1953) reported the number of “residual” coho was at least equal to the number of outmigrants in Cultus Lake, British Columbia. If non-migrants and migrants were included in a test population, an artificially depressed SS or FCE estimates would result.
Residualism could result from two primary circumstances. Juvenile fish are either unable or unwilling to move out of the lake and into the FSC. Both situations (unable or unwilling) could be a manifestation of natural or human induced processes that benefit or impact the fish population. Naturally beneficial residualism is believed to occur when juvenile fish grow in the presence of ample food (Quinn 2005). Fish eat to satiation, resulting in high body fat content, which results in residualism. In this situation, individuals select to remain in the lake environment while growing to maturity. Populations benefit by exhibiting multiple life history strategies (lake-type and ocean-type). Under this scenario, there could be years where the residuals make up a large proportion of the spawning population because of available lake habitats or low adult survival in the ocean or migration corridor. Hatchery fish are also prone to residualism as a result of feeding practices in the hatchery (Shearer et al. 2006).

In addition, juvenile fish may select to not outmigrate because they have not grown to a large enough size for the smolting and outmigration process. These fish are typically underfed or rear in water too cool to grow to the appropriate smolting size. Fish with this life history strategy may overwinter in the lake for a year and then smolt the following year.

Residualism may also be due to stock-specific performance. The stock may not migrate out of the lake because the population expresses an inability to migrate through lake environments. The fish population may not have the genetically driven ability to find the outlet. This problem may be corrected through selective processes over generations or may require use of specific lake tested stocks of coho that exhibit a strong affinity to migrate though lakes. The currently planned stocks to test the collector are either George Adams Hatchery or Lower North Fork coho, neither of which have demonstrated a strong affinity for lake migration.

Residualism rates could also increase if FSC attraction flow is insufficient to attract smolts.

The most applicable system similar to Lake Cushman in the region is Baker Lake. Like Lake Cushman, Baker Lake has been outfitted with an FSC targeted at collected sockeye and coho salmon. Baker is also a large deep lake located in an upper watershed in Western Washington, similar to Lake Cushman. Tests at Baker Lake in 2006 and 2007 indicated that no greater than 90% of coho and sockeye were active outmigrants (R2 Resource Consultants, Inc. 2008). It is currently not known to what extent the population’s intrinsic responses to the environment or collector performance contribute to residualism. Examination of multiple outmigration years and the frequency of a multi-year outmigrant life history strategy expression will provide an indication of the rate of residualism in the test population. The initial 3 years of evaluation will provide data to help determine whether a correction factor should be applied at Lake Cushman, if some other effort to address residualism is appropriate, or if FSC modifications are needed to improve SS and FCE.

**PREDATION**

Another factor influencing anadromous salmonid outmigrant success is predation by fish, birds and mammals. Predation may or may not be an issue that can be corrected. For example, ESA-listed species such as bull trout and Chinook, as well as non-ESA-listed species such as cutthroat, rainbow trout, northern pikeminnow, bass and coho, are known predators of juvenile salmonids in Lake Cushman. These species may be of sufficient population size to have appreciable predation-related impacts on coho released into the lake to test the SS goal. Remedies for predation can take many forms, such as installing devices that exclude large predatory fish, birds and mammals, or changing harvest regulations to reduce predatory fish densities. However, it is unlikely that ESA-listed fish such as bull trout will be controlled via harvest regulation changes. This action was not contemplated during Settlement Agreement
negotiations and is not covered by the USFWS biological opinion. Bull trout predation accounted for between 1% and 6% of smolt mortality in Baker Lake during 2008 and 2009 (Puget Sound Energy 2009).

While the mechanism behind predation at Baker Lake is not understood, bull trout populations may have followed the classic predator-prey model, which suggests predator abundance increases as prey abundance increases, resulting in increased predation. This could also be a response to unnatural concentrations of prey species at the artificial outlet. As our understanding of predation patterns increases through capture of PIT-tag ingested smolts at Lake Cushman, we will be better able to develop appropriate measures to address this potential Extenuating Factor.

1.3.4 DIAGNOSTIC EVALUATIONS

If during Phase One of the FSC evaluation the performance standards are not met and/or SS goals are not achieved for coho, steelhead, sockeye or Chinook smolts, the FHC may elect to conduct more detailed diagnostic evaluations of Lake Cushman outmigrants. Following the initial 3-year period, the data will be examined for trends and Extenuating Factors will be considered by the FHC. The nature of the diagnostic evaluations to be considered will vary depending upon the nature of the results from the initial years of coho data, but may include: a) detailed survival evaluation throughout Lake Cushman using active tags; b) site-specific characterization of physiological indicators for accurate diagnosis of Extenuating Factors for outmigrants vs. non-outmigrants; c) predation rate studies focused on specific species or periods of the smolt migration; d) paired release evaluation of radio tagged smolts downstream of Cushman No. 2 Dam to further define direct effects of the outfall and indirect effects of the passage and handling process on survival; and e) paired releases evaluating stock selection or release strategies for downstream migrants associated with the SS and FCE Performance Standards.

It is important to note that these and other potential diagnostic evaluations are considered a phased approach to identifying and modifying potential system concerns in order to meet FSC performance standards. Therefore, these diagnostic evaluations are not intended to be implemented in the initial study years, but rather will be phased into the FPMP by developing specific studies designed to address critical uncertainties based upon existing data. Diagnostic evaluations will be considered on an annual basis by the FHC based upon the data collected. In an effort to ensure that the FHC is armed with adequate baseline data to inform study designs, a minimum of 3 full years of coho data is anticipated prior to consideration of diagnostic evaluations. However, if there is consensus among the FHC members, diagnostic evaluations may begin sooner, as necessary.

1.4 MONITORING SCHEDULE

System Survival evaluations will begin for coho during the first full outmigration season of the FSC operation. The current projected construction schedule is for FSC completion in late 2014; therefore, initial Performance Standard evaluations would begin in May 2015. System Survival will be measured annually for coho. Sockeye, steelhead, and Chinook will be monitored once they are available in numbers sufficient to produce levels of satisfactory statistical rigor and not be impactful to ESA status. These species will be monitored for the first 2 years after they are available, then for 2 years every 10 years thereafter.
FCE evaluations will also begin during the first full outmigration season following FSC construction (currently projected for 2015), and will be conducted every year until the Performance Standard is met, and once every 5 years thereafter.

Additionally, the initial 3 years of the evaluation schedule (currently projected for 2015-2018) will include collection of baseline data conditions as they relate to the Extenuating Factors. Following the initial 3-year period, the data will be examined for trends and Extenuating Factors will be considered by the FHC as part of the SS and FSC calculation. Additionally, using the initial 3 years of evaluation, and each additional year of data thereafter, the FHC will design diagnostic evaluations to address critical uncertainties associated with the Performance Standards and any potentially associated Extenuating Factors.

1.5 REPORTING AND CONSULTATION

Downstream juvenile passage data will be collected continuously at the FSC and downloaded at least once a week. Additional PIT tag interrogation data will be obtained from the sorting facility during processing and during any bull trout encounters. Monitoring updates and preliminary data will be discussed at FHC meetings as it becomes available and final data will be incorporated into the License Article 416 annual report. The annual report must be filed with FERC by June 30 of each year and will include monitoring data from the previous year. Prior to filing, the annual report will be provided to the FHC for a 30-day review and comment period.

The annual report will include discussions of mark-recapture efficiency related to seasonality and environmental conditions. Following 3 full years of study implementation, this information will be used to assess potential Extenuating Factors. Following 3 full years of study implementation, the data will be evaluated for trends and variability. If the data indicates further diagnostic study is called for, specific study designs will be crafted to address critical uncertainties and reviewed with the FHC.
APPENDIX B

Proposal Signature Page
SIGNATURE PAGE

CITY OF TACOMA DEPARTMENT OF GENERATION / NATURAL RESOURCES

All submittals must be in ink or typewritten and must be executed by a duly authorized officer or representative of the bidding/proposing entity. If the bidder/proposer is a subsidiary or doing business on behalf of another entity, so state, and provide the firm name under which business is hereby transacted.

Submittals will be received and time stamped only at the City of Tacoma Purchasing Division, located in the Tacoma Public Utilities Administration Building North, Main Floor, at 3628 South 35th Street, Tacoma, WA 98409. See the Request for Proposals page near the beginning of the specification for additional details.

REQUEST FOR PROPOSALS SPECIFICATION NO. PG14-0665F

Cushman Floating Surface Collector Downstream Migrant Smolt Evaluation

The undersigned bidder/proposer hereby agrees to execute the proposed contract and furnish all materials, labor, tools, equipment and all other facilities and services in accordance with these specifications.

The bidder/proposer agrees, by submitting a bid/proposal under these specifications, that in the event any litigation should arise concerning the submission of bids/proposals or the award of contract under this specification, Request for Bids, Request for Proposals or Request for Qualifications, the venue of such action or litigation shall be in the Superior Court of the State of Washington, in and for the County of Pierce.

Non-Collusion Declaration

The undersigned bidder/proposer hereby certifies under penalty of perjury that this bid/proposal is genuine and not a sham or collusive bid/proposal, or made in the interests or on behalf of any person or entity not herein named; and that said bidder/proposer has not directly or indirectly induced or solicited any contractor or supplier on the above work to put in a sham bid/proposal or any person or entity to refrain from submitting a bid/proposal; and that said bidder/proposer has not, in any manner, sought by collusion to secure to itself an advantage over any other contractor(s) or person(s).

Bidder/Proposer’s Registered Name

Signature of Person Authorized to Enter into Contracts for Bidder/Proposer Date

Address

Printed Name and Title

City, State, Zip

(Area Code) Telephone Number / Fax Number

E-Mail Address

State Business License Number in WA, also known as UBI (Unified Business Identifier) Number


State Contractor’s License Number (See Ch. 18.27, R.C.W.)

Addendum acknowledgement #1 _____ #2 _____ #3 _____ #4 _____ #5 _____

THIS PAGE MUST BE SIGNED AND RETURNED WITH SUBMITTAL.
APPENDIX C

City of Tacoma
Sample Professional Services Contract
PROFESSIONAL SERVICES CONTRACT

THIS CONTRACT, made and entered into effective this ____ day of ____, 20____, by and between the CITY OF TACOMA, a municipal corporation of the State of Washington (hereinafter referred to as the “CITY”), and Insert Name of Contractor, a Insert Business Entity Status, e.g., sole proprietorship, limited liability company, Washington state corporation, etc., (hereinafter referred to as “CONTRACTOR”);

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

1. Scope of Services/Work

   A. The CONTRACTOR agrees to diligently and completely perform the services and/or deliverables described in Exhibit(s) ________ attached hereto and incorporated herein.

   B. Changes To Scope of Work. The CITY shall have the right to make changes within the general scope of services and/or deliverables upon execution in writing of a change order or amendment hereto. If the changes will result in additional work effort by CONTRACTOR, the CITY will agree to reasonably compensate the CONTRACTOR for such additional effort up to the maximum amount specified herein or as otherwise provided by City Code.

2. Term

   A. All services shall be satisfactorily completed on or before __________________, or as otherwise specified in Exhibit ____ and this Contract shall expire on said date unless mutually extended in writing by the Parties.

   B. Neither party shall be considered to be in default in the performance of this Contract to the extent such performance is prevented or delayed by any cause which is beyond the reasonable control of the affected party and, in such event, the time for performance shall be extended for a period equal to any time lost as a result thereof. In the event CONTRACTOR is unable to proceed due to a delay solely attributable to CITY, CONTRACTOR shall advise CITY of such delay in writing as soon as is practicable.

3. Compensation and Payment

   A. The CITY shall compensate the CONTRACTOR for the services and deliverables performed under this Contract as follows:

      Check ONLY one:

      □ On the basis of Time and Materials according to the rates and charges set forth in Exhibit _________.

      □ In accordance with Exhibit _________.

      □ At the rate of $________ per hour.
B. The total price to be paid by CITY for CONTRACTOR’S full and complete performance of the Scope of Work hereunder shall not exceed $ without the written consent of the CITY. Said price shall be the total compensation for CONTRACTOR’S performance hereunder including, but not limited to, all work, deliverables, materials, supplies, equipment, subcontractor’s fees, and all reimbursable travel and miscellaneous or incidental expenses to be incurred by CONTRACTOR.

C. The CONTRACTOR shall submit monthly invoices in a format comparable to the invoice attached hereto and identified as Exhibit ______, for services completed and/or deliverables furnished during the previous month. Upon CITY’S request, CONTRACTOR shall submit necessary and appropriate documentation, as determined by the CITY, for all invoiced services and deliverables.

D. Payment shall be made through the CITY’S ordinary payment process, and shall be considered timely if made within 30 days of receipt of a properly completed invoice.

E. The CITY may withhold payment to the CONTRACTOR for any services or deliverables not performed as required hereunder until such time as the CONTRACTOR modifies such services or deliverables to the satisfaction of the CITY.

F. All payments shall be subject to adjustment for any amounts, upon audit or otherwise, determined to have been improperly invoiced.

G. In the event the CONTRACTOR incurs cost in excess of the sum authorized for service under this Contract, the CONTRACTOR shall pay such excess from its own funds, and the CITY shall not be required to pay any part of such excess, and the CONTRACTOR shall have no claim against the CITY on account thereof.

4. Independent Contractor Status

A. The services and deliverables shall be furnished by the CONTRACTOR as an independent Contractor, and nothing herein contained shall be construed to create a relationship of employer/employee or master/servant. No payroll or employment taxes of any kind shall be withheld or paid by the CITY with respect to payments to CONTRACTOR. The payroll or employment taxes that are the subject of this paragraph include, but are not limited to, FICA, FUTA, federal income tax, state personal income tax, state disability insurance tax and state unemployment insurance tax. By reason of CONTRACTOR’s status as an independent Contractor hereunder, no workers’ compensation insurance has been or will be obtained by the CITY on account of CONTRACTOR. CONTRACTOR may be required to provide the CITY proof of payment of these said taxes and benefits. If the CITY is assessed or deemed liable in any manner for those charges or taxes, the CONTRACTOR agrees to hold the CITY harmless from those costs, including attorney’s fees.

B. The CONTRACTOR shall provide at its sole expense all materials, office space, and other necessities to perform its duties under this Contract, unless otherwise specified in writing herein.

5. Professional Services Warranty

A. The CONTRACTOR warrants that all services performed pursuant to this Contract shall be generally suitable for the use to which CITY intends to use said services and deliverables
as expressed in Exhibit(s) _____. Additional warranties, if any, for incidental product deliverables hereunder are set forth in Exhibit ___ <<or in Section 1.A.(2) above>>.

B. In the performance of services under this Contract, the CONTRACTOR and its employees agree to exercise the degree of skill and care required by customarily accepted good practices and procedures followed by professionals/consultants rendering the same or similar type of service. All obligations and services of the CONTRACTOR hereunder shall be performed diligently and completely according to such professional standards.

C. If the CONTRACTOR intends to rely on information or data supplied by the CITY, other CITY contractor’s or other generally reputable sources without independent verification, such intent shall be brought to the attention of the CITY.

6. Contract Administration and Right to Audit

A. The Insert Dept/Division/Engineer/City Contact for the CITY shall have primary responsibility for contract administration and approval of services to be performed by the CONTRACTOR, and shall coordinate all communications between the CONTRACTOR and the CITY.

B. The CONTRACTOR shall, at such times and in such form as the CITY may reasonably require, furnish the CITY with periodic status reports pertaining to the services undertaken pursuant to this Contract.

C. Upon CITY’s request, the Contractor shall make available to CITY all accounts, records, and documents related to the Scope of Work for CITY’s inspection, auditing, or evaluation during normal business hours as reasonably needed by CITY to assess performance, compliance, and/or quality assurance under this Contract.

7. Records Retention

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

8. Notices

Except for routine operational communications, which may be delivered personally or transmitted by electronic mail or facsimile, all notices required hereunder shall be in writing and shall be deemed to have been duly given if delivered personally or mailed first-class mail, postage prepaid, to the parties at the following addresses:

<table>
<thead>
<tr>
<th>CITY</th>
<th>CONTRACTOR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name and Address</td>
<td>Name and Address</td>
</tr>
<tr>
<td>Phone</td>
<td>Phone</td>
</tr>
<tr>
<td>Facsimile</td>
<td>Facsimile</td>
</tr>
<tr>
<td>E-mail</td>
<td>E-mail</td>
</tr>
</tbody>
</table>
9. Termination and Suspension

A. The CITY may terminate this Contract at any time, with or without cause, by giving ten (10) business days written notice to CONTRACTOR. In the event of termination, all finished and unfinished work prepared by the CONTRACTOR pursuant to this Contract shall be provided to the CITY. In the event CITY terminates this Contract due to the CITY’s own reasons and without cause due to the CONTRACTOR’s actions or omissions, the CITY shall pay the CONTRACTOR the amount due for actual work and services necessarily performed under this Contract up to the effective date of termination, not to exceed the total compensation set forth herein.

B. The CITY may suspend this Contract, at its sole discretion, upon seven (7) business days written notice to the CONTRACTOR. Such notice shall indicate the anticipated period of suspension. Any reimbursement for expenses incurred due to the suspension shall be limited to the CONTRACTOR’S reasonable expenses and shall be subject to verification. The CONTRACTOR shall resume performance of services under this Contract without delay when the suspension period ends.

C. Termination or suspension of this Contract by CITY shall not constitute a waiver of any claims or remaining rights the CITY may have against CONTRACTOR relative to performance hereunder.

10. Taxes, Licenses and Permits

A. The CONTRACTOR acknowledges that it is responsible for the payment of all charges and taxes applicable to the services performed under this Contract, and the CONTRACTOR agrees to comply with all applicable laws regarding the reporting of income, maintenance of records, and all other requirements and obligations imposed pursuant to applicable law. If the CITY is assessed, made liable, or responsible in any manner for such charges or taxes, the CONTRACTOR agrees to hold the CITY harmless from such costs, including attorney's fees.

B. In the event the CONTRACTOR fails to pay any taxes, assessments, penalties, or fees imposed by any governmental body, including a court of law, then the CONTRACTOR authorizes the CITY to deduct and withhold or pay over to the appropriate governmental body those unpaid amounts upon demand by the governmental body. It is agreed that this provision shall apply to taxes and fees imposed by City ordinance. Any such payments shall be deducted from the CONTRACTOR's total compensation.

C. The CONTRACTOR, at its expense, shall obtain and keep in force any and all necessary licenses and permits. The CONTRACTOR shall obtain a business license as required by Tacoma Municipal Code Subtitle 6B.20 and shall pay business and occupation taxes as required by Tacoma Municipal Code Subtitle 6A.30.

11. Indemnification

A. The CONTRACTOR shall indemnify, defend, and hold harmless the CITY, its officials, officers, agents, employees, and volunteers, from any and all claims, demands, damages, lawsuits, liabilities, losses, liens, expenses and costs arising out of the subject matter of this Contract; provided that this provision shall not apply to the extent that damage or injury results from the fault of the CITY, or its officers, agents, or employees. The term “fault” as
used herein shall have the same meaning as set forth in RCW 4.22.015, as that statute may hereafter be amended.

B. The CONTRACTOR specifically assumes potential liability for actions brought by the CONTRACTOR’S own employees against the CITY and, solely for the purpose of this indemnification and defense, the CONTRACTOR specifically waives any immunity under the state industrial insurance law, Title 51 RCW. THE CONTRACTOR RECOGNIZES THAT THIS WAIVER WAS THE SUBJECT OF MUTUAL NEGOTIATION.

C. This indemnification shall extend to and include attorneys’ fees and the cost of establishing the right of indemnification hereunder in favor of the CITY. This indemnification shall survive the termination of this Contract.

12. Insurance

During the course and performance of the services herein specified, CONTRACTOR will maintain the following insurance coverage:

A. Workers’ Compensation and employer's liability --statutory limits.

B. Commercial General Liability -- $1,000,000 single limit combined for personal injury, property damage; $2,000,000 aggregate.

C. Automobile public liability and property damage -- $1,000,000 single limit combined for bodily injury and property damage.

D. Professional liability or errors and omissions -- $1,000,000 combined single limit for errors and omissions resulting in monetary loss normally covered by professional liability insurance.

Certificates of the above insurance coverage shall be delivered, within ten (10) days, to the CITY by CONTRACTOR’S insurance carrier or agent certifying the above insurance coverage items are in effect and will not be cancelled or materially changed without 30 days’ written notice given to the CITY. The commercial general liability policy shall be on an occurrence basis and shall include an endorsement naming the CITY as an additional insured and stating that coverage under such policy is primary over and non-contributory with any insurance the CITY may maintain.

13. Nondiscrimination

The CONTRACTOR agrees to take all steps necessary to comply with all federal, state, and City laws and policies regarding non-discrimination and equal employment opportunities. The CONTRACTOR shall not discriminate in any employment action because of race, religion, creed, color, national origin or ancestry, sex, gender identity, sexual orientation, age, marital status, familial status, veteran or military status, the presence of any sensory, mental or physical disability or the use of a trained dog guide or service animal by a disabled person. In the event of non-compliance by the CONTRACTOR with any of the non-discrimination provisions of this Contract, the CITY shall be deemed to have cause to terminate this Contract, in whole or in part.

14. Conflict of Interest
No officer, employee or agent of the CITY, nor any member of the immediate family of any such officer, employee or agent as defined by City ordinance, shall have any personal financial interest, direct or indirect, in this Contract, either in fact or in appearance. The CONTRACTOR shall comply with all federal, state, and City conflict of interest laws, statutes and regulations. The CONTRACTOR represents that the CONTRACTOR presently has no interest and shall not acquire any interest, direct or indirect, in the program to which this Contract pertains which would conflict in any manner or degree with the performance of the CONTRACTOR’S services and obligations hereunder. The CONTRACTOR further covenants that, in performance of this Contract, no person having any such interest shall be employed. The CONTRACTOR also agrees that its violation of the CITY’S Code of Ethics contained in Chapter 1.46 of the Tacoma Municipal Code shall constitute a breach of this Contract subjecting the Contract to termination.

15. City ownership of Work/Rights in Data and Publications:

A. To the extent that CONTRACTOR creates any Work subject to the protections of the Copyright Act (Title 17 U.S.C) in its performance of this Contract, CONTRACTOR agrees to the following: The Work has been specially ordered and commissioned by CITY. CONTRACTOR agrees that the Work is a “work made for hire” for copyright purposes, with all copyrights in the Work owned by CITY. To the extent that the Work does not qualify as a work made for hire under applicable law, and to the extent that the Work includes material subject to copyright, CONTRACTOR hereby assigns to CITY, its successors and assigns, all right, title and interest in and to the Work, including but not limited to, all patent, trade secret, and other proprietary rights and all rights, title and interest in and to any inventions and designs embodied in the Work or developed during the course of CONTRACTOR’S creation of the Work. CONTRACTOR shall execute and deliver such instruments and take such other action as may be required and requested by CITY to carry out the assignment made pursuant to this section. Any documents, magnetically or optically encoded media, or other materials created by CONTRACTOR pursuant to this Contract shall be owned by CITY and subject to the terms of this sub-section. To the maximum extent permitted by law, CONTRACTOR waives all moral rights in the Work. The rights granted hereby to CITY shall survive the expiration or termination of this Contract.

B. The CONTRACTOR shall be solely responsible for obtaining releases for the performance, display, recreation, or use of copyrighted materials.

16. Public Disclosure

A. This Contract and documents provided to the CITY by CONTRACTOR hereunder are deemed public records subject to disclosure under the Washington State Public Records Act, Chapter 42.56 RCW (Public Records Act). Thus, the CITY may be required, upon request, to disclose this Contract and documents related to it unless an exemption under the Public Records Act or other laws applies. In the event CITY receives a request for such disclosure, determines in its legal judgment that no applicable exemption to disclosure applies, and CONTRACTOR has complied with the requirements of sub-section B herein, CITY agrees to provide CONTRACTOR ten (10) days written notice of impending release. Should legal action thereafter be initiated by CONTRACTOR to enjoin or otherwise prevent such release, all expense of any such litigation shall be borne by CONTRACTOR, including any damages, attorneys fees or costs awarded by reason of having opposed disclosure. CITY shall not be liable for any release where notice was provided and CONTRACTOR took no action to oppose the release of information. Notice of any proposed release of
information pursuant to Chapter 42.56 RCW, shall be provided to CONTRACTOR according to the “Notices” provision herein.

B. If CONTRACTOR provides the CITY with records that CONTRACTOR considers confidential or proprietary, CONTRACTOR must mark all applicable pages of said record(s) as “Confidential” or “Proprietary.” If CONTRACTOR fails to so mark record(s), then (1) the CITY, upon request, may release said record(s) without the need to satisfy the requirements of subsection A above; and (2) the CONTRACTOR expressly waives its right to allege any kind of civil action or claim against the CITY pertaining to the release of said record(s).

17. Duty of Confidentiality

A. CONTRACTOR acknowledges that unauthorized disclosure of information or documentation concerning the Scope of Work hereunder may cause substantial economic loss or harm to the CITY.

B. Except for disclosure of information and documents to CONTRACTOR’s employees, agents, or subcontractors who have a substantial need to know such information in connection with CONTRACTOR’s performance of obligations under this Contract, the CONTRACTOR shall not without prior written authorization by the CITY allow the release, dissemination, distribution, sharing, or other publication or disclosure of information or documentation obtained, discovered, shared or produced pursuant to this Contract.

C. The CONTRACTOR shall inform its employees, agents, and subcontractors of the confidentiality obligations under this Contract and instruct them so as to ensure such obligations are met. If so requested by the CITY, the CONTRACTOR further agrees to require all such individuals and entities performing services pursuant to this Contract to execute a Confidentiality and Non-Disclosure Agreement in a form acceptable to CITY.

D. The CONTRACTOR shall not release any information or documentation concerning the work under this Contract or any part thereof for marketing, advertising, or other commercial activities or publication including, but not limited to, news releases or professional articles, without the prior written approval of the CITY. Any and all news releases, professional articles, marketing, advertising, publicity, or other commercial activities that describe or discuss the Scope of Services shall be reviewed and approved by the CITY prior to publication, disclosure and/or distribution. The CONTRACTOR may submit for review and approval a generic abstract describing the component parts of the completed Scope of Services (“Project Abstract”). After receiving written approval of the Project Abstract from the CITY, the CONTRACTOR may make minor insignificant changes to the Project Abstract and use all or parts of the Project Abstract in proposals.

E. This Section shall survive for six (6) years after the termination or expiration of this Contract.

F. CONTRACTOR shall ensure that the text of this Section is included in each subcontractor’s contract pertaining to the Scope of Services hereunder.

18. Dispute Resolution
In the event of a dispute pertaining to this Contract, the parties agree to attempt to negotiate in good faith an acceptable resolution. If a resolution cannot be negotiated, then the parties agree to submit the dispute to voluntary non-binding mediation before pursuing other remedies. This provision does not limit the CITY’S right to terminate authorized by this Contract.


A. **Governing Law and Venue.** Washington law shall govern the interpretation of this Contract. Pierce County shall be the venue of any mediation, arbitration or litigation arising out of this Contract.

B. **Assignment.** The CONTRACTOR shall not assign, subcontract, delegate, or transfer any obligation, interest or claim to or under this Contract or for any of the compensation due hereunder without the prior written consent of the CITY.

C. **No Third Party Beneficiaries.** This Contract shall be for the sole benefit of the parties hereto, and nothing contained herein shall create a contractual relationship with, or create a cause of action in favor of, a third party against either party hereto.

D. **Waiver.** A waiver or failure by either party to enforce any provision of this Contract shall not be construed as a continuing waiver of such provisions, nor shall the same constitute a waiver of any other provision of this Contract.

E. **Severability and Survival.** If any term, condition or provision of this Contract is declared void or unenforceable or limited in its application or effect, such event shall not affect any other provisions hereof and all other provisions shall remain fully enforceable. The provisions of this Contract, which by their sense and context are reasonably intended to survive the completion, expiration or cancellation of this Contract, shall survive termination of this Contract.

F. **Entire Agreement.** This Contract and the attached Exhibits, as modified herein, contain the entire agreement between the parties as to the services to be rendered hereunder. All previous and contemporaneous agreements, representations or promises and conditions relating to the subject matter of this Contract are superseded hereby. The Parties hereto mutually acknowledge, understand and agree that the terms and conditions set forth herein shall control and prevail over any conflicting terms and conditions stated in any attachments hereto.

G. **Modification.** No modification or amendment of this Agreement shall be effective unless set forth in writing and signed by the Parties.

H. **Authority to enter into this Contract.** The undersigned Contractor representative, by his/her signature below, represents and warrants that he/she is duly authorized to execute this legally binding Contract for and on behalf of Contractor.

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

CITY OF TACOMA

INSERT NAME OF CONTRACTOR

Professional Services Contract (tracked)  Page 8 of 11
Form Date:  01/02/2014  Attorney:
EXHIBIT "B"

INVOICE

This form is intended to illustrate the information the City of Tacoma needs to process Contract payments. The City of Tacoma prefers that CONTRACTOR use its own standard business invoice forms so long as they include the following information. CONTRACTORS who do not have a standard business invoice form may use this form as their invoice. Your cooperation in providing the information we are requesting will ensure prompt processing of your payments.

I HEREBY REQUEST PAYMENT FOR THE FOLLOWING ITEMIZED SERVICES AND/OR PRODUCT DELIVERABLES:

Services (Describe):

Deliverables (Describe):

AS PER CONTRACT No.: ________________ AMOUNT DUE: ________________

I HEREBY CERTIFY THAT THIS BILL IS CORRECT AND JUST AND THAT PAYMENT FOR THE SERVICES AND/OR DELIVERABLES IDENTIFIED HAS NOT BEEN RECEIVED.

BY: ___________________________ DATE SIGNED: ________________

SIGNATURE:

TITLE: __________________________

ORGANIZATION NAME: __________________________

FEDERAL TAX ID No. or SS No.: __________________________

TELEPHONE NUMBER: __________________________

PLEASE REMIT PAYMENT TO: (Name and Address of Contractor)

I Attest and Certify that all Services and/or Deliverables identified in this Invoice have been performed and/or supplied.

_____________________________

Contract Administrator Signature

City Dept/Division:
Contact Name:
Phone: 253-
Fax: 253-
APPENDIX D

Standard Terms and Conditions, Sections 1 and 2
CITY OF TACOMA
STANDARD TERMS AND CONDITIONS
SECTION 1 – SOLICITATION

THE FOLLOWING TERMS AND CONDITIONS ARE PART OF THIS SPECIFICATION AND ARE BINDING ON ALL RESPONDENTS SUBMITTING RESPONSES TO REQUESTS FOR BIDS, PROPOSALS, QUALIFICATIONS AND INFORMATION.

1.01 DELIVERY OF SUBMITTALS TO THE CITY’S PURCHASING DIVISION

Submittal packages must be received by the City’s Purchasing Division, Tacoma Public Utilities Administration Building, Main Floor, 3628 South 35th Street, Tacoma, WA 98409-3115, prior to the scheduled time and date stated in the solicitation announcement. Each submittal, intact and bound, shall be completely sealed, with the name of the submitting party (hereinafter “Respondent”), the specification number and title clearly marked on the exterior of the package. City offices are not open for special mail or other deliveries on weekends and City holidays.

Submittals may be delivered to the City by mail or in person; however, the Respondent is solely responsible for timely delivery of its submittal to the Purchasing Division.

Facsimile (fax) copies of submittals for requests for sealed bids, requests for proposals, requests for qualifications and requests for information will not be accepted at any City fax machine.

Submittals received after the time stated in the solicitation announcement will not be accepted and will be returned, unopened, to the Respondent.

For purposes of determining whether a submittal has been timely received, the City's Purchasing Division may rely on Universal Coordinated Time from the National Bureau of Standards as reported by http://wwp.greenwichmeantime.com/

1.02 WITHDRAWAL OF SUBMITTALS

A. Prior to Submittal Deadline (Bid Opening)

Submittals may be withdrawn prior to the scheduled submittal deadline by providing written notice to the City’s Purchasing Division. The notice may be submitted in person or by mail; however, it must be received by the City’s Purchasing Division prior to the submittal deadline.

B. After Submittal Deadline

No submittal can be withdrawn after having been opened as set forth in the solicitation announcement, and before the actual award of the contract, unless the award is delayed more than 60 calendar days beyond the date of opening. If a delay of more than 60 calendar days does occur, the Respondent must submit written notice to the purchasing manager that Respondent is withdrawing its submittal.

1.03 SUBMITTAL IS NON-COLLLUSIVE

The Respondent acknowledges that by its delivery of a submittal to the City in response to this solicitation it represents that the prices in such submittal are neither directly nor indirectly the result of any formal or informal agreement with another Respondent.

1.04 OPENING AND ACCEPTANCE OF SUBMITTALS

Submittals, unless previously withdrawn, will be read aloud, irrespective of any irregularities or informalities in such submittal, at the time and place specified in the solicitation announcement.

All submittals must remain open for acceptance by the City for a period of at least 60 calendar days from the date of opening.

1.05 RIGHT TO REJECT

The City of Tacoma reserves the right to reject any and all submittals, waive minor deviations or informalities, and if necessary, call for new submittals.

A. Requests for Proposals (RFP)

By submitting a proposal in response to a City RFP, the Respondent acknowledges and consents to the below City rights and conditions. With regard to this procurement process, the City reserves, holds
without limitation, and may exercise, at its sole discretion, the following rights and conditions:

1. To terminate the procurement process or decide not to award a contract as a result thereof by written notice to the Respondents for any reason whatsoever.

2. To waive any defect, technicality, or any other minor informality or irregularity in any submittal, or any other response from Respondents.

3. To make minor or major changes or alterations to the evaluation, selection and/or performance schedule(s) for any events associated with this procurement process upon notice to the Respondents.

4. To supplement, amend or otherwise modify the RFP specifications, at any time upon prior notice to Respondents, including but not limited to modifications to the description of services and/or products contained in the RFP, by omitting services/products and/or including services/products not currently contemplated therein.

5. To request clarifications, additional information, and/or revised submittals from one or more Respondents.

6. To conduct investigations with respect to the qualifications and experience information for each Respondent included in a submittal and to request additional evidence to support any such information.

7. To eliminate any Respondent that submits an incomplete or inadequate response, or is non-responsive to the requirements of the RFP specifications, or is otherwise deemed to be unqualified during any stage of the procurement process.

8. To select and interview a single finalist or multiple finalists for the purpose of promoting the City’s evaluation of submittals provided in response to the RFP specifications. The City may, in its sole and exclusive discretion as to what is in the City’s best interest, elect not to conduct interviews of any or all respondents in connection with this RFP process.

9. To discontinue contract negotiations with a selected Respondent and commence such negotiations with another respondent, except as otherwise provided in Chap. 39.80, RCW.

10. To select and enter into a contract with one or more Respondents whose submittal best satisfies the interests of the City and is most responsive, in the sole judgment of the City, to the requirements of the RFP specifications.

11. To take any other action affecting the RFP specifications or the procurement process that is determined to be in the City’s best interests.

12. In the event the City receives questions concerning RFP specifications from one or more Respondents prior to the deadline for response, the City reserves the right to provide such questions, and the City’s responses, if any, to all Respondents.

13. Neither the City, its officials, staff, agents, employees, representatives, nor consultants will be liable for any claims or damages resulting from any aspect of this procurement process.

1.06 EVALUATION OF SUBMITTALS

The City of Tacoma reserves the right to award to the lowest and best responsible Respondent(s) delivering a submittal in compliance with the specification documents, provided such submittals are reasonable and are in the best interest of the City to accept. The City may use a number of criteria for determining award, including evaluation factors set forth in Municipal Code Section 1.06.262. Respondents who are inexperienced or who fail to properly perform other contracts may have their submittal rejected for such cause.

A. Evaluation Factors

In addition to the factors set forth in Municipal Code Section 1.06.262, the following may be used by the City in determining the lowest and best responsible submittal:
1. Compliance with the Specification and with applicable City requirements, including by not limited to, the City’s Ethics Code and its Small Business Enterprise and Local Employment and Apprenticeship programs.

2. Submittal prices, listed separately if requested, as well as a lump sum total (if the unit price does not compute to the extended total price, the unit price shall govern).

3. Time of delivery and/or completion of performance (delivery date(s) offered).

4. Warranty terms.

5. Quality of performance of previous contracts or services, including safety requirements and past compliance with the City’s Ethics Code.

6. Previous and existing compliance with laws and ordinances relating to contracts or services.

7. Sufficiency of financial resources.

8. Quality, availability and adaptability of the supplies or services to the particular use required.

9. Ability to provide future maintenance and service on a timely basis.

10. Location of nearest factory authorized warranty repair facility or parts dealership.

11. Ability, capacity, experience, stability, reputation, integrity, character, judgment, technical qualifications and skill to perform the contract or provide the services required.

All other elements or factors, whether or not specifically provided for in this Specification, which would affect the final cost to, and the benefits to be derived by, the City, may be considered in determining the award of the contract. The final award decision will be based on the best interests of the City.

B. Cash Discount

Payment discount periods of 20 calendar days or more, if offered in the submittal, will be considered in determining the apparent lowest responsible submittal. Discounts will be analyzed in context of their overall cumulative effect.

1.07 COMPLETION OF CITY FORMS

All submittals must be completed in ink or typewritten using the forms included with this Specification, and submitted exactly as specified.

City forms requiring signature must be signed in ink by an authorized officer, employee or agent of the Respondent.

Prices must be stated in figures. Corrections shall be initialed in ink by the person signing the submittal. Prices having erasures or interlineations (cross outs) will not be accepted unless initialed in ink by the Respondent.

1.08 CORRECTION OF AMBIGUITIES AND OBVIOUS ERRORS

The City reserves the right to correct obvious errors in the Respondent's submittal. In this regard, if the unit price does not compute to the extended total price, the unit price shall govern.

1.09 CLARIFICATION OF SPECIFICATION

Questions regarding this Specification and/or any included terms, conditions, forms, plans or drawings are to be submitted in writing to the City staff person identified as the contact for this Specification. All requests for interpretation must be received by the City no later than five business days prior to the opening date. Any interpretation of this Specification will be made by addendum duly issued and posted to the Purchasing website at www.TacomaPurchasing.org. Such addendum must be acknowledged in the submittal. The City of Tacoma will not be responsible for any other explanation or interpretation of the specification documents.

1.10 ALTERATIONS NOT ALLOWED

Except as otherwise specifically provided in the specification documents, submittals that are incomplete or conditioned in any way, contain erasures, alternatives or items not called for, or not in conformity with law, may be rejected as being non-responsive. Any attempt to condition the submittal by inserting exceptions to the Specification or any conditions, qualifications or additions that vary its terms may result in rejection of the
submittal. The City cannot legally accept any submittal containing a material deviation from the Specifications.

1.11 INSERTION OF MATERIAL CONFLICTING WITH SPECIFICATIONS

Only material inserted by the Respondent to meet requirements of the specification documents will be considered. Any other material inserted by the Respondent will be disregarded by the City of Tacoma as being non-responsive and may be grounds for rejection of the submittal.

1.12 FIRM PRICES/ESCALATION

Except as specifically allowed elsewhere in the specification documents, only firm prices will be accepted.

1.13 SHIPPING

Prices must be quoted FOB destination (the place of destination as defined in RCW 62A.2-319, as that statute may hereafter be amended), with freight prepaid and allowed (shipping costs included in unit prices), and risk of loss remaining with Respondent until delivery is tendered.

1.14 LEGAL HOLIDAYS

The City of Tacoma observes the following holidays, which shall apply to performance of all contracts awarded from this solicitation:

- New Year's Day: January 1
- Martin Luther King's Birthday: 3rd Monday in January
- Washington's Birthday: 3rd Monday in February
- Memorial Day: Last Monday in May
- Independence Day: July 4
- Labor Day: 1st Monday in September
- Veteran's Day: November 11
- Thanksgiving Day: 4th Thursday of November
- Day after Thanksgiving: 4th Friday of November
- Christmas Day: December 25

When any of these holidays occur on Saturday or Sunday, the preceding Friday or the following Monday, respectively, is a legal holiday for the City of Tacoma.

1.15 TAXES

Unless otherwise required in this Specification, applicable federal, state, city and local taxes shall be included in the submittal as indicated below. The total cost to the City, including all applicable taxes, may be the basis for contract award determination. As used herein, the term “taxes” shall include any and all taxes, assessments, fees, charges, interest, penalties, and/or fines imposed by applicable laws and regulations in connection with the procurement of goods and/or services hereunder.

A. Federal Excise Tax

The City of Tacoma is exempt from federal excise tax. The City will furnish a Federal Excise Tax Exemption certificate, if required. If the Respondent fails to include any applicable tax in its submittal, then Respondent shall be solely responsible for the payment of said tax.

B. State and Local Sales Tax

The City of Tacoma is subject to Washington state sales tax. It is the Respondent's obligation to state the correct sales tax percentage and include the applicable Washington state, city and local sales tax as a separate line item(s) in the submittal.
C. City of Tacoma Business and Occupation Tax

It is the Respondent's obligation to include City of Tacoma Business and Occupation tax in the unit and/or lump sum prices submitted; it shall not be shown separately on the submittal.

Per Sub-Title 6A of the City of Tacoma Municipal Code, transactions with the City of Tacoma may be subject to the City's Business and Occupation Tax.

It is the responsibility of the Respondent awarded the contract to register with the City of Tacoma's Tax and License Division, 733 South Market Street, Room 21, Tacoma, WA 98402-3768, telephone 253-591-5252, website http://www.cityoftacoma.org/Page.aspx?nid=201.

D. Any or All Other Taxes

Any or all other taxes are the responsibility of the Respondent unless otherwise required by law.

1.16 WASHINGTON BUSINESS LICENSE REQUIREMENT

All submittals should include a Washington State Business License number in the space provided on the Submittal Signature Page. If the recommended respondent does not have a Washington State Business License at the time of submittal, it must obtain such license and provide proof thereof to the City of Tacoma prior to contract award. Failure to include a Washington State Business License may be grounds for rejection of the submittal. Information regarding Washington State Business Licenses may be obtained at http://www.dol.wa.gov/businesses.htm.

1.17 PUBLIC DISCLOSURE

Washington State Public Disclosure Act (RCW 42.56 et seq.) requires public agencies in Washington to promptly make public records available for inspection and copying unless they fall within the specified exemptions contained in the Act. Documents submitted under this Specification are considered public records and, unless exempt from disclosure under the Act, will be made available for inspection and copying by the public in response to a public records request.

1.18 PROPRIETARY OR CONFIDENTIAL TRADE SECRET INFORMATION

If the Respondent considers any submittal document to be exempt from disclosure under the law, the Respondent shall clearly mark on the specific page(s) affected such words as “CONFIDENTIAL,” “PROPRIETARY” or “TRADE SECRET.” The Respondent shall also submit an index with its submittal identifying the affected page number(s) and location(s) of all such identified material. Failure to provide an index identifying the location of the material in the submittal that Respondent considers to be protected from disclosure will result in the records being released in response to a request for those records without further notice to Respondent. Marking the entire submittal as “confidential” or “proprietary” or “trade secret” is not acceptable and is grounds to reject such submittal.

If a public records request is made for disclosure of all or any part of Respondent’s submittal, and Respondent has (i) properly marked and (ii) indexed the material it asserts to be exempt from disclosure, the City will determine whether the material is exempt from public disclosure. If, in the City’s opinion, the material is subject to a possible exemption to disclosure, the City will notify Respondent of the request and impending release and allow the Respondent ten (10) business days to take whatever action Respondent deems necessary to protect its interests. The City will reasonably cooperate with any legal action initiated by the Respondent to prevent release; provided that all expense of such action shall be borne solely by the Respondent, including any damages, penalties, attorney's fees or costs awarded by reason of having opposed disclosure and Respondent shall indemnify City against same. If the Respondent fails or neglects to take such action within said period, the City will release all materials deemed subject to disclosure. Submission of materials in response to this solicitation shall constitute assent by the Respondent to the foregoing procedure and the Respondent shall have no claim against the City on account of actions taken pursuant to such procedure.

1.19 TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

The City of Tacoma ensures full compliance with Title VI of the Civil Rights Act of 1964 by prohibiting discrimination against any person on the basis of race, color, national origin or sex in the provision of benefits and services resulting from its federally assisted programs and activities. Contact Tacoma's Title VI coordinator at 253-591-5224 for additional information.
1.20 LEGAL DISPUTES

Respondent agrees and stipulates that in the event any litigation should occur concerning or arising out of this solicitation or any submittal delivered in response hereeto, the sole venue of any such legal action shall be the Pierce County Superior Court of the state of Washington and the interpretation of the terms of the solicitation and submittal shall be governed by the laws of the state of Washington.

1.21 PURCHASE ORDER TERMS AND CONDITIONS

Terms and conditions of City of Tacoma purchase orders, if issued, shall apply to contracts and awards resulting from this solicitation.

1.22 RESPONDENT'S REFUSAL TO ENTER INTO CONTRACT

Any Respondent who refuses to enter into a contract after it has been awarded to the Respondent will be in breach of the agreement to enter the contract, and the Respondent's certified or cashiers check or bid bond, if any, shall be forfeited.

1.23 AWARD

The City reserves the right to award contracts for any or all items to one or more respondents in the best interests of the City.

1.24 FINAL AWARD DETERMINATION

The Tacoma City Council or Public Utility Board, for awards over $200,000, shall be the final judge as to which submittal(s) is/are the lowest and best responsible, and best meets the interest of the City of Tacoma to accept. The purchasing manager makes the determination for awards of $200,000 and less.

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CITY OF TACOMA
STANDARD TERMS AND CONDITIONS
SECTION 2 – SERVICES

UNLESS OTHERWISE REQUIRED BY THE SPECIFICATION OR AGREED TO IN WRITING, THE FOLLOWING TERMS AND CONDITIONS SHALL GOVERN THE RIGHTS, RESPONSIBILITIES AND OBLIGATIONS OF THE PARTIES TO THE CONTRACT.

2.01 CONTRACTOR
As used herein, the "Contractor" shall be the Respondent(s) awarded a contract pursuant to this Specification, whether designated as a Respondent, Vendor, Proposer, Bidder, Seller, Merchant, Service Provider or otherwise.

2.02 ENTIRE AGREEMENT
This Specification, purchase orders issued by the City pursuant hereto, and the Contractor's submittal, in that order of precedence, shall constitute the "Contract" between the parties. Said documents represent the entire agreement between the parties and supersede any prior oral statements, discussions or understandings between the parties, and/or subsequent contractor invoices. No modification of this Contract shall be effective unless mutually agreed in writing.

2.03 SERVICES
The services and/or work contracted for herein exclude public works and improvements as defined in RCW 39.04, as that statute may hereafter be amended.

2.04 SCOPE OF WORK
The Contractor agrees to diligently and completely perform the services required by this Contract.

The City shall have the right to make changes within the general scope of services and/or deliverables upon execution in writing of a change order or amendment hereto. If the changes will result in additional work effort by Contractor the City agrees to reasonably compensate the Contractor for such additional effort up to the maximum amount specified in the Contract or as otherwise provided by Tacoma Municipal Code.

Delivery of incidental products will be as designated in this Contract.

2.05 TIME FOR PERFORMANCE
All services shall be satisfactorily completed by the termination date contemplated by this Contract, and this Contract shall expire on said date unless mutually extended in writing by the Parties.

2.06 EXTENSION OF CONTRACT
This Contract shall be subject to extension by mutual agreement per the same prices, terms and conditions.

2.07 COMPENSATION
The City shall compensate the Contractor in accordance with the Contract. Said compensation shall be the total compensation for Contractor's performance hereunder including, but not limited to, all work, services, deliverables, materials, supplies, equipment, subcontractor's fees and all reimbursable travel and miscellaneous or incidental expenses to be incurred by Contractor.

2.08 INVOICES
Each invoice shall show City of Tacoma purchase order number, release number if applicable, quantity, unit of measure, item description, unit price and extended price for each line. Line totals shall be summed to give a grand total to which sales tax shall be added, if applicable. Invoices shall be sent in duplicate to:

Accounts Payable
City of Tacoma
P. O. Box 1717
Tacoma Washington 98401-1717

Any terms, provisions or language in Contractor's invoice(s) that conflict with the terms of this Contract shall not apply to this Contract unless expressly accepted in writing by the City.
2.09 PAYMENT TERMS

Payment shall be made through the City’s ordinary payment process, and shall be considered timely if made within 30 days of receipt of a properly completed invoice. Payment will not be considered late if mailed or electronically disbursed within the time specified. Payment(s) made in accordance with this Contract shall fully compensate the Contractor for all risk, loss, damages or expense of whatever nature, and acceptance of payment shall constitute a waiver of all claims submitted by Contractor. All payments shall be subject to adjustment for any amounts, upon audit or otherwise, determined to have been improperly invoiced.

Invoices will not be processed for payment, nor will the period of cash discount commence, until all invoiced items are received and satisfactory performance of the Contract has been attained, and a properly completed invoice is received by the City. If an adjustment in payment is necessary due to damage or dispute, the cash discount period shall commence on the date final approval for payment is authorized.

2.10 ADDITIONAL CITY CONTRACTS

During the term of this Contract, other City of Tacoma Departments/Divisions shall have the right to enter into additional service contracts or issue purchase orders based on the unit prices and/or service rates stated in this Contract. An exception taken specifically to this provision at time of submittal shall not constitute a material deviation in the bidding process.

2.11 COOPERATIVE PURCHASING

The Washington State Interlocal Cooperation Act RCW 39.34 provides that other governmental agencies may purchase goods and services based on this Contract in accordance with the terms and prices indicated herein if all parties are agreeable. Each public agency shall formulate a separate contract with the Contractor, incorporating the terms and conditions of this Contract with the City of Tacoma. The City shall incur no liability in connection with such contracts or purchases by other public agencies thereunder. It will be the Contractor’s responsibility to inform such public agencies of this Contract. Contractor shall invoice such public agencies as separate entities.

2.12 WARRANTIES/REPRESENTATIONS

The Contractor warrants that all services performed pursuant to the Contract shall be generally suitable for the use to which the City intends to use said services as expressed in this Contract. The Contractor represents and warrants that it will diligently and completely perform all services and obligations consistent with customarily accepted good practices and standards of performance applicable to service providers rendering the same or similar type of service and that it will comply with all applicable federal, state and local laws, ordinances, rules and regulations including, but not limited to, the Occupational Safety and Health Administration (OSHA) and the Washington Industrial Safety and Health Act (WISHA). If the Contractor intends to rely on information or data supplied by the City, other City contractor’s or other generally reputable sources without independent verification, such intent shall be brought to the attention of the City.

2.13 TAXES, LICENSES, PERMITS

Unless otherwise required by applicable law, the tax provisions in Section 1 - Solicitation apply to this Contract. Except for state sales tax, the Contractor acknowledges that it is responsible for the payment of all taxes applicable to this Contract and the Contractor agrees to comply with all applicable laws regarding the reporting of income, maintenance of records and all other requirements and obligations imposed pursuant to applicable law.

The Contractor, at its expense, shall obtain and keep in force any and all necessary licenses and permits. The Contractor shall obtain a business license as required by Tacoma Municipal Code Subtitle 6B.20 and shall pay business and occupation taxes as required by Tacoma Municipal Code Subtitle 6A.30.

If the City is assessed, made liable, or responsible in any manner for taxes contrary to the provisions of this Contract, the Contractor agrees to hold the City harmless from such costs, including attorney's fees. In the event the Contractor fails to pay any taxes, assessments, penalties, or fees imposed by any governmental body, including a court of law, other than those taxes the City is required to pay, then the Contractor authorizes the City to deduct and withhold or pay over to the appropriate governmental body those unpaid amounts upon demand by the governmental body. It is agreed that this provision shall apply to taxes and fees imposed by City ordinance. Any such payments shall be deducted from the Contractor’s total compensation.
2.14 FEDERAL, STATE AND MUNICIPAL LAWS AND REGULATIONS

All federal, state, municipal and/or local laws and regulations shall be satisfied in the performance of all portions of this Contract. The Contractor shall be solely responsible for all violations of the law from any cause in connection with its performance of work under this Contract.

2.15 SMALL BUSINESS ENTERPRISE (SBE) PROGRAM AND EQUAL OPPORTUNITY

It is the policy of the City of Tacoma that all citizens be afforded an equal opportunity for full participation in our free enterprise system. In order to implement this policy, the City of Tacoma is committed to ensuring equitable participation of small business enterprises. Contact Tacoma's SBE coordinator at 253-591-5224 for additional information.

2.16 NON-DISCRIMINATION

The Contractor agrees to take all steps necessary to comply with all federal, state and City laws and policies regarding non-discrimination and equal employment opportunities. The Contractor shall not discriminate in any employment action because of race, religion, color, national origin or ancestry, sex, gender identity, sexual orientation, age, marital status, familial status, or the presence of any sensory, mental or physical handicap. In the event of non-compliance by the Contractor with any of the non-discrimination provisions of this Contract, the City shall be deemed to have cause to terminate this Contract, in whole or in part.

2.17 PREVAILING WAGES PAID – IF REQUIRED

If this Contract involves services for which state and/or local laws may require the Contractor to pay prevailing wages, and Contractor hereby agrees to pay such applicable prevailing wages. If applicable to this Contract, a Schedule of Prevailing Wage Rates for the locality or localities where this Contract will be performed is attached and made part of this Contract by this reference. If prevailing wages do apply to this Contract, the Contractor and its subcontractors shall (a) be bound by the provisions of Chapter 39.12 RCW, as amended, relating to prevailing wages and usual fringe benefits, (b) ensure that no worker, laborer or mechanic employed in the performance of any part of this Contract shall be paid less than the prevailing rate of wage specified on that Schedule, and (c) immediately upon award of the Contract, contact the Department of Labor and Industries, Prevailing Wages section, Olympia, Washington, to obtain full information, forms and procedures relating to these matters. Per such procedures, a Statement of Intent to Pay Prevailing Wages must be submitted by the Contractor and its subcontractors to the City, in the manner requested by the City, prior to any payment by the City hereunder, and an Affidavit of Wages Paid must be received or verified by the City prior to final Contract payment.

2.18 CONFLICT OF INTEREST

No officer, employee or agent of the City, nor any member of the immediate family of any such officer, employee or agent as defined by City ordinance, shall have any personal financial interest, direct or indirect, in this Contract, either in fact or in appearance. The Contractor shall comply with all federal, state and City conflict of interest laws, statutes and regulations. The Contractor represents that the Contractor presently has no interest and shall not acquire any interest, direct or indirect, in the program to which this Contract pertains that would conflict in any manner or degree with the performance of the Contractor's services and obligations hereunder. The Contractor further covenants that, in performance of this Contract, no person having any such interest shall be employed. The Contractor also agrees that its violation of the City's Code of Ethics contained in Chapter 1.46 of the Tacoma Municipal Code shall constitute a breach of this Contract subjecting the Contract to termination.

2.19 REPORTS, RIGHT TO AUDIT, PERSONNEL

A. Reports

The Contractor shall, at such times and in such form as the City may reasonably require, furnish the City with periodic status reports pertaining to the services undertaken pursuant to this Contract.

B. Right to Audit

Upon City’s request, the Contractor shall make available to City all accounts, records and documents related to the scope of work for City’s inspection, auditing, or evaluation during normal business hours as reasonably needed by City to assess performance, compliance and/or quality assurance under this Contract.
C. Personnel

If before, during, or after the execution of this Contract, the Contractor has represented or represents to the City that certain personnel would or will be responsible for performing services pursuant to this Contract, then the Contractor is obligated to ensure that said personnel perform said Contract services to the maximum extent permitted by law. This Contract provision shall only be waived by written authorization by the City, and on a case by case basis.

2.20 TERMINATION AND SUSPENSION

The City may terminate this Contract at any time, with or without cause, by giving 10 business days written notice to Contractor. In the event of termination, all finished and unfinished work prepared by the Contractor pursuant to this Contract shall be provided to the City. In the event City terminates this Contract due to the City’s own reasons and without cause due to the Contractor’s actions or omissions, the City shall pay the Contractor the amount due for actual work and services necessarily performed under this Contract up to the effective date of termination, not to exceed the total compensation set forth herein.

The City may suspend this Contract, at its sole discretion, upon three business days written notice to the Contractor. Such notice shall indicate the anticipated period of suspension. Any reimbursement for expenses incurred due to the suspension shall be limited to the Contractor’s actual expenses and shall be subject to verification. The Contractor shall resume performance of services under this Contract without delay when the suspension period ends.

Termination or suspension of this Contract by City shall not constitute a waiver of any claims or remaining rights the City may have against Contractor relative to performance hereunder.

2.21 INDEMNIFICATION – HOLD HARMLESS

The Contractor shall indemnify, defend and hold harmless the City, its officials, officers, agents, employees and volunteers, from any and all claims, demands, damages, lawsuits, liabilities, losses, liens, expenses and costs arising out of the subject matter of this Contract; provided that this provision shall not apply to the extent that damage or injury results from the fault of the City, or its officers, agents, or employees. The term “fault” as used herein shall have the same meaning as set forth in RCW 4.22.015, as that statute may hereafter be amended.

The Contractor specifically assumes potential liability for actions brought by the Contractor's own employees against the City and, solely for the purpose of this indemnification and defense, the Respondent specifically waives any immunity under the state industrial insurance law, Title 51 RCW.

These indemnifications shall survive the termination of this Contract.

A waiver or failure by either party to enforce any provision of this Contract shall not be construed as a continuing waiver of such provisions, nor shall the same constitute a waiver of any other provision of this Contract.

2.22 INSURANCE

The Contractor shall maintain all necessary insurance to protect Contractor and the City from losses and claims that may arise out of or result from performance of duties related to the Contract, including Worker's Compensation, automobile public liability and property damage, commercial general liability, professional liability, errors and omissions and others, as specified in the Insurance Requirements attachment.

2.23 INDEPENDENT CONTRACTOR STATUS

The Contractor is considered an independent contractor who shall at all times perform his/her duties and responsibilities and carry out all services as an independent contractor and shall never represent or construe his/her status to be that of an agent or employee of the City, nor shall the Contractor be eligible for any employee benefits. No payroll or employment taxes or contributions of any kind shall be withheld or paid by the City with respect to payments to Contractor. The Contractor shall be solely responsible for all said payroll or employment taxes and/or contributions including, but not limited to, FICA, FUTA, federal income tax, state personal income tax, state disability insurance tax and state unemployment insurance tax. If the City is assessed, made liable or responsible in any manner for such taxes or contributions, the Contractor agrees to indemnify and hold the City harmless from all costs incurred, including attorney fees.

Unless otherwise specified in writing, Contractor shall provide at its sole expense all materials, working space, and other necessities and instruments to perform its duties under this Contract. The Contractor, at
its sole expense, shall obtain and keep in force any and all applicable licenses, permits and tax certificates necessary to perform Contract services.

2.24 NOTICES
Except for routine operational communications, which may be delivered personally or transmitted by electronic mail or facsimile, all notices required hereunder shall be in writing and shall be deemed to have been duly given if delivered personally or mailed first-class mail, postage prepaid, to the Contractor’s registered agent and to the applicable City department representative.

2.25 CITY OWNERSHIP OF WORK/RIGHTS IN DATA/PUBLICATIONS
To the extent that Contractor creates any work subject to the protections of the Copyright Act (Title 17 U.S.C) in its performance of this Contract, Contractor agrees to the following: The work has been specially ordered and commissioned by the City. Contractor agrees that the work is a “work made for hire” for copyright purposes, with all copyrights in the work owned by City. To the extent that the work does not qualify as a work made for hire under applicable law, and to the extent that the work includes material subject to copyright, Contractor hereby assigns to City, its successors and assigns, all right, title and interest in and to the work, including but not limited to, all copyrights, patent, trade secret and other proprietary rights, and all rights, title and interest in and to any inventions and designs embodied in the work or developed during the course of Contractor’s creation of the work.

The Contractor shall be solely responsible for obtaining releases and/or licenses for the reproduction, distribution, creation of derivative works, performance, display, or other use of copyrighted materials. Should the Contractor fail to obtain said releases and/or licenses, the Contractor shall indemnify, defend and hold harmless the City for any claim resulting there from.

2.26 PUBLIC DISCLOSURE
This Contract and documents provided to the City by Contractor hereunder are deemed public records subject to disclosure under the Washington State Public Records Act, Chapter 42.56 RCW (Public Records Act). Thus, the City may be required, upon request, to disclose this Contract and documents related to it unless an exemption under the Public Records Act or other laws applies.

2.27 DUTY OF CONFIDENTIALITY
Contractor acknowledges that unauthorized disclosure of information or documentation concerning the Scope of Work hereunder may cause substantial economic loss or harm to the City. Except for disclosure of information and documents to Contractor’s employees, agents, or subcontractors who have a substantial need to know such information in connection with Contractor’s performance of obligations under this Contract, the Contractor shall not without prior written authorization by the City allow the release, dissemination, distribution, sharing, or other publication or disclosure of information or documentation obtained, discovered, shared or produced pursuant to this Contract.

2.28 DISPUTE RESOLUTION
In the event of a dispute pertaining to this Contract, the parties agree to attempt to negotiate in good faith an acceptable resolution. If a resolution cannot be negotiated, then the parties agree to submit the dispute to voluntary non-binding mediation before pursuing other remedies. This provision does not limit the City’s right to terminate authorized by this Contract.

2.29 GOVERNING LAW AND VENUE
Washington law shall govern the interpretation of this Contract. The state or federal courts located in Pierce County shall be the venue of any mediation, arbitration or litigation arising out of this Contract.

2.30 ASSIGNMENT
The Contractor shall not assign, subcontract, delegate, or transfer any obligation, interest or claim to or under this Contract without the prior written consent of the City.
2.31 WAIVER

A waiver or failure by either party to enforce any provision of this Contract shall not be construed as a continuing waiver of such provisions, nor shall the same constitute a waiver of any other provision of this Contract.

2.32 SEVERABILITY AND SURVIVAL

If any term, condition or provision of this Contract is declared void or unenforceable or limited in its application or effect, such event shall not affect any other provisions hereof and all other provisions shall remain fully enforceable. The provisions of this Contract, which by their sense and context are reasonably intended to survive the completion, expiration or cancellation of this Contract, shall survive termination of this Contract.

2.33 CONFLICT WITH CONTRACT

In the event of any conflict between this document, Standard Terms and Conditions Section 2, Services, and the Professional Services Contract or other type of Contract (Contract) ultimately negotiated and entered into between Respondent and the City, the provisions of the Contract shall prevail. However, absent any such conflict the provisions of this document, Standard Terms and Conditions Section 2, Services, are fully incorporated into and considered part of the Contract.

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APPENDIX E

Insurance Requirements
INSURANCE CERTIFICATE REQUIREMENTS

Please furnish the Purchasing Division with a Certificate of Insurance with the following liability limits based on the contract amount:

<table>
<thead>
<tr>
<th>CONTRACT AMOUNT</th>
<th>LIABILITY LIMITS</th>
</tr>
</thead>
<tbody>
<tr>
<td>$ 25,000 and Under</td>
<td>$ 500,000 Combined Single Limit</td>
</tr>
<tr>
<td>$500,000 and Under</td>
<td>$1,000,000 Per Occurrence / $2,000,000 Aggregate</td>
</tr>
<tr>
<td>Over $500,000</td>
<td>$5,000,000 Total Coverage</td>
</tr>
</tbody>
</table>

A. Umbrella excess liability may be used to reach the limits stated above. Coverage must include:
1. Comprehensive General Liability
2. Automobile Liability - Hired and Non-Owned
3. Contractual Coverage
4. Broad Form Property Damage
5. Underground Explosion and Collapse Hazard (if necessary by the nature of the work)
6. Any additional coverage specifically required by the City's specification

B. The following general requirements apply:
1. Insurance carrier must be authorized to do business in the State of Washington.
2. Coverage must include personal injury, protective and employer liability.
3. Contractor must provide with the certificate (a) evidence of the amount of any deductible or self-insured retention under the policy, and (b) policy endorsement(s) that verify compliance with the additional insured and the primary/non-contributory requirements specified in Section C. 1 and C. 2. below.
4. It is the contractor's responsibility to keep an up-to-date Certificate of Insurance on file with the City throughout the contract.
5. Contractor's insurance must be primary and non-contributory over any insurance the City may maintain, that is, any such City insurance shall be excess to limits stated in the certificate.

C. The following statements are required on the Certificate of Insurance:
1. "The City of Tacoma is named as an additional insured" ("as respects a specific contract" or "for any and all work performed with the City" may be included in this statement).
2. "This insurance is primary and non-contributory over any insurance or self-insurance the City may have" ("as respects a specific contract" or "for any and all work performed with the City" may be included in this statement).
3. "Should any of the above described policies be canceled before the expiration date thereof, the issuing company will mail 30 days written notice to the Certificate Holder named." Language such as, "endeavor to" mail and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representative" is not acceptable and must be crossed out. See example below.

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**DESCRIPTION OF OPERATIONS/Locations/Vehicles/Exclusions Added by Endorsement/Special Provisions**

The below listed certificated holder is added as an additional insured as respects any and all work performed with the City (or as respects project ________). This insurance is primary over any insurance or self-insurance the City may have for any and all work performed with the City (or as respects project ________).

**CERTIFICATE HOLDER**

CITY OF TACOMA  
PO BOX 11007  
TACOMA WA 98411-0007

"Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will **endeavor to** mail 30 days written notice to the certificate holder named to the left, but failure to do so shall impose no obligation or liability of any kind upon the company, its agents or representatives."