

PTOI GOVERNMENTAL CONTRACT-2019 INTERGOVERNMENTAL AGREEMENT

concerning the
Taylor Way Rehabilitation Project
between the
Puyallup Tribe of Indians and the
City of Tacoma

I. INTRODUCTION

This Intergovernmental Agreement (“Agreement”) is entered into between the City of Tacoma (“COT”) and the Puyallup Tribe of Indians (“Tribe”), (collectively “Parties”). The Parties agree that they will consider applicable to the Taylor Way Rehabilitation Project (“Project”) the terms, conditions, restrictions, authorizations, processes and other provisions described in this document. This Agreement, once executed, shall be binding on and enforceable against each Party.

For the purposes of this Agreement, the Project is defined as those activities proposed by COT related to the acquisition of an easement (a.k.a. “right-of-way”) on Pierce County Parcel No. 5000350110 (BIA Trust No. 115 T 1070) identified as Tribal trust land located within the Puyallup Indian Reservation (“Property”).

This Agreement applies to the Project. The Parties agree that the Tribe will accept the COT’s Revised Offer Letter dated October 17, 2018, in which consideration in the amount of SEVENTY-SIX THOUSAND SIX HUNDRED DOLLARS AND ZERO CENTS (\$76,600.00) will be paid to the Tribe and in-kind compensation in the form of utility improvements valued at ONE HUNDRED TWENTY-FOUR THOUSAND SIX HUNDRED DOLLARS AND ZERO CENTS (\$124,600.00) will be constructed and extended by COT on behalf of the Tribe in exchange for the Tribe agreeing to grant COT an easement on the Property comprising approximately 11,421 square feet for public right-of-way and utilities. Said easement is described and shown on Exhibit 1 attached hereto and made a part hereof. As may be allowed under the Code of Federal Regulations, 25 CFR 169.201(b), the Tribe agrees that the term of the easement shall be ninety-nine (99) years with automatic renewals without further action or compensation so long as the easement is used for the purposes intended unless (1) COT affirmatively abandons the easement, or (2) COT violates any conditions of the Bureau of Indian Affairs (“BIA”) Right-of-Way Grant pertaining to the easement contemplated herein and fails to cure.

The Parties agree that nothing in this Agreement shall be interpreted as waiving any requirement or limitation imposed by the Puyallup Tribal Land Claims Settlement Agreement dated August 28, 1988, ratified by Congress in P.L. 101-41.

II. PURPOSE

The purpose of this Agreement is to delineate the commitments by all Parties related to the successful construction and completion of the Project and to clarify and formalize the terms of the COT's offer letter and to document the understanding and agreement between the parties as to the value and consideration exchanged for the easements on the Property.

III. BACKGROUND

- A.** COT plans to construct the Project wholly within the Pierce County, Washington. COT has analyzed the Project pursuant to the National Environmental Policy Act (NEPA), the State Environmental Policy Act (SEPA), and other applicable laws and authorities.
- B.** COT recognizes that the Project is to be conducted within the boundaries of the Puyallup Indian Reservation as defined within the 1873 survey on real property owned by the Tribe (or in trust therefor).
- C.** The Parties recognize that building the Project is subject to the availability of funds and the timely receipt of necessary Federal, Tribal, state and local regulatory approvals.
- D.** COT is seeking to obtain an easement on Tribal trust land for street and road purposes, related construction activities, and for operation, maintenance and repair of the constructed facilities and associated infrastructure.
- E.** The City and the Tribe agree to negotiate in good faith in order to resolve any real property/right-of-way use issues.
- F.** Pursuant to the Washington Inter-local Cooperation Act, Chapter 39.34 RCW, COT has the authority to enter into this agreement with the Tribe.

IV. COORDINATION WITH TRIBAL DEVELOPMENT

The Parties have attached Exhibit 1 hereto as the Project's current configuration. By entering into this Agreement, the Tribe acknowledges its acceptance of the Exhibit 1 design. Any changes to the Project design will be made by mutual agreement and amended to this Agreement as an amendment or replacement of Exhibit 1. Approval of design changes will not be unreasonably withheld, conditioned or delayed.

- A.** COT will:
 - Perform all preconstruction activities for the Project, including design and permitting.
 - Construct the following utility improvements (collectively, "Utility Improvements") on behalf of the Tribe:
 - One (1) stormwater line;
 - One (1) wastewater line;

- One (1) domestic water supply line; and
- One (1) fire water supply line.
- Construct the Utility Improvements from the public right-of-way and bring the Utility Improvements to the property line of said Property.
- Size the Utility Improvements according to the Tribe's proposed development plans for the Property, based upon information that has been provided to COT as of February 2019.
- Locate the Utility Improvements in an area mutually agreeable to the Parties.
- Cap the Utility Improvements per industry standard for future use by the Tribe.

B. The Tribe will:

- Upon execution of this Agreement, the Tribe will provide a Tribal Resolution evidencing to the Bureau of Indian Affairs agreement, acceptance, and concurrence by the Tribe to the COT's Revised Offer Letter dated October 17, 2018, and associated appraisal and review appraisal, and the terms and conditions contained in this Agreement granting COT the property rights needed to construct the Project.
- Coordinate any necessary review and approval activities with COT in accordance with the Project schedule.
- Communicate any issues with the Project as they relate to Tribal operations.
- Identify the location of the Utility Improvements in an area mutually agreeable to the Parties.
- Confirm the location and sizing of Utility Improvements at least four (4) weeks prior to COT advertisement for construction of the Project.

C. The Parties agree that construction, installation or permitting of any water meters is not part of this Agreement.

V. WATER QUALITY

In order to protect the fishery resource and habitat as well as human health and the environment, COT will ensure that all work on the Project complies with Project permits together with Tribal water quality standards.

VI. CONSIDERATION

The Parties agree that, that in exchange for the Tribe granting to COT an easement comprising approximately 11,421 square feet - said easement running along and adjacent to Taylor Way as shown on Exhibit 1 attached hereto and made a part hereof – the Tribe hereby accepts from COT consideration in the amount of SEVENTY-SIX THOUSAND SIX HUNDRED DOLLARS AND ZERO CENTS (\$76,600.00) plus in-kind compensation in the form of utility improvements valued at ONE HUNDRED TWENTY-FOUR THOUSAND SIX HUNDRED DOLLARS AND ZERO CENTS (\$124,600.00), the value and sufficiency of which is hereby acknowledged. The determination of value of

the amounts above were established by a yellow book appraisal and underwent appraisal review.

VII. TECHNICAL APPENDICES

All technical plans included as Exhibits may be subject to modification with the written approval of all Parties without formally amending this Agreement. Said technical plans shall not modify nor amend the granted easement area.

VIII. AMENDMENT

This Agreement may be amended by written amendment. Such amendments and changes made under this Agreement shall be made in writing and signed by Lead Representatives of all the Parties, as noted in Section XVI, LEAD AND DESIGNATED REPRESENTATIVES. Any supplemental agreement shall be agreed upon in writing prior to undertaking any work or incurring any costs covered by such amendment.

IX. NO OBJECTION TO PROJECT

As long as COT is in compliance with the provisions of this Agreement, the terms of any permits, and the provisions of all applicable laws, the Tribe agrees that it will not object to or otherwise oppose the Project in any federal, state, or local regulatory, administrative, or judicial proceedings associated with the permitting, financing, and construction of the Project, including any permit modifications or NEPA, SEPA, JARPA or Section 106 reevaluations for the Project that do not materially increase the impacts of the Project so long as this Agreement remains in effect.

X. RECORDS RETENTION & AUDITS

During the term of this Agreement and for a period not less than six (6) years from the date of final payment by COT, the records and accounts pertaining to the work provided by the Tribe and accounting therefore are to be kept available for inspection and audit by COT and federal and State agencies providing Project funding and copies of all records, accounts, documents, or other data pertaining to the work provided by the Tribe will be furnished upon request. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until said litigation, claim, or audit finding has been resolved even though such litigation, claim, or audit continues past the six (6) year retention period.

XI. RELEASE

Except for those obligations which any federal agency, state agency and COT undertake in this Agreement, the Tribe, its successors or assigns, hereby release and forever discharge the COT, its officers, employees, agents and contractors from any and all claims, demands and causes of action of any nature whatsoever against the COT for damages or equitable or other non-monetary relief associated with the impact

of the Project on its Treaty rights and cultural interests. This release does not pertain to claims or causes of action from the Project for other than anticipated potential impacts to the Tribe's Treaty rights and cultural interests.

XII. INTEGRATION AND SEVERABILITY

This Agreement constitutes a single integrated contract that expresses the entire agreement of the Parties hereto. Any prior representations or agreements, not specified herein, whether oral or written, in regard to this Agreement or its subject matter are hereby superseded in their entirety by this Agreement. If any provision of this Agreement is held invalid, it shall be considered severable from the remainder, and the remaining provisions shall be given full force and effect, provided that such remainder conforms to the terms and requirements of applicable law and the intent of this Agreement.

XIII. AGREEMENT BINDING

The terms and conditions of this Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and assigns.

XIV. AUTHORITY TO SIGN

The Tribe represents, warrants, and covenants that it has the authority to enter into this Agreement, and that its execution and delivery have been duly authorized by Tribal Resolution. As part of this Agreement, the Tribe will furnish a copy of the resolution of the Tribal Council granting authority of the undersigned to execute this Agreement on behalf of the Tribe no later than five (5) business days following execution of this Agreement.

The COT represents, warrants and covenants that it has the authority to enter into this Agreement, and that its execution and delivery have been duly authorized.

XV. DISPUTE RESOLUTION PROCESS

The Parties shall make good faith efforts to quickly and collaboratively resolve any dispute arising under or in connection with this Agreement. The dispute resolution process outlined in this Section applies to disputes arising under or in connection with the terms of this Agreement.

A. Informal Resolution. The informal resolution process begins at the staff level and is raised to the higher organizational levels if necessary.

B. In the event that the Parties are unable to resolve the dispute, the Parties shall submit the matter to non-binding mediation facilitated by a mutually agreed upon, mediator. The Parties shall share equally in the cost of the mediator.

C. Each Party agrees to compromise to the fullest extent reasonably possible in resolving the dispute in order to avoid delays or additional incurred cost to the Project.

D. Upon the demand of either party, any dispute that cannot be resolved by discussion or mediation shall be resolved by binding arbitration following the procedure spelled out in this section. Arbitration proceedings shall be administered by the American Arbitration Association (“AAA”) or such other administrator as the parties shall mutually agree upon in accordance with the AAA Commercial Arbitration Rules. All disputes submitted to arbitration shall be resolved in accordance with the Federal Arbitration Act (Title 9 of the United States Code). The arbitration shall be conducted at a location in Tacoma. If there is any inconsistency between the terms of this Agreement and any such rules, the terms and procedures set forth herein shall control. All statutes of limitation applicable to any dispute shall apply to any arbitration proceeding. All discovery activities shall be expressly limited to the dispute being arbitrated. Fees and costs associated with arbitration shall be divided equally by the parties.

XVI. LEAD, DESIGNATED AND PROJECT REPRESENTATIVES

Lead Representatives

a. Puyallup Tribe of Indians

Chairperson

Puyallup Tribe of Indians

E. 3009 Portland Avenue

Tacoma, WA 98404

253-573-7800

b. City of Tacoma

City Manager

747 Market Street, 12th Floor

Tacoma, WA 98402

253-591-5135

Designated Representatives

a. Puyallup Tribe of Indians

Director of Planning and Land Use, Andrew Strobel

The Puyallup Tribe of Indians

E. 3009 Portland Avenue

Tacoma, WA 98404

253-573-7800

b. City of Tacoma

Director of Public Works, Kurtis D. Kingsolver, P.E.

747 Market Street, 4th Floor

Tacoma, WA 98402

253-591-5269

Project Representatives

a. City of Tacoma

Principal Engineer, Mark D'Andrea
747 Market Street, 5th Floor
Tacoma, WA 98402
Phone: 253-591-5518
Email: mdandrea@cityoftacoma.org

The parties shall provide contact information for project representatives noted in this Agreement. The contact information shall include contact name, mailing address, phone number and e-mail address. The information shall be updated as needed.

XVII. RESERVATION OF RIGHTS, NO WAIVER OF CLAIMS

Except as provided in the Waiver of Sovereign Immunity (Section XIX), by entering into this Agreement, the Tribe does not waive any rights to exercise its Treaty rights, and any and all such rights are hereby expressly reserved.

XVIII. INDEMNIFICATION

To the maximum extent authorized by law, each Party shall indemnify and hold harmless the other Party and its employees and/or officers from and shall process and defend at the indemnifying Party's expense any and all claims, demands, suits at law or equity, actions, penalties, losses, damages (both to persons and/or property), or costs, of whatsoever kind or nature, brought against the other Party arising out of, in connection with, or incident to the indemnifying Party's negligent performance or failure to perform any aspect of this Agreement, including the work done by each party on the project covered by this Agreement; provided, however, that if such claims are caused by or result from the concurrent negligence of the Parties, their employees and/or officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Parties, their employees and/or officers.

The provisions of this Section shall survive the termination of this Agreement.

XIX. WAIVER OF SOVEREIGN IMMUNITY AND VENUE

The Tribe voluntarily enters into a limited waiver of its sovereign immunity on the following terms and conditions: The Tribe consents to binding arbitration of disputes involving the enforcement of the terms of this Agreement and, if necessary, to judicial enforcement of arbitration decisions in Pierce County Superior Court or the Puyallup Tribal Court. The Tribe consents only to arbitration of claims made by COT under the provisions of this Section XV. The Tribe agrees that it will not raise sovereign immunity as a defense in any such arbitration or action for judicial enforcement of an arbitration decision. This limited waiver shall expire upon the expiration or termination of this Agreement.

XX. INSURANCE

A. General Requirements

During the term of the Agreement, the COT shall maintain in full force and at its own expense each insurance coverage or policy noted below, from insurance companies that are authorized to transact insurance and issue coverage in the State of Washington and are acceptable to the Tribe, or alternatively shall maintain functionally equivalent coverage through the COT's program of self-insurance/self-retention with excess coverage. The COT shall pay for all applicable deductibles.

B. Commercial General Liability

The COT shall obtain, at its expense, and keep in effect during the term of this Agreement, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that is satisfactory to the Tribe. This insurance shall include personal injury liability, products and completed operations, and contractual liability coverage for the indemnity provided under this Agreement, and is made on an occurrence basis. Combined single limit per occurrence shall not be less than \$1,000,000. Each annual aggregate limit shall not be less than \$1,000,000.

E. Bonding

The COT shall obtain either on its own or through its contractor for the Project, at its (or its contractor's) expense, and keep in effect during the term of this Agreement, a Performance & Payment Bond with Guaranty. COT is undertaking the work primarily in areas under the ownership or control of the Tribe as right of way or construction easement. As a result of the foregoing, the work guaranteed by this bond is guaranteed both as to the COT and to the Tribe and this Bond may be drawn upon in the event of non-performance by the Contractor.

D. Automobile Liability Insurance: Automobile Liability

The COT shall obtain, at its expense, and keep in effect during the term of this Agreement, Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance. Combined single limit per occurrence shall not be less than \$1,000,000.

E. Additional Insured – Waiver of Reliance on Sovereign Immunity Defenses

(1) The liability insurance coverage required for performance of the Agreement shall include the Tribe as Additional Insured with respect to the COT's activities to be performed under this Agreement. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

(2) In the defense of claims filed against the Tribe, the insurer may not invoke the Tribe's sovereign immunity without the explicit written consent of the Tribe.

F. Certificate(s) of Insurance

Within ten (10) days of commencement of work contemplated under this Agreement the COT shall furnish evidence of the insurance coverage required by this Agreement.

XXI. GOVERNING LAW

The Parties agree that this Agreement and all questions concerning the performance of this Agreement shall be interpreted, construed and enforced in all respects in accordance with contract law of the State of Washington, without reference to rules relating to the choice of law, and any federal law applicable to that interpretation. Further the parties recognize and agree that they will follow all applicable federal, state and Tribal laws in the conduct of their activities under this Agreement.

XXII. TERM

The term of this Agreement shall begin at the date of final execution by the Parties and shall continue until completion of the Project, unless otherwise noted herein.

IN WITNESS WHEREOF, the Parties hereto agree to the terms and conditions of this Agreement as of the day and year last written below.

<p>PUYALLUP TRIBE OF INDIANS Date: _____</p> <p>By: _____ Chairman Puyallup Tribe of Indians</p> <p>APPROVED AS TO FORM</p> <p>By: _____ Alec Wrolson, Attorney</p>	<p>CITY OF TACOMA Date: _____</p> <p>By: _____ Elizabeth A. Pauli, City Manager</p> <p>_____ Kurtis D. Kingsolver, P.E., Director, Public Works</p> <p>_____ Andrew Cherullo, Finance Director</p> <p>_____ Saada Gegoux, Risk Manager</p>
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	<p>APPROVED AS TO FORM</p> <p>By: _____</p> <p>Deputy City Attorney</p>
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