



**Interagency Agreement with**

**Tacoma Power**

**through**

Energy Division  
Direct Appropriation

**Contract Number:  
25-53310-003**

**For**

**Pumped Storage Feasibility Study at Tacoma Power's Mossyrock  
Dam**

**Dated:** Wednesday, January 1, 2025

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## Face Sheet

**Contract Number: 25-53310-003**

### Energy Division, Energy Programs in Communities 23-25 Direct Appropriation Funds

<b>1. Contractor</b> City of Tacoma, Department of Public Utilities, Light Division 3628 S 35th St Tacoma, WA 98409		<b>2. Contractor Doing Business As (as applicable)</b> Tacoma Power 3628 S 35th St Tacoma, WA 98409	
<b>3. Contractor Representative</b> Rachel Clark Resource Planning & Analytics Manager <a href="mailto:RClark2@cityoftacoma.org">RClark2@cityoftacoma.org</a> 253-325-8194		<b>4. COMMERCE Representative</b> Bryce Davis Program Manager (206) 613-7664 bryce.davis@commerce.wa.gov <span style="float: right; padding-left: 20px;">           P.O. Box 42525            1011 Plum St            Olympia, WA 98504-2525         </span>	
<b>5. Contract Amount</b> \$339,500	<b>6. Funding Source</b> Federal: <input type="checkbox"/> State: <input checked="" type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>		<b>7. Start Date</b> January 1, 2025
<b>8. End Date</b> June 30, 2025			
<b>9. Federal Funds (as applicable)</b> N/A		<b>Federal Agency:</b> N/A	
<b>ALN</b>			
<b>10. Tax ID #</b> 91-6001283	<b>11. SWV #</b> 0000318-68	<b>12. UBI #</b> 278-012-338	<b>13. UEI #</b> YUWKM2N6N4G4
<b>14. Contract Purpose</b> \$350,000 of the climate commitment account is provided to Tacoma Power, to conduct a feasibility study, including scoping project costs, on pumped storage at Tacoma Power's Mossyrock dam. The contract is exempt from the competitive procurement requirements in chapter 39.26 RCW. Funds provided in this subsection may not be expended or obligated prior to January 1, 2025.			
COMMERCE, defined as the Department of Commerce, and the Contractor, as defined above, acknowledge and accept the terms of this Contract and Attachments and have executed this Contract on the date below and warrant they are authorized to bind their respective agencies. The rights and obligations of both parties to this Contract are governed by this Contract and the following documents incorporated by reference: Contractor Terms and Conditions including Attachment "A" – Scope of Work, Attachment "B" – Budget, Attachment "C" –Reporting, Attachment "D" - Proviso			
<b>FOR CONTRACTOR</b>  _____ Jackie Flowers, Director of Utilities  _____ Date		<b>FOR COMMERCE</b>  _____ Jennifer Grove, Interim Assistant Director, Energy Division  _____ Date  <b>APPROVED AS TO FORM ONLY          BY ASSISTANT ATTORNEY GENERAL          APPROVAL ON FILE</b>	

## DECLARATIONS

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

### CLIENT INFORMATION

Legal Name: Tacoma Power

Agreement Number: 25-53310-003

Award Year: 2025

State Wide Vendor Number: 0000318-68

### PROJECT INFORMATION

Project Title: Mossyrock Pumped Storage Feasibility Study

Project Address: 4788 US Highway 12

Project City: Mossyrock

Project State: WA

Project Zip Code: 98564

### GRANT INFORMATION

Grant Amount: \$339,500

Earliest Date for Reimbursement: Contract Start Date

Time of Performance: 01/01/2025 – 06/01/2025

## Program Specific Terms and Conditions

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

1. **BILLING AND COMPENSATION FOR PERFORMANCE BASED CONTRACT (Replaces Special Terms and Conditions #4 Billing Procedures and Payment)**

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

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

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

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

COMMERCE will pay Contractor the amounts set forth in Attachment B upon full completion of each milestone. Upon full completion of each Milestone, Contractor will provide an invoice and any required supporting documentation to the Representative of COMMERCE. Except as may be agreed by COMMERCE in its discretion, COMMERCE shall only be obligated to make payments upon demonstration of completion of all Deliverables within a given Milestone.

However, it is acknowledged that in the event one or two Deliverables of a Milestone is unduly delayed (more than 3 months) due to circumstances outside Contractor's control, COMMERCE may, in its sole discretion, reasonably negotiate with Contractor regarding paying for those Deliverables of such Milestones that are completed.

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

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

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

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

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

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

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

## **DUPLICATION OF BILLED COSTS**

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

## **DISALLOWED COSTS**

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

## **2. SUBCONTRACTING (Replaces General Terms and Conditions #15 Subcontracting)**

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

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

Every subcontract shall bind the Subcontractor to follow all applicable terms of this Contract. The Contractor is responsible to COMMERCE if the Subcontractor fails to comply with any applicable term or condition of this Contract. The Contractor shall appropriately monitor the activities of the Subcontractor to assure fiscal conditions of this Contract.

In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to COMMERCE for any breach in the performance of the Contractor's duties. Every subcontract shall include a term that COMMERCE and the State of Washington are not liable for claims or damages arising from a Subcontractor's performance of the subcontract.

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

## **3. PREVAILING WAGE LAW**

The contractor certifies that all contractors and subcontractors performing work on the Project shall comply with state Prevailing Wages on Public Works, Chapter 39.12 RCW, as applicable to the Project funded by this Agreement, including but not limited to the filing of the "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" as required by RCW 39.12.040. The contractor shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and shall make such records available for COMMERCE's review upon request

## **4. HISTORICAL OR CULTURAL ARTIFACTS**

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

Contractor agrees that the Contractor is legally and financially responsible for compliance with all laws, regulations, and agreements related to the preservation of historical or cultural resources and agrees to hold harmless COMMERCE and the state of Washington in relation to any claim related

to such historical or cultural resources discovered, disturbed, or damaged as a result of the project funded by this Contract.

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

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

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

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

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

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

## **5. ACKNOWLEDGMENT OF CLIMATE COMMITMENT ACT FUNDING**

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

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

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

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

## **6. COPYRIGHT (Replaces General Terms and Conditions #6 Copyright)**

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

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

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

## **7. TERMINATION PROCEDURES (Replaces General Terms and Conditions #19 Termination Procedures)**

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

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

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

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

**8. TREATMENT OF ASSETS (Replaces General Terms and Conditions #20 Treatment of Assets)**

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

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

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

## **Special Terms and Conditions**

### **1. AUTHORITY**

COMMERCE enters into this Contract pursuant to the authority granted by Chapter 39.34 RCW.

### **2. CONTRACT MANAGEMENT**

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

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

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

### **3. COMPENSATION**

COMMERCE shall pay an amount not to exceed \$339,500, for the performance of all things necessary for or incidental to the performance of work under this Contract as set forth in the Scope of Work.

#### **EXPENSES**

Contractor shall receive reimbursement for travel and other expenses as identified below or as authorized in advance by COMMERCE as reimbursable. The maximum amount to be paid to the Contractor for authorized expenses shall not exceed \$0, which amount is included in the Contract total above.

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

### **4. BILLING PROCEDURES AND PAYMENT (Replaced by Program Specific Terms and Conditions #1 Billing and Compensation for Performance Based Contract)**

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

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

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

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

#### Invoices and End of Fiscal Year

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

~~Final invoices for a state fiscal year may be due sooner than the 20th and Commerce will provide notification of the end of fiscal year due date. The Contractor must invoice for all expenses from the beginning of the contract through June 30, regardless of the contract start and end date.~~

#### Duplication of Billed Costs

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

#### Disallowed Costs

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

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

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

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

### **6. INSURANCE**

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

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

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

### **8. ORDER OF PRECEDENCE**

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

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

## **General Terms and Conditions**

### **1. DEFINITIONS**

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

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

### **2. ALL WRITINGS CONTAINED HEREIN**

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

### **3. AMENDMENTS**

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

### **4. ASSIGNMENT**

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

### **5. CONFIDENTIALITY AND SAFEGUARDING OF INFORMATION**

- A. "Confidential Information" as used in this section includes:
  - i. All material provided to the Contractor by COMMERCE that is designated as "confidential" by COMMERCE;
  - ii. All material produced by the Contractor that is designated as "confidential" by COMMERCE; and

iii. All Personal Information in the possession of the Contractor that may not be disclosed under state or federal law.

- B. The Contractor shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Contractor shall use Confidential Information solely for the purposes of this Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of COMMERCE or as may be required by law.

The Contractor shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Contractor shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Contract whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures.

The Contractor shall make the changes within the time period specified by COMMERCE. Upon request, the Contractor shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Contractor against unauthorized disclosure.

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

## 6. **COPYRIGHT** (Replaced by Program Specific Terms and Conditions #6 Copyright)

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

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

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

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

## 7. **DISPUTES**

In the event that a dispute arises under this Agreement, it shall be determined by a Dispute Board in the following manner: Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The

Dispute Board shall review the facts, Agreement terms and applicable statutes and rules and make a determination of the dispute. The Dispute Board shall thereafter decide the dispute with the majority prevailing. The determination of the Dispute Board shall be final and binding on the parties hereto. As an alternative to this process, either of the parties may request intervention by the Governor, as provided by RCW 43.17.330, in which event the Governor's process will control.

**8. GOVERNING LAW AND VENUE**

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

**9. INDEMNIFICATION**

Each party shall be solely responsible for the acts of its employees, officers, and agents.

**10. LICENSING, ACCREDITATION AND REGISTRATION**

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

**11. RECAPTURE**

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

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

**12. RECORDS MAINTENANCE**

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

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

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

**13. SAVINGS**

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

**14. SEVERABILITY**

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

15. **SUBCONTRACTING** (Replaced by Program Specific Terms and Conditions #2 Subcontracting)

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

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

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

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

16. **SURVIVAL**

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

17. **TERMINATION FOR CAUSE**

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

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

COMMERCE reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Contractor or a decision by COMMERCE to terminate the contract. A termination shall be deemed a "Termination for Convenience" if it is determined that the Contractor: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence.

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

18. **TERMINATION FOR CONVENIENCE**

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

19. **TERMINATION PROCEDURES** (Replaced by Program Specific Terms and Conditions #7 Termination Procedures)

~~Upon termination of this Grant, COMMERCE, in addition to any other rights provided in this Grant, may require the Grantee to deliver to COMMERCE any property specifically produced or acquired~~

for the performance of such part of this Grant as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

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

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

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

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

**20. TREATMENT OF ASSETS (Replaced by Program Specific Terms and Conditions #8 Treatment of Assets)**

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

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

~~All reference to the Contractor under this clause shall also include Contractor's employees, agents or Subcontractors.~~

**21. WAIVER**

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

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

### **Scope of Work: Basic Info (Feasibility Study)**

Project Name: Pumped Storage Feasibility Study at Tacoma Power's Mossyrock Dam

Site Address: 4788 US Highway 12, Mossyrock, WA 98564

Serving electric utility: Tacoma Public Utilities

### **1. Project Overview**

As the region decarbonizes the economy and the grid, there will be a growing regional need for new carbon-free resources—especially dispatchable carbon-free resources. Pumped storage hydro is a promising option because it provides capacity, flexibility, energy storage, and grid support, without producing carbon emissions.

Tacoma Power's Cowlitz River Project is a particularly promising location to investigate the opportunity to build pumped storage. The powerhouse at Mossyrock Dam has existing generators in two of three bays and therefore has infrastructure available for a pump-turbine unit to be installed in the third bay. Because it would be building upon existing infrastructure, adding pumped storage to the site is likely to require a smaller investment than many greenfield pumped storage sites. This project will conduct a preliminary assessment of the feasibility and cost of alternative configurations of pumped storage at the Cowlitz River Project and compare against the cost of alternative uses of existing infrastructure.

### **2 Project Development and Design**

This project will comprise the following tasks:

#### **Task 1: Develop alternatives**

- Identify list of preliminary alternatives
- Develop details for the preliminary alternatives. The details for each alternative will include scope, costs, benefits, and risks.
- Develop criteria for preliminary screening analysis.
- Develop AACE Class 5 opinion of probable construction cost (OPCC) for each alternative to be evaluated.

#### **Task 2: Alternatives screening analysis**

- Apply criteria and develop short list of those alternatives that will be further developed.
- Summarize each alternative that was not short listed.

#### **Task 3: Perform analysis of selected alternatives and draft report**

- Conduct an assessment of the feasibility of each selected alternative
- Summarize description of capabilities (capacity, storage duration, etc.) associated with the alternative.
- Evaluate geologic, hydrologic, dam safety, and transmission constraint considerations
- Address environmental, cultural, regulatory and property and water rights considerations for each.
- Develop conceptual designs of selected alternatives

- Conduct lifecycle analyses recognizing that different alternatives will have different maintenance costs, different replacement cycles and different environmental, cultural, and regulatory considerations.
- Perform sensitivity analyses on the key inputs and assumptions for the selected alternatives.
- Draft report containing the information collected throughout the process and the analytical results.

### **3 Contracting and Permitting**

Tacoma Power sub-contract to HDR Engineering Inc to conduct this analysis. This project is purely analytical and does not include procurement of equipment. Nor does it require any permits or utility interconnection agreements.

## Attachment B: Budget

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

Milestone	Project Activity and Task (EXAMPLE)	Deliverable(s) (EXAMPLE)	Activity Period	Milestone \$ Designated in Budget	Total Project Cost
<b>A</b>	Develop alternatives	List of preliminary alternatives, screening criteria and OPCC	May 2, 2025	190,000.00	
			<b>Activity A Subtotal</b>	<b>190,000.00</b>	<b>190,000.00</b>
<b>B</b>	Alternatives screening analysis	Memo identifying list of alternatives to be developed further along with a summary for those not recommended	May 26, 2025	109,000.00	
			<b>Activity B Subtotal</b>	<b>109,000.00</b>	<b>299,000.00</b>
<b>C</b>	Perform analysis of selected alternatives	Draft Report	June 27, 2025	40,500.00	
			<b>Activity C Subtotal</b>	<b>40,500.00</b>	<b>339,500.00</b>
			<b>Budget Totals</b>	<b>339,500.00</b>	<b>339,500.00</b>

## **Attachment C: Reporting**

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

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

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

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

### **Quarterly Reports Submission Deadlines**

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

## **Attachment D: Proviso**

### **2023-2025**

ENGROSSED SUBSTITUTE SENATE BILL 5950 Sec. 130

(30) \$350,000 of the climate commitment account—state appropriation is provided solely for the authority to contract with Tacoma power, to conduct a feasibility study, including scoping project costs, on pumped storage at Tacoma power's Mossyrock dam. The contract is exempt from the competitive procurement requirements in chapter 39.26 RCW. Funds provided in this subsection may not be expended or obligated prior to January 1, 2025. If Initiative Measure 2 No. 2117 is approved in the general election, this subsection is null and void upon the effective date of the measure.

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