

3628 South 35th Street

Tacoma, Washington 98409-3192

TACOMA PUBLIC UTILITIES

December 30, 2019

Ann Weckback
Environmental Planner
Lewis County Department of Public Works
2025 NE Kresky Avenue
Chehalis, WA 98532

SUBJECT: Recreation Grant Agreement for the Cowlitz River Public Access Point Project

Dear Ann,

Enclosed are two original grant agreements signed by Tacoma for the Cowlitz River public access point project in Packwood. After Lewis County has signed both agreements, please retain the fully signed one for your records and return the one that Tacoma's Legal Department inadvertently did not sign. I will have our Legal Department sign that one when we receive it back from you and we will retain it for our records.

Lewis County may begin this project at any time following our receipt of the signed agreement from you. If the project is not expected to be completed before the end of 2020, an extension can be granted, but should be requested several months in advance.

A copy of the original application is provided in Exhibit A and the funding guidelines are included in Exhibit B. The total grant is \$89,120.00. You can submit invoices to Eric Russell in our Natural Resources Department at the letterhead address. Sections 4-6 of the Project Agreement describe the compensation process. The invoices, along with any supporting documentation, should be detailed enough so that Tacoma Power staff can determine what is being submitted for reimbursement and whether it is an administrative or construction cost.

When we assign a finance number to the Agreement, you will be provided the number so you can include it on each invoice. Remittance from Tacoma Power will be made only to Lewis County and all invoices from Lewis County should identify the same payee and address. Tacoma Power typically pays invoices within 30 days of receipt.

You may contact me at (253) 502-8782 or bforrest@ci.tacoma.wa.us if you have any questions about the enclosed agreement. Future inquiries should be directed to Eric Russell at (253) 502-8137 or erussell@ci.tacoma.wa.us.

Your project will be a very welcome recreation facility in the Cowlitz River watershed.

Sincerely,

Bret Forrester
Wildlife and Lands Manager

cc: Chad Chalmers, Tacoma Power
Lisa Dill, Tacoma Power
Eric Russell, Tacoma Power
Keith Underwood, Tacoma Power

**RECREATION GRANT FOR COWLITZ RIVER PUBLIC ACCESS POINT
PROJECT AGREEMENT**

Agreement No. _____

BETWEEN

**CITY OF TACOMA
DEPARTMENT OF PUBLIC UTILITIES
LIGHT DIVISION (TACOMA POWER)**

AND

LEWIS COUNTY DEPARTMENT OF PUBLIC WORKS

This Project Agreement (hereinafter referred to as "Agreement"), made and entered into effective this ____ day of ____, 2019, by and between the City of Tacoma, Department of Public Utilities, Light Division, a municipal corporation of the State of Washington (hereinafter referred to as "TACOMA POWER"), and the **Lewis County Department of Public Works** (hereinafter referred to as "LEWIS COUNTY").

RECITALS

WHEREAS, Article 19 of the Federal Energy Regulatory Commission (FERC) License for the Cowlitz Hydroelectric Project (FERC No. 2016) effective July 18, 2003, required TACOMA POWER to develop a plan to establish a grant program for the construction of eligible facilities to improve access to public waters in the Cowlitz Project vicinity with the funding from TACOMA POWER to be made available three times with up to \$67,000 at each award cycle, and

WHEREAS, FERC approved the Water Access Facilities Grant program plan on August 30, 2006, and the Public Utility Board of the City of Tacoma authorized funding on July 11, 2007, and

WHEREAS, the Water Access Facilities Grant program plan allows for larger grant awards if warranted by the public benefit, and

WHEREAS, a total of \$22,120.00 of unspent funds from previous grants was applied to the current grant bringing the total funding offered to \$89,120.00, and

WHEREAS, the Water Access Facilities Grant program grants are available to fund water access facilities in the Cowlitz River basin upstream of the mouth of the Toutle River on public land or land with legal public access and are available to state or federal agencies, municipal subdivisions, Native American tribes or non-profits with a primary mission related to recreation or natural resources, and

WHEREAS, LEWIS COUNTY applied to TACOMA POWER and was awarded a \$89,120.00 Water Access Facilities Grant in May 2019 to construct a public access point on the Cowlitz River on lands owned by LEWIS COUNTY, and

WHEREAS, LEWIS COUNTY desires to move forward with design and construction of the facilities detailed in the grant proposals, and

WHEREAS, TACOMA POWER is obligated to reimburse eligible costs as described in the grant materials and has the funds necessary to pay; and

WHEREAS, TACOMA POWER and LEWIS COUNTY seek to establish written guidance for grant administration and for provisions in the original grant applications regarding maintenance, liability, public access and other provisions related to the grant funded facilities.

WITNESSETH:

NOW THEREFORE, in consideration of covenants, conditions, performances, and promises hereinafter contained, the parties hereto agree as follows:

1) SERVICE PROVISIONS

- a) Funds awarded under this Agreement shall be used by LEWIS COUNTY solely for the Cowlitz River Public Access Point project as described in the application dated March 9, 2019 (Exhibit A - Water Access Grant), and as referenced in Exhibit B (Water Access Facilities Fund Grant Information). Exhibits A and B are attached hereto and fully incorporated herein by reference.
- b) LEWIS COUNTY shall perform in accordance with the terms and conditions of this Agreement.
- c) In the event of conflicting terms or inconsistencies between this Agreement and the Exhibits A and B, this Agreement shall prevail.
- d) All services requiring reimbursement from TACOMA POWER shall be satisfactorily completed and invoices submitted to TACOMA POWER on or before November 30, 2020 to facilitate payment before December 31, 2020.
- e) LEWIS COUNTY shall comply with all applicable provisions of TACOMA POWER's Water Access Facilities Grant program including those requirements listed in the Water Access Facilities Fund Grant Information (Exhibit B).

2) FUNDING

The total funds awarded to LEWIS COUNTY hereunder shall be a sum up to, but not to exceed Eighty-nine thousand, one hundred and twenty dollars (\$89,120.00).

3) AGREEMENT PERIOD

- a) The effective date of this Agreement shall be the date the Agreement is signed by TACOMA POWER.
- b) This Agreement shall expire 25 years after the date the Agreement is approved by TACOMA POWER, unless mutually extended in writing by the Parties. However, ownership of the improvements as described in Section 14 shall prevail.

4) COMPENSATION AND REIMBURSABLE ITEMS

- a) TACOMA POWER shall compensate LEWIS COUNTY for the services and deliverables performed under this Agreement as follows:
 - i) LEWIS COUNTY shall be reimbursed for all expenses directly related to the construction of the Cowlitz River Public Access Point project as described in Exhibits A and B. Costs not found on the following list should be approved by TACOMA POWER before expenditure to be sure they are reimbursable.
 - a. Reimbursable administrative costs not to exceed 20 percent of the total, which may include: engineering, planning, maps, miscellaneous supplies, cultural resource surveys, printing, reports, hearings, billing and travel to the site.
 - b. Reimbursable construction costs to include: surveys, permits, labor cost of contractors and staff, volunteer support, equipment charges and mileage, site improvements, supplies, equipment needed to make the facility usable and vegetation for landscaping.
 - c. Non-reimbursable costs include entertainment, publicity, overcharges and fines, bonus payments, costs in excess of the grant, unspecified overhead, insurance premiums, legal costs, cost to operate facility, donations, furniture and appliances and retroactive costs prior to signing Project Agreement.

5) MATCHING FUNDS

- a) The release of funds under this Agreement is not contingent upon any matching funds provided by LEWIS COUNTY for the Cowlitz River Public Access Point project.

6) PAYMENT PROVISIONS

- a) Payments to LEWIS COUNTY will be made on a reimbursement basis. For the purposes of this Agreement, reimbursement shall be construed to mean costs incurred and paid, or costs incurred and payable within thirty (30) days of receipt of an eligible invoice.
- b) Each request for payment shall include a completed Status Report and/or evidence of costs paid by LEWIS COUNTY.
- c) After receiving and approving the invoice and accompanying forms, TACOMA POWER shall promptly remit a warrant to LEWIS COUNTY.
- d) The expenditure of TACOMA POWER funds shall be controlled so that LEWIS COUNTY expenditures never exceeds the intended grant amount.

- e) Ten percent of the final reimbursement may be held by TACOMA POWER for payment until the completion and inspection of the final project.

7) EVALUATION AND MONITORING

- a) LEWIS COUNTY shall maintain books, records, documents, and other evidence of accounting procedures and practices, which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. These records shall be subject at all reasonable times to inspection, review, or audit by personnel duly authorized by TACOMA POWER, the Office of the State Auditor, and federal officials so authorized by law, rule, regulation, or agreement. LEWIS COUNTY will retain all books, records, documents, and other materials relevant to this Agreement for six years after final payment, and make them available for inspection by persons authorized under this provision.

8) COMPLIANCE WITH APPLICABLE LAW

- a) LEWIS COUNTY will comply with, and TACOMA POWER is not responsible for determining compliance with, all applicable federal, state, and local laws, regulations, and policies, including, but not limited to: State Environmental Policy Act; Americans with Disabilities Act; Architectural Barriers Act (restoration and improvement projects only); Uniform Relocation Assistance and Real Property Acquisition Policies Act (restoration and improvement projects only); Uniform Standards of Professional Appraisal Practices; permits (shoreline, HPA, demolition); land use regulations (comprehensive areas ordinances, GMA); cultural resource regulations, and federal and state safety and health regulations (OSHA/WISHA). LEWIS COUNTY further agrees to indemnify and hold harmless TACOMA POWER from all liability, damages and costs of any nature, including but not limited to costs of suits and attorneys' fees assessed against TACOMA POWER, as a result of the failure of LEWIS COUNTY to so comply. In addition, any rules and regulations imposed as a condition of the Federal Energy Regulatory Commission License for the Cowlitz Hydroelectric Project will be followed upon communication of those requirements by TACOMA POWER to LEWIS COUNTY.

9) AGREEMENT MODIFICATIONS

- a) TACOMA POWER and LEWIS COUNTY may, from time to time, desire to make changes to this Agreement. Any such changes that are mutually agreed upon by TACOMA POWER and LEWIS COUNTY shall be incorporated herein by written amendment. It is mutually agreed and understood that no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto prior to implementation of the changes, and that any oral understanding or agreements not incorporated herein shall not be binding. It is understood that some changes could require that TACOMA POWER consult with signatories to the Cowlitz Settlement Agreement or seek approval from FERC before authorization would be given.

10) TERMINATION OF AGREEMENT

- a) TACOMA POWER or LEWIS COUNTY may terminate this Agreement at any time, with or without cause, by giving ten (10) business days written notice to LEWIS COUNTY. In the event of termination, all finished and unfinished work prepared by LEWIS COUNTY pursuant to this Agreement shall be provided to TACOMA POWER. In the event TACOMA POWER terminates this Agreement due to TACOMA POWER's own reasons and without cause due to LEWIS COUNTY actions or omissions, TACOMA POWER shall reimburse LEWIS COUNTY any outstanding amount due for actual work and services necessarily performed under this Agreement up to the effective date of termination, not to exceed the total funding set forth herein.
- b) Termination or suspension of this Agreement by TACOMA POWER shall not constitute a waiver of any claims or remaining rights TACOMA POWER may have against LEWIS COUNTY relative to performance hereunder.

11) SPECIAL PROVISION

- a) TACOMA POWER's failure to insist upon the strict performance of any provision of this Agreement or to exercise any right based upon a breach thereof or the acceptance of any performance during such breach shall not constitute a waiver of any right under this Agreement.

12) HOLD HARMLESS AND INSURANCE

- a) LEWIS COUNTY agrees to indemnify and to hold TACOMA POWER, its employees, agents, officers, and assigns harmless from any and all claims, demands, causes of action, obligations, damages, and liabilities of any nature whatsoever arising from LEWIS COUNTY or third parties' use or operation of the funded facilities or improvements or the performance of any work under this Agreement by LEWIS COUNTY, its agents or employees, or any other person or entity which has agreed with LEWIS COUNTY to perform any work under this Agreement.

This indemnification clause shall also apply to any and all causes of action arising out of the performance of work activities under this Agreement. Each contract for services or activities utilizing funds provided in whole or in part by this Agreement shall include a provision that TACOMA POWER is not liable for damages or claims from damages arising from any contractor or subcontractor's performance or activities under the terms of the contracts.

- b) Title 51 Waiver
LEWIS COUNTY specifically assumes potential liability for actions brought by their own employees against TACOMA POWER and, solely for the purpose of this indemnification and defense, LEWIS COUNTY specifically waives any immunity under the state industrial insurance law, Title 51 RCW. LEWIS COUNTY RECOGNIZES THAT THIS WAIVER WAS THE SUBJECT OF MUTUAL NEGOTIATION.

c) Insurance

During the course and performance of the services herein specified, LEWIS COUNTY will maintain the insurance coverage in the amounts and in the manner specified in the City of Tacoma Insurance Requirements as is applicable to the services and deliverables provided under this Agreement. The City of Tacoma Insurance Requirements documents are fully incorporated herein by reference.

Failure by TACOMA POWER to identify a deficiency in the insurance documentation provided by Contractor or failure of City to demand verification of coverage or compliance by LEWIS COUNTY with these insurance requirements shall not be construed as a waiver of LEWIS COUNTY'S obligation to maintain such insurance.

13) RECAPTURE PROVISION

In the event that LEWIS COUNTY fails to expend funds in accordance with the provisions of this Agreement, TACOMA POWER reserves the right to recapture funds in an amount equivalent to the extent of noncompliance. Such right of recapture shall exist for a period not to exceed three (3) years following termination of the Agreement.

Repayment by LEWIS COUNTY of funds under this recapture provision shall occur within thirty (30) days of demand. In the event that TACOMA POWER is required to institute proceedings to enforce this recapture provision, TACOMA POWER shall be entitled to its cost thereof, including reasonable attorneys' fees.

14) OWNERSHIP OF PROJECT/CAPITAL FACILITIES

- a) TACOMA POWER is not and shall not be considered co-owners, joint venture partners or developers of the improvements.
- b) TACOMA POWER shall not have any interest in any improvements built on the property of others except enforcement of the requirement that they remain open to the public under the provisions of this program.

15) MAINTENANCE OF PUBLIC FACILITIES AND USE FEES

- a) The facilities constructed or installed under this grant funding must be maintained in a good state of repair and kept open to the public for at least 25 years from the effective date of this Agreement unless other provisions are made with TACOMA POWER.
- b) LEWIS COUNTY may charge a nominal amount for public use to help offset maintenance costs, not to exceed an equivalent fee set by the Washington State Parks and Recreation Commission for its own facilities plus fifteen percent (15%). LEWIS COUNTY may not use the constructed facility to conduct commercial operations or offer special use agreements to third parties that generate income and/or interfere with public use. This does not preclude the use of a concessionaire to operate the recreational facility if that is the normal operating regime for the agency.

SIGNS AND PUBLICITY

- a) If any signs are placed to identify the funded projects or publicity occurs regarding the funded facility, such signs and publicity must identify TACOMA POWER as a funding source. TACOMA POWER will furnish a suitable logo for LEWIS COUNTY use.
- b) TACOMA POWER is authorized to take photos and write articles about the project for use on TACOMA POWER web sites and other documents.

12) RELATIONSHIP BETWEEN THE PARTIES

LEWIS COUNTY and its employees or agents performing under this Agreement are not deemed to be employees of TACOMA POWER nor agents of TACOMA POWER in any manner whatsoever, nor will they hold themselves out as nor claim to be officers or employees of TACOMA POWER or the City of Tacoma or the Public Utility Board hereof and will not make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of TACOMA POWER.

13) GOVERNING LAW AND VENUE

This Agreement shall be construed and enforced in accordance with, and the validity and performance hereof shall be governed by, the laws of the State of Washington. Venue of any suit between the parties arising out of this Agreement shall be the Superior Court of Pierce County, Washington.

14) SEVERABILITY

In the event any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications of this Agreement which can be given effect without the invalid term, condition, or application. To this end, the terms and conditions of this Agreement are declared severable.

15) DISPUTES

- a) The parties shall make every effort to resolve disputes arising out of or relating to this Agreement through discussion and negotiation.
- b) Should discussion and negotiation fail to resolve a dispute arising under this Agreement, the parties shall select a dispute resolution team to resolve the dispute. The team shall consist of a representative appointed by the director of each party and a third party mutually agreed upon by the director of each party. The team shall attempt, by majority vote, to resolve the dispute.
- c) This dispute resolution clause does not preclude the parties from exercising any other remedies including litigation.

REDUCTION IN FUNDS

In the event funds appropriated for the work contemplated under this Agreement are withdrawn, reduced, or limited in any way by TACOMA POWER, during the Agreement period, the parties hereto shall be bound by any such revised funding limitations as implemented at the discretion of TACOMA POWER, and shall meet and renegotiate the Agreement accordingly.

16) ENTIRE AGREEMENT

- a) This Agreement and all attachments hereto contain all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement and attachments shall be deemed to exist or to bind any of the parties hereto. However, it is understood that TACOMA POWER'S Cowlitz Hydroelectric Project is regulated by the Federal Energy Regulatory Commission who can make changes at any time.
- b) The Agreement will be recorded by TACOMA POWER with the county of jurisdiction and will be binding on LEWIS COUNTY and any and all successors and assigns for the period of no less than 25 years from the effective date.

17) NON-ASSIGNABILITY

- a) Neither this Agreement, nor any claim arising under this Agreement, shall be transferred or assigned by LEWIS COUNTY.

18) ADMINISTRATION

- a) LEWIS COUNTY representative shall be:
Ann Weckback, Environmental Planner
(360) 740-1440; Ann.Weckback@lewiscountywa.gov
- b) TACOMA POWER's representative shall be:
Bret Forrester, Wildlife and Lands Manager
253-502-8782; bforrest@ci.tacoma.wa.us

IN WITNESS WHEREOF, TACOMA POWER and LEWIS COUNTY have executed this Agreement as of the date and year written below.

CITY OF TACOMA
Department of Public Utilities

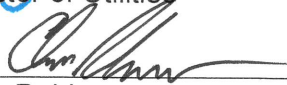
LEWIS COUNTY
Department of Public Works

Approved:



Jackie Flowers
Director of Utilities

Authorized Representative



Chris Robinson
Power Superintendent

Printed Name



Chris Mattson
Generation Manager

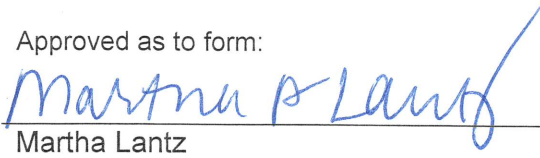
Title

Approved:



Andrew Cherullo
Finance Director

Approved as to form:



Martha Lantz
Deputy City Attorney