

AGREEMENT
Between
The Northwest Seaport Alliance and Seattle City Light
For
Terminal 5 Modernization

This Agreement is made and entered into this _____ day of _____, 2016, by and between the City of Seattle, a municipal corporation, by and through its City Light Department ("Seattle City Light" or "SCL"), and The Northwest Seaport Alliance, a Port Development Authority. Seattle City Light and The Northwest Seaport Alliance ("NWSA") are referenced in this Agreement collectively as "Parties" and individually as the "Party." This Agreement sets forth the terms, conditions, and working guidelines for: 1) the design and construction of an upgrade to the NWSA's Terminal 5 primary electrical service, 2) a possible additional upgrade to the NWSA's Terminal 5 primary electrical service and 3) the alteration, improvement, operation and maintenance of portions of SCL's Distribution and/or other systems, necessitated by these upgrades.

Recitals

WHEREAS, the NWSA is jointly and equally governed by the Port of Tacoma and the Port of Seattle, the Terminal 5 property is an asset owned by the Port of Seattle, and the Terminal 5 facility is under license agreement to the NWSA for leasing, maintenance, and/or development;

WHEREAS, the NWSA plans to expand their North Harbor Terminal 5 ("T-5") facility by adding new cranes, ship to shore power, refrigeration and lighting ("T-5 Modernization");

WHEREAS, the NWSA projects a new electrical demand for the T-5 Modernization of approximately 26 MVA or 572 amps at 26 kV, and the NWSA has requested that the expanded facility be served by SCL with two 10 MVA 26kV/13.8 kV transformers equipped with cooling fans resulting in a transformer rating of 14MVA per transformer. One will be provided, installed and maintained by SCL; one will be purchased by the NWSA and installed and maintained by SCL. Each will be fed from a separate feeder. The feeders are owned, operated and maintained by SCL.

WHEREAS, the NWSA further projects an *additional* new electrical demand of approximately 60 - 70 MVA in 15 to 20 years for a Phase 2 expansion and upgrades under the NWSA's T-5 Modernization project;

WHEREAS, Phase 1 of the NWSA's T-5 Modernization project requires significant electrical capacity enhancements to both feeders in order to serve this expected new load and the NWSA is projected to consume approximately 50% of each feeder's capacity at full load after first-phase rebuild;

WHEREAS, because these SCL system upgrades are unnecessary without the addition of the NWSA's new load, the NWSA has agreed to reimburse SCL 100% of the actual cost of all SCL labor, equipment and materials needed or used for the Service Work as described in the Phase-specific Service Letter and 50% of the actual cost of all SCL labor, equipment and materials needed or used for the SCL System Improvements as summarized in the Phase-specific Service Letter.

WHEREAS, SCL anticipates that its physical infrastructure and Distribution system capacity will be insufficient for meeting an *additional* second-phase load of 60 – 70 MVA in 15 to 20 years and may necessitate extensive physical infrastructure Distribution upgrades and City Light Substation and Transmission-related improvements, and may require changes to City or SCL policies and procedures and/or City ordinances; and

WHEREAS, the Parties recognize that SCL will require necessary and convenient access and easement rights to its system infrastructure for the T-5 Modernization, to be granted or obtained by the NWSA through written and recorded Easements to SCL, wherever necessary or convenient for ownership, operation and maintenance of SCL infrastructure.

NOW THEREFORE, in consideration of the terms, conditions, covenants and performances contained herein, or attached and incorporated and thereby made a part of this Agreement, it is mutually agreed by the Parties:

Agreement

1. Incorporation of Recitals

The recitals set forth above constitute an integral part of this Agreement and are expressly incorporated into this Agreement by this reference as agreements of the Parties.

2. Purpose

This Agreement is executed by the Parties to establish certain responsibilities between, and obligations of, the Parties during the remaining design and construction of the both phases of the NWSA's T-5 Modernization project and to govern the relationship between the Parties throughout the course of both phases of the T-5 Modernization project. Upon completion of each phase of the Project, the Parties acknowledge and agree that SCL will own, operate, and maintain certain facilities constructed and/or upgraded as part of the T-5 Modernization project, and SCL shall require necessary and convenient access and easement rights, to be granted or obtained by the NWSA through written and recorded Easements, wherever necessary, desirable or convenient for ownership, operation and maintenance of SCL infrastructure related to the T-5 Modernization.

3. Term

This Agreement shall commence upon execution by both Parties. This Agreement shall terminate upon final acceptance of all work by SCL, confirmation that final payment/reimbursement has been received by SCL, successful energization of new/upgraded system and service elements, and SCL's acceptance of infrastructure as-builts.

- a. Termination: Either Party may terminate this Agreement by giving written notice of such termination to the other at least one month in advance of the effective date of such termination.

If the NWSA terminates this Agreement, the NWSA shall reimburse SCL for project-specific equipment purchased and work performed through the date of termination, including all engineering, mobilization, labor, equipment and demobilization, together with all reasonable costs incurred by SCL as a result of termination. Reasonable costs shall include costs of

materials and equipment ordered and purchased to perform the work, specified in Attachment A, and written changes agreed to by the parties and not implemented as a result of the termination. The NWSA shall also pay all cancellation charges reasonably assessed by material suppliers or others. Upon the NWSA's full reimbursement /payment to SCL, such materials and equipment shall become property of the NWSA.

4. Property

The property upon which the NWSA's and SCL's Work will be completed is commonly known as Terminal #5 is located at 2701 26th Ave SW (the "Terminal 5 Property").

- a. Access: The NWSA authorizes entrance onto the Terminal 5 Property necessary for SCL to perform the SCL Work as described in the SCL Service Letters for Phases 1 & 2 and for SCL to perform future maintenance, improvements, alterations, and upgrades when needed. See Exhibit A, attached, for the Phase 1 SCL Service Letter. SCL shall have access to all areas required for the T-5 Modernization project, including necessary and convenient access for staging, and the placement, removal and storage of equipment which may include cranes, trucks and trailers.
- b. Easements To Be Granted to SCL: The NWSA, for and in consideration of SCL re-constructing its existing primary power distribution system for the NWSA's T-5 Modernization, shall grant and convey to SCL, its successors and assigns, all necessary overhead and underground easements over, across, under, through and/or within the Terminal 5 Property or other Port of Seattle property, including the right, privilege and authority to access, install, construct, erect, alter, improve, repair, energize, operate, and maintain its electric overhead and underground facilities within the boundaries of the NWSA's Terminal 5 Property or other Port of Seattle property, including access to such easements. SCL's electrical facilities may include, but are not limited to, transformers, ducts, cabinets, containers, conduits, wires and other necessary and convenient appurtenances to make said overhead or underground installations an integrated system. All such easements shall be in the form required by the King County Auditor suitable for filing with said auditor, attached as Exhibit D.
- c. Other Easements: The Parties acknowledge that, if either phase of the NWSA's T-5 Modernization project requires easements, agreements and/or permits from City of Seattle departments, or local communities who will be impacted by the NWSA's T-5 Modernization project and/or SCL Work necessitated by it, the Parties will work collaboratively to ensure that SCL obtains the required easements, agreements and/or permits. The NWSA shall be responsible for paying the costs of obtaining said easements, agreements and/or permits for all SCL Work related to or necessitated by the NWSA's T-5 Modernization project.

If elements of the SCL Work require easements to be granted to SCL by private or public property owners other than the Port of Seattle, the NWSA shall be responsible for obtaining such easements on behalf of and to the satisfaction of SCL, and shall assist SCL by providing or obtaining all documents requested by SCL, including sketches and legal descriptions necessary for such easements. The NWSA shall also provide all necessary assistance as requested by SCL to reach an agreement with the private or public property owners to obtain such easements, and the NWSA shall be responsible for paying the cost of obtaining such easements for SCL.

5. Existing Service and Project Description

The NWSA's Terminal 5 is currently served by a 5 MVA 26 kV/4.16 kV NWSA/customer substation with a historical peak load of approximately 3.5 MVA or 80 amps at 26 kV. The NWSA plans to expand their Terminal 5 facility through the T-5 Modernization project in two phases ("Phase 1" and "Phase 2") which will include adding new cranes, ship to shore power, refrigeration and lighting.

The NWSA projects a new electrical demand, after completion of Phase 1 of the T-5 Modernization, of approximately 26 MVA or 572 amps at 26 kV, and a future electrical demand, after completion of Phase 2, of an additional 60-70 MVA. The NWSA has agreed that the facility as expanded under Phase 1 will be served with two 10 MVA 26kV/13.8 kV transformers with cooling fans, resulting in a transformer rating of 14MVA per transformer. One transformer will be provided, installed and maintained by SCL; one will be purchased by the NWSA and installed and maintained by SCL. Each will be fed from a separate feeder. The feeders are and will continue to be owned, operated and maintained by SCL through and following the T-5 Modernization.

The NWSA will install switchgear to allow transfer of load on the distribution system between either of the two 26 kV feeders. This in turn allows for maintenance of their switchgear without taking a prolonged outage. The Parties agree that the point of transition of ownership between SCL and NWSA electrical equipment is the NWSA's switchgear.

Phase 1 requires upgrades to the NWSA's substation as well as significant SCL 26 kV distribution system upgrades. All Upgrades to the NWSA's substation will be performed and paid for by the NWSA. Upgrades to SCL's systems/feeders will be performed by SCL. However, because the Phase 1 system upgrades would be unnecessary without the addition of the NWSA's new load from the T-5 Modernization, the NWSA and SCL agree that the NWSA will be responsible for paying 50% of the cost of SCL system/feeder upgrades. The NWSA shall be responsible for performing and paying for 100% of the costs of the work associated with NWSA's substation and other electrical infrastructure upgrades related to the T-5 Modernization.

Although a Phase 2 options analysis was completed in 2015, the detailed analysis needed to identify NWSA service and SCL system (Distribution, Transmission and Substation) impacts and requirements related to Phase 2 has not been performed yet. SCL will proceed with detailed activities related to Phase 2 after the NWSA submits a Service Request for this additional Phase 2 load, currently estimated to be 60 – 70 MVA. If substation construction and transmission relocation are needed, property purchase, planning, public involvement, engineering, permitting, design, construction and related activities can take at least 10 years. The Parties understand that amendments to this Agreement or a new separate Agreement may be needed to address the roles, responsibilities and obligations of the Parties for Phase 2 of the T-5 Modernization once the NWSA submits a Service Request for the additional Phase 2 load.

SCL plans to serve Phase 1 of the T-5 Modernization project with the existing feeder on the T-5 property and another feeder from SCL's South Substation. The additional load from Phase 1 of the T-5 Modernization project will push each feeder 100% beyond its respective rating.

Because the Phase 2 system upgrades would be unnecessary without the addition of the NWSA's expected Phase 2 load, the Parties agree that the NWSA shall assume responsibility for 100% of the Phase 2 system upgrade(s), unless some other cost sharing percentage is negotiated and mutually agreed upon by the Parties and memorialized through a written amendment to this Agreement.

6. Description of Work

The Parties' respective Phase 1 responsibilities and obligations are detailed in the **SCL Service Letter**, attached as **Exhibit A**. The Parties agree that a Phase 2 SCL Service Letter will be developed and executed by the Parties, and will be incorporated into this Agreement as an amendment.

7. Work Practices

The Parties agree to work together cooperatively and collaboratively; shall make all reasonable, good faith efforts to resolve unanticipated design and construction issues as they develop; and shall timely and expeditiously complete the Parties' respective bodies of work and their obligations in accordance with the provisions of this Agreement and the Phase 1 or Phase 2 SCL Service Letter, as applicable, including, but not limited to the following:

a. Contact and Coordination

The Parties shall designate a contact person to serve as the single point of contact for all notices and communications related to the Agreement. Through the Phase 1 and Phase 2 work, NWSA and SCL engineers will work and communicate directly with one another as needed.

b. Compliance

The NWSA acknowledges and understands the rights and power of SCL to require adherence to and compliance with its policies, procedures, practices, initiatives and standards, and the general law and applicable statutes and ordinances for the protection of the health, safety and welfare of the public, its staff and all others within its service area.

i. Compliance with Laws

Each Party shall perform its obligations under this Agreement in compliance with all applicable federal, State, and local laws, statutes, rules, regulations, orders and ordinances including but not limited to the National Electric Code, WAS 296-45 Safety Standards for Electrical Workers, and WAC 296-46B Electrical Safety Standards, Administration and Installation.

ii. Compliance with Plans and Standards

All work under this Agreement shall be performed in accordance with the approved plans, any applicable permit requirements, and SCL's construction and materials standards.

SCL updates its construction and materials standards from time to time. SCL will notify the NWSA when standards that will impact the Project are modified to discuss potential Project impacts. Because SCL requires that the most current standards apply, when standards change mid-project, SCL will work with the NWSA to ensure implementation of the most current standard or to specifically agree in writing that a previous standard is acceptable.

When applicable, the NWSA will provide SCL with material submittals for SCL review per the SCL Material Standards, and the City of Seattle Standard Plans and Specifications.

iii. Environment, Safety and Security

All work under this Agreement shall comply with all applicable SCL and NWSA environmental, security and safety standards, policies, procedures and requirements, including electrical safety clearance or other protections.

In the event that the NWSA or SCL, or their contractor(s) or subcontractor(s) in performing the Work discover any materials that require special removal, treatment, handling, transport and/or disposal under any local, state or federal laws or regulations (including, but not limited to hazardous materials, hazardous waste, dangerous waste, toxic waste or contaminated soil or groundwater), the costs for removal, treatment, handling, transporting and disposal of such materials shall be the sole responsibility of the NWSA.

The Parties shall retain all rights they may have under applicable state and federal laws to recover costs that either may incur related to the existence of such hazardous materials, hazardous, dangerous or toxic wastes, or contaminated soil or groundwater from any and all parties that may be responsible for such materials, wastes, or contamination discovered or uncovered during performance of the Work under this Agreement.

The NWSA will require and verify that its assigned staff, contractors, consultants, and on-site inspection staff are familiar with and comply with SCL's construction and materials standards that pertain to the construction or installation of SCL facilities.

c. Permitting

The NWSA and SCL will obtain all required street use, construction and/or other permits and/or authorizations needed for their respective bodies of work as detailed in the applicable Phase-specific SCL Service Letter, if necessary, and will abide by and comply with all permit and/or authorization requirements and conditions.

d. Outages During Construction

Construction and/or reconstruction necessary for Phase 1 or Phase 2 of the T-5 Modernization project may result in or require electric power outages to some businesses and NWSA tenants on or in the vicinity of Terminal 5. SCL will coordinate and schedule all planned outages, and the NWSA shall assist SCL as needed in the coordination and scheduling of these outages to affected NWSA tenants and businesses. The NWSA shall be responsible for paying all costs related to such outages including, but not limited to, lost or delayed work. The NWSA and SCL shall coordinate on all planned outages and shutdowns to accomplish the civil and electrical work for the Project.

Any compensation or reimbursements to SCL customers to be paid by the NWSA shall be negotiated and agreed to in advance by SCL, the applicable customer, and the NWSA. Any such payments shall be made directly from the NWSA to the affected customer. The NWSA recognizes SCL's statutory obligations to maintain adequate service to the general public, and that unforeseen emergencies may require prioritized responses by SCL personnel,

which could extend the time of planned outages to businesses and NWSA tenants within and in the vicinity of Terminal 5 during the T-5 Modernization.

e. Inspection

The NWSA will initiate, coordinate and immediately follow through on all issues raised in any field, pre-final, and final inspections for Phase 1 and Phase 2 T-5 Modernization work.

f. As-builts/redlines

The NWSA, its contractors and subcontractors will document the as-built condition of all facilities constructed on its property and will provide those “redline” drawings to SCL at Phase completion. The NWSA will deliver the final “redline” drawings to SCL within six months of joint execution of the Letter of Acceptance for each Phase.

8. Project Schedule

a. Phase Schedules

Each Phase schedule will be detailed in the applicable, Phase-specific **SCL Service Letter**. See **Exhibit A**, attached, for the Phase 1 schedule. A Phase 2 SCL Service Letter will be developed, executed by both Parties, and incorporated as an amendment to this Agreement.

b. Estimated Completion Dates

The estimated completion date(s) of each Phase of the Work shall be specified after the Parties, or their consultants or contractors prepare an integrated construction schedule for the T-5 Modernization work that has been reviewed and approved by SCL. Such schedule shall include the time frames necessary for the construction, completion, approval and acceptance of the SCL Work, and extra time for SCL customer outages, assuming there are no emergencies affecting SCL personnel availability. The Parties shall make all reasonable efforts to meet the mutually agreed completions date(s). The NWSA acknowledges and understands that SCL may have to redirect its crews to other emergency-related tasks, such as major outages or storm events, which may adversely impact the Phases' schedules and completion of the Work.

c. Notifications of Possible Delay

- i. In the event SCL anticipates an expected or actual delay in the completion date(s) for work identified in the applicable, Phase-specific Service Letter and identified in the agreed upon construction schedule, SCL shall notify the NWSA of such delay as soon as is reasonably practical.
- ii. The NWSA or its designated representative shall notify SCL of any expected or actual project or Phase schedule changes or delays which may or will affect the SCL Work pursuant to this Agreement.

9. Cost Estimates, Payment and Financial Responsibility

The NWSA agrees to pay SCL for 100% of the actual cost of all SCL time, materials, equipment, testing, labor and other costs directly attributable to fulfillment of the SCL Service Work, and 50% of the actual cost of all SCL time, materials, equipment, testing, labor and other costs directly attributable to the SCL System Work, as identified in the Phase-specific Service Letters. **See Exhibit A – Phase 1 Service Letter, attached**. Such costs will include, but are not limited to, cost incurred and expenditures related to engineering, design, easement, access, permit fulfillment, procurement, project management, planning, inspection, and meeting and construction expenditures.

All estimates, charges and payments will comply with SMC 21.49.110 (Electrical Service Connection Provisions) and SCL Department Policy and Procedure (DPP) 500 P III-417 (Customer Deposits), or as they may be amended, replaced or succeeded in the future.

If applicable, the NWSA shall be responsible for providing to SCL an exemption certificate for excise tax, or any other taxes from which it claims exemptions.

The NWSA acknowledges and agrees that the Phase 1 cost estimate in Exhibit A is merely a good faith estimate and the complete, final cost of and billing for the SCL Work for Phase 1 may be higher or lower than the estimated cost, and will be based on actual time and materials. Seattle City Light will provide a final accounting of costs and charges based upon the actual labor and material costs and expenses for the applicable Phase of the Terminal 5 Modernization project within sixty (60) days of SCL's final acceptance of construction for that Phase.

10. Force Majeure

A Party shall not be deemed to be in breach of this Agreement if it is unable to perform its respective obligations hereunder as a result of the occurrence of an event beyond its reasonable control which shall include but not be limited to: acts of nature, acts of the government of the United States or of any State or political subdivision thereof, strikes, civil riots or disturbances, fire, floods, explosions, earthquakes, wind, storms, hurricanes, lightning or other similar catastrophes or other causes beyond the reasonable control of the Party, or its affiliates, claiming Force Majeure.

11. Disputes

The Parties through their respective project teams shall negotiate in good faith and use their reasonable best efforts to resolve any disputes that may develop under this Agreement. Any issue(s) that cannot be resolved in a satisfactory and timely manner at the project team level will be raised to the SCL Director and the NWSA Chief Facilities Development Officer. Any issue(s) that cannot be resolved at the Director/Chief Facilities Development Officer level, shall be raised to the GM/CEO level.

12. Indemnification

The NWSA hereby agrees to indemnify, hold harmless and defend (including reasonable attorney's fees) the City of Seattle, and any elected official, officer, employee, or agent thereof, against all claims of, and liability to, third parties (other than liability which is the fault of the indemnified Party) for bodily injury or damage to real or tangible personal property to the extent arising out of the NWSA's negligence or willful misconduct, or failure to comply with the terms of this Agreement, provided, however, the NWSA shall not be responsible for any damages to the extent the same are caused by a breach of this Agreement by SCL, or the negligence or willful misconduct of SCL. The City of Seattle shall provide reasonable, timely notice of any claim or lawsuit and shall also provide

reasonable and full cooperation in the defense of any claims. The NWSA's obligations in this section shall survive the expiration or termination of this Agreement by either Party.

13. Governing law

This agreement shall be governed by the laws of the State of Washington with venue of any litigation in King County, Washington.

14. Exhibits

Exhibit A: SCL Phase 1 Service Letter

15. Acceptance

Acceptance of this Agreement by SCL and the NWSA is indicated by the following authorized signatures from the respective Parties.

Signatures

THE NORTHWEST SEAPORT ALLIANCE:

Approved by: _____ Date: _____

Printed Name: John Wolfe

Title: Chief Executive Officer

SEATTLE CITY LIGHT:

Approved by: _____ Date: _____

Printed Name: Larry Weis

Title: General Manager and CEO