

THE NORTHWEST SEAPORT ALLIANCE
MEMORANDUM

MANAGING MEMBERS
ACTION ITEM

Item No. 7C
Date of Meeting September 8, 2021

DATE: August 25, 2021
TO: Managing Members
FROM: John Wolfe, CEO

Sponsor: Tong Zhu, Chief Commercial Officer & Chief Strategy Officer

Project Managers: Graham VanderSchelden, Environmental Project Manager II

SUBJECT: Terminal 5 ILA for Shore Power Grant with Department of Commerce

A. ACTION REQUESTED

The NWSA's Master Policy requires approval from Managing Members to accept grants in amounts greater than \$300,000.

Request authorization to accept a grant in the amount of \$4,268,000 to support installation of shore power system components of the Terminal 5 Berth Modernization Program, Master Identification Nos. C800132, C800726, C800988.

B. SYNOPSIS

The NWSA is installing a shore power system for each berth as part of the T-5 Berth Modernization Program. The shore power system is part of satisfying the project's air quality permit condition (condition 6) and is a key implementation action under the Northwest Ports Clean Air Strategy.

During the 2019 legislative session, NWSA staff worked with legislators to include an appropriation in the state's capital budget in the amount of \$4.4 million to support installation of the shore power system at T-5. The \$4.4 million is being directed to the NWSA as a grant from the state's Clean Energy Fund, administered by the Department of Commerce. This grant has been anticipated since summer of 2019 and has been included in the project financials presented to Managing Members in previous briefings. The net award to the NWSA is \$4.268 million, which is the \$4.4 million appropriation minus a 3% administrative charge levied by the Department of Commerce.

The grant agreement is still a draft but nearly final. Staff do not expect major changes to the language between the attached version and the final. Staff are working with Department of Commerce staff to ensure the appropriate backdated start date is incorporated.

C. BACKGROUND

Both to comply with permit conditions and to progress emission reduction efforts under the Northwest Ports Clean Air Strategy, the NWSA is installing shore power infrastructure as part of the T-5 Berth Modernization Program.

The Master Use Permit (MUP) for the renovated T-5 facility and corresponding Memorandum of Understanding (MOU) with the Puget Sound Clean Air Agency require the NWSA to install shore power infrastructure at each berth. The MUP and MOU also require the NWSA to work with the tenant on an Air Quality Management Program, which among other things, must include a program to maximize use of shore power. This air quality management program has been developed and approved and will be implemented starting on the first day of occupancy of the new facility.

The NWSA recently adopted an update to the Northwest Ports Clean Air Strategy which lays out an aspirational vision to phase out emissions from seaport activities by 2050. This expands on the 2017 Greenhouse Gas (GHG) Resolution policy previously adopted by Managing Members that sought to reduce GHG emissions 80% by 2050. Achieving this vision will involve adopting zero emission technology across ocean-going vessels, cargo handling equipment, trucking, rail, harbor vessels, fleets, and facilities. One notable objective of the newly adopted strategy is to install shore power at our major international container terminals by 2030.

Shore Power Description

Shore power is the provision of power from the local grid to vessels while they are at berth, which allows them to shut off their auxiliary engines, eliminating emissions associated with onboard power needs. Without shore power, vessels burn distillate fuels or fuel oil while at berth to generate power. For a vessel to be able to use shore power, plug in points must be installed on the dock and the vessel itself must have special infrastructure installed onboard to accept shore power. We call ships with this infrastructure installed “shore power capable”.

Due to shore power infrastructure installations in California and Asia, the container vessel fleet serving the Pacific Rim is becoming increasingly shore power capable. NWSA staff annually conduct an analysis to assess the shore power capability of vessels calling our major international container terminals. This allows us to regularly assess and re-assess the efficacy of shore power as an emission reduction measure in our gateway. We use the Environmental Ship Index (ESI)¹ and the Port of Oakland’s list of shore power commissioned vessels², cross referenced with the NWSA’s vessel call logs to determine if each call at our major international container terminals is shore power capable. Results of the 2020 analysis are shown in the table below. We estimate that approximately 55% of container ship calls at our major terminals across the gateway were capable of using shore power in 2020 and 49% of the calls in the Seattle Harbor were capable of using shore power.

¹ [ESI Portal \(environmentalshipindex.org\)](https://www.environmentalshipindex.org/)

² [List of Shore Power Vessels - Google Sheets](#)

	Total Calls	Shore Power Capable Calls	Percentage Shore Power Capable Calls	Hours per Shore Power capable call	Shore Power Capable Hours
Husky	86	67	78%	68	4,574
PCT	103	72	70%	35	2,497
WUT	83	39	47%	53	2,061
<i>Tacoma Harbor</i>	<i>272</i>	<i>178</i>	<i>65%</i>	<i>51</i>	<i>9,132</i>
T-18	398	197	49%	32	6,393
T-30	97	47	48%	30	1,395
<i>Seattle Harbor</i>	<i>495</i>	<i>244</i>	<i>49%</i>	<i>32</i>	<i>7,788</i>
Gateway Total	767	422	55%	40	16,920

Shore Power Benefits

Implementing shore power at the NWSA's major international container terminals would result in significant emission reductions, reducing impacts on air quality in near port communities and on climate change. Estimated emission reduction potentials for installing shore power across the major international container terminals in the NWSA gateway are shown in the table below, both for shore power capable calls in the 2020 vessel fleet and a hypothetical future scenario where all vessel calls are shore power capable. The latter represents an upper bound of future emission reduction potential if vessel owners were to install shore power infrastructure on container ships. When Terminal 5 comes online, some of the benefits attributed to T-18 and T-30 in the table below will likely be realized at T-5 as vessel traffic shifts.

	Emission Reduction Potential from 2020 Shore Power Capable Fleet		Emission Reduction Potential if all Vessels were Shore Power Capable	
	GHG	DPM	GHG	DPM
Husky	3,902	1.26	5,008	1.62
PCT	2,097	0.68	2,999	0.97
WUT	1,755	0.57	3,735	1.21
<i>South Harbor</i>	<i>7,754</i>	<i>2.51</i>	<i>11,742</i>	<i>3.8</i>
T-18	5,215	1.68	10,536	3.4
T-30	1,161	0.37	2,397	0.77
<i>North Harbor</i>	<i>6,376</i>	<i>2.05</i>	<i>12,933</i>	<i>4.17</i>
Gateway Total	14,130	4.56	24,675	7.97

D. PROJECT DESCRIPTION

The proposed shore power connection system is being installed as part of the planned marine terminal redevelopment project to serve a diverse fleet of internationally flagged container vessels at T-5 in Seattle, Washington. The infrastructure will be built to safely supply power to a fleet of international container vessels, which have been required to be built to comply with the international codes and standards (i.e. ISO/IEEE/IEC) via plug-in requirements in California.

The project includes dedicated shore power switchgear for each berth, transformers, underground conduit and wiring for power distribution, power distribution vaults, and three connection points in recessed vaults at each of two vessel berths at the facility. The system will allow power to be delivered to the connection points at 6.6 kV. The connection points will be standard Cavotec shore power connection boxes, housed in specialized vaults recessed in the wharf.

Construction of the shore power systems at each berth will be completed as part of the broader berth modernization projects and will therefore be delivered concurrent with completion of each berth. The north berth shore power system will be completed by the end of 2021 and the south berth will be completed by the end of 2022.

E. GRANT DESCRIPTION

During the 2019 legislative session, NWSA staff worked with legislators to include an appropriation in the state's capital budget in the amount of \$4.4 million to support installation of the shore power system at T-5. The appropriation language required that the NWSA apply for and be denied funding through the VW settlement program, managed by the Washington State department of Ecology. In summer of 2020, staff submitted applications to the VW settlement shore power grant opportunity for the T-5 and T-18 project. The T-18 application was funded, awarding \$2 million towards that project and the T-5 application was denied, allowing the NWSA to claim the \$4.4 million appropriation.

The \$4.4 million is being directed to the NWSA as a grant from the state's Clean Energy Fund, administered by the Department of Commerce. The net award to the NWSA is \$4.268 million, which is the \$4.4 million appropriation minus a 3% administrative charge levied by the Department of Commerce. The funds will be claimed against the switchgear elements of the shore power system, as detailed in the attached grant agreement. The attached grant agreement is still in draft form, though one iteration from being final. Staff do not expect any major changes to the language. Staff are working with the Department of Commerce staff to ensure the agreement is back dated appropriately based on when the work on the North Berth occurred. Additionally, the offer date in the cover letter will be updated with the final offer, to ensure we're in compliance with the 60 day acceptance period referenced in the cover letter.

F. ATTACHMENTS TO THIS REQUEST

- Grant Agreement with the Department of Commerce

G. PREVIOUS RELATED ACTIONS OR BRIEFINGS

Date	Action	Amount
July 7, 2021	Terminal 5 Letter of Agreement Second Amendments with the Muckleshoot Indian Tribe and Suquamish Tribe	\$0
July 7, 2021	Construction Authorization for the North Reefer Infrastructure	\$0
July 7, 2021	Increased Program Authorization for Terminal 5 Berth Modernization	\$50,000,000
July 7, 2021	T5 Modernization – Program Update	\$0
June 1, 2021	First Amendment to T5 Lease Authorization by MMs	\$0
April 6, 2021	Quiet Zone MOU	\$0
March 2, 2021	T5 Modernization - Program Update	\$0
February 2, 2021	Approval for Construction of RPM, S Reefers, Clean Truck	\$0
October 6, 2020	T5 Modernization - Program Update	\$0
September 1, 2020	T5 Modernization - Tribal Agreement Update	\$0
August 4, 2020	T5 Marine Building - Approval to advertise for North Building construction only	\$0
July 2, 2020	T5 Marine Building - Authorization to advertise for North and South Buildings construction request	\$0
July 2, 2020	T5 Modernization - Program Update	\$0
April 7, 2020	T5 Modernization - Program Update	\$0
January 14, 2020	T5 Modernization - Program Update	\$0
October 1, 2019	T5 Modernization - Program Update	\$0
August 6, 2019	T5 Modernization - Program Update	\$0
June 4, 2019	T5 Program Update	\$0
May 20, 2019	Program Authorization for Construction of Berth Modernization Program	\$0
April 2, 2019	Additional Program Funding and Authorization to Fund T5 Modernization Program	\$314,150,000
February 26, 2019	Authorization to advertise for construction	\$0
February 5, 2019	Pre-authorization Program Briefing	\$0
November 13, 2018	Motion to prepare construction documents for authorization to advertise	\$0
August 1, 2017	Railroad quiet zone funding, tribal payments, and Agreements	\$5,650,000
October 4, 2016	Additional Funding, Seattle City Light Agreement, and Project Labor Agreement	\$8,200,000
June 7, 2016	DEIS Briefing	\$0
November 4, 2015	Additional SEPA and Design Funding	\$2,000,000
October 13, 2015	Test Pile Bids Exceeded Engineer's Estimate	\$0
July 14, 2015	Additional Design Authorization	\$5,000,000
June 3, 2014	Initial Design Authorization	\$4,700,000
May 13, 2014	T5 Berth Modernization Briefing	\$0
March 12, 2014	Additional Pre-Design Authorization	\$150,000
October 27, 2013	Initial Pre-Design Authorization	\$150,000
TOTAL		\$390,000,000



STATE OF WASHINGTON
DEPARTMENT OF COMMERCE

1011 Plum St SE • PO Box 42525 • Olympia, Washington 98504-2525 • (360) 725-4000
www.commerce.wa.gov

June 28, 2021

Northwest Seaport Alliance
One Sitcum Plaza
Tacoma, WA, 98421
RE: Terminal Five Shore Power Electrification, 19-92201-006

Dear John Wolfe

Attached is the contract for a grant under the Clean Energy Fund 4 for Terminal Five Shore Power Electrification. This contract details the terms and conditions that will govern the agreement between us. Please review the Program Specific, Special and General Terms and Conditions of the contract carefully. We recommend consulting with your legal advisor before accepting this offer.

When you have obtained the appropriate original signatures, return the signed document to me. Please scan and email a legible signed contract to me.

Commerce must receive the signed contract within 60 calendar days of the date of this letter. Failure to return the contracts within this timeline may result in your project being delayed.

After the contracts have been fully executed by Commerce, the scanned original or hard copy will be returned to you, and instructions for invoicing and reporting will be sent via email.

We encourage you to store all pertinent documents associated with this project and grant offer in a file that is readily accessible to auditors for their periodic review. A requirement of this program is that you must maintain updated project records as well as ensure current liability insurance documents are sent to Commerce annually.

We look forward to working with you over the course of your successful project. If you have any questions about this contract, please contact me.

Sincerely,

Hans Berg
Energy Division
360-528-7063
hans.berg@commerce.wa.gov

Interagency Agreement with

Northwest Seaport Alliance

through

Energy Division

For

Terminal Five Shore Power Electrification

Start date: February 1, 2020

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FACE SHEET

Contract Number: 19-92201-006

**Washington State Department of Commerce
Energy Division, Energy Programs in Communities Unit
Terminal Five Shore Power Electrification**

1. Contractor Northwest Seaport Alliance Mailing Street Address: One Sitcum Plaza Street Address City, WA Zip Tacoma, WA, 98421		2. Contractor Doing Business As (optional) N/A N/A N/A N/A	
3. Contractor Representative Representative: Graham VanderSchelden Title Environmental Project Manager Phone 253-292-6791 Fax Email gvanderschelden@nwseaportalliance.com		4. COMMERCE Representative Hans Berg Energy Contracts and Programs Supervisor Phone: 360-528-7063 FAX N/A hans.berg@commerce.wa.gov	
5. Contract Amount \$4,268,000	6. Funding Source Federal: <input type="checkbox"/> State: <input checked="" type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	7. Start Date 2/1/2020	8. End Date 12/31/2022
9. Federal Funds (as applicable) N/A	Federal Agency: N/A	CFDA Number N/A	
10. Tax ID # 47-4921178	11. SWV # SWV0202083-01	12. UBI # 604 088 089	13. DUNS # 080017209
14. Contract Purpose Providing shore power electrification at terminal five. This grant will pay for the installation of switchgear elements of shore power infrastructure at Terminal 5.			
15. Signing Statement 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 hereby incorporated by reference: Attachment "A" – Scope of Work, Attachment "B" – Budget, Attachment "C" – Reporting, Attachment "D" – State Budget Proviso Language.			
FOR CONTRACTOR _____ John Wolfe, CEO <insert title> _____ Date		FOR COMMERCE _____ Michael Furze, Assistant Director, Energy Division _____ Date APPROVED AS TO FORM ONLY BY ASSISTANT ATTORNEY GENERAL 08/22/2019. APPROVAL ON FILE.	

**PROGRAM SPECIFIC TERMS AND CONDITIONS
INTERAGENCY AGREEMENT
STATE FUNDS**

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. SUBCONTRACTING (REPLACES GENERAL TERMS AND CONDITIONS #15)

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.

**SPECIAL TERMS AND CONDITIONS
INTERAGENCY AGREEMENT
STATE FUNDS**

1. AUTHORITY

COMMERCE and Contractor enter 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 \$4,268,000 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.

4. EXPENSES (Section Stricken Through As Not Applicable)

~~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 \$ N/A, 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.~~

5. BILLING PROCEDURES AND PAYMENT

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.

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 19-92201-006. 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

**SPECIAL TERMS AND CONDITIONS
INTERAGENCY AGREEMENT
STATE FUNDS**

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.

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. 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 Agreement performed by subcontractors and the portion of 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.

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 - Current Washington State Capital Budget Proviso Language
- 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
INTERAGENCY AGREEMENT
STATE FUNDS**

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 Department of Commerce.
- C. "Contract" or "Agreement" 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" 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.
- 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.

**GENERAL TERMS AND CONDITIONS
INTERAGENCY AGREEMENT
STATE FUNDS**

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

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 any applicable federal laws, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

**GENERAL TERMS AND CONDITIONS
INTERAGENCY AGREEMENT
STATE FUNDS**

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 (6) 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 #1)

~~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~~

**GENERAL TERMS AND CONDITIONS
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~~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

Upon termination of this contract, COMMERCE, in addition to any other rights provided in this contract, may require the Contractor to deliver to COMMERCE any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

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.

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

- A. Stop work under the contract on the date, and to the extent specified, in the notice;
- B. 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;
- 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 Contractor under the orders and 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 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 contract 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 contract, which is in the possession of the Contractor and in which the Authorized Representative has or may acquire an interest.

20. 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 (SOW)

Purpose:

This SOW describes the work the Northwest Seaport Alliance (NWSA) will conduct for the installation of shore power infrastructure at Terminal 5. The funds will pay for the switchgear elements of the project.

Background:

Ocean going vessels are a key source of diesel pollution that historically have been extremely difficult to influence. Ports themselves do not own or operate the vessels which are regulated under international law by the International Maritime Organization. Due to existing marine terminal regulations in California and shore side infrastructure installations in Asian ports, ocean carriers serving the Pacific Rim have begun to install equipment on vessels that allows them to use power from the local grid while at berth. This allows them to turn off their auxiliary engines, eliminating associated onboard emissions while plugged in. Many vessels that visit these Californian and Asian ports are also visiting Seattle as part of their routes. The NWSA seeks to leverage this newly introduced vessel infrastructure to reduce emissions for vessels while at berth. This project will include the power distribution elements required to bring electricity from the customer-side substation to the connection points on the dock for ships to plug into. The NWSA proposes using the CEF-4 funding for the switchgear elements of the project.

Shore power is a key component of NWSA's strategy for reducing air pollutant and GHG emissions, and as such the NWSA is working to install infrastructure to allow vessels to connect to shore power across the Tacoma/Seattle gateway. T-5 is the first of these deployments.

Motivation:

Shore power is a key implementation action for the NWSA in meeting aggressive air quality and climate goals put forward in the Northwest Ports Clean Air Strategy and the NWSA's Greenhouse Gas (GHG) Resolution—goals that far exceed what is required under current law. The NWSA GHG Resolution sets aggressive targets of a 50% reduction in GHG emissions by 2030 (scope 1, 2, and 3) and an 80% reduction in scope 3 GHG emissions by 2050, while striving to be carbon neutral for scope 1 and 2. Shore power is the biggest step towards meeting these goals that can be taken today as low carbon technologies mature in other sectors. In addition, shore power would reduce air pollution impacts on surrounding communities as well as provide substantial benefits for worker health, especially for the crane operators that sit directly above the ship stacks while loading and unloading cargo.

Site Description:

Terminal 5 holds the promise of being a premier marine terminal facility located in Seattle, Washington owned by Port of Seattle and licensed to the NWSA. The NWSA has authority to develop the property and is the primary agency responsible for leasing and maintaining the property. It has many features that make it ideal for the international container trade that include a naturally deep berth, wide footprint, and the availability of an on-dock rail yard. T-5 was last host to the international container business in 2014. Since then, the Port of Seattle and The Northwest Seaport Alliance have planned, designed, and begun construction on a modernization project that will allow the terminal to host the largest vessels in the Pacific container fleet.

Physical Project Description and Budget:

Attachment A – Scope of Work

The proposed shore power connection system is being installed as part of the planned marine terminal redevelopment project to serve a diverse fleet of internationally flagged container vessels at T-5 in Seattle, Washington. The infrastructure will be built to safely supply power to a fleet of international container vessels, which have been required to be built to comply with the international codes and standards (i.e. ISO/IEEE/IEC) via plug-in requirements in California.

The project includes dedicated shore power switchgear for each berth, transformers, underground conduit and wiring for power distribution, power distribution vaults, and three connection points in recessed vaults at each of two vessel berths at the facility. The system will allow power to be delivered to the connection points at 6.6 kV. The connection points will be standard Cavotec shore power connection boxes, housed in specialized vaults recessed in the wharf. Diagrams of these elements are found in the site plans and photographs and will be provided by NWSA upon request.

NWSA will use the CEF 4 funding (i.e. the budget appropriation) to pay for the switchgear components of the project for both the north and south berth. The specific elements, their costs, and the timeline for incurring costs are provided below.

North Berth Switchgear (started August 2020 – planned completion December 2021)

- August 2020 Shore Power Switchgear Materials, Assembly, and Delivery - \$1,300,000
- October 2020 Shore Power Switchgear Installation and Commissioning - \$450,000
- March 2021 Shore Power Switchgear Conduit - \$165,000
- April 2021 Shore Power Switchgear Grounding - \$145,000
- April 2021 Shore Power Switchgear Vault Racking Install - \$150,000
- April 2021 Shore Power Switchgear Installed on Pad - \$145,000
- May 2021 Shore Power Switchgear Acceptance Testing Completed - \$55,000

South Berth Switchgear (planned start January 2022 – planned completion December 2022)

- January 2022 Shore Power Switchgear Materials, Assembly, and Delivery – Total cost: \$1,300,000; eligible cost: ~~\$1,300,000~~ \$748,000
- March 2022 Shore Power Switchgear Installation and Commissioning - \$450,000
- August 2022 Shore Power Switchgear Conduit - \$165,000
- September 2022 Shore Power Switchgear Grounding - \$145,000
- September 2022 Shore Power Switchgear Vault Racking Install - \$150,000
- September 2022 Shore Power Switchgear Installed on Pad - \$145,000
- October 2022 Shore Power Switchgear Acceptance Testing - \$55,000

- Switchgear total cost: \$4.82 million
- Commerce Grant available: \$4.268 million.
 - Difference of \$552,000 subtracted from South Berth Switchgear Milestone B.1., yielding an eligible cost for reimbursement of \$748,000 for milestone B.1. .

Overall Project Schedule

The following project schedule provides additional context for how the switchgear elements fit in to the broader shore power project.

Time Period	Milestones
Q1 2020	Begin procurement of shore power gear for both berths. Begin construction of main duct bank and vaults.
Q2 2020	Procurement of north shore power gear complete. Begin construction of north berth wharf electrical work including conduit and wiring for shore power, shore power vaults, and ship connection points.
Q4 2020	Begin construction of north berth shore power substation (switchgear and transformer)
Q4 2021	Complete construction of north berth shore power substation (switchgear and transformer)

Attachment A – Scope of Work

Q4 2021	Complete north berth wharf electrical work including conduit and wiring for shore power, shore power vaults, and ship connection point.
Q1 2022	Begin construction on south berth duct bank and vaults.
Q1 2022	Begin construction of south berth shore power substation (switchgear and transformer). Begin wharf electrical work on south berth including conduit and wiring for shore power, shore power vaults, and ship connection points.
Q3 2022	Complete construction of south berth shore power substation (switchgear and transformer). Complete wharf electrical work on south berth including conduit and wiring for shore power, shore power vaults, and ship connection points.
Q4 2022	Construction of shore power system complete

Attachment B – Budget

Budget

Task	Project Activity and Task	Key Deliverable(s)	Estimated Activity Period	Milestone \$ Budget
A	Milestone A: North Berth Switchgear			
A.1	Shore Power Switchgear Materials, Assembly, and Delivery	Backup documentation demonstrating actual costs incurred and milestone completion	Q3 2020	\$ 1,300,000
A.2	Shore Power Switchgear Installation and Commissioning	Backup documentation demonstrating actual costs incurred and milestone completion	Q3 2020	\$ 450,000
A.3	Shore Power Switchgear Conduit	Backup documentation demonstrating actual costs incurred and milestone completion	Q1 2021	\$ 165,000
A.4	Shore Power Switchgear Grounding	Backup documentation demonstrating actual costs incurred and milestone completion	Q2 2021	\$ 145,000
A.5	Shore Power Switchgear Vault Racking Install	Backup documentation demonstrating actual costs incurred and milestone completion	Q2 2021	\$ 150,000
A.6	Shore Power Switchgear Installed on Pad	Backup documentation demonstrating actual costs incurred and milestone completion	Q2 2021	\$ 145,000
A.7	Shore Power Switchgear Acceptance Testing Completed	Backup documentation demonstrating actual costs incurred and milestone completion	Q2 2021	\$ 55,000
			Activity A Subtotal	\$ 2,410,000
B	Milestone B: South Berth Switchgear			
B.1	Shore Power Switchgear Materials, Assembly, and Delivery	Backup documentation demonstrating actual costs incurred and milestone completion	Q1 2022	\$ 748,000
B.2	Shore Power Switchgear Installation and Commissioning	Backup documentation demonstrating actual costs incurred	Q1 2022	\$ 450,000
B.3	Shore Power Switchgear Conduit	Backup documentation demonstrating actual costs incurred and milestone completion	Q3 2022	\$ 165,000
B.4	Shore Power Switchgear Grounding	Backup documentation demonstrating actual costs incurred and milestone completion	Q3 2022	\$ 145,000
B.5	Shore Power Switchgear Vault Racking Install	Backup documentation demonstrating actual costs incurred and milestone completion	Q3 2022	\$ 150,000
B.6	Shore Power Switchgear Installed on Pad	Backup documentation demonstrating actual costs incurred and milestone completion	Q3 2022	\$ 145,000
B.7	Shore Power Switchgear Acceptance Testing Completed	Backup documentation demonstrating actual costs incurred and milestone completion	Q3 2022	\$ 55,000
			Activity B Subtotal	\$ 1,858,000
			Budget Totals	\$ 4,268,000
			Total Award/Required	\$ 4,268,000
			Difference	\$ -

Contractor may move up to 10% of the total budget among Milestones by informing Commerce and submitting a modified Budget Template.

Attachment C – Reporting

The Contractor must provide quarterly written reports and host a regular quarterly 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;

Submit a fact sheet. Commerce may request the fact sheet be updated as conditions warrant.

Attachment D - Proviso

Engrossed Substitute Senate Bill 6248, Chapter 356, Laws of 2020

Section 1005

Clean Energy Transition 4 (40000042)

The appropriation in this section are subject to the following conditions and limitations:

(5) (d) \$4,400,000 of the state building construction account—state appropriation is provided solely for providing shore power electrification at terminal five for the northwest seaport alliance. In order to receive this grant, the northwest seaport alliance must demonstrate that they applied to the VW settlement for this project and were denied.