



## RESOLUTION NO. U-11260

1 A RESOLUTION authorizing the execution of a power service agreement  
2 between Tacoma Power and WestRock CP, LLC (WestRock or  
3 Company) under the terms of Schedule G.

4 WHEREAS the City of Tacoma, Department of Public Utilities, Light  
5 Division (d.b.a. "Tacoma Power"), supplies electric service to its industrial  
6 customers pursuant to the requirements of State law, the Tacoma Municipal  
7 Code and Board and City Council approved policies, and

8 WHEREAS WestRock CP, LLC ("WestRock"), is a large industrial  
9 customer of Tacoma Power that receives Schedule CP service, and

10 WHEREAS as part of WestRock's operations, WestRock operates a  
11 renewable combined heat and power generator that captures energy produced  
12 through the company's paper making processes, and

13 WHEREAS WestRock's sale of energy from its generator to a third party  
14 will reach its scheduled termination date on August 1, 2021, accordingly,  
15 WestRock has requested to transition from the current Schedule CP service  
16 arrangement to one under Schedule G where WestRock will be able to use the  
17 output of its generator to offset its facility's energy requirements, and  
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19 WHEREAS Schedule G is "for general power use where a demand  
20 meter is installed, for standby capacity to customers generating all or part of  
21 their electric power requirements, and for intermittent use," and  
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WHEREAS in order to mitigate the operational effects of the large and variable output of WestRock's generator, WestRock will purchase balancing authority area services from the Bonneville Power Administration (BPA) during the term of the self-supply agreement which will allow Tacoma Power to receive an hourly energy schedule from the generator, and net against the facility's metered load, Now, Therefore;

BE IT RESOLVED BY THE PUBLIC UTILITY BOARD OF THE CITY OF TACOMA:

That Tacoma Power's request to execute a Power Service Agreement, with WestRock CP, LLC, under the terms of Schedule G, as described in the backup materials on file with the Clerk of the Board, is hereby approved, and the proper officers of the City are authorized to execute said agreement, substantially in the form on file with the Clerk of the Board and as approved by the City Attorney.

Approved as to form:

\_\_\_\_\_

Chief Deputy City Attorney

\_\_\_\_\_  
Clerk

\_\_\_\_\_

Secretary

Adopted \_\_\_\_\_



## Board Action Memorandum

**TO:** Jackie Flowers, Director of Utilities  
**COPY:** Charleen Jacobs, Director and Board Offices  
**FROM:** Rick Applegate, Senior Power Analyst  
**MEETING DATE:** June 23, 2021  
**DATE:** June 11, 2021

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**SUMMARY:** Tacoma Power requests authority to execute a new Power Service Agreement with WestRock CP, LLC (WestRock or Company) under the terms of Schedule G.

**BACKGROUND:** WestRock is a large industrial customer of Tacoma Power that has received Schedule CP service for several decades. Approximately 10 years ago, WestRock completed construction of a renewable combined heat and power generator that helps capture energy produced through the Company's paper making processes. At the time, it entered into a long-term sale of this energy to a third party. On August 1<sup>st</sup>, this third party sale will reach its scheduled termination date; accordingly, WestRock has requested to transition from its current Schedule CP service arrangement to one under Schedule G where WestRock will be able to use the output of its generator to offset its facility's energy requirements.

Schedule G is "for general power use where a demand meter is installed, for standby capacity to customers generating all or a part of their electric power requirements, and for intermittent use." In 2020, Tacoma Power modified Schedule G to clarify circumstances and methods for compensation when a customer generates more energy than it can consume on an hourly basis. Unlike the state requirements for generation systems 100 kW or smaller, which provides credits for surplus generation at the utility's retail energy rate regardless of when the energy is generated, Tacoma Power's Schedule G allows the customer to use the generator to offset its load, but credits the customer for surplus generation at the wholesale value of energy together with its value of environmental attributes. This approach generally aligns customer value with utility cost. Under the proposed Power Service Agreement, only a small portion of its total generation—likely less 5 percent—is expected to be surplus to its hourly energy requirements and thus subject to the new provisions of Schedule G.

In order to mitigate the operational effects of the large and variable output of WestRock's generator, WestRock will be required to purchase balancing authority area services from the Bonneville Power Administration (BPA) during the term of the self-supply agreement. This arrangement will allow Tacoma Power to receive an hourly energy schedule from the generator, which it will net against the facility's metered load.

Overall, the financial effect of WestRock self-supplying is expected to be attenuated as the result of offsetting factors. While retail revenues from retail energy and transmission sales will decline as the result the company self-supplying, wholesale energy revenues will increase because Tacoma Power will have additional energy supplies to sell into the wholesale energy market. The eventual net effect of these factors will vary over time and depend on the quantity of energy WestRock produces and on prevailing wholesale energy market prices.



## Board Action Memorandum

**ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED?** No.

**IF THE EXPENSE IS NOT BUDGETED, PLEASE EXPLAIN HOW THEY ARE TO BE COVERED.**

While anticipated revenues from the customer will be less than budgeted, the effect of WestRock self-supplying energy will increase Tacoma Power's wholesale revenues, mostly offsetting the decrease in retail revenues.

**IF THE ACTION REQUESTED IS APPROVAL OF A CONTRACT, INCLUDE LANGUAGE IN RESOLUTION AUTHORIZING \$200,000 INCREASE IN ADMINISTRATIVE AUTHORITY TO DIRECTOR?** Yes.

**ATTACHMENTS:** Proposed Power Service Agreement with attached addendum.

**CONTACT:** Contact and Presenter: Rick Applegate, Senior Power Analyst, (253) 502-8012.  
Supervisor: Clay Norris, Power Manager, (253) 320-0786.

## POWER SERVICE AGREEMENT

THIS AGREEMENT, made, entered into, and executed in duplicate, this \_\_\_\_\_ day of \_\_\_\_\_, by and between the City of Tacoma, Department of Public Utilities, Light Division, doing business as and hereinafter called "**Tacoma Power**", and WestRock CP, LLC, a limited liability company organized and existing under and by virtue of the laws of the State of Delaware and authorized to do business in the State of Washington, hereinafter called the "**Company**". Tacoma Power and the Company are collectively referred to as the "Parties" and each individually as a "Party". This Agreement terminates and supersedes the Power Service Agreement currently in effect between the Parties on the effective date of this Agreement.

### RECITALS

WHEREAS, the Company requires electric energy for its industrial plant facilities in Tacoma Power's service area, and

WHEREAS, the Tacoma Power currently serves the Company's electrical energy requirements under a Power Service Agreement that expires on September 30, 2021, which the Parties wish to supersede with this new Power Service Agreement; and

WHEREAS, the Company operates a 64 Megawatt generator at its facility and desires to use the output of the generator to partially meet the energy requirements of its facility beginning on August 1, 2021, and

WHEREAS, the Company's facility and generator separately interconnect into the Tacoma Power transmission system at Tacoma Power's St. Paul Substation, and

WHEREAS, the Company receives Balancing Authority Area Services from the Bonneville Power Administration ("BPA") for the generator under Contract No. 09TX-13938, and

WHEREAS, Tacoma Municipal Code (TMC) Section 12.06.215, Schedule G service provides for Standby Capacity to customers generating all or a part of their electric power requirements, and

WHEREAS, TMC Section 12.06.215 provides that standby capacity ("Standby Capacity") is the amount of power requested by written application or estimated by the Director of Utilities to be made continuously available for exclusive use of the Standby Capacity customer, and

WHEREAS, pursuant to a Power Service Agreement, Tacoma Power can provide the energy requirements of the Company's facility, net of the scheduled interchange of the Company's generator, under Schedule G, or applicable successor rate for Standby Capacity, provided the Company continues to receive and pay for Balancing Authority Area Services from BPA or another balancing authority, and Company accepts a Standby Capacity value as provided for by this Agreement, and

WHEREAS, in the absence of a Power Service Agreement that provides for the net energy requirements of the Company's facility, Tacoma Power would need to charge the Company based on a then applicable rate schedule for the gross energy requirements of the company's facility, and would not compensate for the actual or scheduled energy output of

the generator unless required to do so by Federal or State law, and

WHEREAS, the Parties now desire to enter into a Power Service Agreement.

NOW, THEREFORE, for good and valuable consideration, including the mutual covenants set forth in this Agreement, the Parties hereto mutually agree as follows:

Section 1. TERM OF CONTRACT. This Agreement shall be effective at the beginning of the Hour Ending (HE) 01 Pacific Prevailing Time (PPT) on \_\_\_\_\_ and shall continue in effect until HE 24 PPT on September 30, 2023. Upon expiration and unless a party has given written notice to the other party thirty (30) days in advance of expiration that the party does not wish for the Agreement to continue, this Agreement will automatically renew for a term of three (3) years and continue in force until either party notifies the other of its intent to terminate all or a portion of this Agreement pursuant to this Section 1 or Section 16 below, respectively. Notwithstanding anything herein to the contrary however, Tacoma Power may not terminate this Agreement pursuant to this Section 1 until after September 30, 2023. This Agreement may (a) be shortened in term or terminated in its entirety in the sole reasonable discretion of Tacoma Power if such shortening or termination is necessary to maintain or obtain the exclusion from gross income for federal income tax purposes of the interest on bonds issued by Tacoma Power for electric utility purposes, (b) be terminated in its entirety in the sole reasonable discretion of Tacoma Power if the existence of this Agreement causes Tacoma Power's issuance of such bonds to be unreasonably burdensome or costly, or (c) as otherwise provided in this Agreement. In the event of any such termination occurring under parts (a) through (c) in this Section 1, the Superintendent of Tacoma Power shall continue to serve Company based on the same terms and conditions set forth herein until such time as the Parties agree an acceptable replacement contract that maintains the material benefits to the Parties as set forth in this Agreement.

Section 2. AGREEMENT TO SELL AND PURCHASE. Tacoma Power will deliver or make available at the Point of Delivery hereinafter specified and will sell to the Company, and the Company will purchase and pay for according to Schedule G as set forth in Tacoma Municipal Code Section 12.06.215 and as hereafter amended, or applicable successor rate for Standby Capacity, all metered electric energy and delivery services used for its operations thereat less the amount of energy made available by the Company from its generator to Tacoma Power. Because the Company's generator is part of another Balancing Authority, the energy from the generator will be made available to Tacoma Power by means of an E-tag with an interchange schedule and will not represent the actual metered output of the generator.

If the interchange schedule for an hour exceeds the Company's corresponding metered load for the same hour, then Tacoma Power shall compensate Company for energy in excess of load in accordance with Tacoma Municipal Code Section 12.06.215 E, or applicable successor rate. When calculated pursuant to Tacoma Municipal Code Section 12.06.215 E, the price for excess energy will be based on Tacoma Municipal Code Section 12.06.215 E.4(a) if Tacoma Power is participating in an Energy Imbalance Market and has sufficient price information available to perform the calculation; otherwise, the price for excess energy will be based on Tacoma Municipal Code Section 12.06.215 E.4(b).

Unless modified by the execution of a mutually agreed contract addendum, it shall be the Company's responsibility to assure that all energy schedules involving the Company's generator comply with the terms of service of the BPA Open Access Transmission Tariff (OATT), as they may be amended. The following shall apply to the delivery and purchase of electrical energy and delivery services:

(a) Point of Delivery – includes all points of interconnection between the Company and Tacoma Power at Tacoma Power’s St. Paul Substation located at 801 Portland Avenue, Tacoma, Washington shall be the Point of Delivery.

(b) Character of Service – The service commitment under this Agreement is for Standby Capacity, as provided under Schedule G, or applicable successor rate schedule for the Company, to generate all or part of Customer’s electric power requirements which is limited to a Firm Power requirement for 60 hertz, 3-phase alternating current made available or delivered at a nominal primary voltage of 115,000 volts.

(c) Firm Power – The term “Firm Power” is defined in Section 3 below.

(d) Resale of Power Prohibited - The Company shall use all power delivered by Tacoma Power hereunder solely at said plant site and none shall be delivered or sold to third parties, or used by Company at another location. Use by affiliates or subsidiaries at least 50% owned by the Company (or Company’s parent company) at the plant site or abutting thereon shall not be deemed a resale.

(e) Applicable Rates – The Applicable Rate shall be the Schedule G rate as set forth in Tacoma Municipal code Section 12.06.215 or applicable successor rate for Standby Capacity, or if the Company terminates self-generation as provided for in Section 12 and Section 16, the Applicable Rate shall be Schedule CP as set forth in Tacoma Municipal Code Section 12.06.260 or such other appropriate rate as shall be available at the time of termination of self-generation.

Section 3. FIRM POWER DEFINED. “Firm Power” is electric power which Tacoma Power will make available continuously except when the operation of Tacoma Power’s facilities is suspended, interrupted, interfered with or curtailed due to causes beyond its control and as further explained in Section 10 herein.

Section 4. DISPUTE RESOLUTION. All disputes arising under or in connection with this Agreement must be resolved as provided in this Section 4 as the exclusive method or procedure resolving disputes hereunder. Except as set forth herein, no suit at law or in equity based on such dispute may be instituted by any Party except to enforce, modify or vacate an arbitrator’s award consistent with this Agreement and R.C.W. Chapter 7.04A *et seq.*

(a) Mediation. The Parties must first mediate any claim, dispute, or controversy (collectively, a “dispute” herein), with a mutually selected mediator, whose efforts will be to assist the Parties to resolve disputed issues through a mediated process of discussion and evaluation of alternative resolutions. The mediation must be scheduled within thirty (30) days of notice and request by either Party, and the mediation will be non-binding and confidential.

(b) Binding Arbitration. If the Parties are unable to resolve any disputed issues through mediation, either Party may initiate binding arbitration, to be held in Tacoma, Washington, for the purpose of resolving a dispute under this Agreement within ninety (90) days after the mediation terminates (as evidenced by notice by any Party to the others that the mediation is terminated). The Parties should attempt to select an arbitrator from Judicial Arbitration and Mediation Services, Inc., American Arbitration Association or any other reputable firm offering similar services, and if no agreement can be reached, the Presiding Judge of Pierce County Superior Court shall select the arbitrator. Discovery shall be allowed to the same extent and manner permitted by the Washington State Superior Court Civil Rules. The arbitrator has authority to decide any and all issues in dispute,

provided that all issues of law shall be subject to review and vacation by application to Superior Court within 30 days of the arbitrator's decision, unless Chapter 7.04A RCW prohibits such review and vacation. It is further provided that either Party shall be entitled to seek injunctive relief prior to and pending arbitration. Except as expressly set forth herein, Chapter 7.04A RCW is applicable to the arbitration.

(c) **Costs.** If a Party is found to have brought any arbitration or litigation proceeding which is determined to be frivolous or without significant merit, or if an arbitration award or (court) judgment is rendered against a Party on substantially all grounds, the opposing Party shall be entitled to recover its reasonable attorneys' fees and all other costs incurred in that action or proceeding as well as any lawsuit instituted to enforce an arbitrator's award, in addition to any other relief to which it may be entitled, to include without limitation its share of the arbitrator's fee (and mediator's fees), and any other amounts incurred in connection therewith. Costs of any successful mediation will be borne by the Parties to such mediation equally. Costs of any unsuccessful mediation will be added to the costs of arbitration and treated as set forth in this Section.

(d) **Litigation.** Notwithstanding the provisions of Section 4(b), for disputes where one Party's liquidated claim aggregates at \$600,000 or greater, either Party may choose to terminate participation in arbitration, and/or proceed directly into Pierce County Superior or Federal Court, provided that termination of the arbitration and filing of such legal action in Pierce County Superior or Federal Court must be accomplished within ten business days of receiving notice of the (at least) \$600,000 liquidated amount in the arbitration proceeding pleadings.

(e) **Statute of Limitations.** No demand for arbitration may be made after the date when institution of legal or equitable proceedings based on such dispute would be barred by the otherwise applicable statute of limitations.

(f) **Equitable Remedies for Breach.** Each Party to this Agreement will have the remedies which are available to it for the violation of any of the terms of this Agreement or resolution of any other dispute, which is the subject of arbitration under this Section, including, but not limited to, the equitable remedies of specific performance and/or injunction, which remedies may be awarded by the arbitrator.

(g) **Questions of Arbitrability.** All questions relating to the arbitrability of any dispute must be decided by arbitration in the same manner and with the same effect as all other controversies that may arise hereunder.

**Section 5. BILLING.** Billing for power made available or delivered under the Agreement shall be rendered monthly by Tacoma Power on or before the tenth day of the succeeding calendar month and at the prescribed rates and under conditions as set forth in this Agreement.

Should Tacoma Power's metering equipment fail, the amount of power delivered or made available will be determined based on the best information available. Said determination shall for billing purposes have the same force and effect as an exact meter reading.

If any billing amount is disputed, the Company will provide written explanation specifying in detail the basis for the dispute and shall pay the portion of the invoice which is not disputed, no later than the tenth day from the date the bill is mailed. If the disputed billing amount is determined to be correct, or if a different billing amount is determined to be correct, such outstanding billing amount shall be paid within fifteen (15) calendar days of the determination,



with accrued interest, at the lower of 1% per month or the maximum allowed by Washington State law, from the original due date to the date of payment.

Section 6. PAYMENT FOR POWER. All bills shall be payable at the City Treasurer's office within fifteen (15) days from the date the bill is mailed; the tenth day shall be the due date, provided however, that if the tenth day be a Saturday, Sunday, or holiday, the following business day shall then be the due date. Failure to receive a bill shall not release WestRock from liability for payment. A late payment charge as established by City ordinance shall also be applicable to Company.

Undisputed payments that are in arrears greater than thirty-five days from the date of invoice may result in a written Disconnection Notice. Subsequent failure to satisfy overdue undisputed payment obligations may result in an Event of Default as defined in Section 7.

Section 7. EVENTS OF DEFAULT. An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

- (a) the failure to make, when due, any undisputed payment required pursuant to this Agreement if such failure is not remedied with fifteen (15) Business Days after written Disconnection Notice;
- (b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;
- (c) Company makes an assignment for the benefit of creditors or institutes any proceeding under the Bankruptcy Act (and amendments thereto);
- (d) the failure of the Company to satisfy the creditworthiness/collateral requirements agreed to pursuant to Section 9 hereof;
- (e) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;
- (f) failure to operate under or follow the material terms of this Agreement.

Section 8. REMEDIES UPON AN EVENT OF DEFAULT. If an Event of Default occurs as described in Section 7, the non-defaulting Party shall serve written notice of the default to the Defaulting Party. Unless alternative arrangements are negotiated in writing, the Defaulting Party shall have fifteen (15) business days to cure the default, and if the default is not cured within that time period, the non-defaulting Party may either suspend performance or terminate the Agreement. Suspension of service and termination of this Agreement does not release the Defaulting Party from its liability to the other for any loss, damage, claim, cost, charge or expense arising from the Event of Default, provided such failure is not excused by the non-defaulting Party in writing. No waiver by either Party hereto of any one or more defaults by the other in the performance of any provision of the Agreement shall operate or be construed as a waiver of any future default or defaults, whether of a like or of a different character.

Section 9. CREDIT REQUIREMENTS. Should the Company's creditworthiness,

financial responsibility, or performance viability materially change and become unsatisfactory to Tacoma Power in Tacoma Power's reasonably exercised discretion with regard to any transaction pursuant to this Agreement, and upon Tacoma Power providing documentation of such condition, then Tacoma Power may require the Company to provide some Performance Assurance (as specified below). Tacoma Power will provide the Company with written notice requesting Performance Assurance in an amount limited to a reasonable estimate of the damages to Tacoma Power, if the Company were to fail to perform its obligations. Upon receipt of such notice the Company shall have fifteen (15) Business Days to remedy the situation by providing such Performance Assurance to Tacoma Power. Performance Assurance shall, at Tacoma Power's sole discretion, consist of, (1) the posting of a Letter of Credit, (2) the posting of other acceptable collateral or security by the Company, or (3) a Guarantee Agreement, in the form attached to this Agreement as an exhibit, executed by a creditworthy entity. In the event that the Company fails to provide such Performance Assurance to Tacoma Power within fifteen (15) Business Days of receipt of notice, then an Event of Default under Section 7 will be deemed to have occurred and Tacoma Power will be entitled to the remedies set forth in Section 8 of this Agreement upon the expiration of the applicable cure period.

#### Section 10. INTERRUPTION OF SERVICE.

(a) In the event that the Company is unable to use wholly or in part, Firm Power because of circumstances reasonably beyond the control of the Company (including acts of war, natural disasters, strikes, lockouts or unavailability of electric or water service), but excluding business conditions, Tacoma Power, upon request of the Company in writing, shall determine if an adjustment of applicable billing determinants is appropriate. If such an adjustment is appropriate, Tacoma Power may, in its sole discretion, adjust the applicable billing determinants and the Company shall pay for electrical power according to the rate schedule determined by Tacoma Power to be applicable based on the adjusted billing determinants.

(b) Electric service is inherently subject to interruption, suspension, curtailment, failure and fluctuation. Tacoma Power shall have no liability to the Company for any interruption, suspension, curtailment, failure, or fluctuation in service or for any loss or damage caused thereby if such interruption, suspension, curtailment, failure or fluctuation is caused in whole or in part by a force beyond the control of Tacoma Power including but not limited to acts of war, natural disasters, strikes, lockouts, droughts, etc. ("Uncontrollable Force"). Such interruption, suspension, curtailment, failure, or fluctuation in service shall not be held to constitute a breach of contract on the part of Tacoma Power, or in any way affect any liability for payment for power made available or for money due on or before the date on which such failure or interference occurred.

Should Tacoma Power's electrical service be subject to an Uncontrollable Force, or should there be a general power shortage throughout the Pacific Northwest so that in the opinion of Tacoma Power, it will be extremely difficult, if not impossible, for Tacoma Power to maintain its power supply for essential domestic and public service without curtailing Firm Power, upon Tacoma Power Superintendent's notification, pursuant to Section 20 of the Agreement, the Company shall reduce its Firm Power to the extent and for such a period as set forth in the notification. However, the Company shall always be entitled to utilize the power generated by the Company's generator. Such notice for curtailment shall define the emergency or condition within the notice and may be the result of any of the following: (1) extraordinary weather conditions impacting system supply; (2) insufficient resources due to physical or extraordinary market circumstances; or (3) the existence of any conditions that may lead to declaration or a North American Electric Reliability Corporation (NERC) Energy Emergency Alert. Tacoma Power shall

use best efforts to provide the Company with advance notice of the Firm Power curtailment emergency or condition. No allowance will be made by Tacoma Power for loss of production or of sales by the Company. "Essential domestic and public service" includes but is not limited to necessary service for residential customers, hospitals and other health care facilities, nursing homes, schools, fire, law enforcement stations, utility services and other necessary public services requested for public safety.

(c) Each Party shall notify the other in advance for predetermined suspensions, interruptions or interferences, and as soon as possible in the case of unforeseen difficulties. The Company shall cooperate with Tacoma Power to schedule and allow Tacoma Power to perform all substation maintenance of Tacoma Power-owned equipment. Tacoma Power will attempt to perform substation maintenance to coincide with the Company's planned downtime. Notwithstanding Section 10 (d), predetermined suspensions, interruptions or interferences shall not be considered as a basis for adjusting monthly billings under this Section 10.

(d) Should the events described in subsections (b) and (c) occur, neither Party, including its respective officers, agents or employees shall be liable to the other for damages or for breach of contract, and/or for acts or for omissions resulting in personal or property damage to the other. Interruptions of service totaling less than two (2) hours and occurring within any single 24-hour period of time shall not be considered as a basis for adjusting monthly billings under this section. If Tacoma Power is unable to deliver electrical energy or unable to deliver electrical energy safely due to the condition of Company's equipment and facilities arising from causes within Company's reasonable control, notwithstanding Section 10(a), Tacoma Power is under no obligation to adjust the billing determinants.

Section 11. ADJUSTMENT OF RATES. For the Schedule G rates, rate review dates will be the same as for all other customers within this class. Tacoma Power shall provide Company with reasonable (regular or electronic mail or telefax) notice and information pertaining to proposed rate proceedings including Utility Board or City Council study sessions on such matters.

Section 12. SELF-GENERATION. Company will provide all or a portion of its facility energy requirements by self-generation, in an amount determined by Company in its sole discretion, and Tacoma Power will calculate Company's charges in accordance with the applicable provisions of Schedule G service, or applicable successor rate for Standby Capacity. In the event self-generation is terminated under this Section, Tacoma Power will have no obligation to compensate Company for self-generated energy.

Company's utilization of self-generation requires that it meet the following conditions:

(a) Company shall continue to receive and pay for Balancing Authority Area Services from BPA or arrange comparable service from another balancing authority;

(b) Company or its designee shall schedule energy from its generator in hourly increments at least one hour prior to delivery from the BPA or other balancing authority to the Tacoma Power balancing authority;

(c) The Company has designated Tacoma Power to perform generator interchange scheduling pursuant to the "Scheduling Addendum" attached hereto as Attachment No.1. The Company may terminate the Scheduling Addendum upon thirty (30) days notice in the event it obtains generator interchange scheduling from another provider, said termination shall apply only

to the Scheduling Addendum and will not affect the terms and conditions of this Agreement;

(d) The Company shall maintain any NERC registrations necessary to operate its generator interconnected with Tacoma Power's transmission system and shall perform all actions required to maintain compliance with those registrations;

(e) The Company shall accept a Standby Capacity value of forty megawatts (40 MW) for the duration of this Agreement for purposes of determining billing demand under Schedule G or applicable successor rate for Standby Capacity, except as provided below.

- i. The company shall have a one-time right to terminate self-generation provided for under this Section and may subsequently reduce the amount of Standby Capacity to zero megawatts (0 MW) for the remaining duration of the Agreement. Reduction of Standby Capacity shall take effect at the beginning of the month, no less than twenty days (20 days) after written notice to Tacoma Power under Section 20. The Company shall not thereafter resume self-generation unless it executes a new agreement with Tacoma Power providing for self-generation.
- ii. The Parties may change the amount of Standby Capacity by executing a mutually agreed contract revision following a demonstration by the Company that at no foreseeable time will its expected load exceed forty megawatts (40 MW) in the event self-generation is interrupted.

(f) As provided in Schedule G or an applicable successor rate, Tacoma Power shall purchase, and compensate Company for, generation in excess of Company's consumption and associated renewable energy credits (RECs as defined by RCW Section 19.285.030). To receive such compensation, the Company must transfer ownership of RECs in accordance with the following provisions:

- i. Following the end of each month, Tacoma Power shall identify the quantity of energy the Company generated in excess of Company's consumption during the previous month, and that is subject to REC transfer to Tacoma Power.
- ii. Company shall transfer within one hundred and twenty (120) days of the end of the month the amount of identified RECs for excess generation on a month/year vintage to Tacoma Power's WREGIS account, or as the parties may separately agree. Upon REC acceptance in WREGIS by Tacoma Power, WestRock shall invoice Tacoma Power for RECs delivered. The price for each REC transferred will be based on the rate stated in Schedule G, Tacoma Municipal Code Section 12.06.215 E.4.c, or applicable successor rate.
- iii. Company shall, at its sole cost and expense, take all commercially reasonable actions and execute all documents or instruments necessary to transfer the RECs hereunder to Tacoma Power using WREGIS and that the transfer of WREGIS Certificates shall represent the transfer of the RECs from the Company's generator. The Parties shall comply with all applicable laws, including the WREGIS Operating Rules regarding the certification and transfer of such WREGIS Certificates to Tacoma Power and Tacoma Power

shall have the sole rights to such WREGIS Certificates based on transfer in accordance with the WREGIS Operating Rules. Transfer of RECs shall be independent of delivery of the energy with which the REC is associated.

In the event Company fails to meet any of the conditions identified above and fails to cure the failure after receiving written notice from Tacoma Power as provided for in Section 20 and within the timeframes set forth in Section 8, Tacoma Power may terminate self-generation under this Section, or terminate this Agreement and continue to provide electric energy service to Company under an applicable rate schedule based on the Company's anticipated energy load profile, charging the Company for its gross facility energy requirements.

### Section 13. LIABILITY.

(a) The Company is responsible for all actions of its employees, agents, contractors and guests who may be injured by any of the equipment located at the Company-owned substation. Prior to maintaining or working with any electrical equipment at or near the substation, Company is responsible for obtaining from Tacoma Power (and verifying) all appropriate clearances and tagging which indicates that the electrical facilities are not energized. The Company hereby agrees to defend, indemnify and hold harmless Tacoma Power, its officers and employees, agents, contractors and guests from any and all costs and expenses including reasonable attorneys' fees arising from any injuries or alleged injuries, including death, to any person including Company employees, contractors and agents, or damage to or destructions of property which may result from Company's negligence in using the electric power provided pursuant to this Agreement or that occurs at and are due to the Company's negligence in installing or maintaining the Company-owned substation and/or other electrical facilities located on the Company's premises.

(b) Tacoma Power is responsible for providing and maintaining the equipment it owns. Tacoma Power hereby agrees to defend, indemnify and hold harmless the Company, its officers and employees, agents, contractors and guests from any and all costs and expenses, including reasonable attorneys' fees, arising from any injuries or alleged injuries, including death, to any person, including Tacoma Power employees, Tacoma Power contractors or agents, or damage to or destruction of property which may result from the negligence of Tacoma Power in delivery of power or in failing to properly install or maintain Tacoma Power-owned facilities.

(c) In this regard, it is understood that the Parties may be waiving Title 51 RCW, Industrial Insurance immunity, and this provision has been mutually negotiated. Provided, however, this Agreement is intended to apply only to the Company and Tacoma Power, and it shall not be interpreted to allow an employee to sue his/her employer.

(d) The obligations of the Parties under the Agreement are obligations of the Parties only, and no recourse shall be available against any officer, director, shareholder, member, employee or partner of any Party or any affiliate of a Party.

(e) The Parties agree to comply with all laws that regulate hazardous or toxic substances, as the same are or may be in the future defined by law. In this regard Tacoma Power acknowledges that it will, if legally responsible, clean up hazardous or toxic materials that Tacoma Power causes to be spilled or contaminate Company's premises.

Section 14. REGULATORY CHANGES. Any provision herein declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a

statutory change (individually or collectively, such events referred to as "Regulatory Event") will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to reform this Agreement in order to give effect to the original intention of the Parties. If the Parties are unable to reform this Agreement to mutual satisfaction, the Agreement may be terminated under the provisions of Section 16, Early Termination, provided that Company shall not be liable for a termination payment in such circumstances.

Section 15. GOVERNING LAW. Parties agree and stipulate that in the event any arbitration or litigation should occur concerning or arising out of this Agreement, the sole venue of any arbitration or legal action shall be in Pierce County in the State of Washington and the interpretation of the terms of this Agreement shall be governed by the laws of the State of Washington.

Section 16. EARLY TERMINATION. In the event the Company elects after the effective date hereof to sell all or a portion of the output of its generator to a third party or otherwise desires to terminate this Agreement and take electrical service under an alternative rate schedule, the Company shall terminate self-generation as described in Section 12 by providing written notice of such intention to Tacoma Power at least six (6) months prior to the intended change of service. Within said notice period or on a date agreed to in writing by the parties not to exceed six months from Tacoma Power's receipt of the notice of early termination, the Applicable Rate will change from Schedule G to Schedule CP as provided in Section 2(e), or such other applicable rate available at that time, and Section 12 will no longer apply. Company shall not be liable for any re-entry charge related to returning to electric service under Schedule CP. Should self-generation be terminated, and unless or until other arrangements are made for Company's generation, the output of the generator will be deemed delivered to BPA as described in the recitals of this Agreement and the Scheduling Addendum. If transmission service has not been reserved over the Tacoma Power transmission system from the generator (ST.PAUL) to BPA (BPAT.TPU), each month, WestRock will be charged the monthly firm point-to-point transmission rate under Tacoma Power's then effective Open Access Transmission Tariff.

Separately, the Company may terminate this Agreement if Standby Capacity and its actual historic demand for the prior ten (10) consecutive months are less than 8 MW. Termination will occur at the start of the month, no less than twenty days (20 days) after providing notice under Section 20. Company will remain responsible for all charges accrued through the remaining duration of the contract under Schedule G, or its successor rate. Following termination, Tacoma Power shall have no obligation to serve Company if Company's load increases above 8 MW.

Section 17. PUBLIC RECORDS. This Agreement and any documents provided to Tacoma Power hereunder are deemed public records subject to disclosure under the Washington State Public Records Act, Chapter 42.56 RCW (Public Records Act). Tacoma Power may be required, upon request, to disclose this Agreement and any documents related to it unless an exemption under the Public Records Act or other laws applies.

Section 18. LIMITATION OF LIABILITY. Except as otherwise set forth in Sections 10, 13, and 16, neither Party shall be liable to the other, based on tort (including negligence and strict liability), contract or otherwise arising out of or related to the Agreement, for any indirect, special, or consequential damage, or exemplary loss or damage, costs of capital or expenses thereof, loss of profits or revenues or the loss of use thereof, and each Party hereby releases the others from any liability for all such losses and damages. All limitations on each Party's liability

contained in the Agreement shall survive the termination of the Agreement. The foregoing limitations on liability and damages shall not apply to a Party's liability and damages arising from gross negligence or willful misconduct.

Section 19. ASSIGNMENT. This Agreement shall inure to the benefit of and be binding upon the respective successors and assignees of the Parties hereto. Provided however that neither this Agreement nor any interest therein shall be transferred or assigned by either Party without prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed.

Section 20. NOTICES. Any notice, except notices under Section 10(b), or demand required by this Agreement shall be deemed given when received by fax, electronic mail (with fax and electronic mail being followed with registered or certified original), registered or certified mail and with postage prepaid thereon, addressed as follows:

To Tacoma Power:

Superintendent  
Tacoma Power  
3628 South 35th Street  
Tacoma, WA 98409-3115  
Fax No.: (253) 502-8378

To Company:

Either Party, by notice to the other, may hereafter designate a change in its address and addressee.

Notices pursuant to Section 10(b) are deemed given when received by fax, electronic mail, or telephone (with fax or written notice confirmation immediately following), excluding voice mail.

Section 21. SECTION HEADINGS. The section headings of this Agreement are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections or the Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement in duplicate, each by the signatures and attest of its duly authorized officers, as of the day and date first above written.

**Tacoma Power**

**WestRock CP, LLC**

\_\_\_\_\_  
Chris Robinson, Superintendent

\_\_\_\_\_  
[Representative]

\_\_\_\_\_  
Andrew Cherullo, Finance Director

Approved as to form:

\_\_\_\_\_  
Deputy City Attorney



SCHEDULING ADDENDUM

Attachment No.1

[DATE]

This Scheduling Addendum specifies the terms and conditions under which the City of Tacoma, Department of Public Utilities, Light Division d.b.a. Tacoma Power (“Tacoma Power”) will schedule energy on behalf of WestRock CP LLC (“WestRock”).

RECITALS

A. WestRock owns and operates a 64 MW renewable combined heat and power generator that is connected to Tacoma Power’s transmission system and that receives balancing authority area services from the Bonneville Power Administration (“BPA”).

B. Tacoma Power and WestRock have executed a Power Service Agreement to which this Agreement has been attached. Pursuant to the Power Service Agreement, WestRock will use the output of its generator to provide energy to its mill operations, which are collocated with the generator, and are also interconnected with the Tacoma Power transmission system.

C. In order for energy generated at the WestRock generator to be accounted for as serving the WestRock mill operations, an interchange schedule or e-tag must be created from the BPA balancing authority to the Tacoma Power balancing authority. Without an interchange schedule from BPA to Tacoma Power, all energy actually produced by the WestRock generator will be deemed delivered to the BPA balancing authority and will not be available for use by Tacoma Power to serve the needs of the WestRock mill operation.

D. Tacoma Power has the systems and personnel to create and modify interchange schedules. By contrast WestRock does not have the systems or personnel capable of providing this function. Accordingly, WestRock desires that Tacoma Power create and modify interchange schedules on its behalf.

E. As a balancing authority area services customer of BPA, WestRock will receive monthly invoices for services from BPA. The monthly bill will vary depending upon a number of factors related to the generator, including how the generator is operated and scheduled. Actions taken by Tacoma Power can and will change the amount of these invoices. The parties agree that WestRock shall pay all BPA charges for balancing authority services and that WestRock shall have no right of reimbursement from Tacoma Power for interchange schedules submitted on WestRock’s behalf.

NOW THEREFORE, in consideration of the mutual promises and obligations specified below and in consideration, the parties agree as follows.

1. Incorporation. The above recitals are hereby incorporated into and made a part of this Scheduling Addendum.

2. Term and Termination. This Scheduling Addendum shall be effective on the starting date of the Power Service Agreement and shall terminate at the expiration of the Power Service Agreement except:

a. WestRock may terminate this Scheduling Addendum prior to expiration of the Power Service Agreement by providing Tacoma Power one (1) month advanced written notice;

b. Tacoma Power may terminate this Scheduling Addendum by providing WestRock three (3) month's advanced written notice; or,

c. The Parties may terminate this Scheduling Addendum prior by mutual written agreement.

3. Scheduling. WestRock authorizes Tacoma Power to create and modify interchange energy schedules with respect to its generator. This includes communication with BPA and any other entity that may be necessary for the creation and modification of interchange schedules.

Tacoma Power shall schedule interchange energy from the WestRock generator and BPA balancing authority to Tacoma Power and the Tacoma Power balancing authority using its best efforts in a manner that is consistent with Good Utility Practice. Good Utility Practice means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region, including those practices required by Federal Power Act section 215(a)(4).

The quantity of energy scheduled for a given interval shall reflect forecast values provided by WestRock to Tacoma Power no less than 90 minutes prior to the time interval being scheduled. The specific method by which WestRock provides a forecast schedule to Tacoma Power shall be by means separately agreed to by the Parties, except Tacoma Power shall not unreasonably withhold its consent. All scheduled energy from the generator that is not curtailed will be deemed as self-generated for purposes of the Power Service Agreement.

4. Payment. WestRock shall remain a balancing authority area services customer of BPA. WestRock shall pay all BPA and other third party related costs associated with its generator, whether or not those costs result from its Balancing Authority Area Services Agreement with BPA. Tacoma Power shall have no obligation to pay any costs or charges of any entity with regard to the generator or related Balancing Authority Area Services, even if those charges were the result of negligence on the part of Tacoma Power.

WestRock shall have no obligation to pay Tacoma Power for creating or modifying interchange scheduling. Tacoma Power shall have no obligation to pay WestRock for the authority to create or modify interchange schedules.

5. Indemnification. WestRock shall hold harmless and indemnify Tacoma Power, its officers, and its employees for any liability incurred for any reasonable actions taken by to Tacoma Power, its officers, or employees in accordance with Good Utility Practice to create or modify interchange energy schedules in furtherance of this agreement.

6. Assignment. Neither Party may not transfer or assign this Scheduling Addendum without the other Party's prior written approval. Approval of said transfer or assignment may be conditioned upon the transferee, assignee, or tenant executing a scheduling agreement that imposes conditions, and requires reasonable coordination with Tacoma Power's power marketing operations. WestRock's payment obligations to BPA and its indemnification of Tacoma Power herein shall be binding upon WestRock's successors and assigns.

7. Survival. Notwithstanding the termination or assignment of the Power Sale Agreement, this Agreement and its terms and conditions Sections 4 through 7 shall survive such termination or assignment and shall remain in full effect and force until all of its obligations are fulfilled to the satisfaction of Tacoma Power.