



RESOLUTION NO. U-11278

1 A RESOLUTION authorizing the execution of a power service agreement
2 between Tacoma Power and James Hardie Building Products, Inc. under
3 the terms of Schedule HVG.

4 WHEREAS the City of Tacoma, Department of Public Utilities, Light
5 Division (d.b.a. "Tacoma Power"), supplies Schedule HVG service to James
6 Hardie Building Products, Inc., ("James Hardie") a large industrial customer,
7 pursuant to a Power Service Agreement, and

8 WHEREAS James Hardie's current agreement with Tacoma Power
9 expires September 30, 2021, and

10 WHEREAS Tacoma Power proposes a new one-year agreement, with a
11 potential additional one-year renewal, with James Hardie on the terms and
12 conditions specified in the proposed Power Service Agreement, and

13 WHEREAS it is in the best public interest to approve to proposed
14 Agreement with James Hardie; Now, Therefore,

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

16 That Tacoma Power's request to execute a Power Service Agreement,
17 with James Hardie Building Products, Inc. is hereby approved, and the
18 proper officers of the City are authorized to execute said agreement,
19 substantially in the form on file with the Clerk of the Board and as approved by
20 the City Attorney.
21

22 Approved as to form:

23 _____
24 /s/ _____
25 Chief Deputy City Attorney

Adopted _____

26 _____
Clerk



Board Action Memorandum

TO: Jackie Flowers, Director of Utilities
COPY: Charleen Jacobs, Director and Board Offices
FROM: Rick Applegate, Senior Power Analyst
MEETING DATE: September 8, 2021
DATE: August 27, 2021

SUMMARY: Tacoma Power requests authority to execute a new Power Service Agreement with James Hardie Building Products, Inc. (James Hardie or Company) under the terms of Schedule HVG.

BACKGROUND: James Hardie is an industrial customer of Tacoma Power. The Company's current power service agreement expires at the end of September, making it one of three customers with power service agreements ending at this time. With this proposed agreement, it is our goal to continue James Hardie's current form of service. The proposed agreement has a one-year term, with a potential one-year renewal. It maintains features of the Company's current agreement, but also includes some minor modifications to reflect Tacoma Power's prevailing policies.

James Hardie is unique in that it is the only Schedule HVG customer that operates under a generally standard service agreement. In 2018, the Company's local manufacturing facility grew, and the Company constructed a substation to support its operations. The substation allowed it to access Tacoma Power's Schedule HVG service. However, at the time, Tacoma Power required all new Schedule HVG customers to have power service agreements. As a result, the agreement that is now expiring was executed with the Company.

ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED? Yes.

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

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 **James Hardie Building Products, Inc.**, a corporation organized and existing under and by virtue of the laws of the State of Nevada 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".

RECITALS

WHEREAS, Tacoma Power provides electrical energy to the Company at a Company owned and operated substation that interconnects with the Tacoma Power transmission system, and

WHEREAS, pursuant to Tacoma Municipal Code (TMC) Section 12.06.225, a Power Service Agreement with Tacoma Power is required for customers who begin taking service under TMC 12.06.225 after April 16, 2017, and

WHEREAS, the Parties maintain a Power Service Agreement that expires on September 30, 2021.

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 October 1, 2021 and shall continue in effect until HE 24 PPT on September 30, 2022. Upon expiration and unless a Party has given written notice to the other Party by June 1, 2022, that the Party does not wish for the Agreement to continue, this Agreement will automatically renew for one additional term of one (1) year. A "Contract Year" shall be defined as the beginning of the HE 01 PPT of October 1 of each year within the term of the contract and concluding at HE 24 PPT of September 30 of the next succeeding year.

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, and (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. In the event of such termination, the Superintendent of Tacoma Power may continue to serve Company based on the same terms and conditions set forth herein until such time as the Parties agree to an acceptable replacement contract.

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 HVG as set forth in Tacoma Municipal Code Section 12.06.225 and as hereafter amended, all electric energy and delivery

services used for its operations thereat except as herein provided. The following shall apply to the delivery and purchase of electrical energy and delivery services:

(a) Point of Delivery - Company's Substation on the Company's plant site located at 4615 192nd St E, Tacoma, WA 98446 shall be the Point of Delivery.

(b) Character of Service – The service commitment under this Agreement 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 HVG rate as set forth in Tacoma Municipal code Section 12.06.225.

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. The Company shall not increase its consumption of Firm Power by more than 10 average megawatts in a rolling 12-month period. In the event the Company consumes Firm Power in excess of these quantities, Tacoma Power may terminate this Agreement and continue to provide service to the Company under Schedule G as set forth in Tacoma Municipal Code Section 12.06.215.

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 fifteenth day from the date of the bill. 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 of the bill; the fifteenth day shall be the due date, provided however, that if the fifteenth 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 the Company 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 the non-defaulting Party agrees to an alternative arrangement 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 become unsatisfactory to Tacoma Power because Company fails to maintain at least a BBB- rating, or equivalent with at least one of the following credit ratings agencies: S&P, Moody's, and Fitch, and upon Tacoma Power providing documentation of such condition, then Tacoma Power may require the Company to provide Performance Assurance (as specified below). Tacoma Power will provide the Company with written notice requesting Performance Assurance in an amount limited to three (3) months worth of the last six (6) months average payments, if the Company were to fail to perform its obligations. Upon receipt of such notice the Company shall have thirty (30) 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 executed by a creditworthy entity. In the event that the Company fails to provide such Performance Assurance to Tacoma Power within thirty (30) 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.

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 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. 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 HVG 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) notice and information pertaining to proposed rate proceedings including Utility Board or City Council study sessions on such matters.

Section 12. SELF-GENERATION. In the event the Company hereafter elects to generate all or a part of its power requirements, it shall give written notice of such intention to Tacoma Power at least ninety (90) days prior to the start of the month that self-generation becomes effective. Self-generation in an amount exceeding five hundred (500) kilowatts will not be permitted under this Agreement and will require the execution of Power Service Agreement that supersedes this Agreement and provides for standby capacity service under a Tacoma rate schedule that allows for such service.

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 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 regard to the indemnity obligations above, 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.

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 OR REDUCTION. The Contract may be cancelled and the power service provided thereunder terminated by the Company for any reason by providing written notice Tacoma Power. In the event of termination, the Company will remain liable for any charges that have accrued or that will accrue under the terms of Schedule HVG, except that Delivery charges that accrue for future periods may be applied to future invoices if the Company elects to take service under an alternative Tacoma Power rate schedule.

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.

Section 20. NOTICES. Any notice, except notices under Section 10(b), or demand required by this Agreement shall be deemed given when received by 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

To Company:

General Counsel
James Hardie Building Products, Inc.
4615 192nd St E
Tacoma, WA 98446

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

Notices pursuant to Section 10(b) in the General Terms and Conditions are deemed given when received by electronic mail, or telephone (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

James Hardie Building Products Inc.

Chris Robinson, Superintendent

Joseph Blasko, General Counsel Approved

Andrew Cherullo, Finance Director

Approved as to form:

Deputy City Attorney