



RESOLUTION NO. U-11388

1 A RESOLUTION related to the City of Tacoma, Department of Utilities, Light
2 Division ("Tacoma Power") entering into an energy conservation
agreement with KMH Housing LLC, a state licensed marijuana business.

3 WHEREAS Tacoma Power has proposed an energy conservation
4 agreement with KMH Housing LLC ("KMH"), and

5 WHEREAS KMH Housing LLC, is a state licensed marijuana business
6 and per Tacoma Public Utility Board Resolution No. 10792, there are specific
7 requirements for transactions over \$200,000, including Public Utility Board
8 approval, and

9
10 WHEREAS in order to expand production and reduce utility expenses,
11 KMH intends to install LEDs rather than conventional energy intensive lights,
12 and is requiring assistance through the funding of an energy conservation
13 agreement, Now, therefore,

14
15 BE IT RESOLVED BY THE PUBLIC UTILITY BOARD OF THE CITY OF TACOMA:

16 That the energy conservation agreement over \$200,000 with KMH
17 Housing LLC, and Tacoma Power is approved, for the installation of LEDs,
18 and the appropriate officers of the City are authorized to execute said
19 agreement, substantially in the form on file with the Clerk of the Board and as
20 approved by the City Attorney's Office.

21
22 Approved as to form:

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

26 Clerk

Chair

Secretary

Adopted _____



Board Action Memorandum

TO: Jackie Flowers, Director of Utilities
COPY: Charleen Jacobs, Director and Board Offices
FROM: **Alan Fraser, Customer Energy Programs**
MEETING DATE: **June 8, 2023**
DATE: June 2, 2023

STRATEGIC DIRECTIVE ALIGNMENT (select as many that apply):

Please indicate which of the Public Utility Board's Strategic Directives is supported by this action.

- | | |
|--|---|
| <input type="checkbox"/> SD1 – Equity & Inclusion | <input type="checkbox"/> SD8 – Telecom |
| <input type="checkbox"/> SD2 – Financial Sustainability | <input checked="" type="checkbox"/> SD9 – Economic Development |
| <input type="checkbox"/> SD3 – Rates | <input type="checkbox"/> SD10 – Government Relations |
| <input type="checkbox"/> SD4 – Stakeholder Engagement | <input type="checkbox"/> SD11 – Decarbonization/Electric Vehicles |
| <input checked="" type="checkbox"/> SD5 – Environmental Leadership | <input type="checkbox"/> SD12 – Employee Relations |
| <input type="checkbox"/> SD6 – Innovation | <input checked="" type="checkbox"/> SD13 – Customer Service |
| <input type="checkbox"/> SD7 – Reliability & Resiliency | <input type="checkbox"/> SD14 – Resource Planning |

SUMMARY: Pursuant to TPU Resolution U-10792, Tacoma Power recommends approval of its entering into an energy conservation agreement with KMH Housing LLC, a state licensed marijuana business.

BACKGROUND: In 2012, Washington passed Initiative 502 related to the legalization of marijuana including legal production of marijuana. In response, Tacoma Public Utilities approved Amended Resolution U-10792 that stipulates requirements for providing conservation program services to state licensed marijuana businesses including Public Utility Board approval of conservation transactions in excess of \$200,000. KMH Housing LLC is a marijuana producer in Tacoma. To expand production and reduce utility expenses, the customer intends to install LEDs rather than conventional, energy intensive lights. In support of this installation, the customer is requesting assistance funding through our energy conservation program. The scope of work and equipment meets program rules and is eligible for incentive.

ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED? Yes

IF THE EXPENSE IS NOT BUDGETED, PLEASE EXPLAIN HOW IT IS TO BE COVERED. N/A.

IF THE ACTION REQUESTED IS APPROVAL OF A CONTRACT, INCLUDE LANGUAGE IN RESOLUTION AUTHORIZING \$200,000 INCREASE IN ADMINISTRATIVE AUTHORITY TO DIRECTOR? No

ATTACHMENTS: Conservation Agreement, U-10792, BAM

CONTACT:

Primary Contact: Alan Fraser, Electrical Engineer PE Principal, 253.355.6338

Supervisor's Name: Natasha Houldson

Additional staff requiring a Zoom presentation link: Ray Johnson, Steve Bicker, Lis Saunders, Natasha Houldson

**Tacoma Power
Customer Energy Programs
Indoor Agriculture Incentives Agreement ¹**

In consideration of the mutual benefits to be derived hereunder, City of Tacoma, Department of Public Utilities, Light Division (d/b/a and hereinafter "Tacoma Power") and the Applicant **KMH Housing, LLC** (hereinafter "Participant") have entered into this Agreement made effective as of June 8, 2023 (the "Effective Date") and hereby agree to the following terms and conditions:

Recitals:

Whereas, Tacoma Power is a municipal utility authorized by the state of Washington and the United States Government to operate electrical generation facilities, to transmit and distribute electrical energy in the state of Washington, and owns electrical transmission and/or distribution facilities that serve customers within its service area including, but not limited to, the Participant's service premises;

Whereas, Tacoma Power has a duty to serve all applicants for electric utility service who are reasonably entitled to receive such service and Tacoma Power also has a duty to acquire all cost effective electrical conservation in our service territory per the Washington State Energy Independence Act, now codified in Chapter 19.285, RCW.

Whereas, Participant has represented that it has, or will have prior to payment of any incentive hereunder, a valid license issued by the State of Washington to engage in the business of marijuana production, processing, and/or retail sales pursuant to applicable Washington State laws and regulations;

Whereas, Tacoma Power has considered the utility customer status of Participant under both Federal and State laws and, believes in good faith that such status does not in and of itself preclude entitlement to electric utility service and/or participation in the energy conservation programs Tacoma Power makes available to all of its electric utility commercial customers.

NOW, THEREFORE, in consideration of the above Recitals and their respective promises and obligations set forth herein, the Parties hereby agree as follows:

1. General Eligibility Requirements: The terms and conditions set forth herein shall apply to the installation of Energy Conservation Measures ("ECM", "ECMs" or "Measures" herein) described in one or more of the following Attachment(s) that Participant has completed and submitted with its Application:

- A. New Construction per Attachment A-1; AND/OR
- B. Bright Rebates per Attachment A-2; AND/OR
- C. Custom Retrofit per Attachment A-3; AND/OR
- D. Equipment Rebates per Attachment A-4

IMPORTANT ! – PLEASE NOTE:

Participant expressly acknowledges and agrees that the terms and conditions set forth in Section 8 (Legal Relations) and in Section 9 (Termination) fully apply to Participant's eligibility for incentives hereunder and shall govern its legal rights and duties hereunder.

2. Energy Conservation Measure Installation: Participant represents that it has the right to, and will, install the Energy Conservation Measures at the facility location(s) ("Facility") designated and identified in each completed Attachment and that any necessary consents have been obtained. Participant is solely responsible for the design and installation of the ECMs and for ensuring that all equipment purchased and work performed complies with applicable federal, state and local safety, building, electrical, and environmental codes and standards. Participant is solely

¹ Use of this template for conservation measures transactions that exceed, or are estimated to exceed, \$200,000 must be presented to the Public Utility Board for approval per the Board's Amended Resolution No. U-10792

responsible for compliance with manufacturer instructions, obtaining all necessary permits, and disposal of all materials in accordance with federal, state and local laws. Participant further agrees to remove and dispose of equipment being replaced by the ECMs in accordance with all laws, rules and regulations and Participant shall not reinstall any of this equipment within Tacoma Power's service territory. Participant agrees to timely notify Tacoma Power, following submittal of completed Application, of any change orders issued to contractors or installers that will materially affect the installation costs or the anticipated savings of the ECMs. Participant assumes full financial responsibility for any ECMs which do not meet the incentive qualifications.

3. Verification. It is critical that Tacoma Power verify the installation of ECMs, technical documentation associated with such installation, and resulting energy savings. Participant agrees to assist Tacoma Power's verification process before, during, and after Measure installation as follows:

- A. Access and Inspection: Participant shall, upon request, provide Tacoma Power and its representatives: (1) reasonable access to and inspection of the Facility and Measure(s) installed therein, (2) all technical documentation related to the ECMs including, but not limited to specifications for renovation of the Facility that will be provided to construction contractor(s) and as-built drawings, and (3) reasonable access to and inspection of all energy usage data related to the ECMs including, but not limited to, release of utility bills and Facility energy consumption information.
- B. Monitoring: Tacoma Power reserves the right to make a reasonable number of follow-up visits to the Facility during the 24 months following installation of ECMs. Such visit(s) will be at a time convenient to Participant, with at least one week advance notice.

Satisfactory verification and completion of a post-installation inspection of the ECMs must occur before any incentive payment will be issued. Tacoma Power may refuse to pay incentives if specifications do not adequately provide for installation of ECMs consistent with good engineering and energy-efficient design practices.

4. Incentive: Estimated incentives have been calculated in accordance with program requirements and incentive levels. The incentive amount will be determined by the number and type of eligible ECMs actually installed according to the incentive payment levels set forth in each completed Attachment and the actual final project costs; HOWEVER, the maximum amount Tacoma Power will ever be required to pay under this Agreement shall not exceed the amount(s) specified in Section 5 (Payment and Schedule) below. Prior to the date a completed Application is submitted, incentive dollar amounts specified in any Attachment are subject to change without notice. The Application must be pre-approved in writing by Tacoma Power prior to Participant installing equipment. Tacoma Power reserves the right to withhold incentive, in whole or in part, in the event Participant commences installation of ECMs, or engages in other unauthorized action, prior to Tacoma Power's written approval of Participant's Application and related Attachment(s).

5. Payment and Schedule: The total incentive amount available to be paid to Participant hereunder is **\$655,071**. This is the aggregate amount of each ECM installation project identified in the completed Attachment(s) to Participant's Application based on the maximum incentive amount available for each ECM installation project -- per subsections A through D below. Participant understands and agrees that Tacoma Power's obligation to make payment of any incentive amount(s) hereunder is expressly conditioned upon Participant's compliance with the general process and requirements applicable to each ECM program specific Attachment submitted.

- A. **New Construction:** For ECM installation projects described in **Attachment A-1** that involve total incentive amounts over \$500.00, Tacoma Power will pay the Participant no more than one hundred (100%) of the approved ECM incremental project cost up to **\$655,071**.
- B. **Bright Rebates:** For ECM installation projects described in **Attachment A-2** that involve total incentive amounts over \$500.00, Tacoma Power will pay the Participant no more than sixty percent (60%) of the project cost up to **\$0**.
- C. **Custom Retrofit:** For ECM installation projects described in **Attachment A-3** that involve total incentive amounts over \$500.00, Tacoma Power will pay the Participant no more than seventy percent (70%) of the project cost up to **\$0**.
- D. **Equipment Rebates:** For ECM installation projects described in **Attachment A-4**, Tacoma Power will pay the Participant no more than **\$0**.
- E. All ECM installation specified in the applicable Attachments shall be completed on or before the installation completion date of **December 31, 2023**.

- F. For approved projects, incentive funds will be paid upon (1) completion of the identified ECMs as verified by Tacoma Power post-installation inspection(s) and (2) submission of all required Final Cost Documentation for the completed ECMs. **NOTE: As an additional condition upon Tacoma Power's obligation to pay incentive funds hereunder, Participant must provide proof of a current State of Washington issued license to engage in business at the site of the Facility as a marijuana producer, processor and/or retailer.** Please allow 60 days from Tacoma Power's receipt of all required information for delivery of the incentive payment, which will be made to Participant at the address listed in the Application. Failure to provide all required information may result in delay or withholding of incentive payment(s). All payments are contingent upon continued funding for this conservation program in the biennial budgets of Tacoma Power.

6. Final Cost Documentation: As a condition of Tacoma Power's payment of incentive funds hereunder, Participant agrees to provide to Tacoma Power upon request all final cost documentation. Final cost documentation must itemize the equipment purchased and/or work performed for the Measure(s) and may include without limitation the following: (1) sales slips, purchase orders, or contracts for equipment or services ordered, (2) size, type, make, model or part number of equipment purchased and the date of the equipment purchased and itemized price paid, (3) a detailed description of installation or other labor charges for the ECMs, and (4) documentation of any federal or state tax credits, discounts, rebates, incentives or other consideration received for the ECMs that reduces the final costs incurred by Participant. Participant agrees to retain, and Tacoma Power reserves the right to review, any final cost documentation related to the ECMs for a period of 24 months following payment of any incentive funds.

7. Persistence of Energy Savings

- A. The intent of Tacoma Power's payment of incentives hereunder is to promote the efficient use of electric power by its customers, rather than the non-use of power. The goal is to achieve energy conservation through the efficient and cost-effective use of power and, thereby, avoid acquisition of more costly alternative supply resources. To acquire the intended energy savings, the ECMs funded under this Agreement must remain in place and be used for a minimum period of time. Accordingly, the Participant agrees to satisfy the following conditions:
1. Participant will maintain the ECM's installed pursuant to this Agreement for a Conservation Savings Period of 5 years (five (5) years unless otherwise stated) following installation in a manner sufficient to ensure the intended energy efficient performance of such equipment. The Conservation Savings Period is calculated using a present forecast value of energy for the ECMs identified and specified in each completed Attachment and is the minimum period of time Tacoma Power deems necessary to achieve the intent and goal of this Agreement.
 2. To ensure energy efficient performance of ECMs funded hereunder, Participant will refrain from removing or replacing the ECMs listed and installed per each completed Attachment during the Conservation Savings Period unless the energy efficiency of the replacement equipment is equal to or greater than the energy efficiency of said ECMs.
 3. In the event Participant intends to sell, lease or otherwise transfer ownership or possession of the Facility at which the ECMs are installed to a third party, Participant shall provide reasonable prior written notice of such intent to Tacoma Power and shall make good faith and best efforts to (i) fully inform the buyer, lessee, or transferee of the foregoing conditions, and (ii) document an express assumption of the duty to satisfy such conditions as reasonably necessary to ensure the intended energy conservation savings will be achieved.
- B. Should the Participant fail to adhere to the foregoing agreed upon conditions, it is expressly acknowledged and understood that Tacoma Power will be deprived of the benefits of energy conservation savings intended hereunder. Accordingly, upon the default of any such condition, Participant agrees to repay Tacoma Power a pro-rata share of the incentive funds provided hereunder for each twelve (12) month period, or portion of a twelve (12) month period, of the Conservation Savings Period remaining after such default.

8. Legal Relations: It is mutually understood and agreed that Tacoma Power would not enter into this Agreement without the express representation and agreement of Participant to the following terms and conditions governing activities conducted at the location of the Facility and to which Tacoma Power provides electrical service (the "Service Premises"):

A. Compliance with Applicable Laws and Regulations:

- 1) The Participant shall fully comply with all federal, state, and local laws and regulations applicable to the use of the Service Premises and any activities conducted thereon that may benefit from electrical service provided by Tacoma Power;
- 2) Participant shall ensure that its contractors, agents, volunteers, lessees, licensees, invitees, and the respective employees, contractors, agents or volunteers of any said lessee, licensee and invitee fully comply with all federal, state, and local laws and regulations applicable to the use of the Service Premises and any activities conducted thereon that may benefit from electrical service provided by Tacoma Power;
- 3) For purposes of this Section 8.A., compliance with applicable federal and state laws and regulations shall specifically include, but not be limited to:
 - (a) Federal guidelines governing the enforcement of the Controlled Substance Act (CSA) as currently set forth in the Department of Justice's Memorandum dated August 29, 2013, as the same may hereafter be revised or otherwise implemented; and
 - (b) Washington State's regulatory scheme governing marijuana production and processing and all related licensing requirements and conditions adopted and implemented as of the Effective Date of this Agreement, as the same may hereafter be amended or implemented;
- 4) Participant shall, in addition to compliance per subsection 8.A.3), ensure that no unlawful activities are conducted on the Service Premises and that any real or personal property under its control, which is used to provide electrical service to or at the Service Premises, will be used in a lawful manner.

B. Indemnification:

- 1) General Indemnifications: To the fullest extent allowed by law, Participant agrees to indemnify, defend, and hold harmless Tacoma Power, its officers and employees acting within the scope of their employment, from and against any and all liabilities, losses, claims, damages, judgments, penalties, causes of action, costs and expenses (including reasonable attorney's fees and costs) arising from or in connection with this Agreement. Participant specifically assumes liability for actions brought by the Participant's own employees against Tacoma Power and, solely for the purpose of this indemnification and defense, the Participant expressly waives any immunity under state industrial insurance law, Title 51 RCW. Participant acknowledges that this waiver was the subject of mutual negotiation. This indemnification shall survive termination of this Agreement.
- 2) Special Indemnities: The Participant shall defend, indemnify, and hold harmless Tacoma Power and its officials, officers, employees and contractors ("Special Indemnitees") against any and all liability, claims, demands, legal actions or proceedings, losses, expenses (including reasonable attorneys' fees) and other costs incurred by Tacoma Power and arising out of or relating to activities conducted at or from the Service Premises by Participant and/or by any of its employees, contractors, agents, volunteers, lessees, licensees, invitees, and the respective employees, contractors, agents or volunteers of any said lessee, licensee and invitee who are or may be engaged in the business of the production, storage, processing, distribution for sale at wholesale or retail, and any other activity whatsoever, involving a substance that is subject to regulation under the Federal Controlled Substance Act of 1970 as set forth in Title 21 of the United States Code ("CSA"), and regardless of whether any of said business endeavors or other activities are licensed by the State of Washington. The foregoing special indemnities shall specifically apply to, but are in no way limited to:
 - (a) All electrical equipment owned and/or operated by Tacoma Power and used to provide electrical service to the Service Premises;
 - (b) Any threatened or actual enforcement of the CSA by the federal government to impose criminal and/or civil liability, penalties, sanctions, damages and related costs or expenses against the Special Indemnitees by reason of the preparation, authorization, execution, implementation or performance of this Agreement and/or subsequent utility services provided to the Service Premises;
 - (c) Any threatened or actual action by the federal government under the CSA to levy against, seize, forfeit, or otherwise demand or receive monies paid to Tacoma Power by Participant for utility services provided to the Service Premises;
 - (d) Any termination of, or other material interference with, the existing or future contractual relations between Tacoma Power and any federal agency including, but not limited to, any power purchase or sales contracts with the Bonneville Power Administration;
 - (e) Any threatened or actual enforcement action by the State of Washington pursuant to State regulations and/or licensing requirements (set forth in the Revised Code of Washington and/or Washington Administrative Code pursuant to I-502) governing the production, processing, and/or retail sale of marijuana in Washington State.

- C. No Joint Venture – Relationship Limited to Electric Utility Services to Customer: The Parties expressly acknowledge and agree that no joint venture or partnership of any kind or nature is intended or will be formed as a result of this Agreement. Tacoma Power's execution and performance of this Agreement is based upon its established duty to serve all applicants reasonably entitled to electrical service and its past practices in offering energy conservation program benefits to all commercial electrical service customers in compliance with its duties under the Energy Independence Act (Chapter 19.285, RCW). Accordingly, it is expressly understood and acknowledged by both Parties that (i) their relationship hereunder is limited to a public utility serving an applicant for service and offering energy conservation program benefits to all of its electrical customers, and (ii) no other relationship is intended or in fact created hereby.
- D. Additional Terms and Conditions Applicable to this Agreement and Subsequent Electrical Service: It is expressly acknowledged and mutually agreed that this Agreement is subject to City of Tacoma Public Utility Board Amended Resolution U-10792 and any other Board Resolutions now in effect, or which may hereafter be adopted, and all terms and conditions of utility service specified in such Resolution(s) shall fully apply to and govern this Agreement whether or not said terms and conditions are set forth herein as of the Effective Date of this Agreement.

9. **Termination:** Tacoma Power shall have the right, without any liability whatsoever to the Participant at law or in equity, to immediately terminate this Agreement upon written notice in the event any of the following occurs:

- A. Participant violates any of its obligations under Section 8.A. (Compliance with Applicable Laws and Regulations);
- B. Threatened or actual enforcement of the CSA by the federal government to impose criminal and/or civil liability, penalties, sanctions, damages and related costs or expenses against Tacoma Power and/or any of its officials, officers, or employees by reason of the preparation, authorization, execution, implementation or performance of this Agreement and/or subsequent utility services provided to the Service Premises;
- C. Threatened or actual action by the federal government under the CSA to levy against, seize, forfeit, or otherwise demand or receive monies paid to Tacoma Power by Participant pursuant for utility services provided to the Service Premises;
- D. Threatened or actual action by the federal government under the CSA to levy against, seize, forfeit, or otherwise interfere with Tacoma Power owned and operated facilities by reason of Tacoma Power entering into this Agreement and/or using such facilities to serve the Service Premises;
- E. Threatened or actual termination of any existing or future contractual relations between Tacoma Power and any federal agency by reason of this Agreement and/or subsequent utility service provided by Tacoma Power to the Service Premises; and/or
- F. Threatened or actual enforcement action by the State of Washington based on Participant's alleged or actual violation of State regulations and/or licensing requirements governing the production, processing, and/or retail sale of marijuana pursuant to I-502.

10. **Confidentiality:** Tacoma Power will treat all information received from Participant as confidential if marked as confidential and/or proprietary, subject to applicable laws. Tacoma Power shall not be liable for release of any information mandated by provisions of the Washington Public Records Act, Chapter 42.56, R.C.W.; Provided, that Tacoma Power will provide at least ten (10) days prior written notice to Participant of impending release to enable Participant to oppose disclosure; and Provided Further, that such opposition shall be at Participant's sole expense and liability for any damages assessed in connection with such opposition to disclosure shall be borne entirely by Participant. Such notice will be provided to the address following Participant's signature below. Except as otherwise specified in this paragraph, Tacoma Power shall have the right to publish information relating to installation and performance of the ECMs, including Facility energy consumption, to evaluate and/or promote its energy conservation programs for a period of three (3) years following installation. If release of energy consumption information requires tenant approval, Participant agrees to reasonably assist Tacoma Power in obtaining that approval.

11. **Assignment of Incentive Payment by Participant:** Participant may direct that incentive payments be paid directly to Participant's contractor. Such request must be made using the Tacoma Power "Assignment of Funds" form. Notwithstanding such assignment, responsibility for complying with all terms and conditions of this Agreement shall continue to rest solely with Participant, and Tacoma Power's sole obligation under this Agreement shall be to Participant.

12. **Financial, Legal and Tax Responsibility:** The sole responsibility of Tacoma Power hereunder is in providing financial incentives for approved Measure installations. Participant assumes full financial responsibility for any ECMs that do not meet the incentive qualifications. Tacoma Power is not a party to any contracts for the purchase of equipment,

materials or labor for the installation of the ECMs and, therefore, shall have no liability regarding such contracts. Tacoma Power will not provide any tax advice regarding, and is not responsible for, any tax liability imposed on Participant as a result of, payment of incentives hereunder. Participant is responsible for declaring and paying any applicable taxes.

13. No Endorsement: Tacoma Power does not endorse any particular contractor, manufacturer or product in promoting this program. The Participant acknowledges that Tacoma Power in no way influenced the choice of contractor or specific brands of equipment and, therefore, Participant is solely responsible for the quality of the installation of ECMs. Notwithstanding the foregoing, Participant acknowledges that Tacoma Power has the right to prohibit specific vendors or contractors from program participation.

14. Termination and Survival: Tacoma Power is not obligated to approve any Application for an incentive that may result in Tacoma Power exceeding its program budget. Tacoma Power may terminate this Agreement at any time upon thirty days written notice to Participant. If Participant has reasonably incurred obligations for the installation of authorized ECMs prior to receipt of such notice, an appropriate prorated incentive payment for the obligation actually incurred will be made; Provided, Tacoma Power shall have no responsibility for any ECMs which do not meet the incentive qualifications. If no incentive payment has been made by Tacoma Power, Participant may terminate this Agreement upon written notice to Tacoma Power specifying the reason for termination. The terms and conditions of this Agreement shall survive the completion of any incentive payments provided to Participant hereunder.

15. Limitation of Liability: Tacoma Power's entire liability under this Agreement is limited to payment of specified incentive(s) according to the terms and conditions of this Agreement. Tacoma Power shall not be liable to Participant for any consequential or indirect damages of any kind arising in connection with this Agreement or the installation of the ECMs. In no event shall Tacoma Power's total liability under this Agreement, regardless of legal or equitable basis, exceed the amount of any incentive owed.

16. No Warranties/Disclaimer: Tacoma Power's verification, inspection and/or monitoring activities are solely for its own program purposes and no warranties to, or reliance by, Participant shall be implied. Tacoma Power makes no express or implied warranties of any kind under this Agreement and makes no representations regarding the results to be achieved by the ECMs to be installed.

Participant understands that Tacoma Power is simply providing funding to assist Participant in implementing energy efficiency ECMs and, therefore, Participant acknowledges and agrees that: (1) Tacoma Power and its representatives shall not be responsible in any way for assuring that the design, engineering and construction of the Facility, or installation of the ECMs, is proper or complies with any particular laws, codes, or industry standards, (2) Participant shall independently evaluate any information provided by Tacoma Power or its representatives related to the ECMs, (3) Tacoma Power does not guarantee any particular energy savings results, and (4) Participant assumes the risk of any loss or damages that Participant may suffer in connection with the installation of Measure(s).

17. Hazardous Materials: Tacoma Power and its representatives shall have no responsibility for the discovery, presence, handling, removal, or disposal of or exposure of persons to hazardous materials of any kind in connection with Participant's Facility, including without limitation asbestos, PCBs, or other toxic substances.

18. Miscellaneous:

- A. Entire Agreement/Severability: This Incentive Agreement, the terms and conditions of Participant's attached Application, together with any completed Attachment(s) thereto, contain the entire agreement between the Parties regarding the incentive payments and ECM installation. All prior communications, representations, promises, or conditions relating to the subject matter of this Agreement are superseded hereby. If any term, condition or provision of this Agreement is declared void, unenforceable or limited in its application by any court or administrative body having jurisdiction, such event shall not affect any other provision, which remaining provisions shall continue in full force and effect in accordance with their terms.
- B. Modification/Survival: No modification or amendment of this Agreement shall be effective unless in writing and signed by the Parties. The provisions of this Agreement, which by their sense and context are reasonably intended to survive the completion, expiration or cancellation of this Agreement, shall survive termination of this Agreement.
- C. Governing Law and Venue: Unless removed to Federal Court pursuant to applicable federal court and/or procedural rules, the laws of Washington State shall govern any legal action and/or alternative dispute proceedings initiated to resolve disputes hereunder or necessary to enforce the terms and conditions hereof.

Venue for any legal action and/or alternative dispute proceedings shall be in the Federal or State courts located in Pierce County, Washington.

- D. The Parties acknowledge and agree that this Agreement is the result of mutual negotiation and shall be interpreted and construed as such without regard to whether one Party was or may be deemed to be the drafter of any terms and conditions contained herein.
- E. Authority to Enter into Agreement: By initialing here and signing below, I represent and warrant that I have read, understand, and agree to the terms and conditions of this Agreement and that I am the owner or duly authorized agent of the owner of the Facility referred to in this agreement with full power to accept said terms and conditions.

Participant Initials: MF

19. **SIGNATURE**: Each signatory below represents he/she has the authority to enter into this Agreement for and on behalf of the Party for which he/she signs and by such signature accepts the terms and conditions hereof effective as of the Effective Date of this Agreement.

ACCEPTED AND AGREED:

City of Tacoma d/b/a Tacoma Power

Jackie Flowers
Director of Utilities

Chris Robinson
Power Superintendent/COO

Approved:

DocuSigned by:

Thi Pham
Finance

Approved as to Form:

DocuSigned by:

Martha Lantz
Deputy Assistant City Attorney

PARTICIPANT
KMH Housing LLC

DocuSigned by:

By: Mark Hjelle
2616C1939ABB432
(Signature)

Printed Name: Mark Hjelle

Title: Owner/Mgr.

Mailing Address:

9017 Bowdoin Way

Edmonds

98026

City, State

Zip

Telephone: 2069202901

Business Legal Status:

☐ Corporation ☐ Sole Proprietorship ☐ Partnership
☒ LLC ☐ Other (enter here)

Attachment A-1

1. Energy Conservation Measure (ECM) Measures and Location(s)

Install the listed energy conservation measure(s) at 3801 S Union Ave., Suite B, Tacoma, WA.

1.1. ECM 1: High Efficiency Horticultural Lighting

2. Incentive Payment Levels

Estimated incentive payment is based on ECM bid cost documentation and estimated first year electricity energy savings as listed in the following table. Once the ECM is installed and operating per the Participant's design, Tacoma Power will determine the final incentive based on the actual energy use and documented ECM cost, as described in this Attachment. Incentives are based on published program requirements at the following link. https://www.mytpu.org/wp-content/uploads/BCEP_Process_Requirements.pdf

Estimated Incremental Cost	Estimated Annual kWh Savings	Estimated Adjusted Incentive
\$1,088,295	3,605,399	\$655,071

Incentive Adjustment: Tacoma Power paid an incentive (via Agreement #119410) in October 2021 to upgrade lights in Flower Room A. As part of the current project, covered by this Agreement #129874, the Participant removed the new lights in Flower Room A. Flower Room A lights operated for one year and were obligated to operate for five years per section 7, Persistence. To account for the removal of the new lights in Flower Room A, the outstanding value of \$66,009 will be deducted from the incentive for this Agreement #129874. After this deduction, the offered incentive is listed in the table above.

3. Equipment Requirements

All products installed shall be based on the submittals to Tacoma Power by the Participant. Modifications to proposed equipment or equipment operation may be eligible for incentives provided the changes have annual energy electric savings and meet current program requirements. Modifications may affect the estimated incentive listed in this Agreement. ECM details shall include the following:

3.1. ECM 1

- 3.1.1. Install (761) 680-Watt Enlite Flora LED lights and operate in flowering mode.
- 3.1.2. Install (24) 660-Watt Enlite Demeter LED lights and operate in flowering mode.
- 3.1.3. Install (216) 520-Watt Enlite Flora LED lights and operate in flowering mode.
- 3.1.4. Install (448) 28-Watt Hortitube LED lights and operate in cloning mode.

4. Inspection, Documentation, and Payment

To render payment, Tacoma Power requires the following from the Participant:

4.1. Final invoices documenting ECM cost.

4.2. Participant shall facilitate site visit or visits for Tacoma Power to review ECM installation and operation. Tacoma Power requires:

4.2.1 Access to ECM to conduct a visual observation.

4.2.2 Access to site personnel to verify system operation.

4.2.3 Access to allow Tacoma Power to measure and collect data to validate ECM operation and energy savings. Adhering to the safety protocols, Tacoma Power may install and retrieve temporary electric or other measurement equipment to determine pre and post energy use. Measured parameters intend to capture data that can be extrapolated into annual system energy. Duration of data collection to validate this project may need to include several grow cycles.

4.2.4 Access to Participant-collected data to enable validation of energy savings including but not limited to light operating schedule including lighting controls, ECM installation dates, energy use, set points, and production data of affected systems for both pre-and post-installation of ECM.

4.2.5 If customer site visits are not permitted by Government and/or Utility guidance, these observations may be performed via one or a combination of: Participant provided photographs, Participant provided video, and/or Participant facilitated live video walk through of spaces associated with conservation measures. Tacoma Power will approve requirements of this option.

4.3. Measurement and Verification (M&V)

Tacoma Power will perform measurement and verification analysis to confirm final, verified energy savings. Participant shall assist Tacoma Power to complete the analysis of the ECM as described in this Attachment.

Tacoma Power will use standardized Measurement & Verification protocols and methodologies accepted by Bonneville Power Administration, State of Washington, or *International Performance Measurement and Verification Protocols*.

The M&V period will start after requirements listed in item three listed above have been fulfilled, and Participant has applied desired ECM operation with plants under the lights. The verification period should represent typical ECM operation to allow annual energy use to be predicted and used to calculate the final incentive.

MEMORANDUM



DATE: August 13, 2015
FROM: Charleen Jacobs, Executive Assistant
SUBJECT: Public Utility Board Actions

The Public Utility Board adopted the following actions at their regular meeting on Wednesday, August 12, 2015.

- D-1 Resolution U-10797 – Award contracts and approve purchases:
1. Award contract to Cenveo for production and delivery of utility bill mailing envelopes (one year contract for \$60,087 plus option for two additional one-year renewals and an option for 2018 monthly billing-related volumes for a cumulative total of \$213,346.30, plus applicable sales tax);
 2. Award contract to CGI Technology and Solutions, Inc., to upgrade the Distribution/Outage Management system (\$450,000, plus applicable sales tax);
 3. Award contract to Ulsh Excavating, Inc., for the construction of ductile iron water main in East E Street from East 7th Street and East 11th Street (\$278,678.43, plus sales tax).

F. Unfinished Business

- F-1 Resolution U-10792 - Authorize Tacoma Public Utilities and its employees to provide utility services to state-licensed marijuana businesses.

Resolution U-10792 was amended as follows:

On page 1 line 19 strike the word "Assuming" and insert the following "Until there is definitive comprehensive federal legal determination applicable to TPU..."

On page 4 line 11 after "Sec. 2. TPU shall" strike the words "track utility customers who are known state licensed marijuana businesses" and insert the following "require a Washington State marijuana business to (1) provide proof that it holds a valid Washington State marijuana business license prior to receiving utility services and (2) agree to maintain such license in good standing while engaging in activities that are in violation of the CSA"



AMENDED RESOLUTION NO. U-10792

1
2 A RESOLUTION related to utility service and state licensed marijuana
3 businesses.

4 WHEREAS the citizens of Washington voted to legalize the cultivation,
5 distribution, and use of marijuana in accordance with Initiative 502. While
6 Washington State voters have legalized marijuana to some extent, the United
7 States Department of Justice ("DOJ") has stated that such activities remain
8 illegal under the Federal Controlled Substances Act of 1970 ("CSA"), and

9 WHEREAS there is a conflict between state and federal law that has
10 yet to be addressed by Congress or the courts. This conflict further extends
11 to a municipal utility's duty to serve its customers under state law versus its
12 employees' duty to obey federal drug laws, and

13
14 WHEREAS RCW 80.28.110 requires electric and water utilities, such
15 as the City of Tacoma, Department of Public Utilities ("TPU"), to provide
16 service "to all persons and corporations who may apply therefor and be
17 reasonably entitled thereto...." Service under Chapter 80.28 RCW relates to
18 the furnishing and supplying of the instrumentalities and facilities necessary
19 for providing electricity and water to customers. Until there is a definitive
20 comprehensive federal legal determination applicable to TPU that customers
21 who intend to use utility services in direct violation of the CSA are not
22 included in those "reasonably entitled" to such services, TPU is required to
23 provide utility services. Nevertheless, TPU can still only provide these
24 services through its employees. Absent Congressional action, state laws will
25
26



not protect an individual employee from legal action by the federal government, and

WHEREAS, as noted in its letter dated April 14, 2011, to then Governor Gregoire, DOJ continues to assert its authority to enforce federal law against anyone who would knowingly assist a person or entity violate the CSA. The likelihood of such enforcement action against government employees has greatly diminished through the issuance of the memo dated August 29, 2013, from DOJ, regarding marijuana enforcement. In that memo, DOJ states it will use its limited investigative and prosecutorial resources to address those areas that involve large-scale criminal enterprises, gangs, and cartels, not on activities in states that are in compliance with a strong and effective state regulatory system. The DOJ expressly reserved its authority to withdraw this guidance memo at any time, and

WHEREAS, presently, Washington State is attempting to put such a regulatory scheme in place, reducing even further the chance that TPU employees engaging in routine activities related to providing basic utility service (such as installing and inspecting services, turning services on, changing out TPU-owned equipment to enable services, collecting payments, and responding to outages) would be subject to federal prosecution while the guidance memo dated August 29, 2013, from DOJ, is in effect, and

WHEREAS TPU and the federal government are parties to numerous contractual arrangements that include the purchase of wholesale power from the Bonneville Power Administration ("BPA"), storage of water behind Howard



1 Hansen Dam, hydroelectric licenses from the Federal Energy Regulatory
2 Commission, easements for pipes, wires, and roads across United States
3 Forest Service lands, and the use of federal tax exempt municipal bonds and
4 federal drinking water loans. All of these relationships with the federal
5 government are contractual and are governed by federal law, and

6 WHEREAS protection of these vital services provided by the federal
7 government is paramount to the continued success of TPU, while at the same
8 time, as a political subdivision of the state, TPU is not required to enforce,
9 report, or prosecute violations of federal law, nor is there a Congressional
10 mandate or court interpretation requiring TPU to refuse utility service to state
11 licensed marijuana businesses, and

12 WHEREAS both Tacoma Power and Tacoma Water have received
13 numerous requests for service from state licensed marijuana businesses, so it
14 is now prudent to provide predictability to such customers by establishing
15 reasonable conditions of service given the potential conflict with state and
16 federal laws, and

17
18 WHEREAS both the City Attorney's Office and TPU management
19 recommend the Board affirmatively authorize TPU and its employees to
20 provide utility service to state licensed marijuana businesses for as long as
21 DOJ does not change its enforcement guidance memo dated August 29,
22 2013, and in the manner described below so as to protect the interests of the
23 City of Tacoma, its citizens, TPU ratepayers, and TPU employees; Now,
24 therefore,
25
26



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

1 Sec. 1. TPU and its employees are authorized to provide utility
2 services available to all of its ratepayers, including transactions involving
3 conservation measures (e.g. loans, incentives, rebates, etc.), to state licensed
4 marijuana businesses for as long as DOJ does not change its enforcement
5 guidance memo dated August 29, 2013. No inferences from this Resolution
6 shall be taken to mean that TPU and its employees are intentionally
7 participating with, aiding or abetting, or endorsing the conduct of its
8 customers.
9

10 Sec. 2. TPU shall require a Washington State marijuana business to
11 (1) provide proof that it holds a valid Washington State marijuana business
12 license prior to receiving utility services and (2) agree to maintain such
13 license in good standing while engaging in activities that are in violation of the
14 CSA; however, this Resolution shall not be construed to impose an affirmative
15 duty on TPU and employees to inspect the conduct of customers to determine
16 the purpose of the customer's use of utility services provided by TPU and or
17 enforcement of state marijuana license requirements.
18

19 Sec. 3. All requests by state licensed marijuana businesses that
20 require changes or upgrades to utility infrastructure shall be pre-paid by the
21 customer in accordance with the Tacoma Municipal Code and applicable
22 utility service policies. In addition, all other fees, such as Water System
23 Development Charges, shall be paid in advance and as required under the
24 Tacoma Municipal Code.
25
26



1 Sec. 4. Contracts with state licensed marijuana businesses involving
2 system changes/upgrades or agreements for conservation measures that are
3 estimated to be in excess of \$200,000, shall be approved by the Board.

4 Sec. 5. Contracts with state licensed marijuana businesses involving
5 system changes/upgrades, including transactions involving conservation
6 measures (e.g. loans, incentives, rebates, etc.), shall contain language
7 terminating such contracts along with adequate assurances and security (as
8 appropriate) for repayment and/or return of equipment in the event the
9 enforcement guidance memo dated August 29, 2013, from DOJ, is no longer
10 in effect or the federal government threatens to or does take adverse action
11 against TPU based on TPU providing utility service to state licensed
12 marijuana businesses.

13 Sec. 6. Contracts with state licensed marijuana businesses involving
14 system changes/upgrades, including transactions involving conservation
15 measures (e.g. loans, incentives, rebates, etc.), shall contain language
16 requiring the state licensed marijuana business to defend, indemnify, and
17 hold harmless the City, TPU and its officers and employees against any and
18 all liability arising out of or relating to the state licensed marijuana business
19 engaging in activities in violation of the CSA.

20 Approved as to form and legality:

21
22 William C. Fiske
23 Chief Deputy City Attorney

24
25 Sharon Fiske
26 Clerk

[Signature]
Chair

[Signature]
Secretary

Adopted 8-12-15