



RESOLUTION NO. U-11505

1 A RESOLUTION relating to the Department of Public Utilities, Light Division;
2 authorizing the execution of a customer-funded construction service
3 agreement for The Heights Project.

4 WHEREAS the City of Tacoma, Department of Public Utilities, Light
5 Division ("Tacoma Power") requests approval to execute a customer-funded
6 service agreement for The Heights Project ("Agreement"), and

7 WHEREAS The Heights is a new 69 lot housing development at a
8 property in Spanaway, near the intersection of 22nd Ave. E and 208th St. E, and

9 WHEREAS completion of the utility work in this Agreement will allow for
10 the construction of each 69 homes and will accommodate Pierce County's
11 required right-of-way improvement, and

12 WHEREAS the necessary utility work includes replacing 23 utility poles,
13 installing new vaults, conduit, transformers, and wires, and

14 WHEREAS the total project cost for this customer-funded project is
15 \$910,275.34, and

16 WHEREAS Tacoma Power recommends approval of the Agreement;
17 Now, therefore,

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

19 That Tacoma Power's request to enter into a customer-funded
20 construction service agreement for The Heights Project, is hereby approved,
21 and the proper officers of the City are authorized to execute said agreement
22 substantially in the form as on file with the Clerk and as approved by the City
23 Attorney's Office.
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Approved as to form:

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/s/

Chief Deputy City Attorney

Clerk

Chair

Secretary

Adopted



Board Action Memorandum

TO: Jackie Flowers, Director of Utilities
COPY: Charleen Jacobs, Director and Board Offices
FROM: John Martinson, Power Systems Engineering, Manager
MEETING DATE: 1/22/2025
DATE: 12/19/2024

GUIDING PRINCIPLE ALIGNMENT (select as many that apply):

Please indicate which of the Public Utility Board's Guiding Principle(s) is supported by this action.

- | | |
|--|---|
| <input type="checkbox"/> GP1 – Diversity, Equity, Inclusion, Belonging | <input type="checkbox"/> GP8 – Telecom |
| <input type="checkbox"/> GP2 – Financial Sustainability | <input type="checkbox"/> GP9 – Economic Development |
| <input type="checkbox"/> GP3 – Rates | <input type="checkbox"/> GP10 – Government Relations |
| <input type="checkbox"/> GP4 – Stakeholder Engagement | <input type="checkbox"/> GP12 – Employee Relations |
| <input type="checkbox"/> GP5 – Environmental Sustainability | <input checked="" type="checkbox"/> GP13 – Customer Service |
| <input type="checkbox"/> GP6 – Innovation | <input type="checkbox"/> GP14 – Resource Planning |
| <input type="checkbox"/> GP7 – Reliability & Resiliency | |

SUMMARY: This resolution will authorize Tacoma Power to complete necessary customer-funded electric utility work for service to a new 69 lot housing development project known as The Heights. Total project cost is \$910,275.34 which will be paid by customer.

BACKGROUND: The Heights is a new 69 lot housing development at a property in Spanaway near the intersection of 22nd Ave E and 208th St. Completion of the utility work in this agreement will allow for the construction of each of the 69 homes and accommodate Pierce Counties required right of way improvements. Necessary utility work includes replacing 23 utility poles, and installing new vaults, conduit, transformers, and wire.

ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED? No

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

This is a customer funded project. Actual costs will be trued up upon project completion with a final invoice or refund to the customer.

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

ATTACHMENTS: Utility Installation Agreement – The Heights

CONTACT:

Jayce Booker, Associate Power Systems Engineer, 253-441-4545
Alex Hamlin, Power Systems Engineer, PE, 253-502-8371
John Martinson (Presenter), Power Systems Engineering, Manager, 253-502-8296
Chad Edinger, Electrical Services Manager, 253-502-8146

UTILITY INSTALLATION AGREEMENT (Customer Funded)
~KB Home / The Heights~

This **UTILITY INSTALLATION AGREEMENT** ("Agreement") with an effective date as of the last signature below ("Effective Date") is made by and between KB Home (KBHPNW LLC), a Limited Liability Company (hereinafter referred to as "CUSTOMER"), and the **City of Tacoma, Department of Public Utilities, Light Division**, a municipal corporation of the State of Washington, (hereinafter referred to as "Tacoma Power and/or City"). CUSTOMER and Tacoma Power each may be referred to as a "Party," or collectively as the "Parties".

RECITALS:

WHEREAS, CUSTOMER is constructing a new 69 lot home development project known as The Heights on property it owns and operates in Pierce County ("**The Heights Project**");

WHEREAS, Tacoma Power is authorized under Washington law to engage in the production, acquisition, transmission, distribution, and sale of electric power;

WHEREAS, CUSTOMER wishes to energize its new housing development project by connecting to Tacoma Power's electrical system and has requested Tacoma Power perform certain utility installation work and related services as necessary to do so. Tacoma Power is prepared to provide electrical services to the new 69 lot housing development and perform said utility installation work and related services, provided that all electrical facilities are designed, constructed, and completed as set forth in this Agreement;

WHEREAS, The Heights Project necessitates certain installation and relocation work, involving Tacoma Power owned and operated utility facilities along 22nd Ave E and 208th St E located within the Pierce County right-of-way as necessary to provide new power supply and capacity to serve The Heights Project. The Heights Project further necessitates construction of a new 12.5/7.2kV underground distribution circuit from Tacoma Power owned and operated utility facilities within parcels 0318023054 and 0318023053, located within The Heights Project Area (as further defined in Article 1.3 k. below). All such installation, relocation and construction work, together with related design engineering and inspection services to meet applicable safety and operating requirements, is collectively referred to herein as the "**Tacoma Power Work**" (as further defined in Article 1.3 h. below) and in the Exhibits to this Agreement;

WHEREAS, to arrange for the orderly and timely installation of utility facilities for the Project, CUSTOMER is responsible to complete performance of certain underground utilities structure work that includes digging the trench to Tacoma Power standard and backfilling the trench after construction is complete. Said work, referred to herein as the "**CUSTOMER Work**" (as further defined in Article 1.3 f. below) will be performed by and through CUSTOMER's separately contracted construction and/or electrical contractor(s),

and their authorized sub-contractors, per Tacoma Power's engineered design set forth in "**Design Documents**" (as further defined in Article 1.3 b. below). CUSTOMER will fully reimburse Tacoma Power under the terms of this Agreement.

WHEREAS, CUSTOMER will be solely responsible for, and pay, all developmental costs to complete The Heights Project including, but not limited to, all time and materials costs incurred by Tacoma Power to perform the Tacoma Power Work and further design and inspection services related to the CUSTOMER Work as specified in and pursuant to this Agreement. Such costs specifically include "**Direct Costs**" (as defined in Article 1.3 a. below) and may include further costs for Additional Work per Article 2.4 and/or Extra Work per Article 4. Notwithstanding the foregoing, it is understood and agreed that Tacoma Power will own and operate all resulting electric supply system facilities unless expressly noted otherwise herein.

IN CONSIDERATION OF the mutual promises set forth herein and the mutual benefits to be derived hereunder, the Parties hereby agree as follows:

ARTICLE 1 - SCOPE

1.1 Purpose and Intent. The purpose of this Utility Installation Agreement is to set forth the terms and conditions pursuant to which the Parties will cooperatively undertake, at CUSTOMER's sole expense, all electric utility work and associated equipment and materials needed for the Project and as necessary to meet applicable safety and operating requirements. It is intended that Tacoma Power will perform work and provide equipment and materials, as specified herein and in the Design Documents attached hereto, including the design, installation, relocation or conversion, construction and inspection work related to: (i) its existing overhead and underground electric power facilities as necessary to provide a power supply system for The Heights Project, and (ii) portions of a new electrical distribution system to and within said The Heights Project. It is intended that the CUSTOMER, by and through the CUSTOMER's Contractor, will perform work and provide equipment and materials, as specified herein and per the Design Documents attached hereto, including (i) the underground utility structure construction and related management activities necessary for the installation of underground vaults and conduits for the new electrical distribution system to and within The Heights Project, and (ii) all other The Heights Project work, equipment, materials, and design and/or inspection coordination not specified to be performed or provided by Tacoma Power.

1.1.1 In further elaboration of the foregoing, this Agreement and the attached Exhibits provide for:

- a new and modified 12.5/7.2kv underground primary distribution system for "The Heights" & 208th St E and 22nd Ave E work to accommodate the new construction activities for the new 69 lot home development, and additional new or modified services.

- Tacoma Power ownership and operation of all primary power facilities including metering equipment, current transformers, pad mount transformers, vaults, conduits, and cabling following completion of all electrical work for The Heights and final acceptance by Tacoma Power
- Payment of all procurement and developmental costs incurred and required to accomplish the foregoing.

1.2 Incorporation of Recitals. The Parties acknowledge that the above stated Recitals are true and accurate and are incorporated as contractual provisions herein.

1.3 Definitions.

- a. "Direct Costs" shall mean and include all costs and expenses incurred by Tacoma Power directly related to The Heights Project as provided under this Agreement and shall include, without limitation,
- All costs and expenses of materials, equipment, supplies, utilities, consumables, goods, and other items used or incorporated in connection with and in furtherance of this Agreement and any taxes, insurance, and interest expenses related thereto, including activity pricing for inspection, engineering, crews, and equipment.
 - All labor costs and expenses incurred to date and pursuant to this Agreement for the design, inspection, and construction activities and/or tasks designated to be performed by Tacoma Power hereunder. Such costs are inclusive of payroll benefits and overhead for applicable labor classifications.
 - All cost and expenses incurred to date and during performance of this Agreement for any work performed by City consultants or contractors that pertains to The Heights Project and as necessary to undertake and complete the Tacoma Power Work under this Agreement.
- b. "Design Document(s)" means the plans and specifications for The Heights Project and prepared by Tacoma Power in coordination with CUSTOMER and/or the CUSTOMER Contractor pursuant to this Agreement, which include the (i) specifications, standards, and requirements applicable to the CUSTOMER Work attached hereto as **Exhibit "A"**, and (ii) specifications, plans, drawings, and sketches applicable to the Tacoma Power Work attached hereto as **Exhibit "B"**; which Exhibits are, by this reference, fully incorporated herein.
- c. "Field Representative(s)" means the person(s) identified by Tacoma Power as having inspection authority or whom direct Tacoma Powers field forces for construction activity.

d. "Inspection Work" means all labor, equipment, and material necessary for Tacoma Power to monitor the CUSTOMER Work to ensure conformance with the Design Documents. Duties of this Inspection Work, which will be performed by Tacoma Power's designated Construction Inspector, include:

- approving or rejecting materials for conformance with Design Documents through the Resident Engineer,
- rejecting work not in conformance with the Design Documents through the Resident Engineer,
- verifying the CUSTOMER Work is conducted in accordance with the NESC and Tacoma Power T&D Construction Standards,
- coordinating power outages,
- generating punch lists ahead of final acceptance, and
- recording as-built information.

Direct Costs of all of the foregoing work performed by Tacoma Power shall be pre-paid and/or fully reimbursed by CUSTOMER hereunder.

e. "Project Manager" mean the respective persons designated by the Parties in Section 5.3 herein to be the point of contact for design and contract changes and/or updates.

f. "CUSTOMER Work" for purposes of this Agreement shall mean the underground utility structure installation work for which CUSTOMER is responsible hereunder and generally includes all site preparation, surveying, excavation, inspection coordination, and construction work necessary to fully and properly install electrical vaults and conduit per the Design Documents, together with all costs and expenses required and/or incurred in connection therewith. Such work includes all construction and administrative activities related to and in any way connected with the electrical work performed by the CUSTOMER Contractor and otherwise necessary to successfully complete The Heights Project.

As further described in the Design Documents, such work and activities specifically require and involve, but are not necessarily limited to:

- Removal, adjustment, protection, installation, and relocation of Tacoma Power electrical facilities and appurtenant equipment.
- All necessary construction trenching, and preparation for an electrical conduit duct and vault system.
- Contracting and coordination of, and payment for, all temporary power requirements for The Height Project including installation and removal, and all related labor and equipment shall be considered CUSTOMER Work hereunder.

All of the foregoing work and activities will be utilized in conjunction with the Tacoma Power Work and pertain to all Tacoma Power electrical facilities within the Project Area and/or impacted by The Heights Project all as described in the Design Documents (**Exhibit "A & B"**). The CUSTOMER Work shall not include the Tacoma Power Work that Tacoma Power is expressly required to perform hereunder.

- g. "Resident Engineer" means the representative designated by CUSTOMER after notice to proceed who will be the point of contact regarding all the Heights Project related construction under this Agreement.
- h. "Tacoma Power Work" means all labor, materials, equipment, services, supplies, overheads, applicable taxes, and all other items necessary to relocate, reroute, modify, and reconnect the power systems and facilities to accommodate The Heights Project all as further described and set forth in the Tacoma Power Work Sketches. For purposes of this Agreement, the "Tacoma Power Work Sketches" mean all Tacoma Power prepared documents and drawings to be utilized by Tacoma Power to perform its work and are attached hereto in **Exhibit B**, but may also be included in Exhibit A.
- The Tacoma Power Work will also include:
- installation of permanent power service and equipment for The Heights Project per **Exhibits A and B**,
 - modification for existing 12.5/7.2kv service and removal of electrical facilities per **Exhibits A and B**
 - traffic-control as may be necessary to facilitate such work
- i. "The City" is used interchangeably with "Tacoma Power" in this document.
- j. "CUSTOMER Contractor" means* the General Contractor and/or Electrical Contractor designated by CUSTOMER to prosecute The Heights Project and to perform the CUSTOMER Work hereunder for and on behalf of CUSTOMER.
- **NOTE:** All references to the "CUSTOMER Contractor" herein shall expressly include and refer to any and all subcontractors acting by and through the **CUSTOMER Contractor**. Notwithstanding any separate contract executed by CUSTOMER with the **CUSTOMER Contractor** that may pertain to The Heights Project, **CUSTOMER** shall be and remain fully bound and responsible hereunder for the proper performance of the **CUSTOMER Work**, the completion of The Heights Project, and the payment of all costs and expense provided for hereunder, all in accordance with the terms and conditions of this Agreement.
- k. "The Heights Project Area" means all lands, public and private, where the Heights Project electrical work will be performed and includes all areas

identified, described, or delineated in the Design Documents (**Exhibits A and B**) and/or in the drawings entitled "**The Heights**" prepared by D.R. Strong Consulting Engineering, which drawings are, by this reference, fully incorporated herein.

ARTICLE 2 – RESPECTIVE PROJECT OBLIGATIONS

2.1 City Obligations:

2.1.1 Design & Work: Tacoma Power will provide all Design Documents, Inspection Work, and defined Tacoma Power Work noted in the Design Documents. The preparation of Design Documents, Inspection Work, and Tacoma Power Work shall be performed by Tacoma Power per the design requirements set forth in Tacoma Power's T&D Construction Standards and in the National Electrical Safety Code (NESC). City Inspection Work will be provided as scheduled or required during **CUSTOMER** and/or the **CUSTOMER Contractor's** prosecution of the **CUSTOMER Work**. It is expressly understood that by performing the Inspection Work, Tacoma Power shall not be deemed to have any direct control over The Heights Project and/or **CUSTOMER Work** or to have assumed any duties or liabilities for the full, proper, and lawful prosecution of The Heights Project and/or **CUSTOMER Work**; all of which is and shall remain at all times the sole responsibility of the **CUSTOMER**. All Tacoma Power communications regarding inspection, acceptance, approval, rejection, or modification of the **CUSTOMER Work** will be addressed to the **CUSTOMER Resident Engineer**, or Project Manager.

2.1.2 Inspection Work: Tacoma Power agrees to provide Inspection of **CUSTOMER Contractor's** work during the performance of the **CUSTOMER Work** including, but not limited to, installation of the vaults and ducts. Such Inspection Work shall be for the exclusive purpose of confirming said performance complies with the Design Documents including, but not limited to, the agreed upon drawings and Tacoma Power standards therein. **CUSTOMER's** Resident Engineer is to schedule the Inspection Work in such manner as not to unreasonably delay or interfere with **CUSTOMER Contractor** performance of the **CUSTOMER Work**; Provided, that Tacoma Power shall not be responsible for any costs or claims based on delay attributable to **CUSTOMER Contractor** and/or their sub-contractor(s).

2.1.3 Coordination of Service modifications: Certain electrical facility modifications and installations are required and may be impacted by labor, equipment procurement, and/or temporary outage scheduling. Tacoma Power's Project Manager will notify the **CUSTOMER Contractor** to coordinate any necessary service outages, cut-overs, and metering energization. Notwithstanding such notice, the **CUSTOMER Contractor** shall remain primarily

responsible for timely coordination of all The Heights utility installation work.

Project

2.1.4 Temporary Outages and New Service Coordination: Subject to Section 2.1.3, Tacoma Power will coordinate all temporary outages with its customers if and when required to perform and complete the Tacoma Power Work. It is understood and agreed that the Tacoma Power Work involves installation of infrastructure capable of accommodating new and/or increased electrical services to the Project and that energization of such new services will be coordinated by and with the CUSTOMER Contractor.

2.1.5 Additional Work: Except as specifically set forth in this Agreement and/or in the Exhibits attached hereto, any additional utility installation work necessary to accommodate the multitude of construction activities involved in The Heights Project shall be subject to additional design, labor, equipment, services, materials, and supplies costs. CUSTOMER Contractors shall be responsible for the timely request and coordination of all such additional work. Requests for additional work shall be submitted to Tacoma Power's Project Manager and processed as a change order. The cost of such additional work shall be in addition to the amounts set forth in the **Preliminary Cost Estimate**, (which is attached hereto as **Exhibit C** and fully incorporated herein by this reference) and CUSTOMER shall be solely responsible for, and shall pay, such cost to Tacoma Power.

2.2 CUSTOMER Obligations:

2.2.1 Work to be Performed: CUSTOMER shall be, at its sole cost and expense, responsible for the full and complete performance of the CUSTOMER Work as specified herein and in **Exhibit A**. The CUSTOMER Work shall comply with all applicable laws and regulations whether or not set forth in **Exhibit A**. In performing the CUSTOMER Work, CUSTOMER shall be responsible for all CUSTOMER Work construction contracting functions including, but not limited to, those related to the CUSTOMER Contractor.

2.2.2 Scheduling: Prior to commencement of any work on the Project including, but not limited to the CUSTOMER Work, CUSTOMER Contractor shall provide a construction schedule to Tacoma Power and shall thereafter timely notify Tacoma Power of scheduling changes related to The Heights Project that are expected to materially impact the CUSTOMER Work or Tacoma Power Work schedules. CUSTOMER contractors shall provide weekly progress reports to Tacoma Power and schedule work coordination meetings with Tacoma Power as necessary to allow Tacoma Power to coordinate and timely complete the Inspection Work and Tacoma Power Work. The CUSTOMER Resident Engineer shall coordinate with Tacoma Power's Field Representative or Project Manager, as appropriate, to accomplish desired changes or corrections to Tacoma Power's Inspection Work and/or Tacoma Power Work in the field as necessary to avoid delays to CUSTOMER Work activities. The CUSTOMER

Resident Engineer will handle all communications with the CUSTOMER Contractor.

2.2.3 Property Rights: CUSTOMER shall obtain and furnish, at no cost to Tacoma Power, any access, licenses, easements, and/or rights of way upon, over, under and across lands comprising The Heights Project as necessary for Tacoma Power to perform and complete the Tacoma Power Work, and shall at all reasonable times provide Tacoma Power and/or its employees, representatives, agents, and/or contractors free access to such lands.

- A. CUSTOMER shall further obtain for and/or assign to Tacoma Power all access and use rights, including but not limited to easements reasonably necessary to allow Tacoma Power to operate, maintain, repair, and reconstruct all The Heights Project electrical facilities in the future. Tacoma Power shall at its sole discretion approve the adequacy of such access and/or property rights, and such approval shall not be unreasonably withheld.
- B. Tacoma Power may agree, in its sole discretion and shall not be obligated, to procure additional access, easements, licenses, and/or rights of way as reasonably necessary to performance of the Tacoma Power Work on property owned by persons or entities other than CUSTOMER; in which event, all costs incurred by Tacoma Power shall be deemed a Direct Cost hereunder and reimbursed by CUSTOMER. Tacoma Power will not be obligated to commence Tacoma Power Work on any property unless or until approved access and/or property rights have been established.
- C. Per Section 2.2.6 below, CUSTOMER shall be responsible for all surveying and documentation preparation work required to secure and formally establish any and all of the foregoing property rights.

2.2.4 Performance of Work: As further specified herein and in **Exhibit A & B**, CUSTOMER will employ all CUSTOMER Contractors and other persons or entities necessary to perform the CUSTOMER Work. Without limiting the foregoing, CUSTOMER shall be responsible for environmental compliance, permitting, management, control, construction, and inspection necessary to fully and properly complete the CUSTOMER Work.

2.2.5 Work Area: CUSTOMER shall require the CUSTOMER Contractor to coordinate with Tacoma Power Project Manager to ensure Tacoma Power has accessible and adequate work areas so as to not unreasonably delay or interfere with the performance of the Tacoma Power Work within The Heights Project Area.

2.2.6 Surveying/Staking and Documentation: The CUSTOMER Contractor shall provide all surveying, staking, and elevations identification as requested in writing by Tacoma Power as necessary to allow complete performance of the

Tacoma Power Work within The Heights Project Area. Staking shall be completed within five (5) business days of receipt of such notice.

At the conclusion of The Heights Project, **CUSTOMER** shall perform and complete surveying work, and prepare as-built documentation and drawings based thereon, for all The Heights Project electrical facilities and utility installations as necessary to (i) identify and establish easements and other property access rights granted to Tacoma Power hereunder, and (ii) enable Tacoma Power to obtain further formal easement or property access rights as set forth in Section 2.2.3 above. Such surveying, documentation, and drawings shall include, but not be limited to, all conduits, vaults, cabling, pad mounted equipment, and SSB equipment installations.

2.2.7 Clearing & Grubbing: The **CUSTOMER** Contractor shall provide and perform all required clearing and grubbing requested in writing by Tacoma Power as necessary to allow complete performance of the Tacoma Power Work. Clearing and grubbing shall be done in a timely manner as to not unreasonably delay or interfere with the Tacoma Power Work.

2.2.8 Electrical Service Cancellations: The **CUSTOMER** Contractor shall timely submit to Tacoma Power service cancellation requests for all service property located within The Heights Project Area and/or impacted by The Heights Project so as not to unreasonably delay or interfere with the Tacoma Power Work. For service properties not owned or controlled by **CUSTOMER**, **CUSTOMER** will contact service customers and coordinate service cancellation requests by the customer as necessary to ensure that all required service cancellation requests are timely received by Tacoma Power to avoid delay of the Tacoma Power Work.

2.2.9 Coordination with other Utilities: The **CUSTOMER** Contractor shall coordinate with other utilities to ensure the Tacoma Power Work is not unreasonably delayed or interfered with.

2.3 Schedule of Work

2.3.1 Schedule for The Heights Project, CUSTOMER Work and/or Tacoma Power's Work. Prior to commencement of any **CUSTOMER** Work or any work on the Project that may impact the Tacoma Power Work, **CUSTOMER** shall provide to Tacoma Power the **CUSTOMER** Contractor's proposed schedule(s) for the completion of the **CUSTOMER** Work and other The Heights Project work that may impact or be dependent upon the Tacoma Power Work.

- A. The Parties will, in good faith, develop and agree upon a schedule of work for the Tacoma Power Work including schedule stages and milestones, notice requirements or other schedule-related issues ("Schedule of Work"), which shall be attached and incorporated into this Agreement as **Exhibit D**. The Schedule of Work shall consider and reflect the following:

- For scheduling purposes, this work is expected to be on a straight time basis.
- Weather conditions may impede this work plan.
- Emergency operations will take precedence on Tacoma Power's work force commitments.
- Tacoma Power's work schedule and priorities will be developed in coordination with the **CUSTOMER** Project Manager.
- Permits must be obtained by the **CUSTOMER** Contractor before setting the Schedule of Work.

B. **CUSTOMER** Contractor will administer its construction work and activities in accordance with the agreed upon Schedule of Work and timely notify Tacoma Power of any scheduling changes related to The Heights Project that are expected to materially impact the **CUSTOMER** Work and/or Tacoma Power's Work. **CUSTOMER**'s Resident Engineer shall coordinate with Tacoma Power's Project Manager as necessary to avoid delays to the **CUSTOMER** Contractor performance.

C. Following commencement of the **CUSTOMER** Work, Tacoma Power shall timely notify **CUSTOMER** Project Engineer in writing of any changes in the schedule of Tacoma Power Work that are expected to impact the **CUSTOMER** Work and **CUSTOMER** Contractor shall exercise good faith efforts to incorporate such changes into its construction schedules to minimize any delay or adverse impacts.

2.3.2 The Schedule of Work shall incorporate the Construction Tasks to be performed by the **CUSTOMER** Contractor for Tacoma Power, which will include work on existing and new underground facilities as described in **Exhibit A** and **B**, in order to maintain continuous electrical service to Tacoma Power customers and/or avoid delay to Tacoma Power Work.

2.4 Changes to Design Documents

2.4.1 In the event Tacoma Power submits a written change in **Exhibit A** or **Exhibit B** after commencement of the **CUSTOMER** Work, **CUSTOMER** shall have ten (10) business days following receipt to review and approve any such submittal, which approval shall not be unreasonably withheld. Should **CUSTOMER** not approve the change as submitted, **CUSTOMER** shall provide written comments to Tacoma Power specifying the reasons for non-approval.

2.4.2 In the event **CUSTOMER** requests a change in **Exhibit A** after commencement of the **CUSTOMER** Work, **CUSTOMER** shall provide Tacoma Power with written notice specifying the basis and scope of such proposed change. Within ten (10) business days following receipt of such notice, Tacoma Power shall review such request and either (i) approve such change and modify **Exhibit A**

accordingly, which approval shall not be unreasonably withheld, or (ii) provide written comments to **CUSTOMER**.

2.4.3 All proposed or actual changes to **Exhibit A** requested by **CUSTOMER**, which result in a cost increase over the **Preliminary Cost Estimate (Exhibit C)** shall be paid solely by **CUSTOMER**. All proposed or actual changes to **Exhibit A** requested by Tacoma Power that result in such cost increase shall be governed by **Article 4** below. The Parties agree to work cooperatively to timely resolve any disputes arising out of the review process for changes to **Exhibit A**, using the process set forth below in **Article 8**.

ARTICLE 3 – PAYMENT OBLIGATIONS OF CUSTOMER

3.1 Payment. **CUSTOMER** agrees that it shall be responsible for payment of all of the City's actual Direct Costs, as defined herein, related or attributable to The Heights Project. **CUSTOMER**'s payment obligation for Tacoma Power's design, Inspection Work, and Tacoma Power Work to be performed hereunder is estimated at **\$910,275.34**, as more fully described in the **Preliminary Cost Estimate (Exhibit C)**. The Preliminary Cost Estimate set forth in Exhibit C may be modified based on (i) the procedures for changes to the Design Documents and/or adjustment of costs as provided in Section 2.4, or (ii) **Article 4** of this Agreement. Said payment obligation is based on a preliminary estimate of the cost for Tacoma Power design, Inspection Work, and Tacoma Power Work to be performed hereunder and reflects the Parties' best estimates of the Direct Costs that may be incurred by Tacoma Power under this Agreement. Actual payments required under this Agreement shall be based on actual work performed and materials provided under this Agreement. In the event it is determined that the scope of work for which Tacoma Power is responsible hereunder has been accomplished for a lesser amount than identified in this Agreement, **CUSTOMER** shall only pay for actual Direct Costs.

3.2 Invoices & deposits. Upon mutual execution of this Agreement, Tacoma Power shall provide an invoice to **CUSTOMER** (c/o Accounts Payable) and **CUSTOMER** shall tender an Initial Payment to Tacoma Power in the total amount of **\$905,275.34**. Said Initial Payment represents pre-payment of estimated Direct Costs over and above Direct Costs covered by Tacoma Power; said deposits include an original **non-refundable deposit of \$5,000.00** made by **CUSTOMER** on February 2, 2024. The Initial Payment, together with the prior deposit, equals the Direct Costs as outlined in the Preliminary Cost Estimate. Subject to the terms and conditions of this Agreement, **CUSTOMER** shall, within thirty (30) days of receipt of any further invoices, reimburse Tacoma Power for any Direct Costs incurred in excess of said Preliminary Cost Estimate. It is agreed that Tacoma Power will not begin actual construction activities associated with the Tacoma Power Work beyond temporary power and overhead power additions and modifications until the Initial Payment has been paid and Tacoma Power may cease performance hereunder if any invoiced amount is not paid within thirty (30) days following issuance.

3.3. Records. Tacoma Power shall, in accordance with its standard processes and procedures, keep records of the Direct Costs using a work order accounting system.

3.4 Invoices shall be mailed to:

CUSTOMER:

KB Home - Accounts Payable
Attention: Eric Jacobs
320 120th Ave NE, Suite 202
Bellevue, WA 98005

3.5 Payment. Except for the Initial Payment, which will be invoiced and is due upon execution of this Agreement, **CUSTOMER** shall fully pay each invoice submitted by the City within 30 calendar days of receipt of the invoice. Checks shall be made payable to the Treasurer, City of Tacoma and shall be mailed to:

Tacoma Power
Attn: Electrical Services, Utility Staff Support Supervisor
3628 South 35th Street
Tacoma, WA 98409-3192

In the event **CUSTOMER** fails to pay any monies to the City as and when due hereunder, **CUSTOMER** shall pay interests on such unpaid sum from thirty (30) calendar days after the date due at an annual rate equal to twelve percent (12%) per annum, or the maximum rate permitted by law, whichever is less. Tacoma Power reserves the right to suspend performance hereunder, including but not limited to construction activities, for non-payment.

Notwithstanding any contested invoice by **CUSTOMER**, per Section 3.6 below, **CUSTOMER**, shall make full payment on all invoices issued by Tacoma Power.

3.6 Contested charges. **CUSTOMER** may contest a charge for any Tacoma Power Work detailed in an invoice within 30 days of receipt of such invoice by providing written notice to Tacoma Power specifying the charges and/or documentation in dispute. Upon receipt of such notice, Tacoma Power will investigate items contested and make appropriate amendments to the invoice, if necessary. If warranted, Tacoma Power will arrange a meeting between the Parties to discuss **CUSTOMER** concerns as specified in its written notice. The Parties shall attempt to resolve all disputes within 30 days of the date of notice of a contested invoice. At or before the end of said period, **CUSTOMER** shall submit any outstanding items to Dispute Resolution as provided in **Article 8**. It is further agreed that at the time of a final audit, all required adjustments will be made and reflected in a final payment. Interest shall not accrue on the contested part of any billing until mutually resolved. **CUSTOMER** will not unreasonably contest any bill.

3.7 Refund. At the end of The Heights Project the actual Direct Costs incurred by Tacoma Power will be compared with the estimated costs, invoice payments, and remaining minimum deposited amount. If an overpayment to Tacoma Power exists, then a refund will be made to **CUSTOMER** within 60 days.

3.8 Audit. During the progress of the Parties work under this Agreement and for a period not less than three (3) years from the date of final payment to the City, the records and accounts pertaining to the Parties' work under this Agreement and accounting therefore are to be kept available for inspection and audit by either Party. Copies of all records, accounts documentation or other data pertaining to the Project will be made available for inspection, copying, or audit upon written request by either Party. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until all litigation, claim or audit finding has been resolved even though such litigation, claim or audit continues past the three-year retention period.

In the event a written request to audit is received, the recipient Party agrees to cooperate fully with the auditor or independent auditor chosen, retained, and paid by the requesting Party. In the event the audit determines that **CUSTOMER** has paid Tacoma Power in excess of the amounts properly due hereunder, Tacoma Power will promptly refund the excess amount to **CUSTOMER**. In the event the audit determines that Tacoma Power has incurred costs for its design, Inspection Work, and/or the Tacoma Power Work that exceeds payment made by **CUSTOMER**, **CUSTOMER** shall promptly pay Tacoma Power the amount owed. In the event the Parties cannot agree on the results of the audit, or upon a method of refund or payment, the disagreement shall be dealt with in accordance with the Dispute Resolution provisions of **Article 8** below.

ARTICLE 4 - EXTRA WORK

In the event either Party identifies additional work, other than additional work due to unforeseen conditions, that require an increase over the Preliminary Cost Estimate for the Tacoma Power Work as set forth in **Exhibit C**, the Party asserting such additional work will provide written notice thereof to the other Party. The Parties agree to negotiate in good faith to modify this Agreement to authorize any increased payment resulting from such additional work. For additional costs due to unforeseen conditions, **CUSTOMER** shall be responsible for and pay such costs.

Actual or proposed cost increases of less than \$10,000.00 over the amount set forth in **Exhibit C** will not require formal approval by **CUSTOMER** to be chargeable by, and paid to, the City. Any necessary authorization(s) for payment shall be processed in a timely manner to avoid delaying work by Tacoma Power and/or the **CUSTOMER** Contractor.

Actual or proposed cost increases of \$10,000.00 or more over the amount set forth in **Exhibit C**, including payment for increased work and/or a substantial change in the scope of the Tacoma Power Work, shall be limited to Direct Costs allowed by written modification, change order, or extra work orders which are to be pre-approved by the Parties and pre-paid by **CUSTOMER**.

ARTICLE 5 – PROJECT ADMINISTRATION AND REPRESENTATIVES

5.1 It is acknowledged that **CUSTOMER**, by and through the **CUSTOMER** Contractor, shall be responsible for all administrative activities required for The Heights Project except as expressly agreed otherwise hereunder. It is further acknowledged that such administrative activities shall ensure all **CUSTOMER** Work is completed to Tacoma Power standards and that in no event shall performance of Inspection Work by Tacoma Power personnel result in delegation to, or assumption by, Tacoma Power of any duty to complete and pay for such work or of any other obligation or responsibility of **CUSTOMER** hereunder.

5.2 Permits. Except as otherwise specifically provided herein, **CUSTOMER** shall be responsible, at its sole expense, for acquiring all necessary permits, including but not limited to construction easements, or other governmental approvals necessary to perform and complete The Heights Project. Tacoma Power shall not be responsible for securing any permits or easements for the prosecution of the **CUSTOMER** Work. The Parties agree that **CUSTOMER** may assign responsibility to the **CUSTOMER** Contractors for obtaining any permits necessary for performance of the **CUSTOMER** Work.

5.3 Administration. The following designated Project Managers shall be responsible for administrating the joint and cooperative undertaking of the Project as described herein:

5.3.1 Tacoma Power's Project Manager shall be **Jayce Booker**. All Project related work, including correspondence with Tacoma Power, review and approval of changes to Design Documents, scheduling, participation, and other activities related to the **CUSTOMER** Work and the Tacoma Power Work shall be coordinated through said Project Manager.

Jayce Booker - Project Manager
Tacoma Power
3628 South 35th Street
Tacoma WA, 98409-3192
(253) 441-4545 Office or (253) 337-4422 Mobile

5.3.2 CUSTOMER Project Manager shall be **Eric Jacobs**. All Project related work including, but not limited to, **CUSTOMER** Work and Tacoma Power Work correspondence with **CUSTOMER** regarding the administration of this Agreement shall be coordinated through said Project Manager. The issuance of approved changes to the Design Documents will be handled by the **CUSTOMER** Project Manager before Notice to Proceed is issued.

Eric Jacobs - Project Manager
KB Home Seattle Division
320 120th Ave NE, Suite 202

Bellevue, WA 98005
Phone: (425)389-9418

5.3.3 The foregoing designation of Project Managers shall not modify or supersede the dispute escalation process or designated Party representatives set forth in **Article 8**.

5.4 Field Representatives

5.4.1 Tacoma Power's Designated Field Representative. Upon its receipt of **CUSTOMER** Notice to Proceed, Tacoma Power shall designate a Field Representative in writing to **CUSTOMER**. The Field Representative will be present to assure that Tacoma Power standards are followed, to coordinate any work with Tacoma Powers dispatch office, to assure proper as built documentation is recorded, and to communicate with Tacoma Power's Project Manager.

5.4.2 **CUSTOMER** Resident Engineer. **CUSTOMER** designates as its Resident Engineer the following:

Jason Moore - BME Site Contact

Upon issuance of Notice to Proceed, **CUSTOMER** shall designate its Resident Engineer as its field representative. The Resident Engineer will be in control of the construction site and handle all scheduling, inspection, approval, change orders and other construction activities relating to the work under this Agreement. All communications between Tacoma Power and the **CUSTOMER** Contractors shall be made through the Resident Engineer.

5.5 **Notices**. Except for routine day to day communications or as otherwise specified in **Exhibit A**, all notices which may be or are requested to be given pursuant to this Agreement shall be in writing and be deemed given when emailed, personally delivered, or when deposited in the United States mail, postage prepaid, and marked registered or certified mail, return receipt requested, and addressed to the parties at the following addresses unless otherwise provided for herein:

To Tacoma Power:

Jayce Booker - Project Manager
3628 South 35th Street
Tacoma WA, 98409-3192
(253) 441-4545 Office or (253) 337-4422 Mobile
JBooker@cityoftacoma.org

With a copy to:

John Martinson, Power Engineering Supervisor
Tacoma Power, T&D
3628 South 35th Street

Tacoma WA, 98409-3192
(253) 502-8296
JMARTINS@cityoftacoma.org

To **CUSTOMER**:

Eric Jacobs - Project Manager
KB Home Seattle Division
320 120th Ave NE, Suite 202
Bellevue, WA 98005
Phone: (425) 389-9418
ewjacobs@kbhome.com

With a copy to:

Eric Enstrom - Director, Land Development
KB Home Seattle Division
320 120th Ave NE, Suite 202
Bellevue, WA 98005
Phone: (425) 419-3329
eenstrom@kbhome.com

Either Party may change the address to which notices shall be sent by providing written notice of such change to the other Party.

ARTICLE 6 - INSPECTION AND ACCEPTANCE OF PROJECT WORK

6.1 **Timely Inspection/Approvals**. In coordination with the **CUSTOMER** Resident Engineer and as the work progresses, Tacoma Power shall be invited to conduct reasonable and timely inspection of each stage of the **CUSTOMER** Work. The **CUSTOMER** Contractor shall give at least two (2) business days' prior notice to Tacoma Power of when work items are scheduled to be performed and are ready for Inspection Work. As stages are completed, Tacoma Power will provide approvals or rejections pursuant to the process in Section 6.2.

6.2 **Sequencing of Inspections/Approvals/Acceptance**. The **CUSTOMER** Work will be conducted in stages that require inspections and approvals from Tacoma Power before the **CUSTOMER** Contractor proceeds with the next stage of the **CUSTOMER** Work and/or before Tacoma Power proceeds with certain Tacoma Power Work. The sequence of inspections, approvals and final acceptance is as follows:

- (a) Inspections. Tacoma Power will provide regular inspection activities as coordinated with **CUSTOMER** Resident Engineer via regular communications. If Tacoma Power discovers that the particular elements of the **CUSTOMER** Work

were not performed, or installed per **Exhibit A**, then Tacoma Power shall give prompt notice to the Resident Engineer of said defect(s) and what work remains to be done. Tacoma Power shall endeavor to complete its inspections and notice of approval or rejection in less than two (2) business days. **CUSTOMER** and/or the **CUSTOMER** Contractor will direct all applicable sub-contractors to, promptly re-perform or make repairs to the **CUSTOMER** Work as necessary to fully comply with **Exhibit A**. Following its inspection and approval, Tacoma Power shall be allowed to use and operate the completed stage of the **CUSTOMER** Work as part of its utility system.

- (b) **Final Inspection.** At the completion of all the **CUSTOMER** Work, the Resident Engineer will schedule a final inspection with Tacoma Power's Project Manager & Tacoma Powers Construction Inspector, and Tacoma Power shall have five (5) working days after receipt of written notice from **CUSTOMER** Contractor to accept or reject the completed **CUSTOMER** Work ("Final Inspection"). If Tacoma Power discovers that the particular stage or element of the **CUSTOMER** Work was not performed or installed per **Exhibit A**, then Tacoma Power shall give prompt written notice to the Resident Engineer of said defect(s) and what work remains to be done. Upon receipt of such notice, the **CUSTOMER** Contractor will, directly or through its sub-contractor(s), promptly re-perform or make repairs to the **CUSTOMER** Work as necessary to fully comply with **Exhibit A**, unless it is reasonably demonstrated that the specified defects are the direct result of actions or omissions by Tacoma Power.
- (c) **Final Acceptance.** After Tacoma Power has connected the **CUSTOMER** Work to its utility system, Tacoma Power will be asked to provide its Final Acceptance of the **CUSTOMER** Work. Tacoma Power's final acceptance of **CUSTOMER**, work shall occur only when Tacoma Power is satisfied that (i) all such work is completed in accordance with **Exhibit A**, and (ii) all items indicated on Tacoma Power Inspector's punch list have been completed. Upon such final acceptance, Tacoma Power's Project Manager shall provide written notice thereof to **CUSTOMER** Project Manager.

Nothing in Tacoma Power's inspection, approval, or acceptance of the **CUSTOMER** Work shall reduce or waive the **CUSTOMER** Contractor's responsibility for performance and full and proper completion of **CUSTOMER** Work.

6.3 Warranties and Performance Bond.

- (a) **Warranties.** **CUSTOMER** fully warrants the **CUSTOMER** Work, which warranty shall include all contractor and manufacturer's warranties it obtains and/or may assert in connection with said work. **CUSTOMER**, or the **CUSTOMER** Contractor as applicable, will assign all rights under said warranties to Tacoma Power with respect to all electrical facilities of the **CUSTOMER** Work.
- (b) **Bonds.** To ensure full and complete satisfaction of its obligations hereunder, **CUSTOMER** or the **CUSTOMER** Contractor shall obtain and furnish to Tacoma

Power a performance bond for the cost of the **CUSTOMER** Work directly related to electrical facilities, together with the estimated additional Direct Costs Tacoma Power may reasonably incur in the event of a significant default hereunder. Such bond shall:

- (1) be in the amount of not less than \$916,508.00;
- (2) name the City of Tacoma, Department of Public Utilities, Light Division, as the sole obligee thereunder;
- (3) be in a form acceptable to the Tacoma Power's legal counsel; and
- (4) be delivered to Tacoma Power prior to commencement of any Tacoma Power Work, or within five (5) business days following the Effective Date of this Agreement, which ever shall first occur.

6.4 Ownership/Use. Tacoma Power shall own all power supply and distribution facilities installed pursuant to this Agreement up to the demarcation points identified in the Design Documents specifically including, but not limited to, the conduits and vaults installed as the result of the **CUSTOMER** Work. **CUSTOMER** shall own and be solely responsible for all The Heights Project electrical facilities on the **CUSTOMER** side of said demarcation points, provided that Tacoma Power will be given exclusive access to any such facilities while under construction. Upon receiving notice of final acceptance and approval from Tacoma Power Construction Inspector, **CUSTOMER** shall transfer control of the completed **CUSTOMER** Work to Tacoma Power for its use, occupancy, operation, and maintenance. Tacoma Power shall thereafter install equipment, cabling, and other miscellaneous fixtures and devices.

Tacoma Power will be responsible for the operation and maintenance of said Utility meters and components, switchgear, conduits, vaults, pad mounted equipment and primary power cables.

ARTICLE 7 - LEGAL RELATIONS

7.1 Indemnification by City. To the extent permitted by law, the City shall protect, defend, indemnify, and save harmless **CUSTOMER**, and its officers, employees, and agents, while acting within the scope of their employment, from any and all third party claims, demands, judgments, damages, or liability of any kind including injuries to persons or damages to property, including reasonable attorney's fees and costs incurred in connection therewith, which arise out of, or in any way result from, or are connected to, or are due to the negligent acts or omissions of the City, its employees, agents and/or contractors in performing the Inspection Work and/or Tacoma Power Work under this Agreement. The foregoing defense, indemnification and hold harmless provisions shall not apply if the claim, suit, or action for injuries, death, or damages is caused by the negligence or misconduct of **CUSTOMER** and/or the **CUSTOMER** Contractor, or their respective officers, employees, agents, or contractors. Where such claims, suits, or actions result from concurrent negligence of the Parties, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the indemnifying Party's own negligence. The City agrees that its obligations under this indemnification

section extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents.

7.2 Indemnification by CUSTOMER. To the extent permitted by law, **CUSTOMER** shall protect, defend, indemnify, and save harmless the City, and its officers, officials, employees, and agents, while acting within the scope of their employment, from any and all third party claims, demands, judgments, damages, or liability of any kind including injuries to persons or damages to property, including reasonable attorney's fees and costs incurred in connection therewith, which arise out of, or in any way result from, or are connected to, or are due to the negligent acts or omissions of **CUSTOMER**, the **CUSTOMER** Contractor, and/or their respective officers, employees, agents or contractors in performing the **CUSTOMER** Work under this Agreement. The foregoing defense, indemnification and hold harmless provisions shall not apply if the claim, suit, or action for injuries, death, or damages is caused by the negligence or misconduct of the City, its employees, agents and/or contractors. Where such claims, suits, or actions result from concurrent negligence of the Parties, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the indemnifying Party's own negligence. **CUSTOMER** agrees that its obligations under this indemnification section extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents and/or by the **CUSTOMER** Contractor or their employees, agents, or sub-contractors.

7.3 For purposes of the indemnification provisions set forth in this Article 7, each Party hereby waives, with respect to the other only, any immunity that would otherwise be available against such claims under the industrial insurance provisions of Title 51 RCW. EACH PARTY EXPRESSLY RECOGNIZES THAT THIS WAIVER WAS THE SUBJECT OF MUTUAL NEGOTIATION. Such waiver shall not, however, be construed as establishing any independent right or cause of action by employees of **CUSTOMER** against it or by employees of Tacoma Power against it. In the event of any claims, demands, actions and lawsuits, the indemnifying Party upon prompt notice from the indemnified Party shall assume all costs of defense thereof, including legal fees incurred by the indemnified Party, and of all resulting judgments that may be obtained against the indemnified Party. In the event that a Party incurs attorney fees, costs or other legal expenses to enforce the provisions of this section, all such fees, costs and expenses shall be recoverable by the prevailing Party. This indemnification shall survive the termination of this Agreement.

7.4 Insurance.

7.4.1 CUSTOMER Coverages. **CUSTOMER** or the **CUSTOMER** Contractor that will perform the **CUSTOMER** Work shall not commence work under this Agreement until all required insurance has been obtained and such insurance has been approved by the City. It is **CUSTOMER** responsibility to ascertain that all contractors including, but not limited to, the **CUSTOMER** Contractor (and each of its affiliated sub-contractors that participate in performance of **CUSTOMER** Work), shall have the insurance as required by this Agreement at all times during

performance of the **CUSTOMER** Work. The insurance coverages required herein shall be maintained and effective at all times any such work is being performed.

- (a) Workers Compensation Insurance. **CUSTOMER** shall, at all times during the life of this Agreement, fully comply with all of the terms and conditions of the laws of the State of Washington pertaining to Workers' Compensation together with any and all amendments and supplements thereto and any and all regulations promulgated there-under. In the event any of the **CUSTOMER** Work herein is sublet, **CUSTOMER** shall require the **CUSTOMER** Contractor, and all other contractors and sub-contractors performing work on the Project, other than Tacoma Power, to fully comply with all of the terms and conditions of the laws of the State of Washington pertaining to Workers' Compensation. For persons engaged in employment who are not within the mandatory coverage of the state Workers' Compensation laws, **CUSTOMER** shall provide and shall cause the **CUSTOMER** Contractor and each and every other said contractor and subcontractor to provide compensation insurance (including self-insurance if it otherwise meets all requirements of state Workers' Compensation laws), satisfactory to the City, at least equivalent to the benefits provided for covered employment under state Workers' Compensation laws.
- (b) Public Liability and Property Damage Insurance. **CUSTOMER** shall procure and maintain during the life of this Agreement, a policy of commercial general liability insurance, with an insurance carrier authorized to do business in the State of Washington. The policy shall be approved as to form and content by the Tacoma City Attorney and shall protect the City from liability imposed by law for damages suffered by any persons arising out of or resulting from acts or omissions in the performance of this Agreement: (1) for bodily injury or death resulting therefrom caused by accidents or occurrences resulting from any act or omission by **CUSTOMER**, the **CUSTOMER** Contractor, and their respective employees, agents, and other contractors in the performance of the Agreement, and (2) for injury to, or destruction of, any property, including property of the City, and including loss of use. The policy or policies shall include coverage for claims for damages because of bodily injury or death or property damage arising out of the ownership, maintenance, or use of any motor vehicle, including hired or non-owned vehicles. The City of Tacoma, Department of Public Utilities, Power Division shall be designated in said policy as a primary additional named insured and shall be given 30 days written notice of cancellation, nonrenewal, or material change in the coverage provided. Said insurance shall be on a Commercial General Liability form with coverages to include Blanket Contractor, Broad Form Property Damage, Personal Injury, Protective Liability and Employers Liability. Limits shall be at \$1,000,000 per occurrence, \$2,000,000 aggregate and for contracts in excess of \$500,000 the minimum coverage limits include Umbrella Excess Liability of \$5,000,000. **CUSTOMER** shall further furnish CGL policy

coverage provisions or endorsements specifying that the City's insurance is excess to any other collectible insurance. **CUSTOMER** shall furnish evidence of the amount of any deductible or self-insured retention under the CGL policy or policies, which amount shall be subject to approval by the City Attorney's Office for the City of Tacoma if the amount of the deductible or self-insured retention exceeds \$20,000. The City may require **CUSTOMER** to furnish evidence of its ability to pay the amount of any deductible or self-insured retention. If the policy provides for a deductible or self-insured retention, **CUSTOMER** shall be solely responsible for paying the amount of the deductible or self-insured retention toward the cost of any claim under the policy. If **CUSTOMER** fails to maintain such insurance, the City, at its discretion, may obtain equivalent substitute insurance coverage and be entitled to full reimbursement and payment of its costs thereof. Nothing herein contained shall be in any manner construed as limiting the extent to which **CUSTOMER** or its contractor(s) may be held liable or responsible for payment of damages resulting from their operations.

(c) **Builder's Risk.** **CUSTOMER** and the **CUSTOMER** Contractor shall be expected to protect and insure from loss for any tools and equipment owned or rented by **CUSTOMER** and/or the **CUSTOMER** Contractor, and each of their respective sub-contractors, employees or agents. Until the **CUSTOMER** Work is completed and finally accepted by the City, all construction is at the sole risk of the **CUSTOMER** and no acceptance of payment by the City shall constitute acceptance of the **CUSTOMER** Work or relieve **CUSTOMER** of responsibility to deliver to the City the completed **CUSTOMER** Work as required by this Agreement.

(d) **Proof of Insurance Coverage.** **CUSTOMER** shall furnish and file with the City, within ten business days of the Effective Date of this Agreement, a certificate of insurance coverage together with policy endorsements verifying the insurance coverage types and limits required herein. An up-to-date certificate of insurance must be on file with the City throughout the term of this Agreement. The City may, at the time the Agreement is executed or at any other time, require **CUSTOMER** to furnish and file with the City a certified true copy of the insurance policy or policies, together with a letter from the insurance carrier verifying that the premium has been paid for the period indicated. The policy or policies shall be approved as to form and content by the City Attorney.

ARTICLE 8 - DISPUTE RESOLUTION

8.1 Preventing Conflicts. The Parties agree to use their best efforts to prevent and resolve potential sources of conflict before they escalate into dispute, claims or legal actions.

8.2 Resolving Disputes Through Negotiation. The Parties agree to use their best efforts to resolve disputes arising out of or related to this Agreement using good faith negotiations by engaging in the following dispute escalation process should any such disputes arise:

8.2.1 Level One – The respective Project Managers of the Parties shall meet to discuss and attempt to resolve the dispute in a timely manner. If they cannot resolve the dispute within ten (10) business days after the referral of that dispute to Level One, either party may refer the dispute to Level Two.

8.2.2 Level Two – An executive officer of **CUSTOMER** or designee and the Superintendent of Tacoma Power or his designee shall meet to discuss and attempt to resolve the dispute in a timely manner.

8.3 Failure to Resolve Dispute Through Best Efforts Except as otherwise specified in this Agreement, in the event the dispute is not resolved at Level Two within ten (10) business days after referral of that dispute to Level Two, the dispute may be referred to mediation as mutually agreed to by the Parties, or the Parties may exercise whatever other rights they may have at law or in equity. At all times prior to resolution of the dispute, the Parties shall continue to perform their respective duties under this Agreement in the same manner and under the terms as existed prior to the dispute.

8.4 Venue. Venue for any alternative dispute proceedings and/or legal action shall be in Pierce County, Washington.

ARTICLE 9 – MISCELLANEOUS PROVISIONS

9.1 Termination. If this Agreement is terminated by **CUSTOMER** and/or if **CUSTOMER** defaults under this Agreement prior to completing all **CUSTOMER** Work and said termination or default results in a state of reduced operation and reliability to City-owned utilities, then the City shall restore its utility systems to a reliable and operable condition and **CUSTOMER** shall be responsible for and shall promptly pay Tacoma Power all costs associated with such restoration.

9.2 Agency or Employee Relationship. No joint venture or partnership is formed as a result of this Agreement. No employees, agents, or subcontractors of one Party shall be deemed, or represent themselves to be, employees of any other Party. In performing work and services pursuant to this Agreement, **CUSTOMER**, its employees, consultants, agents, and representatives shall be acting as agents of **CUSTOMER** and shall not be deemed or construed to be employees or agents of the City in any manner whatsoever. **CUSTOMER** shall not hold itself out as, nor claim to be, an officer or employee of the City and will not make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the City. **CUSTOMER** shall be solely responsible for any claims for wages or compensation by the respective employees, contractors, sub-contractors, agents, and representatives of **CUSTOMER** and the **CUSTOMER**

Contractor, and shall defend, indemnify, and hold the City harmless, from these claims. In performing work and services pursuant to this Agreement, the City, its, employees, consultants, agents, and representatives shall be acting as agents of the City and shall not be deemed or construed to be employees or agents of **CUSTOMER** in any manner whatsoever.

9.3 Entire Agreement. This Agreement and the Exhibits attached hereto constitute the entire agreement and understanding between **CUSTOMER** and the City relating to the subject matter contained herein. There are no restrictions, promises, representations, warranties, covenants, or undertakings, oral or otherwise, except those expressly set forth or referenced herein.

9.4 Severability. In the event that any term, covenant, condition, or provision of this Agreement, or the application of the Agreement to any person or circumstance, is found to be invalid or unenforceable in any respect, the remainder of this Agreement, and the application of such term or provision to other persons or circumstances nevertheless shall be binding with the same effect as if the invalid or unenforceable provision were originally deleted. The Parties agree to bargain in good faith to reform this Agreement or replace any invalid or unenforceable provision with a valid and enforceable provision that comes as close as possible to the intention of the invalid or unenforceable provision.

9.5 Amendments. No waiver, modification, addition, or amendment to this Agreement shall be of any force or effect unless reduced to writing and signed by the authorized employees of each Party hereto.

9.6 Rights and Remedies. The duties and obligations imposed by this Agreement and the rights and remedies available hereunder shall be in addition to and not a limitation of or waiver regarding any duties, obligations, rights, and remedies otherwise available by law. No waiver by either Party hereto of any default shall affect or impair any right arising from any subsequent default. The failure of either Party hereto to insist at any time upon the strict observance or performance of any of the provisions of this Agreement or to exercise any right or remedy provided for in this Agreement shall not impair any such right or remedy nor be construed as a waiver or relinquishment of such right.

9.7 Force Majeure. Neither Party hereto shall be liable to the other Party for any failure to perform an obligation set forth herein to the extent such failure is caused by war, act of terrorism or an act of nature, provided that such Party has made and is making all reasonable efforts to perform such obligation and minimize any and all resulting loss or damage. Tacoma Power has a responsibility to restore service after storms before returning to scheduled work. Storm related schedule delays shall not constitute liability.

9.8 Transfer/Assignment. Neither Party shall assign any interest, obligation, or benefit in this Agreement or transfer any interest in the same, whether by assignment or novation, without prior written consent by the other Party. This Agreement is binding upon, and inures to the benefit of, the Parties and their respective permitted successors and assigns.

9.9 Benefits. This Agreement is intended for the sole benefit of the Parties to this Agreement. Nothing in this Agreement is intended to give any person or entity, other than the Parties hereto, any legal or equitable right, remedy, or claim under this Agreement.

9.10 Authorization to Execute Agreement. The undersigned, by their respective signatures below, represent and warrant that they are each duly authorized to execute this legally binding Agreement for and on behalf of the Party for whom they have signed. **CUSTOMER** through its undersigned representative, expressly acknowledges and agrees that the formal approval of this Agreement by the City of Tacoma's Public Utility Board is a required pre-condition to the effectiveness and enforceability of this Agreement. Tacoma Power shall have no legal or equitable liability hereunder and/or in connection with The Heights Project unless or until such approval is obtained. Upon such approval, this Utility Installation Agreement shall become effective as of the Effective Date first above written.

KB HOMES

**CITY OF TACOMA
DEPARTMENT OF PUBLIC UTILITIES**

By: _____
Printed Name: _____
Title: _____

By _____
Jackie Flowers,
Utilities Director

Approved:

By _____
Chris Robinson
General Manager, Tacoma Power

Approved:

Finance Director

Approved as to Form:

Deputy City Attorney

**Exhibit A
CUSTOMER Work**

Design Documents attached:

- Tacoma Power Construction Standards
- Tacoma Power Preliminary Drawings

Specifications & Contractor's Responsibility:

After the "For Construction" drawing has been released by Tacoma Power, the contractor will be required to furnish and install the following in accordance with Tacoma Power's design, construction, and inspection standards:

- a. Prior to any construction, the contractor shall contact the project engineer to schedule a pre-construction meeting.
- b. The primary trench and conduit in accordance with Standard C-UG-1300. The conduit shall be Schedule 40 PVC gray electrical type or as shown on the Tacoma Power drawing. If the trench is more than four feet deep, shoring will be required.
- c. As part of the URD system, the Developer shall perform all work necessary to install, to Tacoma Power specifications, all street crossing conduit, including those required for Tacoma Power communications. Tacoma Power specifications include, but are not limited to, installation of electrical street crossing conduit by a qualified electrical contractor licensed in the State of Washington under Chapter 19.28 RCW, inspection and approval of the street crossing work by Tacoma Power, and compliance with Tacoma Power's joint trench standards. Tacoma Power will supply the necessary crossing conduit material at the Developer's expense. The Developer must make necessary arrangements separately with other communications and/or natural gas companies for facilities of those companies to be installed in the URD trenches.
- d. Guard posts shall be installed at transformer locations according to Standard C-UG-1400. The transformers will not be installed until an acceptable transformer guard is installed. Consult with Tacoma Power's T&D Construction Inspector for guard post requirements.

Exhibit A Continued

- e. Proof primary conduit using a Tacoma Power approved mandrel after backfill. The conduit is to be fished and swabbed by the CUSTOMER upon completion of the installation. Proving shall then be demonstrated with Tacoma Power's authorized T&D Construction inspector present. After proving that the conduit is free from obstruction, the CUSTOMER shall leave a 1/8-inch diameter polypropylene fish cord in the conduit.

Obtain an electrical permit for any secondary work from Tacoma Power's Electrical Inspection office. Call (253) 502-8277 for permit fees and other required information

- f. **For services of 400 amps and above, a set of electrical plans must be submitted to the Electrical Inspection Office for review.**
- g. All secondary conduits and cables from the transformers (or from the service boxes) to the service point on each building, and data conduit as specified by Tacoma Power for remote meter reading, system automation or other Tacoma Power data needs. Any secondary cables pulled after the transformer is set will be done with the transformer in place at an additional fee. Installation of secondary conduit is to be inspected by the Electrical Inspection office before backfill of the trench. Call (253) 502-8277, 24-hours prior to construction for inspection scheduling.
- h. Obtain a copy of the following Tacoma Power Standards prior to construction: A-UG-1200, C-UG-1100, C-UG-1200, C-UG-1300, C-UG-1400, C-UG-1700 and C-UG-2000. These Standards can be obtained from this office or from Tacoma Power's website (www.tacomapower.com).
- i. The contractor is responsible to have a copy of this letter and the standards available on the construction site.

Exhibit A Continued

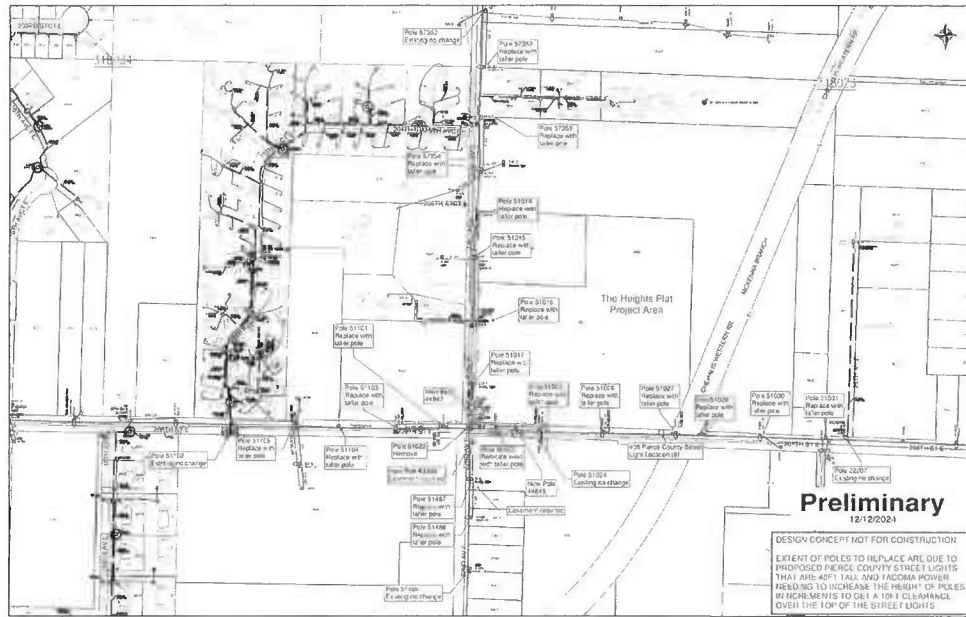


Exhibit A Continued



**Exhibit B
Tacoma Power Work**

Design Documents attached:

- Tacoma Power Preliminary Drawings

Tacoma Power's Responsibility:

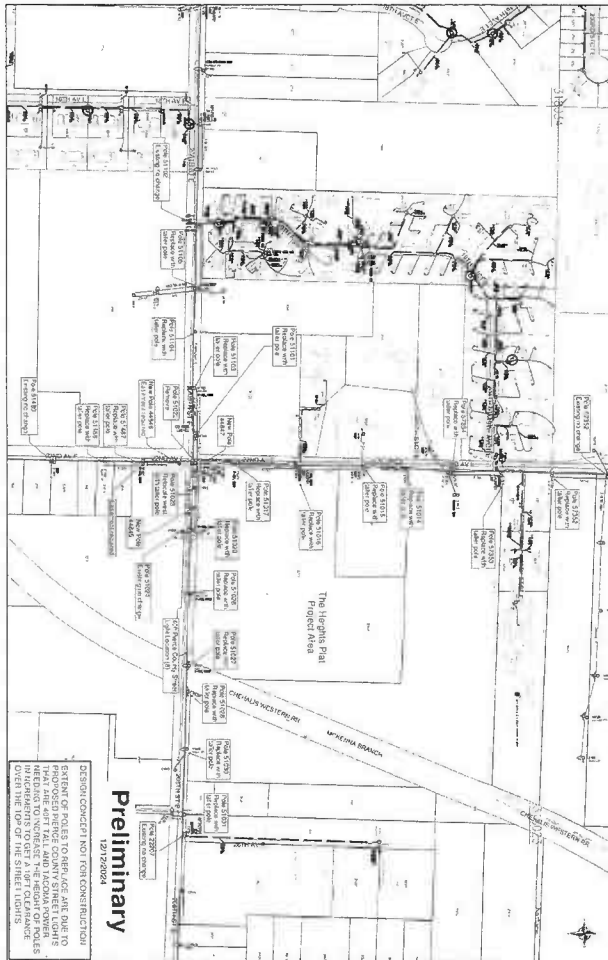
Tacoma Power will prepare a preliminary drawing for this project showing where the electrical facilities are to be installed. Preparation of this drawing will begin upon receipt of the payment and this **CUSTOMER** Agreement signed by an authorized person. Depending on the workload, lead time until release of this drawing for review may take up to **six weeks**. Two copies of the preliminary drawing with a cover letter will be sent to the developer and other joint trench utilities for review and comments. After full payment has been received, all required easements have been secured and the preliminary drawings that were sent for review and comments have been returned to Tacoma Power, a "**For Construction**" drawing will be issued. A **two-week** period will be required to schedule construction after the "For Construction" drawing is issued, then the following will be provided by Tacoma Power:

- a. Frame terminal poles and complete the terminal pole risers.
- b. Replace and/or install a total of twenty three (23) poles to accommodate the roadway improvements outside the development. The roadway improvements impacting the existing power lines include, but are not limited to, alignment changes, curb, sidewalk, and street light installations.
- c. Install one (1) - 554 primary junction box near pole 51016 to intercept and extend single-phase primary to residence west and provide connection point to new plat on 22nd Ave E.
- d. Railroad permit to complete pole installations and equipment transfers.
- e. Install two (2) - 444 primary junction boxes to intercept and extend single-phase primary.
- f. Nine (9) internally grounded, 444 concrete transformer vaults and cover for pad-mounted transformers.
- g. One (1) internally grounded, 554 concrete transformer vault and cover for pad-mounted transformer.

**Exhibit B Continued
Tacoma Power Work**

- h. Eight (8) Single-phase, 50kVA, 120/240 volt pad mount transformer on the 444 concrete vault providing 3-wire service. The AIC at the transformer secondary bushings is 13,900 amps.
- i. One (1) Single-phase, 25kVA, 120/240 volt pad mount transformer on the 444 concrete vault providing 3-wire service. The AIC at the transformer secondary bushings is 6,600 amps.
- j. One (1) three-phase, 150kVA, 277/480 volt pad mount transformer on the 554 concrete vault providing 4-wire service. The AIC at the transformer secondary bushings is 12,000 amps.
- k. All necessary primary cables, conduit, and terminations.
- l. All secondary cables from the transformers to the service boxes, and all secondary terminations at the transformers and service boxes.
- m. All other necessary overhead and underground facilities for providing electrical service.
- n. All necessary primary cables and terminations, and all secondary terminations at the transformer.
- o. One (1) three-phase meter & CT's as follows:
One (1) three-phase meter & CT's for 800 amp secondary service

**Exhibit B Continued
Tacoma Power Work**



**Exhibit C
Preliminary Cost Estimate**

CUSTOMER is to reimburse Tacoma Power for all supplied materials associated with "The Heights" for the entire cost of Tacoma Power's work.

The Preliminary Cost Estimate for the Tacoma Power work is:

ROW Improvements – The Heights	
Materials	\$132,963.00
Labor	\$274,850.73
Equipment	\$31,636.00
Engineering/Supervisory	\$35,455.74
External Overhead Billing	\$64,895.71
Contingency	\$13,742.54
Underground Install – The Heights	
Materials & Handling	\$124,289.84
Labor	\$77,917.02
Engineering	\$23,302.03
Administrative Recovery	\$32,022.26
Communication Relocation – The Heights	
Labor, Materials, Equipment	\$15,000.00
Subtotal	\$826,074.87
WA State B&O Tax	\$15,929.82
GG Gross Earning Tax	\$68,270.65
Estimated Construction Total	\$910,275.34

Exhibit D
Schedule of Work

The schedule is to be determined and added when developed in coordination with the Project Team.