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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

CITY OF TUMWATER, a Washington)
municipal corporation,)
)
Plaintiff,)
)
vs.)
)
PUGET SOUND ENERGY, a)
Washington corporation,)
)
Defendant.)

NO. 06-2 00697-3

DEPOSITION UPON ORAL EXAMINATION OF

JAY EATON

February 7, 2007
Olympia, Washington

ORIGINAL

RANDI R. HAMILTON
Certified Court Reporter
Washington CCR No. 2260
OLYMPIA COURT REPORTERS
P.O. Box 1126
Olympia, Washington 98507-1126
(360) 943-2693

1 BE IT REMEMBERED that the Deposition Upon
2 Oral Examination of JAY EATON was taken in the
3 above-entitled and numbered cause on behalf of the
4 Defendant on February 7, 2007, commencing at 9:20 a.m.,
5 before Randi R. Hamilton, Court Reporter and Notary Public
6 in and for the state of Washington, at 111 Market Street
7 Northeast, Suite 200, Olympia, Washington.

8 The following proceedings took place:

9

<<<<>>>>

10

11 JAY EATON, being first duly sworn to
12 tell the truth, the whole
13 truth and nothing but the
14 truth, testified as follows:

15

16

EXAMINATION

17 BY MR. WILLIAMS:

18 Q Please state your full name, sir.

19 A John C. Eaton, but I go by Jay.

20 Q Can you give us a business address, sir.

21 A 555 Israel Road Southwest, Tumwater, Washington,
22 98501.

23 Q Thank you for coming today, Mr. Eaton. I'm James
24 Williams. I represent Puget Sound Energy. Today
25 we're going to take your deposition in the case of

1 A 1994.

2 Q And is that the position you currently hold?

3 A Correct.

4 Q Tell me what you understand your duties and
5 responsibilities are as director of public works
6 for the city of Tumwater.

7 A Basically the day-to-day operations of the public
8 works department, so all of our functions in
9 dealing with transportation and utility
10 infrastructure and carrying out the direction and
11 plans that have been given to me by the council.

12 Q In terms of contracting authority, what do you
13 understand your authority is?

14 A I have no contracting authority.

15 (EXHIBIT NO. 1 MARKED.)

16 Q All right. I'm going to show you what's been
17 marked as Exhibit 1, if you'll take a look at it.

18 A (Witness complies.)

19 Q Can you tell us what Exhibit 1 appears to be, sir.

20 A It would be the job description for the director of
21 public works.

22 Q Is that the job description for the position you
23 currently hold?

24 A Correct.

25 Q And that's the job description for the position

1 that has been in place since 1986, correct?

2 A That's what the document says.

3 Q Okay. I want to review some of these
4 responsibilities with you. On the first page,
5 under examples of -- well, actually, in the general
6 statement of duties, it says:

7 (READING) Manages fiscal resources, analyzes
8 and prepares funding applications and proposals.

9 Do you see that??

10 A Yes.

11 Q What do you understand that to mean?

12 A Basically the council, through their budgeting and
13 capital facilities project, provides a budget for
14 the public works department, so I'm responsible for
15 managing those fiscal resources.

16 The analysis and preparation of funding
17 applications is basically looking for grant funds,
18 determining which projects might be eligible for
19 grant funds or might compete well for grant funds,
20 and then preparing the necessary applications to go
21 out and try to achieve that.

22 Q Further down the page there's a section entitled
23 Examples of Typical Duties, and the third arrow or
24 bullet says, quote:

25 (READING) Represents the city and acts on the

1 city's behalf with local, state and federal
2 agencies and public organizations, citizens, media,
3 boards or commissions as assigned, period, close
4 quote.

5 Do you see that?

6 A Yes.

7 Q What do you understand that to mean?

8 A I guess I believe that that means that I am acting
9 on the behalf of the city to carry forward council
10 direction, policy decisions, to the agencies and
11 the organizations that are listed.

12 Q Does this mean that you speak on behalf of the
13 city?

14 A Yes.

15 Q Further down, the last bullet says, quote:

16 (READING) Confers with the city
17 administrator, mayor and city council on
18 administrative matters, legislation, policies and
19 public works issues and makes recommendations for
20 action, period, close quote.

21 Do you see that?

22 A Yes.

23 Q What do you understand that to mean?

24 A I guess these matters could either be something
25 that is put forward by me to the city

1 Q Did you know in 2003 that Puget Sound Energy was
2 undertaking the process of evaluating its rights in
3 connection with the work that was being requested
4 of it on the Airdustrial Way widening project?

5 A No.

6 (EXHIBIT NO. 8 MARKED.)

7 Q I'll show you what the court reporter has marked as
8 Exhibit 8.

9 A (Witness reviewing document.)

10 Q Have you ever seen Exhibit 8 before, sir?

11 A Yes.

12 Q Can you tell us what it appears to be.

13 A This is a letter to me from Barry Lombard.
14 Basically it's the correspondence asserting that
15 PSE has private rights over the PSE facilities.

16 Q Just for the record, this letter is dated
17 April 16th, 2003, correct?

18 A Correct.

19 Q And you recall receiving this on or about that
20 date, close to it?

21 A Yes.

22 Q In the letter, Mr. Lombard says, quote:

23 (READING) As we discussed by telephone on
24 April 9th, Puget Sound Energy has completed its
25 rights review for electrical facilities located in

1 would be that he did not have the easement document
2 during our conversation and that we either
3 requested it or obtained it ourselves as to what we
4 believed that the document actually contained.

5 Q What was the significance of the private easement
6 right, in your mind?

7 A I guess at the time I believed that that gave PSE a
8 right that was in effect prior to the dedication by
9 the Port of Olympia to the city of this
10 thoroughfare.

11 Q And in practical terms, what does that mean?

12 A My opinion at that time was that PSE had rights
13 that were granted to them that would have changed
14 the cost sharing arrangement.

15 Q And when you say the cost sharing arrangement, are
16 you referring to the cost sharing arrangement we
17 talked about earlier under schedule 74 for
18 conversion?

19 A Correct.

20 Q How in your view did the private easement change
21 the cost sharing as you understand it, under
22 schedule 74?

23 MR. PATTON: Objection. You changed
24 the question. You said understand it as opposed to
25 understood it, two different time periods Mr. Eaton

1 Q And we've only talked about cost sharing for
2 conversion in terms of the schedule 74, correct?

3 A Correct.

4 Q So my question to you, then, is: That altering of
5 the cost sharing arrangement that you're referring
6 to, is that in the context of schedule 74?

7 A Because I at the time lumped the schedule 74 which
8 dealt with the conversion and also the relocation
9 basically into the same basket, it was my
10 impression that it applied to both.

11 Q That schedule 74 applied to the relocation and the
12 conversion?

13 A No, that the city's responsibility for 100 percent
14 of the cost applied to both.

15 Q Let's focus on the conversion here for a moment.
16 Just so we're on the same page, is it your
17 understanding that schedule 74 applies to
18 conversions and relocations?

19 A No.

20 Q What is your understanding of what it applies to?

21 A Conversions.

22 Q So we're just talking about the conversion of
23 overhead electrical facilities to underground
24 facilities, correct, in terms of schedule 74?

25 A In terms of schedule 74.

1 Q Does this look like it's an authentic letter from
2 the city of Tumwater?

3 A Yes.

4 Q Okay.

5 (EXHIBIT NO. 11 MARKED.)

6 Q I'll show you what the court reporter has marked as
7 Exhibit 11, if you could take a look at that,
8 please.

9 A (Witness complies.)

10 Q Sir, have you ever seen Exhibit 11 before?

11 A Yes.

12 Q Can you tell us what it is.

13 A The first two pages are part of the agenda report
14 that was prepared for the city council. It
15 contains a recommendation from the public works
16 committee that the city council approve and
17 authorize the mayor to sign the project design
18 agreement with Puget Sound Energy for the
19 underground conversion of the overhead utilities,
20 and it also includes a copy of that project design
21 agreement per schedule 74.

22 Q I think earlier in your testimony you said that the
23 public works committee was composed of three
24 members of the city council; is that right?

25 A Correct.

1 Q And those three members include Pete Kmet, correct?
2 A Correct.
3 Q And Mr. Kmet is the chair of the public works
4 committee and mayor pro tem?
5 A Correct.
6 Q It also is composed of Neil McClanahan?
7 A Correct.
8 Q And Mr. Jeffrey Murphy?
9 A Jerry.
10 Q Excuse me, Jerry Murphy.
11 As you can see, this document appears to come
12 from the public works committee, correct?
13 A Correct.
14 Q Did you have any input in the drafting of this
15 document?
16 A I would have either -- yes.
17 Q What did you do, as you recall?
18 A I don't recall, but typically I would have either
19 directly drafted it or I would have certainly
20 approved the draft.
21 Q Do you recall having any discussion with the public
22 works committee members or with Doug Baker, the
23 city administrator, about the Puget Sound Energy
24 easement at the time that this document was
25 created?

1 A I don't recall any conversation with Doug Baker,
2 the city administrator. I don't recall a
3 discussion with the public works committee.

4 However, it appears just by, I mean, reading the
5 discussion and alternatives, that they were made
6 aware that I believed that we were required to pay
7 all of the costs.

8 Q And when you say they were made aware, who were you
9 referring to?

10 A The public works committee.

11 Q And is it your understanding that this document
12 went forward to the city council?

13 A Yes.

14 Q So the other members of the city council would have
15 also been made aware of the Puget Sound Energy
16 easement if they looked at this document?

17 A Correct, if they would have read the document.

18 Q Do you know whether this would have been a document
19 that would have been provided to the city council
20 for review?

21 A Yes.

22 Q And would it have been provided for review at the
23 next meeting of the city council after the date of
24 this? This is dated April 20, 2004, so I'm just
25 wondering.

1 A It would have been on April 20th, 2004, would have
2 been the date of the meeting.

3 Q I see. Do you remember whether there was any
4 discussion at the city council about this document
5 on April 20, 2004?

6 A No, and it appears just from the notation on it
7 that it was approved on the consent agenda.

8 Q What does that mean?

9 A That means that there isn't a discussion by the
10 full council at that meeting.

11 Q Why would there not be a discussion of this?

12 A A lot of the agreements that we do, administrative
13 matters, things like that, rather than going to the
14 full city council for a discussion, a lot of those
15 are -- that's part of the purpose of the
16 committees, is for them to give it a more in-depth
17 review with a recommendation to the council, and so
18 a lot of those contractual and administrative
19 things are handled by consent where the council
20 approves a host of items through that consent
21 action.

22 Q Is consent approval routine or unusual, or does it
23 come up very often?

24 A There's a consent approval at virtually every
25 council meeting.

1 Q I see. I want to go through some of this with you
2 to see if it refreshes your recollection of any
3 discussions you may have had. In section 2 of this
4 memorandum from the public works committee, it has
5 Action Requested/Staff Recommendations, and it
6 says, quote:

7 (READING) The public works committee
8 recommends the city council approve and authorize
9 the mayor to sign the project design agreement with
10 Puget Sound Energy for the first phase of work
11 required for the underground conversion of the
12 overhead utilities, period, close quote.

13 Do you see that?

14 A Yes.

15 Q Would you have had an occasion to meet with the
16 public works committee to discuss that
17 recommendation?

18 A That would be my assumption.

19 Q Do you have, as you sit here now, any recollection
20 of meeting with the public works committee to talk
21 about that recommendation?

22 A No.

23 Q The next part is History and Facts Brief in
24 section (3), and it says, quote:

25 (READING) PSE's electric tariff G, schedule

1 74, provides the rules and conditions for the
2 process and cost sharing when a municipality wishes
3 to convert overhead power infrastructure within
4 their jurisdiction to an underground system. The
5 tariff is regulated by the Washington Utilities and
6 Transportation Commission, period, close quote.

7 Do you see that?

8 A Yes.

9 Q Do you know where that information would have come
10 from to the public works committee?

11 A It would have either been drafted by myself or Jim
12 Shoopman.

13 Q Do you think that that is an accurate statement of
14 schedule 74?

15 A I believe so.

16 Q The next paragraph under History and Facts Brief
17 says, quote:

18 (READING) Under the terms of the tariff,
19 Puget Sound Energy requires the execution of a
20 project design agreement which, among other things,
21 provides for reimbursement of the design costs upon
22 completion of the design work, period, close quote.

23 Do you see that?

24 A Yes.

25 Q Do you know whether the public works committee

1 members would have come up with that language on
2 their own or whether that's something that you
3 and/or Mr. Shoopman would have provided them?

4 A It would not have been the public works committee.

5 Q Okay. That's what I'm getting at, is who drafted
6 this. Do you know whether you drafted this or
7 whether somebody on the public works committee
8 drafted it?

9 A It would have been staff. It would not have been
10 from committee.

11 Q And when you say staff, is that you or is that
12 Mr. Shoopman?

13 A Going off a little bit here, it would have either
14 been me or Mr. Shoopman. My only hesitation here
15 is sometimes -- I'm going to assume that there's
16 also a report that looks almost identical to this
17 that would have went to our public works committee
18 saying, "We're looking for your recommendation."
19 That one would have been drafted by me or
20 Mr. Shoopman.

21 Once the committee takes their action, makes
22 their recommendation, a lot of times my
23 administrative assistant will basically roll that
24 over, take the same agenda report and it's now for
25 the city council from the public works committee.

1 In essence, it's either me or Mr. Shoopman that
2 does it, but sometimes she rolls it over, says,
3 "Here, this is what you want, right?"

4 Q But at some point the public work committee vets
5 whatever you presented to them and then they have
6 the final say on what goes forward to the city
7 council, correct?

8 A Correct.

9 Q In the third paragraph of section 3, it says,
10 quote:

11 (READING) A similar agreement for
12 construction work will need to be executed
13 subsequent to completion of the design. When
14 applicable, any costs sharing would be credited at
15 construction, period, close quote.

16 Do you see that?

17 A Yes.

18 Q Do you recall having any discussion about that?

19 A Not specifically. Well, certainly not at the
20 council meeting, because this was on the consent
21 agenda.

22 Q Moving down to section 4, it says Discussion and
23 Alternatives. What is that section supposed to be
24 doing, this Discussion and Alternatives; what's the
25 purpose of it?

1 A Really just to provide additional information to in
2 this case the city council as far as the action
3 they're taking that's a little bit beyond kind of,
4 "Here the documents you're looking at," and those
5 types of things, but just alerting them to, you
6 know, what we felt was important that they know
7 about that agreement.

8 Q So in advance of the agreement that's attached, you
9 felt it was important for them to know the
10 information that's in section 4, Discussion and
11 Alternatives?

12 A Yes.

13 Q Okay. In section 4, it says, quote:

14 (READING) There is no cost sharing for the
15 work on this project because the facilities are in
16 a utility easement that predates the city's
17 right-of-way ownership, period, close quote.

18 Do you see that?

19 A Yes.

20 Q Do you know who would have drafted that?

21 A Me or Mr. Shoopman.

22 Q Do you remember any discussions with the members of
23 the public works committee about that sentence?

24 A Not specifically, but, again, I'm going to make an
25 assumption that we basically told them the PSE

1 theory and that we were in agreement with that.

2 Q Did anyone on the public works committee object to
3 this sentence, that is, that there's no cost
4 sharing for the work?

5 A Not that I recollect.

6 Q Okay. This goes on to say, quote:

7 (READING) The city will be required to pay
8 all costs for relocating and/or converting PSE's
9 electrical facilities from overhead to underground,
10 period, close quote.

11 Do you see that?

12 A Yes.

13 Q Would you have also drafted that?

14 A Me or Mr. Shoopman.

15 Q And, again, same question: Do you have a
16 recollection of a discussion with anyone on the
17 public works committee about that sentence?

18 A No specific recollection. It would refer to the
19 same conversation that I would speculate --
20 probably not supposed to speculate -- that we had.

21 Q Is it fair to say that on or about April 20th, this
22 document would have been discussed by the public
23 works committee?

24 A Probably two weeks prior to April 20th.

25 Q Okay.

1 A Not knowing the specific date, but --.

2 Q Okay. During the discussion with the public works
3 committee, would that have been the proper place
4 for a member of the city council to raise an
5 objection to or challenge of this document?

6 A It would have certainly been a place where they
7 could have done that.

8 Q Do you recall whether the city attorney would have
9 received a copy of this?

10 A A copy should have been available to them.

11 Q Okay. As you sit here today, do you have a
12 recollection of anyone in the city attorney's
13 office challenging or objecting to the statement
14 that you or Mr. Shoopman made in section 4 of this
15 memo?

16 A No.

17 Q Attached to this memo is a document that has at the
18 top, capital "A" in quotes, and then it says
19 Schedule 74 for Ground Conversion Project Design
20 Agreement.

21 Have you seen this before, sir?

22 A Yes.

23 Q When do you recall first seeing this?

24 A Again, don't remember the specific date. I would
25 assume it was provided when Barry Lombard

1 originally met with us to talk about the changes
2 from the prior schedule to the schedule 74
3 agreement. At that time it wouldn't have been
4 about a specific project agreement.

5 Q Do you know whether this document, this project
6 design agreement, was attached to whatever you and
7 Mr. Shoopman would have forwarded to the public
8 works committee?

9 A Yes.

10 Q It would have been?

11 A Yes.

12 Q And that would have been at some point before
13 April 20, 2004, correct?

14 A Correct.

15 Q If you go to the last page of that document, of
16 that agreement, there is a signature under "Approve
17 as to form," it says, and it appears to have the
18 signature of someone named Christy A. Todd.

19 Do you see that?

20 A Yes.

21 Q As you sit here today, do you recall Ms. Todd
22 approving as to form this design agreement?

23 A It's apparent that she did it.

24 Q Yes, I understand, but do you have a recollection
25 of meeting with her or getting this from her?

(EXHIBIT NO. 13 MARKED.)

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Q Would you take a look at what the court reporter has marked as Exhibit 13.

A (Witness complies.)

Q Can you tell us what it is, sir, what it appears to be?

A It appears to be a transmittal letter for an executed schedule 74 underground conversion project design agreement for the Tumwater Boulevard widening project.

Q Was that letter from Mr. Lombard to you?

A Correct.

Q And it's dated May 17th, 2004?

A Correct.

Q Do you remember receiving this?

A No.

Q Do you remember the document that's attached to it?

A Yes.

Q Describe the document that's attached to this.

A It is the project design agreement for the schedule 74 underground conversion.

Q Can you go to the last page of that document.

A (Witness complies.)

Q Do you see signatures there, sir?

A Yes.

1 Q Whose signatures are there?

2 A Ralph Osgood, Christy Todd, Gayla Gjertsen and
3 Barry Lombard.

4 Q Do you recall having any discussion with Mr. Osgood
5 at or around the time this document was signed?

6 A No.

7 Q How about with Gayla Gjertsen?

8 A No.

9 (EXHIBIT NO. 14 MARKED.)

10 Q I'll show you what's been marked as Exhibit 14, if
11 you can take a look at it.

12 A (Witness complies.)

13 Q Sir, have you ever seen Exhibit 14 before?

14 A Yes.

15 Q Can you tell us what it appears to be.

16 A Again, it's a combined transmittal and actually, I
17 guess, the body of a design schedule, design cost
18 estimate for the schedule 74 underground conversion
19 project design agreement for the Tumwater Boulevard
20 widening project to me from Barry Lombard.

21 Q And that's dated July 1, 2004, correct?

22 A Correct.

23 Q At the bottom of this document, first page, the
24 last sentence says, quote:

25 (READING) Please note, however, that the PSE

1 A Not that I recollect.

2 Q Do you recall at this point, in July of 2004,
3 anyone within the city attorney's office
4 challenging the notion that the city would be 100
5 percent responsible for the cost of converting
6 PSE's facilities?

7 A Inasmuch as at this phase of the process under the
8 schedule 74 agreement there wouldn't have
9 specifically been anything sent up to legal counsel
10 for review.

11 Q Okay.

12 (EXHIBIT NO. 15 MARKED.)

13 Q I'll show you what the court reporter has marked as
14 Exhibit 15.

15 A (Witness reviewing document.)

16 Q Have you ever seen Exhibit 15 before, sir?

17 A Not to my recollection.

18 Q All right. For the record, I'll describe it. It's
19 a July 13th, 2004, letter apparently from James
20 Shoopman on city of Tumwater letterhead. It's
21 addressed to Puget Sound Energy's Barry Lombard,
22 and it's regarding Tumwater Boulevard widening
23 project schedule 74 underground conversion project
24 design agreement.

25 Do you recall having a conversation with

1 Mr. Shoopman giving him direction to issue what's
2 called a notice to proceed?

3 A Not specifically, but it's my presumption that that
4 occurred.

5 Q Would you be the person who would give Mr. Shoopman
6 instructions on whether to issue a notice to
7 proceed?

8 A Yes.

9 Q As you sit here now, do you have any reason to
10 question the authenticity of this document?

11 A No.

12 Q And do you have any reason to think that you did
13 not issue a notice to proceed to Mr. Shoopman for
14 this design agreement?

15 That's a convoluted question. Let me restate
16 it. As you sit here today, would you agree that
17 you gave a notice-to-proceed instruction on the
18 design agreement to Mr. Shoopman?

19 A Yes.

20 (EXHIBIT NO. 16 MARKED.)

21 Q You can take a look at Exhibit 16.

22 A (Witness complies.)

23 Q Have you seen Exhibit 16 before, sir?

24 A Yes.

25 Q Can you tell us what it is.

1 A It's a facility relocation agreement for the
2 Tumwater Boulevard improvements.

3 Q When do you recall first seeing this, sir?

4 A On or prior to December 16th of 2004.

5 Q Did you have any discussion with anyone within the
6 city of Tumwater about this document?

7 A I don't believe so.

8 Q If you look at page 8 of the agreement, there are
9 two signature blocks. One is for Puget Sound
10 Energy, and one is for the city of Tumwater.

11 Do you see that?

12 A Yes.

13 Q Is that your signature there where it says city of
14 Tumwater?

15 A No, I can't -- yes. Yes, it is. Not very funny, I
16 know.

17 MR. PATTON: It was to me.

18 Q Just to be clear, Mr. Eaton, that is your signature
19 on this agreement?

20 A Yes, it is.

21 Q In this agreement on the first page of Exhibit 16,
22 it says:

23 (READING) Facility relocation agreement,
24 Tumwater Boulevard improvements. This agreement
25 dated as of December 16th, 2004, is made and

1 proceed?

2 A Not that I recall.

3 Q You were mentioning that something happened in
4 September that caused you to change your view of
5 PSE's easement right; is that right?

6 A I believe I said that it was sometime following
7 that infamous September 9th date in 2005 that I
8 changed my view.

9 Q Why do you say infamous September 9th date?

10 A No reason.

11 Q Well, why don't we take a look at a memo from the
12 public works committee from that infamous
13 September 9th date.

14 (EXHIBIT NO. 21 MARKED.)

15 Q Can you take a look at what the court reporter has
16 marked as Exhibit 21.

17 A (Witness complies.)

18 Q Sir, have you ever seen Exhibit 21 before?

19 A I believe so.

20 Q Can you tell us what it appears to be.

21 A It is an agenda report to Doug Baker for the public
22 works committee from the public works department,
23 me, regarding Tumwater Boulevard and Puget Sound
24 Energy agreements for electrical utility
25 relocations. That would include the facility

1 relocation agreement relocation plan, the
2 underground conversion project plan and the
3 schedule 74 underground conversion project
4 construction agreement.

5 Q Is this a document that you recall preparing?

6 A I don't actually recall preparing it, but I have no
7 doubt that I did.

8 Q Is that your initial off to the side right margin?

9 A Yes.

10 Q On the first page, I'm referring to.

11 So is this the document that you would have
12 sent to the public works committee for them to in
13 turn forward a recommendation to the city council?

14 A Correct.

15 Q In your public works department document under
16 staff recommendation, it says, quote:

17 (READING) Staff requests that the public
18 works committee recommend the city council approve
19 and authorize the mayor to sign the schedule 74
20 underground conversion agreement and project plan
21 and the facility relocation plan and authorize the
22 mayor to issue a notice to proceed for relocation
23 of PSE facilities, period, close quote.

24 Do you see that?

25 A Yes.

1 Q Why did you make that recommendation?

2 A It was the only way we had of getting PSE to
3 complete the work.

4 Q And why is that?

5 A PSE would not have moved forward with the work
6 until such time that we gave them those approvals.

7 Q Okay. In the third section of this History and
8 Facts Brief, in the second paragraph you state,
9 quote:

10 (READING) Because PSE had an easement over
11 the Port of Olympia property prior to Airdustrial
12 Way being dedicated to the city as public
13 right-of-way, their rights supersede the city's
14 under the franchise agreement and WSUTC's tariff G,
15 period, close quote.

16 Do you see that?

17 A Yes.

18 Q What is the basis for you saying that?

19 A The assertion from Barry Lombard.

20 Q Did you independently believe that to be the case?

21 A At this time, yes.

22 Q Did you have any reason to question that the
23 franchise agreement was at that point superseded by
24 the easement?

25 A I don't understand the question.

1 Q Okay. Well, let me finish reading and then I'll
2 come back to it. You go on to say, quote:

3 (READING) The city has to bear the full cost
4 of any relocation of PSE electrical facilities in
5 the Tumwater Boulevard right-of-way, period, close
6 quote.

7 Do you see that?

8 A Yes.

9 Q What is that based on?

10 A Again, the assertions from PSE about their prior
11 rights.

12 Q And, again, at the time that you wrote this, you
13 believed this to be the case?

14 A Yes.

15 Q Do you remember whether you wrote it or
16 Mr. Shoopman wrote it?

17 A I don't recall.

18 Q What happened after you submitted this
19 recommendation to the public works committee?

20 A I'm not sure. And I'm going to go off a little bit
21 again. I'm confused. I've lost myself in the
22 events that happened, the times they happened. For
23 some reason, I had in my mind that September 9th
24 was a council meeting and that it was that agenda
25 report that was then seen by the city attorney

1 Q If you can take a look at Exhibit 22.

2 A (Witness complies.)

3 Q Have you had a chance to look at that, sir?

4 A Yes.

5 Q What is that?

6 A That is a copy of the Tumwater public works
7 committee meeting minutes of September 9th, 2005.

8 Q Were you present at this meeting?

9 A I would assume so.

10 Q Under Consensus, there is a section called Tumwater
11 Boulevard: Puget Sound Energy Agreements for
12 Electrical Utility Relocations.

13 Do you see that?

14 A It's not actually under a section for consensus.
15 The consensus is for an item that was discussed
16 previously to that subject.

17 Q In the sort of middle top of the page, there is a
18 paragraph there right next to a heading that says
19 Tumwater Boulevard. Do you see that?

20 A Correct, yes.

21 Q The seventh line down, there's a statement, quote:
22 (READING) PSE discovered it had easement
23 rights superseding the city's, and the expense will
24 be the responsibility of the city, period, close
25 quote.

1 Do you see that?

2 A Yes.

3 Q Do you know who said that?

4 A The presumption would be that it was me.

5 Q And that's something you said to the city council?

6 A To the public works committee.

7 Q To the public works committee. I see.

8 Further down the page, it has Consensus; do
9 you see that?

10 A Yes.

11 Q First, what does consensus mean here?

12 A The public works committee works on a consensus.

13 Basically there's, again, three committee members,
14 and they try to reach consensus amongst themselves
15 for a decision versus doing a formal vote.

16 Q So when they say consensus, that's sort of the will
17 of the committee?

18 A Correct.

19 Q Here it --

20 A Not always necessarily unanimous as far as
21 agreement, as far as a decision goes.

22 Q Does consensus mean that there is an objector?

23 A Basically what the committee would be doing is
24 reaching consensus to forward the issue or the
25 recommendation to the city council, and I guess the

1 gist there is that same person, even though they
2 consented that, yes, let's send this forward to
3 council for discussion and decision, they may very
4 well be against the recommendation that was made --

5 Q Do you know --

6 A -- by that committee.

7 Q I'm sorry. Do you know if anyone on the public
8 works committee was against the recommendation that
9 you made in Exhibit 21?

10 A I don't believe so.

11 Q Okay. In Exhibit 22, in a public works committee
12 meeting minutes, it says Consensus, quote:

13 (READING) The public works committee
14 recommended the city council authorize the mayor to
15 sign the schedule 74 underground conversion
16 agreement and project plan and the facility
17 relocation plan and authorize the mayor to issue a
18 notice to proceed for relocation of PSE facilities,
19 period, close quote.

20 Do you see that?

21 A Yes.

22 Q Is it your understanding that they were
23 recommending moving forward with the 100 percent
24 cost being borne by the city?

25 A Yes.

1 Q Do you recall the discussion with the public works
2 committee before this consensus was reached?

3 A Not beyond what you see in the minutes.

4 Q Do you know whether, in fact, that recommendation
5 went forward to the city council?

6 A I don't believe this specific recommendation ever
7 made it to the city council.

8 Q Do you know why not?

9 A I was using the wrong date as the infamous date.
10 It's the September 20th council packet that landed
11 in the hands of the city attorney, who was not in
12 agreement with the 100 percent.

13 Q Why don't we take a look at that. I'll have the
14 court reporter mark it as Exhibit 23.

15 (EXHIBIT NO. 23 MARKED.)

16 Q Can you tell us what Exhibit 23 appears to be, sir.

17 A It is the agenda report and attached references for
18 the city council from the public works committee
19 recommending city council approval and
20 authorization for the mayor to sign the schedule 74
21 underground conversion agreement and project plan
22 and the facility relocation plan and authorize the
23 mayor to issue a notice to proceed with relocation
24 of PSE facilities.

25 Q And this recommendation would have necessarily

1 involved the city agreeing to pay 100 percent of
2 the cost for relocation and conversion?

3 A Correct.

4 Q At the top of the page, there's some handwriting
5 right next to the date, September 20, 2005. Can
6 you read for us what that says?

7 A (READING) Pulled by city attorney.

8 Q Do you have an understanding what that means?

9 A Yes.

10 Q Can you tell us what that is.

11 A That this staff report was pulled from the city
12 council agenda and was not presented to the city
13 council at the September 20th meeting.

14 Q Do you know why?

15 A Because she did not agree in review of the
16 documents that we were responsible for 100 percent
17 of the cost.

18 Q And "she" being the city attorney?

19 A Correct.

20 Q Is that Christy Todd?

21 A Correct.

22 Q Is it ordinary or normal practice to have the city
23 attorney pull a recommendation like this away from
24 the city council for consideration?

25 A I don't know if it's ordinary, but it's her job if

1 related to the relocation or construction
2 agreements ever went forward to the city council
3 for consideration?

4 A Yes.

5 Q And what was the recommendation you recall?

6 A I believe the recommendation that eventually went
7 forward was to proceed with the execution of these
8 or similar agreements together with another
9 agreement with PSE agreeing that the work would go
10 forward, the city would initially pay the costs,
11 and we would agree to disagree and go through this
12 process or some other process to decide who really
13 pays.

14 Q Okay.

15 (EXHIBIT NO. 24 MARKED.)

16 Q I'll show you what I've had the court reporter mark
17 as Exhibit 24.

18 A (Witness reviewing document.)

19 Q Sir, have you ever seen Exhibit 24 before?

20 A Yes.

21 Q Can you tell us what it is.

22 A It is an agenda report for the city council from
23 the public works committee regarding Tumwater
24 Boulevard and the Puget Sound Energy agreements for
25 electrical utility relocations. It includes the

1 Tumwater Boulevard facility relocation agreement
2 and relocation plan, the Tumwater Boulevard
3 underground conversion project plan, the schedule
4 74 underground conversion project construction
5 agreement and a reservation of rights agreement.

6 Q And this is a document that was created by the
7 public works committee?

8 A The document would have been created by me.

9 Q By you, so you created this document?

10 A I believe so.

11 Q How do you know that?

12 A I'm speculating.

13 Q Do you see an initial off to the right margin
14 towards the top of the page?

15 A Yes.

16 Q Do you know whose initial that is?

17 A That would be mine.

18 Q That's your initial, okay. Why would your initial
19 be there?

20 A I initial all of our staff reports that go forward
21 to the public works committee from our department.

22 Q So the date of this memo is February 21, 2006,
23 correct?

24 A Correct. No, that's not correct. The meeting date
25 listed at the top of any of the agenda reports is

1 the date of the meeting itself, not the date that
2 the document was created.

3 Q Do you know when this document was created?

4 A Not specifically, but in general our city council
5 meetings are on the first and third Tuesdays of
6 each month. Our public works committee meetings
7 are on the Friday on the same week following a
8 council meeting, and the staff reports are due on
9 the Thursday prior to that. Sorry.

10 Q So this --

11 A Generally about a week before or four to five days
12 before a city council meeting the document would be
13 prepared.

14 Q So this document was prepared roughly five months
15 after Exhibit 23, which is the meeting agenda memo
16 that was pulled by the city attorney, correct?

17 A Correct.

18 Q Do you recall what happened in terms of discussion
19 about the PSE easement between September of 2005
20 and February of 2006?

21 A In general, I believe that attorney Todd researched
22 the issues that were involved and came to the
23 conclusion that the city was not responsible for
24 100 percent of either the relocation or the
25 conversion costs and that we should move forward

1 with a claim against PSE for that.

2 Q Okay.

3 A And at the same time understanding that the road
4 project itself needed to move forward, so there
5 were discussions with PSE to agree that the work
6 needed to occur, it was just a question of who
7 pays.

8 Q So your understanding was that at some point before
9 this February 2006 meeting of the city council and
10 before this memo was generated, the city attorney
11 had decided that legally in her view the city did
12 not have to pay 100 percent of the relocation
13 costs?

14 A Or a conversion.

15 Q For relocation or conversion, correct?

16 A Correct.

17 Q Okay. In Exhibit 24 under the Action Requested, it
18 states, quote:

19 (READING) The public works committee
20 recommends the city council approve and authorize
21 the mayor to sign the schedule 74 underground
22 conversion agreement and project plan and the
23 facility relocation agreement and authorize the
24 mayor to issue a notice to proceed for relocation
25 of Puget Sound Energy's facilities, period, close

1 quote.

2 Do you see that?

3 A Yes.

4 Q Is it your understanding that that was the
5 recommendation from the public works committee in
6 February of 2006?

7 A That's what this appears to say.

8 Q Okay. And it's fair to say that by the time this
9 document was generated, the public works committee,
10 or at least the people who were involved with
11 drafting this memo, were aware of the city
12 attorney's view, correct?

13 A Correct.

14 Q Is it fair to say that moving forward with this
15 particular recommendation, as stated here in
16 paragraph 2, the first part of paragraph 2, moving
17 forward with that recommendation would have
18 required the city to pay 100 percent of the cost of
19 relocation and conversion of Puget Sound Energy's
20 electrical facilities?

21 A I don't believe that those recommendations for
22 approval of those was independent of the
23 reservation of rights agreement.

24 Q I'm going to get to that in a minute, because
25 that's the second paragraph in section 2. But I'm

1 just focused on the first part of this
2 recommendation, the first paragraph here, which I
3 think is identical to the Action Requested/Staff
4 Recommendation in Exhibit 23, which is the memo
5 that was pulled by the city attorney.

6 I believe you said, with respect to that
7 recommendation, that would have required the city
8 to pay 100 percent of the relocation and conversion
9 cost, correct?

10 A Correct.

11 Q I'm assuming that this language being identical to
12 that, that is, the language here in Exhibit 24, in
13 the February 2006 memo being identical, would also,
14 if accepted, require the city to pay 100 percent of
15 the cost to relocate or convert PSE's facilities?

16 A I can't separate the different authorizations,
17 because at that time the committee nor council
18 would have agreed to the first three without the
19 reservation of rights agreement.

20 Q So let's talk about the other part. It says,
21 quote:

22 (READING) Additionally, staff requests that
23 the council authorize the mayor to sign the
24 reservation of rights agreement.

25 Do you see that?

1 of the situation.

2 Q Okay. The city attorney Todd's evaluation of the
3 situation was that Puget Sound Energy, on
4 conversion, would pay 60 percent of the cost,
5 correct?

6 A Correct.

7 Q And on the relocation of PSE facilities would pay
8 100 percent?

9 A Correct.

10 Q And that's because of her research or review of the
11 easement rights?

12 MR. PATTON: Objection --

13 A No.

14 MR. PATTON: -- if you're asking for
15 his conversation with Christy Todd.

16 Q Do you have an understanding personally of why
17 there's a difference in position?

18 A Her reading of both the schedule 74 agreement and
19 the franchise agreement would provide that PSE pay
20 100 percent of the relocation cost and 60 percent
21 of the conversion cost.

22 (EXHIBIT NO. 25 MARKED.)

23 Q Can you take a look at Exhibit 25 and tell us what
24 that appears to be, sir.

25 A A reservation of rights agreement.

1 Q Do you know what that was used for?

2 A I believe that this is the reservation of rights
3 agreement between the city of Tumwater and PSE.
4 Again, that basically said that both parties will
5 agree to move forward with the work and we will
6 agree to disagree and follow the proceedings for
7 dispute resolution --

8 Q Okay.

9 A -- contained in the agreement.

10 Q I'm sorry. I didn't mean to interrupt you. Were
11 you finished?

12 A Yes.

13 Q This is dated February 23, 2006, correct?

14 A Correct.

15 Q To your knowledge, has Puget Sound Energy moved
16 forward with completing the work on the
17 construction project?

18 A Yes.

19 Q To your knowledge, is there anything else left for
20 Puget Sound Energy to do in terms of the relocation
21 or conversion?

22 A I can't answer that. I'm not aware. I would
23 assume that the vast majority of the work, if not
24 all of it, has been completed.

25 Q The facility relocation agreement dealt with just

1 the concept of relocation, right; facility
2 relocation deals with relocating above ground or
3 relocating any electrical facilities?

4 A Correct.

5 Q And it's not conversion, because conversion is
6 covered by schedule 74, right?

7 A Correct.

8 Q Okay. And your understanding is the franchise
9 agreement required PSE to pay 100 percent of any
10 facility relocation after September 20; is that
11 correct?

12 A For any facility, correct.

13 Q And that's after the city attorney's position
14 became known, correct?

15 A Correct.

16 Q All right.

17 (EXHIBIT NO. 26 MARKED.)

18 Q I'll show you what I've had the court reporter mark
19 as Exhibit 26.

20 A (Witness reviewing document.)

21 Q Have you seen Exhibit 26 before, sir?

22 A Yes.

23 Q Can you tell us what it is.

24 A It is a transmittal of a facility relocation
25 agreement for the Henderson Boulevard and Old

1 Highway 99 project.

2 Q Is this a facility relocation agreement that you
3 signed on behalf of the city?

4 A Correct.

5 Q And you sent it to Mr. Lombard at Puget Sound
6 Energy, correct?

7 A Correct.

8 Q This happened, according to this letter, it's dated
9 January 5, 2005, correct?

10 A Correct.

11 Q Was this for relocation design and construction?

12 A Yes.

13 Q If you go to page 5 of this document, of the
14 agreement itself, under the Cost Reimbursement
15 section, there's a section 7.3, Design Work Costs
16 and Relocation Costs.

17 Do you see that?

18 A Yes.

19 Q It says, quote:

20 (READING) The government entity shall be
21 responsible for and shall reimburse PSE for all
22 costs and expenses incurred by PSE in connection
23 with the performance of design work and relocation
24 work. For purposes of this agreement, the design
25 costs and relocation costs shall include without

1 limitation any and all direct or indirect costs
2 incurred by PSE in connection with the performance
3 of the design work and relocation work, including,
4 but not limited to, labor, personnel, supplies,
5 materials, overheads, contractors, consultants,
6 attorneys and other professionals, administration
7 and general expenses and taxes, period, close
8 quote.

9 Do you see that?

10 A Yes.

11 Q Did you agree to that?

12 A Yes.

13 Q If you look at the first page of this facility
14 relocation agreement, under Recitals, heading A, it
15 says:

16 (READING) PSE owns and operates certain
17 utility systems at the facilities necessary and
18 convenient to the transmission and distribution of
19 electricity that are located on or in relation to
20 certain operating rights. The facilities and
21 existing operating rights are more particularly
22 described on Exhibit A attached hereto and
23 incorporated herein by this reference.

24 Do you see that?

25 A Yes.

1 Q Do you know what that's referring to?

2 A Generally.

3 Q What is that?

4 A This was an intersection improvement, and at that
5 location PSE had facilities that were currently
6 located outside of city right-of-way for Old
7 Highway 99 and had an easement from the Port of
8 Olympia to be located where they were.

9 Q Do you know whether that's the same easement that
10 PSE asserts that it has rights to under the
11 Tumwater Boulevard widening project?

12 A I don't recall, but I believe it's referenced.

13 Q If you look at Exhibit A, page 9, at the bottom it
14 says Operating Rights. Do you see that?

15 A Yes.

16 Q It says, quote:

17 (READING) Easement No. 8112080070 granted by
18 the Port of Olympia, period, close quote.

19 Do you see that?

20 A Yes.

21 Q Do you know whether that's the same easement that
22 Puget Sound Energy contends provides it with
23 superior rights on the Tumwater Boulevard widening
24 project?

25 A It appears that it is.

1 Q As you sit here today, do you know whether the city
2 paid out costs associated with the relocation of
3 Puget Sound Energy's electrical facilities on the
4 Henderson Boulevard and Old Highway 99 project?

5 A I believe that we paid all the costs associated
6 with the relocation of the facilities that were
7 located on that easement. There were additional
8 facilities located outside of the easement that we
9 did not incur any costs for.

10 Q Do you know when you made the payment on that?

11 A No, I don't.

12 Q Okay.

13 MR. WILLIAMS: Why don't we take a
14 break.

15 (RECESS TAKEN.)

16 (EXHIBIT NO. 27 MARKED.)

17 Q (Continuing by Mr. Williams) Let's go back on the
18 record.

19 Mr. Eaton, we were talking about the Henderson
20 and Old Highway 99 project and the fact that it was
21 on the same easement that PSE asserts rights to in
22 terms of the Tumwater Boulevard widening project.

23 Do you recall that discussion?

24 A Yes.

25 Q Do you recall anyone from your office challenging

1 PSE's assertion that 100 percent of the relocation
2 cost for design and work should be borne by Puget
3 Sound Energy under the franchise agreement when you
4 talked about the Henderson project?

5 A No.

6 Q Why not?

7 A Why don't I recall that?

8 Q No. Do you know why that wasn't raised?

9 A Speaking for myself, we were under the same
10 impression as we were with the assertion as it
11 related to Tumwater Boulevard and didn't
12 differentiate between the two projects.

13 Q So in September of 2005, though, you say that the
14 city attorney caused there to be a change in view
15 on the relocation cost issue, correct?

16 A Correct.

17 Q And her view was on relocation that 100 percent of
18 that was owed by Puget Sound Energy because of the
19 franchise agreement, correct?

20 A Correct.

21 Q So do you know why the city of Tumwater decided to
22 move forward with paying for 100 percent of the
23 relocation costs on the Henderson project?

24 A It was prior to city attorney Todd's conclusion or
25 revelation that PSE was responsible for those

1 costs.

2 Q Okay. I want to show you what's been marked as

3 Exhibit 27.

4 A (Witness reviewing document.)

5 Q Have you ever seen Exhibit 27 before, sir?

6 A Not to my recollection.

7 Q Okay.

8 A But, again, I would presume that I very well may

9 have.

10 Q What does it appears to be?

11 A It's an invoice from Puget Sound Energy to the city

12 of Tumwater for costs incurred for relocation at

13 the Henderson Boulevard and Old Highway 99 project.

14 Q And that's the project we've just been discussing,

15 correct?

16 A Correct.

17 Q Do you know whether the city moved -- let me back

18 up. This invoice is dated August 15, 2006,

19 correct?

20 A Correct.

21 Q So this is almost a year after the city attorney

22 has determined that relocation costs should be

23 borne 100 percent by Puget Sound Energy, correct?

24 A Correct.

25 Q Do you know whether the city paid this invoice for

1 all the costs associate with relocating PSE's
2 facilities on the Henderson Boulevard and Old
3 Highway 99 project?

4 A I believe that we did pay this.

5 Q Do you know why you paid it?

6 A Because we agreed to in the agreement that we
7 executed.

8 MR. WILLIAMS: No further questions.

9 MR. PATTON: No questions.

10 He'll reserve signature.

11 (DEPOSITION CONCLUDED

12 AT 2:45 P.M.)

13

14 (SIGNATURE RESERVED.)

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April 16, 2003

Mr. Jay C. Eaton, P.E.
Director of Public Works
555 Isreal Road S.W.
Tumwater, WA 98501

COPY

RE: Airdustrial Way Widening Project

Dear Mr. Eaton:

As we discussed by telephone on April 9th, Puget Sound Energy (PSE) has completed its rights review for electrical facilities located in Tumwater along Airdustrial Way SW between Linderson Way SE eastward to Market Street SW. We have determined that private easement rights cover all of PSE facilities lying in those areas designated as Airdustrial Way SW west of Old Highway 99. Our rights are derived from an easement document recorded on December 8, 1981 under Thurston County Auditor's file No. 8112080070.

Over the years Airdustrial Way SE has been built up and extended over the area where PSE has underlying easement rights. Because the PSE easement pre-dates the City's right-of-way, PSE has superior rights in this area. Therefore, all of the costs for converting or relocating PSE facilities located within our easement area are reimbursable by the City.

I would like to arrange a meeting with Jim Shoopman and you to discuss our rights review and ensure the City concurs with our analysis. We may want to take the opportunity to discuss how the City might be able to redesign its project to avoid or lessen conflicts with PSE facilities and thereby reduce costs associated with relocating such facilities. We could also discuss the agreements that PSE and the City would need to execute prior to converting or relocating PSE's facilities.

I will call to find out when you have time available to meet with us. Bob Lawrence, Sandy Leek, Shawn Greninger and I would like to attend the meeting on behalf of PSE.

Following our meeting, PSE will prepare a revised preliminary cost estimate that will cover the City's requested conversion of overhead facilities and relocation of underground vaults within the boundaries of the City's Airdustrial Way Widening Project. The preliminary estimate we provide will not include surveying, trenching and restoration, which would also be 100% the City's responsibility. The preliminary estimate will not include any unforeseen circumstances, which may be encountered during construction, or the cost for additional operating rights that may be necessary. The preliminary estimate will not be based on detailed design, which would be completed only after PSE and the City sign a design agreement and the City provides PSE with a

EXHIBIT	8
WIT:	Eaton
DATE:	2-7-07
RANDI HAMILTON, CCR	

written notice to proceed with design work. After the design work is completed a more accurate cost estimate will be prepared based on the detailed design.

Do not hesitate to call me at (253) 476-6037 if you have any questions or need additional information. I look forward to continuing to work with you on this project.

Sincerely,

A handwritten signature in cursive script, appearing to read "Barry Lombard".

Barry Lombard
Municipal Liaison Manager

cc: Jim Shoopman, City of Tumwater

*approved on
Consent agenda*

AGENDA ITEM NO. 7d
MEETING DATE: April 20, 2004

TO: Doug Baker, City Administrator
FOR: City Council
FROM: Public Works Committee
RE: Puget Sound Energy's Design Agreement for Tumwater Boulevard

1) References: (List only those attached)

A. Agreement

2) Action Requested / Staff Recommendation:

The Public Works Committee recommends the City Council approve and authorize the Mayor to sign the Project Design Agreement with Puget Sound Energy (PSE) for the first phase of work required for the underground conversion of the overhead utilities.

3) History & Facts Brief:

PSE's Electric Tariff G, Schedule 74, provides the rules and conditions for the process and cost sharing when a municipality wishes to convert overhead power infrastructure within their jurisdiction to an underground system. The tariff is regulated by Washington Utilities and Transportation Commission.

Under the terms of the tariff, Puget Sound Energy requires the execution of a Project Design Agreement which, among other things, provides for reimbursement of the design costs upon completion of the design work. Following execution of the agreement by the city, PSE will prepare a good faith estimate of the cost to perform the design work and a proposed schedule for the completion of the design. If the estimated costs are acceptable to the city, a notice to proceed will be issued to PSE.

A similar agreement for construction work will need to be executed subsequent to completion of the design. When applicable, any cost sharing would be credited at construction.

4) Discussion & Alternatives:

There is no cost sharing for the work on this project because the facilities are in a utility easement that predates the city's right-of-way ownership. The city will be required to pay all costs for relocating and/or converting PSE's electrical facilities from overhead to underground.

SR 04019cc

EXHIBIT 11
WIT: Eaton
DATE: 2-7-07
RANDI HAMILTON, CCR

City Council

April 20, 2004

Puget Sound Energy's Design Agreement for Tumwater Boulevard

Page Two

5) Fiscal Notes:

The preliminary cost estimate to bury the existing overhead system is between \$72,000 and \$108,000, and is included in the cost of the project.

"A"

SCHEDULE 74 UNDERGROUND CONVERSION

Project Design Agreement

Project Name: Tumwater – Tumwater Boulevard Widening Project

Project Number: _____

THIS Agreement, dated as of this ____ day of _____, 2004, is made by and between the City of Tumwater (the "Government Entity"), and PUGET SOUND ENERGY, Inc., a Washington Corporation (the "Company").

RECITALS

A. The Company is a public service company engaged in the sale and distribution of electric energy and, pursuant to its franchise or other rights from the Government Entity, currently locates its electric distribution facilities within the jurisdictional boundaries of the Government Entity.

B. The Government Entity is considering conversion of the Company's existing overhead electric distribution system to a comparable underground electric distribution, as more specifically described in the Scope of Work (as defined in paragraph 2, below) furnished to the Company by the Government Entity (the "Conversion Project").

C. The Government Entity has requested that the Company perform certain engineering design services and otherwise work cooperatively with the Government Entity to develop a mutually acceptable Project Plan (as defined in paragraph 6, below) for the Conversion Project, in accordance with and subject to the terms and conditions of this Agreement (the "Design Work").

D. The Government Entity and the Company wish to execute this written contract in accordance with Schedule 74 of the Company's Electric Tariff G ("Schedule 74") to govern the Design Work for the Conversion Project.

AGREEMENT

The Government Entity and the Company therefore agree as follows:

1. Unless specifically defined otherwise herein, all terms defined in Schedule 74 shall have the same meanings when used in this Agreement.
2. The Government Entity shall, within ten (10) business days after the date of this Agreement, provide the Company with a written scope of work for the Conversion Project which includes, among other things, (a) a reasonably detailed description of the scope of the work required for the Conversion Project, (b) a list of the key milestone dates for the Conversion Project, (c) reasonably detailed drawings showing any associated planned improvements to the Public Thoroughfare, and (d) a statement as to whether the Government Entity desires to install the ducts and vaults for the Conversion Project (the "Scope of Work"). The Government Entity shall provide the Company two (2) hard copies of the Scope of Work and a copy of the relevant electronic file(s) in a mutually agreed electronic format.
3. Within ten (10) business days of its receipt of the Scope of Work, the Company shall prepare and submit to the Government Entity (a) a reasonably detailed, good faith estimate of the cost to perform the Design Work (the "Design Cost Estimate"), and (b) a proposed schedule for completion of the Design Work which, to the extent reasonably practicable, reflects the applicable key milestone dates

Design Agreement, Attachment "A" to Schedule 74, Page 1
Tumwater Boulevard Widening Project

TUM 00376

specified in the Scope of Work and provides for completion of the Design Work within ninety (90) business days from the date the Company receives the Government Entity's notice to proceed under paragraph 5, below (the "Design Schedule"). The proposed Design Cost Estimate and the proposed Design Schedule shall be based upon the then-current Scope of Work. Unless otherwise specified in the Scope of Work, the Design Work shall not include negotiation or acquisition of third party property rights but shall include preliminary planning between the Company and the Government Entity regarding their respective obligations for negotiating and acquiring third party property rights.

4. Within ten (10) business days after the Government Entity's receipt of the proposed Design Cost Estimate and the proposed Design Schedule from the Company, the Government Entity and the Company shall meet in order to (a) review the proposed Design Cost Estimate, (b) review the proposed Design Schedule; (c) review the Scope of Work, and (d) make any changes necessary to create a final Scope of Work, final Design Cost Estimate, and final Design Schedule that are reasonably acceptable to both parties. If the parties are unable to agree upon a final version of the Scope of Work, Design Cost Estimate, and/or Design Schedule, then either party may, by written notice to the other party, submit the matter for resolution pursuant to the dispute resolution procedures in paragraph 16, below. The final Scope of Work, Design Cost Estimate and Design Schedule, once determined in accordance with this paragraph 4, may thereafter be changed or amended only in accordance with the change procedures set forth in paragraph 13, below.
5. The Government Entity shall, within ten (10) business days after determination of the final of the Scope of Work, Design Cost Estimate, and Design Schedule, issue (a) a written notice to proceed which shall delineate the final Scope of Work, Design Cost Estimate, and Design Schedule, or (b) a written notice to terminate this Agreement without cost to the Government Entity. If the Government Entity terminates this Agreement, the costs incurred by the Company in preparing and submitting the Design Cost Estimate and the Design Schedule shall not be reimbursable to the Company, and the rights and obligations of the parties under this Agreement shall be terminated in their entirety and without liability to either party.
6. Following the Company's receipt of the notice to proceed, and within the applicable time period specified in the Design Schedule, the Company shall, with the cooperation and assistance of the Government Entity as outlined in this Agreement, prepare a project plan for the Conversion Project (the "Project Plan") which shall include, among other things, the following: (a) a detailed description of the work that is required to be performed by each party and any third party in connection with the Conversion Project (the "Construction Work"), (b) the applicable requirements, drawings, and specifications for the Construction Work, (c) a description of any operating and other property rights that are required to be obtained by each party for the Conversion Project (and the requirements and specifications with respect thereto), (d) a detailed estimate of the costs to be incurred by each party in its performance of the Construction Work, and (e) a detailed schedule for completing the Construction Work (including, without limitation, the dates for delivery of the ducts and vaults and other materials for use at the site of the Construction Work).
7. The Government Entity shall be responsible for coordinating the Design Work with all other design work to be performed in connection with the Conversion Project and any associated planned improvements to the Public Thoroughfare. The parties shall work together in an effort to mitigate the costs of the Conversion Project to each party, including, without limitation, identifying ways to accommodate the facilities of the Company to be installed as part of the Conversion Project within the Public Thoroughfare.
8. Within the applicable time period specified in the Design Schedule, the Company shall prepare and submit to the Government Entity a proposed initial draft of the Project Plan. The parties understand and acknowledge that the proposed Project Plan submitted by the Company shall be preliminary in nature and shall not include, without limitation, information required to be supplied by the Government Entity (e.g., scope and estimate of the cost of the Construction Work to be performed by the Government Entity).

9. Within the applicable time period specified in the Design Schedule, the Government Entity shall (a) review the proposed Project Plan submitted by the Company, (b) complete any information required to be supplied by the Government Entity, (c) make any changes required to conform the proposed Project Plan to the Scope of Work and this Agreement, and (d) return the amended Project Plan to the Company.
10. Within the applicable time period specified in the Design Schedule, the Company shall review the amended Project Plan submitted by the Government Entity and notify the Government Entity in writing of either the Company's acceptance of, or the Company's specific objections to, the amended Project Plan. If the Company makes any objection to the amended Project Plan, and the parties are unable to resolve the objections and mutually agree upon the Project Plan prior to the final design date specified in the Design Schedule, then either party may, by written notice to the other party, submit the matter for resolution pursuant to the dispute resolution procedures in paragraph 18, below. The Project Plan, as mutually agreed upon by the parties or established through the dispute resolution process, shall be attached to and incorporated in a Project Construction Agreement substantially in the form attached hereto as Exhibit A (the "Construction Agreement") which is to be signed by the parties prior to commencement of the Construction Work.
11. The parties intend and agree that the Design Work and the Project Plan in its final form shall conform to the following requirements:
 - (a) The Project Plan shall, if requested by the Government Entity in its initial Scope of Work, specify that the Government Entity shall install the ducts and vaults for the Conversion Project; provided that (i) the parties mutually agree upon and set forth in the Project Plan (A) the costs of such installation work to be included in the Cost of Conversion, and (B) the specifications and standards applicable to such installation work, and (ii) such installation work is accomplished by the Government Entity in accordance with the applicable design and construction specifications provided by the Company and set forth in the Project Plan.
 - (b) Each estimate of the costs to be incurred by a party shall, at a minimum, be broken down by (i) the design and engineering costs, (ii) property and related costs, including any costs of obtaining operating rights, and (iii) construction costs, including and listing separately inspection, labor, materials, and equipment.
 - (c) All facilities of the Company installed as part of the Conversion Project shall be located, and all related property and operating rights shall be obtained, in the manner set forth in the applicable provisions of Schedule 74. The Project Plan shall describe in detail the location of such facilities, any related property and operating rights required to be obtained, and the relative responsibilities of the parties with respect thereto.
 - (d) The schedule set forth in the Project Plan for completing the Construction Work shall include, at a minimum, milestone time periods for completion of the Trenching, installation of ducts and vaults, the construction and removal of any Temporary Service, and the removal of overhead facilities.
 - (e) The Project Plan may include the specification of work and requirements for Government-Requested Upgrades and Company-Initiated Upgrades; provided, however, that the costs incurred by the Company with respect to the design and engineering of Company-Initiated Upgrades shall not be included in the costs reimbursable to the Company under this Agreement or the Construction Agreement. For purposes of the foregoing, (i) the term "Government-Requested Upgrade" shall mean any feature of the Underground Distribution System which is requested by the Government Entity and is not reasonably required to make the Underground Distribution System comparable to the overhead distribution system being replaced, and (ii) the term "Company-Initiated Upgrade" shall mean any feature of the Underground Distribution System which is required by the Company and is not reasonably required to make the Underground Distribution System comparable to the overhead distribution system being replaced. For

purposes of subparagraph (ii), above, a "comparable" system shall include, unless the parties otherwise agree, the number of empty ducts (not to exceed two (2), typically having a diameter of 6" or less) of such diameter and number as may be specified and agreed upon in the final Scope of Work necessary to replicate the load-carrying capacity (system amperage class) of the overhead system being replaced. For purposes of subparagraph (i), above, any empty ducts installed at the request of the Government Entity shall be a Government-Requested Upgrade.

- (f) The Project Plan shall set forth all specifications, design standards and other requirements for the Construction Work and the Conversion Project, including, but not limited to, the following:
 - (i) applicable federal and state safety and electric codes and standards, (ii) applicable construction and other standards of the Company, and (iii) applicable street design and other standards of the Government Entity which are in effect as of the commencement of the Conversion Project.

12. Upon request of the Government Entity, and in any event at the times specified in the Design Schedule, the Company shall provide periodic reports which compare the actual costs of the Design Work incurred to that point in time to the Design Cost Estimate, as changed or amended in accordance with paragraph 13, below. Further, if at any time the Company reasonably expects that the actual cost of the Design Work will exceed the Design Cost Estimate, as changed or amended in accordance with paragraph 13, below, the Company shall notify the Government Entity immediately. Upon receipt of the Company's notice, the Government Entity may, at its option,

- (a) notify the Company in writing that this Agreement is terminated; or
- (b) request a reasonably detailed explanation supported by documentation (reasonably satisfactory to the Government Entity) to establish that the actual costs in excess of the Design Cost Estimate are:
 - (i) reasonable,
 - (ii) consistent with the Scope of Work, and
 - (iii) consistent with sound engineering practices.

If the Government Entity requests an explanation, the Government Entity shall, within ten (10) business days after receipt of the explanation,

- (a) change the Scope of Work in accordance with paragraph 13, below, or
- (b) direct the Company to continue with the Design Work without a change in the Scope of Work, but reserving to the Government Entity the right to dispute the reasonableness of the costs to be paid the Company under paragraph 14, below, in accordance with the dispute resolution procedures in paragraph 16, below, or
- (c) direct the Company to discontinue performing the Design Work pending resolution, pursuant to paragraph 16, below, of any dispute regarding the reasonableness of the costs, in which event the Design Schedule will be adjusted to reflect the delay, or
- (d) notify the Company in writing that this Agreement is terminated.

In the event the Government Entity terminates this Agreement or discontinues the performance of the Design Work under subparagraph (c), above, for more than ninety (90) days, the Government Entity shall pay the Company for all costs incurred by the Company in its performance of the Design Work prior to the date the Company receives the Government Entity's notice of termination, plus any costs incurred by the Company for materials and other items ordered or procured by the Company with the prior authorization of the Government Entity in order to meet the schedule for the Conversion Project. The foregoing payment obligation shall survive any termination of this Agreement.

13. (a) Either party may, at any time, by written notice thereof to the other party, request changes to the Scope of Work (a "Request for Change"). No Request for Change shall be effective and binding upon the parties unless signed by an authorized representative of each party. If any approved Request for Change would cause an increase in the cost of, or the time required for, the performance of any part of the Design Work, an equitable adjustment in the Design Cost Estimate and the Design Schedule shall be made to reflect such increase. The parties shall negotiate in good faith with the objective of agreeing in writing on a mutually acceptable equitable adjustment. If the parties are unable to agree upon the terms of the equitable adjustment, either party may submit the matter for resolution pursuant to the dispute resolution procedures in paragraph 16, below. Notwithstanding any dispute or delay in reaching agreement or arriving at a mutually acceptable equitable adjustment, each party shall, if requested by the other party, proceed with the Design Work in accordance with the Request for Change. Any such request to proceed must be accompanied by a written statement setting forth the requesting party's reasons for rejecting the proposed equitable adjustment of the other party.
- (b) The Design Cost Estimate and/or the Design Schedule shall be equitably adjusted from time to time to reflect any change in the costs or time required to perform the Design Work to the extent such change is caused by: (i) any Force Majeure Event under paragraph 17, below, (ii) the discovery of any condition within the Conversion Area which affects the scope, cost, schedule or other aspect of the Design Work and was not known by or disclosed to the affected party prior to the date of this Agreement, or (iii) any change or inaccuracy in any assumptions regarding the scope, cost, schedule or other aspect of the Design Work which are expressly identified by the parties in the final Scope of Work. Upon the request of either party, the parties will negotiate in good faith with the objective of agreeing in writing on a mutually acceptable equitable adjustment. If, at any time thereafter, the parties are unable to agree upon the terms of the equitable adjustment, either party may submit the matter for resolution pursuant to the dispute resolution provisions in paragraph 16, below.
14. Upon completion of the Design Work (i.e., the date on which the Project Plan is final under paragraph 10, above, either by mutual agreement of the parties or as established through the dispute resolution procedures), the Government Entity shall pay the Company all actual, reasonable costs to the Company for the Design Work (which, if disputed in good faith by the Government Entity, may be submitted by either party for resolution pursuant to the dispute resolution provisions in paragraph 16, below), plus any costs incurred by the Company for materials and other items ordered by the Company with the prior authorization of the Government Entity in order to meet the schedule for the Conversion Project. If, thereafter, the Construction Agreement is executed by the parties and the Conversion Project is completed within five (5) years from the date of this Agreement, the full amount of the costs incurred by the Company in its performance of the Design Work shall be included in the "Shared Company Costs" under the Construction Agreement and any payment of such amounts under this Agreement shall be credited to the Government Entity in calculating the "Net Amount" payable under the Construction Agreement.
15. Within sixty (60) business days after completion of the Design Work, the Company shall issue to the Government Entity an itemized invoice for the amounts payable under this Agreement. Such invoice shall be in a form mutually agreed upon by the Company and the Government Entity and shall, at a minimum, itemize the design and engineering costs, including and listing separately inspection, labor, materials and equipment. In the event the Government Entity does not verify such invoice within ten (10) business days of receipt, the Government Entity shall provide a written request to the Company specifying the additional information needed to verify the invoice. The Company will provide, within a reasonable period after receipt of any request, such documentation and information as the Government Entity may reasonably request to verify such invoice. The Government Entity shall pay the Company all amounts payable under this Agreement within thirty (30) days after receipt of the Company's invoice. Payment as provided in this Agreement shall be full compensation for the Company's performance of the Design Work, including without limitation all services rendered and all materials, supplies, equipment, and incidentals necessary to complete the Design Work.

16. Dispute Resolution Procedures:

- (a) Any dispute, disagreement or claim arising out of or concerning this Agreement must first be presented to and considered by the parties. A party who wishes dispute resolution shall notify the other party in writing as to the nature of the dispute. Each party shall appoint a representative who shall be responsible for representing the party's interests. The representatives shall exercise good faith efforts to resolve the dispute. Any dispute that is not resolved within ten (10) business days of the date the disagreement was first raised by written notice shall be referred by the parties' representatives in writing to the senior management of the parties for resolution. In the event the senior management are unable to resolve the dispute within twenty (20) business days (or such other period as the parties may agree upon), each party may pursue resolution of the dispute through other legal means consistent with the terms of this Agreement. All negotiations pursuant to these procedures for the resolution of disputes shall be confidential and shall be treated as compromise and settlement negotiations for purposes of the state and federal rules of evidence.
 - (b) Any claim or dispute arising hereunder which relates to the Scope of Work, Design Cost Estimate, and Design Schedule under paragraph 4, above; the Project Plan under paragraph 10, above; or any Request for Change (including, without limitation, any associated equitable adjustment) under paragraph 13, above; and is not resolved by senior management within the time permitted under paragraph 16(a), above, shall be resolved by arbitration in Seattle, Washington, under the Construction Industry Arbitration Rules of the American Arbitration Association then in effect. The decision(s) of the arbitrator(s) shall be final, conclusive and binding upon the Parties. All other disputes shall be resolved by litigation in any court or governmental agency, as applicable, having jurisdiction over the Parties and the dispute.
 - (c) In connection with any arbitration under this paragraph 16, costs of the arbitrator(s), hearing rooms and other common costs shall be divided equally among the parties. Each party shall bear the cost and expense of preparing and presenting its own case (including, but not limited to, its own attorneys' fees); provided, that, in any arbitration, the arbitrator(s) may require, as part of his or her decision, reimbursement of all or a portion of the prevailing party's costs and expenses by the other party.
 - (d) Unless otherwise agreed by the parties in writing, the parties shall continue to perform their respective obligations under this Agreement during the pendency of any dispute.
17. In the event that either party is prevented or delayed in the performance of any of its obligations under this Agreement by reason beyond its reasonable control (a "Force Majeure Event"), then that party's performance shall be excused during the Force Majeure Event. Force Majeure Events shall include, without limitation, war; civil disturbance; flood, earthquake or other Act of God; storm, earthquake or other condition which necessitates the mobilization of the personnel of a party or its contractors to restore utility service to customers; laws, regulations, rules or orders of any governmental agency; sabotage; strikes or similar labor disputes involving personnel of a party, its contractors or a third party; or any failure or delay in the performance by the other party, or a third party who is not an employee, agent or contractor of the party claiming a Force Majeure Event, in connection with the Work or this Agreement. Upon removal or termination of the Force Majeure Event, the party claiming a Force Majeure Event shall promptly perform the affected obligations in an orderly and expedited manner under this Agreement or procure a substitute for such obligation. The parties shall use all commercially reasonable efforts to eliminate or minimize any delay caused by a Force Majeure Event.
18. This Agreement is subject to the General Rules and Provisions set forth in Tariff Schedule 80 of the Company's electric Tariff G and to Schedule 74 of such Tariff as approved by the Washington Utilities and Transportation Commission and in effect as of the date of this Agreement.

19. Any notice under this Agreement shall be in writing and shall be faxed (with a copy followed by mail or hand delivery), delivered in person, or mailed, properly addressed and stamped with the required postage, to the intended recipient as follows:

If to the Government Entity:

City of Tumwater
555 Isreal Road S.W.
Tumwater, WA
Attn: Mr. Jay Eaton, PE
Fax: 360/754-4142

If to the Company:

Puget Sound Energy, Inc.
3130 South 38th Street TAC-LL
Tacoma, WA 98409
Attn: Barry Lombard
Fax: 253/476-6037

Either party may change its address specified in this paragraph by giving the other party notice of such change in accordance with this paragraph.

20. This Agreement shall in all respects be interpreted, construed and enforced in accordance with the laws of the State of Washington (without reference to rules governing conflict of laws), except to the extent such laws may be preempted by the laws of the United States of America.
21. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and all other agreements and understandings of the Parties, whether written or oral, with respect to the subject matter of this Agreement are hereby superseded in their entirety.
22. This Agreement shall be binding upon and inure to the benefit of the respective successors, assigns, purchasers, and transferees of the parties, including but not limited to, any entity to which the rights or obligations of a party are assigned, delegated, or transferred in any corporate reorganization, change of organization, or purchase or transfer of assets by or to another corporation, partnership, association, or other business organization or division thereof.

Government Entity:

Company:

CITY OF TUMWATER

PUGET SOUND ENERGY, INC.

BY _____

BY _____

Ralph C. Osgood
ITS Mayor

ITS Municipal Liaison Manager

Date Signed _____

Date Signed _____

Approved as to form:

Christy A. Todd

ATTEST:

Gayla L. Gjertsen, Clerk/Treasurer

**TUMWATER CITY COUNCIL MEETING
MINUTES OF MEETING
April 20, 2004 Page 4 of 20**

COMMITTEE:
Neil McClanahan

**THURSTON
COMMUNITY
TELEVISION:**
Neil McClanahan

The board discussed membership and its role pertaining to fundraising efforts. Members also reviewed program and personnel reductions.

**THURSTON COUNTY
EMERGENCY MEDICAL
SERVICES COUNCIL:**
Bruce Zeller

The council discussed the "Red Report." The report is a review of emergency medical services throughout Thurston County. Information also includes how emergency services are distributed throughout the county and response times.

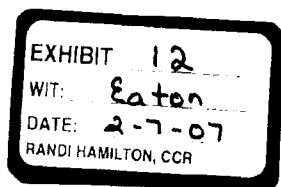
LOTT ALLIANCE:
Bruce Zeller

On Monday, May 3, LOTT will host a Water Quality Summit for policymakers to begin discussions about water quality that not only impacts potable water but wastewater as well. Members received a presentation on the scientific study on water quality within Budd Inlet.

CONSENT CALENDAR:

- a. Approval of Minutes: April 6, 2004
- b. Ordinance No. O2004-012, Budget Amendment
- c. Resolution No. R2004-008, Vacation of a Portion of Rural Avenue
- d. Puget Sound Energy's Design Agreement for Tumwater Boulevard
- e. Firefighter Wage Settlement for 2004 and 2005
- f. Construction Closure of Case Road – 88th Avenue to 93rd Avenue

Councilmember Murphy pulled item b for additional clarification about the funding request by the Development Services Department. Director Gellenbeck reported the department was not able to complete permits quickly. Permit issuing has increased from 30 days to three months or more. The proposal is to increase both the plan review and building inspection fees. The budget request is to fund a position that can cover both areas. Depending on the activity, the position could perform plan review or field inspections.



Mayor Osgood explained that although the City receives permit fees up front, the request for \$42,000 is to meet service commitments to reduce the time frame for issuing permits and conducting inspections.

MOTION:

Councilmember Valenzuela moved, seconded by Councilmember Murphy, to approve the consent calendar as presented. Motion carried.

SPECIAL ITEMS:

**PROCLAMATION --
DINE OUT FOR LIFE
DAY, APRIL 29, 2004:**

A proclamation proclaiming April 29, 2004 as "Dine Out For Life Day" in the City of Tumwater to unite against HIV/AIDS by participating in community events and supporting the United Community AIDS Network through support of programs and the use of community resources to help



PUGET
SOUND
ENERGY

COPY

May 17, 2004

Mr. Jay Eaton
Director of Public Works
555 Israel Road S.W.
Tumwater, WA 98501

**RE: Tumwater Boulevard Widening Project
Schedule 74 Underground Conversion Project Design Agreement**

Dear Mr. Eaton:

Enclosed is a fully executed original of the above referenced agreement for designing the conversion of overhead electrical facilities to underground along Tumwater Boulevard in Tumwater.

Within ten (10) days, Puget Sound Energy (PSE) will provide the City with a design cost estimate and design schedule for design of the conversion project. After the City has had the opportunity to review this information, if you like, we can meet to discuss and finalize it. Once the City and PSE agree on the scope of work, design cost estimate and design schedule, the City must issue a Notice to Proceed before PSE will initiate design work for the conversion project. The City will not incur any costs until it provides PSE with the written Notice to Proceed.

Do not hesitate to call me at (253) 476-6037 if you have any questions or need additional information. I look forward to working with you on this project.

Sincerely,

Barry Lombard
Municipal Liaison Manager

cc: Jim Shoopman, City of Tumwater

Enclosure

EXHIBIT	13
WIT:	Eaton
DATE:	2-7-07
RANDI HAMILTON, CCR	

SCHEDULE 74 UNDERGROUND CONVERSION

Project Design Agreement

COPY

Project Name: Tumwater – Tumwater Boulevard Widening Project

Project Number: 10475804

THIS Agreement, dated as of this 17th day of May, 2004, is made by and between the City of Tumwater (the "Government Entity"), and PUGET SOUND ENERGY, Inc., a Washington Corporation (the "Company").

RECITALS

A. The Company is a public service company engaged in the sale and distribution of electric energy and, pursuant to its franchise or other rights from the Government Entity, currently locates its electric distribution facilities within the jurisdictional boundaries of the Government Entity.

B. The Government Entity is considering conversion of the Company's existing overhead electric distribution system to a comparable underground electric distribution, as more specifically described in the Scope of Work (as defined in paragraph 2, below) furnished to the Company by the Government Entity (the "Conversion Project").

C. The Government Entity has requested that the Company perform certain engineering design services and otherwise work cooperatively with the Government Entity to develop a mutually acceptable Project Plan (as defined in paragraph 6, below) for the Conversion Project, in accordance with and subject to the terms and conditions of this Agreement (the "Design Work").

D. The Government Entity and the Company wish to execute this written contract in accordance with Schedule 74 of the Company's Electric Tariff G ("Schedule 74") to govern the Design Work for the Conversion Project.

AGREEMENT

The Government Entity and the Company therefore agree as follows:

1. Unless specifically defined otherwise herein, all terms defined in Schedule 74 shall have the same meanings when used in this Agreement.
2. The Government Entity shall, within ten (10) business days after the date of this Agreement, provide the Company with a written scope of work for the Conversion Project which includes, among other things, (a) a reasonably detailed description of the scope of the work required for the Conversion Project, (b) a list of the key milestone dates for the Conversion Project, (c) reasonably detailed drawings showing any associated planned improvements to the Public Thoroughfare, and (d) a statement as to whether the Government Entity desires to install the ducts and vaults for the Conversion Project (the "Scope of Work"). The Government Entity shall provide the Company two (2) hard copies of the Scope of Work and a copy of the relevant electronic file(s) in a mutually agreed electronic format.
3. Within ten (10) business days of its receipt of the Scope of Work, the Company shall prepare and submit to the Government Entity (a) a reasonably detailed, good faith estimate of the cost to perform the Design Work (the "Design Cost Estimate"), and (b) a proposed schedule for completion of the Design Work which, to the extent reasonably practicable, reflects the applicable key milestone dates

specified in the Scope of Work and provides for completion of the Design Work within ninety (90) business days from the date the Company receives the Government Entity's notice to proceed under paragraph 5, below (the "Design Schedule"). The proposed Design Cost Estimate and the proposed Design Schedule shall be based upon the then-current Scope of Work. Unless otherwise specified in the Scope of Work, the Design Work shall not include negotiation or acquisition of third party property rights but shall include preliminary planning between the Company and the Government Entity regarding their respective obligations for negotiating and acquiring third party property rights.

4. Within ten (10) business days after the Government Entity's receipt of the proposed Design Cost Estimate and the proposed Design Schedule from the Company, the Government Entity and the Company shall meet in order to (a) review the proposed Design Cost Estimate, (b) review the proposed Design Schedule; (c) review the Scope of Work, and (d) make any changes necessary to create a final Scope of Work, final Design Cost Estimate, and final Design Schedule that are reasonably acceptable to both parties. If the parties are unable to agree upon a final version of the Scope of Work, Design Cost Estimate, and/or Design Schedule, then either party may, by written notice to the other party, submit the matter for resolution pursuant to the dispute resolution procedures in paragraph 16, below. The final Scope of Work, Design Cost Estimate and Design Schedule, once determined in accordance with this paragraph 4, may thereafter be changed or amended only in accordance with the change procedures set forth in paragraph 13, below.
5. The Government Entity shall, within ten (10) business days after determination of the final of the Scope of Work, Design Cost Estimate, and Design Schedule, issue (a) a written notice to proceed which shall delineate the final Scope of Work, Design Cost Estimate, and Design Schedule, or (b) a written notice to terminate this Agreement without cost to the Government Entity. If the Government Entity terminates this Agreement, the costs incurred by the Company in preparing and submitting the Design Cost Estimate and the Design Schedule shall not be reimbursable to the Company, and the rights and obligations of the parties under this Agreement shall be terminated in their entirety and without liability to either party.
6. Following the Company's receipt of the notice to proceed, and within the applicable time period specified in the Design Schedule, the Company shall, with the cooperation and assistance of the Government Entity as outlined in this Agreement, prepare a project plan for the Conversion Project (the "Project Plan") which shall include, among other things, the following: (a) a detailed description of the work that is required to be performed by each party and any third party in connection with the Conversion Project (the "Construction Work"), (b) the applicable requirements, drawings, and specifications for the Construction Work, (c) a description of any operating and other property rights that are required to be obtained by each party for the Conversion Project (and the requirements and specifications with respect thereto), (d) a detailed estimate of the costs to be incurred by each party in its performance of the Construction Work, and (e) a detailed schedule for completing the Construction Work (including, without limitation, the dates for delivery of the ducts and vaults and other materials for use at the site of the Construction Work).
7. The Government Entity shall be responsible for coordinating the Design Work with all other design work to be performed in connection with the Conversion Project and any associated planned improvements to the Public Thoroughfare. The parties shall work together in an effort to mitigate the costs of the Conversion Project to each party, including, without limitation, identifying ways to accommodate the facilities of the Company to be installed as part of the Conversion Project within the Public Thoroughfare.
8. Within the applicable time period specified in the Design Schedule, the Company shall prepare and submit to the Government Entity a proposed initial draft of the Project Plan. The parties understand and acknowledge that the proposed Project Plan submitted by the Company shall be preliminary in nature and shall not include, without limitation, information required to be supplied by the Government Entity (e.g., scope and estimate of the cost of the Construction Work to be performed by the Government Entity).

9. Within the applicable time period specified in the Design Schedule, the Government Entity shall (a) review the proposed Project Plan submitted by the Company, (b) complete any information required to be supplied by the Government Entity, (c) make any changes required to conform the proposed Project Plan to the Scope of Work and this Agreement, and (d) return the amended Project Plan to the Company.
10. Within the applicable time period specified in the Design Schedule, the Company shall review the amended Project Plan submitted by the Government Entity and notify the Government Entity in writing of either the Company's acceptance of, or the Company's specific objections to, the amended Project Plan. If the Company makes any objection to the amended Project Plan, and the parties are unable to resolve the objections and mutually agree upon the Project Plan prior to the final design date specified in the Design Schedule, then either party may, by written notice to the other party, submit the matter for resolution pursuant to the dispute resolution procedures in paragraph 16, below. The Project Plan, as mutually agreed upon by the parties or established through the dispute resolution process, shall be attached to and incorporated in a Project Construction Agreement substantially in the form attached hereto as Exhibit A (the "Construction Agreement") which is to be signed by the parties prior to commencement of the Construction Work.
11. The parties intend and agree that the Design Work and the Project Plan in its final form shall conform to the following requirements:
 - (a) The Project Plan shall, if requested by the Government Entity in its initial Scope of Work, specify that the Government Entity shall install the ducts and vaults for the Conversion Project; provided that (i) the parties mutually agree upon and set forth in the Project Plan (A) the costs of such installation work to be included in the Cost of Conversion, and (B) the specifications and standards applicable to such installation work, and (ii) such installation work is accomplished by the Government Entity in accordance with the applicable design and construction specifications provided by the Company and set forth in the Project Plan.
 - (b) Each estimate of the costs to be incurred by a party shall, at a minimum, be broken down by (i) the design and engineering costs, (ii) property and related costs, including any costs of obtaining operating rights, and (iii) construction costs, including and listing separately inspection, labor, materials, and equipment.
 - (c) All facilities of the Company installed as part of the Conversion Project shall be located, and all related property and operating rights shall be obtained, in the manner set forth in the applicable provisions of Schedule 74. The Project Plan shall describe in detail the location of such facilities, any related property and operating rights required to be obtained, and the relative responsibilities of the parties with respect thereto.
 - (d) The schedule set forth in the Project Plan for completing the Construction Work shall include, at a minimum, milestone time periods for completion of the Trenching, installation of ducts and vaults, the construction and removal of any Temporary Service, and the removal of overhead facilities.
 - (e) The Project Plan may include the specification of work and requirements for Government-Requested Upgrades and Company-Initiated Upgrades; provided, however, that the costs incurred by the Company with respect to the design and engineering of Company-Initiated Upgrades shall not be included in the costs reimbursable to the Company under this Agreement or the Construction Agreement. For purposes of the foregoing, (i) the term "Government-Requested Upgrade" shall mean any feature of the Underground Distribution System which is requested by the Government Entity and is not reasonably required to make the Underground Distribution System comparable to the overhead distribution system being replaced, and (ii) the term "Company-Initiated Upgrade" shall mean any feature of the Underground Distribution System which is required by the Company and is not reasonably required to make the Underground Distribution System comparable to the overhead distribution system being replaced. For

purposes of subparagraph (ii), above, a "comparable" system shall include, unless the parties otherwise agree, the number of empty ducts (not to exceed two (2), typically having a diameter of 6" or less) of such diameter and number as may be specified and agreed upon in the final Scope of Work necessary to replicate the load-carrying capacity (system amperage class) of the overhead system being replaced. For purposes of subparagraph (i), above, any empty ducts installed at the request of the Government Entity shall be a Government-Requested Upgrade.

- (f) The Project Plan shall set forth all specifications, design standards and other requirements for the Construction Work and the Conversion Project, including, but not limited to, the following:
 - (i) applicable federal and state safety and electric codes and standards, (ii) applicable construction and other standards of the Company, and (iii) applicable street design and other standards of the Government Entity which are in effect as of the commencement of the Conversion Project.
12. Upon request of the Government Entity, and in any event at the times specified in the Design Schedule, the Company shall provide periodic reports which compare the actual costs of the Design Work incurred to that point in time to the Design Cost Estimate, as changed or amended in accordance with paragraph 13, below. Further, if at any time the Company reasonably expects that the actual cost of the Design Work will exceed the Design Cost Estimate, as changed or amended in accordance with paragraph 13, below, the Company shall notify the Government Entity immediately. Upon receipt of the Company's notice, the Government Entity may, at its option,
- (a) notify the Company in writing that this Agreement is terminated; or
 - (b) request a reasonably detailed explanation supported by documentation (reasonably satisfactory to the Government Entity) to establish that the actual costs in excess of the Design Cost Estimate are:
 - (i) reasonable,
 - (ii) consistent with the Scope of Work, and
 - (iii) consistent with sound engineering practices.

If the Government Entity requests an explanation, the Government Entity shall, within ten (10) business days after receipt of the explanation,

- (a) change the Scope of Work in accordance with paragraph 13, below, or
- (b) direct the Company to continue with the Design Work without a change in the Scope of Work, but reserving to the Government Entity the right to dispute the reasonableness of the costs to be paid the Company under paragraph 14, below, in accordance with the dispute resolution procedures in paragraph 16, below, or
- (c) direct the Company to discontinue performing the Design Work pending resolution, pursuant to paragraph 16, below, of any dispute regarding the reasonableness of the costs, in which event the Design Schedule will be adjusted to reflect the delay, or
- (d) notify the Company in writing that this Agreement is terminated.

In the event the Government Entity terminates this Agreement or discontinues the performance of the Design Work under subparagraph (c), above, for more than ninety (90) days, the Government Entity shall pay the Company for all costs incurred by the Company in its performance of the Design Work prior to the date the Company receives the Government Entity's notice of termination, plus any costs incurred by the Company for materials and other items ordered or procured by the Company with the prior authorization of the Government Entity in order to meet the schedule for the Conversion Project. The foregoing payment obligation shall survive any termination of this Agreement.

13. (a) Either party may, at any time, by written notice thereof to the other party, request changes to the Scope of Work (a "Request for Change"). No Request for Change shall be effective and binding upon the parties unless signed by an authorized representative of each party. If any approved Request for Change would cause an increase in the cost of, or the time required for, the performance of any part of the Design Work, an equitable adjustment in the Design Cost Estimate and the Design Schedule shall be made to reflect such increase. The parties shall negotiate in good faith with the objective of agreeing in writing on a mutually acceptable equitable adjustment. If the parties are unable to agree upon the terms of the equitable adjustment, either party may submit the matter for resolution pursuant to the dispute resolution procedures in paragraph 16, below. Notwithstanding any dispute or delay in reaching agreement or arriving at a mutually acceptable equitable adjustment, each party shall, if requested by the other party, proceed with the Design Work in accordance with the Request for Change. Any such request to proceed must be accompanied by a written statement setting forth the requesting party's reasons for rejecting the proposed equitable adjustment of the other party.
 - (b) The Design Cost Estimate and/or the Design Schedule shall be equitably adjusted from time to time to reflect any change in the costs or time required to perform the Design Work to the extent such change is caused by: (i) any Force Majeure Event under paragraph 17, below, (ii) the discovery of any condition within the Conversion Area which affects the scope, cost, schedule or other aspect of the Design Work and was not known by or disclosed to the affected party prior to the date of this Agreement, or (iii) any change or inaccuracy in any assumptions regarding the scope, cost, schedule or other aspect of the Design Work which are expressly identified by the parties in the final Scope of Work. Upon the request of either party, the parties will negotiate in good faith with the objective of agreeing in writing on a mutually acceptable equitable adjustment. If, at any time thereafter, the parties are unable to agree upon the terms of the equitable adjustment, either party may submit the matter for resolution pursuant to the dispute resolution provisions in paragraph 16, below.
14. Upon completion of the Design Work (i.e., the date on which the Project Plan is final under paragraph 10, above, either by mutual agreement of the parties or as established through the dispute resolution procedures), the Government Entity shall pay the Company all actual, reasonable costs to the Company for the Design Work (which, if disputed in good faith by the Government Entity, may be submitted by either party for resolution pursuant to the dispute resolution provisions in paragraph 16, below), plus any costs incurred by the Company for materials and other items ordered by the Company with the prior authorization of the Government Entity in order to meet the schedule for the Conversion Project. If, thereafter, the Construction Agreement is executed by the parties and the Conversion Project is completed within five (5) years from the date of this Agreement, the full amount of the costs incurred by the Company in its performance of the Design Work shall be included in the "Shared Company Costs" under the Construction Agreement and any payment of such amounts under this Agreement shall be credited to the Government Entity in calculating the "Net Amount" payable under the Construction Agreement.
 15. Within sixty (60) business days after completion of the Design Work, the Company shall issue to the Government Entity an itemized invoice for the amounts payable under this Agreement. Such invoice shall be in a form mutually agreed upon by the Company and the Government Entity and shall, at a minimum, itemize the design and engineering costs, including and listing separately inspection, labor, materials and equipment. In the event the Government Entity does not verify such invoice within ten (10) business days of receipt, the Government Entity shall provide a written request to the Company specifying the additional information needed to verify the invoice. The Company will provide, within a reasonable period after receipt of any request, such documentation and information as the Government Entity may reasonably request to verify such invoice. The Government Entity shall pay the Company all amounts payable under this Agreement within thirty (30) days after receipt of the Company's invoice. Payment as provided in this Agreement shall be full compensation for the Company's performance of the Design Work, including without limitation all services rendered and all materials, supplies, equipment, and incidentals necessary to complete the Design Work.

16. Dispute Resolution Procedures:

- (a) Any dispute, disagreement or claim arising out of or concerning this Agreement must first be presented to and considered by the parties. A party who wishes dispute resolution shall notify the other party in writing as to the nature of the dispute. Each party shall appoint a representative who shall be responsible for representing the party's interests. The representatives shall exercise good faith efforts to resolve the dispute. Any dispute that is not resolved within ten (10) business days of the date the disagreement was first raised by written notice shall be referred by the parties' representatives in writing to the senior management of the parties for resolution. In the event the senior management are unable to resolve the dispute within twenty (20) business days (or such other period as the parties may agree upon), each party may pursue resolution of the dispute through other legal means consistent with the terms of this Agreement. All negotiations pursuant to these procedures for the resolution of disputes shall be confidential and shall be treated as compromise and settlement negotiations for purposes of the state and federal rules of evidence.
 - (b) Any claim or dispute arising hereunder which relates to the Scope of Work, Design Cost Estimate, and Design Schedule under paragraph 4, above; the Project Plan under paragraph 10, above; or any Request for Change (including, without limitation, any associated equitable adjustment) under paragraph 13, above; and is not resolved by senior management within the time permitted under paragraph 16(a), above, shall be resolved by arbitration in Seattle, Washington, under the Construction Industry Arbitration Rules of the American Arbitration Association then in effect. The decision(s) of the arbitrator(s) shall be final, conclusive and binding upon the Parties. All other disputes shall be resolved by litigation in any court or governmental agency, as applicable, having jurisdiction over the Parties and the dispute.
 - (c) In connection with any arbitration under this paragraph 16, costs of the arbitrator(s), hearing rooms and other common costs shall be divided equally among the parties. Each party shall bear the cost and expense of preparing and presenting its own case (including, but not limited to, its own attorneys' fees); provided, that, in any arbitration, the arbitrator(s) may require, as part of his or her decision, reimbursement of all or a portion of the prevailing party's costs and expenses by the other party.
 - (d) Unless otherwise agreed by the parties in writing, the parties shall continue to perform their respective obligations under this Agreement during the pendency of any dispute.
17. In the event that either party is prevented or delayed in the performance of any of its obligations under this Agreement by reason beyond its reasonable control (a "Force Majeure Event"), then that party's performance shall be excused during the Force Majeure Event. Force Majeure Events shall include, without limitation, war; civil disturbance; flood, earthquake or other Act of God; storm, earthquake or other condition which necessitates the mobilization of the personnel of a party or its contractors to restore utility service to customers; laws, regulations, rules or orders of any governmental agency; sabotage; strikes or similar labor disputes involving personnel of a party, its contractors or a third party; or any failure or delay in the performance by the other party, or a third party who is not an employee, agent or contractor of the party claiming a Force Majeure Event, in connection with the Work or this Agreement. Upon removal or termination of the Force Majeure Event, the party claiming a Force Majeure Event shall promptly perform the affected obligations in an orderly and expedited manner under this Agreement or procure a substitute for such obligation. The parties shall use all commercially reasonable efforts to eliminate or minimize any delay caused by a Force Majeure Event.
18. This Agreement is subject to the General Rules and Provisions set forth in Tariff Schedule 80 of the Company's electric Tariff G and to Schedule 74 of such Tariff as approved by the Washington Utilities and Transportation Commission and in effect as of the date of this Agreement.

19. Any notice under this Agreement shall be in writing and shall be faxed (with a copy followed by mail or hand delivery), delivered in person, or mailed, properly addressed and stamped with the required postage, to the intended recipient as follows:

If to the Government Entity:

City of Tumwater
555 Isreal Road S.W.
Tumwater, WA
Attn: Mr. Jay Eaton, PE
Fax: 360/754-4142

If to the Company:

Puget Sound Energy, Inc.
3130 South 38th Street TAC-LL
Tacoma, WA 98409
Attn: Barry Lombard
Fax: 253/476-6037

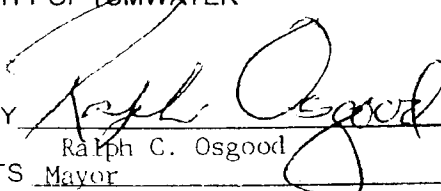
Either party may change its address specified in this paragraph by giving the other party notice of such change in accordance with this paragraph.

20. This Agreement shall in all respects be interpreted, construed and enforced in accordance with the laws of the State of Washington (without reference to rules governing conflict of laws), except to the extent such laws may be preempted by the laws of the United States of America.
21. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and all other agreements and understandings of the Parties, whether written or oral, with respect to the subject matter of this Agreement are hereby superseded in their entireties.
22. This Agreement shall be binding upon and inure to the benefit of the respective successors, assigns, purchasers, and transferees of the parties, including but not limited to, any entity to which the rights or obligations of a party are assigned, delegated, or transferred in any corporate reorganization, change of organization, or purchase or transfer of assets by or to another corporation, partnership, association, or other business organization or division thereof.

Government Entity:

CITY OF TUMWATER

BY


Ralph C. Osgood
ITS Mayor

Date Signed April 27, 2004

Company:

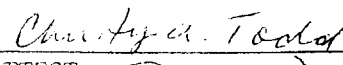
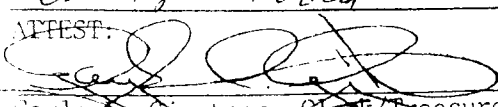
PUGET SOUND ENERGY, INC.

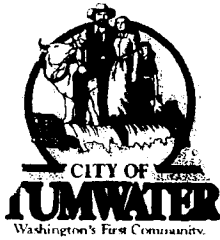
BY


ITS Municipal Liaison Manager

Date Signed 5/17/04

Approved as to form:


APPEST:

Gayla C. Gertsen, Clerk/Treasurer



TUMWATER CITY HALL
515 ISRAEL ROAD SW
TUMWATER, WA 98501-6558
WWW.CITYOFWATER.WA.GOV
FAX: 360/754-4126

ADMINISTRATION
CITY ADMINISTRATOR
MAYOR AND COUNCIL
360/754-4120

ATTORNEY
360/754-4121

DEVELOPMENT SERVICES
BUILDING PERMITS
ZONING & ENGINEERING
360/754-4190

BUILDING INSPECTION
REQUEST LINE
360/754-4189

FINANCE DEPARTMENT
CITY CLERK
INFORMATION SYSTEMS
360/754-4110

MUNICIPAL CLERK
360/754-4140

FIRE DEPARTMENT
360/754-4110
FAX: 360/754-4110

GENERAL SERVICES
PERSONNEL
360/754-4122
JOBLINE: 360/754-4119

PARKS & RECREATION
360/754-4110
FAX: 360/754-4160

MUNICIPAL COLLEGE COURSE
4611 TUMWATER VALLEY COURSE
TUMWATER, WA 98501
360/754-4960
FAX: 360/943-4178

OLD TOWN CENTER
215 N. 10TH STREET SW
TUMWATER, WA 98512
360/754-4164
FAX: 360/754-2063

PLANNING & FACILITIES
LONG RANGE PLANNING
BUILDINGS & GROUNDS
HISTORIC PROGRAMS
360/754-4210
FAX: 360/754-4110

POLICE DEPARTMENT
360/754-4200
FAX: 360/754-4196

PUBLIC WORKS
ENGINEERING
360/754-4140
FAX: 360/754-4144

OPERATIONS &
MAINTENANCE
360/754-4150

July 13, 2004

COPY

Puget Sound Energy, Inc.
Attention: Barry Lombard, Municipal Liaison Manager
310 South 38th Street TAC-LL
Tacoma, WA 98509

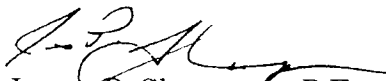
Re: **Tumwater Boulevard Widening Project –
Schedule 74 Underground Conversion Project Design
Agreement**

Dear Mr. Barry:

Pursuant to your proposed design schedule and cost estimate dated July 1, 2004, please accept this correspondence as your Notice to Proceed with design. The only exception or caution we have is that you be fully aware that the design of the Linderson Way / Tumwater Boulevard intersection is still under consideration by city officials and remains fluid at this time. With luck, we will know in a short period of time whether or not we'll opt for the roundabout option vs. something similar to what is currently on the preliminary plans. Should the roundabout option be chosen, we will hasten to provide you with revised preliminary plans for that affected portion of the project area.

Please don't hesitate to call if you have any questions.

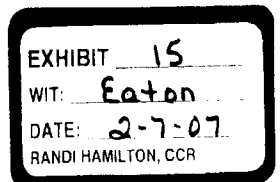
Sincerely,


James P. Shoopman, P.E.
Design/Construction Manager

JPS/ca

c: Tumwater Boulevard File ST 00008

L:\Tumwater Boulevard\PSE Notice to Proceed



AGENDA ITEM NO. _____
MEETING DATE: September 9, 2005

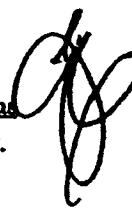
EXHIBIT	21
WIT:	Eaton
DATE:	2-7-07
RANDI HAMILTON, CCR	

TO: Doug Baker, City Administrator dbaker@ci.tumwater.wa.us

FOR: Public Works Committee

FROM: Public Works Department / Jay C. Eaton, P.E., Director jeaton@ci.tumwater.wa.us
Jim Shoopman, P.E., Design/Construction Mgr.

RE: Tumwater Boulevard: Puget Sound Energy (PSE) Agreements for Electrical Utility Relocations



1) References: (List only those attached)

- A. Tumwater Boulevard Facility Relocation Agreement Relocation Plan
- B. Tumwater Boulevard Underground Conversion Project Plan
- C. Schedule 74 Underground Conversion Project Construction Agreement
- D. Capital Facilities Plan Worksheet

2) Action Requested / Staff Recommendation:

Staff requests that the Public Works Committee recommend the City Council approve, and authorize the Mayor to sign, the Schedule 74 Underground Conversion Agreement and Project Plan, and the Facility Relocation Plan, and authorize the Mayor to issue a Notice to Proceed for relocation of PSE facilities.

3) History & Facts Brief:

There are both overhead and underground facilities that must be relocated to accommodate the proposed Tumwater Boulevard roadway improvement project. The city has expressed a desire to convert the overhead portion of the facilities to an underground system and in July 2004 entered into a design agreement with PSE. The Schedule 74 Underground Conversion Agreement is required and regulated by the Washington State Utility and Transportation Commission (WSUTC), Tariff 'G'. The existing underground portion of the facilities (and the overhead portion, if not converted) are not included in the Schedule 74 agreement and are typically relocated as part of the utility's Franchise Agreement. Typically, facilities relocated to accommodate the city's improvements in the right-of-way are the responsibility of and paid for by the utility, and Schedule 74 conversions have a cost sharing component.

Because PSE had an easement over the Port of Olympia property prior to Airdustrial Way being dedicated to the city as public right-of-way, their rights supercede the city's under the Franchise Agreement and WSUTC's Tariff 'G'. The city has to bear the full cost of any relocation of PSE electrical facilities in the Tumwater Boulevard right-of-way. This is not true for gas, telephone or fiber optic utilities.

Public Works Committee

September 9, 2005

Tumwater Boulevard: Puget Sound Energy Agreements for Electrical Utility Relocations

Page Two

4) Discussion & Alternatives:

Both the city's and PSE's plans were coordinated to minimize conflict, however there are significant facilities at the intersections of Capitol Boulevard, New Market Street, and Linderson Way that will be impacted.

PSE's plan, and the associated cost estimate, assumes the worse case scenario in which several major runs of cable can't be salvaged due to relocation of vaults at the intersections. The design provides the opportunity to salvage existing facilities and minimize loss and expense where possible. The ability to salvage these facilities won't be known until the work by PSE is actually underway.

The relocation part of the work requires a Notice to Proceed, as acceptance of the city's liability for the cost, whereas the Schedule 74 Conversion is initiated by a signed agreement.

The relocation work at Capitol Boulevard will cause power outages to businesses and PSE is not required to provide temporary power generation.

5) Fiscal Notes:

The city's cost for the conversion is estimated at \$103,500 to PSE plus the cost of trenching, backfill, restoration and excavation for vaults, which is estimated at up to \$20,000 depending on bid prices.

The PSE estimate for the relocation work is \$545,077 if none of the existing facilities described previously can be saved. There are several runs of cable whose replacement costs approach \$100,000.

The 2005 CFP included \$250,000 for the PSE work. It wasn't known at that time that the city would be responsible for 100 percent of the cost for the relocation work. The CFP amount will need to be revised to reflect the actual cost.



PUGET
SOUND
ENERGY

"A"

June 21, 2005

Mr. Jay Eaton
Director of Public Works
City of Tumwater
555 Israel Road S.W.
Tumwater, WA 98501

**RE: Tumwater Boulevard Facility Relocation Agreement
Relocation Plan**

Dear Mr. Eaton:

Enclosed for your review and comment is a Relocation Plan for the relocation of electric facilities located along Tumwater Boulevard in Tumwater. The attached Relocation Plan has been prepared in accordance with the Facility Relocation Agreement signed by the City and PSE on December 16, 2004. The attached plan includes a proposed work schedule, relocation cost estimate and final project drawings.

Please review the attached Relocation Plan and provide me with any comments you may have as soon as possible. If the enclosed plan is acceptable to the City of Tumwater please provide PSE with a written "Notice to Proceed with Relocation Work" at your earliest convenience. Issuance of the "Notice to Proceed with Relocation Work" in a timely manner will ensure that we meet the City's schedule for the Tumwater Boulevard Improvements Project. PSE will not proceed with any construction activities that would incur reimbursable costs until the City issues the "Notice to Proceed with Relocation Work."

Do not hesitate to call me at (253) 476-6037 if you have any questions or need additional information. We look forward to continuing to work with the City on this project.

Sincerely,

Barry Lombard
Municipal Liaison Manager

cc: Dana Marie Smith, Potelco
Jim Shoopman, City of Tumwater

Exhibit B: Project Plan PUGET SOUND ENERGY

City of Tumwater: Tumwater Boulevard Relocation Project Project Number 101025446 June 20, 2005

This Project Plan describes work to be performed by Puget Sound Energy (PSE) and the City of Tumwater (the City) for the relocation of J-boxes, pull vaults, switches, mini-pad transformers, total underground transformers and associated equipment ("Facilities") described herein (the "Relocation Work"). In addition to this document, this Project Plan includes and consists of:

- Drawings and specifications for the Relocation Work
- The Project Cost Estimate document(s)

The above listed materials are further described below.

The City and PSE must mutually approve revisions to this Project Plan.

I. Description and Allocation of the Work

A. Detailed Description of the Work: Improvements to Tumwater Boulevard between the I-5 ramps and Capitol Boulevard will necessitate the relocation of the following facilities at the following locations:

STA "A" 48+94 & 49+03 :

- Relocate vaults 560974-139658 and 560974-139657 to the north & west of sidewalk.

STA 119 + 20

- Relocate J-box vault 560962-139661 and MP 560962-139660 to the south and west of sidewalk.
- Adjust elevation of crossing to eliminate conflict with storm sewer pipe between catch basins CB#14 and CB#15.
- Reroute and re-pull primary cables as required.

STA "A" 62+15:

- Relocate vault 560976-139794 to east side of New Market Street round-about to outside curb line.
- Relocate 560974-139793 to north of curb line.
- Reroute and re-pull feeder and primary cables as required.

STA "A" 64 + 95

- Intercept existing conduits and reroute.

STA "A" 68 + 95:

- Install extra 4" spare across Tumwater Boulevard (PSE cost)

STA "A" 75+20:

- Lower crossing to eliminate conflict with storm drain pipe between CB#51 and CB#54.
- Install extra 4" spare across Tumwater Boulevard.

STA "A" 79+41:

- Relocate TUT adjacent to switch 0-5021 (no grid number on map).

STA "A" 86+65 LT:

- Relocate switch cabinet 561091-139989 and J-box 561092-139989 to behind back of sidewalk.
- Reroute and re-pull feeder and primary cables as required.
- Ensure cable/conduit runs do not conflict with storm drainpipe between CB#73 and CB#76.

STA "C" 206+50 RT:

- Relocate J-box 561071-140004 in sidewalk
- Relocate MP 561070-140004 to behind new sidewalk.

B. Allocation of Work Between Parties: The tasks associated with the Relocation Work shall be allocated between the parties as follows:

Notice to Customers: The City will provide notification to customers.

Surveying: The City will provide all survey data.

Traffic Control: PSE's Service Provider, Potelco, will provide all traffic control required for the Relocation Work.

Coordination with Other Utilities: PSE will make available drawings for review to other utilities as requested

Service Interruptions: Temporary interruption of electric service to customers may be required during construction of the Relocation Work. PSE will use best efforts to provide 48 hours advance notice of service interruptions. City will provide information to customers regarding street improvement project.

II. Applicable Requirements and Specifications for the Work

The Relocation Work described above shall be performed in accordance with PSE Design Standards referenced in the PSE project drawings as such standards were in effect as of July 1, 2003.

Any change in the Relocation Work described in this Project Plan may require compliance with other PSE Design Standards applicable to such work.

III. Project Costs Estimate & Allocation

A. Cost Estimate and Cost Allocation: The estimate to perform the Relocation Work is included in Section IV below. The City is responsible for reimbursing PSE for 100% of the actual costs incurred by PSE/Potelco, based on time and materials, to perform the relocation portions of the work.

There are three areas that PSE has elected to install additional equipment that is not considered part of the relocation work. This equipment will be installed at 100% PSE cost. The areas are:

- From PV01 and J01 across Linderson Way to EP1. Two 6' and two 4" conduits will be installed.
- From PV03 and J03 across the roundabout to PV03A and EM2. Two 6' and two 4" conduits will be installed.
- At station 69+00, from EM3 to EM4 two 4" conduits will be installed.

B. Costs Not Included: The Relocation Cost Estimate shall not include the following costs, which shall be borne by the parties as set forth below:

1. **Overtime Costs.** The City has specified that the conversion project will be day work. The cost estimate does not include overtime or night time work.
2. **Surveying Costs.** City to provide survey.
3. **Final Restoration of Asphalt and Final Landscaping Costs.** The City will be responsible for final restoration of asphalt and final landscaping and, therefore, the estimate does not include these costs.
4. **Permitting Costs.** PSE will work under the permits obtained by the City.
5. **Conduits identified as existing are assumed to be available for use.** Cost of replacement of existing conduits are not included.
6. **Time to find existing conduit at intercept points is assumed to be four hours.** Time in excess of this is not included.

7. Cost to excavate through existing Controlled Density Fill (CDF) is not included.
8. Cost for backfill with CDF or Fluidized Thermal Backfill is not included.

C. Assumptions Upon Which Relocation Costs Were Based:

Schedule

- 1 PSE, or its contractor, will be provided continuous access to the construction site during the construction period as necessary to complete its work. At a minimum, access will be from 7:00 AM to 5:30 PM Monday through Friday.
- 2 PSE or its contractor will perform PSE's Relocation Work according to the following Schedule of Work mutually established by PSE/Potelco and the City and its contractor in May, 2005:
 - Approximate relocation work start date July 22, 2005
 - Approximate start of Tumwater Boulevard Schedule 74 work by City contractor is August 15, 2005
 - Relocation work at west and east ends of Schedule 74 conversion project will start approximately on September 15, 2005

*Approximate Date Relocation Work Completed	10/31/05
---	----------

* This schedule is subject to change to accommodate the schedule for the City of Tumwater's Tumwater Boulevard Project.

Traffic Control

- 3 Traffic control will be provided as allocated under Section I B, Allocation of Work between the Parties, above.

PSE Design Plans

- 4 PSE will work under permits obtained by the City or its consultant. Such permits will cover any and all PSE relocation work.
- 5 Locations for relocated facilities as shown on the plans are available for use.
- 6 Work requiring a scheduled disruption of electricity to customers will be done within business hours at straight time rate of pay (see Part III C 1). Outages will be scheduled with a minimum of forty eight (48) hours notice.
- 7 Work does not include installation and removal of "temporary" facilities at the request of others during construction.

IV. Relocation Cost Estimate

The Relocation Cost Estimate is **\$489,155.21**.

V. Relocation Work Drawings

Drawings for the Relocation Work are attached as project drawings for Work Order # 101025446. The Relocation Work is shown on sheets 1 through 9 of the attached drawings.

	100% City	100% PSE	Combined
Potelco	\$282,700.10	\$ 41,974.90	\$324,675.00
Sales Tax	<u>\$24,877.81</u>	<u>\$3,693.79</u>	<u>\$28,571.40</u>
Sub Total	\$307,577.71	\$45,668.69	\$353,246.40
Materials	<u>\$117,774.65</u>	<u>\$ 2,958.55</u>	<u>\$120,733.20</u>
Sub Total	\$425,352.36	\$48,627.24	\$473,979.60
PSE OH 15%	<u>\$63,802.85</u>	<u>\$7,294.09</u>	<u>\$71,096.94</u>
Total	<u>\$489,155.21</u>	<u>\$55,921.33</u>	<u>\$545,076.54</u>

"B"

Exhibit A: Project Plan **City of Tumwater: Tumwater Boulevard Underground Conversion** **Project Number: 101022060** **June 8, 2005**

This Project Plan describes work to be performed by Puget Sound Energy and/or its contractor ("PSE") and the City of Tumwater and/or its contractor ("City") for the conversion of certain PSE electrical distribution system facilities as described herein (the "Conversion Project"). In addition to this document, this Project Plan includes and consists of:

- Relevant drawings and specifications for the Conversion Project work
- Relevant PSE Standards for installation of PSE facilities
- Project Cost Estimate document(s)

The City and PSE must mutually approve revisions to this Project Plan.

Conversion Project Scope

Pursuant to PSE's Schedule 74, PSE will convert its existing overhead distribution system of 15,000 volts and less to an Underground Distribution System within the following area (the "Conversion Area"): Along and within portions of Tumwater Boulevard from Linderson Way SW (approximately station 50 + 50) east to New Market (approximately station 64 + 45). The Conversion Project will also include conversion of overhead service lines and removal of PSE's existing overhead distribution facilities within the Conversion Area for a total of 1,280 feet, which includes two crossings. Refer to project drawings for PSE Work Order 101022060.

PSE will include a system upgrade in the conversion project, which will consist of two (2) six-inch (6") conduits and pull vault for future feeders. The two six-inch conduits will be installed within 950 feet of the trench but not in the two street crossings. The excavation for the pull vault will be 5' 4" deep by 9' wide by 11' long. The cost for this system upgrade, including the proportional increase in trench width and pull vault excavation, will be 100% PSE's responsibility. PSE will credit the City for the proportional increase in trench width and pull vault excavation through a Change Order, after the trenching is completed and the costs can be quantified.

Operating Rights

The existing overhead distribution facilities are located entirely within private rights derived from an easement document recorded on December 8, 1981 under Thurston County Auditor's file No. 8112080070. By mutual agreement between PSE and the City, all of the converted facilities (except for two crossings at 59 + 60 and 54 + 80) will be relocated within the same easement area and will be covered by private rights derived from the above referenced easement document. The two crossings will be within the City of Tumwater right-of-way and after a five-year relocation protection period, PSE will be responsible for costs associated with any City requested relocation of these crossings.

City Responsibilities

Notice to Customers: The City will provide appropriate written notice to customers within the Conversion Area prior to the start of Conversion Project construction work, including City and PSE contact information, Conversion Project Schedule, anticipation of service interruptions and work required to be performed by customers.

Trenching, Restoration & Job Coordination: The City will be responsible for all trenching costs (except for costs associated with the proportional increase in trench width for PSE's two six-inch conduits and a pull vault). The City will perform all excavation and trenching, shoring (if required), bedding, backfill, final site restoration and job coordination required for the installation of the Underground Distribution System.

Surveying: The City will perform all surveying for vault, duct and trench alignment, elevation grades and offsets.

Traffic Control: The City will provide flagging and traffic control as required for all work performed by the City.

Notice to Convert or Modify Service Lines: Unless otherwise specified in this Project Plan, at the completion of the Conversion Project all customers within the Conversion Area must be served by underground services lines. The City will be responsible for replacing existing overhead service lines with underground service lines or modifying/rerouting existing underground service lines as required to connect to the Underground Distribution System. Service lines to be replaced or modified are listed in this Project Plan. Costs for providing secondary distribution, a new Point of Delivery and reconnecting the Customer's existing underground service shall be 100% the City's cost. The City has agreed to assume the cost of trenching or excavation necessary for the installation or re-routing of an underground service on private property. The costs to convert or modify service lines are not included in the attached Construction Costs Estimate Summary.

Coordination of Other Utilities: The City will coordinate the removal and relocation of other utilities attached to PSE's poles within the Conversion Area and will coordinate any joint use by other utilities of any excavations and/or trenches used for the Conversion Project.

Obtaining Permission/Consent to Work on Private Property: The City is responsible for obtaining permission/consent for PSE/Potelco to work on private property.

PSE Responsibilities

Trenching: PSE will be responsible for the cost of the proportional increase in trench width for PSE upgrades - i.e. the two six-inch conduits and a pull vault.

Installation and Removal of Electrical Facilities: PSE will install all electrical facilities for the Underground Distribution System and will remove the existing overhead facilities (including overhead service lines) within the Conversion Area after the Underground Distribution System is placed in service, all customer service lines are connected thereto and all other utilities have been removed from PSE's poles. PSE will fill holes left after pole remove with compacted native material.

Traffic Control: PSE will provide flagging and traffic control as required for all work performed by PSE.

Underground Service Lines: Unless otherwise specified in this Project Plan, at the completion of the Conversion Project all customers within the Conversion Area must be served by underground services lines. PSE will connect all underground service lines to the Underground Distribution System in accordance with PSE Schedule 85. PSE will provide information and assistance to customers and the City to facilitate work to be performed by the City associated with underground service lines. PSE will disconnect and reconnect service to customers during regular business hours and will schedule service line work with customers at least 48 hours in advance. Service lines to be replaced or modified are listed in this Project Plan.

Service Interruptions: Temporary interruptions of electrical service to customers will be required during construction of the Conversion Project and transfer of customers to the Underground Distribution System. PSE will use reasonable efforts to provide at least two working days advance notice of service interruptions to customers.

Customers Responsibilities

Underground Service Lines:

Service lines within the Conversion Area must be replaced or modified to provide underground service from the Underground Distribution System. PSE Tariff Schedule 85 will apply to performance of this work. The service lines to be replaced or modified are listed below in a section entitled Service Lines. Although Customers are normally responsible for the replacement or modification of service lines, as indicated above in the section entitled City Responsibilities, the City will assume responsibility for conversion or modification of service lines for this Conversion Project. The costs to convert or modify service lines are not included in the attached Construction Costs Estimate Summary.

Construction Work Schedule

The Conversion Project Work will be performed in accordance with the following Work Schedule, unless this Schedule is revised by mutual consent and agreement of the City and PSE or circumstances beyond the control of PSE and the City preclude such performance.

Installation of ducts and vaults: PSE/Potelco will complete the installation of vaults and ducts concurrent with the City's road improvement project. The anticipated start date for the road improvement project is August 15, 2005. The anticipated start date for installation of ducts and vaults is August 22, 2005 and is dependent upon the City's Contractor having trench open and available for PSE/Potelco. The anticipated completion date for installation of ducts and vaults is September 12, 2005. The electrical underground installation has an anticipated completion date of October 5, 2005. The PSE/Potelco start and completion dates may change if the City start date changes.

Installation of equipment, connection of customer service lines and removal of the existing overhead facilities: PSE/Potelco will complete the installation of equipment, connection of customer service lines and removal of existing overhead facilities concurrent with the City's road improvement project. The anticipated start date for the road improvement project is August 15, 2005. The anticipated start date for installation of equipment, connection of customer service lines and removal of the existing overhead facilities is September 14, 2005 and the anticipated completion date is October 5, 2005. The PSE/Potelco anticipated start and completion dates might change if the City start date changes.

Daily Productivity Rate: The Daily Productivity Rate is based on the City's contractor opening a minimum of 250 feet of trench per day. The Daily Productivity Rate is used to calculate the number of days a PSE/Potelco crew will be installing the conduits and vaults.

Project Cost Estimate & Allocation

The estimated costs to perform the Conversion Project are presented in the attached Project Costs Estimate Summary (Attachment A) and consist of PSE's good faith estimate of costs to design and construct the Conversion Project together with the City's good faith estimate of its costs to perform certain work as described in the Project Plan (if any). Estimated project costs are based on the installation of Facilities and performance of the Conversion Project as described in this Project Plan and may be subject to change in the event that performance of the Conversion Project differs from that described in this Project Plan.

Actual project costs will be allocated pursuant to the Conversion Project Design Agreement and Construction Agreement and PSE's rate Schedule 74. As of the date of this Project Plan and unless otherwise altered by one or more mutually agreed Requests for Change, certain project costs will be allocated as follows:

- Costs incurred to acquire Public Thoroughfare for the installation of the Conversion Project Facilities (if any) will be 100% Government Costs.
- The cost for trenching in the Conversion Area will be allocated 100% to the City (excluding the cost of trench for PSE upgrades i.e. two six-inch conduits and a pull vault, which will be 100% PSE's responsibility).
- The City has elected to assume 100% of the costs for trenching or excavation necessary for the installation or re-routing of an underground service on private property.

Assumptions

The Project Design Work (construction plans and specifications), Construction Schedule and Construction Costs Estimate are based on and reflect the following assumptions. Construction conditions that are not consistent with these assumptions may result in a request for change to the Construction Schedule and/or Construction Costs Estimate pursuant to Section 6 of the Construction Agreement.

Schedule

- 1 PSE will be provided continuous access to the construction site and associated electrical work from 7:00 AM to 3:30 PM Monday through Friday or 7:00 AM to 5:00 PM Monday through Thursday (regular business hours).
- 2 The normal PSE construction crew work schedule for the duct and vault crew consists of five eight-hour workdays per week within the working period referenced in assumption 1 above. The normal PSE construction crew work schedule for the electrical crew consists of four ten-hour workdays within the working period referenced in assumption 1 above.

- 3 Once PSE's construction crews are mobilized, the conversion will be constructed in one continuous nonstop effort, end to end, until the project is completed.
- 4 Cut-over and transfers of existing customers will be performed during regular business hours. Overtime charges may be assessed for work performed outside of the regular business hours referenced in assumption 1.
- 5 Customer work to install or modify service lines and work necessary by other utilities will be performed and completed so as not to interfere with or delay the performance of PSE's work.

PSE Design Plans

- 6 The Conversion Project will be performed as shown in PSE's project drawings and PSE's design and construction standards, which accompany this Project Plan.
- 7 PSE's design is based 90% roadway design hardcopy drawings provided to PSE by the City the week of November 22, 2004 and the updated storm drainage plans provided to PSE on May 6, 2005 .
- 8 Vault excavation will provide for appropriate grade, elevations and locations. The bottom of vault excavations will be leveled with a minimum of six (6) inches of 5/8 inch crushed rock.
- 9 Maximum trench depth for PSE conduits and conductors is 48 inches unless otherwise shown on PSE's project drawings.
- 10 Minimum depth of cover above the top of PSE's conduits and conductors is 36 inches unless otherwise shown on PSE's project drawings..
- 11 This Project Plan does not include installation and removal of "temporary" facilities at the request of others during construction.

Cost Estimate

- 12 The estimated costs presented in the Construction Costs Estimate Summary are based on the installation of facilities at locations shown in PSE's project drawings and otherwise in accordance with this Project Plan.
- 13 The estimated costs presented in the Construction Costs Estimate Summary are based on the performance of work by PSE in accordance with the Construction Work Schedule included in this Project Plan during the working period addressed in assumptions 1 and 2 above. No overtime work is included in this Project Plan.
- 14 The estimated costs presented in the Construction Costs Estimate Summary provide for performance of duct & vault installation; electrical installation of distribution system; removal of overhead service lines; connection of underground service lines to the Underground Distribution System and all materials and overheads required for the above mentioned work.
- 15 The estimated costs presented in the Construction Costs Estimate Summary are based on the City's contractor opening a minimum of 250 linear feet of trench per day.

PSE Facilities Design Standards

This Conversion Project has been designed by PSE and will be constructed by PSE and the City in accordance with PSE design and construction standards in effect as of the date of this Project Plan. Standards applicable to work to be performed by the City have been provided to the City is

PSE's Electric Distribution Trench/Duct/Vault Construction Standards, 2003, attached to this Project Plan by reference.

Services Lines

The following services must be replaced or modified to provide underground service from the Underground Distribution System.

7380 Linderson Way SW, Olympic Pipeline, OH 3 phase service, replace with new UG service to (2) delta transformers V01 & V02

711 Tumwater Blvd SE, City of Tumwater # pump and well house, OH 3 phase service, replace with new UG service to (2) delta transformers V05 & V06

7511 New-Market ST SW, Department of General Administration, OH 3 phase service, replace with new UG service to V04

Cut-overs and Transfers

Some PSE customers within the Conversion Area will experience disruption of electric service during the completion of this Conversion Project. Customers may experience service disruptions when transferring PSE system load from the Overhead to the Underground Distribution System. PSE will notify all customers in advance of expected outages. PSE will provide 48-hour advance notice of outages. All cut-over and transfer work will be completed during normal business hours. At their request, customers will be charged overtime premium for after hours cutover and transfer work.

Acceptance of Project Plan

The City and PSE mutually agree to and accept this Project Plan as of the date indicated:

For the City of Tumwater:

For Puget Sound Energy:

By: _____

By: _____

Date: _____

Date: _____



Date: 3/25/2005
 Project Title: Turnwater Blvd Conversion
 Project Description: Convert 957' of 3-phase OH. Install 4" & 6" conduits, 3-phase 1/0 primary system, 2 pull vaults, 5 J-Box vaults.

Rate Schedule: 74
 Project Manager / Phone #: Dana Marie Smith / 253-476-4428
 Project Engineer / Phone #: Dana Marie Smith / 253-476-4428
 Municipal Liaison Mgr / Phone #: Barry Lombard / 253-476-8037
 Project #: 101022000
 Revision #: 2
 Revision Date: 6/6/2005

Construction Costs Estimate Summary^{1,2}

	100% Government Entity Reimbursable Costs							Construction Costs Totals ⁴
	Shared Costs ³ Estimate	Private Conversion Estimate	Gov Req Upgrade Estimate	Temporary Services Estimate	Prior Conv/Restoc Within 8 Years Estimate	Total 100% GE Reimbursable Costs Estimate	100% PSE Costs Estimate	
Company	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Labor	\$ -	\$ 25,300	\$ -	\$ -	\$ -	\$ 25,300	\$ 13,500	\$ 38,800
Materials	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Equipment	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Inspection	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Service Provider Outside Services	\$ -	\$ 64,600	\$ -	\$ -	\$ -	\$ 64,600	\$ 5,200	\$ 69,800
Operating Rights	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Overhead	\$ -	\$ 13,600	\$ -	\$ -	\$ -	\$ 13,600	\$ 3,000	\$ 16,600
Government Entity	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Labor	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Operating Rights	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Construction Costs Totals ⁴	\$ -	\$ 103,500	\$ -	\$ -	\$ -	\$ 103,500	\$ 21,700	\$ 125,200

Projected allocation of Estimated Construction Costs at Completion of Construction Work

Company	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Government Entity	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 103,500	\$ 21,700	\$ 125,200

Notes:

- ¹ Estimate prepared in accordance with Sections 6 & 11 of Schedule 74 Design Agreement and Section 7 of Schedule 74 Construction Agreement.
- ² All amounts shown in this estimate are rounded up to the next \$100.
- ³ Shared Costs are allocated 40% to the Government Entity and 60% to the Company if the Conversion Project is completed.
- ⁴ Total Costs excludes Government Entity costs of trenching, restoration, and surveying.

Construction Estimate

"C"

EXHIBIT A
SCHEDULE 74 UNDERGROUND CONVERSION
Project Construction Agreement

Project Name: Tumwater – Tumwater Boulevard Widening Project
Project Number: 101022060

THIS Agreement, dated as of this _____ day of _____, 2004, is made by and between the City of Tumwater (the "Government Entity"), and PUGET SOUND ENERGY, Inc., a Washington Corporation (the "Company").

RECITALS

A. The Company is a public service company engaged in the sale and distribution of electric energy, and pursuant to its franchise or other rights from the Government Entity, currently locates its electric distribution facilities within the jurisdictional boundaries of the Government Entity.

B. The Government Entity has determined that it is necessary to replace the existing overhead electric distribution system within the area specified in the Project Plan (as defined below) (the "Conversion Area") with a comparable underground electric distribution system, all as more specifically described in the Project Plan (the "Conversion Project").

C. The Government Entity and the Company have previously entered into a Project Design Agreement dated as of May 17, 2004 (the "Design Agreement"), pursuant to which the parties completed certain engineering design, cost assessment, operating rights planning and other preliminary work relating to the Conversion Project and, in connection with that effort, developed the Project Plan.

D. The Government Entity and the Company wish to execute this written contract in accordance with Schedule 74 of the Company's Electric Tariff G ("Schedule 74") to govern the completion of the Conversion Project, which both parties intend shall qualify as an underground conversion under the terms of Schedule 74.

AGREEMENT

The Government Entity and the Company therefore agree as follows:

1. Definitions.

(a) Unless specifically defined otherwise herein, all terms defined in Schedule 74 shall have the same meanings when used in this Agreement, including, without limitation, the following:

- i) Cost of Conversion;
- ii) Public Thoroughfare;
- iii) Temporary Service;
- iv) Trenching and Restoration;
- v) Underground Distribution System; and
- vi) Underground Service Lines.

(b) "Company-Initiated Upgrade" shall mean any feature of the Underground Distribution System which is required by the Company and is not reasonably required to make the Underground Distribution System comparable to the overhead distribution system being replaced. For

- purposes of the foregoing, a "comparable" system shall include, unless the Parties otherwise agree, the number of empty ducts (not to exceed two (2), typically having a diameter of 6" or less) of such diameter and number as may be specified and agreed upon in the Project Plan necessary to replicate the load-carrying capacity (system amperage class) of the overhead system being replaced.
- (c) "Estimated Reimbursable Private Conversion Costs" shall mean the Company's good faith estimate of the Reimbursable Private Conversion Costs, as specified in the Project Plan and as changed and adjusted from time to time in accordance with Section 6, below.
 - (d) "Estimated Reimbursable Temporary Service Costs" shall mean the Company's good faith estimate of the Reimbursable Temporary Service Costs, as specified in the Project Plan and as changed and adjusted from time to time in accordance with Section 6, below.
 - (e) "Estimated Reimbursable Upgrade Costs" shall mean the Company's good faith estimate of the Reimbursable Upgrade Costs, as specified in the Project Plan and as changed and adjusted from time to time in accordance with Section 6, below.
 - (f) "Estimated Shared Company Costs" shall mean the Company's good faith estimate of the Shared Company Costs, as specified in the Project Plan and as changed and adjusted from time to time in accordance with Section 6, below.
 - (g) "Estimated Shared Government Costs" shall mean the Government Entity's good faith estimate of the Shared Government Costs, as specified in the Project Plan and as changed and adjusted from time to time in accordance with Section 6, below.
 - (h) "Government-Requested Upgrade" shall mean any feature of the Underground Distribution System which is requested by the Government Entity and is not reasonably required to make the Underground Distribution System comparable to the overhead distribution system being replaced. For purposes of the foregoing, any empty ducts installed at the request of the Government Entity shall be a Government-Requested Upgrade.
 - (i) "Party" shall mean either the Company, the Government Entity, or both.
 - (j) "Private Property Conversion" shall mean that portion, if any, of the Conversion Project for which the existing overhead electric distribution system is located, as of the date determined in accordance with Schedule 74, (i) outside of the Public Thoroughfare, or (ii) pursuant to rights not derived from a franchise previously granted by the Government Entity or pursuant to rights not otherwise previously granted by the Government Entity.
 - (k) "Project Plan" shall mean the project plan developed by the Parties under the Design Agreement and attached hereto as Exhibit A, as the same may be changed and amended from time to time in accordance with Section 6, below. The Project Plan includes, among other things, (i) a detailed description of the Work that is required to be performed by each Party and any third party, (ii) the applicable requirements and specifications for the Work, (iii) a description of the Operating Rights that are required to be obtained by each Party for the Conversion Project (and the requirements and specifications with respect thereto), (iv) an Itemization and summary of the Estimated Shared Company Costs, Estimated Shared Government Costs, Estimated Reimbursable Private Conversion Costs (if any), Estimated Reimbursable Temporary Service Costs (if any) and Estimated Reimbursable Upgrade Costs (if any), and (v) the Work Schedule.
 - (l) "Operating Rights" shall mean sufficient space and legal rights for the construction, operation, repair, and maintenance of the Underground Distribution System.
 - (m) "Reimbursable Private Conversion Costs" shall mean (i) all Costs of Conversion, if any, incurred by the Company which are attributable to a Private Property Conversion, less (ii) the distribution

pole replacement costs (if any) that would be avoided by the Company on account of such Private Property Conversion, as determined consistent with the applicable Company distribution facilities replacement program, plus (iii) just compensation as provided by law for the Company's interests in real property on which such existing overhead distribution system was located prior to conversion; provided that the portion of the Reimbursable Private Conversion Costs attributable to the Costs of Conversion under subparagraph (i) of this paragraph shall not exceed the Estimated Reimbursable Private Conversion Costs without the prior written authorization of the Government Entity.

- (n) "Reimbursable Temporary Service Costs" shall mean all costs incurred by the Company which are attributable to (i) any facilities installed as part of the Conversion Project to provide Temporary Service, as provided for in Schedule 74, and (ii) the removal of any facilities installed to provide Temporary Service (less salvage value of removed equipment); provided that the Reimbursable Temporary Service Costs shall not exceed the Estimated Reimbursable Temporary Service Costs without the prior written authorization of the Government Entity.
- (o) "Reimbursable Upgrade Costs" shall mean all Costs of Conversion incurred by the Company which are attributable to any Government-Requested Upgrade; provided that the Reimbursable Upgrade Costs shall not exceed the Estimated Reimbursable Upgrade Costs without the prior written authorization of the Government Entity.
- (p) "Shared Company Costs" shall mean all Costs of Conversion (other than Reimbursable Upgrade Costs, Reimbursable Private Conversion Costs and Reimbursable Temporary Service Costs) incurred by the Company in connection with the Conversion Project; provided, however, that the Shared Company Costs shall not exceed the Estimated Shared Company Costs without the prior written authorization of the Government Entity. For the avoidance of doubt, the "Shared Company Costs" shall, as and to the extent specified in the Design Agreement, include the actual, reasonable costs to the Company for the "Design Work" performed by the Company under the Design Agreement.
- (q) "Shared Government Costs" shall mean all Costs of Conversion incurred by the Government Entity in connection with (i) any duct and vault installation Work which the Parties have specified in the Project Plan is to be performed by the Government Entity as part of the Government Work, and (ii) the acquisition of any Operating Rights which the Parties have, by mutual agreement, specified in the Project Plan are to be obtained by the Government Entity for the Conversion Project, but only to the extent attributable to that portion of such Operating Rights which is necessary to accommodate the facilities of the Company; provided, however, that the Shared Government Costs shall not exceed the Estimated Shared Government Costs without the prior written authorization of the Company.
- (r) "Total Shared Costs" shall mean the sum of the Shared Company Costs and the Shared Government Costs. For the avoidance of doubt, the Total Shared Costs shall not include, without limitation, (i) costs to the Government Entity for Trenching and Restoration, or (ii) costs associated with any joint use of trenches by other utilities as permitted under Section 3(b).
- (s) "Work" shall mean all work to be performed in connection with the Conversion Project, as more specifically described in the Project Plan, including, without limitation, the Company Work (as defined in Section 2(a), below) and the Government Work (as defined in Section 3(a), below).
- (t) "Work Schedule" shall mean the schedule specified in the Project Plan which sets forth the milestones for completing the Work, as the same may be changed and amended from time to time in accordance with Section 6, below.

2. Obligations of the Company.

- (
- (a) Subject to the terms and conditions of this Agreement, the Company shall do the following as specified in, and in accordance with the design and construction specifications and other requirements set forth in, the Project Plan (the "Company Work"):
 - i) furnish and install an Underground Distribution System within the Conversion Area (excluding any duct and vault installation or other Work which the Parties have specified in the Project Plan is to be performed by the Government Entity);
 - ii) provide a Company inspector on-site at the times specified in the Work Schedule to inspect the performance of any duct and vault installation Work which the Parties have specified in the Project Plan is to be performed by the Government Entity; and
 - iii) upon connection of those persons or entities to be served by the Underground Distribution System and removal of facilities of any other utilities that are connected to the poles of the overhead system, remove the existing overhead system (including associated wires and Company-owned poles) of 15,000 volts or less within the Conversion Area except for Temporary Services.
 - (b) Upon request of the Government Entity, the Company shall provide periodic reports of the progress of the Company Work identifying (i) the Company Work completed to date, (ii) the Company Work yet to be completed, and (iii) an estimate regarding whether the Conversion Project is on target with respect to the Estimated Shared Company Costs, the Estimated Reimbursable Private Conversion Costs (if any), the Estimated Reimbursable Temporary Service Costs (if any), the Estimated Reimbursable Upgrade Costs (if any) and the Work Schedule.
 - (c) Except as otherwise provided in the Company's Electric Tariff G, the Company shall own, operate and maintain all electrical facilities installed pursuant to this Agreement including, but not limited to, the Underground Distribution System and Underground Service Lines.
 - (d) Subject to the terms and conditions of this Agreement, the Company shall perform all Company Work in accordance with the Project Plan, the Work Schedule and this Agreement.

3. Obligations of the Government Entity.

- (a) Subject to the terms and conditions of this Agreement, the Government Entity shall do the following as specified in, and in accordance with the design and construction specifications and other requirements set forth in, the Project Plan (the "Government Work"):
 - i) provide the Trenching and Restoration;
 - ii) perform the surveying for alignment and grades for ducts and vaults; and
 - iii) perform any duct and vault installation and other Work which the Parties have specified in the Project Plan is to be performed by the Government Entity.
- (b) Other utilities may be permitted by the Government Entity to use the trenches provided by the Government Entity for the installation of their facilities so long as such facilities or the installation thereof do not interfere (as determined pursuant to the Company's electrical standards) with the Underground Distribution System or the installation or maintenance thereof. Any such use of the trenches by other utilities shall be done subject to and in accordance with the joint trench design specifications and installation drawings set forth or otherwise identified in the Project Plan, and the Government Entity shall be responsible for the coordination of the design and installation of the facilities of the other utilities to ensure compliance with such specifications and drawings.
- (c) Upon request of the Company, the Government Entity shall provide periodic reports of the progress of the Government Work identifying (i) the Government Work completed to date, (ii) the Government Work yet to be completed, and (iii) an estimate regarding whether the Conversion Project is on target with respect to the Estimated Shared Government Costs and the Work Schedule.

- (d) The Government Entity shall be responsible for coordinating all work to be performed in connection with the street improvement program within the Conversion Area.
- (e) Subject to the terms and conditions of this Agreement, the Government Entity shall perform all Government Work in accordance with the Project Plan, the Work Schedule and this Agreement.

4. Work Schedule.

- (a) The Government Entity and the Company have agreed upon the Work Schedule as set forth in the Project Plan. Changes to the Work Schedule shall be made only in accordance with Section 8, below.
- (b) Promptly following the execution of this Agreement, and upon completion by the Government Entity of any necessary preliminary work, the Government Entity shall hold a pre-construction meeting involving all participants in the Conversion Project to review project design, coordination requirements, work sequencing and related pre-mobilization requirements. Following the pre-construction meeting, the Government Entity shall give the Company written notice to proceed with the Work at least ten (10) business days prior to the commencement date specified in the Work Schedule.
- (c) Subject to the terms and conditions of this Agreement, each Party shall perform the Work assigned to it under this Agreement in accordance with the Work Schedule. So long as the Company performs the Company Work in accordance with the Work Schedule, the Company shall not be liable to the Government Entity (or its agents, servants, employees, contractors, subcontractors, or representatives) for any claims, actions, damages, or liability asserted or arising out of delays in the Work Schedule.

5. Location of Facilities.

All facilities of the Company installed within the Conversion Area pursuant to this Agreement shall be located, and all related Operating Rights shall be obtained, in the manner set forth in the applicable provisions of Schedule 74, as specified by the Parties in the Project Plan.

6. Changes.

- (a) Either Party may, at any time, by written notice thereof to the other Party, request changes in the Work within the general scope of this Agreement (a "Request for Change"), including, but not limited to: (i) changes in, substitutions for, additions to or deletions of any Work; (ii) changes in the specifications, drawings and other requirements in the Project Plan, (iii) changes in the Work Schedule, and (iv) changes in the location, alignment, dimensions or design of items included in the Work. No Request for Change shall be effective and binding upon the Parties unless signed by an authorized representative of each Party.
- (b) If any change included in an approved Request for Change would cause a change in the cost of, or the time required for, the performance of any part of the Work, an equitable adjustment shall be made in the Estimated Shared Company Costs, the Estimated Shared Government Costs, the Estimated Reimbursable Private Conversion Costs (if any), the Estimated Reimbursable Temporary Service Costs (if any), the Estimated Reimbursable Upgrade Costs (if any) and/or the Work Schedule to reflect such change. The Parties shall negotiate in good faith with the objective of agreeing in writing on a mutually acceptable equitable adjustment. If the Parties are unable to agree upon the terms of the equitable adjustment, either Party may submit the matter for resolution pursuant to the dispute resolution provisions in Section 10, below.
- (c) The Work Schedule, the Estimated Shared Company Costs, the Estimated Shared Government Costs, the Estimated Reimbursable Private Conversion Costs, the Estimated Reimbursable Temporary Service Costs and/or the Estimated Reimbursable Upgrade Costs shall be further

equitably adjusted from time to time to reflect any change in the costs or time required to perform the Work to the extent such change is caused by: (i) any Force Majeure Event under Section 11, below, (ii) the discovery of any condition within the Conversion Area which affects the scope, cost, schedule or other aspect of the Work and was not known by or disclosed to the affected Party prior to the date of this Agreement, or (iii) any change or inaccuracy in any assumptions regarding the scope, cost, schedule or other aspect of the Work which are expressly identified by the Parties in the Project Plan. Upon the request of either Party, the Parties will negotiate in good faith with the objective of agreeing in writing on a mutually acceptable equitable adjustment. If, at any time thereafter, the Parties are unable to agree upon the terms of the equitable adjustment, either Party may submit the matter for resolution pursuant to the dispute resolution provisions in Section 10, below.

- (d) Notwithstanding any dispute or delay in reaching agreement or arriving at a mutually acceptable equitable adjustment, each Party shall, if requested by the other Party, proceed with the Work in accordance with any approved Request for Change. Any request to proceed hereunder must be accompanied by a written statement setting forth the requesting Party's reasons for rejecting the proposed equitable adjustment of the other Party.

7. Compensation and Payment.

- (a) Subject to and in accordance with the terms and conditions of this Agreement (including, without limitation, the payment procedures set forth in this Section 7), payment in connection with the Conversion Project and this Agreement shall be as follows:

- i) The Total Shared Costs shall be allocated to the Parties in the following percentages: (A) sixty percent (60%) to the Company, and (B) forty percent (40%) to the Government Entity.
- ii) The Government Entity shall pay one hundred percent (100%) of all Reimbursable Private Conversion Costs, if any.
- iii) The Government Entity shall pay one hundred percent (100%) of all Reimbursable Upgrade Costs, if any.
- iv) The Government Entity shall pay one hundred percent (100%) of all Reimbursable Temporary Service Costs, if any.
- v) The Government Entity shall pay one hundred percent (100%) of the costs it incurs to perform that portion of the Government Work specified in Section 3(a)(i) and (ii) (i.e., Trenching and Restoration and surveying).
- vi) The Company shall pay one hundred percent (100%) of the costs it incurs to design, provide and construct any Company-Initiated Upgrade.
- vii) The Company shall pay one hundred percent (100%) of the costs it incurs to obtain Operating Rights outside the Public Thoroughfare.

- (b) Based on the allocation of responsibilities set forth in Section 7(a), above, the Parties shall determine the net amount payable by the Government Entity or the Company, as applicable, to the other Party under this Agreement (the "Net Amount"). The Net Amount shall be determined by using the amount of the Total Shared Costs allocated to the Government Entity under Section 7(a)(i), and adjusting such amount as follows:

- i) Subtracting (as a credit to the Government Entity) the amount of the Shared Government Costs.
- ii) Adding (as a credit to the Company) the amount of all Reimbursable Private Conversion Costs, Reimbursable Upgrade Costs and Reimbursable Temporary Service Costs.
- iii) Subtracting (as a credit to the Government Entity) any payments previously made to the Company by the Government Entity under the Design Agreement which, under the terms of the Design Agreement, are to be credited to the Government Entity under this Agreement.

The Net Amount, as so calculated, (A) will be an amount payable to the Company if it is a positive number, and (B) shall be an amount payable to the Government Entity if it is a negative number.

- (c) Within sixty (60) business days of completion of the Conversion Project, the Government Entity shall provide the Company with an Itemization of the Shared Government Costs (the "Government Itemization"), together with such documentation and information as the Company may reasonably request to verify the Government Itemization. The Government Itemization shall, at a minimum, break down the Shared Government Costs by the following categories, as applicable: (i) property and related costs incurred and/or paid by the Government Entity, including any costs of obtaining Operating Rights, and (ii) construction costs incurred and/or paid by the Government Entity, including and listing separately inspection, labor, materials and equipment, overhead and all costs charged by any agent, contractor or subcontractor of the Government Entity.
- (d) Within thirty (30) business days after the Company's receipt of the Government Itemization and requested documentation and information, the Company shall provide the Government Entity a written statement (the "Company Statement") showing (i) an itemization of the Shared Company Costs, (ii) the Parties' relative share of the Total Shared Costs based on the Company's itemization of the Shared Company Costs and the Government Entity's itemization of the Shared Government Costs set forth in the Government Itemization, (iii) any Reimbursable Private Conversion Costs, (iv) any Reimbursable Upgrade Costs, (v) any Reimbursable Temporary Service Costs, (vi) any credits to the Government Entity for payments previously made to the Company by the Government Entity under the Design Agreement which, under the terms of the Design Agreement, are to be credited to the Government Entity under this Agreement, and (vii) the Net Amount, as determined in accordance with Section 7(b), above, together with such documentation and information as the Government Entity may reasonably request to verify the Company Statement. The Itemization of the Shared Company Costs included in the Company Statement shall, at a minimum, break down the Shared Company Costs by the following categories, as applicable: (i) design and engineering costs, and (ii) construction costs, including and listing separately inspection, labor, materials and equipment, overhead and all costs charged by any agent, contractor or subcontractor of the Company.
- (e) Within thirty (30) business days after the Government Entity's receipt of the Company Statement and requested documentation and information, the Net Amount shall be paid by the owing Party to the other Party, as specified in the Company Statement.

B. Indemnification.

- (a) The Government Entity releases and shall defend, indemnify and hold the Company harmless from all claims, losses, harm, liabilities, damages, costs and expenses (including, but not limited to, reasonable attorneys' fees) caused by or arising out of any negligent act or omission or willful misconduct of the Government Entity in its performance under this Agreement. During the performance of such activities the Government Entity's employees or contractors shall at all times remain employees or contractors, respectively, of the Government Entity.
- (b) The Company releases and shall defend, indemnify and hold the Government Entity harmless from all claims, losses, harm, liabilities, damages, costs and expenses (including, but not limited to, reasonable attorneys' fees) caused by or arising out of any negligent act or omission or willful misconduct of the Company in its performance under this Agreement. During the performance of such activities the Company's employees or contractors shall at all times remain employees or contractors, respectively, of the Company.
- (c) Solely for purposes of enforcing the indemnification obligations of a Party under this Section 8, each Party expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, and agrees that the obligation to indemnify, defend and hold harmless provided for in this Section 8 extends to any such claim brought against the indemnified Party by or on behalf of any employee of the indemnifying Party. The foregoing waiver shall not in any way

preclude the indemnifying Party from raising such immunity as a defense against any claim brought against the indemnifying Party by any of its employees.

9. Conversion of Service to Customers within Conversion Area.

- (a) Upon commencement of the Work, the Government Entity shall notify all persons and entities within the Conversion Area that service lines to such customers must be converted from overhead to underground service within the applicable statutory period following written notice from the Government Entity that service from underground facilities are available in accordance with RCW 35.96.050. Upon the request of any customer, other than a single family residential customer, within the Conversion Area, the Company shall remove the overhead system and connect such persons' and entities' Underground Service Lines to the Underground Distribution System.
- (b) The Parties acknowledge that single family residences within the Conversion Area must (i) provide a service trench and conduit, in accordance with the Company's specifications, from the underground meter base to the point of service provided during the conversion, and (ii) pay for the secondary service conductors as defined in Schedule 85 of the Company's Electric Tariff G. The Government Entity shall exercise its authority to order disconnection and removal of overhead facilities with respect to owners failing to convert service lines from overhead to underground within the timelines provided in RCW 35.96.050.

10. Dispute Resolution.

- (a) Any dispute, disagreement or claim arising out of or concerning this Agreement must first be presented to and considered by the Parties. A Party who wishes dispute resolution shall notify the other Party in writing as to the nature of the dispute. Each Party shall appoint a representative who shall be responsible for representing the Party's interests. The representatives shall exercise good faith efforts to resolve the dispute. Any dispute that is not resolved within ten (10) business days of the date the disagreement was first raised by written notice shall be referred by the Parties' representatives in writing to the senior management of the Parties for resolution. In the event the senior management are unable to resolve the dispute within twenty (20) business days (or such other period as the Parties may agree upon), each Party may pursue resolution of the dispute through other legal means consistent with the terms of this Agreement. All negotiations pursuant to these procedures for the resolution of disputes shall be confidential and shall be treated as compromise and settlement negotiations for purposes of the state and federal rules of evidence.
- (b) Any claim or dispute arising hereunder which relates to any Request for Change or any equitable adjustment under Section 6, above, or the compensation payable by or to either Party under Section 7, above, and which is not resolved by senior management within the time permitted under Section 10(a), above, shall be resolved by arbitration in Seattle, Washington, under the Construction Industry Arbitration Rules of the American Arbitration Association then in effect. The decision(s) of the arbitrator(s) shall be final, conclusive and binding upon the Parties. All other disputes shall be resolved by litigation in any court or governmental agency, as applicable, having jurisdiction over the Parties and the dispute.
- (c) In connection with any arbitration under this Section 10, costs of the arbitrator(s), hearing rooms and other common costs shall be divided equally among the Parties. Each Party shall bear the cost and expense of preparing and presenting its own case (including, but not limited to, its own attorneys' fees); provided, that, in any arbitration, the arbitrator(s) may require, as part of his or her decision, reimbursement of all or a portion of the prevailing Party's costs and expenses (including, but not limited to, reasonable attorneys' fees) by the other Party.
- (d) Unless otherwise agreed by the Parties in writing, the Parties shall continue to perform their respective obligations under this Agreement during the pendency of any dispute.

11. Uncontrollable Forces.

In the event that either Party is prevented or delayed in the performance of any of its obligations under this Agreement by reason beyond its reasonable control (a "Force Majeure Event"), then that Party's performance shall be excused during the Force Majeure Event. Force Majeure Events shall include, without limitation, war; civil disturbance; flood, earthquake or other Act of God; storm, earthquake or other condition which necessitates the mobilization of the personnel of a Party or its contractors to restore utility service to customers; laws, regulations, rules or orders of any governmental agency; sabotage; strikes or similar labor disputes involving personnel of a Party, its contractors or a third party; or any failure or delay in the performance by the other Party, or a third party who is not an employee, agent or contractor of the Party claiming a Force Majeure Event, in connection with the Work or this Agreement. Upon removal or termination of the Force Majeure Event, the Party claiming a Force Majeure Event shall promptly perform the affected obligations in an orderly and expedited manner under this Agreement or procure a substitute for such obligation. The Parties shall use all commercially reasonable efforts to eliminate or minimize any delay caused by a Force Majeure Event.

12. Insurance.

- (a) PSE shall, and shall require each of its contractors to, secure and maintain in force throughout the duration of the Conversion Project (or, if sooner, until termination of this Agreement) comprehensive general liability insurances, with a minimum coverage of \$1,000,000.00 (one million) per occurrence and \$1,000,000.00 (one million) aggregate for personal injury; and \$1,000,000.00 (one million) per occurrence/ aggregate for property damages, and professional liability insurance in the amount of \$1,000,000.00 (one million).
- (b) The Government Entity shall ensure that each of its contractors performing any Government Work secures and maintains in force throughout the duration of the Conversion Project (or, if sooner, until termination of this Agreement) insurance policies having the same coverage, amounts and limits as specified Section 12(a), above.
- (c) In lieu of the insurance requirements set forth in Section 12(a), above, the Company may self-insure against such risks in such amounts as are consistent with good utility practice. Upon the Government Entity's request, the Company shall provide the Government Entity with reasonable written evidence that the Company is maintaining such self-insurance.

13. Other.

- (a) Agreement Subject To Tariff. This Agreement is subject to the General Rules and Provisions set forth in Tariff Schedule 80 of the Company's electrical Tariff G and to Schedule 74 of such Tariff as approved by the Washington Utilities and Transportation Commission and in effect as of the date of this Agreement.
- (b) Termination. The Government Entity reserves the right to terminate the Conversion Project and this Agreement upon written notice to the Company. In the event that the Government Entity terminates the Conversion Project and this Agreement, the Government Entity shall reimburse the Company for all costs reasonably incurred by the Company in connection with the Work performed prior to the effective date of termination. In such event, the costs reimbursable to the Company (i) shall not be reduced by any Shared Government Costs or other costs incurred by the Government Entity, and (ii) shall be paid within thirty (30) days after the receipt of the Company's invoice therefor. Sections 1, 5, 7, 8, 9, 10, 11 and 13 shall survive any termination of the Conversion Project and/or this Agreement.
- (c) Facilities Greater Than 15,000 Volts. Nothing in this Agreement shall in any way affect the rights or obligations of the Company under any previous agreements pertaining to the existing or future facilities of greater than 15,000 Volts within the Conversion Area.

- (d) **Compliance With Law.** The Parties shall, in performing the Work under this Agreement, comply with all applicable federal, state, and local laws, ordinances, and regulations.
- (e) **No Discrimination.** The Company, with regard to the Work performed by the Company under this Agreement, shall comply with all applicable laws relating to discrimination on the basis race, color, national origin, religion, creed, age, sex, or the presence of any physical or sensory handicap in the selection and retention of employees or procurement of materials or supplies.
- (f) **Independent Contractor.** The Company and the Government Entity agree that the Company is an independent contractor with respect to the Work and this Agreement. The Company is acting to preserve and protect its facilities and is not acting for the Government Entity in performing the Work. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the Parties. Neither the Company nor any employee of the Company shall be entitled to any benefits accorded employees of the Government Entity by virtue of the Work or this Agreement. The Government Entity shall not be responsible for withholding or otherwise deducting federal income tax or social security or contributing to the State Industrial Insurance Program, or otherwise assuming the duties of an employer with respect to the Company, or any employee of the Company.
- (g) **Nonwaiver of Rights or Remedies.** No failure or delay of either Party to insist upon or enforce strict performance by the other Party of any provision of this Agreement or to exercise any other right under this Agreement, and no course of dealing or performance with respect thereto, shall, except to the extent provided in this Agreement, be construed as a waiver or, or choice of, or relinquishment of any right under any provision of this Agreement or any right at law or equity not otherwise provided for herein. The express waiver by either Party of any right or remedy under this Agreement or at law or equity in a particular instance or circumstance shall not constitute a waiver thereof in any other instance or circumstance.
- (h) **No Third Party Beneficiaries.** There are no third-party beneficiaries of this Agreement. Nothing contained in this Agreement is intended to confer any right or interest on anyone other than the Parties, their respective successors, assigns and legal representatives.
- (i) **Governmental Authority.** This Agreement is subject to the rules, regulations, orders and other requirements, now or hereafter in effect, of all governmental regulatory authorities and courts having jurisdiction over this Agreement, the Parties or either of them. All laws, ordinances, rules, regulations, orders and other requirements, now or hereafter in effect, of governmental regulatory authorities and courts that are required to be incorporated into agreements of this character are by this reference incorporated in this Agreement.
- (j) **No Partnership.** This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties or to impose any partnership obligations or liability upon either Party. Further, neither Party shall have any right, power or authority to enter into any agreement or undertaking for or on behalf of, to act as or be an agent or representative of, or to otherwise bind the other Party.
- (k) **Severability.** In the event that any provision of this Agreement or the application of any such provision shall be held invalid as to either Party or any circumstance by any court having jurisdiction, such provision shall remain in force and effect to the maximum extent provided by law, and all other provisions of this Agreement and their application shall not be affected thereby but shall remain in force and effect unless a court or arbitrator holds they are not severable from the invalid provisions.

- (l) **Notice.** Any notice under this Agreement shall be in writing and shall be faxed (with a copy followed by mail or hand delivery), delivered in person, or mailed, properly addressed and stamped with the required postage, to the intended recipient as follows:

If to the Government Entity:

City of Tumwater
 555 Israel Road S.W.
 Tumwater, Washington
 Attn: Mr. Jay Eaton, P.E.
 Fax: 360/754-4142

If to the Company:

Puget Sound Energy, Inc.
 3130 South 38th Street, TAC-LL
 Tacoma, WA 98409
 Attn: Barry Lombard
 Fax: 253/476-6037

Any Party may change its address specified in this Section 13(l) by giving the other Party notice of such change in accordance with this Section 13(l).

- (m) **Applicable Law.** This Agreement shall in all respects be interpreted, construed and enforced in accordance with the laws of the State of Washington (without reference to rules governing conflict of laws), except to the extent such laws may be preempted by the laws of the United States of America.
- (n) **Entire Agreement.** This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof and all other agreements and understandings of the Parties, whether written or oral, with respect to the subject matter of this Agreement are hereby superseded in their entirety; provided, however, that except as expressly set forth in this Agreement, nothing herein is intended to or shall alter, amend or supersede the Design Agreement and the same shall remain in full force and effect in accordance with its terms.
- (o) **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the respective successors, assigns, purchasers, and transferees of the Parties, including but not limited to, any entity to which the rights or obligations of a Party are assigned, delegated, or transferred in any corporate reorganization, change of organization, or purchase or transfer of assets by or to another corporation, partnership, association, or other business organization or division thereof.

Government Entity:

CITY OF TUMWATER

BY _____

ITS _____

Date Signed _____

Company:

PUGET SOUND ENERGY, INC.

BY _____

ITS Municipal Liaison Manager

Date Signed _____

Approved as to form:

CITY OF TUMWATER CAPITAL FACILITIES PLAN WORKSHEET

ST 1

CONTACT: Jay Eaton
 FUND: General / Street
 DEPT: Public Works
 PROJECT NO.
 NEW:
 PRIOR:

PROGRAM TITLE: Tumwater Boulevard Improvement - Capital to I-5

PROGRAM DESCRIPTION: Improves Tumwater Boulevard to full urban standard from Capital Boulevard to I-5. A five-lane roadway section would be extend from Capitol to Linderson, and a six-lane section would extend from Linderson to I-5. Bike lanes, sidewalks and illumination would be included the length of the project. A roundabout is included at the intersection of New Market Street. A standard signalized intersection will be constructed at Linderson Way.

IS PROJECT RECOMMENDED BY PLAN/POLICY: PLAN: PAGE#

		FINANCIAL DATA									
		2004	2005	2006	2007	2008	2009	2010	2011	2012	TOTAL
EXPENSES											
Capital Costs:											
Planning & Design	\$336,500.00	\$90,000.00	\$50,000.00	\$50,000.00							\$476,500.00
Land & R-O-W			\$0.00								\$0.00
Construction			\$4,100,000.00	\$3,600,000.00	\$500,000.00						\$4,100,000.00
Equipment			\$250,000.00	\$250,000.00							\$500,000.00
Other (PSE)			\$4,400,000.00	\$3,900,000.00	\$500,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$4,828,500.00
TOTAL EXPENSES	\$336,500.00	\$90,000.00	\$4,400,000.00	\$3,900,000.00	\$500,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$4,828,500.00
Sources of Funds:											
General Government	\$100,062.00		\$282,911.00	\$233,000.00							\$382,973.00
Grants	\$194,561.00	\$64,000.00	\$2,374,417.00	\$1,960,000.00	\$384,417.00						\$2,822,978.00
Water/Sewer/Storm			\$0.00	\$0.00							\$0.00
G.O. Bonds: NonVtd			\$0.00	\$0.00							\$0.00
G.O. Bonds: Voted			\$0.00	\$0.00							\$0.00
TIF	\$41,877.00	\$36,000.00	\$1,612,772.00	\$1,527,000.00	\$85,772.00						\$1,660,648.00
Mitigation			\$160,000.00	\$150,000.00							\$310,000.00
Other			\$0.00	\$0.00							\$0.00
TOTAL SOURCES	\$336,500.00	\$90,000.00	\$4,400,000.00	\$3,900,000.00	\$500,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$4,828,500.00

		OPERATING COSTS									
		2004	2005	2006	2007	2008	2009	2010	2011	2012	TOTAL
EXPENSES											
Operating Costs:											
Personnel Costs			\$0.00								\$0.00
Supplies			\$0.00								\$0.00
O&M			\$0.00								\$0.00
Debt Services			\$0.00								\$0.00
Other			\$0.00								\$0.00
TOTAL OPERATING	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00