# TUMWATER PUBLIC WORKS COMMITTEE MINUTES OF MEETING September 9, 2005 Page 3



station and City Hall, the two parking lots should connect, and there might be an opportunity to expand parking at City Hall.

**CONSENSUS:** 

The Public Works Committee recommended the City Council approve and authorize the Mayor to sign a professional services agreement with Jerome W. Morrissette and Associates (JWM&A) for engineering services for planning and design of the Town Center Connector Roadway.

TUMWATER
BOULEVARD:
PUGET SOUND
ENERGY
AGREEMENTS
FOR ELECTRICAL
UTILITY
RELOCATIONS:

Manager Shoopman reported there is a conflict with electrical facilities on Tumwater Boulevard. The overhead portion must be relocated to accommodate City facilities. The City began implementation of the conversion of 1,200 feet of overhead wiring to an underground system. When systems are converted, the state requires a Schedule 74 Agreement with a 60/40 cost sharing. The City pays 40% and Puget Sound Energy (PSE) pays the balance. The City provides the trench and backfill for PSE's conduit and any restoration. PSB discovered it has e assement rights superseding the City's and the expense will be the responsibility of the City. The same type of agreement with the cost-sharing element will also occur for the Littlerock Road and Capitol Boulevard projects. The cost estimate for the conversion is \$103,500 plus trenching and backfill. PSE's worst case estimate for the relocation is \$545,077.

Chair Kmet asked if the City will install additional fiber optic conduit. Manager Shoopman replied there is conduit in Tumwater Boulevard from Linderson Way to Capitol Boulevard. The City is only providing the trench for the conversion piece from New Market to Linderson Way on the north side. PSE will hire contractors for the remaining work. A brief discussion of the project costs and when the project will go to bid ensued.

**CONSENSUS:** 

The Public Works Committee recommended the City Council 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.

ACCEPTANCE OF WORK – LITTLEROCK ROAD 24" WATERMAIN: Manager Shoopman reported the Littlerock Road 24" water main project was completed on May 24, 2005. The contract amount is \$151,374. The final cost of the project is \$156,120. There were change orders totaling \$3,033 to add a valve, protect the white oak, and remove additional obstructions. The project completes the 24-inch main from the Tumwater Hill reservoir to Interstate 5.

CONSENSUS:

The Public Works Committee recommended the City Council accept the Littlerock Road 24" water main project as complete and authorize the release of the retained funds as soon as the laws of the state of Washington allow.

DISCUSSION:

RESOLUTION NO. R2005-027 -

Engineer Johnston presented an overhead drawing of the immediate vicinity of the proposed vacation. In light of cancelled meetings and timing issues, the issue was

MEETING DATE: September 20, 2005 Pulled to the party or, City Administrator description water ways

TO:

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Doug Baker, City Administrator

FOR:

City Council council@ci.tumwater.wa.us

FROM:

Public Works Committee

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:

The Public Works Committee recommends 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.

EXHIBIT

City Council September 20, 2005

Tumwater Boulevard: Puget Sound Energy Agreements for Electrical Utility Relocations

Page Two

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### 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.



"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 Turnwater Boulevard in Turnwater. 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 Turnwater 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

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- 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.

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### STA "A" 64 + 95

Intercept existing conduits and reroute.

### STA "A" 68 + 95:

Install extra 4" spare across Turnwater 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 Turnwater 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.
  - 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

- 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.
- 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 Turnwater 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	10/31/05
Work Completed	

<sup>\*</sup> 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

- PSE will work under permits obtained by the City or its consultant. Such permits will cover any and all PSE relocation work.
- Locations for relocated facilities as shown on the plans are available for use.
- 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.
- Work does not include installation and removal of "temporary" facilities at the request of others during construction.

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### 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	<b>\$</b> 41.974.90	\$324,675.00
Sales Tax	\$24,877.61	\$3,693.7	•
Sub Total	\$307,577.71	\$45,668.69	
Materials	<b>\$</b> 117,774.65	\$ 2,958.55	\$120,733.20
Sub Total	\$425,352.36	\$48,627.2	4 \$473,979.60
PSE OH 15%	\$63,802.8 <u>5</u>	<u>\$7,294.0</u>	<b>\$71.096.94</b>
Total	<b>\$489,155.21</b>	<b>\$</b> 55,921.3	3 <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 Turnwater 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) sixinch (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 of Tumwater Tumwater Boulevard Underground Conversion 101022060

### 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.

City of Tumwater Tumwater Boulevard Underground Conversion 101022060

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.

City of Tumwater Tumwater Boulevard Underground Conversion 101022060

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 tenhour workdays within the working period referenced in assumption 1 above.

City of Tumwater Tumwater Boulevard Underground Conversion 101022060

- 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 competed 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.
- 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

City of Tumwater Tumwater Boulevard Underground Conversion 101022060 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:
Ву:	Ву:
Date:	Date:



Data: 3/25/2005
Project Title: Turnwaler Bivd Conversion
Project Description: Convert 950' 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 Marte Smith / 283-476-6428

Project Engineer / Phone #: Dane Marie Smith / 253-476-6428
Municipal Liaison Mgr / Phone #: Barry Lombard / 253-476-6037
Project #: 101022060

Revision #: 2

Ravision Date: 6/8/2005

# Construction Costs Estimate Summary 12

			100% Governm	100% Government Entity Reimbursable Costs	Sursable Costs			
		Dehoate	Gov Red	Temporary	Prior Conv/Reloc	Total 100% GE Reimbursable	100% PSE	Construction
	Shared Costs <sup>3</sup>	Conversion	Upgrade	Services	Within 5 Years	Coets	Coats	Coats Totals
	Estimate	Estimate	Estimate	Estimete	Estimate	Estimate	Estimate	Estimate
Company						•		4
Labor	•	•	•			•	•	•
Metaclois	•	\$ 25,300	•	•	•	\$ 25,300	13,500	38,800
Eculoment	•	v	•		•	•	•	•
			•	•	•	•	•	•
Service Presider Orthole Services	• •	S. 64.600	•	•	•	\$ 64,600	\$ 5,200	008'69
Control Clerks Comme Comme							•	•
Ourhand rooms		13,600	• •			\$ 13,600	3,000	\$ 16,800
Government Entity								
above			•	•		•	•	•
Operating Rights		•			\$	•	\$	.,
Construction Costs Totals		\$ 103,500		•	•	\$ 103,500 \$	\$ 21,700	\$ 125,200

Projected allocation of Estimated Construction Costs at Completion of Construction Work

			•	
	•			
Commence Enthy	•	000001	•	3
COLUMN CITATION				

Estimate prepared in accordance with Sections 6 & 11 of Schedule 74 Design Agreement and Section 7 of Schedule 74 Construction Agreement.

All amounts shown in this estimate are rounded up to the next \$100

Sharred Coats are altosated 40% to the Government Entity and 60% to the Company if the Conversion Project is completed

Total Costs excludes Government Entity costs of transhing, nestoration, and surveying

"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;
  - (v) 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

Construction Agreement, Attachment "B" to Schedule 74, Page 1 Turnwater Boulevard Widening Project 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.

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- (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 8, 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.
- (i) "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

Construction Agreement, Attachment "B" to Schedule 74, Page 2 Turnwater Boulevard Widening Project

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"):
  - 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 entitles 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 6, 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 preconstruction 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

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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:
  - The Total Shared Costs shall be allocated to the Parties in the following percentages:

     (A) stxty 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.
  - 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:
  - Subtracting (as a credit to the Government Entity) the amount of the Shared Government Costs.
  - 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 subconfractor 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.

### 8. 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 entitles' 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.

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### 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) <u>Agreement Subject To Tariff</u>, 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) <u>Termination.</u> 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) <u>Facilities Greater Than 15,000 Volts</u>, 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.
- (9) 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.
- (i) 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 Itability 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) <u>Severability</u>. 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.

(i) 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 Turnwater 555 Israel Road S.W. Turnwater, 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(I) by giving the other Party notice of such change in accordance with this Section 13(I). (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 entireties; 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: Company: CITY OF TUMWATER PUGET SOUND ENERGY, INC. BY ITS Municipal Liaison Manager

Date Signed\_\_\_

Construction Agreement, Attachment "B" to Schedule 74, Page 11 Tumwater Boulevard Widening Project

Date Signed\_\_\_\_

Approved as to form:

7/18/2004

# CITY OF TUMWATER CAPITAL FACILITIES PLAN WORKSHEET

ST 1

Jay Eaton General / Street Public Works CONTACT:

DEPT: PROJECT NO. FUND:

PRIOR: ZEX:

PROGRAM TITLE: Tumwater Boulevard Improvement - Capitol to H5

PROGRAM DESCRIPTION: Improves Turnwater Bouleward to kill urban standard from Capitol Boulevard to I-5. A five-lane roadway section would be extend from Linderson to I-5. Bite tenes, adewelts and flumination would be included the length of the project. A roundabout is included at the intersection of New Market Street. A standard algustical intersection will be constructed at

IS PROJECT RECOMMENDED BY PLANPOLICY?

CINANCIAL DATA

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### Tousley, Amy

From:

Leek, Sandy A

int:

Wednesday, November 23, 2005 9:26 AM

**ა**:

Tousley, Amy

Cc:

Cochrane, Casey L; Swayne, Andy

Subject:

FW: Tumwater Blvd. Utility Relocation and Conversion Projects

Hi Amy,

I phoned Andy Swayne yesterday regarding the attached email from Jim Shoopman. It seems Tumwater legal staff is seeking a PSE legal representative so the two of them may discuss the Tumwater Boulevard issue. Andy noted that he needed additional information on what the specific issues were before he would be able to direct the City's attorney to the right individual. Andy did offer to speak with the City directly.

I know you are working today (Les Olson meeting) so I thought you might want to follow-up with Jim, et al.

If there is anything I can do to support you on this issue, please let me know. Thanks, and have a great Holiday weekend! Sandy

----Original Message----

From: JIM SHOOPMAN [mailto:jshoopman@ci.tumwater.wa.us]

Sent: Tuesday, November 22, 2005 2:19 PM

To: Leek, Sandy A

Subject: Tumwater Blvd. Utility Relocation and Conversion PRojects

I left a message for Amy Tousley, but suspect she may be out due to the approaching holiday. Our attorney would like to speak with a PSE legal representative and would like to know who that would be. Can you find out for me?

.im Shoopman, P.E.
Design and Construction Manager
555 Israel Rd, SW
Tumwater, WA 98512
360-754-4140

### AGENDA ITEM NO. \_\_\_\_\_ MEETING DATE: February 21, 2006

TO:

Doug Baker, City Administrator dbaker@citumwater.wa.us

FOR:

City Council council@ci.tumwater.wa.us

FROM:

**Public Works Committee** 

RE:

Tumwater Boulevard: Puget Sound Energy (PSE) Agreements for

**Electrical Utility Relocations** 

1) References: (List only those attached)

A. Tumwater Boulevard Facility Relocation Agreement and Relocation Plan

B. Tumwater Boulevard Underground Conversion Project Plan

C. Schedule 74 Underground Conversion Project Construction Agreement

D. Reservation of Rights Agreement

E. 2006-2011 Capital Facilities Plan Worksheet

### 2) Action Requested / Staff Recommendation:

The Public Works Committee recommends the City Council approve, and authorize the Mayor to sign the Schedule 74 Underground Conversion Agreement and Project Plan, and the Facility Relocation Agreement, and authorize the Mayor to issue a Notice to Proceed for relocation of Puget Sound Energy's (PSE's) facilities.

Additionally, staff requests that the Council authorize the Mayor to sign the Reservation of Rights Agreement.

### 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 Council expressed a desire to convert the overhead portion of the facilities to an underground system, and in July 2004 the City entered into a design agreement with PSE. The Schedule 74 Underground Conversion Agreement is required and regulated by the Washington State Utilities 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 Franchise Agreement between the City and PSE. Typically, facilities relocated to accommodate the City's improvements in the public right-of-way are the responsibility of and paid for by the utility; whereas Schedule 74 conversions have a 40%/60% cost sharing component.

SR 06010cc

City Council February 21, 2006

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

Page Two

PSE had an easement over the Port of Olympia property prior to Airdustrial Way being dedicated to the City as public right-of-way. PSE contends that this easement created superior property rights that supercede terms of both the Franchise Agreement and WSUTC's Tariff 'G'. PSE thus expects the City to bear the full cost of any relocation of PSE electrical facilities in the Tumwater Boulevard right-of-way, as well as the full cost of conversion. This position has been disputed by the City Attorney, and the city has engaged outside counsel for purposes of dispute resolution with PSE on these issues.

PSE and the City have engaged in formal dispute resolution over the past two months and while the dispute has not been resolved, both parties have agreed to move forward with the project. The Reservation of Rights Agreement acknowledges the disputes, but allows both parties to move forward using the standard agreements and processes.

### 4) <u>Discussion & Alternatives:</u>

Both the City's and PSE's construction plans were coordinated to minimize conflicts between existing utilities and proposed improvements, 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 because of PSE's position that the City is liable 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.

City Council
February 21, 2006
Tumwater Boulevard: Puget Sound Energy (PSE) Agreements for Electrical
Utility Relocations
Page Two

### 5) Fiscal Notes:

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The total cost for the conversion from overhead to underground is estimated at \$108,300. If the City prevails in its position as to costs, we will be responsible for 40% of this cost. If PSE prevails in its position as to costs, the City will be responsible for 100% of conversion costs. Under the conversion agreement the City bears the cost of trenching, backfill, restoration and excavation for vaults, which is estimated at \$20,000, but could vary considerably depending on bid prices.

The PSE estimate for the relocation work is \$501,137 if none of the existing facilities described previously can be saved. Again, depending on the outcome of the dispute about relocation costs, the City could be liable for all or none of this cost.

The 2006 CFP includes \$600,000.00 for the electrical conversion and relocation work.

### "A"

### **FACILITY RELOCATION AGREEMENT**

## City of Tumwater Tumwater Boulevard Relocation Project

This Agreement, dated as of	, 2006, is made and entered into by and
between Puget Sound Energy, Inc., a Washin	gton corporation ("PSE"), and City of Tumwater,
("Government Entity"). PSE and the Govern	ment Entity are sometimes referred to herein
individually as a "Party" and collectively as the	ne "Parties."

### RECITALS

- A. PSE owns and operates certain utility systems and facilities necessary and convenient to the transmission and distribution of electricity ("Facilities") that are located on or in relation to certain operating rights ("Existing Operating Rights"). The Facilities and Existing Operating Rights are more particularly described on Exhibit A attached hereto and incorporated herein by this reference.
- B. The Government Entity plans to construct improvements to Tumwater Boulevard east from Capitol Boulevard to the Interstate 5 on-ramps. ("Improvements").
- C. In connection with the Improvements Project, the Government Entity has requested that PSB perform certain engineering design work relating to modification or relocation of its Facilities ("Design Work"), and certain construction work relating to modification or relocation of its Facilities ("Relocation Work"), all in accordance with and subject to the terms and conditions of this Agreement, and any applicable tariff on file with the Washington Utilities and Transportation Commission ("WUTC").

### AGREEMENT

The Parties, therefore, agree as follows:

### Section 1. Design Work

- 1.1 Improvements Plan. Upon execution of this Agreement by the Parties, the Government Entity shall provide to PSE a written plan for the Improvements ("Improvements Plan"), which shall include, among other things, (a) plans and specifications sufficient in detail, as reasonably determined by PSE, for use by PSE in preparation of the Design Work, including reasonably detailed drawings showing the planned Improvements, (b) a list of the key milestone dates for the Improvements, and (c) information concerning possible conflicts between PSE's Facilities and other utilities or facilities.
- 1.2 Design Work Plan. Within 10 days of PSE's receipt of the Improvements Plan and final execution of this agreement, PSE shall prepare and submit to the Government Entity a proposed work plan for performance of the Design Work requested by the Government Entity ("Design Work Plan"), which shall include, among other things, (a) a description of the scope of

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the Design Work to be performed by PSE; (b) a good faith estimate of the cost to perform the Design Work ("Design Cost Estimate"); (c) a schedule for completion of the Design Work that, to the extent reasonably practicable, reflects the applicable key milestone dates provided by the Government Entity; and (d) a description of any additional information needed from the Government Entity to support performance of the Design Work.

- 1.3 Notice to Proceed. Within 5 days after the Parties mutually agree on the final Design Work Plan, the Government Entity shall either (a) provide to PSE a written notice to proceed with the Design Work or (b) terminate this Agreement by written notice to PSE. In the event of such termination, the Government Entity shall promptly pay PSE the amounts payable to PSE in connection with such termination under Section 7.5.
- 1.4 Performance of Design Work. Subject to the terms and conditions of this Agreement and any applicable tariffs on file with the WUTC, PSE shall use reasonable efforts to perform the Design Work as described in the Design Work Plan. As part of the Design Work, PSE shall prepare and submit to the Government Entity a proposed work plan for the Relocation Work to be performed by PSE ("Relocation Plan"), which shall include, among other things, (a) a reasonably detailed description of the Relocation Work to be performed by PSE, (b) a good faith estimate of the costs to perform the Relocation Work ("Relocation Cost Estimate"), and (c) a proposed schedule for performance of the Relocation Work that, to the extent reasonably practicable, reflects the applicable key milestone dates provided by the Government Entity in the Improvements Plan ("Relocation Schedule"). The Design Work Plan shall be based upon the Improvements Plan provided by the Government Entity.
- 1.5 Relocation Plan. Within 5 days after the Government Entity's receipt of the proposed Relocation Plan, the Government Entity and PSE shall discuss the Relocation Plan and make any changes necessary to create a final Relocation Plan that is mutually acceptable to both Parties. The final Relocation Plan mutually agreed upon by the Parties thereafter will be attached as Exhibit B to this Agreement.

#### Section 2. Relocation Work

- 2.1 Notice to Proceed. At least 10 days prior to the Relocation Work commencement date specified in the Relocation Schedule, the Government Entity shall either (a) provide to PSE a written notice to proceed with the Relocation Work or (b) terminate this Agreement by written notice to PSE. In the event of such termination, the Government Entity shall promptly pay PSE the amounts payable to PSE in connection with such termination under Section 7.5.
- 2.2 Performance of Relocation Work. Subject to the terms and conditions of this Agreement and any applicable tariffs on file with the WUTC, PSE shall use reasonable efforts to perform the Relocation Work as described in the Relocation Plan. Unless otherwise specified in the Relocation Plan, PSE shall provide all necessary materials, equipment and labor for the Relocation Work.
- 2.3 Adjustments to Relocation Plan. The Government Entity and PSE acknowledge that additional requirements not contemplated by the Relocation Plan may arise during the course of performing the Relocation Work. In the event such additional requirements arise, the Parties shall use good faith reasonable efforts to appropriately respond to such requirements in a prompt

City of Tumwater

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and efficient manner, including appropriate adjustment(s) to the applicable cost estimate(s) and work schedule(s). All notices of such requirements shall be in writing.

2.4 Relocation Schedule. PSE shall perform the Relocation Work in accordance with the Relocation Schedule with reasonable diligence in the ordinary course of its business and in light of any operational issues as to the remainder of its utility systems that may be influenced by the Relocation Work. PSE shall have no liability to the Government Entity or any third party, nor shall the Government Entity be relieved or released from its obligations hereunder, in the event of any delay in the performance of the Relocation Work due to any (a) repair, maintenance, improvement, renewal or replacement work on PSE's utility systems, which work is necessary or prudent as determined by PSE in its sole discretion; or (b) actions taken by PSE which are necessary or consistent with prudent utility practices to protect the performance, integrity, reliability or stability of PSE's utility systems or any systems to which such systems are connected.

#### Section 3. Operating rights

The Government Entity shall be solely responsible for the acquisition of, and any and all costs related thereto, any and all operating rights for the Facilities that are necessary or appropriate, in addition to or as replacement for the Existing Operating Rights, for completion of the Relocation Work ("New Operating Rights"). Such New Operating Rights shall be in PSE's name, shall be of equivalent quality and kind as the Existing Operating Rights and shall be provided in a form acceptable to PSE, all as determined by PSE in its sole discretion. The New Operating Rights shall be provided with sufficient title information demonstrating to PSE's satisfaction that PSE shall obtain clear, good and sufficient title to such rights, if applicable. PSE shall not be obligated to commence the Relocation Work, or otherwise in any way change, limit, curtail, impair or otherwise affect the normal and reliable operation of the Facilities as located upon or relative to the Existing Operating Rights, unless and until PSE is in possession of the New Operating Rights.

The Parties agree that PSE will act in good faith as the Government Entity's agent soley for the purpose of acquiring the New Operating Rights. The Government Entity shall reimburse PSE for any and all costs reasonably incurred by PSE to acquire the New Operating Rights. PSE will make reasonable effort to acquire the New Operating Rights in a timely manner and at reasonable costs; however, in no event will PSE be responsible for any delay of the Relocation Work or the Improvements which may result, directly or otherwise, from PSE's performance of the Operating Rights Work. In the event PSE is unable to acquire any of the New Operating Rights through good faith negotiation at reasonable costs, PSE will promptly inform the Government Entity of same in writing, and thereafter the responsibility for acquisition of such New Operating Rights shall revert to the Government Entity.

#### Section 4. Permits

The Government Entity shall be solely responsible for the acquisition, and any costs related to acquisition of any and all permits, licenses, certificates, inspections, reviews, impact statements, determinations, authorizations, exemptions or any other form of review or approval given, made, done, issued or provided by any one or more governmental authorities with jurisdiction necessary or convenient for the Relocation Work (collectively, "Permits"). The

City of Tuniwater

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Permits shall be on such terms and conditions as PSE shall, in its sole discretion, determine to be appropriate to its needs. PSE shall not be obligated to commence the Relocation Work, or otherwise in any way change, limit, curtail, impair or otherwise affect the normal and reliable operation of the Facilities, unless and until PSE is in possession of all Permits necessary for the Relocation Work and all rights of appeal with respect to the Permits shall have been exhausted. The Government Entity shall be responsible for the performance of and all costs associated with any mitigation required by the Permits.

#### Section 5. Revisions to Relocation Plan

- 5.1 Performance by Government Entity. In the event the Government Entity does not perform its obligations under Sections 3 and/or 4 above to PSE's reasonable satisfaction in accordance with the Relocation Plan (as evidenced by PSE's written notice to the Government Entity regarding such satisfaction), absent written waiver by PSE of such obligation, PSE and the Government Entity shall use reasonable efforts to adjust the Relocation Schedule to allow time for the Government Entity to perform such obligations; provided, that if the Parties cannot reasonably agree upon such schedule adjustment, PSE may, at its option, thereafter terminate this Agreement by giving written notice to the Government Entity, and the Government Entity shall promptly pay PSE the amounts payable to PSE in connection with such termination under Section 7.5. PSE's determination as to the satisfaction or waiver of any such obligation under this Agreement shall not be deemed to be a determination of satisfaction or waiver of any other condition arising under this Agreement.
- 5.2 Revisions to Improvements Plan or Delays. PSE shall notify the Government Entity in writing of any reasonably anticipated changes to the Relocation Plan (including the Relocation Schedule and/or Relocation Cost Estimate) that result from (a) the revision or modification of any Improvements in a manner that requires PSE to revise its plans and specifications for the Relocation Work; (b) delay in PSE's performance of the Relocation Work caused by the Government Entity (or its agents, servants, employees, contractors, subcontractors, or representatives); or (c) conditions or circumstances otherwise beyond the control of PSE.

#### Section 6. Ownership

All materials, information, property and other items provided for, used or incorporated into the Relocation Work (including but not limited to the Facilities) shall be and remain the property of PSE.

#### Section 7. Cost Reimbursement

- 7.1 Estimates. The Parties agree that the Design Cost Estimate and Relocation Cost Estimate set forth in the Design Work Plan and the Relocation Plan are estimates only and PSE shall be entitled to reimbursement of all actual costs incurred in or allocable to the performance of the Design Work and the Relocation Work.
- 7.2 Costs in Excess of Estimates. PSE shall use reasonable efforts to monitor its actual costs incurred during the performance of the Design Work and the Relocation Work, and in the event PSE determines that such costs are likely to exceed the then-current Design Cost

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Estimate or Relocation Cost Estimate by more than twenty percent (20%), PSE shall so notify the Government Entity in writing. In such event PSE may, at its discretion, suspend performance of the Design Work or the Relocation Work until such time that PSE receives from the Government Entity its written acceptance of PSE's revised cost estimate(s). PSE shall not be obligated to take any further action with respect to performance of any work unless and until PSE receives the Government Entity's written acceptance of PSE's revised cost estimate(s) and authorization to proceed with the Design Work or the Relocation Work based on the revised cost estimate(s). In the event PSE does not receive written authorization from the Government Entity to proceed with the performance of the Design Work or the Relocation Work within ten (10) working days from the date of PSE's written notice, PSE may, at its discretion, terminate this Agreement. In the event of such termination, the Government Entity shall promptly pay PSE the amounts payable to PSE in connection with such termination under Section 7.5.

- 7.3 Design Work Costs & Relocation Costs. The Government Entity shall be responsible for, and shall reimburse PSE for, all costs and expenses incurred by PSE in connection with the performance of the Design Work ("Design Costs") and the Relocation Work ("Relocation Costs"). For purposes of this Agreement, the Design Costs and Relocation Costs shall include, without limitation, any and all direct or indirect costs incurred by PSE in connection with the performance of the Design Work (including preparation of the Design Work Plan) and the Relocation Work, including, but not limited to, labor, personnel, supplies, materials, overheads, contractors, consultants, attorneys and other professionals, administration and general expenses and taxes.
- 7.4 Statement of Costs Invoice. Within thirty (30) days of the completion of the Design Work and sixty (60) days of the completion of the Relocation Work, PSE shall provide the Government Entity with a statement and invoice of the actual Design Costs or Relocation Costs incurred by PSE; provided, however, that the statement and invoice of Design Costs may, at the PSE's option, be deferred to and provided concurrent with the statement and invoice of Relocation Costs. PSE shall provide, within a reasonable period after receipt of any written request from the Government Entity, such documentation and information as the Government Entity may reasonably request to verify any such invoice.
- 7.5 Costs Upon Termination of Agreement. In the event either Party terminates this Agreement, the Government Entity shall promptly pay PSB the following:
- (a) all costs and expenses incurred by PSE in connection with the Design Work and the Relocation Work prior to termination of this Agreement (including, without limitation, all Design Costs and Relocation Costs incurred through the date of termination and such additional costs PSE may incur in connection with its suspension or curtailment of the Design Work and the Relocation Work); and
- (b) all costs and expenses incurred by PSE in returning and restoring the Facilities to normal and reliable commercial operations.
- 7.6 Payment. The Government Entity shall, within thirty (30) days after the receipt of an invoice for costs payable under this Agreement, remit to PSE a payment for the full amount of the invoice.

#### Section 8. Indemnification

- Indemnification. The Government Entity releases and shall defend, indemnify 8.1 and hold harmless PSE 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. PSE releases and shall defend, indemnify and hold harmless the Government Entity 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 PSE in its performance under this Agreement. During the performance of such activities employees or contractors of each Party shall at all times remain employees or contractors, respectively, that Party and shall not be, or be construed to be, employees or contractors, respectively, of the other Party.
- Title 51 Walver. 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.

#### Section 9. Disclaimers and Limitation of Liability

- 9.1 Disclaimer. PSE makes no representations or warranties of any kind, express or implied, with respect to the Design Work, Relocation Work or other items or services provided under this Agreement including, but not limited to, any implied warranty of merchantability or fitness for a particular purpose or implied warranty arising out of course of performance, course of dealing or usage of trade.
- 9.2 Limitation of Liability. In no event shall PSB be liable, whether in contract, warranty, tort or otherwise, to any other party or to any other person for any indirect, incidental, special or consequential damages arising out of the performance or nonperformance of the Design Work, Relocation Work or this Agreement.

#### Section 10. Miscellaneous

- Tariffs Control. This Agreement is in all respects subject to all applicable tariffs of PSE now or hereafter in effect and on file with the WUTC. In the event of any conflict or inconsistency between any provision of this Agreement and any such tariff, the terms of the tariff shall govern and control.
- 10.2 Survival. Sections 3, and 6 through 10 shall survive any termination of this Agreement. Subject to the foregoing, and except as otherwise provided herein, upon and following termination of this Agreement neither Party shall have any further obligations arising under this Agreement and this Agreement shall be of no further force or effect.

City of Tumwater

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- 10.3 Waiver. The failure of any Party to enforce or insist upon strict performance of any provision of this Agreement shall not be construed to be a waiver or relinquishment of any such provision or any other provision in that or any other instance; rather, the same shall be and remain in full force and effect.
- 10.4 Entire Agreement. This Agreement, including any exhibits hereto, sets forth the complete and integrated agreement of the Parties. This Agreement cannot be amended or changed except by written instrument signed by the Party to be bound thereby.
- 10.5 Force Majeure. 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; storm, 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 Design Work, the Relocation 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 obligation 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 cause by a Force Majeure Event.
- 10.6 Enforceability. The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.
- 10.7 Notice. Any notice, request, approval, consent, order, instruction, direction or other communication under this Agreement given by either Party to the other Party shall be in writing and shall be delivered in person to an authorized representative or mailed, properly addressed and stamped with the required postage, to the intended recipient at the address and to the attention of the person specified below the Parties' respective signatures on this Agreement. Either Party may from time to time change such address by giving the other Party notice of such change in accordance with this section.
- 10.8 Governing Law. This Agreement shall be interpreted, construed and enforced in all respects in accordance with the laws of the State of Washington. This Agreement shall be fully binding upon the Parties and their respective successors, assigns and legal representatives.

above.

PSE: Government Entity:

Puget Sound Energy, Inc. City of Tumwater

By \_\_\_\_\_\_\_ By \_\_\_\_\_\_

Its Municipal Liason Manager Its \_\_\_\_\_\_\_

Address: 2711 Pacifice Avenue S.B. Olympia, WA 98501

Attn: Amy L, Tousley Attn: \_\_\_\_\_\_\_

In witness whereof, the Parties have executed this Agreement as of the date set forth

### EXHIBIT A FACILITIES AND EXISTING OPERATING RIGHTS

#### FACILITIES:

#### STA "A"49+20:

- Adjust lids on vaults 560974-139658 and 560974-139657 to final grade.
- Relocate J-box vault 560962-139661 and MP 560962-139660 to behind sidewalk.
- Adjust elevation of crossing to eliminate conflict with storm sewer pipe between catch basins CB#14 and CB#15.
- Reroute and repull primary cables as required.

#### STA "A"57+50 RT:

• Lower crossing to eliminate conflict with storm drain pipe between CB#31 and CB#32.

#### STA "A"59+68 RT:

Extend conduit on crossing to behind back of new sidewalk.

#### STA "A"62+15:

- Relocate vaults 560976-139794 and 560974-139793 to outside curb line.
- Reroute and repull feeder and primary cables as required.

#### STA "A"75+20:

- Lower crossing to eliminate conflict with storm drain pipe between CB#51 and CB#54.
- Extend conduit on crossing to behind back of new sidewalk.

#### STA "A"79+401:

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

#### STA 86+65 LT:

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

#### STA "C"206+50 RT:

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

#### **EXISTING OPERATING RIGHTS:**

PSE's operating rights are derived from an easement document recorded on December 8, 1981 under Thurston County Auditor's file No. 8112080070. All facilities are on private easement so this work is 100% billable to the city.

#### EXHIBIT B: PROJECT PLAN

This Project Plan describes work to be performed by Puget Sound Energy (PSE) and the City of Turnwater (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 vanits 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
- 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 Turnwater Boulevard.

City of Tunwater

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#### 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: PSB'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 June 2005. 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.
- 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. Costs 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 an 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

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- 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 April 2006:
- Approximate relocation work start date on or before April 24, 2006.
- Approximate start of Tumwater Boulevard Schedule 74 work by City contractor is <u>May 15</u>, 2006.
- Relocation work at west and east ends of Schedule 74 conversion project will begin on or before <u>April 24, 2006</u>.
- Approximate date Relocation Work completed on or before July 3, 2006.

This schedule is subject to change to accommodate the schedule for the City of Turnwater's Turnwater 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 \$559,259.32

	100% City	100% PSE	Combined
Labor	\$293,222.09	\$ 43,814.80	\$337,036.89
Sales Tax	\$25,803.54	\$3,855.70	\$29,659.25
Sub Total	\$319,025.63	\$47,670.50	\$366,696.14
Materials	<b>\$116,745.53</b>	<b>\$</b> 2,870.79	\$119,616.32
Sub Total	\$435,771.16	\$50,541.29	\$486,312.46
Overhead (15%)	<u>\$65,365.67</u>	<b>\$7.581.19</b>	<b>\$</b> 72,946,87
Total	\$501,136.84	\$58,122.49	\$559,259.32

#### 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.

#### "B"

## Exhibit A: Project Plan City of Tumwater Tumwater Boulevard Underground Conversion

#### February 16, 2006

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) sixinch (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% PSB'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 of Tumwater
Tumwater Boulevard Underground Conversion
101022060

City Responsibilities

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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 rerouting 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

City of Tumwater Tumwater Boulevard Underground Conversion 101022060

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 PSB 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. PSB 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 PSE/Potelco start and completion dates may change if the City start date changes.

- u The anticipated start date for the road improvement project is April 24, 2006.
- D The anticipated start date for installation of ducts and vaults is May 15, 2006 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 June 5, 2006.
- The electrical underground installation has an anticipated completion date of <u>July 3, 2006</u>.

City of Tumwater Tumwater Boulevard Underground Conversion 101022060

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 PSE/Potelco anticipated start and completion dates might change if the City start date changes.

- The anticipated start date for the road improvement project is April 24, 2006.
- The anticipated start date for installation of equipment, connection of customer service lines and removal of the existing overhead facilities is <u>June 7, 2006</u>.
- The anticipated completion date is July 3, 2006.

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. These estimated costs are valid for 90 days from the date on the Construction Costs Estimate Summary page. If this Project Plan and the Construction Agreement are not fully executed within 90 days, the estimated cost is subject to revision.

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.

City of Tumwater Tumwater Boulevard Underground Conversion 101022060

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 tenhour 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 competed 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 PSB 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 2005 Electric Distribution Trench/Duct/Vault Construction Standards, 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	pt this Project Plan as of the date indicated:
For the City of Tumwater:	For Puget Sound Energy:
Ву:	Ву:
Date:	Date:



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Date: 3/25/2006 Project Tibe: Tutteralige Bhyd Conversion

Project Description: ConvertABF of 3-phase Oil. Install 4" & 6" conduits, 3-phase 1/0 primary system, 2 pull vaults, 5 J-Box vaults.

Rate Schedule: 74

Project Manager / Phone & Dans Marie Smith / 283-476-6422 Project Engineer / Phone & Dana Marte Smith / 253-476-642

Municipal Lisison Mgr / Phons # Amy L. Tousley / 360-736-8958 Project & 101022060

Revision Date: 1/30/2006

# Construction Costs Estimate Summary 1.2

			100% Government	sent Entity Reimt	Entity Relembursable Costs			
		Private	Gov Req	Temporary	Prior Corry/Raioc Within 5 Years	Total 100% GE Reimburseble Costs	100% PBE Costs	Construction
	Shared Cours	Ledinske	Estimate	Estimate	Estimate	Estimate	Estimate	Estimate
Company	\$	•			•	••	•	60
Magariais	•	\$ 23,700	•	•	•	25,730	12,800	000,00
Equipment	•	•	•	•	•		* *	• •
Inspection		•	•	•	,		- W	74.200
Service Provider Outside Services	•	\$ 70,400	•	·	<b>,</b>			
Operating Rights	•	•	•		· ·	14.200	2.700	16,900
Overhead	•	3		•	,			
Government Entity							•	
Labor	•	•	•		,	~ •	* *	
Operating Rights		•	*		*	•	•	•
Construction Costs Totals	4	2 108.300			\$	\$ 106,300	\$ 19,300	\$ 127,600

Projected allocation of Estimated Construction Costs at Completion of Construction Work

108,300 Company Government Entity

Estimate properted in accordance with Sections 6 & 11 of Schedule 74 Dasign Agreement and Section 7 of Schedule 74 Construction Agreement.

All emounts shown in this estimate are rounded up to the next \$100

Shared Coets are allocated 40% to the Government Entity and 60% to the Company if the Conversion Project is completed

Total Coats excludes Government Entity coats of transhing, nestoration, and surveying

Construction Estimate

#### SCHEDULE 74 UNDERGROUND CONVERSION

#### **Project Construction Agreement**

Project Name: <u>Tumwaler Boulevard</u> Project Number: <u>101022060</u>
THIS Agreement, dated as of this day of, 2006, is made by and between <u>Turnwater</u> , a <u>City</u> (the "Government Entity"), and PUGET SOUND ENERGY, Inc., a Washington Corporation (the "Company").
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#### 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:
  - Cost of Conversion:
  - Public Thoroughfare; H)
  - Temporary Service; HI)
  - Trenching and Restoration; iv)
  - Underground Distribution System; and
  - 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 Ptan" 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 Ptan 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.
- (i) "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 !tmitation, (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).
- (8) "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"):

- 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);
- iii) 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
- 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 Teriff 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 6, 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 preconstruction 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 Itable 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) sldy percent (60%) to the Company, and (B) forty percent (40%) to the Government Entity.
  - 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:
  - 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.

#### 8. <u>Indemnification.</u>

- (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 35.98.050.

#### 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 flability insurances, with a minimum coverage of \$per
	convergence and \$ addressed for personal injury; and \$ per occurrence/
	aggregate for property damages, and professional liability insurance in the amount of \$

- (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) <u>Agreement Subject To Tariff.</u> 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) <u>Facilities Greater Than 15,000 Volts.</u> 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) Norwaiver 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) <u>Severability</u>, 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.

(1)		shall be in writing and shall be faxed (with a copy ed in person, or malied, properly addressed and intended recipient as follows:
	If to the Government Entity:	
		Altn:
		Fax:
	If to the Company:	Puget Sound Energy, Inc. 2711 Pacific Avenue S.E. Olympia, WA 98501 Attn: Amy L. Tousley Fac: (380) 788-5975
	Any Party may change its address specific such change in accordance with this Section 2.00 cm.	ied in this Section 13(i) by giving the other Party notice of
(m)	accordance with the laws of the State of V	all respects be interpreted, construed and enforced in Vashington (without reference to rules governing conflict hay be preempted by the laws of the United States of
(n)	the subject matter hereof and all other ag written or oral, with respect to the subject entireties; provided, however, that except	titutes the entire agreement of the Parties with respect to reements and understandings of the Parties, whether matter of this Agreement are hereby superseded in their as expressly set forth in this Agreement, nothing herein ersede the Design Agreement and the same shall ice with its terms.
(0)	respective successors, assigns, purchase limited to, any entity to which the rights or transferred in any corporate reorganizatio	nt shall be binding upon and inure to the benefit of the ers, and transferees of the Parties, including but not obligations of a Party are assigned, delegated, or n, change of organization, or purchase or transfer of ership, association, or other business organization or
Govern	nment Entity:	Company:
		PUGET SOUND ENERGY, INC.
BY		BY
ITS		гтв
	lgned	Date Signed
Approv	ed as to form:	

Construction Agreement, Attachment "B" to Schedule 74, Page 11 [Tumwater Boulevard (Linderson Way to New Market)]

#### RESERVATION OF RIGHTS AGREEMENT

This Agreement, dated as of February \_\_\_, 2006, is made and entered into by and between Puget Sound Energy, Inc. ("PSE"), and the City of Tumwater (the "City").

#### RECITALS

- A. The City desires to construct certain improvements to Tumwater Boulevard east from Capitol Boulevard to the Interstate 5 on-ramps (the "City Project"). In connection with the City Project, the City has requested that PSE undertake certain design and construction work with respect to the relocation and underground conversion of certain electrical distribution facilities owned by PSE within the area of the City Project (the "Work") and PSE has agreed to continue the Work in accordance with and subject to the terms of the Project Agreements (as defined below) and the reservation of rights set forth in this Agreement.
- B. The parties have entered into a Project Design Agreement dated May 17, 2004, pursuant to PSE Tariff G, Schedule 74 ("Schedule 74"), relating to the design work for the underground conversion portion of the Work (the "Design Agreement"). In order to complete the Work, the parties agree to enter into a Project Construction Agreement pursuant to Schedule 74 relating to the construction work for the underground conversion portion of the Work (the "Construction Agreement"), and a new Facility Relocation Agreement relating to the design and construction work for the relocation portion of the Work (the "Facility Relocation Agreement"), each of which will be based on PSE's corresponding standard form agreement and will be signed contemporaneously with the execution of this Agreement. The Design Agreement, Construction Agreement and Facility Relocation Agreement are referred to herein as the "Project Agreements."
- C. A dispute has arisen between the parties with respect to the proper allocation between them of the costs incurred by PSE in connection with the Work (the "Dispute"). The parties desire to move forward with the Work pending resolution of the Dispute. Therefore, the parties have entered into this Agreement to confirm their mutual understanding and agreement that notwithstanding the parties' execution of and performance under the Project Agreements, each party reserves all available rights, claims, remedies and defenses relating to the Dispute and each reserves all available rights, claims, remedies and defenses relating to issues of contract construction and interpretation regarding the Project Agreements.

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#### **AGREEMENT**

Therefore, the parties, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

#### 1. Reservation of Rights

- Notwithstanding its execution of and performance under the Project Agreements, including PSE's assertion of prior operating rights, the City hereby reserves all rights, claims, remedies and defenses of any kind that are available to the City in connection with the Dispute, including, without limitation, any right of the City to seek a judicial determination that the City is not responsible for all or any portion of the costs incurred by PSE in completing the Work. Prior to final resolution of the dispute, the City will be bound by and comply with the terms of the Project Agreements. Upon final resolution of the Dispute, whether such resolution be by judicial determination or by settlement between the parties, (a) any payment made by the City to PSE under the Project Agreements will be subject to refund with interest at the applicable Interest Rate (as defined below) from the date of payment by the City, to the extent such payment is required to be refunded to the City pursuant to judicial order or written settlement of the parties; and (b) the parties will continue to be bound by and comply with the terms of the Project Agreements except to the extent required otherwise by judicial order or written settlement of the parties.
- PSE hereby reserves all rights, claims, remedies and defenses of any kind that are available to PSE in connection with the Dispute, including, without limitation, any right of PSE to seek a judicial determination that the City is responsible for all or any portion of the costs incurred by PSE in completing the Work. Prior to final resolution of the Dispute, PSE will be bound by and comply with the terms of the Project Agreements. Upon final resolution of the Dispute, whether such resolution be by judicial determination or by settlement between the parties, (a) any payment made by the City to PSE under the Project Agreements will be subject to refund with interest at the applicable Interest Rate from the date of payment by the City, to the extent such payment is required to be refunded to the City pursuant to judicial order or written settlement of the Project Agreements except to the extent required otherwise by judicial order or written settlement of the parties.
- 1.3 For purposes of this Section 1, the term "Interest Rate" shall mean an interest rate of four and sixty-six one hundredths percent (4.66%) per annum (the Non-Default Rate"); provided, however, if PSE does not pay any required refund amounts on or before the due date specified in a court order or written settlement of the parties, the term "Interest Rate" shall thereafter mean an interest rate of twelve percent (12%) per annum (the "Default Rate") for all periods after the date of default. For the avoidance of doubt, if PSE fails to pay any refund when due, interest will accrue on the refund amount at the Non-Default Rate up to the date of default and will thereafter accrue on any unpaid portion of the refund amount at the Default Rate from the date of default until paid in full.

Reservation of Rights Agreement Turnwater Boulevard

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#### 2. Miscellaneous

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- 2.1 The failure of either party to insist upon or enforce strict performance of any provision of this Agreement or to exercise any right under this Agreement shall not be construed as a waiver or relinquishment to any extent of such party's right to assert or rely upon any such provision or right in that or any instance.
- 2.2 This Agreement constitutes the entire agreement, and supersedes any and all prior agreements and understandings, of the parties with respect to the parties' reservation of rights regarding the Dispute. This Agreement cannot be amended except by written instrument signed by both parties.
- 2.3 This Agreement shall be interpreted, construed and enforced according to the laws of the State of Washington. This Agreement shall be fully binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns. Any action at law or in equity to enforce this Agreement shall be brought only in the Superior Court for Thurston County, Washington.

Company:	<u>City</u> :
Puget Sound Energy, Inc.	City of Tumwater
By: Name: Title:	By: Ralph C. Osgood, Mayor
	ATTEST:
	City Clerk
	Approved as to Form: Christya. Toda
	Christy A. Todd City Attorney

CITY OF TUMWATER CAPITAL FACILITIES PLAN WORKSHEET

ST 1

Jay Eaton General / Street Public Works CONTACT: FUND: DEPT:

PROJECT NO. NEW:

PRIOR:

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

PROGRAM DESCRIPTION:

Improves Turnwater Boulevard to full urban standard from Capitol Boulevard to L6. A five-laire readway section would be autend from Capitol to Underson, and a sticlure section would extend from Underson to L6. Bitical improves Turnwater Boulevard to the included the largest of the project. A roundsbook is intersection of New Markest Street. A standard signaffined intersection will be incorporated into the project. Expenses for utility conversion and relocation will be borns 100% by the City because PSE obtained essements prior to the street being dedicated to the City by the Port.

IS PROJECT RECOMMENDED BY PLANPOLICY?

					FINANCIAL DATA	MTA					
EXPENSES	PROOF YRS	2005	EVR TOTAL	2006	2007	2008	2009	2010	2011	PUTUPE YEARS	GRAND TOTAL
Capital Costs:											
Planning & Design	\$404,015	\$160,000	\$50,000	\$50,000				•			\$614,015
Land & R-O-W	-		8		_						<b>\$</b>
Construction			\$5,200,000	\$4,700,000	\$500,000					-	\$5,200,000
Equipment			8								8
Other (PSE)			2800,000	\$600,000							\$600,000
TOTAL EDPENSES	\$404,015	\$160,000	86,860,000	*	000'005'\$	2	2	2	\$	\$	\$6,414,016
Sources of Funds:								-			
General Government	\$115,467	(\$115,467)	000'00#5	\$460,000	\$360,000						\$800,000
Grants	\$246,671	\$131,329	*	\$2,103,500	\$150,000			-			\$2,631,500
Water/Sewer/Storm			\$350,000	\$350,000							2350,000
G.O. Bonds: NonVtd			8								<b>\$</b>
G.O. Bonds: Voted			3								2
1	241,877	\$144,138	\$1.906.	\$1,906,500			-				\$2,082,515
Mitigation				\$380,000							000'005\$
Port of Olympia			\$150,000	\$150,000							\$150,000
TOTAL SOURCES	\$404,015	\$190,000		\$5,360,000	\$600,000	2	3	\$	\$	8	\$4,414,016
	a alexand			and and	I and and	2					ŀ

!				0	OPERATING COSTS	osts			;		
COSTS	PROR YRS	2005	eve total	2006	2002	2008	2009	2010	2011	FUTURE YEARS	PUTURE YEARS GRAND TOTAL
Operating Costs:							,				
Personnel Costs			2								2
Supplies	•		8								2
OSTM			8		-						8
Debt Service			2								8
Other			8								8
TOTAL OPERATING	\$0.00	20.00	00.04	90°04	20.04	00.04	20.02	20.03	00.03	00.03	20.03

7/19/2004

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 it 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 Turnwater Boulevard

e. Firefighter Wage Settlement for 2004 and 2005

f. Construction Closure of Case Road - 88th Avenue to 93rd Avenue

21 00 00 g

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

### RESERVATION OF RIGHTS AGREEMENT

This Agreement, dated as of February 23, 2006, is made and entered into by and between Puget Sound Energy, Inc. ("PSE"), and the City of Tumwater (the "City").

#### RECITALS

- A. The City desires to construct certain improvements to Tumwater Boulevard east from Capitol Boulevard to the Interstate 5 on-ramps (the "City Project"). In connection with the City Project, the City has requested that PSE undertake certain design and construction work with respect to the relocation and underground conversion of certain electrical distribution facilities owned by PSE within the area of the City Project (the "Work") and PSE has agreed to continue the Work in accordance with and subject to the terms of the Project Agreements (as defined below) and the reservation of rights set forth in this Agreement.
- B. The parties have entered into a Project Design Agreement dated May 17, 2004, pursuant to PSE Tariff G, Schedule 74 ("Schedule 74"), relating to the design work for the underground conversion portion of the Work (the "Design Agreement"). In order to complete the Work, the parties agree to enter into a Project Construction Agreement pursuant to Schedule 74 relating to the construction work for the underground conversion portion of the Work (the "Construction Agreement"), and a new Facility Relocation Agreement relating to the design and construction work for the relocation portion of the Work (the "Facility Relocation Agreement"), each of which will be based on PSE's corresponding standard form agreement and will be signed contemporaneously with the execution of this Agreement. The Design Agreement, Construction Agreement and Facility Relocation Agreement are referred to herein as the "Project Agreements."
- C. A dispute has arisen between the parties with respect to the proper allocation between them of the costs incurred by PSE in connection with the Work (the "Dispute"). The parties desire to move forward with the Work pending resolution of the Dispute. Therefore, the parties have entered into this Agreement to confirm their mutual understanding and agreement that notwithstanding the parties' execution of and performance under the Project Agreements, each party reserves all available rights, claims, remedies and defenses relating to the Dispute and each reserves all available rights, claims, remedies and defenses relating to issues of contract construction and interpretation regarding the Project Agreements.



#### **AGREEMENT**

Therefore, the parties, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

## 1. Reservation of Rights

- 1.1 Notwithstanding its execution of and performance under the Project Agreements, including PSE's assertion of prior operating rights, the City hereby reserves all rights, claims, remedies and defenses of any kind that are available to the City in connection with the Dispute, including, without limitation, any right of the City to seek a judicial determination that the City is not responsible for all or any portion of the costs incurred by PSE in completing the Work. Prior to final resolution of the dispute, the City will be bound by and comply with the terms of the Project Agreements. Upon final resolution of the Dispute, whether such resolution be by judicial determination or by settlement between the parties, (a) any payment made by the City to PSE under the Project Agreements will be subject to refund with interest at the applicable Interest Rate (as defined below) from the date of payment by the City, to the extent such payment is required to be refunded to the City pursuant to judicial order or written settlement of the parties; and (b) the parties will continue to be bound by and comply with the terms of the Project Agreements except to the extent required otherwise by judicial order or written settlement of the parties.
- PSE hereby reserves all rights, claims, remedies and defenses of any kind that are available to PSE in connection with the Dispute, including, without limitation, any right of PSE to seek a judicial determination that the City is responsible for all or any portion of the costs incurred by PSE in completing the Work. Prior to final resolution of the Dispute, PSE will be bound by and comply with the terms of the Project Agreements. Upon final resolution of the Dispute, whether such resolution be by judicial determination or by settlement between the parties, (a) any payment made by the City to PSE under the Project Agreements will be subject to refund with interest at the applicable Interest Rate from the date of payment by the City, to the extent such payment is required to be refunded to the City pursuant to judicial order or written settlement of the parties; and (b) the parties will continue to be bound by and comply with the terms of the Project Agreements except to the extent required otherwise by judicial order or written settlement of the parties.
- 1.3 For purposes of this Section 1, the term "Interest Rate" shall mean an interest rate of four and sixty-six one hundredths percent (4.66%) per annum (the Non-Default Rate"); provided, however, if PSE does not pay any required refund amounts on or before the due date specified in a court order or written settlement of the parties, the term "Interest Rate" shall thereafter mean an interest rate of twelve percent (12%) per annum (the "Default Rate") for all periods after the date of default. For the avoidance of doubt, if PSE fails to pay any refund when due, interest will accrue on the refund amount at the Non-Default Rate up to the date of default and will thereafter accrue on any unpaid portion of the refund amount at the Default Rate from the date of default until paid in full.

### 2. Miscellaneous

- 2.1 The failure of either party to insist upon or enforce strict performance of any provision of this Agreement or to exercise any right under this Agreement shall not be construed as a waiver or relinquishment to any extent of such party's right to assert or rely upon any such provision or right in that or any instance.
- 2.2 This Agreement constitutes the entire agreement, and supersedes any and all prior agreements and understandings, of the parties with respect to the parties' reservation of rights regarding the Dispute. This Agreement cannot be amended except by written instrument signed by both parties.
- 2.3 This Agreement shall be interpreted, construed and enforced according to the laws of the State of Washington. This Agreement shall be fully binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns. Any action at law or in equity to enforce this Agreement shall be brought only in the Superior Court for Thurston County, Washington.

Company:

Puget Sound Energy, Inc.

By: / My L. lowley
Name: April 1. Tourley
Title: All Holing Lights Man

City:

City of Tumwater

Osgood, Mayor

Approved as to Form:

Christy A. Todd City Attorney



COPY

TUMWATER CTTY HALL 555 ISRAEL ROAD SW TUMWATER, WA 98501-6558

www.ci.tumwater.wa.su FAX: 360/754-4126

ADMINISTRATION

CITY ADMINSTRATOR MAYOR AND COUNCIL 360/754-4120

ATTORNEY 360/754-4121

DEVELOPMENT SERVICES

BUILDING PERMITS ZONING & ENGINEERING 360/754-4180

BUILDING INSPECTION REQUEST LINE 360/154-4189

FINANCE DEPARTMENT

CTTY CLERK INFORMATION SYSTEMS 360754 4130

MUNICIPAL COURT

FIRE DEPARTMENT

360/754-4170 FAX: 360/754-4129

TRAL SERVICES

USONNEI #754-4122 #OB LINE 160/754-4129

PARKS & RECREATION

360/754-4160 FAX: 360/754-4166

MUNICIPAL GOLF CIXURSE 4611 TUMWATER VALLEY DR SE TUMWATER, WA 98501 364943-9500 FAX: 360943-4378

OLD TOWN CENTER 215 N. ZND STREET SW TUMWATER, WA 96512 360/754-4164 FAX: 360/754-2063

PLANNING & FACILITIES

LONG RANGE PLANNING BUILDINGS & GROUNDS HISTORIC PROGRAMS 360754-4210 FAX: 360754-4142

POLICE DEPARTMENT

360/754-4200 FAX: 360/154-4198

PUBLIC WORKS

ENGINEERING 360/754-4140 FAX 360/754-4142

OPERATIONS & MAINTENANCE 160754-4151 January 5, 2005

Barry Lombard, Municipal Liaison Manager Puget Sound Energy, Inc. 3130 South 38th Street Tacoma, WA 98409

Facility Relocation Agreement Henderson Boulevard & Old Highway 99 PSE Project #101022497 / Tumwater Project #ST 03009

Dear Mr. Lombard:

Re:

Attached is one fully executed original of the above referenced Facility Relocation Agreement. As directed in your letter of December 30<sup>th</sup>, we have retained the duplicate original for the city's records.

Don't hesitate to contact us at 360.754.4140 if you have questions or need additional information.

Jay C. Eaton

Sincerely

Director of Public Works

/smt

Attachment

Sheryle Wyatt, City Clerk (with duplicate original)

L.Projects\Henderson Old 99 Signal\010505 PSE Facility Relocation Agree

EXHIBIT 26
WIT: £a+on
DATE: 2-7-07
RANDI HAMILTON, CCR



# HENDERSON BOULEVARD AND OLD HIGHWAY 99

# **FACILITY RELOCATION AGREEMENT**

This Agreement, dated as of 20, 2004, is made and entered into by and between Puget Sound Energy, Inc., a Washington corporation ("PSE"), and the City of Tumwater, ("Government Entity"). PSE and the Government Entity are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

#### RECITALS

- A. PSE owns and operates certain utility systems and facilities necessary and convenient to the transmission and distribution of electricity ("Facilities") that are located on or in relation to certain operating rights ("Existing Operating Rights"). The Facilities and Existing Operating Rights are more particularly described on Exhibit A attached hereto and incorporated herein by this reference.
- B. The Government Entity plans to construct improvements to the intersection of Henderson Boulevard and Old Highway 99.
- C. In connection with the Improvements, the Government Entity has requested that PSE perform certain engineering design work relating to modification or relocation of its Facilities ("Design Work"), and certain construction work relating to modification or relocation of its Facilities ("Relocation Work"), all in accordance with and subject to the terms and conditions of this Agreement, and any applicable tariff on file with the Washington Utilities and Transportation Commission ("WUTC).
- D. The Government Entity has provided to PSE a written plan for the Improvements ("Improvement Plan") which includes, among other things, (a) plans and specifications sufficient in detail, as reasonably determined by PSE, for PSE to develop Design Work (as defined below), including reasonably detailed drawings showing planned Improvements, (b) a list of the key milestone dates for the Improvements, and (c) information concerning possible conflicts between PSE's Facilities and other utilities or facilities.

#### **AGREEMENT**

The Parties, therefore, agree as follows:

# Section 1. Design Work

1.1 Subject to the terms and conditions of this Agreement and any applicable tariffs on file with the WUTC, PSE shall use reasonable efforts to perform the Design Work and Relocation Work necessary to accommodate the Improvements. As part of the Design

Work, PSE shall prepare and submit to the Government Entity a proposed work plan ("Relocation Plan"), which shall include, among other things, (a) a reasonably detailed description of the Relocation Work to be performed by PSE, (b) a good faith estimate of the costs to perform the Relocation Work ("Relocation Cost Estimate"), and (c) a schedule for performance of the Relocation Work that, to the extent reasonably practicable, reflects the applicable key milestone dates specified by the Government Entity (the "Relocation Schedule").

1.2 PSE's good faith estimate of the costs to perform the Design Work ("Design Cost Estimate") and Relocation Work ("Relocation Cost Estimate") is \$9,800.00, subject to Section 7.1 of this Agreement.

## Section 2. Relocation Work

- 2.1 Notice to Proceed. At least 2 days prior to the Relocation Work commencement date specified in the Relocation Schedule, the Government Entity shall either (a) provide to PSE a written notice to proceed with the Relocation Work or (b) terminate this Agreement by written notice to PSE. In the event of such termination, the Government Entity shall promptly pay PSE the amounts payable to PSE in connection with such termination under Section 7.5.
- 2.2 Performance of Relocation Work. Subject to the terms and conditions of this Agreement and any applicable tariffs on file with the WUTC, PSE shall use reasonable efforts to perform the Relocation Work as described in the Relocation Plan. Unless otherwise specified in the Relocation Plan, PSE shall provide all necessary materials, equipment and labor to perform the Relocation Work. The Relocation Plan shall be based upon the Improvements Plan provided by the Government Entity.
- 2.3 Adjustments to Relocation Plan. The Government Entity and PSE acknowledge that additional requirements not contemplated by the Relocation Plan may arise during the course of performing the Relocation Work. In the event such additional requirements arise, the Parties shall use good faith reasonable efforts to appropriately respond to such requirements in a prompt and efficient manner, including appropriate adjustment(s) to the applicable cost estimate(s) and work schedule(s). All notices of such requirements and requests for such resources shall be in writing.
- 2.4 Relocation Schedule. PSE shall perform the RelocationWork in accordance with the Relocation Schedule with reasonable diligence in the ordinary course of its business and in light of any operational issues as to the remainder of its utility systems that may be influenced by the Relocation Work. PSE shall have no liability to the Government Entity or any third party, nor shall the Government Entity be relieved or released from its obligations hereunder, in the event of any delay in the performance of the Relocation Work due to any (a) repair, maintenance, improvement, renewal or replacement work on PSE's utility systems, which work is necessary or prudent as determined by PSE in its sole discretion; or (b) actions

taken by PSE which are necessary or consistent with prudent utility practices to protect the performance, integrity, reliability or stability of PSE's utility systems or any systems to which such systems are connected.

# Section 3. Operating Rights.

PSE shall be solely responsible for the acquisition, and any costs related to acquisition of any and all operating rights for the Facilities that are necessary or appropriate, in addition to or as replacement for the Existing Operating Rights, for completion of the Relocation Work ("New Operating Rights"). Unless otherwise provided for in the Relocation Plan, such New Operating Rights shall be in PSE's name, shall be of equivalent quality and kind as the Existing Operating Rights, all as determined by PSE in its sole discretion. The New Operating Rights shall be provided with sufficient title information demonstrating to PSE's satisfaction that PSE shall obtain clear, good and sufficient title to such rights, if applicable. PSE shall not be obligated to commence the RelocationWork, or otherwise in any way change, limit, curtail, impair or otherwise affect the normal and reliable operation of the Facilities as located upon or relative to the Existing Operating Rights, unless and until PSE is in possession of the New Operating Rights.

### Section 4. Permits.

The Government Entity shall be solely responsible for the acquisition, and any costs related to acquisition of any and all permits, licenses, certificates, inspections, reviews, impact statements, determinations, authorizations, exemptions or any other form of review or approval given, made, done, issued or provided by any one or more governmental authorities with jurisdiction necessary or convenient for the Relocation Work (collectively, "Permits"). The Permits shall be on such terms and conditions as PSE shall, in its sole discretion, determine to be appropriate to its needs. PSE shall not be obligated to commence the Relocation Work, or otherwise in any way change, limit, curtail, impair or otherwise affect the normal and reliable operation of the Facilities, unless and until PSE is in possession of all Permits necessary for the Relocation Work and all rights of appeal with respect to the Permits shall have been exhausted. The Government Entity shall be responsible for performance of and any costs associated with any mitigation required by the Permits.

# Section 5. Revisions to Relocation Plan

5.1 Performance by Government Entity. In the event the Government Entity has not performed its obligations under Sections 3 and 4 above to PSE's reasonable satisfaction in accordance with the Relocation Plan (as evidenced by PSE's written notice to the Government Entity regarding such satisfaction), and absent written waiver by PSE of such obligation, PSE and the Government Entity shall use reasonable efforts to adjust the Relocation Schedule to allow time for the Government Entity to perform such obligations; provided, that if the Parties cannot reasonably agree upon such rescheduling, PSE may, at its option, thereafter terminate this Agreement by giving written notice to the Government

Entity, and the Government Entity shall promptly pay PSE the amounts payable to PSE in connection with a termination under Section 7.5. PSE's determination as to the satisfaction or waiver of any such condition under this Agreement shall not be deemed to be a determination of satisfaction or waiver of any other condition arising under this Agreement.

5.2 Revisions to Improvements Project Plan or Delays. PSE shall notify the Government Entity in writing of any reasonably anticipated changes to the Relocation Plan (including the Relocation Schedule and/or Relocation Cost Estimate) that result from (a) the revision or modification of any Improvements in a manner that requires PSE to revise its plans and specifications for the RelocationWork; (b) delays in PSE's performance of the Relocation Work caused by the Government Entity (or its agents, servants, employees, contractors, subcontractors, or representatives); or (c) conditions or circumstances otherwise beyond the control PSE.

## Section 6. Ownership

All materials, information, property and other items provided for, used or incorporated into the Relocation Work (including but not limited to the Facilities) shall be and remain the property of PSE.

#### Section 7. Cost Reimbursement

- 7.1 Estimates. The Parties agree that the Design Cost Estimate and Relocation Cost Estimate set forth in Section 1.2 and in the Relocation Plan is only an estimate and PSE shall be entitled to reimbursement of all actual costs incurred in or allocable to the performance of Design Work and Relocation Work.
- 7.2 Costs in Excess of Estimates. PSE shall use reasonable efforts to monitor its actual costs incurred during the performance of the Design Work and the Relocation Work, and in the event PSE determines that such costs are likely to exceed the then-current Design Cost Estimate or Relocation Cost Estimate by more than twenty percent (20%), PSE shall so notify the Government Entity in writing. In such event PSE may, at its discretion, suspend performance of the Design Work or the Relocation Work until such time that PSE receives from the Government Entity its written acceptance of PSE's revised cost estimate(s). PSE shall not be obligated to take any further action with respect to performance of any work unless and until PSE receives the Government Entity's written acceptance of PSE's revised cost estimate(s) and authorization to proceed with the Design Work or the Relocation Work based on the revised cost estimate(s). In the event PSE does not receive written authorization from the Government Entity to proceed with the performance of the Design Work or the Relocation Work within ten (10) working days from the date of PSE's written notice, PSE may, at its discretion, terminate this Agreement. In the event of such termination, the Government Entity shall promptly pay PSE the amounts payable to PSE in connection with such termination under Section 7.5.

- 7.3 Design and Relocation Work Costs. The Government Entity shall be responsible for, and shall reimburse PSE for, all costs and expenses incurred by PSE in connection with the performance of Design Work ("Design Costs") and Relocation Work ("Relocation Costs"). For purposes of this Agreement, the Design Costs and Relocation Costs shall include, without limitation, any and all direct or indirect costs incurred by PSE in connection with the performance of the Design Work (including preparation of the Design Work Plan) and Relocation Work, including, but not limited to, labor, personnel, supplies, materials, overheads, contractors, consultants, attorneys and other professionals, administration and general expenses and taxes.
- 7.4 Statement of Costs Invoice. Within thirty (30) days of the completion of the Design Work and sixty (60) day of the completion of the Relocation Work, PSE shall provide the Government Entity with a statement and invoice of the actual Design Costs or Relocation Costs incurred by PSE; provided, however, that the statement and invoice of Design Costs may, at the PSE's option, be deferred to and provided concurrent with the statement and invoice of Relocation Costs. PSE shall provide, within a reasonable period after receipt of any written request from the Government Entity, such documentation and information as the Government Entity may reasonably request to verify any such invoice.
- 7.5 Costs Upon Termination of Agreement. In the event either Party terminates this Agreement, the Government Entity shall promptly pay PSE, the following:
  - (a) all costs and expenses incurred by PSE in connection with the Design Work and the Relocation Work prior to termination of this Agreement (including, without limitation, all Design Work and Relocation Work Costs incurred through the date of termination and such additional costs PSE may incur in connection with its suspension or curtailment of Design Work and Relocation Work and the orderly termination of Design Work and Relocation Work); and
  - (b) all costs and expenses incurred by PSE in returning and restoring the Facilities to normal and reliable commercial operations.
- 7.6 Payment. The Government Entity shall, within thirty (30) days after the receipt of an invoice for costs payable under this Agreement, remit to PSE a payment for the full amount of the invoice.

# Section 8. Indemnification

8.1 Indemnification. The Government Entity releases and shall defend, indemnify and hold harmless PSE 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. PSE releases and shall defend, indemnify and hold harmless the Government Entity 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 PSE in its performance under this Agreement. During the performance of such activities employees or contractors of each Party shall at all times remain employees or contractors, respectively, that Party and shall not be, or be construed to be, employees or contractors, respectively, of the other Party.

8.2 Title 51 Waiver. 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.

## Section 9. Disclaimers and Limitation of Liability

- 9.1 Disclaimer. PSE makes no representations or warranties of any kind, express or implied, with respect to the Design Work, Relocation Work or other items or services provided under this Agreement including, but not limited to, any implied warranty of merchantability or fitness for a particular purpose or implied warranty arising out of course of performance, course of dealing or usage of trade.
- 9.2 Limitation of Liability. In no event shall PSE be liable, whether in contract, warranty, tort or otherwise, to any other party or to any other person for any indirect, incidental, special or consequential damages arising out of the performance or nonperformance of the Design Work, Relocation Work or this Agreement.

#### Section 10. Miscellaneous

- 10.1 Tariffs Control. This Agreement is in all respects subject to all applicable tariffs of PSE now or hereafter in effect and on file with the WUTC. In the event of any conflict or inconsistency between any provision of this Agreement and any such tariff, the terms of the tariff shall govern and control.
- 10.2 Survival. Sections 3, and 6 through 10 shall survive any termination of this Agreement. Subject to the foregoing, and except as otherwise provided herein, upon and following termination of this Agreement neither Party shall have any further obligations arising under this Agreement and this Agreement shall be of no further force or effect.
- 10.3 Waiver. The failure of any Party to enforce or insist upon strict performance of any provision of this Agreement shall not be construed to be a waiver or relinquishment of any such provision or any other provision in that or any other instance; rather, the same shall be and remain in full force and effect.

- 10.4 Entire Agreement. This Agreement, including any exhibits hereto, sets forth the complete and integrated agreement of the Parties. This Agreement cannot be amended or changed except by written instrument signed by the Party to be bound thereby.
- 10.5 Force Majeure. 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; storm, 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 Design Work, the Relocation 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 obligation 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 cause by a Force Majeure Event.
- 10.6 Enforceability. The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.
- 10.7 Notice. Any notice, request, approval, consent, order, instruction, direction or other communication under this Agreement given by either Party to the other Party shall be in writing and shall be delivered in person to an authorized representative or mailed, properly addressed and stamped with the required postage, to the intended recipient at the address and to the attention of the person specified below the Parties' respective signatures on this Agreement. Either Party may from time to time change such address by giving the other Party notice of such change in accordance with this section.
- 10.8 Governing Law. This Agreement shall be interpreted, construed and enforced in all respects in accordance with the laws of the State of Washington. This Agreement shall be fully binding upon the Parties and their respective successors, assigns and legal representatives.

In witness whereof, the Parties have executed this Agreement as of the date set forth above.

<u>PSE</u> :	Government Entity
Puget Sound Energy, Inc.	City of Tunivater
By Stung Sunfator	By Gullatin
Its Municipal Liaison Manager	Its ACTING CITY FOMINISTRAPE
Address: 3130 South 38th Street	Address: 655 Jordan RD SW
Tacoma, WA 98409	TUMWATER WA 98501
Attn: TAC-LL	Attn:

### **EXHIBIT A**

# FACILITIES AND EXISTING OPERATING RIGHTS

FACILITIES: The existing facilities to be replaced include two distribution poles located near the intersection of Henderson Boulevard and Old Highway 99.

One of the existing poles, which will be removed is located approximatley at STA 16 + 70 on the west side of Old Highway 99. This pole will be replaced with a new pole approximately at STA 16 + 70

A second existing pole to be removed is approximately at STA 50 + 46 on the east of Old Highway 99. This pole will be replaced with a new pole approximately at STA 50 + 46.

### **OPERATING RIGHTS:**

Easement #8112080070 granted by the Port of Olympia.

#### EXHIBIT B

#### **RELOCATION PLAN**

# City of Tumwater:

# Henderson Boulevard/Old Highway 99 Traffic Signal

Project Number: 101022497

**December 30, 2004** 

This Project Plan describes work to be performed by Puget Sound Energy (PSE) and the City of Turnwater (the City) for the relocation of two power poles with 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

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 at the intersection of existing Henderson Boulevard and Old Highway 99 will necessitate the relocation of two poles and associated facilities. An existing pole located approximately at STA 16 + 70 will be removed. A new pole will be installed approximately at STA 16 + 70 A second existing pole located approximately at STA 50 + 46 will be removed. A new pole will be installed approximately at STA 50 + 46.
- 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, assuming the Relocation Work occurs at different times than the City's project.

Coordination with Other Utilities: PSE will coordinate drawing review with other utilities. The City will coordinate with all utilities that plan to install facilities in joint trenches. The City will coordinate communication among the utilities and will coordinate the timing for the installation of various utility facilities.

Service Interruptions: Temporary interruption of 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.

# 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 Design Work and Relocation Work are 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 Design Work and Relocation Work.
- 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:

Overtime Costs. Unless the City specifies otherwise this will be day work.

Surveying Costs. City to provide survey.

Permitting Costs. PSE will work under the permits obtained by the City.

## C. Assumptions Upon Which Relocation Costs Were Based:

#### Schedule

PSE, or its contractor, will be provided continuous access to the construction site and associated gas work during the construction period as necessary to complete its work. At a minimum, access will be from 7:00 AM to 5:00 PM Monday through Friday. PSE or its contractor will perform PSE's Relocation Work according to the following Schedule of Work.

Work Description	Duration	Date
Remove pole P08A and associated equipment at STA 16 + 70	8 hrs	Jan 3, 2005
Install pole P08 and associated equipment at STA 16 + 70	8 hrs	Jan 3, 2005
Remove pole P04A at STA 50+46	8 hrs	Jan 5, 2005
Install pole P04 and associated equipment at STA 50 + 46	8 hrs	Jan 5, 2005

*Relocation	Work	Completion	Jan 17, 2005
Date	1		

<sup>\*</sup> This schedule is subject to change to accommodate the schedule for the City's Project.

#### Traffic Control

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

#### PSE Design Plans

- 3 PSE will work under permits obtained by the City or its consultant. Such permits will cover any and all PSE relocation work.
- 4 Locations for relocated facilities as shown on the plans are available for use. Work requiring a scheduled disruption of electricity to customers will be done within business hours at straight time rate of pay. Outages will be scheduled with a minimum of two (2) business days notice.
- 5 Work does not include installation and removal of "temporary" facilities at the request of others during construction.

# IV. Design/Relocation Cost Estimate

The Design/Relocation Cost Estimate is \$9,800.00.

# V. Relocation Work Drawings

Drawings for the Relocation Work are attached as project drawings for Work Order # 101022497. The Relocation Work is shown on sheets 2 of 2 of the attached drawings.



Puget Scand Energy, Inc. P.O. Box 90868 Berlevue, WA 98009-0868

August 15, 2006

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

RE: Henderson Boulevard and Old Highway 99

Company Statement & Billing at Project Completion

Dear Mr. Eaton: WW

First of all, my apologies for the delay in submitting this bill statement to the City. This seems to be one of the projects lost in transition.

Puget Sound Energy (PSE) has completed construction work for the above referenced project. In accordance with Section 7 of the Facility Relocation Agreement dated December 30, 2004. The enclosed statement reflects construction costs to complete the project incurred by PSE. It allocates project costs as provided by Facility Relocation Agreement. The Construction Billing Statement reflects the areas final billing and allocation of costs:

Materials	\$1,348.63
(x 7% overhead)	94.40
Sub-folar	TANK THE PROPERTY OF THE STATE
Crew Labor	\$6,650.45
Project Management	313.04
1 Toject Management	\$6,963.49
(x 8.8% sales tax)	612.79
Sub-foral Action Control	金属设备设备设备设备设备设备
Materials and Labor	\$9,019.31
(x 15% PSE overhead)	1,352.90
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Please contact me with any questions you may have about the enclosed statement at 360.786.5956. PSE would be happy to meet with the City.

Cordially,

Amy L. Tousfey

Municipal Liaison Manager

Enclosure

Cc: Dana Marie Smith

EXHIBIT 27
WIT: Eaton
DATE: 2-7-07
RANDI HAMILTON, CCR

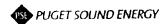
Customer

City of Tumwater



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STATEMENT SUMMARY AS OF August 15, 2006	Account No.	760-045-7
Balance as of last billing		Account Bala \$0.00
Thank you for your payment(s) Balance Forward		\$0.00 C \$0.00
Current Charges		\$10,372.21
CURRENT TOTAL AS OF August 15, 2006		\$10,372.21
Statement Due Date September 16, 2006 AMOU	NT DUE THIS STATEMENT	\$10,372.21
Description of Current Charges		Amount
Henderson Blvd.& Hwy 99 Relocation Project, PSE Project This project has been conducted under a Facility Relocat	et # 101022497 dion Agreement (12/30/04)	\$10,372.21
Design and Construction Costs	\$10,372.21	
See accompanying Statement Summary sheet(s) for addition	al detail	

For information, emergencies, to report an outage or for changes to your account, please call 1-888-225-5773 (out of state call 1-425-452-1234)
When paying in person, please present both portions. When mailing remittance, please mail to Puget Sound Energy, BOT-01H, P.O. Box 91269, Bellevue, WA 98009-9269
Please defact allong dashed line and return this portion with you payment.



Account 760-045-766 Current Bill Due Date September 16, 2006 Total Amount Due \$10,372.21

Please make checks payable to Puget Sound Energy

City of Tumwater Jay Eaton, Public Works Director 555 Israel Road S.W. Tumwater, WA 98501-6558 Puget Sound Energy BOT-01H P.O. Box 91269 Bellevue, WA 98009-9269 Customer

CITY OF TUMWATER



		ruge i oi i
 STATEMENT SUMMARY AS OF OCT 02, 2006	6 Account No.	760-045-766-2
Balance as of last billing		Account Balance
		<b>\$</b> 9,800.00
Thank you for your payment(s)		\$10,372.21CR
Balance Forward	_	\$572.21CR
CURRENT TOTAL AS OF OCT 02, 2006		\$572.21CR
 Statement Due Date Oct 20, 2006	AMOUNT DUE THIS STATEMENT	\$.00
You have a credit balance on your account.	This will be applied toward future charc	100

For information, emergencies, to report an outage or for changes to your account, please call 1-889-225-5773 or from out-of-state, 1-425-452-1234.
When paying in person, please present both pertions. When mailing remittence, please mail to Puget Sound Energy, BOT-01H, P.O. Bex 91269, Believue, WA 88009-8269

Please detach here 1 and return this portion with your payment

760-040-471 PUGET SOUND ENERGY Account: 760-045-766-2

NONE

\*\*C028

Haladadadalalaaaallallaadalaaallallaladalaadalaad ATTN JIM SHOOPMAN CITY OF TUMWATER 555 ISRAEL RD SW TUMWATER WA 98501-6515

**Puget Sound Energy** BOT-01H P.O. Box 91269 Bellevue, WA 98009-9269



Date: Oct 3, 2006 Time: 07:13:47

ATTN JIM SHOOPMAN CITY OF TUMWATER

555 ISRAEL RD SW TUMWATER WA 98501-6515

Client: CITY OF TUMWATER

**Account No:** 

760-045-766

Enclosures

Copies

Reg'd

1611

Y

### **Tickled Information:**

Mail Stop: PUY-SVC Org Unit: PUY SVC Tickled Date: August 15, 2006

Work Loc: PUYALLUP SERVICE CENTER

Tickled To: SUZI THOMAS Tickled By: SUZI THOMAS

Comments: SEND TO AMY TOUSLEY