

SELLEY DE RECORDS  
MANAGEMENT

Reliability

CONTRACT FACE SHEET

Document Type: ☐ Contract ☐ Franchise Agreement  
☒ MOU ☐ Right of Way Use Agreement  
☐ Interlocal Agreement ☐ Lien  
☐ Notice of Acceptance ☐ Correspondence  
☐ Retainage ☐ Collective Bargaining Agreement

Status: ☒ New ☐ Renewal  
☐ Amendment ☐ Cancellation  
☐ Change Order

\*Vendor Name: Puget Sound Energy

\*JDE PO Number: \_\_\_\_\_

\*Effective Date: 6-25-03

\*Termination Date: 6-25-07

\*Clerks Receiving Number: 34157

Related Receiving Number: \_\_\_\_\_

Bid Number: \_\_\_\_\_

Grant Number: \_\_\_\_\_

Ordinance Number: 5443

Resolution Number: \_\_\_\_\_

CIP Number: \_\_\_\_\_

Project Name: Performance - Reliability Report

Site Name: \_\_\_\_\_

Vendor Number: \_\_\_\_\_

Location: \_\_\_\_\_

\* Denotes Mandatory Fields. If referring to Retainage, please indicate the Termination Date same as the Contract Termination Date.

Face Sheet Date: 6-24-05

Scan: \_\_\_\_\_

Index: \_\_\_\_\_

EC NO. 34157  
ITY OF BELLEVUE  
ATE 6/25/03  
4M-TOMW00  
TY CLERK'S OFFICE

**Memorandum of Understanding  
Performance and Reliability Reporting**

This Memorandum of Understanding is entered into between the City of 03-387  
Bellevue (the "City") and Puget Sound Energy ("PSE"), also referred to herein at the  
"Parties". MDL 5443

WHEREAS, the City and PSE recognize the value of defining and developing their working relationship through cooperation, planning, communication and coordination, and

WHEREAS, the City and PSE desire to establish mutually agreed provisions for reporting of certain performance and reliability measures,

NOW, THEREFORE, it is hereby understood and agreed between the Parties as follows:

This Memorandum of Understanding may be amended by mutual agreement of the Parties. Any amendments must be set forth in writing, signed by both Parties, and specifically state that it is an amendment to this Memorandum of Understanding.

This Memorandum of Understanding, as from time to time amended, will remain in full force and effect for a period of ten (10) years from the date this Memorandum of Understanding was signed by the Parties, unless sooner terminated or further extended by mutual agreement of the Parties.

The performance of the Parties under this Memorandum of Understanding may become subject to regulation by the Washington Utilities and Transportation Commission. In such event the Parties agree to amend this Memorandum of Understanding so that it shall be consistent with any such regulation.

**Reporting Requirements**

PSE will use good faith efforts to maintain and improve the reliability of electrical service provided to all customers in the City. In furtherance of this objective, PSE will:

1. On an annual basis, provide to the City the System Average Interruption Frequency Index ("SAIFI") and the System Average Interruption Duration Index ("SAIDI") for PSE electric service within the City for a period that covers each of the previous five (5) years, and;
2. On an annual basis, identify and report to the City any individual circuits serving the City having a SAIFI and/or SAIDI, for the preceding year, that is greater than the PSE system SAIFI and/or SAIDI for the same period and identify any corrective actions that may be taken by PSE to improve any such circuits, and;

3. On an annual basis, report to the City information concerning all non-scheduled outages (and resulting service interruptions to customers) within the City, identifying the individual circuit, cause, equipment, duration and number of customers affected by the outage. Such information shall be provided solely for the information of the City for the purpose of facilitating further inquiry by the City to PSE concerning particular circuits and/or outages of interest to the City. The provision of such information by PSE shall not otherwise create or imply any other commitment or obligation by PSE. The City will not provide such information to any third party without prior notice to PSE of the City's intention to do so.

### **Dispute Resolution**

In the event of any dispute with respect to performance under this Memorandum of Understanding, the City shall notify PSE in writing, stating with reasonable specificity the nature of the dispute. Within seven (7) days of receipt of such notice, PSE shall provide written response to the City that shall acknowledge receipt of such notice and state PSE's intentions with respect to how PSE shall respond to such notice. PSE shall have thirty (30) days from its receipt of such notice to:

1. Respond to the City, contesting the City's assertion(s) as to the dispute and requesting a meeting, as provided below, or
2. Resolve the dispute, or,
3. Notify the City that PSE cannot resolve the dispute within thirty (30) days, due to the nature of the dispute. Notwithstanding such notice, PSE shall promptly take all reasonable steps to begin to resolve the dispute and notify the City in writing and in detail as to the actions that will be taken by PSE and the projected completion date. In such case, the City may set a meeting, as provided below.

If any dispute is not resolved or a meeting is requested or set, then the City shall promptly schedule a meeting between the City and PSE to discuss the dispute. The City shall notify PSE of the meeting in writing and such meeting shall take place not less than ten (10) days after PSE's receipt of notice of the meeting. Each Party shall appoint a representative who shall attend the meeting and shall be responsible for representing the Party's interests. The representatives shall exercise good faith efforts to resolve the dispute and reach agreement on any corrective action to be taken by either Party. Any dispute (including any dispute concerning any corrective action to be taken) that is not resolved within ten (10) days following the conclusion of the meeting 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) days of such referral (or such other period as the Parties may agree upon), each Party may pursue resolution of the dispute through other legal means consistent with this Memorandum of Understanding. 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.

Any dispute not resolved by the Parties as described above may be submitted to binding arbitration as provided herein below. However, the Parties specifically do not waive and hereby reserve any right they may have for access to the courts and to pursue any other recourse and remedies under applicable law.

Unless otherwise agreed by the Parties in writing, the Parties shall, as may reasonably be practicable, continue to perform their respective obligations as provided herein during the pendency of any dispute.

### **Arbitration**

The Parties agree that any dispute, controversy, or claim arising out of or relating to performance under this Memorandum of Understanding, shall be referred for resolution to the American Arbitration Association in accordance with the rules and procedures in force at the time of the submission of a request for arbitration.

The arbitrators shall allow such discovery as is appropriate to the purposes of arbitration in accomplishing a fair, speedy and cost-effective resolution of the dispute(s). The arbitrators shall reference the Washington State Rules of Civil Procedure then in effect in setting the scope and timing of discovery. The Washington State Rules of Evidence shall apply in toto. The arbitrators may enter a default decision against any Party who fails to participate in the arbitration proceedings.

The arbitrators shall have the authority to award compensatory damages, including consequential damages. Such damages may include, but are not limited to: all costs and expenses of materials, equipment, supplies, utilities, consumables, goods and other items; all costs and expenses of staff; all costs and expenses of any labor (including, but not limited to, labor of any contractors and / or subcontractors); all pre-arbitration costs and expenses of consultants, attorneys, accountants, professional and other services; and all taxes, insurance, interest expenses, overhead and general administrative costs and expenses, and other costs and expenses of any kind incurred by the City in connection with the dispute. The arbitrator may award equitable relief in those circumstances where monetary damages would be inadequate.

Any award by the arbitrators shall be accompanied by a written opinion setting forth the findings of fact and conclusions of law relied upon in reaching the decision. The award rendered by the arbitrators shall be final, binding and non-appealable, and judgment upon such award may be entered by any court of competent jurisdiction.

Except as provided below, each Party shall pay the fees of its own attorneys, expenses of witnesses and all other expenses and costs in connection with the presentation of such Party's case including, without limitation, the cost of any records, transcripts or other things used by the Parties for the arbitration, copies of

any documents used in evidence, certified copies of any court, property or City documents or records that are placed into evidence by a Party, is borne by that Party.

Except as provided below, the remaining costs of the arbitration, including without limitation, fees of the arbitrators, costs of records or transcripts prepared for the arbitrator's use in the arbitration, costs of producing the arbitrator's decision and administrative fees shall be borne equally by the Parties.

Notwithstanding any of the foregoing, in the event either Party shall be found to be the prevailing party in any two (2) arbitration proceedings brought by such Party pursuant to this Memorandum of Understanding, or any other agreement between the Parties which provides therefore, then such Party shall thereafter be entitled to recover all reasonably incurred costs, fees and expenses, including attorney fees, for any subsequent arbitration brought by them in which they are found to be the prevailing party.

In the event a Party desires to make a copy of the transcript of an arbitration proceeding for its use in writing a post-hearing brief, or a copy of an arbitration decision to append to a lawsuit to reduce the award to judgment, etc., then that Party shall bear the cost thereof, except to the extent such cost might be allowed by a court as court costs.

Agreed and Accepted this \_\_\_\_\_ day of \_\_\_\_\_, 2003

PUGET SOUND ENERGY, INC.

CITY OF BELLEVUE

John H. Hart - Manager Municipal Land Planning EROB  
(Title) City Manager  
Mark S. Bauman Director of Customer Operations  
(Title)

Approved as to form:

R. J. Kelly  
Deputy City Attorney

