

## **Memorandum of Understanding Vegetation Management Practices**

This Memorandum of Understanding ("MOU") is entered as of this \_\_\_ day of \_\_\_\_\_, 2018 ("Effective Date") by and between the City of Bellevue, a municipal corporation of the state of Washington (the "City") and Puget Sound Energy Inc., a Washington corporation ("PSE"), which are together referred to herein as the "Parties" and each individually as a "Party".

WHEREAS, the City and PSE have entered into a Franchise Agreement, Ordinance No. \_\_\_\_\_ (the "Franchise"), and

WHEREAS, the City takes exceptional pride in the care of trees throughout the City, reflected in the City's Comprehensive Plan EN-1, EN-2 and EN-13 (minimize loss of tree canopy); whether located on public or private property, within environmentally sensitive areas or along landscaped streets, all trees should be trimmed with the same care and attention to detail, and

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 encourages directional pruning of trees and phased replacement of improperly located vegetation in City rights-of-way (Bellevue Comprehensive Plan Policy UT-66), and

WHEREAS, PSE is responsible by law to maintain vegetation clearances for safe and reliable operations of its utility facilities, and

WHEREAS, the City and PSE desire to establish mutually agreed practices for the performance of vegetation management throughout the City.

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

This MOU is intended by the Parties to be supplemental to the Franchise to the extent it contains provisions and procedures addressing vegetation management activities performed by PSE pursuant to the Franchise.

Unless specifically defined otherwise in this agreement, all defined terms herein will have the same meaning as when used in the Franchise.

This MOU 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 MOU.

- 1. PURPOSE.** The purpose of this MOU is to establish practices for the performance of routine vegetation management by PSE within the City of Bellevue and a process for vegetation removal and replacement within the City right-of-way ("Franchise Area") or on City of Bellevue owned property. The parties acknowledge that following these practices are in the best interest of the public health, safety, and welfare by maintaining vegetation health without compromising worker safety or electrical reliability.

**2. PRUNING PRACTICES FOR TREES AND VEGETATION.**

- A. All routine pruning of trees and vegetation throughout the City shall be conducted:
  - i. In accordance with the Bellevue City Code, City policies and procedures, and the terms and conditions of any relevant permit.
  - ii. Under ANSI A300 standards and adherence to the International Society of Arboriculture's Best Management Practices - Utility Pruning of Trees. Crew foreman and crew shall be aware of these standards and practices and implemented for all pruning conducted by or for PSE within the City.
  - iii. Under the guidance of an International Society of Arboriculture certified arborist.
  - iv. In accordance with WAC 296-45-455 and such other laws, codes and standards as may relate to the safety and wellbeing of crews performing vegetation management activities (which such laws, codes and standards shall govern and control in the case of any conflict or inconsistency with the preceding subparagraphs (i), (ii) and (iii)).
- B. PSE's schedule for routine vegetation management activities shall take into consideration species growth habits. Crew foreman will be aware of different tree species and understand their corresponding growth habits.
- C. Climbing trees with gaffs, spikes, spurs or any foot equipment that can cause damage to the tree cambium is strongly discouraged unless the tree is to be removed.
- D. Tree crown management to maintain vegetation clearances for safe and reliable operations of utility facilities shall follow ANSI A300 Utility Crown Reduction Pruning standards, and PSE shall use best efforts to avoid tree topping when performing this maintenance.

**3. ROUTINE PRUNING OR REMOVAL OF VEGETATION WITHIN FRANCHISE AREA OR CITY OWNED PROPERTY.**

- A. Annual Vegetation Management Plan. PSE will coordinate its routine vegetation management activities within the Franchise Area and within City owned property with the City. On an annual basis, PSE will provide to the City a proposed vegetation management plan. Thereafter, upon the request of the City, and no more often than quarterly, PSE will meet with the City to coordinate the implementation of the plan with the following City departments: Transportation, Parks and Community Services, and Development Services.
- B. Notice. At least ten days prior to the start of planned routine vegetation management activities within the Franchise Area or within City owned property, PSE or its contractor will notify the City's Natural Resource Manager ("NRM"), Right-of-Way Manager ("ROW Manager"), and in the event of vegetation management within a critical area, Land Use Manager ("LU Manager"), or his/her designee.
- C. Tree Pruning. All trees within the Franchise Area or on City owned property shall be pruned in accordance with Section 2 of this MOU. If a tree has been previously pruned beyond ANSI standards, PSE and the City shall evaluate such tree for health and the City may elect to have such tree removed and replaced rather than continue to be pruned. A knowledgeable PSE representative will maintain communication with the NRM and/or ROW Manager while

vegetation management work is performed within the Franchise Area or within City owned property.

When trees are trimmed or removed within the Franchise Area or City owned property, the work should be performed in such a way as to avoid damage to other trees and vegetation and embankments or wetlands within that area. If additional trees or vegetation or wetlands to be protected are accidentally damaged during such work, PSE or its contractor will so notify the City and will use its best efforts to appropriately prune any such damaged trees and restore any damaged areas to a good and sustainable condition.

- D. **Tree Removal and Replacement.** If damage to a tree within the Franchise Area or on City owned property caused by PSE's vegetation management activities is of a nature that requires removal and restoration of such damaged tree, the City shall identify the appropriate tree species and equitable canopy ratio for replacement including approximate size/caliper of tree. PSE shall have or cause such planting to occur (i) in the approximate vicinity of the removed tree, provided the mature size of the replacement planting will not interfere with maintenance of clearance limits for PSE's overhead lines, and (ii) in accordance with industry standards. PSE shall provide for a one year maintenance/warranty period for plant establishment. However, in the event the Parties determine the same location is not appropriate, the Parties will identify an alternate location within the same Storm Drainage Basin.
  - E. **Tree Removal and Compensation.** In the event PSE removes a tree within the Franchise Area or on City owned property and if such removed tree cannot be replaced pursuant to Section 3(D) by PSE, then PSE shall compensate the City in an amount equal to the cost to acquire and plant a replacement tree as otherwise provided in Section 3(D). PSE shall pay such replacement cost within thirty (30) days of receiving an invoice for such amount from the City.
  - F. **Restoration.** All debris associated with vegetation management activities within the Franchise Area or within City owned property will be chipped and removed by PSE or its contractor from the trimming site at no cost to the City. 'Drop and Scatter' practices will require prior approval from the NRM or ROW Manager, or his/her designee.
  - G. **Emergency Work.** Emergency (as distinct from routine) vegetation management activities shall be undertaken in accordance with industry standard practices in order to restore safe and reliable operations as soon as is reasonable possible under the circumstances. PSE shall notify the NRM and ROW Manager, or his/her designee, of such emergency operations either by phone or e-mail. If the NRM or ROW Manager is not available, a message can be left and City staff will review the nature of the work on the next available business day. For purposes of this MOU, an emergency includes vegetation management in the Franchise Area and or other City Property which arises as a result of an emergency or other unexpected event or conditions which require immediate response to correct an unsafe condition which has or could result in bodily injury, damage to property or equipment, and/or interference/obstruction to the rights-of-way or to eliminate a condition which poses an imminent threat to the operation and reliability of PSE's utility facilities.
- 4. RESERVATION OF RIGHTS AND REMEDIES.** The Parties reserve all rights and remedies to which the Parties are entitled under the Franchise or at law or in equity with respect to vegetation management. Nothing contained in this MOU shall be deemed to alter any of the existing terms and conditions of the

Franchise. Without limiting the generality of the foregoing, each Party reserves the right to terminate this MOU upon thirty (30) days prior written notice to the other Party and seek any and all rights to which it is entitled under the Franchise, at law or in equity.

5. **CONFLICT RESOLUTION.** Any dispute, disagreement or claim arising out of this MOU must first be presented to and considered by the Parties. A Party who wishes to present such dispute, disagreement or claim will notify the other Party and pursue resolution of the dispute, disagreement or claim pursuant to the Dispute Resolution process set forth in the Franchise. In the event the Parties are unable to reach an agreement, the parties are free to file suit, seek any available legal remedy, or agree to alternative dispute resolution methods such as mediation.
6. **TERM.** This MOU shall commence as of the Effective Date and remain in full force and effect, as from time to time amended, for the term of the Franchise including any extensions or termination thereof (as provided for in the Franchise) unless sooner terminated by either of the Parties.
7. **NOTICE.** Except as otherwise provided by the MOU, all notices and other communications must be in writing and shall be deemed valid if sent by certified mail, return receipt requested, or overnight delivery, addressed as follows:

If to City:                      City of Bellevue  
    Transportation Department  
    Attn: Right-of-Way Manager  
    PO Box 90012  
    Bellevue, WA 98009-9012

With a copy to:              Franchise Manager  
    Transportation Department  
    City of Bellevue  
    PO Box 90012  
    Bellevue, WA 98009-9012

And

If to PSE:                      Puget Sound Energy  
    Vegetation Management  
    PO Box 97034 SKC-OFC  
    Bellevue, WA 98009-9734

## 8. MISCELLANEOUS.

- A. Nothing in this MOU is intended to create any rights or interests as third-party beneficiaries. Each of the Parties reserves their right to terminate this MOU and to pursue remedies provided in the Franchise. Each of the Parties reserves all their respective rights and interests with respect to the subject matter of this MOU. Any amendment shall be set forth in writing, signed by the Parties, and specifically state to what section or sections it is an amendment to this MOU.
- B. This MOU and the Franchise sets forth the entire agreement of the Parties and supersedes any and all prior agreements of the Parties with respect to the subject matters hereof. The invalidity or unenforceability of any provision of this MOU shall not affect the other provisions hereof, and this MOU shall be construed in all respects as if such invalid or unenforceable provisions were

omitted. This MOU shall be governed by and construed in accordance with the laws of the State of Washington.

Agreed and Accepted this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

<b>CITY OF BELLEVUE</b>  Signature: _____  Name: _____  Title: _____	<b>PUGET SOUND ENERGY</b>  Signature: _____  Name: _____  Title: _____
Approved as to form:  _____  BY: Monica Buck  Assistant City Attorney	