

## Memorandum of Understanding Discontinued Poles

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") which provides certain operating rights and privileges to PSE for use of the Franchise Area (as defined therein) pursuant to the terms, conditions and obligations of the Franchise; and

WHEREAS, PSE owns and maintains utility poles in the Franchise Area; and

WHEREAS, over time utility poles in the Franchise Area are replaced by PSE with new poles; and

WHEREAS, when PSE replaces a pole in the Franchise Area it coordinates the pole replacement with third parties having lines and equipment co-located on PSE owned utility poles to allow such third parties to relocate to a replacement pole; and

WHEREAS, the City desires that utility poles no longer in use (discontinued poles) be removed from the Franchise Area following their discontinuance of use; and

WHEREAS, the City takes exceptional pride in the aesthetics of its streetscapes and neighborhoods by, among other objectives, ensuring that discontinued poles are removed by the parties responsible for such poles, consistent with the City's Comprehensive Plan UT-86 (removal of abandoned facilities), UT-67 (consolidation on existing facilities), UT-77 (aesthetically compatible); and

WHEREAS, the Parties desire to enter into this MOU to facilitate timely removal from the Franchise Area of utility poles that are no longer in use.

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 PSE owned poles no longer in use by PSE located in the Franchise Area.

Unless specifically defined otherwise in this MOU, 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 set forth a process to facilitate timely removal of PSE owned Discontinued Poles from the Franchise Area. For purposes of this MOU:

- A. "Discontinued Pole" refers to any PSE owned utility pole located in the Franchise Area which is no longer needed to provide Regulated Services and from which PSE and all third parties have permanently removed all attachments of wires, devices and other equipment.
  - B. "Third Party Occupied Pole" refers to any PSE owned utility pole located in the Franchise Area from which PSE has removed all of its attachments of wires, devices and other equipment, but which still has attachments of wires, devices and other equipment owned by third parties; such Third Party Occupied Poles are still necessary for third parties to provide services regulated by the Washington Utilities and Transportation Commission ("WUTC"), the Federal Communications Commission or any agency with jurisdiction over such services provided by a third party.
  - C. "Regulated Services" means any service provided by PSE that is regulated by the Federal Energy Regulatory Commission ("FERC") or by the Washington Utilities and Transportation Commission ("WUTC"), or any successor agency with jurisdiction over such services.
  - D. "Satisfactory Removal/Restoration" refers to the removal of a Discontinued Pole which is completed in compliance with the requirements of the Franchise and applicable City Codes, permits and policies.
2. **REMOVAL PLANNING.** PSE and the City shall confer, no more frequently than every 180 days (unless the Parties mutually agree otherwise), with respect to PSE's practices and plans to remove Discontinued Poles from the Franchise Area.
3. **THIRD PARTY POLE ATTACHMENTS.** The City acknowledges that PSE is subject to and must comply with applicable federal and state laws and regulations that apply to attachments of wires, devices and other equipment owned by third parties to PSE's utility poles and facilities within the Franchise Area. As of the date of this MOU, PSE and third parties having attachments of wires, devices and other equipment to PSE's utility poles and facilities within the Franchise Area use the National Joint Utilities Notification System ("NJUNS") as the means of providing official notice between them of actions required to be taken and reporting of actions taken by such third parties with respect to such attachments. To the extent consistent with applicable federal and state laws and regulations and at the request of the City, PSE will use commercially reasonable efforts (subject to the functional capabilities and limitations of NJUNS in place from time to time) to include the City as an interested party to any notification tickets submitted by PSE in NJUNS with respect to any of PSE's utility poles within the Franchise Area that are Third Party Occupied Poles. The City may monitor activity associated with such third party attachments through NJUNS and engage directly with such third party to compel completion of such third party activities under any applicable City authority. Following removal of all PSE facilities and equipment and all such third party attachments from a Third Party Occupied Pole, any such pole shall be deemed a Discontinued Pole and PSE shall remove such Discontinued Pole from the Franchise Area in accordance with Section 4 of this MOU; provided, following permanent removal of all PSE facilities and equipment from one or more such Third Party Occupied Poles and with the City's written concurrence, PSE may transfer ownership of one or more such poles to any third party having attachments on such poles for such third party's continued use, and in such event PSE shall not be required to remove such poles, nor bear any further responsibility for such poles under the terms of this MOU.

#### 4. REMOVAL & ENFORCEMENT.

- A. PSE shall use commercially reasonable efforts to remove a Discontinued Pole from the Franchise Area within ninety (90) days of the date that such Discontinued Pole shall have been deemed a Discontinued Pole pursuant to Section 1; provided, however, that (a) such removal is not being contested by any third-party asserting any rights to attach to or use such Discontinued Pole; (b) the City (or any other agency with jurisdiction) has provided, in a timely manner, any and all permits or approvals required to remove such Discontinued Pole from the Franchise Area and such removal is otherwise consistent with applicable law; (c) such removal does not cause the delay of PSE work for a City public improvement project where the pole to be removed is located; and (d) such removal has not been hindered or delayed by an event of force majeure. As used herein, "event of force majeure" means any event, circumstance or combination of events or circumstances beyond the reasonable control of PSE resulting in or causing a failure or delay by, hindrance to or interference with the fulfillment, wholly or in part, of PSE's obligation to remove a Discontinued Pole from the Franchise Area.

In the event a Discontinued Pole is part of a group of poles identified in NJUNS under one ticket, the obligation to remove a Discontinued Pole within ninety (90) days shall not commence until all poles on the ticket have been deemed Discontinued Poles.

- B. If PSE shall be in breach of the obligation set forth in the preceding paragraph and shall thereafter fail to cure the same within thirty (30) days of its receipt of a written demand from the City to cure, PSE shall pay the City within thirty (30) days of the written demand \$100 per pole per calendar month until the removal has been completed.

When PSE and the City confer pursuant to the terms of Section 2, the parties shall review and assess the timeliness of PSE's removal of Discontinued Poles, and may amend the terms of this Section 4.B. by mutual agreement.

5. **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 one or more Discontinued Pole(s) or PSE's obligation to restore. 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.
6. **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.
7. **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.

- 8. NOTICE.** All notices must be 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  
                          Municipal Relations  
                          PO Box 97034  
                          Bellevue, WA 98009-9734

**9. 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.

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