

**CITY OF ORTING  
WASHINGTON**

**RESOLUTION NO. 2014-8**

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**A RESOLUTION OF THE CITY OF ORTING,  
WASHINGTON, APPROVING AND AUTHORIZING THE  
MAYOR TO EXECUTE A FACILITY RELOCATION  
AGREEMENT WITH PUGET SOUND ENERGY FOR THE  
DESIGN AND RELOCATION OF UTILITY FACILITIES AS  
PART OF THE CALISTOGA SETBACK LEVEE PROJECT**

**WHEREAS**, the City adopted a Comprehensive Flood Hazard Management Plan in June 2009, which contains the determination that setback levees would provide protection of persons and property by increasing flood storage capacity, reducing downstream flood impacts, restoring channel processes and restoring natural habitat; and

**WHEREAS**, the City has identified a site located on the right bank of the Puyallup River in Orting for the construction of a setback levee known and referred to as the “**Calistoga Setback Levee**”; and

**WHEREAS**, on February 12, 2014, the City Council approved award of the bid of the Calistoga Setback Levee Project (the “**Project**”) to the low bidder and a notice to proceed has been issued; and

**WHEREAS**, the Project necessitates the relocation of certain energy utility systems and related facilities owned and operated by Puget Sound Energy (“**PSE**”) that are located within the Project area; and

**WHEREAS**, the scope and budget for the Project anticipated and allocated Project funds associated with design and engineering (the “**Design Work**”) and relocation work (the “**Relocation Work**”) necessary to be performed by PSE for the purpose of relocation of the PSE utility systems and related facilities; and

**WHEREAS**, PSE has now provided the City with its cost estimates for the Relocation Work and the form of a “**Facility Relocation Agreement**” that allocates fifty percent (50%) of the costs of the Design Work and Relocation Work to the City, with all such costs allocated to the City to be reimbursed to PSE in accordance with the terms and conditions of the Facility Relocation Agreement (i.e. within 30 days of receipt of invoice); and

**WHEREAS**, the City’s estimated allocated costs for the Relocation Work is **\$91,709.60** which amount may be increased or decreased depending upon the actual cost of the work; and

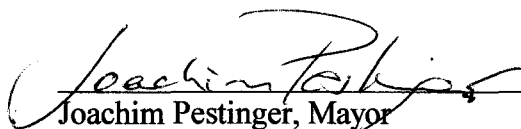
**WHEREAS**, the City Council having been in all matters fully advised finds that it is in the best interest of the City to authorize the Mayor, on behalf of the City, to execute the Facility Relocation Agreement in substantially the form of the agreement attached hereto as Exhibit "A" in order to allow the Design Work and Relocation Work to commence as soon as possible to ensure that such Work does not interfere with critical path work for the Project;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ORTING, WASHINGTON, DOES RESOLVE AS FOLLOWS:**


Section 1. Authorizing Execution of Facility Relocation Agreement. That the Mayor is hereby authorized, on behalf of the City, to execute a Facility Relocation Agreement with Puget Sound Energy in substantially the form of the agreement attached hereto as Exhibit "A".

PASSED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 30<sup>th</sup> DAY OF APRIL, 2014.


CITY OF ORTING

  
Joachim Pestinger, Mayor

ATTEST/AUTHENTICATED:

  
Mark Bethune, City Clerk/Treasurer

Approved as to form:

  
Chris Bacha,  
Kenyon Disend, PLLC  
City Attorney

Passed by the City Council: 4/30/14  
Resolution No.: 2014-8

EXHIBIT A

*(Facility Relocation Agreement with Puget Sound Energy)*

## FACILITY RELOCATION AGREEMENT

This Agreement, dated as of \_\_\_\_\_, 2014, is made and entered into by and between Puget Sound Energy, Inc., a Washington corporation ("PSE"), and the City of Orting ("City" or its agents, servants, employees, contractors, subcontractors, or representatives). PSE and the City 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 electric services ("Facilities") on property beyond the City's established Right-of-Ways. The current City Calistoga Levee Setback Project requires PSE to relocate and modify its Facilities. The Facilities are more particularly described on **Exhibit A** attached hereto and incorporated herein by this reference.

B. The City plans to construct improvements to an area encompassing a portion of Calistoga Street, 184<sup>th</sup> St E, 150<sup>th</sup> Ave E, 159<sup>th</sup> Ave E and 176<sup>th</sup> St E, hereafter referred to as the "Project Area". There are existing PSE electric facilities located within the Project Area which are in conflict and will have to be either relocated and/or modified ("Improvements").

C. In connection with the Improvements project, the City has requested that PSE perform certain engineering design work relating to modification, or relocation, of its Facilities (the "Design Work"), and certain construction work relating to modification, or relocation, of its Facilities (the "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 (the "WUTC").

### AGREEMENT

The Parties, therefore, agree as follows:

#### **Section 1. Design Work**

**1.1 Improvements Plan.** The City shall provide to PSE a written plan for the Improvements (the "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 Relocation Plan.** Upon the City's receipt of the proposed Relocation Plan, and within a reasonable period of time thereafter, the City 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.

## **Section 2. Relocation Work**

**2.1 Notice to Proceed.** At least 30 days prior to the Relocation Work commencement date specified in the Relocation Schedule, the City shall either: (a) provide to PSE a written notice to proceed with the Relocation and Modification Work; or (b) terminate this Agreement by written notice to PSE. In the event of such termination, the City shall promptly pay PSE the amounts payable to PSE in connection with such termination under Section 7.5.

**2.2 Performance of Relocation and Modification 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 City 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 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 City, or any third party, nor shall the City 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**

Unless otherwise provided for in the Relocation Plan, the City shall be solely responsible for the acquisition of, and any costs related to acquisition of any and all operating rights for the Facilities that are necessary or appropriate unless sufficient space for the relocated Facilities is already available throughout the Project Area for completion of the

Relocation Work ("New Operating Rights"). Such New Operating Rights shall be equivalent or greater than the PSE current rights within the Project Area. 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.

#### **Section 4. Permits**

The City shall be solely responsible for 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 construction for 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 City 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 the City.** In the event the City 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 City regarding such satisfaction), absent written waiver by PSE of such obligation, PSE and City shall use reasonable efforts to adjust the Relocation Schedule to allow time for the City 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 City, and the City 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 City 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 City (or its agents, servants, employees, contractors, subcontractors, or representatives); or (c) conditions or circumstances otherwise beyond the control of PSE.

#### **Section 6. Materials and Ownership**

Unless specifically stated otherwise in the Relocation Plan, PSE shall provide all necessary materials, equipment and labor required to perform the Relocation Work. 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, subject to the notification requirement of paragraph 7.2..

**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 City in writing. In such event PSE may, at its discretion, suspend performance of the Design Work or the Relocation Work and PSE shall not be obligated to continue with performance of any work unless and until PSE receives the City's written acceptance of PSE's revised cost estimate(s) and written notice to proceed with the Design Work or the Relocation Work. In the event PSE does not receive such acceptance and notice from the City to proceed with the performance of the Design Work or the Relocation Work within ten (10) working days from the date of PSE's notice, then PSE may, at its discretion, terminate this Agreement. In the event of such termination, the City 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 City shall be responsible for, and shall reimburse PSE for, fifty percent (50%) of all costs and expenses incurred by PSE in connection with the performance of the Design Work (the "Design Costs") and the Relocation Work (the "Relocation Costs") subject to the notification requirement of paragraph 7.2. For purposes of this Agreement, the Design Costs and the 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.** Upon completion of both, the Design Work and Relocation Work, PSE shall provide the City with a statement and invoice of the actual Design Costs or Relocation Costs incurred by PSE. PSE shall provide, within a reasonable period after receipt of any written request from the City, such documentation and information as the City may reasonably request to verify any such invoice.

**7.5 Costs Upon Termination of Agreement.** In the event either Party terminates this Agreement, the City shall promptly pay PSE the following:

(a) all costs and expenses incurred by PSE in connection with the Design Work and the Relocation Work (including, without limitation, all Design Costs and Relocation Costs incurred through the date of termination and such additional costs as PSE may incur in connection with its suspension or curtailment of the Design Work and the Relocation Work and the orderly termination 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 City 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 City 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 City in its performance under this Agreement. PSE releases and shall defend, indemnify and hold harmless the City 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.

**Puget Sound Energy, Inc.**

By \_\_\_\_\_

Its Municipal Liaison Manager

Address: 3130 So. 38<sup>th</sup> St

Tacoma, WA 98409

**City of Orting**

By \_\_\_\_\_

Its \_\_\_\_\_

Address: 110 Train Street

Orting, WA 98360

## **EXHIBIT A**

### **Project Area and Scope of Work**

This project requires removal of overhead primary line in support of the City of Orting Calistoga Levee Setback project. PSE will remove existing overhead three phase primary line running along Gratzer Ave NW (behind Orting Middle School) and river crossing to Leach Rd E and 159th Ave E. PSE will replace the river crossing by constructing new three phase primary line and reconstruct existing single phase primary line outside Orting City Limits within the jurisdiction of Pierce County. This job is a 50/50 shared cost project with the City of Orting.

**EXHIBIT B**

**Relocation Cost Estimate**

(See Separate Sheet)



**PUGET  
SOUND  
ENERGY**

## FACILITY RELOCATION/MODIFICATION BILLING DETAIL

To: City of Orting  
176th & 150th Ave E  
Orting, WA 98047

Date: 04/29/14

Attn: Ken Wolfe

**Project Description:** Remove facilities in conflict with the Levee Re-build and re-route three phase tie in.

**Location:** 150th Ave East and 184th St E and 176th ST E

**PSE Project Manager:** Glen Thomas

Activity:	Distribution Relocation	Direct PSE Labor	Flagging	Tree trimming
PSE Order #:	101087753	101087753	101087753	101087753
% Reimbursable:	50%	50%	50%	50%
Materials	\$7,300.00	\$0.00		
Construction	\$136,784.00	\$0.00	\$4,632.00	\$1,000.00
Engineering & Management	\$0.00	\$3,200.00		
Right of Way	\$2,004.00	\$520.00		
Overhead	\$26,295.84	\$669.60	\$833.76	\$180.00
<b>Total Actual Costs:</b>	<b>\$172,383.84</b>	<b>\$4,389.60</b>	<b>\$5,465.76</b>	<b>\$1,180.00</b>
<b>GRAND TOTAL:</b>				<b>\$183,419.20</b>
<b>REIMBURSABLE PORTION:</b>				<b>\$91,709.60</b>