

**Summary of Joint Trencher Comments on CPSE’s Proposed
Joint Trenching Agreement and CPSE’s Response as well as other Revisions
June 3, 2024**

Where practical, CPS Energy (“CPSE”) shares its trenches in new residential and commercial developments with communications providers as a community service and spreads the associated construction costs among all users of the Joint Trench for mutual benefit. It should be noted that CPSE is NOT the project engineer for any development and all joint trench activity is coordinated with and through the Developer’s project engineer, subject to CPSE’s review of communication design documents to determine pro rata share of trenching cost.

In order to better and more efficiently support the needs of CPSE, our community, and our Joint Trench Partners, CPSE has developed a new Joint Trench Agreement (the “Agreement”). The new Agreement will replace and update all prior existing joint trench agreements and shall govern all new joint trench activities. The new Agreement has been undertaken by CPSE in order to: update outdated provisions and practices; consolidate the administration of residential and commercial joint trench projects into a single agreement; conform with the CPSE Pole Attachment Standards (and other applicable CPSE standards); and ensure fair and reasonable cost recovery for CPSE through the adoption of a streamlined payment process under which CPSE is paid in advance for the performance of agreed upon work.

Under the new Agreement, all Joint Trenchers remain responsible for (1) the design of their facilities; (2) construction coordination with the Developer’s project engineer and other entities regarding the installation of their facilities; (3) obtaining all requisite authorizations from public and private property owners and governmental entities to install, maintain, and operate their facilities within the public rights of way or easement where the trench is located; and (4) making upfront payment of construction costs to CPSE where applicable.

In order to obtain input from Joint Trenchers, on November 3, 2023, CPSE posted its Agreement with proposed edits on CPSE’s website. Comments to the Agreement were due on December 8, 2023. Charter and AT&T submitted comments. Below is a summary of their comments along with CPSE’s responses as well as a description of any corresponding revisions made by CPSE to the Agreement. In addition, described below is a summary of additional clarifying edits that CPSE has made to the Agreement based upon its own internal review.

Charter’s Comments

- 1. Recital D: Charter commented that the late payment of invoices by a Joint Trencher should not impact CPSE’s consideration of a new joint trenching request.**

CPSE Response: The untimely payment of invoices or other charges related to joint trenching is one of many factors that CPSE may use to refuse to authorize new joint trenching projects. Late payment or non-payment for joint trenching will cause further issues if they are not addressed as soon as possible. CPS Energy clarified the language in the Agreement to ensure that a contracting party may not be refused access to a trench for non-payment related to another agreement with CPS Energy not related to trenching.

2. Section 3.1.3.3: Charter commented that payment should not be required in advance of the work, for example, prior to the pre-construction meeting.

CPSE Response: This comment appears to reflect a misunderstanding of the sequence and nature of the design and construction process. Under Section 3.1.3.1, Joint Trencher has the responsibility to deliver to CPSE its design documents within 30 business days of CPSE delivering its Preliminary Design to the Developer. As provided in section 3.1.3.2, within 20 business days of receiving the Joint Trencher's design CPSE will review the Joint Trencher's design to determine the proposed trench footage, number of conduits, and conduit size. This information will be used to determine whether to accept or reject a proposal to share the trench. If accepted, CPSE will generate an invoice based on the accepted design, which must be paid at least 5 business days prior to the Pre-Construction Meeting per section 3.1.3.3. This process describes a pay-to-play transaction which is common to all types of construction projects. If the Joint Trencher fails to make payment for participation in the joint trench it will have been deemed to have signaled that it has no interest in participating in the joint trench or in attending the Pre-Construction Meeting. CPSE revised these sections to clarify this process.

3. Section 7.2.1: Charter commented that section 7.2.1 is unclear and suggested clarifying language.

CPSE Response: CPSE agrees with Charter and made additional revisions to this section, along with the addition of section 7.2.1.1, consistent with Charter's suggested language to make it clear that any Joint Trencher that causes damage to another Party's facilities or to an encasement containing the facilities of multiple Parties is responsible for paying for such damage.

4. Section 10.1.1: Charter commented that this section dealing with costs related to the Joint Trencher's failure to act on Joint Trencher's facilities as required by the Agreement was not an indemnity issue.

CPSE Response: CPSE is in agreement and moved this provision to a new Section 10.3 that addresses cost recovery matters.

5. Section 10.1.2: Charter commented that the costs specified in this section are covered in Section 10.1.

CPSE Response: CPSE deleted Section 10.1.2.

6. Section 10.1.3: Charter commented that taxes or special charges by others are not an indemnity issue. Charter recommended deleting this section.

CPSE Response: CPSE has kept this provision in the indemnity section of the Agreement because it relates to third-party "claims" and are therefore properly considered liability issues.

- 7. Section 10.2.3: Charter recommended deleting provision related to CPSE's acceptance of Joint Trencher's choice of counsel in defending against claims for which it is indemnifying CPSE.**

CPSE Response: CPSE has revised this provision to make clear that the Joint Trencher will have the right at any time, by written notice to CPSE, to consult with CPSE on claims and that CPSE will cooperate fully with Joint Trencher in the defense of the claim to the extent reasonably feasible without waiver of either attorney-client privilege or attorney work product protections.

- 8. Section 10.2.4: Charter noted that some words appeared to be missing from the subsection.**

CPSE Response: CPSE added language to clarify that the provision is intended to apply to the settlement of third-party claims for monetary liabilities.

- 9. Appendix A: Charter commented that the rates are excessive and that it would like to see support for these rates.**

CPSE Response: CPSE's rates are applied uniformly for all Joint Trenchers and are consistent with applicable law and are not subject to negotiation. The rates represent a cost recovery mechanism and are based on the average of existing trenching contract costs and internal costs. The new trench rates have been updated to reflect today's construction costs. The CPSE labor and associated costs reflected in current rates have not been adjusted since about 2012. CPSE will provide the supporting documents upon request and subject to a confidentiality agreement.

AT&T's Comments

- 10. AT&T inquired whether CPSE is able to provide Joint Trenchers a copy of the Preliminary design as well as the Final design.**

CPSE Response: Section 3.1.2.1 states that CPSE will provide the Preliminary Design to the Developer or Civic Authority, the Developer's Engineer, or the Developer's Representative. Joint Trencher is responsible for obtaining the Preliminary Design from the Developer.

Similarly, Section 3.1.2.2 states that CPSE will provide the Final Design to the Developer or Civic Authority, the Developer's Engineer, or the Developer's Representative. Joint Trencher is responsible for obtaining the Final Design from the Developer, Civic Authority, Developer's Engineer, or Developer's Representative.

- 11. AT&T inquired whether CPSE can notify Joint Trenchers of any scheduled meetings so Joint Trenchers can make their deadlines as outlined in 3.1.3.**

CPSE Response: CPSE will make reasonable efforts to remind the Developer to notify Joint Trenchers of any scheduled meetings but ultimately it is up to the Developer to coordinate such

meetings and CPSE encourages Joint Trenchers to work closely with Developers on individual projects because those schedules may change from project-to-project.

12. AT&T inquired as to what happens when the design changes? AT&T noted that currently, Joint Trenchers find out about changes when they receive the Final Design, and that this typically happens one week before the Pre-Construction Meeting. AT&T asked whether CPSE can provide the invoice to Joint Trenchers after the Pre-Construction Meeting in 3.1.3.3.

CPSE Response: The joint-trenching process is intended to allow for the integration of communication facilities requests by multiple parties between the Preliminary Design and the Final Design. See CPSE's response to item #2 above. Should a design change between the Preliminary Design and the Final Design result in a Joint Trencher requesting further changes to the Final Design, Section 3.1.6 allows a Joint Trencher to request reasonable deviations from the Final Design at the Pre-Construction Meeting. During that meeting Joint Trenchers may identify proposed revisions in the number and size of conduits per trench segment included in the Final Design. Any accepted deviations from the Final Design will be subject to additional cost, which will be reflected in a supplemental invoice sent after the Pre-Construction Meeting. This section was revised consistent with this response and section 3.2.3 was amended to clarify that payment of supplemental invoices must be received by CPSE within 30 days of the invoice date.

Also related to changes to the Final Design, CPS Energy added new section 3.1.13 to provide that a Residential Joint Trencher that fails to install its facilities in the trench within the construction phase will receive a refund or credit toward a future joint trench project.

13. AT&T inquired whether there is a way to ensure meeting notifications for the Pre-Construction Meetings are sent and received by Joint Trenchers? AT&T indicated that meeting notifications are sometimes not received by Joint Trenchers.

CPSE Response: CPSE will make reasonable efforts to remind the Developer to notify Joint Trenchers of any scheduled meetings but ultimately it is up to the Developer to coordinate with the Joint Trenchers and CPSE encourages Joint Trenchers to work closely with Developers on individual projects because those schedules may change from project-to-project.

14. Section 3.1.13. AT&T inquired about the requirement in Section 3.1.13 (Section 3.1.14 under the latest revisions) for the Joint Trencher to stake its pedestal locations according to Applicable Engineering Standards before the start of construction for identification purposes.

CPSE Response: CPSE amended new Section 3.1.14 to clarify that it's the Joint Trencher's responsibility to stake pedestal locations consistent with "industry standards," not CPSE's "Applicable Engineering Standards".

CPS Energy's Additional Clarifications: Additional revisions were made to the Agreement to address minor oversights and improve service delivery.

- 15. Amendment to Section 2.12 and Addition of Section 2.13:** *Section 2.12 was amended by deleting a sentence referencing the responsibility of a Joint Trencher for “boring” to connect to an available trench and replaced with new section 2.13 which clarifies that boring associated with connecting a Joint Trencher’s service drops or network equipment to facilities in a trench are outside the scope of the Agreement and the sole responsibility of the Joint Trencher.*
- 16. Amendments to Section 7.3 Regarding Emergency Repairs:** *Section 7.3 has been amended to clarify the sequence in performing work to carry out emergency repairs as between CPSE and different Joint Trenchers.*
- 17. Amendments to Section 7.4 Related to Charges and Collection for Damages:** *Section 7.4 has been amended to clarify the process for individual Joint Trenchers to seek reimbursement for damage to their facilities.*
- 18. Amendments to Article 8 Related to Assignment and Termination:** *Section 8 has been amended to clarify the preconditions for CPSE to approve an assignment of an Agreement by a Joint Trencher. The section was also amended to clarify that the Joint Trencher remains responsible for all charges associated with an Underground Project in which it is participating at time of an assignment or termination of the Agreement.*
- 19. Amendments to Appendix C:** *Engineering diagrams were added to Appendix C to further demonstrate orientation and spacing of trenches at street intersections.*