

NON-CODE

**CITY OF REDMOND**  
**ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE GRANTING PUGET SOUND ENERGY, INC., A WASHINGTON CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE, AUTHORITY AND FRANCHISE TO SET, ERECT, LAY, CONSTRUCT, EXTEND, SUPPORT, ATTACH, CONNECT, MAINTAIN, REPAIR, REPLACE, ENLARGE, OPERATE AND USE FACILITIES IN, UPON, OVER, UNDER, ALONG, ACROSS AND THROUGH THE FRANCHISE AREA TO PROVIDE FOR THE TRANSMISSION, DISTRIBUTION, AND SALE OF GAS AND ENERGY FOR POWER, HEAT, LIGHT, AND SUCH OTHER PURPOSES FOR WHICH GAS AND ENERGY MAY BE USED

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THE CITY COUNCIL OF THE CITY OF REDMOND, WASHINGTON, DOES ORDAIN AS FOLLOWS:

**Section 1. Definitions.**

1.1 Where used in this franchise (the "Franchise"), the following terms will have the meaning set forth in this Section 1. Other terms are defined elsewhere in this Franchise.

1.1.1 "City" means the City of Redmond, Washington, a code city of the State of Washington.

1.1.2 "City Council" means the Redmond City Council, or its successor, the governing body of the City of Redmond, Washington.

1.1.3 "Decommissioned Pole" means a utility pole Facility that is located in the Franchise Area and is no longer needed to provide a Regulated Service.

1.1.4 "Dispute" means any and all claims, controversies or disputes arising between the Parties relating to or in connection with this Franchise.

1.1.5 "Environmental Laws" means any and all State and federal Laws relating to the protection of human health and the environment, including those relating to the generation, use, handling, transportation, storage, release, discharge or disposal of Hazardous Substances, such as the Hazardous Waste Cleanup - Model Toxics Control Act, Chapter 70A.305 RCW.

1.1.6 "Facilities" means, collectively and as applicable, any and all of the following facilities that are owned, operated, or maintained by PSE: (i) natural gas distribution facilities and systems, including gas pipes, pipelines, mains, laterals, conduits, feeders, regulators, meters, meter-reading devices and infrastructure (including advanced metering infrastructure), and related communication systems used in connection with electric and gas systems; (ii) electric transmission and distribution facilities and systems, including poles (with or without crossarms), wires, lines, conduits, cables, braces, guys, anchors and vaults, meter-reading devices and infrastructure (including advanced metering infrastructure), and related communication systems used in connection with electric and gas systems; and (iii) any and all other equipment, appliances, attachments, appurtenances, and other facilities or items necessary, convenient, or in any way appertaining to any and all of the foregoing, whether the same be located above ground or underground.

1.1.7 "Force Majeure Event" means any event or circumstance (or combination thereof) that: (i) delays or prevents performance by a Party of any of its obligations under this Franchise; (ii) is not caused by, and is beyond the reasonable control of, the affected Party; and (iii) could not have been prevented or overcome by commercially reasonable measures taken by the affected Party to avoid the effect of the event or circumstance on the affected Party's ability to perform its obligations hereunder and the affected Party attempted to mitigate the consequences of the event or circumstance. Force Majeure Events may include the following: (a) acts of nature, including storms; (b) epidemics and pandemics; (c) acts of public enemies, terrorism, war, rioting, insurrection or sabotage; (d) any form of compulsory federal or State government action; (e) accidents or other casualties causing damage, loss or delay; (f) labor disturbances, strikes, lock-outs or other industrial actions affecting the Parties or any of their contractors, subcontractors, agents or employees; and (g) supply chain disruptions, shortages in materials, or similar events delaying or preventing the procurement of certain materials.

1.1.8 "Franchise Area" means the Rights-of-Way within the jurisdictional boundaries of the City.

1.1.9 "Hazardous Substances" means any hazardous, toxic, or dangerous substance, material, waste, pollutant, or contaminant that is specifically designated as such and regulated by any Environmental Law.

1.1.10 "Law" means any and all federal, State or municipal law, code, statute, ordinance, rule, tariff, regulation or other requirement that is applicable to a Party or its activities under this Franchise and is accorded the full force and effect of law and is binding upon such Party.

1.1.11 "Ordinance" means Ordinance No. \_\_\_\_\_, which sets forth the terms and conditions of this Franchise.

1.1.12 "Party" means, as applicable, PSE or the City, and "Parties" means, collectively, PSE and the City.

1.1.13 "PSE" means Puget Sound Energy, Inc., a Washington corporation, and its successors and assigns.

1.1.14 "Public Improvement Project" means a capital improvement project within the Franchise Area that requires the relocation of Facilities within the Franchise Area, is funded by the City (either with its own funds or with other public monies obtained by the City for such capital improvement project), and is undertaken by the City.

1.1.15 "Regulated Service" means any utility, telecommunications, gas, electric, or similar service that is subject to the jurisdiction of one or more federal or State agencies that regulate the terms and conditions for such service (including the Federal Energy Regulatory Commission and the UTC).

1.1.16 "Right-of-Way" or "ROW" means any and all of the roads, streets, avenues, alleys, and highways of the City as now laid out, platted, dedicated or improved; and any and all roads, streets, avenues, alleys and highways that may hereafter be laid out, platted, dedicated or improved within the limits of the City.

1.1.17 "State" means the State of Washington.

1.1.18 "Term" means the term of this Franchise as defined in Section 19 (Franchise Term).

1.1.19 "UTC" means the Washington Utilities and Transportation Commission, and any successor agency with jurisdiction over the terms and conditions of any gas or energy services provided by PSE to its customers.

**Section 2. Non-Exclusive Franchise.**

2.1 This non-exclusive Franchise shall in no way prevent, inhibit, or prohibit the City from using or modifying any of the

Franchise Area, in a manner that is consistent with Law and the terms and conditions of this Franchise, for any City purpose.

2.2 Nothing in this Franchise constitutes any representation or warranty, whether express or implied, by the City to PSE as to the condition of the Franchise Area, including its merchantability or fitness for any purpose.

**Section 3. Grant of Rights.**

3.1 The City hereby grants to PSE the right, privilege, authority and franchise to set, erect, lay, construct, extend, support, attach, connect, maintain, repair, replace, remove, enlarge, operate and use Facilities in, upon, over, under, along, across and through the Franchise Area to provide for the transmission, distribution and sale of gas and energy for power, heat, light, and such other purposes for which gas and energy may be used.

3.2 This Franchise is not, and will not be deemed to be, an exclusive Franchise. This Franchise will not in any manner prohibit the City from granting other and further franchises over, upon, under and along the Franchise Area that do not interfere with PSE's rights under this Franchise. This Franchise will not affect the jurisdiction of the City over the Franchise Area and will not limit or constrain the exercise of the City's police powers, or prohibit or prevent the City from using the Franchise Area, in a manner that is consistent with Law and the terms and conditions of this Franchise.

3.3 PSE will exercise its rights within the Franchise Area in accordance with Law; except, that in the event of any conflict or inconsistency between any municipal law, code, statute, ordinance, rule, regulation, policy or other requirement of the City and the terms and conditions of this Franchise, the terms and conditions of this Franchise will govern and control.

3.4 This Franchise will not convey any right to PSE to install any Facilities on, under, over or across, or to otherwise use, any City-owned properties or City-leased properties of any kind that are located outside the Franchise Area. Further, this Franchise will not govern or apply to any Facilities located on any PSE-owned or PSE-leased properties or any easements (whether inside or outside of the Franchise Area, whether granted by a private or public entity, and whether now existing or hereafter acquired), and such Facilities are not, and will not be deemed to be, located pursuant to rights derived from this Franchise.

3.5 Facilities that were installed or maintained by PSE in accordance with a prior franchise agreement between PSE and the City, but that are not within the Franchise Area under this Franchise, may be maintained, repaired, and operated by PSE at the location such Facilities exist as of the Effective Date; except, that no such Facilities may be enlarged, improved, or expanded by PSE without the prior review and written approval of the City pursuant to and consistent with Law.

**Section 4. PSE's Use and Occupancy of the Franchise Area.**

4.1 The construction, operation and maintenance of Facilities authorized by this Franchise shall not preclude the City, its agents or its contractors, from grading, excavating, or doing other necessary work contiguous to such Facilities in a manner that is consistent with Law and the terms and conditions of this Franchise.

4.2 All work performed on Facilities within the Franchise Area will be accomplished in a good and workmanlike manner, with due regard for safety, by means that, to the extent practicable, minimize interference with the free passage of pedestrian or vehicle traffic, and by methods that allow for reasonable access to adjoining property, whether public or private. PSE will post and maintain proper barricades, flags, flaggers, lights, flares, safety devices, and other measures as required by Law. If any work by PSE (or any of its contractors of any tier) on Facilities within the Franchise Area under this Franchise impairs the lateral support of the Franchise Area or adjacent properties, PSE will take such action as is reasonably necessary to restore and maintain the lateral support of the Franchise Area or such adjacent properties.

4.3 Prior to PSE engaging in any work on Facilities located within the Franchise Area, PSE will apply for all City permits required to do such work. In addition, PSE will, except to the extent contrary to or inconsistent with the terms and conditions of this Franchise, comply with all requirements and conditions of such permits and will pay all City permit fees applicable to such permits. If Facilities within the Franchise Area are in such a condition so as to endanger the property, life, health, or safety of any individual or threaten system integrity, or are otherwise compromised, in each case as reasonably determined by PSE, PSE may take prompt action to correct the dangerous condition without first obtaining any required City permits on the condition that PSE applies for any such permit(s) as soon as reasonably practicable after taking such action. If the City discovers an emergency situation involving any Facilities, the City will promptly notify

PSE, and PSE will address the emergency situation pursuant to this Section 4.3.

4.4 PSE shall have the discretion to determine the placement of its Facilities as may be necessary to provide safe and reliable electric and gas service within the Franchise Area, and will coordinate with the City with respect to such placement through the applicable permitting process of the City. To the extent practicable, when installing Facilities within the Franchise Area under this Franchise, PSE shall maintain separation from other existing utilities and communications facilities installed in the Franchise Area as reasonably prescribed by the Redmond Municipal Code, the National Electrical Safety Code and prevailing industry standards.

4.5 All PSE Facilities and all construction or maintenance work pertaining to the Facilities in the Franchise Area shall be the responsibility of PSE.

4.6 PSE will, after completing any installation, construction, relocation, maintenance, removal or repair of any of the Facilities within the Franchise Area pursuant to this Franchise, restore the affected Franchise Area and any adjacent areas within the Franchise Area that may be damaged or disturbed by PSE's work to as good or a better condition as such area or property was in immediately prior to the applicable work. The Public Works Department shall have the final authority to determine the adequacy of the restoration performed in accordance with the requirements set forth herein, provided that the Public Works Department shall not unreasonably withhold such an adequacy determination. The City will not impose any fee, fine, charge, or other cost or expense on PSE for any such damage or disturbance if such restoration work is completed to the reasonable satisfaction of the City. If such restoration work is not done in accordance with this Section 4.6 and to the reasonable satisfaction of the City, the City may notify PSE in writing that it wishes to perform such restoration work. If the City and PSE agree in writing that the City will perform such restoration work, the City will perform such restoration work in accordance with this Section 4.6, and PSE will reimburse the City for the actual, reasonable costs incurred by the City in performing such restoration work within sixty (60) days after PSE's receipt of an undisputed, itemized invoice of the City's incurred costs.

4.7 Before PSE commences any work under this Franchise which may disturb any existing monuments or markers relating to subdivisions, tracts, streets, highways, plats, roads, or surveys, PSE shall reference all such monuments and markers consistent with

Laws. All markers and monuments which are to be disturbed or displaced by any such work will be restored consistent with Law.

4.8 PSE will have the right to cut, clear, prune and remove vegetation encroaching on, overhanging, or growing into Facilities within the Franchise Area so as to prevent such vegetation from coming in contact with such Facilities and to maintain safe and reliable operations of such Facilities. The exercise of such right will be subject to the City's prior written approval, which will not be unreasonably withheld, conditioned, or delayed. PSE's tree trimming activities will preserve the appearance, integrity, and health of the trees to the extent reasonably possible. Except in emergency situations or as otherwise approved by the City, PSE will (i) be responsible for all debris removal from such activities and (ii) ensure such work is performed under the direction of a certified arborist.

Except for work undertaken pursuant to Section 4.3, PSE may not prune trees at a point below twenty (20) feet above the finished grade of the applicable Franchise Area until written notice has been given to the owner or occupant of the premises abutting the applicable Franchise Area in or over which the tree is growing. The owner or occupant of the abutting premises may prune such tree at points twenty (20) feet above the finished grade of the applicable Franchise Area at their own expense. If the pruning does not take place within the agreed upon time frame or is not sufficiently done by such owner or occupant, in PSE's sole discretion, PSE may prune such tree at its own expense.

4.9 If PSE intends to use chemical sprays to control or kill weeds and brush within the Franchise Area, prior written approval must be obtained from the City at least annually (which approval may be satisfied by the City's issuance of an applicable permit for such work). The City may limit or restrict the types, amounts, and timing of sprays within the Franchise Area if a significant negative impact on the aesthetics of the area is anticipated and such limitations or restrictions are not in conflict with State Laws or prudent utility practices governing utility right-of-way maintenance.

4.10 The Parties acknowledge that PSE is subject to State and federal Laws that apply to its gas and energy operations and that certain information related to such operations is publicly available, including from or through the UTC. The City may review such information, including publicly available maintenance, safety, and inspection information related to Facilities, in its discretion.

4.11 Nothing in this Franchise is intended (nor will be construed) to relieve either Party of its respective obligations under Law with respect to determining the location of underground utility facilities, including Facilities.

**Section 5. Planning and Coordination.**

5.1 Each Party will exercise commercially reasonable efforts to coordinate construction work it may undertake within the Franchise Area with the other Party so as to promote the orderly and expeditious performance and completion of such work as a whole. In so doing, the Parties will undertake cooperative planning so as to promote the coordinated timing, location, and performance of such work within the Franchise Area. Upon the reasonable request of a Party, but not more often than annually (unless otherwise agreed upon by the Parties), the Parties will meet to discuss and coordinate future construction activities then being planned by either Party within the Franchise Area. Such discussions and coordination will be for informational purposes only and will not obligate either Party to undertake any specific improvements or other activities within the Franchise Area.

5.2 The City may, from time to time, request:

5.2.1 copies of certain available PSE plans for potential improvements to Facilities within the Franchise Area if and to the extent such information is needed by the City for its own project planning purposes, and

5.2.2 copies of certain available maps in use by PSE showing the approximate locations of Facilities within the Franchise Area if and to the extent such information is needed by the City for specific Right-of-Way management purposes.

Any such request by the City must be submitted by email to [Map.Request@pse.com](mailto:Map.Request@pse.com) (or by such other method as PSE may reasonably direct, from time to time) and must be reasonable in scope and at intervals that minimize administrative burdens on both Parties. Any release of information to the City pursuant to this Section 5.2 will be subject to PSE's prior approval, which will not be unreasonably conditioned, withheld or delayed. Any information provided by PSE pursuant to this Section 5.2 will be for informational purposes only and will not obligate PSE to undertake any specific improvements or other activities within the Franchise Area, or be construed as a proposal to undertake any specific improvements or other activities within the Franchise Area. PSE

does not warrant the accuracy of any information provided pursuant to this Section 5.2 and, to the extent the locations of Facilities are shown in any such information, such Facilities are shown in their approximate locations. Further, notwithstanding anything in this Franchise to the contrary, PSE will have no obligation to disclose any records, documents, or other information that, in PSE's reasonable discretion: (i) are financial, commercial, or proprietary in nature, or (ii) constitute critical energy infrastructure information as regulated under the Federal Regulation and Development of Power - 16 U.S.C. § 791a, et seq.

**Section 6. Records.**

6.1 PSE shall maintain adequate records to document activities performed under this Franchise.

6.2 PSE shall maintain records to document the approximate location of its Facilities, including as-built plans and maps, as determined by PSE in its sole discretion.

6.3 If the City receives a request under the Public Records Act, Chapter 42.56 RCW, to inspect or copy any information provided by PSE in connection with this Franchise and the City reasonably determines that the release of such information is required pursuant to RCW 42.56, then the City shall notify PSE promptly in writing, and no later than five (5) days after the City identifies the applicable information, to allow PSE an opportunity to take action to prevent or limit the disclosure of such information. If PSE does not communicate in writing to the City, within ten (10) business days of receipt of the City's notice, its intent to take action to prevent the disclosure of such information, then the City may release the applicable information. If PSE provides notice pursuant to this Section 6.3 of its intent to take action, PSE will take all necessary actions to prevent or limit the proposed disclosure in a manner so as to ensure the City's response is not delayed or improper under the Public Records Act or Law.

**Section 7. Joint Use of PSE Excavation.**

Except in emergency situations, if PSE intends to make an excavation within the Franchise Area, PSE will, to the extent practicable, provide at least thirty (30) days written notice to the City and afford the City an opportunity to use such excavation if PSE: (i) receives a written request from the City to do so, (ii) such joint use would not unreasonably delay the work of PSE causing such excavation, and (iii) such joint use is arranged and

accomplished upon terms and conditions reasonably satisfactory to PSE and the City.

**Section 8. City Use of PSE Poles or Other Facilities in Franchise Area.**

8.1 During the Term, the City may install and maintain City-owned equipment, fiber or wires on PSE-owned overhead electric distribution pole Facilities within the Franchise Area, subject to PSE's prior consent, which shall not unreasonably be withheld, and pursuant to a mutually agreed upon pole attachment agreement entered into between the City and PSE.

8.2 The City will install, operate, and maintain all City-owned facilities on PSE-owned overhead electric distribution pole Facilities within the Franchise Area at its sole risk and expense and will conduct all such activities in accordance with Law and consistent with such reasonable terms and conditions as PSE may specify from time to time (including requirements accommodating Facilities or the facilities of other parties having the right to use PSE's poles). For the avoidance of doubt, PSE's obligations with respect to any such pole attachments by the City will be set forth in the applicable pole attachment agreement entered into between the City and PSE, and PSE will have no obligation under Section 12 (Indemnification) or Section 13 (Insurance) in connection with any City-owned facilities that are installed or maintained on PSE's pole Facilities. Nothing herein will require PSE to bear any cost or expense in connection with any such installation or use by the City.

**Section 9. Decommissioned Facilities.**

9.1 As of the Effective Date, PSE and third parties having attachments of wires, devices and other equipment to PSE-owned pole Facilities located within the Franchise Area will use the National Joint Utilities Notification System ("NJUNS") as the means of providing official notice 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 Law and at the request of the City, PSE will use commercially reasonable efforts (subject to the functional capabilities and limitations of NJUNS) to include the City as an interested party to any notification tickets submitted by PSE in NJUNS with respect to any PSE-owned pole Facilities located within the Franchise Area that are permanently no longer in use by PSE and which contain third-party attachments. The City may monitor activity associated with such third-party attachments through NJUNS.

9.2 If PSE determines that a PSE-owned pole Facility located within the Franchise Area is a Decommissioned Pole, PSE will notify the City of the same and such notice will establish the date by which such Decommissioned Pole will be removed from the Franchise Area. PSE will use commercially reasonable efforts to remove any such Decommissioned Pole from the Franchise Area within one hundred twenty (120) days after the date of such notice. If, however, upon receipt of any such notice from PSE, the City reasonably determines that such Decommissioned Pole unreasonably interferes with the free passage of pedestrian or vehicle traffic within the Franchise Area, the City will notify PSE of the same, and PSE will use commercially reasonable efforts to remove such Decommissioned Pole from the Franchise Area within thirty (30) days after the date of such notice from the City.

9.3 If the City reasonably determines that a PSE-owned pole Facility located within the Franchise Area is no longer in use by PSE or by any authorized third party, the City may request that PSE determine if such Facility constitutes a Decommissioned Pole within sixty (60) days' notice from the City. Upon receipt of such request, PSE will review the status of the Facility in question. If PSE determines such Facility to be a Decommissioned Pole, PSE will give the City notice thereof in accordance with Section 9.2. If PSE determines that such Facility is not a Decommissioned Pole, PSE will notify the City of the same, and such notice will explain the basis for making such determination. The Parties will work together to establish mutually agreeable procedures for the implementation of this Section 9.3 that achieve the Right-of-Way management objectives of the City in a manner that minimizes the administrative burdens on both Parties.

9.4 The Parties acknowledge that: (i) the removal of underground Facilities often causes significant disruptions to the Franchise Area, which may adversely impact the use of the affected Franchise Area and inconvenience the public, and (ii) an approach of decommissioning certain Facilities in place within the Franchise Area, consistent with prudent utility practice and this Franchise, could help the Parties reduce unnecessary disruptions to the Franchise Area while maintaining the Parties' respective responsibilities under this Franchise with respect to such Facilities. Accordingly, PSE may, from time to time, elect to discontinue its use of underground Facilities within the Franchise Area with the City's prior written approval, and decommission such Facilities in place ("Decommissioned Underground Facilities"). In such event, PSE will notify the City of its decision to decommission such Facilities and will decommission such Facilities in place consistent with prevailing industry standards and Law.

With respect to Decommissioned Underground Facilities that are gas Facilities, such decommissioning in place may include disconnecting such Decommissioned Underground Facilities from the operating natural gas system in accordance with Laws or prevailing industry standards, sealing such Decommissioned Underground Facilities, and rendering such Decommissioned Underground Facilities inert. In addition, for the avoidance of doubt, Decommissioned Underground Facilities within the Franchise Area remain subject to the terms and conditions of this Franchise, including Section 11 (Relocation of Facilities), Section 12 (Indemnification) and Section 13 (Insurance).

**Section 10. Hazardous Substances.**

10.1 PSE will only use Hazardous Substances within the Franchise Area incidental to PSE's normal business operations, and in all cases (i) limited to such quantities as may be required in its normal business operations, (ii) used, transported or stored in accordance with prevailing industry standards and Law, and (iii) used, transported or stored only for their intended use. In the event PSE or its contractors of any tier cause an unlawful release of Hazardous Substances within the Franchise Area, PSE will notify the City within twenty-four (24) hours after its discovery of such release.

10.2 PSE shall be responsible for promptly remediating any releases of Hazardous Substances caused by PSE or its contractors of any tier within the Franchise Area in accordance with Environmental Laws.

10.3 PSE shall timely prepare and submit any reports or communications required by Environmental Laws.

10.4 If PSE discovers Hazardous Materials in conducting actions authorized under this Franchise, PSE shall immediately or as soon thereafter as reasonably possible provide notice to the City by email and will provide notice to other government entities as required by Environmental Laws.

**Section 11. Relocation of Facilities.**

11.1 Whenever the City causes a capital improvement project to be undertaken by the City within the Franchise Area, and the City believes such project constitutes a Public Improvement Project that requires the relocation of then-existing Facilities within the Franchise Area (for purposes other than those described in Section 11.3), the City will provide to PSE, within a reasonable time prior to the commencement of such project:

11.1.1 written notice of the applicable project; and

11.1.2 reasonable plans and specifications sufficient, in PSE's discretion, to: (i) evaluate whether the proposed project constitutes a Public Improvement Project, including whether the relocation of any Facilities within the Franchise Area is necessary, and (ii) if the project is a Public Improvement Project that requires any such relocations, develop an initial system design for such Facilities in connection with such Public Improvement Project.

After receipt of such notice and such plans and specifications, the City and PSE will work together to review the plans and specifications provided pursuant to this Section 11.1 as well as any proposed relocation of Facilities for such Public Improvement Project. For any Facilities that must be relocated within the Franchise Area for such Public Improvement Project, PSE will perform such relocations at no charge to the City and in accordance with a schedule mutually agreed upon by the City and PSE. If the City requires the subsequent relocation of any such Facilities within five (5) years from the date of the initial relocation of such Facilities pursuant to this Section 11.1, the City will bear the entire cost of such subsequent relocation.

11.2 If the City and PSE agree upon a revised schedule for a relocation pursuant to Section 11.1, PSE shall complete the relocation in accordance with the agreed-upon schedule.

In the event PSE performs in good faith but is unable to complete relocation according to the schedule agreed to by the Parties due to delays, acts, or omissions attributable to the City or any third party or attributable to other circumstances beyond PSE's control, then PSE shall not be liable for its inability to timely complete such relocation pursuant to this Section 11.2 but PSE shall continue such relocation with all due diligence until completion.

11.3 Whenever (i) any public or private development within the Franchise Area, other than a Public Improvement Project, requires the relocation of Facilities within the Franchise Area to accommodate such development, or (ii) the City requires the relocation of Facilities within the Franchise Area for the benefit of any person or entity other than the City, then, in such event, PSE will have the right as a condition of such relocation, to require such person or entity to make payment to PSE, at a time and upon terms and conditions acceptable to PSE, for any and all costs and expenses incurred by PSE in the relocation of such Facilities.

11.4 Any condition or requirement imposed by the City upon any person or entity, other than PSE, that requires the relocation of Facilities will be a relocation under Section 11.3 (including any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits for zoning, land use, construction or development).

11.5 Nothing in this Section 11 will require PSE to bear any cost or expense in connection with the location or relocation of any Facilities authorized by easement or other rights not derived from this Franchise, regardless of whether such easement or other rights are on public or private property and regardless of whether such easement or other rights extend to property within the Franchise Area.

**Section 12. Indemnification.**

12.1 PSE will defend, indemnify and hold harmless the City and its elected and appointed officials, officers, agents, and employees, from and against any and all actions or causes of action, claims and demands (and resulting damages, liabilities, monetary losses, costs, and expenses, including reasonable attorneys' fees) made against the City or its elected and appointed officials, officers, agents, or employees on account of injury or death of any person or damage to property, to the extent such injury or damage is caused by the negligence or willful or intentional misconduct of PSE, its agents, employees or contractors of any tier, in exercising the rights granted to PSE by this Franchise. In the event any such claim or demand is presented to or filed with the City, the City must promptly notify PSE thereof in writing, and PSE will have the right, at its election and at its sole cost and expense, to settle and compromise such claim or demand, or to defend the same at its sole cost and expense, by attorneys of its own election. In addition, in the event any suit or action is begun against the City based upon any such claim or demand, the City must likewise promptly notify PSE thereof in writing, and PSE will have the right, at its election and its sole cost and expense, to settle and compromise such suit or action, or to defend the same at its sole cost and expense, by attorneys of its own election. However, should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of PSE and the City, its elected and appointed officials, officers, agents, and employees, PSE's indemnity obligations under this Section 12.1 shall apply only to the extent of the negligence of PSE.

12.2 The City shall cooperate fully with PSE, provided that: (a) any settlement or compromise is consistent with the terms of this Franchise; and (b) any terms or conditions of any settlement that in any way contractually obligates the City to take any action shall require the City's prior written approval.

12.3 It is further specifically and expressly understood that, solely to the extent required to enforce any indemnification under this Section 12, PSE waives any immunity it may have under RCW Title 51; except, that the foregoing waiver will not in any way preclude PSE from asserting such immunity directly against any of its own employees or such employees' estates or other representatives. The waiver set forth in this Section 12.3 has been specifically negotiated by the Parties.

12.4 The City's approval or acceptance of any work performed by PSE under this Franchise shall not be grounds for PSE's avoidance of its obligations contained in this Section 12.

**Section 13. Insurance.**

13.1 During the Term of this Franchise, and as long as PSE maintains Facilities in the Franchise Area, PSE will maintain the following insurance or self-insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges, and authority granted to PSE in this Franchise or which may arise from, or in connection with, the performance of work hereunder by PSE, its agents, representatives, employees and contractors of any tier. PSE shall pay the costs of such insurance.

13.1.1 Commercial General Liability insurance with limits not less than two million dollars (\$2,000,000) per occurrence for liability arising from bodily injury or death, property damage, and public liability. Such coverage shall include Products-Completed Operations and stop-gap liability.

13.1.2 Automobile liability insurance for owned, non-owned and hired vehicles with a Combined Single Limit of two million dollars (\$2,000,000) for each accident.

13.1.3 Workers' compensation with statutory limits and employer's liability insurance with limits of not less than two million dollars (\$2,000,000).

13.1.4 Excess or Umbrella Liability Insurance extending over and providing coverage at least as broad as the commercial general liability, automobile liability, and employer's liability

coverage required herein, in the amount of ten million dollars (\$10,000,000).

13.2 Nothing contained within these insurance requirements shall be deemed to limit the scope, application or limits of the coverage afforded by said policies, which coverage will apply to each named insured to the full extent provided by the terms and conditions of the policy(ies).

13.3 By requiring such minimum insurance, the City shall not be deemed or construed to have assessed the risks that may be applicable to PSE under this Franchise, nor shall such minimum limits be construed to limit any insurance coverage obtained by PSE. PSE shall assess its own risks and, if it deems appropriate or prudent, maintain greater limits and broader coverage.

13.4 The deductible and self-insured retention of the policies shall not limit PSE's liability to the City and shall be the sole responsibility of PSE.

13.5 The insurance policies required in this Franchise are to contain, or be endorsed to contain, the following provisions with respect to all liability policies except Workers' Compensation:

13.5.1 The City shall be covered as an additional insured with respect to liability arising out of activities performed by or on behalf of PSE in connection with this Franchise.

13.5.2 PSE's insurance coverage shall be primary insurance with respect to the City to the extent of PSE's negligent acts or omissions. Any insurance or self-insurance maintained by the City shall not contribute to PSE's insurance or benefit PSE in any way.

13.5.3 PSE's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability.

13.6 With respect to all policies outlined above, PSE shall provide to the City notice of suspension, cancellation, or material reduction in coverage within ten (10) business days after receiving notice of such action from its insurer. In such event, PSE shall obtain and furnish to the City evidence of replacement insurance policies to maintain compliance with the requirements of this Section 13.

13.7 Insurance is to be placed with insurers with an AM Best rating of no less than A-VII.

13.8 PSE shall furnish the City with certificates of insurance and endorsements, as applicable, or confirmation of self-insurance as required by this Franchise. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

13.9 PSE shall cause each and every PSE contractor of any tier exercising the rights granted to PSE under this Franchise to provide insurance coverage that complies with all applicable minimum requirements of the PSE-provided insurance as set forth in Sections 13.1.1, 13.1.2 and 13.1.3. PSE shall have sole responsibility for determining the Excess or Umbrella limits of coverage required to be obtained by such contractors of any tier.

13.10 PSE may maintain a self-insurance program for its liability exposures in this Franchise, which is consistent with good utility practice. PSE agrees to provide the City with at least thirty (30) days written notice of any material change in PSE's self-funded insurance program and a letter of self-insurance as adequate proof of coverage. If PSE decides to no longer maintain a self-insurance program for its liabilities, PSE must promptly notify the City in writing and provide certificates of insurance and corresponding endorsements evidencing the insurance requirements of this Section 13.

**Section 14. Surety - Performance Bond.**

14.1 Within thirty (30) days of the Effective Date of this Franchise, PSE shall furnish a performance bond issued by a corporate surety authorized to do surety business in the State of Washington, in an amount reasonably established by the City based on the nature and scope of the work being performed (but not to exceed one hundred thousand dollars [\$100,000.00]) with respect to the performance by PSE of its obligations under this Franchise relating to the restoration of the Franchise Area associated with its construction, installation, maintenance, or removal activities performed under this Franchise, or to reimburse the City for its direct costs associated with such restoration activities. Such financial security shall not be construed to limit PSE's liability to the bond amount, or otherwise limit the City's recourse to any remedy to which the City is otherwise entitled at Law or in equity. If the performance bond is drawn upon by the City for any reason, PSE shall replenish the amount of the performance bond to its original amount within ten (10) business days after the surety approves and pays a draw upon the bond. PSE shall pay all premiums and costs associated with maintaining the performance bond and shall keep the bond in full force and effect at all times during

the Term. The Parties agree that PSE's maintenance of the bond required herein shall not be construed to excuse PSE's failure to perform or limit the liability of PSE to the amount of the bond.

14.2 The City may reasonably require additional bonding from PSE for specific PSE projects that have a restoration value for public infrastructure or Right-of-Way as determined by the City that exceeds the amount of the bond specified above.

**Section 15. Reservation of Easement in Event of Vacation.**

In the event the City vacates any portion of the Franchise Area containing Facilities during the Term, the City will reserve an easement for such Facilities that are located in such vacated portion of the Franchise Area in a manner consistent with the City's vacation procedures, as applicable, and at no cost to PSE. The City will give PSE advance notice of its intent to vacate any portion of the Franchise Area and will consult with PSE regarding the terms and conditions of the easement to be reserved for Facilities.

**Section 16. Force Majeure.**

If performance of this Franchise, or of any obligation hereunder, is prevented or substantially restricted or interfered with by reason of a Force Majeure Event, the affected Party, upon giving notice to the other Party of the Force Majeure Event and its impact on the affected Party, will be excused from such performance to the extent of and for the duration of such prevention, restriction or interference. The affected Party must use commercially reasonable efforts to avoid or remove such causes of nonperformance under this Franchise and must continue performance hereunder whenever such causes are removed.

**Section 17. Dispute Resolution.**

17.1 A Dispute must be resolved in accordance with the dispute resolution procedures set forth in this Section 17. A Party will notify the other Party promptly following the occurrence or discovery of a Dispute. The initial mechanism to resolve a Dispute will be by negotiation between the Parties' representatives, so designated by the Parties by notice given pursuant to this Section 17.1.

17.2 If the Parties cannot resolve a Dispute satisfactorily within fifteen (15) business days after receipt of the initial notice in accordance with Section 17.1, either Party may thereafter deliver to the other Party notice initiating the dispute resolution

procedures set forth in this Section 17.2. Such notice will (i) contain a detailed description of the issues in Dispute, (ii) identify the senior officers or administrators authorized to settle the Dispute on behalf of the Party providing such notice, and (iii) propose a date or dates, not more than thirty (30) days from the date of such notice (unless otherwise agreed by the Parties), that such officers or administrators are available for a meeting to resolve such Dispute. The recipient Party will, within ten (10) business days following receipt of notice pursuant to this Section 17.2, provide to the notifying Party a parallel schedule of availability of the recipient Party's senior officers or administrators authorized to settle the Dispute on behalf of the recipient Party. Following delivery of the respective senior officers' or administrators' schedules of availability, the senior officers or administrators so designated will engage in good-faith negotiations for a period of at least thirty (30) days after the first meeting between such officers or administrators (or such other time period as may be agreed upon by the Parties), to resolve the Dispute to the satisfaction of both Parties.

17.3 If at any time after the expiration of such thirty (30) day period (or such other time period as may be agreed upon by the Parties pursuant to Section 17.2), a Party determines that continued negotiations with the other Party will not result in a resolution of the Dispute, and if the Party reasonably believes that the other Party is in default of its obligations under this Franchise, such Party may serve upon the other Party a written order to comply with the provisions of this Franchise pursuant to Section 18 (Default).

17.4 Except as otherwise provided in Section 17.3, the Parties intend that the Parties exhaust, in good faith, the procedures for dispute resolution set forth in this Section 17 before a Party exercises any other right or remedy available under this Franchise or at law or in equity.

**Section 18. Default.**

Subject to the provisions of Section 17, if PSE fails to comply with any of the provisions of this Franchise, the City may serve upon PSE another written notice to so comply within sixty (60) days after the date on which such additional notice is given. If PSE is not in compliance with this Franchise after expiration of such sixty (60) day period, the City may, by ordinance, declare an immediate forfeiture of this Franchise; except, that if any failure to comply with this Franchise by PSE cannot be corrected with due diligence within such sixty (60) day period (PSE's obligation to

comply and to proceed with due diligence being subject to unavoidable delays and events beyond its control), the time within which PSE may so comply will be extended for such time as may be reasonably necessary and so long as PSE commences promptly and diligently to effect such compliance.

**Section 19. Franchise Term.**

19.1 The Term shall be for a period of ten (10) years from and after the Effective Date, unless forfeited, terminated, revoked or amended pursuant to the provisions of this Franchise.

19.2 The Term may be extended by the City's Public Works Department for up to two (2) additional periods of five (5) years each, if so requested by PSE in accordance with this Section 19. The request by PSE must be in writing and made to the City, not more than two (2) years nor less than one hundred eighty (180) days prior to the expiration of the then-current Term. Unless PSE receives written notice from the City prior to expiration of the then-current Term indicating the City has chosen to extend the term of this Franchise (and the length of the extension), then the then-current Term shall not be extended under this Section 19.2.

19.3 If PSE continues to use the Franchise Area after the expiration or termination of this Franchise, such continued use shall be subject to the terms and conditions of this Franchise. Said use shall not constitute a renewal of this Franchise.

**Section 20. Franchise Fees and Taxes.**

20.1 Pursuant to RCW 35.21.860, the City acknowledges that it is precluded from imposing a franchise fee upon light and power and gas distribution business, as defined in RCW 82.16.010, for use of the Right-of-Way, but that it is authorized to recover its actual administrative expenses pursuant to RCW 35.21.860. In the event of a change in state Law which allows the imposition of a franchise fee by the City upon an electric or natural gas distribution business for the use of the City's Rights-of-Way and the City wishes to impose such a fee for PSE's use of the Franchise Area pursuant to this Franchise, then the City may provide PSE with written notice that it wishes to commence negotiations to amend this Franchise to address any such fee proposed by the City, which notice will describe the proposed fee. Following PSE's receipt of such notice, the Parties will negotiate in good faith to agree upon the amount, type, and terms of any such franchise fee and will memorialize any such agreement between the Parties with respect to any such franchise fee in an amendment to this Franchise.

20.2 Nothing in this Franchise shall limit the City's exercise of its power of taxation in accordance with Law, as exists now or as later amended.

**Section 21. Assignment.**

PSE will not assign this Franchise to any unaffiliated third party without the prior written consent of the City, which consent will not be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, PSE will have the right, without such notice or such written acceptance, to mortgage its rights, benefits and privileges in and under this Franchise for the benefit of bondholders or financial institutions.

**Section 22. No Waiver.**

Failure of a Party to exercise any rights or remedies under this Franchise shall not constitute a waiver of any such right or remedy or any other right or remedy and shall not prevent the Party from pursuing such right or remedy or any other right or remedy at any future time.

**Section 23. Eminent Domain.**

Nothing in this Franchise precludes or limits the exercise of eminent domain by the City in accordance with and subject to applicable State Laws.

**Section 24. Tariffs.**

PSE is subject to regulation by the UTC, including provisions of any tariff on file and in effect with the UTC. This Franchise is subject to the provisions of any applicable tariff on file with the UTC (or its successor). In the event of any conflict or inconsistency between the provisions of this Franchise and any such tariff, the provisions of the tariff will control.

**Section 25. Undergrounding of Electric Facilities.**

PSE provides electric energy services on a non-preferential basis subject to and in accordance with tariffs on file with the UTC. Subject to the availability of such services in accordance with such tariffs, and if, during the Term, the City directs or otherwise requires PSE to underground overhead electric Facilities within the Franchise Area, such undergrounding will be arranged and accomplished subject to and in accordance with applicable

tariffs. This Section 25 governs all matters related to the undergrounding of PSE's overhead electric Facilities within the Franchise Area pursuant to this Franchise.

**Section 26. Miscellaneous.**

26.1 Unless otherwise specifically provided by this Franchise, all notices, consents, requests, demands or other communications required or permitted by this Franchise must be in writing and given by personal delivery, email, or certified mail. All legal notices provided in connection with this Franchise, including notices relating to breach of this Franchise or a waiver of any right or obligation under this Franchise, however, must be in writing and sent to the notice address set forth in this Section 26.1 of the Party being notified. Such a notice will be deemed effective as follows: (i) if sent by certified mail, with return receipt requested, upon certified receipt; (ii) if sent by a nationally recognized courier or mail service, delivery charges or postage prepaid, with delivery receipt requested, upon receipt; or (iii) if delivered personally, upon delivery.

To PSE: Municipal Liaison Manager  
Attn: Municipal Relations  
PO Box 97034  
Bellevue, WA 98009  
With a copy sent via email to:  
[Municipal.Relations@pse.com](mailto:Municipal.Relations@pse.com)

To the City:  
City of Redmond  
15670 NE 85th Street  
Redmond, WA 98052  
Attention: Public Works Director

With a copy to:  
City of Redmond  
15670 NE 85th Street  
Redmond, WA 98052  
Attention: City Attorney

A Party may change its address for purposes of this Section 26.1 by giving written notice of such change to the other Party pursuant to this Section 26.1.

26.2 The headings of sections and subsections of this Franchise are for convenience of reference only and are not intended to

restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections or subsections.

26.3 Terms defined in a given number, tense or form have the corresponding meaning when used in this Franchise in another number, tense or form. References containing terms such as "hereof," "herein," "hereto," "hereinafter" and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Franchise taken as a whole. The terms "includes" or "including" will not be deemed limited by the specific enumeration of items, but will be deemed without limitation. The term "or" is not exclusive.

26.4 If any section, sentence, clause, phrase, or provision of this Franchise or the application of such to any person or circumstance shall be held to be invalid or unconstitutional by a court of competent jurisdiction, or is otherwise prohibited or rendered unenforceable by any State or federal Law, such invalidity, unconstitutionality, prohibition or unenforceability shall not affect any other section, sentence, clause, phrase, or provision of this Franchise. In such event, the remainder of this Franchise shall remain valid and in full force and effect. Upon such determination that any term or other provision is invalid, unconstitutional, prohibited, or rendered unenforceable as described in this Section 26.4, the Parties will negotiate in good faith to modify this Franchise so as to maintain the original intent of the Parties as closely as possible in an acceptable manner to the end that rights and obligations contemplated under this Franchise are fulfilled to the greatest extent possible.

26.5 This Franchise may be amended only by a written instrument, signed by both Parties, which specifically states that it is an amendment to this Franchise and is approved and executed in accordance with Law and by their duly authorized representatives.

26.6 As provided by RCW 35.21.860, the City may recover from PSE actual administrative expenses incurred by the City that are directly related to receiving and approving permits and this Franchise, and to the inspecting of plans and construction, and, if necessary, for the preparation of a detailed statement pursuant to Chapter 43.21C RCW. As such expenses are incurred by the City, the City shall submit to PSE statements/billings for such expenses, and PSE will remit payment within sixty (60) days after its receipt and verification of such statements/billings.

26.7 Nothing in this Franchise will be construed to grant or create any rights or duties to any third party, nor any liability to or standard of care with reference to any third party. This Franchise will not grant or confer any right or remedy upon anyone, other than the City and PSE. No action may be commenced or prosecuted against either the City or PSE by any third party claiming as a third-party beneficiary of this Franchise.

26.8 The Parties will act in good faith and use commercially reasonable efforts to carry out their respective obligations under this Franchise.

26.9 This Franchise will be governed by, subject to and construed under the laws of the State of Washington.

26.10 Any action relating to this Franchise shall be brought in King County Superior Court or, in the case of a federal action, the United States District Court for the Western District of Washington in Seattle, unless an administrative agency has primary jurisdiction.

26.11 All terms and conditions of this Franchise that must be reasonably construed to survive the expiration or termination of this Franchise in order to give full force and effect to the intent of the Parties as set forth herein will survive the expiration or termination of this Franchise, regardless of whether such survival is expressly specified herein.

26.12 As of the Effective Date, this Franchise, including any Acceptance attached hereto, constitutes the entire agreement between the Parties, and supersedes all other prior agreements and understandings, oral and written, between the Parties, with respect to the subject matter hereof.

26.13 If a suit or other action is instituted in connection with any controversy arising out of this Franchise, each Party shall bear its own legal costs and attorneys' fees incurred in defending or bringing such suit or other action, including all appeals.

**Section 27. Acceptance.**

Within sixty (60) days from the final approval by the City Council and PSE's receipt of written notice from the City of its execution of this Franchise, this Franchise may be accepted by PSE by executing this Franchise and filing the executed Franchise with the Redmond City Clerk, which act shall be deemed an unconditional

written acceptance thereof. Unless this Franchise is accepted pursuant to this Section 27, this Franchise will be voidable at the discretion of the City.

**Section 28. Effective Date.**

This Ordinance will be effective on \_\_\_\_\_, \_\_\_\_\_, having been: (i) introduced to the City Council not less than five (5) days before its passage; (ii) first submitted to the City Attorney; (iii) published at least five (5) days prior to the effective date of this Ordinance and as otherwise required by Law; and (iv) passed at a regular meeting of the legislative body of the City of Redmond by a vote of a majority of the members on \_\_\_\_\_, \_\_\_\_\_. This Franchise will take effect as of the date of PSE's written acceptance thereof (the "Effective Date").

Signed and approved by the Mayor on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

CITY OF REDMOND:

\_\_\_\_\_  
ANGELA BIRNEY, MAYOR

ATTEST:

\_\_\_\_\_  
CHERYL XANTHOS, MMC, CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
DANIEL P. KENNY CITY ATTORNEY

FILED WITH THE CITY CLERK:  
PASSED BY THE CITY COUNCIL:  
SIGNED BY THE MAYOR:  
PUBLISHED:  
EFFECTIVE DATE:  
ORDINANCE NO.

HONORABLE MAYOR AND CITY COUNCIL  
CITY OF REDMOND, WASHINGTON

In the matter of the application )  
of Puget Sound Energy, Inc., a ) Franchise Ordinance  
No. \_\_\_\_\_ )  
Washington corporation, for a )  
non-exclusive franchise to )  
construct, operate and maintain )  
gas and electric facilities in, upon, )  
over, under, along, across and )  
through the Franchise Area of )  
the City of Redmond, Washington )

ACCEPTANCE

WHEREAS, the City Council of the City of Redmond, Washington, has granted a non-exclusive franchise to Puget Sound Energy, Inc., a Washington corporation, its successors and assigns, by enacting Ordinance No. \_\_\_\_\_, bearing the date of \_\_\_\_\_, \_\_\_\_; and

WHEREAS, a copy of said Ordinance granting said franchise was received by Puget Sound Energy, Inc. on \_\_\_\_\_, \_\_\_\_\_, from said City of Redmond, King County, Washington.

NOW, THEREFORE, Puget Sound Energy, Inc., a Washington corporation, for itself, its successors and assigns, hereby accepts said Ordinance and all the terms and conditions thereof, and files this, its written acceptance, with the City of Redmond, King County, Washington.

IN TESTIMONY WHEREOF said Puget Sound Energy, Inc. has caused this written Acceptance to be executed in its name by its undersigned \_\_\_\_\_ thereunto duly authorized on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

ATTEST: PUGET SOUND ENERGY, INC.

By: \_\_\_\_\_  
Title: \_\_\_\_\_ Title: \_\_\_\_\_

Copy received for City of Redmond  
on \_\_\_\_\_, \_\_\_\_

By: \_\_\_\_\_  
City Clerk