

**CITY OF SAMMAMISH
WASHINGTON**

ORDINANCE NO. O2016 - 416

**AN ORDINANCE OF THE CITY OF SAMMAMISH,
WASHINGTON, GRANTING PUGET SOUND
ENERGY, INC., A FRANCHISE TO CONSTRUCT,
EXTEND, MAINTAIN, AND OPERATE FACILITIES
IN THE PUBLIC RIGHTS-OF-WAY IN THE
FRANCHISE AREA TO TRANSMIT, DISTRIBUTE,
AND SELL GAS AND ENERGY FOR POWER, HEAT
AND LIGHT, AND ANY OTHER PURPOSES FOR
WHICH GAS AND ENERGY MAY BE USED;
PROVIDING FOR SEVERABILITY; AND
ESTABLISHING AN EFFECTIVE DATE**

WHEREAS, Puget Sound Energy, Inc. (PSE), a Washington corporation (“Franchisee”), has made application to the City to have a franchise agreement to operate a gas and energy system within the public rights-of-way of the City; and

WHEREAS, Franchisee represents that it has the legal, technical and financial qualifications to operate in the rights-of-way of the City as a gas and energy services company within the meaning of Title 80 RCW; and

WHEREAS, based on representations and information provided by Franchisee, and in response to its request for the grant of a franchise, the City Council has determined that the grant of a nonexclusive franchise, on the terms and conditions herein and subject to applicable law, are consistent with the public interest; and

WHEREAS, the City is authorized by applicable law to grant nonexclusive franchises within the boundaries of the City;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAMMAMISH, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. The gas and energy services franchise agreement between the City of Sammamish and PSE, as shown on the attached Exhibit A, is hereby approved.

Section 2. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 3. Effective Date. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

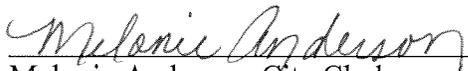
**ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING
THEREOF ON THE 18th DAY OF OCTOBER, 2016.**

CITY OF SAMMAMISH



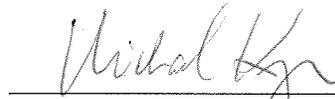
Donald J. Gerend, Mayor

ATTEST/AUTHENTICATED:



Melonie Anderson, City Clerk

Approved as to form:



Michael R Kenyon, City Attorney

Filed with the City Clerk:	September 28, 2016
First Reading:	October 4, 2016
Passed by the City Council:	October 18, 2016
Date of Publication:	October 21, 2016
Effective Date:	October 26, 2016

EXHIBIT A

ELECTRIC AND GAS FRANCHISE AGREEMENT

10-04-2016

City of Sammamish

and

Puget Sound Energy, Inc.

October 26, 2016 – October 26, 2041

**(See Section 18, 10 years 10-26-2016 – 10-26-2026, renew for three
additional 5-year terms)**

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Section 1. Definitions.

1.1 Where used in this Electric and Gas Franchise Agreement (this "Franchise") the following terms mean:

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

1.1.2 "City" means the City of Sammamish, a code city of the State of Washington, and its successors and assigns.

1.1.3 "Franchise Area" means the surface of, and the space above and below, any public road, street, avenue, boulevard, highway, freeway, bridge, path, alley, court, sidewalk, lane, circle, or other public right-of-way under control of the City, as such public rights-of-way are now laid out, platted, dedicated, acquired, or improved and/or as they may hereafter be laid out, platted, dedicated, acquired, or improved in the future, within the corporate, territorial limits of the City as they now exist or as they may later be extended (by annexation or otherwise).

1.1.4 "Facilities" means, collectively, any and all (a) natural gas distribution systems, including but not limited to, gas pipes, pipelines, mains, laterals, conduits, feeders, regulators, valves, meters, meter-reading devices, fixtures, and communication systems; (b) electric transmission and distribution systems, including but not limited to, poles (with or without crossarms), wires, lines, conduits, cables, braces, guys, anchors and vaults, meter-reading devices, fixtures, and communication systems; and (c) any and all other equipment, appliances, attachments, appurtenances and other items necessary, convenient, or in any way appertaining to any and all of the foregoing, whether the same be located over or under ground.

1.1.5 "Ordinance" means the City-adopted Ordinance No. O2016-416 which sets forth the terms and conditions of this Franchise.

1.1.6 "Public Improvement" means any capital improvement, repair or maintenance project within the Franchise Area that is undertaken by the City (either directly or through its contractors) and is funded by the City (either directly with its own funds or with other funds obtained by the City from any other public or private source). For the avoidance of doubt, the term "Public Improvement" includes any such capital improvement, repair or maintenance project undertaken by or on behalf of the City which requires the relocation of PSE's Facilities within the Franchise Area, even if the capital improvement, repair or maintenance entails, in part, related work performed for a third party county or municipality under a valid interlocal agreement between the City and such county or municipality (except to

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the extent the relocation of PSE's Facilities is caused by the work done for such third party), but does not include, without limitation, any other improvements or repairs undertaken for the benefit of third party private entities.

1.1.7 "Traffic" means all forms of travel, both motorized and non-motorized, within the Franchise Area (e.g., vehicle, pedestrian, bicycle, equestrian, etc.).

Section 2. Facilities Within Franchise Area.

2.1 The City does hereby grant to PSE 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.

2.2 This Franchise does not convey any right to PSE to install its Facilities on or to otherwise use City-owned or City-leased properties outside the Franchise Area; but PSE retains the right to maintain, repair and operate Facilities installed pursuant to prior franchise agreements with the City regardless of whether said Facilities are outside the Franchise Area, but such right shall be subject to the provisions of Section 2.3. Further, this Franchise does not govern or apply to Facilities located on PSE owned or leased properties or 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 or pursuant to rights otherwise granted by the City.

2.3 PSE may continue to maintain, repair, and operate existing Facilities previously installed or maintained by PSE on public grounds and places within the City pursuant to prior franchise agreements (in cases where such Facilities are not within the Franchise Area as defined in this Franchise) at the location such Facilities exist as of the effective date of this Franchise for the term of this Franchise; but no such Facilities may be enlarged, improved or expanded without the prior review and approval of the City pursuant to applicable ordinances, codes, resolutions, standards and procedures.

2.4 If, at the border of the Franchise Area, PSE's Facilities within the Franchise Area cross over into rights-of-way of an adjacent municipality or other public agency and such Facilities are located on such rights-of-way pursuant to rights derived from a franchise or similar agreement between PSE and the other municipality or other government agency, PSE will be responsible for coordinating

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work it performs on such Facilities with the other municipality or public agency in accordance with such franchise or similar agreement.

Section 3. Noninterference and Maintenance of Facilities.

3.1 PSE's Facilities shall be constructed, installed, maintained and repaired within the Franchise Area so as not to unreasonably interfere with the free passage of Traffic and in accordance with the laws of the State of Washington. PSE shall exercise its rights within the Franchise Area in accordance with applicable City codes and ordinances governing use and occupancy of the Franchise Area; however, in the event the terms of this Franchise conflict or are inconsistent with the codes and ordinances of the City, the terms of this Franchise govern and control. Nothing herein is intended to waive, prejudice or otherwise limit any right of appeal afforded PSE by such City codes and ordinances.

3.2 Any repair of PSE's Facilities within the Franchise Area shall be made within the time and in a manner which conforms with generally accepted customs, practices and standards in the industry. In the event of any emergency in which PSE's Facilities located in or under the Franchise Area break or are damaged, or if PSE's Facilities within the Franchise Area are otherwise in a condition as to immediately endanger the property, life, health or safety of any individual or entity, PSE shall, upon receipt of notification from the City of the existence of such condition, take all reasonable actions to correct the dangerous condition. If PSE causes a discharge or release of a hazardous substance from or related to PSE's Facilities, equipment, or vehicles within the Franchise Area in violation of applicable law, PSE shall take all remedial steps required by applicable law in response to such release and immediately inform the City.

3.3 Whenever PSE permanently discontinues its use of any above ground or at-grade Facilities within the Franchise Area, such as poles (with or without crossarms), braces, guys, anchors and vaults, due to modifications or upgrades to PSE's Facilities within the Franchise Area, the discontinued Facilities shall be removed promptly (which, subject to Section 22.14 or other unusual circumstances, will not exceed thirty (30) days) after all utility attachments have been disconnected and removed from such Facilities and in a manner consistent with any contractual obligations to third party users of such Facilities.

Section 4. Permits; Restoration.

4.1 Whenever PSE desires to engage in any work within the Franchise Area, PSE shall apply for all permits required under City code to do such work. PSE shall also comply with all requirements and conditions of such permits that are not inconsistent or in conflict with the terms and conditions of this Franchise,

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including but not limited to any such restrictions relating to location, traffic control, and restoration, repair, or other work to restore the surface of the Franchise Area to its condition immediately prior to the work, or as otherwise specified in the permit issued by the City in connection with the work. Such restoration responsibility shall continue for a period of time to correspond to the remaining life of the existing structure, pavement and/or surface in which the work was accomplished, but shall not apply to any subsequent repair or restoration made necessary by the acts or omissions of the City or any third party. It is further provided that in the event that PSE has any work in the Franchise Area completed by any of its authorized agents or subcontractors, PSE shall remain fully responsible for the permit, permitted work and any other permit requirements, notwithstanding any provisions of this Franchise to the contrary.

4.2 In the event of an emergency situation in which PSE's Facilities within the Franchise Area are in such a condition so as to immediately endanger the property, life, health or safety of any individual, PSE may take immediate action to correct the dangerous condition without first obtaining any required permit, in which case PSE shall notify the City telephonically (425-295-0500 during business hours, 425-295-0700 after hours), electronically at <http://www.sammamish.us/services/CitizenRequest.aspx> or in person within twenty-four (24) hours of the event, and shall apply for any permit(s) required by the City for such work as soon as reasonably practicable thereafter. For the purposes hereof, "as soon as reasonably practicable" means that PSE must submit the permit application to the City not later than ten (10) business days after the date of the commencement of the action that requires such permit.

4.3 Nothing in this Franchise is intended, nor shall it be construed, as a hindrance to PSE's ability to take such actions as it deems necessary to discharge its public service obligations in accordance with the laws of the State of Washington.

Section 5. Maps and Drawings.

5.1 PSE shall provide the City, upon the City's reasonable request, copies of available drawings and GIS data in use by PSE showing the location of its Facilities within the Franchise Area, provided the request is limited to Facilities at specific locations in the Franchise Area and is made in connection with the City's planning of capital improvement, maintenance, or repair projects. Further, PSE shall, upon the City's reasonable request, discuss and explore ways in which PSE and the City may cooperate and coordinate activities with respect to the development of drawing file layers compatible with the City's Geographic Information System ("GIS") which show PSE's Facilities at specific locations in the Franchise Area.

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5.2 As to any drawings and GIS data provided under this Section 5, PSE does not warrant the accuracy thereof and, to the extent the location of Facilities is shown, such Facilities are shown in their approximate location. With respect to any excavations within the Franchise Area undertaken by or on behalf of PSE or the City, nothing herein is intended (nor shall be construed) to relieve either party of their respective obligations arising under applicable law with respect to determining the location of utility facilities.

5.3 Upon the City's reasonable request in connection with the City's design of new streets and intersections, renovations of existing streets and intersections, and any other Public Improvement, PSE shall further provide to the City (a) the location and grade of PSE's underground Facilities at those specific locations within the Franchise Area affected by the project by field markings and by locating the Facilities in the City's design drawings, and (b) other reasonable cooperation and assistance. Nothing in this Section 5.3 or any other provision of this Franchise is intended to (or shall) relieve any person or entity of its obligations under applicable law with respect to determining the location of underground facilities.

Section 6. Right to Complete Work.

In the event that PSE fails to perform any work to restore the surface of the Franchise Area to enable the free passage of Traffic by the traveling public as required by this Franchise or (to the extent not inconsistent with this Franchise) any permit issued by the City relating to such work, and such failure continues for a period of ten (10) days after PSE receives written notice from the City regarding such failure (or, in the event of an emergency situation, such shorter period of time after receipt of notice from the City as is reasonably required in the circumstances), the City may, but in no event is obligated to, perform or contract for such work and, thereafter, PSE shall, upon the City's written request, reimburse the City for the costs incurred by the City in having such work performed to meet the conditions in this Franchise or such permit.

Section 7. Relocation of Facilities.

7.1 Whenever a Public Improvement is undertaken by the City (either directly or through its contractors) within the Franchise Area, and such Public Improvement requires the relocation of PSE's then existing Facilities within the Franchise Area (for purposes other than those described in Section 7.3 below), the City shall provide PSE, within a reasonable time prior to the commencement of such Public Improvement: (a) written notice requesting such relocation and (b) reasonable plans and specifications for such Public Improvement. For the avoidance of doubt, the foregoing may include a temporary relocation of PSE's

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Facilities if and to the extent the City and PSE mutually agree that such action is needed to complete the Public Improvement.

7.2 After receipt of such notice and such plans and specifications under Section 7.1, PSE shall relocate such Facilities within the Franchise Area at no charge to the City. If the City requires the subsequent relocation of any Facilities within five (5) years from the date on which the same Facilities were relocated pursuant to this Section 7.2, the City shall bear the entire cost of the subsequent relocation. This five-year period commences on the date when PSE received notice from the City to proceed with the prior relocation of the Facilities.

7.3 Whenever (a) any public or private development within the Franchise Area, other than a Public Improvement, requires the relocation of PSE's Facilities within the Franchise Area to accommodate such development; or (b) the City requires the relocation of PSE's Facilities within the Franchise Area for the benefit of any person or entity other than the City (including, without limitation, any condition or requirement imposed by the City upon any person or entity, other than PSE, that requires the relocation of PSE's Facilities, such as, for example, a condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits for zoning, land use, construction or development), PSE may, as a condition of the relocation, require such developer, person or entity to make payment to PSE, at a time and upon terms acceptable to PSE, for any and all costs and expenses incurred by PSE in the relocation of PSE's Facilities.

7.4 Nothing in this Section 7 "Relocation of Facilities" shall require PSE to bear any cost or expense in connection with the location or relocation of any Facilities then existing pursuant to 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 this Franchise co-exists with such easement or other rights.

Section 8. Undergrounding of Facilities.

PSE acknowledges the City desires to encourage the undergrounding of overhead electrical Facilities within the Franchise Area. The City acknowledges that PSE utilizes such overhead Facilities to provide electrical service on a non-preferential basis subject to and in accordance with tariffs on file with the Washington Utilities and Transportation Commission. Subject to and in accordance with such tariffs, PSE will cooperate with the City in the formulation of policy and regulations concerning the undergrounding of PSE's overhead electrical Facilities within the Franchise Area. If, during the term of this Franchise, the City directs PSE to underground overhead electrical Facilities within the Franchise Area, such undergrounding shall be arranged and accomplished subject to and in accordance

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with tariffs on file with the Washington Utilities and Transportation Commission, including, but not necessarily limited to, Schedule 73 and Schedule 74 of PSE's Electric Tariff G (as amended or replaced from time to time), and (to the extent not in consistent or in conflict with any such tariff) the terms and conditions of this Franchise.

Section 9. Indemnification.

9.1 PSE shall indemnify, defend and hold harmless the City, its elected and appointed officials, officers, employees, agents, representatives, engineers, and consultants from any and all claims, costs, judgments, awards, or liability to any person arising from injury or death of any person or damage to property to the extent the same is caused by the negligent acts or omissions of PSE, its agents, servants, officers, or employees in performing under this Franchise. This covenant of indemnification shall include, but not be limited by this reference, to claims against the City arising as a result of the negligent acts or omissions of PSE, its agents, servants, officers, or employees in barricading, instituting trench safety systems or providing other warnings of any excavation, construction, or work in the Franchise Area or in any other public place in performance of work or services permitted under this Franchise.

9.2 Inspection or acceptance by the City of any work performed by PSE at the time of completion of construction is not grounds for avoidance of any covenants of indemnification in this Franchise. PSE's indemnification obligations extend to claims which are not reduced to a suit and any claims which may be compromised by PSE or by the City with the prior approval of PSE prior to the culmination of any litigation or the institution of any litigation.

9.3 In the event any claim or demand for which indemnification is provided under Section 9.1 is presented to, or suit or action is commenced against, the City based upon any such claim or demand, the City shall promptly notify PSE thereof, and PSE may elect, at its sole cost and expense, to settle and compromise such suit or action, or defend the same with attorneys of its choice. In the event that PSE refuses the tender of defense in any suit or any claim for which indemnification is provided under Section 9.1, said tender having been made pursuant to this indemnification clause, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter) to have been a wrongful refusal on the part of PSE, then PSE shall pay all of the City's costs for defense of the action, including all reasonable expert witness fees and reasonable attorneys' fees and the reasonable costs of the City, including reasonable attorneys' fees of recovering under this indemnification clause.

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9.4 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 officers, employees and agents, PSE's liability hereunder shall be only to the extent of PSE's negligence. It is further specifically and expressly understood that, solely to the extent required to enforce the indemnification provided herein, PSE waives its immunity under RCW Title 51; however, the foregoing waiver does not in any way preclude PSE from raising such immunity as a defense against any claim brought against PSE by any of its employees. This waiver has been mutually negotiated by the parties.

9.5 In the event it is determined that RCW 4.24.115 applies to this Franchise, PSE's indemnification obligations under Section 9.1 will apply to the maximum extent permitted thereunder, to the full extent of PSE's negligence. Further, in any such action, the City shall have the right to participate, at its sole cost and expense, through its own attorney in any suit or action which arises pursuant to this Franchise when the City determines that such participation is in the City's best interest.

9.6 The provisions in this Section 9 survive the expiration or termination of this Franchise with respect to any claim, demand, suit or action for which indemnification is provided under Section 9.1 and which is based on an act, omission, injury, or damages that occurred during the term of this Franchise.

Section 10. Reservation of Rights.

10.1 In the event the City vacates any portion of the Franchise Area during the term of this Franchise, the City shall, in its vacation procedure, reserve and grant an easement to PSE for PSE's existing Facilities unless the City reasonably determines that to do so would be impracticable in light of the nature of the vacation. In cases where the City determines that reserving and granting an easement to PSE is impracticable, the City will notify PSE thirty (30) business days prior to any final vacation action.

10.2 The existence of this Franchise does not preclude the City from acquiring by condemnation, in accordance with applicable law, all or any portions of PSE's Facilities within the Franchise Area.

Section 11. Moving Buildings within the Franchise Area.

If any person or entity obtains permission from the City to use the Franchise Area for the movement or removal of any building or other object, the City shall, prior to granting such permission, require such person or entity to arrange with PSE for the temporary adjustment of PSE's overhead wires necessary to accommodate

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the movement or removal of such building or other object, where the movement or removal of such building or other object will pass under PSE's overhead wires or where the movement or removal of such building or other object will otherwise require the temporary adjustment of PSE's overhead wires. The City shall require such person or entity to complete such arrangements, upon terms and conditions acceptable to PSE, not less than thirty (30) calendar days prior to the movement or removal of such building or other object. In such event, PSE shall, at the sole cost and expense of the person or entity desiring to move or remove such building or other object, adjust any of its overhead wires which may obstruct the movement or removal of such building or object.

Section 12. Use of Facilities by City.

During the term of this Franchise, the City may, subject to PSE's prior written consent, which shall not be unreasonably withheld, install and maintain City-owned overhead wires for traffic signalization and police and fire communications upon PSE's poles which are Facilities located within the Franchise Area. The foregoing rights of the City to install and maintain such wires are further subject to the following:

(a) The City shall perform such installation and maintenance at its sole risk and expense in accordance with all applicable laws and in accordance with such reasonable terms and conditions as PSE may specify from time to time (including, without limitation, requirements accommodating Facilities or the facilities of other parties having the right to use the Facilities); and

(b) PSE shall have no obligation under Section 9 in connection with any City-owned wires installed or maintained on PSE's poles, and any indemnification rights or obligations between the parties will be as set forth in the terms and conditions established under subsection (a), above.

Section 13. Vegetation Management.

PSE may not apply any pesticide or herbicide within the Franchise Area without prior approval of the City, which approval shall not be unreasonably withheld. If PSE first obtains such approval from the City to apply a specific product in accordance with the defined procedure on an ongoing basis throughout the Franchise Area, PSE will not thereafter be required to obtain the City's approval on each occasion such product is so applied unless changes occur in State or federal law or regulation that would require or necessitate subsequent approval. Trees that may interfere with ungrounded supply conductors should be trimmed as a first option or removed only if trimming is not feasible. All such tree trimming and/or

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removal shall comply with all applicable city codes and regulations in effect at that time that are not inconsistent or in conflict with the terms of this Franchise. PSE shall coordinate its routine vegetation management activities with the City and shall trim vegetation in proximity to its Facilities within the Franchise Area in compliance with all City ordinances, regulations, resolutions and rules. PSE shall provide a minimum two (2) week advance notice to the City and to the owners of property adjacent to conductors where major vegetation removal is planned. However, PSE's obligation to coordinate and comply does not limit PSE's right under this Franchise to cut, trim or otherwise remove vegetation at any time within the Franchise Area that, due to proximity to PSE's Facilities, poses an imminent threat to property, public safety or continuity of electrical service.

Section 14. Street Lighting.

PSE shall install, operate and maintain street lighting as requested by the City in accordance with applicable schedules and tariffs on file with the Washington Utilities and Transportation Commission (or other regulatory agency having jurisdiction). Subject to the terms and conditions of the aforementioned schedules or tariffs, PSE shall apply its best efforts to replace individual street lamps (which PSE is otherwise required to replace in accordance with its schedules and tariffs) promptly after receipt of notice from the City.

Section 15. Recovery of Costs; Permit Fees.

15.1 As specifically provided by RCW 35.21.860, the City may not impose a franchise fee or any other fee or charge of whatever nature or description upon PSE as a result of this Franchise. However, as provided in RCW 35.21.860, the City may recover from PSE the actual administrative expenses incurred by the City that are directly related to: (a) receiving and approving a permit, license or this Franchise, (b) inspecting plans and construction, or (c) preparing a detailed statement pursuant to Chapter 43.21C RCW. With respect to payment by PSE of such administrative expenses, the City shall submit to PSE statements/billings which specify the amounts due. PSE shall make payment to the City in reimbursement of such expenses within thirty (30) days of the receipt of such statements/billings. Failure by PSE to pay such amount within such thirty (30) day time period constitutes a failure to comply with the Franchise for the purposes of Section 16, Default, hereof. Additionally, the failure by PSE to timely pay said amounts is grounds for the City to preclude the processing of any applications and/or issuing permits until payment has been fully made. Furthermore, any late payment will accrue interest computed at the rate of twelve percent (12%) per annum from the thirtieth day.

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15.2 With respect to the payment of permit fees, PSE shall comply with all applicable payment terms set forth in applicable codes, ordinances or permits of the City, including, without limitation, any such terms relating to the schedule for payment and the City's right to withhold permits or charge interest in connection with any payment default by PSE; provided, however, the City shall accept payment of such permit fees directly from contractors of PSE that perform work in the Franchise Area on behalf of PSE so long as PSE has notified the City in writing that the contractor is authorized to do so on PSE's behalf and PSE remains responsible for compliance with the terms of the permit.

Section 16. Default.

If PSE fails to comply with the provisions of this Franchise, the City may serve upon PSE a written order to so comply within thirty (30) days from the date the order is received by PSE. If PSE is not in compliance with this Franchise after the expiration of said thirty (30) day period, the City may, by ordinance, declare an immediate forfeiture of this Franchise. The parties expressly acknowledge and agree, however, that the forgoing rights and obligations of the parties are subject in all respects to excused performance based on a Force Majeure Event (as defined in Section 22.14).

Section 17. Nonexclusive Franchise.

This Franchise does not, and will not be deemed to be, an exclusive Franchise. This Franchise shall not in any manner prohibit the City from granting other and further franchises over, upon, and along the Franchise Area that do not interfere with PSE's rights under this Franchise. This Franchise does not prohibit or prevent the City from using the Franchise Area or affect the jurisdiction of the City over the same or any part thereof.

Section 18. Franchise Term.

This Franchise is effective as of the Effective Date (as defined below) and will remain in full force and effect through December 31, 2026 (10 years), but only if, within sixty (60) days after the Effective Date, PSE files with the City its written acceptance of the Franchise. This Franchise will automatically renew for three additional five-year terms (resulting in a total term of 25 years) unless either party requests in writing to renegotiate any terms or conditions of this Franchise at least one (1) year prior to the expiration date of the then-current term. In the event such request to renegotiate is made by a party, this Franchise will not automatically renew and the parties agree to negotiate in good faith to revise the relevant terms or conditions within one (1) year of the request, or such other period as the parties may mutually agree. If the parties are unable to reach agreement on the requested

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revisions, then this Franchise will terminate at the end of the then current term unless otherwise agreed to in writing by the parties.

Section 19. Insurance.

19.1 PSE shall maintain the following liability insurance coverages, insuring PSE and including the City, and its elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers as additional insureds against claims for injuries to persons or damages to property for which PSE is liable as a result of the exercise of the right granted to PSE under this Franchise, and subject to policy terms and conditions:

19.1.1 General liability insurance with limits not less than:

- (a) Five million dollars (\$5,000,000) for bodily injury or death to each person; and
- (b) Five million dollars (\$5,000,000) for property damage resulting from any one occurrence.

Coverage shall not exclude premises-operations, explosion, collapse and underground hazards (XCU) and products-completed operations.

19.1.2 Automobile liability for owned, non-owned and hired vehicles with a limit of \$3,000,000 for each person and \$3,000,000 for each accident.

19.1.3 Worker's compensation with statutory limits and employer's liability insurance with limits of not less than \$1,000,000.

19.2 PSE shall maintain the liability insurance described herein throughout the term of this Franchise, and such other period of time during which PSE is operating its Facilities within the Franchise Area without a franchise, or is engaged in the removal of its Facilities from the Franchise Area. Payment of deductibles and self-insured retentions is the sole responsibility of PSE. Minimum limits may be achieved through an excess or umbrella policy. Coverage under this policy shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. The City shall be included as an additional insured under PSE's Commercial General Liability insurance policy. PSE shall be the primary insured as respects the City, its officers, officials, employees, agents, consultants, and volunteers. Any insurance maintained by the City, its officers, officials, employees, consultants, agents, and volunteers will be treated as excess of PSE's insurance and not contribute with it.

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19.3 The liability insurance described herein, and any subsequent replacement policies, shall provide that insurance may not be cancelled or materially changed so as to be out of compliance with these requirements without first providing thirty (30) days written notice to the City. If the insurance is cancelled or materially altered so as to be out of compliance with the requirements of this subsection within the term of this Franchise, PSE shall provide a replacement policy. PSE agrees to maintain continuous uninterrupted insurance coverage, in at least the amounts required for the duration of this Franchise and, in the case of the Commercial General Liability, for at least three (3) years after expiration of the term of this Franchise. Any lapse in the required insurance coverage is cause for termination of this Franchise.

19.4 In the event this Franchise continues beyond the initial ten (10) year term under Section 18, the parties may, by mutual written agreement, adjust the minimum coverage limits specified in Section 19.1 to reflect changes in potential liability exposure. Such adjustments will be made in accordance with the renegotiation process outlined in Section 18.

19.5 In lieu of the insurance requirements set forth in this Section 19, PSE may self-insure against such risks in such amounts as are consistent with good utility practice. Upon the City's request, PSE shall provide the City with reasonable written evidence that PSE is maintaining such self-insurance.

Section 20. Memorandum of Understanding.

20.1 The parties agree to use good-faith efforts to develop and maintain in effect for the term of this Franchise a memorandum of understanding addressing more specifically the procedures to be followed in planning and completing work needed to relocate PSE's Facilities within the Franchise Area to accommodate Public Improvements pursuant to Section 7.2 of this Franchise.

20.2 In the event either party fails to perform or meet its obligations under the memorandum of understanding, if any, contemplated by this Section 20, such failure will not constitute a failure to perform any material obligation under this Franchise for the purposes of Section 23 of this Franchise.

Section 21. Assignment.

PSE may not assign or transfer its rights, benefits or privileges in and under this Franchise without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. Prior to any assignment, the intended assignee shall, within thirty (30) days of the proposed date of any assignment, file written notice of the intended assignment with the City together with its written

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acceptance of all terms and conditions of this Franchise. Notwithstanding the foregoing, PSE may, without such notice or such written consent, mortgage its rights, benefits and privileges in and under this Franchise for the benefit of bondholders.

Section 22. Miscellaneous.

22.1 If any term, provision, condition or portion of this Franchise is held to be invalid, or is held to be inapplicable to any person or circumstance, the remaining portions of this Franchise shall continue in full force and effect, and its application to other persons and circumstances shall not be affected. The headings of sections and paragraphs 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 paragraphs.

22.2 This Franchise may be amended only by written instrument that is signed by both parties, which specifically states that it is an amendment to this Franchise and is approved and executed in accordance with the laws of the State of Washington. Without limiting the generality of the foregoing, this Franchise (including, without limitation, Section 9 above) governs and supersedes and may not be changed, modified, deleted, added to, supplemented or otherwise amended by any permit, approval, license, agreement or other document required by or obtained from the City in conjunction with the exercise (or failure to exercise) by PSE of any and all rights, benefits, privileges, obligations or duties in and under this Franchise, unless such permit, approval, license, agreement or other document specifically:

- (a) references this Franchise; and
- (b) states that it supersedes this Franchise to the extent it contains terms and conditions that change, modify, delete, add to, supplement or otherwise amend the terms and conditions of this Franchise.

In the event of any conflict or inconsistency between the provisions of this Franchise and the provisions of any such permit, approval, license, agreement or other document, the provisions of this Franchise control.

22.3 This Franchise is subject to the provisions of any applicable tariff on file with the Washington Utilities and Transportation Commission or its successor. In the event of any conflict or inconsistency between the provisions of this Franchise and such tariff, the provisions of such tariff control.

22.4 In connection with its performance of work under this Franchise, PSE shall, during the term of this Franchise, fully comply with all applicable equal

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employment or non-discrimination provisions and requirements of federal, state and local laws.

22.5 During the term of this Franchise, each party shall notify and keep the other party apprised of its local address for the service of notices by mail. All notices and other communications given or required to be given under this Franchise shall be sent postage prepaid to such respective address and such notices shall be effective upon receipt. The City and PSE may change their respective addresses by written notice to the other party at any time.

22.6 During the term of this Franchise, PSE shall also provide the City (and maintain current) a written list showing the names and telephone numbers of the specific departments and (if applicable) individuals within PSE that may be contacted by the City to identify and address problems and issues that arise under this Franchise. PSE shall ensure that the list includes contact information for addressing emergency support and technical support issues (with emergency support being available 24 hours per day), and shall ensure that the names and telephone numbers appearing on the list in those areas have the expertise and authority (or access to the same) needed to address the problem or issue promptly and effectively. PSE shall use all reasonable efforts to respond to requests from the City promptly, to work diligently with the City in resolving any problems or issues identified by the City, and to actively communicate with the City regarding each problem or issue from the time it is first identified by the City until the time it is resolved. PSE shall update the list to ensure that it remains current and shall give written notice of the change to the City.

22.7 PSE and the City shall, as reasonably requested by the other party from time to time, discuss and coordinate their activities with respect to construction which may affect the public ways in any manner in an effort to minimize public inconvenience, disruption or damages.

22.8 This Franchise binds the parties hereto and their permitted successors and assigns.

22.9 Nothing herein creates a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor may either party, act toward third persons or the public in any manner that would indicate any such relationship with the other.

22.10 The failure of either party at any time to require performance by the other party of any provision hereof in no way affects the right of such party thereafter to enforce the same. Nor shall the waiver by a party of any breach of any

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provision hereof by the other party be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision.

22.11 This Franchise shall be governed by and construed in accordance with the laws of the State of Washington. Venue and jurisdiction over any dispute related to this Franchise lies exclusively with the King County Superior Court.

22.12 If either party shall be required to bring any action to enforce any provision of this Franchise, or shall be required to defend any action brought by the other party with respect to this Franchise, and in the further event that one party shall prevail in such action, the other party shall, in addition to all other payments required therein, pay all of the prevailing party's reasonable costs in connection with such action, including such sums as the court or courts may adjudge reasonable as attorney's fees in the trial court and in any appellate courts.

22.13 This Franchise represents the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior oral negotiations between the parties.

22.14 In the event that either party is prevented or delayed in the performance of any of its obligations under this Franchise by any event or circumstance 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; flood, earthquake or other Act of God; storm or other condition which necessitates the mobilization of the personnel of a party or its contractors to restore utility service; 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 this Franchise. Upon removal or termination of the Force Majeure Event, the party claiming a Force Majeure Event shall promptly perform the affected obligations in an orderly and expedited manner under this Franchise or procure a substitute for such obligation. The parties shall use all commercially reasonable efforts to eliminate or minimize any delay caused by a Force Majeure Event.

Section 23. Dispute Resolution.

23.1 The parties recognize that cooperation and communication are essential to resolving issues quickly and efficiently. If any dispute arises in regard to the terms or conditions of this Franchise, then the parties shall meet and engage in good faith discussions with the objective of settling the dispute within ten (10)

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days after either party requests such a meeting. If the parties do not resolve the dispute within such ten (10) day period, the parties will, upon the written request of either party, seek to resolve the dispute in accordance with the following dispute resolution process:

Level One – A representative from PSE and a representative of the City, as appointed by the City Manager, shall meet to discuss and attempt to resolve the dispute in a timely manner. If these representatives do not resolve the dispute within fourteen (14) calendar days after referral of the dispute to Level One, either party may by written notice to the other party refer the dispute to Level Two.

Level Two – In the event either party properly refers the dispute to Level Two, a new PSE representative and the City Manager shall meet to discuss and attempt to resolve the dispute in a timely manner. If these representatives do not resolve the dispute within fourteen (14) calendar days after referral of the dispute to Level Two, either party may by written notice to the other party refer the dispute to Level Three.

Level Three – In the event either party properly refers the dispute to Level Three, the parties shall mediate the dispute using a mediator mutually agreeable to the parties. If these representatives do not resolve the dispute at mediation within ninety (90) days of the referral to Level Three (or such additional time as may be required to schedule the mediation with the agreed-upon mediator), either party may by written notice to the other party refer the dispute to Level Four.

Level Four – In the event either party properly refers the dispute to Level Four, either party may seek resolution of the dispute through litigation or other judicial proceedings in the court specified in Section 22.11 (or, if both parties agree, the parties may submit the dispute to binding arbitration before a single arbitrator using the Commercial Arbitration Rules of the American Arbitration Association, in lieu of judicial proceedings).

23.2 Notwithstanding Section 22.1 or any other provision of this Franchise to the contrary, with respect to any dispute arising under this Franchise, either party may commence litigation or other judicial proceedings within thirty (30) days prior to the date after which the commencement of litigation could be barred by any applicable statute of limitations or other law, rule, regulation, or order of similar import, or in order to request preliminary injunctive or other equitable relief necessary to prevent irreparable harm. In such event, the parties will (except as may be prohibited by judicial order) nevertheless continue to follow the procedures set forth in this Section 23.

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Section 24. Severability.

If any section, sentence, clause or phrase of this Franchise is ever held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this Franchise.

Section 25. Ratification.

Any act of the City consistent with the authority granted by the City prior to the effective date of this Franchise is hereby ratified and affirmed by the City.

Section 26. Effective Date.

This Franchise takes effect five days after the City Council adopts an ordinance approving this Franchise ("Effective Date").

AGREED TO AND ACCEPTED BY:

FRANCHISEE: PUGET SOUND ENERGY, INC.

By: Catherine Koch
Its: Director Planning
Date: 11/9/16

CITY OF SAMMAMISH: By: [Signature]
Its: City Manager
Date: October 26, 2016

Approved as to form by:
[Signature]
City Attorney