ORIGINAL

ORDINANCE NO. 798

AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON, GRANTING PUGET SOUND ENERGY, INC., A WASHINGTON CORPORATION, A NON-EXCLUSIVE FRANCHISE TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE AND REPAIR A NATURAL GAS DISTRIBUTION SYSTEM, IN, ACROSS, OVER, ALONG, UNDER, THROUGH AND BELOW PUBLIC RIGHTS-OF-WAY OF THE CITY OF SHORELINE, WASHINGTON.

WHEREAS, RCW 35A.11.020 grants the City broad authority to regulate the use of the public right-of-way; and .

WHEREAS, RCW 35A.47.040 authorizes the City to grant nonexclusive franchises for the use of public streets, bridges or other public ways, structures or places above or below the surface of the ground for the transmission and distribution of gas; and

WHEREAS, with the adoption of Ordinance No. 308 on August 26, 2002, the City granted Puget Sound Energy a non-exclusive franchise for a natural gas distribution system within the public rights-of-way of the City; and

WHEREAS, the term of the Franchise granted by Ordinance No. 308 expires on October 31, 2017; and

WHEREAS, the City and Puget Sound Energy are currently negotiating a new, long-term franchise agreement but such negotiations may continue beyond the October 31, 2017 expiration; and

WHEREAS, the Council finds that it is in the bests interests of the health, safety and welfare of residents of the Shoreline community to grant a one-year non-exclusive franchise to Puget Sound Energy for the operation of a natural gas distribution system within the City rights-of-way to allow for negotiations to occur, NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON, DO ORDAIN AS FOLLOWS:

1. **Definitions.** The following terms contained herein, unless otherwise indicated, shall be defined as follows:

   1.1. City: The City of Shoreline, a municipal corporation of the State of Washington, specifically including all areas incorporated therein as of the effective date of this Ordinance and any other areas later added thereto by annexation or other means.

   1.2. City Manager: The City Manager of the City of Shoreline or designee.

   1.3. Days: Calendar days.

ORIGINAL

1.4. Facilities: All gas pipes, pipelines, mains, laterals, conduits, feeders, regulators, valves, meters, meter-reading devices; and all other equipment, appliances, attachments, and appurtenances utilized by PSE in the operation of activities authorized by this Ordinance. The abandonment by PSE of any Facilities as defined herein shall not act to remove the same from this definition.

1.5. PSE: Means Puget Sound Energy, Inc. a Washington corporation, and its successors and assigns.

1.6. Permittee: A person who has been granted a permit by the Permitting Authority, and PSE operating under Section 5.8 Blanket Permit of this Agreement.

1.7. Permitting Authority: The head of the City department authorized to process and grant permits required to perform work in the City's Right-of-way, or the head of any agency authorized to perform this function on the City's behalf. Unless otherwise indicated, all references to Permitting Authority shall include the designee of the department or agency head.

1.8. Person: An entity or natural person.

1.9. Right-of-way: As used herein shall refer to the surface of and the space along, above, and below any street, road, highway, freeway, lane, sidewalk, alley, court, boulevard, parkway, drive, utility easement, and/or road right-of-way now or hereafter held or administered by the City of Shoreline.

2. **Franchise Granted.**

2.1. Pursuant to RCW 35A.47.040, the City hereby grants to PSE, its heirs, successors, and assigns, subject to the terms and conditions hereinafter set forth, a franchise beginning on the effective date of this Ordinance ("Franchise").

2.2. This Franchise shall grant PSE the right, privilege and authority, subject to the terms and conditions hereinafter set forth, to install, construct, operate, maintain, repair, replace, and use Facilities for a natural gas distribution system, in, under, on, across, over, through, along or below the Right-of-way, as approved under City permits issued by the Permitting Authority pursuant to this Franchise and City ordinances.

2.3. This Franchise specifically does not authorize PSE to place facilities or to otherwise utilize Facilities in the Right-of-way to provide telecommunications, cable television, point-to-point data communications, or similar services either via wire or wireless technologies regardless of whether these services are provided to any person outside PSE's organization. This Section does not restrict PSE's ability to utilize telemetric devices to monitor and operate its natural gas distribution system or to monitor and control the usage of natural gas.

2.4. This Franchise is granted upon the express condition that it shall not in any manner prevent the City from granting other or further franchises in, along, over, through, under, below or across any Right-of-way. Such Franchise shall in no way prevent or prohibit the City from using any Right-of-way or other City property or affect its jurisdiction over

ORIGINAL

them or any part of them, and the City shall retain the authority to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, dedication of the same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of new Right-of-way or other public properties of every type and description.

3. **Franchise Term.** The term of the Franchise granted hereunder shall be for the period of one (1) year counted from the last day of the calendar month in which this Ordinance becomes effective.

4. **City Ordinances and Regulations.**

4.1. Nothing herein shall be deemed to direct or restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating PSE's exercise of its rights under this Franchise. PSE shall promptly conform with all such regulations, unless compliance would cause PSE to violate requirements of state or federal law.

5. **Right-of-Way Management.**

5.1. PSE's Facilities shall be maintained within the Right-of-way and PSE's activities shall be undertaken in such a manner, so as not to unreasonably interfere with the free and safe passage of traffic and unobstructed use of adjoining property in accordance with City standards and regulations.

5.2. Excavation And Notice Of Entry.

5.2.1. PSE shall at all times post and maintain proper barricades and comply with all applicable safety regulations during any period of construction or maintenance activities within the Right-of-way as required by City or state regulations, including RCW 39.04.180, for the construction of trench safety systems.

5.2.2. Whenever PSE excavates in the Right-of-way for the purpose of installation, construction, repair, maintenance or relocation of its Facilities, it shall apply to the City for a permit to do so in accordance with the ordinances and regulations of the City requiring permits to operate in the Right-of-way. In no case shall any such work commence within any Right-of-way without a permit, except as otherwise provided in this Ordinance. PSE shall provide the City with plans, maps, and information showing the proposed and final location of any Facilities in accordance with Section 5.12 of this Franchise.

5.2.3. At least ten (10) days prior to its intended construction of Facilities, except those activities exempted from permit requirements in accordance with Sections 5.7 and 5.8 or activities that will impact the use of the adjacent property for less than a four (4) hour period. PSE shall inform all residents in the immediately affected area that a construction project will commence, the dates and nature of the project, and provide a toll-free or local number which the resident may call for further information. A pre-printed door hanger may be used for this purpose.

5.2.4. PSE shall make a good faith effort to comply with the property owner/resident's

ORIGINAL

preferences, if any, regarding the location or placement of Facilities that extend above ground level consistent with sound engineering practices, City regulations, and state law.

5.2.5. At least twenty-four (24) hours prior to entering Right-of-way adjacent to or on private property to perform the installation, maintenance, repair, reconstruction, or removal of facilities, except those activities exempted from permit requirements in accordance with Sections 5.7and 5.8 or activities that will impact the use of the adjacent property for less than a four (4) hour period, a written notice describing the nature and location of the work to be performed shall be physically posted upon the affected private property by PSE.

5.3. Abandonment of PSE's Facilities. PSE shall not abandon in place any of its Facilities within the Right-of-way without the prior written consent of the City Manager. Absent consent to abandon in place, abandoned Facilities shall be removed from the Right-of-way within 180 days of the discontinuation of their active utilization, or in accordance with a written removal plan authorized by the City Manager. All necessary permits must be obtained prior to such work.

5.4. Restoration after Construction.

5.4.1. PSE shall, after any installation, construction, relocation, maintenance, or repair of Facilities within the Right-of-way, promptly restore the Right-of-way to at least the condition the same was in immediately prior to any such installation, construction, relocation, maintenance or repair in accordance with City standards at its sole cost and expense. All concrete encased monuments which have been disturbed or displaced by such work, shall be restored pursuant to all federal, state and local standards and specifications.

5.4.2. If it is determined that PSE has failed to restore the Right-of-way in accordance with this Section 5.4, the City shall provide PSE with written notice including a description of actions the City believes necessary to restore the Right-of-way. If the Right-of-way is not restored in accordance with the City's notice within thirty (30) days of that notice, the City, or its authorized agent, may restore the Right-of- way. PSE shall be responsible for all costs and expenses incurred by the City in restoring the Right-of-way in accordance with this Section. The remedy granted to the City under this Section shall be in addition to those otherwise provided by this Franchise.

5.5. Bonding Requirement: Before undertaking any of the work authorized by this Franchise, PSE shall furnish a bond executed by PSE and a corporate surety authorized to do a surety business in the State of Washington, in a sum to be set and approved by the City Manager as reasonably sufficient to ensure performance of PSE's obligations under this Franchise. The bond shall be conditioned so that PSE shall observe all the covenants, terms and conditions and faithfully perform all of the obligations of this Franchise, and to restore or replace any defective work or materials discovered in the restoration of the Right-of-way discovered within a period of two years from the final City inspection date of any such restoration. PSE may meet the obligations of this Section with one or more bonds acceptable to the City. In the event that a bond issued pursuant to this Section is canceled by the surety, after proper notice and pursuant to the terms of said bond, PSE

ORIGINAL

shall, prior to the expiration of said bond, procure a replacement bond which complies with the terms of this Section.

5.6. Recourse Against Bond: With respect to undertaking any of the work authorized by this Franchise, in the event PSE fails to perform its obligations in accordance with the terms and conditions of this Franchise and further fails to cure its deficiency within a reasonable period of time after receipt of written notice of such deficiency by the City, then the City may use any bond(s) furnished by PSE pursuant to Section 5.5 to cure such deficiency.

5.6. 1 In the event the City makes use of such bond(s) furnished by PSE pursuant to Section 5.5, the City shall promptly provide written notice of same to PSE. Within thirty (30) days of receipt of such notice, PSE shall replenish or replace such bond(s) pursuant to Section 5.5.

5.6.2. The rights reserved to the City by this Section 5.6 are in addition to all other rights of the City whether reserved by this Franchise or authorized by law, and no action, proceeding, or exercise of a right under this Section 5.6 shall constitute an election or waiver of any rights or other remedies the City may have.

5.7. Emergency Work, Permit Waiver. In the event of any emergency where any Facilities located in the Right-of-way are broken or damaged, or if PSE's construction area within the Right-of-way is in such a condition as to place the health or safety of any person or property in imminent danger, PSE shall immediately take any necessary emergency measures to repair or remove its Facilities or otherwise make its construction area safe without first applying for and obtaining a permit as required by this Franchise. However, this emergency provision shall not relieve PSE from later obtaining any necessary permits for the emergency work. PSE shall apply for the required permits the next business day following the emergency work or, in the case of an extended state of emergency, as soon thereafter as practical.

5.8. Blanket Permit. PSE shall be authorized to perform Minor Activities without a City permit of any kind and Blanket Activities under the terms and conditions of this Section 5.8 provided that the terms "Minor Activities" and "Blanket Activities" are defined in a specifically negotiated Blanket Permit Definitions. All other activities will require a separate permit in accord with City ordinances.

5.8.1. The Permittee shall pay the City a permit inspection/processing fee in the amount set out in Blanket Permit Definitions.

5.8.2. The Permittee shall provide a quarterly list of permit activity by the months of April, July, October, and January listing the previous quarter's activity authorized under this Section.

5.8.3. The Permittee shall provide payment of inspection fees for the quarterly activity on a quarterly basis in accordance with this Section 5.8. No statements will be provided by the City.

5.8.4. For each separate use of the Right-of-way under this Section, and prior to commencing any work on the Right-of-way under this Section, the Permittee shall:

ORIGINAL

5.8.4.1. Fax or otherwise deliver to the Permitting Authority, at least twenty-four (24) hours in advance of entering the Right-of-way, a City Inspection Request Form, as provided by the Permitting Authority, which shall include at a minimum the following information: Franchise number, street address nearest to the proposed work site, and description of work to be performed.

5.8.4.2. Fax or deliver to the Permitting Authority a notice of completion in the form provided by the Permitting Authority within twenty-four (24) hours after completing work.

5.8.5. In the event the Permittee fails to comply with any of the conditions set forth in Section 5.8, the City is authorized to suspend or terminate the Permittee's authority to operate under this Section 5.8 by providing Permittee written notice of such suspension or termination and the basis therefore.

5.8.6. The City reserves the right to alter the terms and conditions of Section 5.8 and the terms and conditions of the Blanket Permit Definitions by providing thirty (30) days written notice to the Permittee. Any change made pursuant to this subsection, including any change in the permit inspection/processing fee stated in Blanket Permit Definitions, shall thereafter apply to all subsequent work performed pursuant to this Section 5.8. Further, the City may terminate the Permittee's authority to work in the Right-of-way under a Blanket Permit as provided by the terms of this Section at any time without cause by providing thirty (30) days written notice to the Permittee. Any such modification or termination shall not affect the remaining terms and conditions of this Franchise or impair the rights and obligations of the Parties under those remaining terms and conditions.

5.9. Safety.

5.9.1. PSE shall exercise the rights granted in this Franchise in accordance with applicable safety rules and regulations.

5.10. Dangerous Conditions, Authority for City to Abate.

5.10.1. In the event that PSE's Facilities or operations cause or contribute to a condition that appears to endanger any person or substantially impair the lateral support of the adjoining Right-of-way, public or private property, the City Manager may direct PSE, at no charge or expense to the City, to take actions to resolve the condition or remove the endangerment. Such directive may include compliance within a prescribed time period.

5.10.2. In the event PSE fails to promptly take action as directed by the City, or fails to fully comply with such direction, or if emergency conditions exist which require immediate action to prevent imminent injury or damages to persons or property, the City may take such actions as it believes are necessary to protect persons or property and PSE shall be responsible to reimburse the City for its costs. The City's authority to act upon PSE's Facilities hereunder is specifically limited to actions, taken by trained emergency response personnel, to stop the flow of natural gas actively contributing to a dangerous condition in the face of PSE's failure to timely respond to the City's

ORIGINAL

request for such action.

5.11. Relocation of Facilities.

5.11.1. PSE agrees to protect, support, temporarily disconnect, relocate or remove from the Right-of-way its Facilities without cost to the City, when so required by the City to facilitate the completion of or as a result of a public project, provided that PSE shall in all such cases have the privilege to temporarily bypass, in the authorized portion of the Right-of-way and upon approval by the City, any Facilities required to be temporarily disconnected or removed. As used in this Section, the term "public project" is a project included in any future City adopted six-year Capital Improvement Program and consistent with the City's Comprehensive Plan as currently adopted or hereinafter amended.

5.11.2. If the City determines that a Public Project necessitates the relocation of PSE's existing Facilities, the City shall:

5.11.2.1. As soon as possible, but not less than sixty (60) days prior to the commencement of such Public Project, provide PSE with written notice requiring such relocation; and

5.11.2.2. Provide PSE with copies of any plans and specifications pertinent to the requested relocation and a proposed temporary or permanent relocation for PSE's Facilities.

5.11.2.3. After receipt of such notice and such plans and specifications, PSE shall complete relocation of its Facilities at no charge or expense to the City at least ten (10) days prior to commencement of the Public Project or at such later time as mutually agreed by the City and PSE.

5.11.3. PSE may, after receipt of written notice requesting a relocation of its Facilities, submit to the City written alternatives to such relocation. The City shall evaluate such alternatives and advise PSE in writing if any of the alternatives are suitable to accommodate the Public Project. If so requested by the City, PSE shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by PSE full and fair consideration. In the event the City ultimately determines that there is no other reasonable alternative, PSE shall relocate its Facilities as provided in this Section.

5.11.4. If the City requires the subsequent relocation of Facilities within five (5) years from the date of relocation of such Facilities pursuant to this Section, then the City shall bear the entire cost of such subsequent relocation.

If the City vacates any Right-of-way with PSE Facilities, the City shall reserve an easement in its vacation ordinance adequate for the repair, maintenance and replacement of the Facilities and sited along the location of the Facilities, provided that no easement shall be reserved if the vacation is for a Public Project and the Facilities are to be relocated under this Section 5.11. No easement shall be reserved if the vacation is conditioned upon a vacation petitioner's payment for the cost of

ORIGINAL

relocating existing Facilities to another Right-of-way or private easement including necessary service reconnections caused by the relocation.

5.11.5. The provisions of this Section 5.11 shall in no manner preclude or restrict PSE from making any arrangements it may deem appropriate when responding to a request for relocation of its Facilities by any person other than the City, where the improvements to be constructed by said person are not part of a Public Project, provided that such arrangements do not unduly delay or increase the cost of a related Public Project.

5.12. PSE's Maps and Records. PSE agrees to provide the City, upon reasonable request and without charge, copies of available as-built plans, maps, and records, in use by PSE, that show the approximate vertical and horizontal location of its Facilities at specified locations within the Right-of-way. If available, such maps shall also be provided in Geographical Information System (GIS) or other digital electronic format used by the City. All such maps and records will be provided for informational purposes only. PSE does not warrant the accuracy of any map or other information provided under this Section 5.12, and to the extent the location of Facilities are shown, such locations are approximate.

5.13. Utility Location. 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.

5.14. Underground Installation. PSE hereby affirms its understanding and agreement that its activities within the City must comply with Shoreline Municipal Code ("SMC") 13.20, which establishes minimum requirements and procedures for the underground installation of electric and communication facilities, to the extent it applies to PSE's activities under this Franchise. Consistent with that regulation, PSE shall install Facilities under this Franchise underground subject to and in accordance with tariffs on file with the Washington Utilities and Transportation Commission; provided, that PSE may install above ground those Facilities that must be so installed in order to function properly. PSE will also share information and otherwise cooperate with the City and other utility providers to serve the objectives of SMC 13.20.

6. Planning Coordination.

6.1. Growth Management. PSE agrees, as follows, to participate in the development of, and reasonable updates to, the utilities element of the City's comprehensive plan:

6.1.1. PSE will participate in a cooperative effort with the City to ensure that the Utilities Element of Shoreline's Comprehensive plan is accurate as it relates to PSE's operations and is updated to ensure its continued relevance at reasonable intervals.

6.1.2. PSE shall submit information related to the general location, proposed location, and capacity of existing and proposed Facilities as requested by the City Manager within a reasonable time, not exceeding sixty (60) days from receipt of a written request for such information.

6.2. System Development Information. PSE will assign a representative whose

ORIGINAL

responsibility shall be to coordinate with the City on planning for City Capital Improvement Program projects. At a minimum, such coordination shall include the following:

6.2.1. By March 1st of each year, PSE shall provide the City Manager or his designee with a schedule of its planned capital improvements, which may affect the Right-of-way for that year;

6.2.2. PSE shall meet with the City, other franchisees and users of the Right-of-way, according to a schedule to be determined by the City, to schedule and coordinate construction; and

6.2.3. All construction locations, activities, and schedules shall be coordinated, as required by the City Manager or his designee, to minimize public inconvenience, disruption, or damages.

6.2.4. PSE will cooperate with the City to extend its natural gas distribution system into areas of the City that do not have natural gas service available in conjunction with City road improvement projects subject to applicable PSE tariffs on file with the Washington Utilities and Transportation Commission.

6.3. Emergency Operations. The City and PSE agree to cooperate in the planning and implementation of emergency operations response procedures.

7. **Indemnification.**

7.1 PSE hereby agrees to indemnify, defend and hold harmless the City, its elected officials, employees, agents, and volunteers from any and all claims, costs, judgments, awards or liability to the extent the same is caused by the negligent acts or omissions of PSE, its agents, servants, officers or employees in performing activities authorized by this Franchise. This covenant of indemnification shall include, but not be limited by this reference, claims against the City to the extent they arise 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 adequate warnings of any excavation, construction, or work in any right-of-way or other public place in performance of work or services permitted under this franchise. If final judgment is rendered against the City, its elected officials, employees, agents, and volunteers, or any of them, PSE shall satisfy the same to the extent it is based on a claim or demand which is covered by PSE's indemnification obligations hereunder. In the event any claim or demand 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. If any such claim or demand is subject to RCW 4.24.115 and caused by or results from the concurrent negligence of (a) the City, its elected or appointed officials, or its agents or employees; and (b) PSE, or PSE's agents or employees, then in such event the defense and indemnity provisions provided for in this subsection shall be valid and enforceable only to the extent of PSE's negligence.

7.2 The City shall not be liable upon, and PSE shall indemnify and defend the City from and

ORIGINAL

against, any claim which is caused by the acts or omissions of PSE in exercising its rights under this Franchise and is asserted by any person against the City for injury to any person or damage to property, to the extent such claim is asserted solely on the basis of the City's ownership or control of the Right-of-way or the City's grant of this Franchise to PSE.

7.3 PSE's indemnification obligations pursuant to this Franchise shall be valid and enforceable with respect to actions brought against the City by PSE's own employees and the employees of PSE's agents, contractors, and subcontractors notwithstanding PSE's immunity under Title 51 RCW from direct suit brought by such employees. It is expressly agreed and understood that the foregoing waiver is limited solely to claims against the City arising by virtue of PSE's exercise of the rights set forth in this Franchise and excludes claims against PSE or claims arising from and to the extent of the negligent acts or omissions of the City, its officials, 'employees or agents. The obligations of PSE under this Franchise have been mutually negotiated by the parties hereto, and PSE acknowledges that the City would not enter into this Franchise without PSE waiver thereof. To the extent required to provide this indemnification and this indemnification only, PSE waives its immunity under Title 51 RCW as provided in RCW 4.24.115; provided, however, the foregoing waiver shall not in any way preclude PSE from raising such immunity as a defense against any claim brought against PSE by any of its employees.

7.4 Inspection or acceptance by the City of any work performed by PSE at the time of completion of construction shall not be grounds for avoidance of PSE's indemnification obligations. Said indemnification obligations shall extend to claims that are not reduced to a suit and any claims that may be compromised prior to the culmination of any litigation or the institution of any litigation.

8. **Insurance.**

8.1. In lieu of the insurance requirements set forth below in this Section 8 and with the concurrence of the City, PSE may utilize a combination of operating reserves and excess liability insurance to protect against such risks in such amounts as are consistent with good utility practice. To secure such concurrence, PSE and the City may, from time to time, review PSE's financial position and risk management program. Upon PSE's acceptance of this Franchise and upon reasonable request thereafter, PSE shall provide the City with reasonable written evidence that such protection is being maintained.

8.2. Except as otherwise provided in Subsection 8.1, PSE shall procure and maintain for the duration of the Franchise, 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 hereunder to PSE, its agents or employees. A combination of self-insurance and excess liability insurance may be utilized by PSE. Upon PSE's acceptance of this Franchise, PSE shall provide to the City a certificate of insurance and/or evidence of self-insurance evidencing the following required coverages and limits:

8.2.1. Automobile Liability insurance for owned, non-owned and hired vehicles with limits no less than $4,000,000 Combined Single Limit per accident for bodily

ORIGINAL

injury and property damage; and

8.2.2. Commercial General Liability insurance policy and self-insurance coverage providing combined coverage of no less than $50,000,000 combined single limit per occurrence and $50,000,000 aggregate for personal injury, bodily injury and property damage. Coverage shall include premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse or underground property damage. If coverage is provided by self-insurance or a policy of insurance written on a claims made rather than occurrence bas.is, PSE agrees to maintain the same levels of self-insurance or claims made policy coverage, or to purchase endorsements providing additional reporting periods in which claims otherwise covered by the claims made policy or self-insurance may be reported, for a period of three (3) years following either the discontinuance of the claims made policy or self-insurance or the termination of this Franchise, whichever is earlier.

8.3. Payment of deductible or self-insured retention shall be the sole responsibility of PSE.

8.4. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, or employees. In addition, the insurance policy shall, contain a clause stating that coverage 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. PSE's insurance shall be primary. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of PSE's insurance and shall not contribute with it. Coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the City.

9. **Enforcement.**

9.1. A substantial violation or breach of this Franchise by PSE shall include, but shall not be limited to, the following:

9.1.1. An uncured violation of any material provision of this Franchise, or any material rule, order or regulation of the City made pursuant to its power to protect the public health, safety and welfare;

9.1.2. An intentional evasion or knowing attempt to evade any material provision of this Franchise or practice of any fraud or deceit upon the City;

9.1.3. An uncured failure to pay fees that may be associated with this Franchise, if any.

9.2. In the event either party shall fail to comply with the terms of this Franchise, the other party shall provide the non-complying party with detailed written notice of any alleged violation or breach. The party who is allegedly in non-compliance shall have a period of 60 days following such written notice to cure the alleged violation or breach, demonstrate to the other's satisfaction that a violation or breach does not exist, or submit a plan satisfactory to the other to correct the violation or breach. If, at the

ORIGINAL

end of said 60-day period, the City or PSE reasonably believes that a substantial violation or material breach is continuing and the party in breach is not taking satisfactory corrective action, the other may declare that the party in breach is in default, which declaration must be in writing. Within 20 days after receipt of a written declaration of default, the non-defaulting party may terminate this Franchise.

9.3. The City or PSE may, in its discretion, provide an additional opportunity for the other to remedy any violation or breach and come into compliance with this Franchise so as to avoid termination.

9.4. Any violation or breach by PSE continuing to exist after the expiration of the notice and cure periods identified in Section 9.2 may be remedied by the City at PSE's expense.

10. **Force Majeure.** Neither party will be subject to penalty for any non-compliance with this Franchise or delay in compliance of any of its obligations hereunder where such compliance is prevented or delayed by acts of God (except normal weather conditions for the Shoreline-Seattle area), fire, explosion, accident, flood, epidemic, war, riot, rebellion, interruption or rationing of fuel supply, or other unexpected and uncontrollable event ("force majeure events"). If a force majeure event occurs, this Section will only apply if the Party intending to seek the protections of this Section notifies the other Party in writing. The City may continue to exercise its rights to abate any Dangerous Condition consistent with Section 5.10.

11. **Survival.** All of the provisions, conditions and requirements of Sections 5.3 Abandonment of PSE's Facilities, 5.4 Restoration After Construction, 5.10 Dangerous Conditions, Authority For City To Abate, 7. Indemnification, 8. Insurance, and other sections of this Franchise that may be reasonably construed to survive the termination or expiration of this Franchise shall survive such termination or expiration. All of the provisions, conditions, regulations and requirements contained in this Franchise shall further be binding upon the heirs, successors, executors, administrators, legal representatives and assigns of the parties hereto and all privileges, as well as all obligations and liabilities of each party shall inure to their respective heirs, successors and assigns.

12. **Severability.** If any Section, sentence, clause or phrase of this Franchise should be 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. The Parties may amend, repeal, add, replace, or modify any provision of this Franchise to preserve the intent of the parties as expressed herein prior to any finding of invalidity or unconstitutionality.

13. **Assignment.** This Franchise shall not be sold, transferred, assigned, or disposed of in whole or in part either by sale, voluntary or involuntary merger, consolidation or otherwise, without the written approval of the City, which shall not be unreasonably withheld. The City may recover from PSE any actual administrative expenses incurred by the City during its review of any transfer proposed by PSE.

13.1. An assignment of this Franchise shall be deemed to occur if there is an actual change in control or where ownership of fifty percent (50%) or more of the beneficial

ORIGINAL

interests, singly or collectively, are obtained by other parties. The word "control" as used herein is not limited to majority stock ownership only, but includes actual working control in whatever manner exercised.

13.2. Except as otherwise provided herein, PSE shall promptly notify the City prior to any proposed change in, or transfer of, or acquisition by any other party of control of PSE. Every change, transfer, or acquisition of control of PSE shall cause a review of the proposed transfer. In the event that the City denies its consent and such change, transfer or acquisition of control has been effected, the Franchise is terminated.

13.3. PSE shall be permitted, without the City's approval, to mortgage its rights, privileges and authority in and under this Franchise to the trustee under its mortgage indenture for the benefit of its bondholders.

14. **Notice.** Any notice or information required or permitted to be given to the parties under this Franchise may be sent to the following addresses unless otherwise specified:

Puget Sound Energy
P.O. Box 90868
Bellevue, WA 98009-0868
Attn: Municipal & Land Planning

City Manager City of Shoreline
17500 Midvale Avenue N.
Shoreline, WA 98133-4921

15. **Non-Waiver.** The failure of either party to enforce any breach or violation by the other party of any provision of this Franchise shall not be deemed to be a waiver or a continuing waiver by the non-breaching party of any subsequent breach or violation of the same or any other provision of this Franchise.

16. **Alternate Dispute Resolution.** If the parties are unable to resolve disputes arising from the terms of this Franchise, prior to resorting to a court of competent jurisdiction, the parties shall submit the dispute to a non-binding alternate dispute resolution process agreed to by the parties. Unless otherwise agreed between the parties or determined herein, the cost of that process shall be shared equally.

17. **Entire Agreement.** Except for the Blanket Permit Definitions to be prepared in accordance with Section 5.8, this Franchise constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon execution and acceptance hereof.

18. **Amendment.** Except for the Blanket Permit Definitions to be prepared in accordance with Section 5.8, this Franchise may be amended only by 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 the laws of the State of Washington.

19. **Supremacy.** This Franchise represents the dominant agreement between the parties. In the event of any conflict between this Franchise and any City ordinance or permit, the terms of this Franchise shall control. In the event, however, of any conflict between the provisions of this Franchise and PSE's applicable tariff on file with the Washington Utilities and Transportation Commission or a successor state regulatory authority, the tariff shall control for the duration of

ORIGINAL

that conflict, provided, that PSE shall provide the City written notice within five (5) days of filing any proposed tariff or amended tariff which would affect the terms of this Franchise or any rights of the City hereunder.

20. **Directions to City Clerk**. The City Clerk is hereby authorized and directed to forward certified copies of this Ordinance to PSE. PSE shall have sixty (60) days from receipt of the certified copy of this Ordinance to accept in writing the terms of the Franchise granted to PSE in this Ordinance.

21. **Publication Costs**. In accord with state law, this Ordinance shall be published in full. The costs of said publication shall be borne by PSE.

22. **Effective Date**. This Ordinance shall take effect and be in full force on the first day of the first full month at least five days following the publication of this Ordinance.

PASSED by the City Council on this 9th day of October, 2017.

APPROVED:

Christopher Roberts, Mayor

ATTEST:

Jessica Simulcik Smith
City Clerk

APPROVED AS TO FORM:

Margaret King
City Attorney Ast. City Attorney

Date of Publication: October 12, 2017
Effective Date: November 1, 2017