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**ORDINANCE NO. 860**

**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 ... poles, conduits, tunnels, towers and structures, pipes and wires and appurtenances thereof for transmission and distribution of...gas…"; 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 non-exclusive franchise to Puget Sound Energy, Inc., for the operation of a natural gas distribution system within the City right-of-way;

**NOW, THERFORE, 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. Days: Calendar days.

1.3. Director: The Director of the Public Works Department or designee.

1.4. Facilities: Natural gas distribution systems, including, but not limited to, all gas pipes, pipelines, mains, laterals, conduits, feeders, regulators, valves, meters, meter-reading devices, fixtures and communications systems; and all other equipment, appliances, facilities, attachments, and appurtenances utilized by PSE in the operation of activities authorized by this Franchise, whether the same be located over or under ground. The decommissioning by PSE of any Facilities as defined herein shall not act to remove the same from this definition.

1.5. Person: An entity or natural person.

1.6. Public Project: City initiated capital improvement project as listed in the City's Capital Improvement Plan, including but not limited to, roadway improvement, pedestrian improvement projects, and City owned utility, that is undertaken by or on behalf of the

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City and is funded by the City (either directly with its own funds or with other public monies obtained by the City).

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

1.8. 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 unimproved right-of-way now or hereafter be laid out, platted, dedicated, acquired, or improved within the present or extended limits of the City.

1.9. Tariff. As used herein is that term defined in WAC 480-80-030, as amended, or such similar definition describing rate schedules, rules and regulations relating to charges and services as may hereinafter be adopted by the regulatory authority with jurisdiction, under the laws of the State of Washington, over public service companies.

1.10. Traffic: All forms of travel, both motorized and non-motorized, within the Right-of-way (e.g., vehicle, pedestrian, bicycle, equestrian, etc.).

## 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 City 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 wires, wireless technology or telemetric devices to monitor and operate its natural gas distribution systems, to monitor and control the usage of natural gas, and/or to operate communications systems supporting its gas operations but which are not used by PSE to provide telecommunications services to the general public.

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 subject to Section 3 below. 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 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.

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2.5. This Franchise shall not govern or apply to Facilities located on and using PSE owned or leased properties or easements (whether inside or outside of the Right-of-way, 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 other rights granted by the City.

**3. Nonexclusive Franchise.**

This Franchise is not and shall not be deemed to be an exclusive Franchise and shall not prohibit the City from granting other franchises upon, under, and across the Franchise Area which do not interfere with PSE's rights under this Franchise. PSE acknowledges that the City's grant of a non-exclusive franchise to another party providing electrical or natural gas services does not, in and of itself, constitute unreasonable interference so long as the terms of the other franchise do not purport to give the other party priority or preference rights, or any other rights that unreasonably interfere with PSE's rights under this Franchise. This Franchise in no way shall prevent or prohibit the City from using the Franchise area or affect the jurisdiction of the City over the same or any part thereof.

**4. Franchise Term.**

The term of the Franchise granted hereunder shall be for the period of fifteen (15) years counted from the last day of the calendar month in which this Ordinance becomes effective.

**5. City Ordinances and Regulations.**

5.1. Subject to Section 25 below, 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 and PSE shall promptly conform with all such regulations, unless compliance would cause PSE to violate requirements of state or federal law.

**6. Right-of-Way Management.**

6.1. PSE's Facilities shall be constructed, installed, maintained, and repaired within the Right-of-way, and PSE's activities shall be undertaken in such a manner, so as not to unreasonably interfere with the safe and unobstructed passage of Traffic and the unobstructed access to property adjoining the Right-of-way.

6.2. Permitting And Notice Of Entry.

6.2.1. PSE shall at all times post and maintain proper barricades and comply with all applicable federal, state, and local safety regulations when performing applicable activities as provided under this Franchise or applicable City permit within the Right-of-way, including RCW 39.04.180, for the construction of trench safety systems.

6.2.2. Prior to performing any work in the City's Right-of-way for the purpose of installation, construction, repair, testing, maintenance, or relocation of its Facilities, PSE shall apply for and obtain from the City appropriate permit(s) in accordance with the City's ordinances and regulations 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 Franchise. PSE shall provide the City with its proposed plans, and upon

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request, maps and information showing the final location of any Facilities in accordance with Section 7.10 of this Franchise.

6.2.3. Minor Activities.

6.2.3.1. Minor Activities Defined. A Minor Activity is routine work performed by PSE that requires no hard surface cuts of the Right-of-way. Typical examples include but are not limited to: valve adjustment in pavement when in conjunction with a City or developer-generated project, valve maintenance, leak surveys, valve box maintenance in gravel shoulder, testing, cathodic testing, utility locates, and repair or replacement of services or mains involving the excavation of 25 square feet or less in a gravel shoulder.

6.2.4. Requirements for Minor Activities. Minor activities do not require a City permit, City notification, or payment of fees. The following Traffic passage requirements must be met for minor activities: no lane restrictions on arterials, street closures or Traffic detours at any time. Minor activities require Traffic control measures consistent with the Manual on Uniform Traffic Control Devices (MUTCD) and Americans with Disabilities Act (ADA) requirements.

6.2.5. Blanket Activities.

6.2.5.1. Blanket Activities Defined. Blanket activities are any routine work performed by PSE on a non-arterial street that requires hard-surface excavation of 35 square feet or less in the Right-of-way as well as service installations that require no more than two (2) hard-surface excavations of 35 square feet or less in the right-of-way. Other typical examples of blanket activities for work performed on non-arterials include but are not limited to: leak repairs and cut and caps with a hard-surface excavation of 35 square feet or less, service or main repairs more than 25 square feet in a gravel shoulder, replacement or installation of valves in pavement, and transverse tie-ins on joint-trench jobs. Cut and caps of existing gas lines in arterials shall also be considered a blanket activity if they have no impact to travel lanes and occur in the soft surface shoulder of the street.

6.2.5.2. Requirements for Blanket Activities. PSE must obtain a Blanket Permit from the City for each Blanket Activity performed in the City's Right-of-way. Each Blanket Permit will be charged at a Right-of-way Use permit rate equal to two (2) hours of time as identified in the City's Fee Schedule and shall be paid on a monthly basis within 30 Days following the end of each month. Blanket Activities require Traffic control measures consistent with the MUTCD. Traffic passage requirements include no street closures or Traffic detours at any time. Alternating two-way Traffic consistent with MUTCD is permissible.

6.2.5.3. Notification of Blanket Activities. PSE shall notify the City in writing, at least twenty-four (24) hours in advance of performing any activity in the Right-of-way, and submit a City Inspection Request Form,

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which shall include at a minimum the following information: Franchise ordinance number, street address nearest to the proposed work site, and description of work to be performed. PSE shall provide written notice of completion within twenty-four (24) hours after completing work.

6.2.6. Major Activities.

6.2.6.1. Major Activities. All activities not deemed Minor or Blanket Activities are Major Activities and require a Right-of-way Use permit. Fees will be assessed individually according to the City's Fee Schedule and paid on a monthly basis within 30 Days following the end of each month.

6.2.6.2. All permits shall be closed out prior to the expiration date. PSE shall request a final site inspection when all permit conditions have been met and work is complete. If the work cannot be completed prior to the expiration date a request to extend the permit must be submitted.

6.2.7. If none of the activities listed accurately describes or captures a proposed activity, PSE and the City shall meet to discuss the nature and scope of the proposed activity. Based upon the parties' discussions, the Director shall determine whether the proposed activity shall be categorized as a minor, blanket, or major activity.

6.2.8. Emergency Work, Permit Waiver. In the event of any emergency where immediate action is needed to protect the integrity of PSE's Facilities within the Franchise Area for which a permit from the City is required under this Franchise, PSE shall immediately take any necessary emergency measures to repair or remove its Facilities without first applying for and obtaining a permit as required by this Franchise. During normal work hours PSE shall verbally notify the Director as soon as possible after the event of the need to perform emergency repairs. This emergency provision shall not relieve PSE from later obtaining any necessary permits for the emergency work, with the exception of minor and blanket activities as described in 6.2.3 and 6.2.4. PSE shall apply for the required permits the next business day following the emergency work or as soon as practical.

6.2.9. Notice of construction in the right-of-way. At least five (5) calendar days prior to the anticipated start of construction activities within the right-of-way that qualify as Major Activities, except those activities exempted from permit requirements in accordance with Section 6.2.7, or that are expected to conclude in eight (8) hours or less, PSE shall inform the occupants of all immediately adjacent properties that a construction project will commence, provide the anticipated date range and nature of the project, and share a point of contact for seeking more information. Notification may be completed using one or more methods, including but not limited to: door hangers, mailed notices, emails, phone calls, onsite signage, coordination with property management companies, web content and onsite crew coordination.

6.2.10. Notice of construction activities impacting private property. At least twenty-four (24) hours prior to the start of construction, maintenance or repair

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activities directly impacting the use of a private property, except those activities exempted from permit requirements in accordance with Section 6.2.7, PSE shall inform impacted property occupants of the nature of the work. Notification may be completed using one or more notification tools, including but not limited to: door hangers, mailed notices, emails, phone calls, onsite signage, coordination with property management companies, web content, and onsite crew coordination. In some cases, the notice of construction in the right-of-way may be combined with the notice of construction activities impacting private property.

6.2.11. In the event PSE fails to comply with any conditions set forth in Section 6.2, the City shall provide PSE with written notice of the alleged noncompliance. PSE shall have thirty (30) calendar days from the date of the notice to cure the noncompliance, commence the cure in good faith if said cure will reasonably take longer than 30 days to complete under the circumstances, or enter into an agreement that establishes a schedule for curing the noncompliance with the City. If PSE fails to cure the noncompliance, commence the cure, or enter into an agreement that establishes a schedule for curing the noncompliance within that 30-day period, as outlined herein this Section, the parties shall enter into dispute resolution pursuant to Section 15 below, and the City may suspend all rights and privileges granted under Section 6.2 until such time as PSE cures the noncompliance, or enters into an agreement that establishes a cure for the noncompliance. This suspension does not preclude PSE from applying for permits as provided in SMC Chapter 12.15, as it currently exists or may hereafter be amended. Any non-compliance under this section shall not be deemed a default under section 14.2.

6.3. Decommissioned Facilities.

6.3.1. Above ground decommissioned facilities. PSE shall notify the City if PSE elects to permanently decommission any of its above-ground Facilities within the Right-of-way. Upon receipt of said notice, the City will have the right to require PSE to remove such decommissioned Facilities from the Right-of-way within the Franchise Area. If so required, PSE shall remove the decommissioned Facilities 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. All necessary permits must be obtained prior to such work.

6.3.2. Below ground decommissioned facilities. In the event PSE permanently ceases use of any of its underground Facilities within the Right-of-way, PSE may leave such underground Facilities in place subject to the conditions set forth in this Section. Any such underground Facilities to be left in place shall be made inert by purging all natural gas from such underground Facilities (including displacement of natural gas with an appropriate inert gas) and disconnecting and sealing such underground Facilities, all in compliance with applicable regulation and industry standards. Such action by PSE shall not relieve PSE of the obligation and/or costs to subsequently remove or alter

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such underground Facilities in the event the City reasonably determines that such removal or alteration is reasonably necessary to accommodate a Public Project pursuant to Section 7 or to protect the health and safety of the public, in which case PSE shall perform such work at no cost to the City within a mutually agreed upon timeframe, but not less than one-hundred and twenty (120) Days. Decommissioned Facilities must be identified on as built plans, provided to the City upon request, and consistent with utility locate standards. The City and PSE shall work in good faith to avoid or minimize the need to remove any decommissioned underground Facilities within the Franchise Area. The obligations contained in this section shall survive the expiration, revocation and termination of this Franchise.

6.4. Restoration after Construction.

6.4.1. PSE shall, after any installation, construction, relocation, maintenance, or repair of its Facilities within the Right-of-way that disturbs the surface or subsurface of the Right-of-way, promptly restore the Right-of-way to at least the same condition it was in immediately prior to any such installation, construction, relocation, maintenance or repair and, to the extent reasonable in light of the scope and nature of PSE's work in the Right-of-way, in accordance with City standards at no cost to the City. 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.

6.4.2. If it is determined that PSE has failed to restore the Right-of-way in accordance with this Section, 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.

6.5. Bonding Requirement: Before undertaking any of the work within the Right-of-way 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 performed by or on behalf of PSE or materials discovered in the restoration of the Right-of-way 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 shall, prior to the expiration of said bond, procure a replacement bond which complies with the terms of this Section.

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6.6. Recourse Against Bond: With respect to undertaking any of the work pursuant to section 6.5 of 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 6.5 to cure such deficiency.

6.6.1. In the event the City makes use of such bond(s) furnished by PSE pursuant to Section 6.5, 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 6.5.

6.6.2. The rights reserved to the City by this Section 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 shall constitute an election or waiver of any rights or other remedies the City may have.

6.7. Safety. PSE, in accordance with applicable federal, state, and local safety rules and regulations, shall, at all times, employ ordinary care in the installation, maintenance, and repair utilizing methods and devices commonly accepted in the natural gas industry of operation.

6.8. Lateral Support Impairment. In the event that PSE's Facilities or operations within the Right-of-way directly and solely causes a condition that substantially impairs the lateral support of the Right-of-way, or public property adjacent thereto , the Director may direct PSE, at no charge or expense to the City, to take actions to resolve the impairment, with all necessary permits and authority granted by the City in an expeditious manner, provided that PSE is authorized to take any necessary emergency measures to repair or remove its Facilities pursuant to Section 6.2.6. In the event that PSE disputes that its Facilities or operation directly and solely caused the substantial impairment of lateral support, the Parties shall engage in dispute resolution pursuant to Section 14 below.

## 7. Relocation of Facilities.

7.1. PSE agrees to protect, support, temporarily disconnect, relocate or remove from any Right-of-way its Facilities without cost to the City, to the extent permitted by law and under this Franchise, when so required by the City for a Public Project. Relocations means PSE will move above grade Facilities to another above grade location (above ground to above ground relocation) and below grade Facilities to another below grade location (underground to underground relocation). PSE shall in all such cases have the privilege to temporarily bypass, in the authorized portion of the same Right-of-way and upon approval by the City, any Facilities required to be temporarily disconnected or removed for a Public Project. It is understood that conditions including, but not limited to, scope and complexity of a project, and the ability to gain necessary easements and permits, will impact these projects and will be taken into consideration when establishing timelines for such projects.

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7.2. If the City determines that a Public Project requires the Relocation of PSE's existing Facilities the City shall:

7.2.1. As soon as possible to the notice to proceed is given for a Public Project, but not less than one-hundred twenty (120) Days, provide PSE written notice requesting such relocation and the date by which relocation needs to be completed, provided that the relocation deadline will be extended as reasonably necessary if it would be impossible or impracticable for PSE to complete the relocation work by the original relocation deadline due to factors and circumstances beyond PSE's reasonable control, including but not limited to force majeure events, and events caused by a third party and which PSE does not control; and

7.2.2. Provide PSE with copies of relevant portions of the City's plans and specifications for such public works improvement.

7.2.3. Ensure that all necessary permits and easements are issued to PSE in an expeditious manner so PSE may maintain the timeline of a Public Project established under this Franchise or a separate agreement.

7.3. PSE may, after receipt of written notice by the City as specified in Subsection 7.2.1 requesting a relocation of its Facilities, submit to the City written alternatives to such Relocation that in PSE's judgment offer the least amount of interference to PSE's customers and operations, provide a more cost-effective alternative, or provide a more efficient or appropriate design or method for the Relocation for the Public Project. The City shall evaluate such alternatives and advise PSE in writing if any of the alternatives are suitable to accommodate the work that necessitates the Relocation of the Facilities. 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 the alternatives submitted by PSE are not amenable to the City, PSE shall relocate its Facilities as provided in this Section.

7.4. PSE will work cooperatively with the City on Public Projects to explore the most cost-effective means of coordinating the Relocation of Facilities for Public Projects. After receipt of such notice and such plans and specifications provided to PSE by the City as specified in Subsections 7.2.1 and 7.2.2 of this Agreement, PSE shall complete Relocation of its Facilities at least ten (10) Days prior to commencement of a Public Project, unless a different date is provided in a separate Public Project coordination agreement between the City and PSE.

7.5. 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. The "date of relocation" shall be the date in which the physical relocation of the Facilities is completed.

7.6. Whenever (i) any public or private development within the Right-of-way, other than a Public Project, requires the relocation of PSE's Facilities within the Right-of-way to accommodate such development; or (ii) the City requires the relocation of PSE's Facilities within the Right-of-way for the benefit of any person or entity other than the

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City, then in such event, PSE shall have the right as a condition of such relocation, to 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.

7.7. Any condition or requirement imposed by the City upon any person or entity, other than PSE, that requires the relocation of PSE's Facilities shall be a required relocation for purposes of Section 7.5 (including, without limitation, any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits for zoning, land use, construction or development).

7.8. 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. No easement shall be reserved if the vacation is conditioned upon a vacation petitioner's payment for the cost of relocating existing Facilities to another Right-of-way or private easement including necessary service reconnections caused by the relocation.

7.9. Nothing in this Section 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.

7.10. 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 horizontal location of its Facilities at specified locations within the Right-of-way. If available, such maps shall also be provided in a digital electronic format usable 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, and to the extent the location of Facilities are shown, such locations are approximate.

## 8. 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.

## 9. Planning Coordination.

9.1. Growth Management Act Comprehensive Planning. Pursuant to the Growth Management Act (GMA), chapter 36.70A RCW, the City is required to prepare and periodically update a comprehensive plan. RCW 36.70A.070 lists the mandatory elements that must be contained in the comprehensive plan, including a utilities element. PSE agrees to participate in a cooperative effort with the City in updates to its utilities element to meet the GMA's requirements, to the extent such information can be provided consistent with applicable laws.

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9.2. Coordination of Projects and Activities. PSE will assign a representative whose 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:

9.2.1. By February 1st of each year, PSE shall provide the Director with a schedule of its planned capital improvements, which may affect the Right-of-way for that year;

9.2.2. 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 on specific projects; and

9.2.3. All construction locations, activities, and schedules shall be coordinated, as required by the Director, to minimize public inconvenience, disruption, or damages.

9.2.4. PSE will cooperate with the City to consider the extension of 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.

9.3. Development of Right-of-Way Standards. PSE herein agrees to provide the staff-support necessary to enable PSE to meaningfully participate in the City's revision of Right-of-way Standards. By way of illustration and not limitation, this participation shall include attendance at City planning meetings, review and comment of documents proposed for adoption, and any other activities that may be required in the formulation of Right-of-way Standards, as agreed by PSE and the City. Such participation shall be for informational purposes only and shall not obligate either party to undertake any specific improvements within the Franchise Area, nor shall such discussions or coordination be construed as a proposal to undertake any specific improvements within the Franchise Area.

9.4. Emergency Operations. The City and PSE agree to cooperate in the planning and implementation of emergency operations response procedures. PSE will be engaged in City emergency planning process at the request of the City, including participation in the City's Emergency Management Council. The City will provide current emergency contact information to PSE's Emergency Manager. Such participation shall be for informational purposes only and shall not obligate either party with respect to said participation.

**10. Indemnification.**

10.1. PSE hereby agrees to indemnify, defend and hold harmless the City, its elected officials, employees, agents, and volunteers from any and all third party 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, including equipment installation, maintenance and operations, authorized by this Franchise. If final judgment is rendered against the City, its elected officials,

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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 the preceding paragraph 9.1 shall be valid and enforceable only to the extent of PSE's negligence.

10.2. Solely to the extent required to enforce the indemnification provisions of this Section 9, PSE waives its immunity under Title 51 RCW, Industrial Insurance; 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. The foregoing waiver has been mutually negotiated by the parties hereto, and PSE acknowledges that the City would not enter into this Franchise without PSE waiver thereof.

10.3. 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.

**11. <u>Insurance.</u>**

11.1. In lieu of the insurance requirements set forth below in this Section and with the concurrence of the City, PSE may utilize a combination of self-insurance 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.

11.2. Except as otherwise provided in <u>Section 11.1</u>, PSE shall procure and maintain for the duration of the Franchise, during any period of time during which PSE is operating its Facilities without a franchise, or is engaged in the removal of its Facilities from the Franchise Area, 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. PSE's maintenance of insurance as required by this Franchise shall not be construed to limit the liability of PSE to the coverage provided by such insurance or otherwise limit the City's recourse to any remedy available at law or in equity. 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:

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11.2.1. Automobile Liability insurance or self-insurance for owned, non-owned and hired vehicles with limits no less than $2,000,000 Combined Single Limit per accident for bodily injury and property damage; and

11.2.2. Commercial General Liability insurance policy or self-insurance coverage providing no less than $2,000,000 per occurrence and $2,000,000 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.

11.2.3. Excess liability insurance with limits not less than $5,000,000 per occurrence excess of Commercial General Liability and automobile limits described above in items 11.2.1 and 11.2.2.

11.2.4. Worker's compensation with statutory limits and employers liability insurance with limits of not less than $1,000,000.

11.2.5. If coverage is provided by self-insurance or a policy of insurance written on a claims made rather than occurrence basis, 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.

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

11.4. 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 as applies to the indemnity obligations of this Franchise. 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.

**12. <u>Notice of Tariff Changes.</u>**

PSE shall when making application for any changes in Tariffs affecting the provisions of the franchise, notify the City in writing, that the application has been submitted to the Washington Utilities and Transportation Commission ("WUTC") within five (5) Days of filing with the WUTC and any approved Tariff by the Washington Utilities and Transportation Commission, or its successor, affecting the provisions of this Franchise. In the event of any conflict or

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inconsistency between the provisions of this Franchise and such Tariff, the provisions of such Tariff shall control.

**13. Utility Tax and Franchise Fee.**

13.1. Utility Tax. PSE acknowledges that the City is authorized under RCW 35.21, as amended, to impose a utility tax on PSE. Nothing in this franchise shall exempt nor be construed to exempt PSE from payment of this utility tax in accordance with the City's Code.

13.2. Franchise Fee. The City acknowledges that it is precluded from imposing a franchise fee upon PSE pursuant to RCW 35.21.860, for use of the right-of-way except for administrative expenses, fees, taxes or charges authorized by RCW 35.21. As such, the City will not impose a franchise fee under the terms of this Franchise, other than as described herein or as authorized by law.

**14. Enforcement.**

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

14.1.1. An uncured violation of any material provision of this Franchise;

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

14.1.3. Misrepresentation of material fact during negotiations relating to this Franchise or the implementation thereof.

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

14.2. 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 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, and engage in Dispute Resolution pursuant to Section 15.2 below.

14.3. The City or PSE may, in its sole discretion, provide an extension of the 60 Day period provided for in Section 14.2 for the other party to remedy any violation or breach and come into compliance with this Franchise so as to avoid a declaration of default. The party granting the extension may not unreasonably withhold such an extension provided that the noncompliant party demonstrates prompt and diligent efforts to cure the violation or breach.

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**15. Dispute Resolution.**

15.1 In the event of a dispute between City and PSE arising by reason of this Franchise, or any obligation hereunder, the dispute shall first be referred to the operational officers or representatives designated by City and PSE to have oversight over the administration of this Franchise. Said officers or representatives shall meet within thirty (30) calendar days of either party's request for a meeting, whichever request is first, and the parties shall make a good faith effort to attempt to achieve a resolution of the dispute.

15.2 In the event that the parties are unable to resolve the dispute under the procedures set forth in Sections 14 or 15.1, then the parties hereby agree that the matter shall be referred to mediation. The parties shall mutually agree upon a mediator to assist them in resolving their differences. Each party shall bear its own expenses related to the mediation and the parties shall share the cost of the mediator equally.

15.3 If either party is dissatisfied with the outcome of the mediation, that party may then pursue any available judicial remedies, provided, that if the party seeking judicial redress does not substantially prevail in the judicial action, it shall pay the other party's reasonable legal fees and costs incurred in the judicial action.

**16. 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.

**17. Survival.**

All of the provisions, conditions and requirements of Sections 6.3 Decommissioned Facilities, 6.4 Restoration After Construction, 6.8 Lateral Support Impairment, 10. Indemnification, 11. 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.

**18. 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.

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**19. Assignment.**

This Franchise shall not be assigned in whole or in part without the written approval of the City, which shall not be unreasonably withheld. Notwithstanding the foregoing, 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.

**20. 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, Inc.<br>P.O. Box 97034<br>Bellevue, WA 98009-9734<br>Attn: Municipal Relations | City Manager<br>City of Shoreline<br>17500 Midvale Avenue N.<br>Shoreline, WA 98133-4905 |

**21. 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.

**22. Entire Agreement.**

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.

**23. Amendment.**

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.

If, during the term of this Franchise, there becomes effective any change in federal or state law that may require action by the City or PSE that conflicts or is inconsistent with any provision of this Franchise, either party may notify the other party in writing of such party's desire to commence negotiations to amend this Franchise. Such negotiations shall only encompass the specific term or condition affected by the change in federal or state law and no party shall be obligated to reopen negotiations on any other term or condition of this Franchise.

Without limiting the generality of the foregoing, this Franchise (including, without limitation the Sections addressing indemnification and insurance) shall govern and supersede and shall 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 of its rights, benefits, privileges, obligations or duties in and under this Franchise, unless such permit, approval, license, agreement or other document specifically: (i) references this Franchise, and (ii) states that it supersedes this Franchise to the extent it contains terms and conditions which change, modify, delete, add to, supplement or otherwise amend the terms and conditions of

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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 shall control.

**24. 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 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.

**25. No Third Party Beneficiary.**

Nothing in this Franchise shall be construed to create any rights in or duties to any third party, nor any liability to or standard or are with reference to any third party. This Franchise shall not confer any right or remedy upon any person other than the parties. No action may be commenced or prosecuted against any party by any third party claiming as a third party beneficiary of the Franchise. This Franchise shall not release or discharge any obligation or liability of any third party to either party.

**26. Captions.**

The titles of sections or any other parts of this Franchise are for the convenience only and do not define or limit the contents.

**27. Acceptance by PSE.**

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 unconditionally accept in writing the terms of the Franchise granted to PSE in this Ordinance and file such acceptance with the City Clerk.

**28. Publication Costs.**

In accordance with state law, a summary of this Ordinance consisting of its title shall be published in the official newspaper of the City in lieu of publishing the Ordinance in its entirety. PSE shall reimburse the City for the cost of publishing this Ordinance within thirty (30) days of receipt of any invoice from the City.

**29. Reimbursement of Administrative Costs.**

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. However, as provided in RCW 35.21.860, PSE shall reimburse and pay the City's actual administrative expenses incurred by the City that are directly related to: (i) receiving and approving a permit, license or this Franchise, (ii) inspecting plans and construction, or (iii) preparing a detailed statement pursuant to Chapter 43.21C RCW.

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**30. Effective Date.**

This Ordinance shall take effect and be in full force after publication and upon acceptance by PSE as provided in Section 27.

**PASSED BY THE CITY COUNCIL ON JUNE 24, 2019.**

Mayor Will Hall

**ATTEST:**

Jessica Simulcik Smith
City Clerk

**APPROVED AS TO FORM:**

Margaret King
City Attorney

Date of Publication: June 27, 2019
Effective Date: _____, 2019