

ORDINANCE NO. 3397

AN ORDINANCE of the City of Lynnwood, Washington, granting Puget Sound Energy, Inc., a Washington corporation, its successors and assigns, the right, privilege, authority and franchise to set, erect, lay, construct, extend, support, attach, connect, maintain, repair, replace, enlarge, operate and use Facilities in, upon, over, under, along, across and through the Franchise Area to provide for the transmission, distribution and sale of gas for power, heat and light, and any other purposes for which gas may be used.

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

WHEREAS, RCW 35.47.040 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, ... pipes, ... and appurtenances thereof ... for gas ... and other private and publicly owned and operated facilities for public service"; and

WHEREAS, Puget Sound Energy, Inc. ("PSE") has requested a franchise for purposes of transmission, distribution, and sale of natural gas for power, heat, light, and any other purpose for which natural gas may be used; and

WHEREAS, in 1985, the City Council adopted Ordinance No. 1434, which granted a franchise to PSE for the construction, operation, maintenance and repair of natural gas distribution facilities for a twenty-five year period; and

WHEREAS, the original term of that PSE franchise ended in 2010, and the parties have continued to operate under the terms of such franchise since that time; and

WHEREAS, the City and PSE have negotiated a new, mutually acceptable franchise, the terms of which are contained in this Ordinance; and

WHEREAS, the City Council finds that it is in the best interest of the health, safety and welfare of residents of Lynnwood to grant a non-exclusive franchise to PSE for the operation of a natural gas distribution systems within the City right-of-way;

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

Section 1. Definitions.

1.1 Where used in this franchise (the "Franchise") the following terms shall mean:

1.1.1 “City” means the City of Lynnwood, Washington, a code city of the State of Washington, and its successors and assigns.

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

1.1.3 “Environmental Laws” means and includes any Law relating to the protection of human health and the environment, including those relating to the generation, use, handling, transportation, storage, release, discharge or disposal of Hazardous Substances, such as the Model Toxics Control Act, RCW ch. 70.105D.

1.1.4 “Facilities” means, collectively, any and all natural gas distribution systems, including gas pipes, pipelines, mains, laterals, conduits, feeders, regulators, meters, meter-reading devices, and communication systems and any and all other equipment, appliances, attachments, appurtenances and other items necessary, convenient, or in any way appertaining to any and all of the foregoing, whether the same be located over or under ground.

1.1.5 “Force Majeure” means any event or circumstance (or combination thereof) and the continuing effects of any such event or circumstance (whether or not such event or circumstance was foreseeable or foreseen by the Parties) that delays or prevents performance by a Party of any of its obligations under this Franchise, but only to the extent that and for so long as the event or circumstance is beyond the reasonable control of the affected Party; and only to the extent that the affected Party has taken commercially reasonable measures to avoid the effect of the event or circumstance on the affected Party’s ability to perform its obligations hereunder and to mitigate the consequences of the event. Force Majeure shall include the following, to the extent also satisfying the criteria specified above: (a) acts of nature, including storms; (b) acts of public enemies, terrorism, war, rioting, insurrection or sabotage; (c) any form of compulsory government action or change in Law; (e) labor disturbances, strikes, lock-outs or other industrial actions affecting the Parties or any of their contractors, subcontractors, agents or employees; (f) epidemic, pandemic, or other similar health emergency (except to the extent such emergency was occurring on the effective date of this Ordinance); and (g) delay in obtaining or denial of any regulatory consents or approvals.

1.1.6 “Franchise Area” means any, every and all of the roads, streets, avenues, alleys, highways, and other rights-of-way of the City as now laid out, platted, dedicated or improved; and any, every and all roads, streets, avenues, alleys, highways, and other rights-of-way that may hereafter be laid out, platted, dedicated or improved within the present limits of the City and as such limits may be hereafter extended.

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

1.1.8 “Law” means any and all applicable federal, state or municipal law, code, statute, ordinance, rule, regulation or other requirement that is accorded the full force and effect of law and is binding upon the Parties to this Franchise, as such Law exists, is amended, or may be created during the Term. In the event of any conflict or inconsistency between any

municipal law, code, statute, ordinance, rule, regulation or other requirement of the City and the terms and conditions of this Franchise, the terms and conditions of this Franchise shall govern and control.

1.1.9 “Ordinance” means this Ordinance No. 3397, which sets forth the terms and conditions of this Franchise.

1.1.10 “Party” means and is a reference to either PSE or the City, and “Parties” means and is a collective reference to PSE and the City.

1.1.11 “PSE” means Puget Sound Energy, Inc., a Washington corporation, and its successors and assigns.

1.1.12 “Public Improvement Project” means a capital improvement within the Franchise Area undertaken by or on behalf of the City that requires the relocation of Facilities within the Franchise Area, and such capital improvement is funded by the City or with other public monies obtained by the City for such capital improvement.

1.1.13 “Regulated Service” mean any utility, telecommunications or similar service that is subject to the jurisdiction of one or more federal or state agencies that regulate the terms and conditions such service (including the Federal Energy Regulatory Commission, the Federal Communications Commission, and the WUTC,).

1.1.14 “Term” means the term of this Franchise, as set forth in Section 13, “Franchise Term.”

1.1.15 “WUTC” means the Washington Utilities and Transportation Commission, and any successor agency with jurisdiction over the terms and condition of the services provided by PSE to its customers.

Section 2. Grant of Rights.

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

2.2 This Franchise is not, and shall not be deemed to be, an exclusive Franchise. This Franchise shall not in any manner prohibit the City from granting other and further franchises over, upon, and along the Franchise Area that do not interfere with PSE’s rights under this Franchise. This Franchise shall not limit or constrain the exercise of the City's police powers, nor shall this Franchise prohibit or prevent the City from using the Franchise Area or affect the jurisdiction of the City over the same or any part thereof, if so exercised and used in a manner that is consistent with the terms and conditions of this Franchise.

2.3 The authority granted in Section 2.1 shall not include or be a substitute for (a) any permit or authorization required by Law for the privilege of transacting and carrying on a business within the City, including but not limited to a City business license; or (b) any permit, agreement, authorization, or condition required by Law for using the Franchise Area in connection with

operations on or in the Franchise Area, such as right-of-way use permits and approved traffic control plans.

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

2.5 Existing Facilities installed or maintained by PSE on public grounds and places within the City in accordance with prior franchise agreements (but which such Facilities are not within the Franchise Area as defined in this Franchise) may continue to be maintained, repaired and operated by PSE at the location such Facilities exist as of the effective date of this Ordinance for the Term of this Franchise; provided, however, that no such Facilities may be enlarged, improved or expanded without the prior review and approval of the City pursuant to Law.

2.6 This Franchise shall not be construed so as to deprive the City of any rights or privileges under Law to regulate the use and control of the Franchise Area. Nothing in this Franchise shall limit nor expand the City's right of eminent domain under Law. If the City exercises its authority to vacate all or any portion of the Franchise Area containing PSE Facilities, the City shall, through its vacation procedure, reserve an easement for PSE's Facilities. The City shall give PSE advance notice of its intent to vacate any portion of the Franchise Area and shall consult with PSE regarding the terms and conditions of the easement to be reserved for PSE's Facilities.

2.7 By accepting this Franchise, the Parties acknowledge and accept each other's legal right to issue and enforce the Franchise; accept and agree to comply with each and every provision of this Franchise; and agree that the Franchise was granted pursuant to processes and procedures consistent with Law.

Section 3. PSE Use and Occupancy of Franchise Area.

3.1 PSE shall exercise its rights within the Franchise Area in accordance with Law. All work performed on PSE's Facilities within the Franchise Area shall be accomplished in a good and workmanlike manner, by means that minimize interference with the free passage of pedestrian or vehicle traffic, and by methods that allow for reasonable access to adjoining property, whether public or private. PSE shall post and maintain proper barricades, flags, flaggers, lights, flares, safety devices and other measures as required by Law. If work on PSE's Facilities within the Franchise Area shall impair the lateral support of the Franchise Area or adjacent properties, then PSE shall take such action as is reasonably necessary to restore and maintain the lateral support of the Franchise Area or such adjacent properties.

3.2 Prior to PSE engaging in any work on PSE's Facilities located within the Franchise Area, PSE shall apply for, and obtain, all necessary City permits to do such work, and shall, except to the extent contrary to or inconsistent with the terms and conditions of this Franchise, comply with all requirements and conditions of such permits. In the event of an emergency situation in which PSE's Facilities within the Franchise Area are in such a condition so as to endanger the property,

life, health or safety of any individual, PSE may take immediate action, including relocating such Facilities, to correct the dangerous condition without first obtaining any required permit; provided that PSE shall notify the City telephonically or in person within twenty four (24) hours of the event, and provided that PSE applies for any necessary permit(s) from the City for such work as soon as reasonably practicable thereafter. If the City discovers an emergency situation involving PSE's Facilities, the City will promptly notify PSE, and PSE will address the emergency situation consistent with this Section 3.2.

3.3 In the event that the City Director of Public Works or designee reasonably determines, after providing advance written notice to PSE of not less than one hundred twenty (120) days, and a reasonable opportunity for PSE to respond to the City's concerns, that any one or more of PSE's Facilities within the Franchise Area interfere with the free and safe passage of pedestrian, bicycle and/or vehicular traffic therein, then PSE shall promptly take such action as is reasonably necessary to eliminate such interference. In so doing, the City shall reasonably cooperate with PSE, including, without limitation, allowing changes or modifications to City-owned improvements in the Franchise Area (not including expanding the scope of the Franchise Area), at no expense to the City, if such changes or modifications provide the most effective or economical means of eliminating such interference. In the event any such interference from PSE's Facilities arises due to a Public Improvement Project, the terms of Section 7.1 shall apply. If the interference from PSE's Facilities is due to a public or private development that is not a Public Improvement Project, the terms of Section 7.2 shall control any relocation of PSE's Facilities.

3.4 PSE shall, after installation, construction, relocation, maintenance, removal or repair of any of PSE's Facilities within the Franchise Area, restore the effected Franchise Area and any other City property situated within the Franchise Area that may be disturbed or damaged by such work, to at least the same condition as it was immediately prior to any such work. The City shall not impose any fee, fine, charge or other cost or expense on PSE for such damage or disturbance, provided that such restoration work is completed to the reasonable satisfaction of the City and in accordance with any applicable City construction standards, to the extent that such standards are not in conflict with or inconsistent with the terms and conditions of this Franchise. All survey monuments which are to be disturbed or displaced by such work shall be referenced and restored consistent with Law. PSE shall perform all restoration work promptly, and shall promptly repair any damage caused by such work to the Franchise Area at no expense to the City. In the event PSE fails to restore the Franchise Area as required in this Section 3.4 within a reasonable period following the City's written notice to PSE of PSE's failure to do so, the City reserves the right to make such repairs or restoration to the Franchise Area and to bill PSE for the cost of the restoration, including the cost of labor and equipment. PSE shall pay the reasonable costs of such work to the City within thirty (30) days of receipt of the billing for the work.

3.5 The City shall have the right to inspect all work performed by PSE under City permits in the Franchise Area, whether during the performance of such work or after completion, so long as such inspection does not disrupt PSE's system operation. To the extent that the City is required to perform any inspections for PSE work performed under a City permit, the City may recover the costs and expenses consistent with Law.

3.6 PSE shall take prompt corrective action if, after reasonable notice from the City, either Party finds that PSE's Facilities are not operating in a manner consistent with approved plans, or

either Party finds that PSE Facilities and equipment do not comply with the requirements of this Franchise or Law.

3.7 PSE shall exercise reasonable care in the course of the installation and maintenance of its Facilities. All Facilities in the Franchise Area, wherever situated or located, shall at all times be kept and maintained in a safe condition. PSE shall comply with Law during the construction, operation, maintenance, upgrade, repair, or removal of its Facilities.

Section 4. Planning and Coordination.

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

4.2 PSE shall provide to the City, upon the City's reasonable request, copies of available drawings in use by PSE showing the location of its Facilities within the Franchise Area. As to any such drawings so provided, PSE does not warrant the accuracy thereof and, to the extent the location of Facilities are shown, such Facilities are shown in their approximate location.

4.3 Upon the City's reasonable request, PSE will make available for review by the City, PSE's annual maintenance, safety and inspection plans and records concerning or related to PSE's natural gas Facilities located in the City, as prepared for filing with the WUTC.

4.4 PSE reserves the right to withhold information that may be Critical Electric/Energy Infrastructure Information (CEII). CEII means information that relates to the production, generation, transportation, transmission, or distribution of energy in which the release may cause incapacity or destruction that would negatively affect security, economic security, public health, or safety, or any combination thereof. Any such withholding must be consistent with FERC regulations 18 CFR 388.113 (g) (5).

4.5 In the event either PSE or the City shall cause excavations to be made within the Franchise Area, the Party causing such excavation shall afford the other, upon receipt of a written request to do so, an opportunity to use such excavation so long as such joint use does not unreasonably delay the work of the Party causing such excavation, and such joint use is arranged and accomplished upon terms and conditions reasonably satisfactory to the Party causing such excavation. With respect to any excavations by PSE or the City within the Franchise Area, nothing in this Franchise is intended (nor shall be construed) to relieve either Party of their respective obligations arising under Law with respect to determining the location of utility facilities.

4.6 PSE represents that it is familiar with Chapter 19.122 RCW (Washington State's "Underground Utilities" statute) and understands and will comply with Law relating to the one call locator service program.

Section 5. Decommissioned Facilities.

5.1 PSE may, from time to time, elect to discontinue its use of underground natural gas Facilities within the Franchise Area and decommission such Facilities in place (“Decommissioned Gas Facilities”). In such event, PSE shall notify the City of its decision to decommission such Facilities and provide the City with a plan for such decommissioning. PSE’s written notification may be included with any right-of-way permit application to the City for such decommissioning. The decommissioning plan shall address how the Facilities will be decommissioned and how the Franchise Area will be protected and, if necessary, restored after decommissioning.

5.2 All such decommissioning work shall be accomplished in compliance with Law. Unless otherwise approved by the City, decommissioning work should be accomplished within one hundred and eighty (180) calendar days after the Facilities are decommissioned and any required permits for such decommissioning work have been issued.

5.3 Within thirty (30) calendar days of receiving a decommissioning plan submitted by PSE pursuant to Section 5.1, the City will review the plan and either approve or require changes to and resubmittal of the plan. The City will not unreasonably withhold approval of PSE’s proposed plan, but may require changes if it determines, in its reasonable discretion, that said plan fails to comply with Law or Section 5.1. Following the City’s approval of the decommissioning plan, PSE shall promptly and in good faith implement the plan and obtain all required permits for its work in the Franchise Area. If the City reasonably determines, after consultation with PSE, that leaving the Facilities will threaten the public health, safety or welfare if left in place, the City may require removal of the decommissioned Facilities.

5.4 Decommissioned Gas Facilities will continue to be subject to the terms of this Franchise (including but not limited to the relocation provisions in Section 7 and the indemnification provisions in Section 8). As requested by the City in accordance with Section 4, PSE shall provide the City with drawings that show the approximate location of Decommissioned Gas Facilities.

Section 6. Hazardous Substances.

PSE shall comply with Environmental Laws in connection with its use and occupancy of the Franchise Area. PSE shall only use Hazardous Substances within the Franchise Area incident to PSE’s normal business operations, and in all cases, (a) limited to such quantities as may be required in its normal business operations, (b) used, transported or stored per manufacturer’s instructions, and (c) used, transported or stored only for its intended use. In the event PSE or its contractors cause a release of Hazardous Substances within the Franchise Area, PSE shall notify the City within twenty-four (24) hours of its discovery. PSE shall act promptly to remediate such release of Hazardous Substances in accordance with Environmental Laws (the “Remediation Work”). All Remediation Work shall be performed at PSE’s sole cost and expense.

Section 7. Relocation of Facilities.

7.1 Whenever the City causes a Public Improvement Project to be undertaken within the Franchise Area, and such Public Improvement Project requires the relocation of PSE's then existing Facilities within the Franchise Area (for purposes other than those described in Section 7.2 below), the City shall:

7.1.1 provide PSE, within a reasonable time (but in no event less than one hundred twenty (120) calendar days) prior to the commencement of such Public Improvement Project, written notice requesting such relocation; and

7.1.2 provide PSE with sufficient plans and specifications, as reasonably determined by PSE, for the planning and coordination of such work (collectively, a “Relocation Notice”).

No later than one hundred twenty (120) calendar days (or such longer period of time as the Parties may mutually agree to in writing for a specific Public Improvement Project) after receipt of such Relocation Notice (the “Relocation Date”), PSE shall relocate the Facilities within the Franchise Area at no cost or charge to the City. If, however, PSE reasonably determines that it is impossible or impracticable to perform the relocation by the proposed Relocation Date, then PSE shall promptly inform the City and provide a reasonable alternative relocation timeline. The Parties shall promptly meet and confer, in good faith and with due regard to all relevant facts and circumstances, to determine a mutually agreeable Relocation Date. If the Parties agree upon a Relocation Date, then PSE shall complete the relocation of its existing Facilities within the Franchise Area in accordance with Section 7.1 on or before the Relocation Date. In all other cases, PSE shall exercise commercially reasonable efforts to relocate such Facilities within the Franchise Area prior to the City’s proposed Relocation Date. If the City requires the subsequent relocation of any Facilities within five (5) years from the date of relocation of such Facilities pursuant to this Section 7.1, the City shall bear the entire cost of such subsequent relocation.

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

7.3 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 7.2 above (including any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits for zoning, land use, construction or development).

7.4 Nothing in this Section 7 “Relocation of Facilities” shall require PSE to bear any cost or expense in connection with the location or relocation of any Facilities then existing pursuant to easement or other rights not derived from this Franchise, regardless of whether such easement or other rights are on public or private property and regardless of whether this Franchise co-exists with such easement or other rights.

7.5 Subject to the exclusions and requirements set forth below in this Section 7.5, if PSE does not relocate its Facilities within the Franchise Area in accordance with Section 7.1 on or before a Relocation Date and such failure to relocate in a timely manner is the direct cause of a delay in performance of Public Improvement Project construction by the City’s contractor(s) resulting in a claim by the City’s contractor(s) for any direct costs or expenses incurred by the contractor(s) by reason of such delay (a “Contractor Delay Claim”), then the City may require that PSE reimburse the City for any such costs and, expenses that are legally required to be paid by the City to its contractor(s); provided, that, if the City requires reimbursement by PSE under this Section 7.5,

then the City shall first give PSE written notice of the Contractor Delay Claim, within a reasonable time of receipt of such claim, and give PSE the opportunity to compromise or settle with the third party contractor(s) the Contractor Delay Claim for a period of not less than thirty (30) days (or such shorter period of time as the City may have to respond to the Contractor Delay Claim without prejudicing its right to respond, provided that the City affords PSE with a reasonable period of time to compromise or settle the claim) prior to the City's payment of the Contractor Delay Claim. Nothing in this Section 7.5 or otherwise shall require PSE to bear or be responsible for any Contractor Delay Claim to the extent the delay giving rise to such Contractor Delay Claim is caused by the City, its contractor(s), any third party that is not an agent, employee, or contractor of PSE, or a Force Majeure event; provided, however, if such a delay is caused by the City, its contractor(s), a third party that is not an agent, employee or contractor of PSE, or a Force Majeure Event, then PSE's performance shall only be excused for the time period that is reasonably attributable to such delay.

Section 8. Indemnification and Insurance.

8.1 Indemnification.

8.1.1 PSE shall indemnify, defend, protect, and hold harmless the City, its elected and appointed officials, officers, employees, representatives and agents, from any and all third party claims made against the City, and any damages, costs, judgments, awards or liability resulting from such claims (a) for injury or death of any person or damage to property to the extent the same is caused by the negligent acts or omissions, or willful misconduct, of PSE, its officers, employees, agents, representatives, or contractors in the performance of this Franchise and any rights granted hereunder, or (b) to the extent such claim or demand is caused by PSE's unlawful release of Hazardous Substances into the Franchise Area in violation of any Environmental Law in its construction, maintenance or operation of its Facilities within the Franchise Area and exercise of any rights granted hereunder; provided, that such indemnification shall not extend to any portion of any claim, demand, liability, loss, cost, damage or expense of any nature including all costs and attorneys' fees caused by the willfully tortious, or negligent acts or omissions of the City, its officers, employees, agents, representatives, or contractors.

8.1.2 In the event any claim for such damages be presented to or filed with the City, the City shall promptly notify PSE. PSE shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim; provided, that in the event any suit or action is filed against the City based upon any such claim or demand, the City shall likewise promptly notify PSE thereof, and PSE shall have the right, at its election and its sole cost and expense, to settle and compromise such suit or action, or defend the same at its sole cost and expense, by attorneys of its own election.

8.1.3 The provisions contained in this Section 8.1 have been mutually negotiated by the Parties. Solely to the extent required to enforce the indemnification provisions of this Section 8.1, 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.

8.1.4 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 any of these covenants of indemnification.

8.1.5 The provisions of this Section 8.1 shall survive the termination or expiration of this Franchise.

8.2 Insurance.

8.2.1 During the Term PSE shall maintain the following liability insurance coverages, insuring PSE, and including the City as additional insured, against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges, and authority granted to PSE in this Franchise:

A. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The City shall be included as an additional insured under PSE's Commercial General Liability insurance policy with respect this Franchise Agreement. Insurance shall be written with limits no less than \$2,000,000 each occurrence.

B. Automobile liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01. Insurance shall be for a combined single limit for bodily injury and property damage of \$2,000,000 per accident.

C. Worker's compensation coverage as required by the Industrial Insurance laws of the State of Washington.

D. Excess or Umbrella Liability insurance shall be excess over and at least as broad in coverage as the PSE's Commercial General Liability and Automobile Liability insurance. The City shall be included as an additional insured on PSE's Excess or Umbrella Liability insurance policy. Insurance shall be written with limits of not less than \$5,000,000 per occurrence and annual aggregate. The Excess or Umbrella Liability requirement and limits may be satisfied instead through PSE's Commercial General Liability and Automobile Liability insurance, or any combination thereof that achieves the overall required limits.

8.2.2 PSE's Commercial General Liability, Automobile Liability, and Excess or Umbrella Liability insurance policy or policies are to contain, or be endorsed to contain, that they shall be primary insurance as respect the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of PSE's insurance and shall not contribute with it.

8.2.3 In lieu of the insurance requirements in Section 8.2, PSE may self-insure against such risks in such amounts as are consistent with good utility practice. If PSE is self-insured or becomes self-insured during the term of the Franchise Agreement, PSE or its affiliated parent entity shall comply with the following: (i) provide the City, upon request, a copy of PSE's or its

parent company's most recent audited financial statements, if such financial statements are not otherwise publicly available; (ii) PSE or its parent company is responsible for all payments within the self-insured retention; and (iii) PSE assumes all defense and indemnity obligations as outlined in the indemnification section of this Agreement.

8.2.4 Each year, PSE shall provide the City with a Certificate of Coverage, evidencing the insurance requirements of the Agreement. If PSE is maintaining a self-insurance program consistent with Section 8.2.3, PSE shall provide reasonable written evidence of such self-insured program. All coverage shall be written with insurers with a current A.M. Best rating of not less than A: VII and licensed to do business in the State of Washington.

8.2.5 PSE shall maintain continuous, uninterrupted insurance coverage, in the amounts required, for the duration of the Franchise term, and in the case of Commercial General Liability, for at least one year after expiration of this Franchise. PSE shall provide the City with written notice of any policy cancellation within ten business days of their receipt of such notice. If the insurance is cancelled or materially changed so as to be out of compliance with the requirements of this section, PSE shall provide evidence a replacement policy has been obtained. Failure on the part of PSE to maintain the insurance as required shall constitute a material breach of Agreement, upon which the City may, after giving five business days' notice to PSE to correct the breach, terminate the Agreement.

8.2.6 PSE shall cause each and every Subcontractor to provide insurance coverage that complies with all applicable requirements of PSE-provided insurance as set forth herein, except PSE shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors.

Section 9. Performance Bond.

9.1 During the Term PSE shall maintain a performance bond consistent with the applicable requirements of the Lynnwood Municipal Code and as reasonably sufficient to ensure performance of PSE's obligations under this Franchise to perform work within the Franchise Area. Such bond shall not exceed the sum of \$250,000 and shall be executed by a corporate surety authorized to do business in the State of Washington with an A.M. Best's rating of not less than A (Excellent).

9.2 The City shall give PSE written notice of any withdrawal under this section upon such withdrawal. Within thirty (30) days following receipt of such notice, PSE shall restore the performance bond to the amount required under this Franchise. PSE's maintenance of the bond shall not be construed to excuse performance of obligations under the Franchise, or to limit the liability of PSE or otherwise limit the City's recourse to any other remedy available at law or equity.

Section 10. Force Majeure.

If performance of this Franchise or of any obligation hereunder is prevented or substantially restricted or interfered with by reason of an event of Force Majeure, the affected Party, upon giving notice to the other Party, shall be excused from such performance to the extent of and for the duration of such prevention, restriction or interference. The affected Party shall use its reasonable efforts to avoid or remove such causes of nonperformance and shall continue performance

hereunder whenever such causes are removed. Notwithstanding the foregoing, the insufficiency of funds, financial inability to perform or changes in such Party's cost of performing its obligations hereunder shall not constitute a Force Majeure event.

Section 11. Dispute Resolution.

11.1 A Dispute shall be resolved in accordance with the dispute resolution procedures set forth in this Section 11, "Dispute Resolution." A Party shall inform the other Party promptly following the occurrence or discovery of any item or event that would reasonably be expected to result in a Dispute. The initial mechanism to resolve a Dispute shall be by negotiation between the Parties' representatives, so designated by the Parties by notice given pursuant to this Section 11.1.

11.2 If the Parties cannot resolve a Dispute satisfactorily within fifteen (15) days after receipt of the initial notice in accordance with Section 11.1, either Party may thereafter deliver to the other Party notice initiating the dispute resolution procedures set forth in this Section 11.2. Such notice shall (i) contain a detailed description of the issues in Dispute, (ii) identify the senior officers or administrators authorized to settle the Dispute, and (iii) propose a date or dates, not less than (30) days from the date such notice, that such officers or administrators are available for a meeting to resolve such Dispute. The recipient Party shall, within three (3) business days following receipt of the Dispute notice, provide to the notifying Party a parallel schedule of availability of the recipient Party's senior officers or administrators duly authorized to settle the Dispute. Following delivery of the respective senior officers' or administrators' schedules of availability, the senior officers or administrators so designated shall meet and confer, as often as they deem reasonably necessary during the remainder of the thirty (30) day period, in good-faith negotiations to resolve the Dispute to the satisfaction of both Parties.

11.3 If at any time after the expiration of such thirty (30) day period the City shall determine that continued negotiations with PSE will not result in a resolution of the issue or issues in Dispute, and if the City reasonably believes that PSE is then in default of its obligations under this Franchise, then the City may serve upon PSE a written order to comply with the provisions of this Franchise pursuant to Section 12, "Default."

Section 12. Default and Termination.

If PSE shall fail to comply with the provisions of this Franchise, the City may serve upon PSE a written order to so comply within sixty (60) days from the date such order is received by PSE. If PSE is not in compliance with this Franchise after expiration of said sixty (60) day period, the City may, by ordinance, declare an immediate forfeiture of this Franchise; provided, however, if any failure to comply with this Franchise by PSE cannot be corrected with due diligence within said sixty (60) day period (PSE's obligation to comply and to proceed with due diligence being subject to unavoidable delays and events beyond its control), then the time within which PSE may so comply shall be extended for such time as may be reasonably necessary and so long as PSE commences promptly and diligently to effect such compliance. The Parties agree that termination of this Franchise is not the City's sole remedy for PSE's failure to comply with the provisions of this Franchise, but is supplemental to any and all legal and equitable remedies available to the City for such failure or to enforce the provisions of this Franchise. Both Parties reserve the right to pursue all legal and equitable remedies available in the event of a breach of this Franchise.

Section 13. Franchise Term, Renewal and Expiration.

13.1 This Franchise is and shall remain in full force and effect for a period of ten (10) years from and after the effective date of this Ordinance; provided, however, PSE shall have no rights under this Franchise nor shall PSE be bound by the terms and conditions of this Franchise unless PSE shall, within sixty (60) days after the effective date of this Ordinance, file with the City its written acceptance of the Ordinance. The term of this Franchise may be renewed at the sole discretion of the Lynnwood City Council for up to two additional ten (10) year periods, upon the written request of PSE, provided that such request is submitted to the City not more than two (2) years nor less than ninety (90) days prior to the expiration of the Franchise.

13.2 Within one (1) year prior to the expiration of the Term or the final renewal Term of this Franchise, as applicable, or following the termination of this Franchise, and in the absence of any succeeding franchise, either Party may initiate negotiations with the other Party to agree upon the terms and conditions of a succeeding franchise to this Franchise. Following the initiation of any such negotiations by a Party, each Party will work with the other Party diligently and in good faith, to negotiate and agree upon terms and conditions of a succeeding franchise. As long as PSE conduct such negotiations diligently and in good faith, the Parties will continue to operate under the terms and conditions of this Franchise until the date on which a succeeding franchise to this Franchise has been entered into by the Parties and becomes effective.

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

Section 14. Assignment.

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

Section 15. Payments to the City.

15.1 Recovery of Costs.

Pursuant to RCW 35.21.860, the City acknowledges that it is precluded from imposing a franchise fee or any other fee upon a gas distribution business, as defined in RCW 82.16.010, for use of the right-of-way, except for actual administrative expenses, fees, taxes or charges authorized by RCW 35.21.860 and RCW 35.21.865. Therefore, the City may not impose a franchise fee under this Franchise, other than as stated in this Franchise.

15.2 Permit Fees.

PSE shall be subject to all standard permit fees that are directly related to receiving and approving a permit or license, and to inspecting plans and construction, to the extent consistent with Law. PSE shall pay such costs and expenses directly to the City within sixty (60) days of submittal by

the City of an itemized billing by project for incurred costs, or in accordance with the City code, whichever is sooner.

15.3 Acceptance of Payment.

No acceptance of any payment by the City shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall such acceptance of payment be construed as a release of any claim which the City may have for further or additional sums payable under the provisions of this Franchise. PSE's payment to the City shall not be construed as an acknowledgement by PSE that the amount paid is the correct amount and PSE reserves the right to subsequently seek to recover any amount of such payments in the event of an erroneous overpayment or for other lawful reasons.

Section 16. Miscellaneous.

16.1 Notice.

Unless otherwise specifically provided by this Franchise, all notices, consents, requests, demands or other communications required or permitted by this Franchise must be in writing and given by personal delivery, email or certified mail and shall be sent to the respective parties as follows:

To PSE:

Puget Sound Energy, Inc.
P.O. Box 97034
Bellevue, WA 98009-9734
Attn: Municipal Relations

To City:

Art Ceniza, City Administrator
City of Lynnwood
19100 44th Ave W
Lynnwood, WA 98036
aceniza@lynnwoodwa.gov

Any such communication by a Party shall be deemed to have been received by the other Party (i) upon the delivery date received by the intended recipient if delivered by hand; (ii) five (5) business days after it is sent by certified mail, postage prepaid; or (iii) if sent by email transmission, when dispatched and acknowledged by the recipient as having been received in full and in legible form. A Party may change its address for purposes of this Section 16.1 by giving written notice of such change to the other Party in the manner provided in this Section 16.1.

16.2 Terminology.

The headings of sections and paragraphs of this Franchise are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs. Terms defined in a given number, tense or form shall have the corresponding meaning when used in this Franchise with initial capitals in another number, tense or form. References containing terms such as "hereof," "herein," "hereto," "hereinafter" and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Franchise taken as a whole.

“Includes” or “including” shall not be deemed limited by the specific enumeration of items, but shall be deemed without limitation. The term “or” is not exclusive.

16.3 Severability.

Any provisions of this Franchise prohibited or rendered unenforceable by any law shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Franchise. In such event, the remainder of this Franchise will remain valid and enforceable. Upon such determination that any term or other provision is prohibited or rendered unenforceable, the Parties shall negotiate in good faith to modify this Franchise so as to maintain the original intent of the Parties as closely as possible in an acceptable manner to the end that rights and obligations contemplated under this Franchise are fulfilled to the greatest extent possible.

16.4 Entire Franchise.

This Franchise may be amended only by an ordinance which specifically states that it is an amendment to this Franchise and is approved by the Lynnwood City Council and accepted by PSE in accordance with the laws of the State of Washington. This Franchise constitutes the entire agreement between the Parties, and supersedes all other prior agreements and understandings, oral and written, between the Parties, with respect to the subject matter hereof.

16.5 Reservation of Rights.

16.5.1 The City reserves all rights and powers under its police powers and powers conferred by Law. In particular the City reserves the right to alter, amend, or repeal its municipal code as it determines shall be conducive to the health, safety, and welfare of the public, or otherwise in the public interest. The City agrees that by accepting this Franchise, PSE has not waived its right to object to the application to it of actions by the City pursuant to its reserved rights or police powers.

16.5.2 Both parties expressly reserve all rights they may have under Law to the maximum extent possible; neither the City nor PSE shall be deemed to have waived any federal or state constitutional or statutory rights they may now have or may acquire in the future by entering into this agreement.

16.5.3 This Franchise is intended to convey limited rights to PSE for use of the Franchise Area in accordance with the express terms of this Franchise. This Franchise is not a warranty of title or of interest in City road rights-of-way. None of the rights granted to PSE shall affect the jurisdiction of the City over City road rights-of-way or the City's power to perform work upon its roadways, rights-of-way or appurtenant drainage facilities including by constructing, altering, renewing, paving, widening, grading, blasting or excavating. This Franchise does not deprive the City of any power, rights, or privileges it now has or may later acquire in the future to regulate the use of and to control the City rights-of-way in a manner consistent with the provisions of this Franchise.

16.6 Nothing in this Franchise shall be construed to create any rights or duties to any third party, nor any liability to or standard of care with reference to any third party. This Franchise shall not confer any right or remedy upon any person or entity other than the City and PSE. No action may

be commenced or prosecuted against either the City or PSE by any third party claiming as a third-party beneficiary of this Franchise.

16.7 The Parties shall act in good faith and use commercially reasonable efforts to carry out their respective obligations under this Franchise. The failure of either Party to insist on or enforce strict performance of any provision of this Franchise or to exercise any right or remedy under this Franchise or Law will not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such provision, right or remedy in that or any other instance; rather, the same will be and remain in full force and effect.

16.8 This Franchise shall be governed by, subject to and construed under the laws of the State of Washington. This Franchise is subject to the provisions of any applicable tariff on file with the WUTC or its successor. In the event of any conflict or inconsistency between the provisions of this Franchise and such tariff, the provisions of such tariff shall control.

16.9 Any litigation filed by either Party arising out of or relating to this Franchise shall be filed in Snohomish County Superior Court.

16.10 Within sixty (60) days of the effective date of this Ordinance, PSE shall execute and return to the City the PSE Acceptance form, attached to this Ordinance. The executed Franchise Acceptance shall be returned to the City. In the event PSE fails to accept this Franchise by said date, this Franchise shall be null and void and the Parties shall continue to operate under the terms of the prior Franchise.

Section 17. Effective Date.

This Ordinance, being passed in compliance with RCW 35A.47.040, shall take effect five (5) days after its publication, which shall be by an approved summary thereof consisting of its title.

PASSED by the City Council this 13th day of September, 2021.

APPROVED:

Nicola Smith 9/14/2021

MAYOR NICOLA SMITH

ATTEST/AUTHENTICATED:

Karen Fitzthum

KAREN FITZTHUM, CITY CLERK

APPROVED AS TO FORM:

Curtis Chambers for:

ROSEMARY LARSON, CITY ATTORNEY

ACCEPTANCE OF FRANCHISE

Puget Sound Energy, Inc., for itself and for its successors and assigns, hereby agrees to and accepts the provisions of this Franchise Ordinance, a copy of which is attached hereto. By accepting this Franchise Ordinance, PSE covenants and agrees to perform and be bound by each and every term and condition of this Franchise Ordinance. PSE shall send to the City PSE's written acceptance of this Franchise via certified mail, unless otherwise hand-delivered to an employee of the City at City Hall during regular working hours.

Dated: _____

PUGET SOUND ENERGY, INC.

By: _____
Printed Name: _____
Its: _____