

**CITY OF MERCER ISLAND
ORDINANCE NO. 13C-05**

AN ORDINANCE OF THE CITY OF MERCER ISLAND, 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 AND SUCH OTHER SERVICES AS MAY BE PROVIDED BY SUCH FACILITIES.

WHEREAS, Puget Sound Energy, Inc., currently operates certain Facilities within the public rights-of-way of the City pursuant to the terms of an expired natural gas franchise agreement previously entered into by the City with Washington Natural Gas; and

WHEREAS, Puget Sound Energy, Inc., became the successor-in-interest to the rights of Washington Natural Gas as the result of a previous merger with Washington Natural Gas; and

WHEREAS, the City and Puget Sound Energy, Inc., desire to provide for the continued use of the public rights-of-way of the City by Puget Sound Energy, Inc., for purposes of operating natural gas Facilities to provide for the transmission, distribution and sale of gas and other applicable services within and outside the current and future limits of the City; and

WHEREAS, the City and Puget Sound Energy, Inc., desire to formalize the cooperative and mutually beneficial relationship under which Puget Sound Energy, Inc., may continue to use the public rights-of-way of the City for the purposes and on the terms set forth herein.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. **Repeal MICC Chapter 15.28.** MICC Chapter 15.28, Washington Natural Gas Franchise is hereby repealed.

Section 2. **Natural Gas Franchise.** The City Manager is authorized to execute a Franchise Agreement between the City of Mercer Island and Puget Sound Energy, Inc., dated April 22, 2013, in the form attached hereto as Exhibit A, which Franchise Agreement is adopted by this reference, to guide the business relationship between the City of Mercer Island and Puget Sound Energy, Inc., relating to the use of the public rights-of-way of the City of Mercer Island by Puget Sound Energy, Inc., for the purposes and on the terms set forth therein.

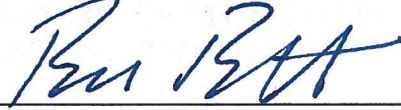
Section 3. **Severability.** If any section, sentence, clause or phrase of this Ordinance shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such

invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 4. **Effective Date.** This Ordinance shall take effect and be in force on 30 days after its passage and publication.

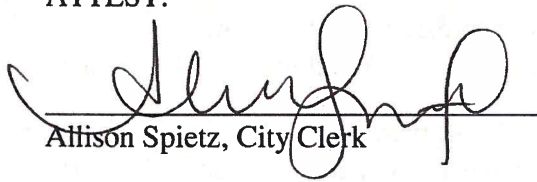
PASSED by the City Council of the City of Mercer Island, Washington at its regular meeting on the 6th day of May 2013 and signed in authentication of its passage.

CITY OF MERCER ISLAND



Bruce Bassett, Mayor

ATTEST:



Allison Spietz, City Clerk

Approved as to Form:



Katie H. Knight, City Attorney

Date of Publication: 5/15/2013

**FRANCHISE AGREEMENT BETWEEN THE CITY OF MERCER ISLAND AND
PUGET SOUND ENERGY, INC. FOR THE CONTINUED USE OF CITY
RIGHTS-OF-WAY TO INSTALL AND OPERATE FACILITIES FOR THE
TRANSMISSION, DISTRIBUTION, AND SALE OF NATURAL GAS**

1. Date and Parties. This Franchise Agreement is dated, for reference purposes only, the 22nd day of April, 2013, between the City of Mercer Island, a Washington municipal corporation ("City") and Puget Sound Energy, Inc., a Washington corporation ("PSE").

2. Definitions.

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

2.1.1 "PSE" means Puget Sound Energy, Inc., a Washington Corporation, and its successors and assigns.

2.1.2 "City" means the City of Mercer Island, a municipality of the State of Washington, and its successors and assigns.

2.1.3 "Franchise Area" means any, every and all of the roads, streets, avenues, alleys, highways and public 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 public rights-of-way of the City 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.

2.1.4 "Facilities" means, collectively, any and all natural gas distribution systems as may be necessary or convenient for providing natural gas service for customers, including but not limited to, gas pipes, pipelines, mains, laterals, conduits, feeders, regulators, valves, meters, meter-reading devices, fixtures, and communication systems; and any and all other equipment, appliances, attachments, appurtenances and other items necessary, convenient, or in any way pertaining to any and all of the foregoing, whether the same be located over or under ground.

2.1.5 "Ordinance" means Ordinance No.13-05 which sets forth the terms and conditions of this Franchise.

2.1.6 "Public Improvement" means any capital improvement or repair within the Franchise Area that is undertaken by or on behalf of the City and is funded by the City (either directly with its own funds or with other public monies obtained by the City), including any such capital improvement or repair undertaken by the City which requires the relocation of PSE's Facilities within the Franchise Area, even if the capital improvement or repair entails, in part, related work performed for a third party county or municipality under a valid interlocal agreement between the City and such county or municipality (except to the extent the relocation of PSE's Facilities is caused by the work done for such third party), but for clarity shall not include improvements or repairs undertaken by or for the benefit of third party private entities.

3. Franchise Granted; Facilities Within Franchise Area.

3.1 Pursuant to RCW 35A.47.040, the City hereby grants to PSE, subject to the terms and conditions herein, a non-exclusive Franchise for the term specified in Section 16.

3.2 This Franchise 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 natural gas for any purpose for which natural gas may be used and other such services as may be provided by such Facilities.

3.3 This Franchise does not convey any right to PSE to install its Facilities outside the Franchise Area; provided, however, that PSE retains the right to maintain, repair and operate Facilities installed pursuant to prior franchise agreements with the City regardless of whether said Facilities are outside the Franchise Area, but such right shall be subject to the provisions of Section 3.4. 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.

3.4 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 Franchise 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 applicable ordinances, codes, resolutions, standards and procedures.

4. Noninterference and Maintenance of Facilities.

4.1 PSE's Facilities shall be constructed, installed, maintained and repaired within the Franchise Area so as not to unreasonably interfere with the free passage of pedestrian and/or vehicle traffic and in accordance with the laws of the State of Washington, and the ordinances, rules and regulations of the City which are not inconsistent with the terms of this Franchise. PSE shall exercise its rights within the Franchise Area in accordance with applicable City codes and ordinances governing use and occupancy of the Franchise Area; provided, however, that in the event of any conflict or inconsistency of such codes and ordinances with the terms of this Franchise, the terms of this Franchise govern and control; provided further that nothing herein shall be deemed to waive, prejudice or otherwise limit any right of appeal afforded PSE by such City codes and ordinances.

4.2 Any repair of PSE's Facilities within the Franchise Area must be made within the time and in a manner which conforms with generally accepted customs, practices and standards in the industry. In the event of any emergency in which PSE's Facilities located in or under the Franchise Area break or are damaged, or if PSE's Facilities within the Franchise Area are

otherwise in a condition as to immediately endanger the property, life, health or safety of any individual, PSE shall, upon receipt of notification from the City of the existence of such condition, take all reasonable actions to correct the dangerous condition.

4.3 Whenever PSE permanently discontinues use of any above ground or at grade Facilities within the Franchise Area, PSE shall promptly remove the discontinued Facilities at no cost to the City; provided that with the express written consent of the City, PSE may leave such Facilities in place subject to the conditions set forth in this Section 4.3. Any such Facilities to be left in place must be made inert by purging all natural gas from such Facilities (including displacement of natural gas with an appropriate inert gas) and disconnecting and sealing such Facilities, all in compliance with applicable regulations and industry standards. The City's consent does not relieve PSE of the obligation and/or costs to subsequently remove or alter such Facilities in the event the City reasonably determines that such removal or alteration is necessary or advisable for the health and safety of the public, in which case PSE shall perform such work at no cost to the City. The obligations contained in this Section 4.3 survive the expiration, revocation, or termination of this Franchise.

5. Permits: Restoration.

5.1 Whenever it is necessary for PSE to engage in any work within the Franchise Area, PSE shall apply for all necessary City permits to do such work, and shall, subject to the provisos in Section 4.1 and except as expressly provided in Section 5.2, comply with all requirements and conditions of such permits, federal and state laws, and City codes, ordinances, regulations, standards, and procedures, including, but not limited to, location restrictions, schedules, traffic control, and restoration, repair or other work to restore the surface of the Franchise Area, as nearly as practicable, to its condition immediately prior to the work. If, at any time during the term of this Franchise, a PSE Facility or trench within the Franchise Area causes a street to crack, settle or otherwise fail, the City will notify PSE of the deficiency and PSE will correct the deficiency and repair the damage within thirty (30) days after its receipt of written notice from the City. Such restoration responsibility shall include restoration performed by PSE prior to the execution of this Agreement and shall continue for the remaining life of the existing structure, pavement and/or surface in which the work was accomplished, but shall not apply to any subsequent repair or restoration made necessary by the acts or omissions of the City or any third party. It is further provided that in the event that PSE has any work in the Franchise Area completed by any of its authorized agents or subcontractors, PSE shall remain fully responsible for the permit, permitted work and any other permit requirements, notwithstanding any provisions of this Franchise to the contrary.

5.2 In the event of an emergency situation in which PSE's Facilities within the Franchise Area are in such a condition so as to immediately endanger the property, life, health or safety of any individual, PSE may take immediate action to correct the dangerous condition without first obtaining any required permit, 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. For the purposes hereof, "as soon as reasonably practicable" means that the permit application shall be submitted to the City not later than ten (10) business days after

the date of the commencement of the action that requires such permit.

5.3 PSE shall, after installation, construction, relocation, maintenance, removal, or repair of any of PSE's Facilities within the Franchise Area, restore the surface of the Franchise area and any other City property within the Franchise Area which may be disturbed or damaged by such work, to at least the same condition as it was immediately prior to such work. The City shall have final approval of the condition of the Franchise Area after restoration pursuant to the provisions of applicable City codes, ordinances, regulations, standards, and procedures, as now exist or as may be hereafter amended or superseded, provided that such provisions are not in conflict or inconsistent with the express terms and conditions of this Franchise.

5.4 The City may require PSE to post an appropriate bond, in an amount mutually agreed upon by PSE and the City, to ensure satisfactory restoration of the Franchise Area following the completion of PSE's work therein. In lieu of separate bonds for routine individual projects involving work in the Franchise Area, PSE may satisfy the City's bond requirement of this Section 5.4 by posting an indemnity bond as approved by the City.

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

6. Maps and Drawings.

6.1 PSE shall provide the City, upon the City's reasonable request and at no cost to the City, copies of available drawings in use by PSE showing the location of its Facilities within the Franchise Area, provided the request is limited to Facilities at specific locations in the Franchise Area. Further, PSE shall, upon the City's reasonable request, discuss and explore ways in which PSE and the City may cooperate and coordinate activities with respect to the development of drawing file layers compatible with the City's Geographic Information System ("GIS") which show PSE's Facilities at specific locations in the Franchise Area.

6.2 As to any such drawings and drawing file layers 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. With respect to any excavations within the Franchise area undertaken by or on behalf of PSE or the City, nothing herein is intended (nor may be construed) to relieve either party of their respective obligations arising under applicable law with respect to determining the location of utility facilities.

6.3 Upon the City's reasonable request in connection with the City's design of new streets and intersections and major renovations of existing streets and intersections, and any other Public Improvement, undertaken by the City, PSE shall further provide to the City at no cost to the City (a) the location and grade of PSE 's underground Facilities at those specific locations within the Franchise Area affected by the project by either field markings or by locating the Facilities in the City's design drawings, and (b) other reasonable cooperation and assistance; provided, however, that nothing in this Section 6.3 or any other provision of this Franchise is intended to (or shall) relieve any person or entity of its obligations under applicable

law with respect to determining the location of underground facilities.

7. Right to Complete Work.

7.1 In the event that PSE fails to perform any work to restore the surface of the Franchise Area as required by this Franchise, and such failure continues for a period of ten (10) calendar days after PSE receives written notice from the City regarding such failure (or, in the event of an emergency situation, such shorter period of time after receipt of notice from the City as is reasonably required in the circumstances), the City may, but in no event is obligated to, perform or contract for such work and, thereafter, PSE shall, upon the City's written request, reimburse the City for the reasonable costs incurred by the City in having such work performed.

8. Relocation of Facilities.

8.1 Whenever the City causes a Public Improvement to be undertaken within the Franchise Area, and such Public Improvement requires the relocation of PSE's then existing Facilities within the Franchise Area (for purposes other than those described in Section 8.2 below), the City shall:

8.1.1 Provide PSE, within a reasonable time prior to the commencement of such Public Improvement, written notice requesting such relocation; and

8.1.2 Provide PSE with reasonable plans and specifications for such Public Improvement, including a proposed relocation of PSE's Facilities.

After receipt of such notice and such plans and specifications, PSE shall relocate such Facilities within the Franchise Area at no charge to the City. If the City requires the subsequent relocation of any Facilities within five (5) years from the date of relocation of such Facilities pursuant to this Section 8.1, such subsequent relocation shall be at no cost to PSE.

8.2 Whenever (i) any public or private development within the Franchise Area, other than a Public improvement, requires the relocation of PSE's Facilities within the Franchise Area to accommodate such development; or (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 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.

8.3 Any condition or requirement imposed by the City upon any person or entity, other than PSE, that requires the relocation of PSE's Facilities constitute a required relocation for purposes of Section 8.2 above (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).

8.4 Nothing in this Section 8 "Relocation of Facilities" require PSE to bear any cost or expense in connection with the location or relocation of any Facilities then existing pursuant

to easement or such 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.

9. Shared Use of Excavation.

9.1 In the event either PSE or the City causes 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 the excavation, and such joint use is arranged and accomplished upon terms and conditions reasonably satisfactory to the party causing such excavation.

10. Indemnification.

10.1 PSE shall indemnify, defend and hold harmless the City, its agents, officers or employees, from any and all third party claims and demands, together with any liability, loss, cost, damage or expense of any nature whatsoever, including all costs and attorney's fees, arising out of such claim or demand, that is made against the City, its agents, officers or employees on account of injury, harm, death or damage to persons or property to the extent the same is caused by the negligent acts or omissions of PSE or its agents, servants, employees, contractors or subcontractors in the exercise of the rights granted to PSE by this Franchise.

10.2 PSE's indemnification obligations pursuant to Section 10.1 shall include assuming potential liability for claims covered by such indemnification obligations that are brought by PSE's own employees and the employees of PSE's agents, representatives, contractors, and subcontractors, even though PSE might be immune under Title 51 RCW from direct suit brought by such employees. It is expressly agreed and understood that this assumption of potential liability for claims brought by the aforementioned employees is limited solely to claims covered by PSE's indemnification obligations pursuant to Section 10.1 that are brought against the City and arise by virtue of PSE's negligent acts or omissions in the exercise of the rights set forth in this Agreement. Solely to the extent required to enforce the indemnification obligations provided herein, PSE waives its immunity under Title 51 RCW as provided in RCW 4.24.115; provided, however, the foregoing waiver shall not in any way preclude PSE from raising such immunity as a defense against any claim brought against PSE by any of its employees. The obligations of PSE under this section have been mutually negotiated by the Parties hereto, and PSE acknowledges that the City would not enter into this Agreement without PSE's waiver thereof.

10.3 PSE's indemnification obligations under Section 10.1 shall apply to the extent of PSE's negligence. Further, in any such action, the City shall have the right to participate, at its sole cost and expense, through its own attorney in any suit or action which arises pursuant to this Franchise when the City determines that such participation is in the City's best interest.

10.4 The provisions in this Section 10 shall survive the expiration or termination of this Franchise with respect to any claim, cost (including reasonable attorney fees), judgment,

award, liability, demand, suit or action for which indemnification is provided under Section 10.1 and which arises from an act or omission that occurred during the term of this Franchise.

11. Reservation of Rights.

11.1 In the event the City considers vacating any portion of the Franchise Area during the term of this Franchise and PSE's Facilities are located within the area to be vacated, then the City shall give PSE advance written notice of the same to allow PSE the opportunity to review and comment on the proposed vacation. Thereafter, unless otherwise requested by PSE, the City shall, in its vacation procedure, reserve and grant an easement to PSE for PSE's existing Facilities based on the input received from PSE.

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

12. Abandonment.

12.1 No above-ground Facilities of PSE within the Franchise Area may be abandoned by PSE without the express written consent of the City. Any plan for abandonment or removal of PSE's above-ground Facilities within the Franchise Area must be first approved by the Development Services Group Director or his/her designee, and all necessary permits must be obtained prior to such work. The provisions of this Section shall survive the expiration, revocation or termination of this Franchise.

13. Recovery of Costs: Permit Fees.

13.1 As specifically provided by RCW 35.21.860, which is applicable to the City pursuant to RCW 35A.21.160, the City may not impose a franchise fee or any other fee or charge of whatever nature or description upon PSE as a result of this Franchise. However, as provided in RCW 35.21.860, the City may recover from PSE, and PSE agrees to pay, the 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. With respect to its payment of such administrative expenses, the City shall submit to PSE statements/billings which specify the amounts due. PSE shall make payment to the City in reimbursement of such expenses within thirty (30) days of the receipt of such statements/billings. Failure by PSE to pay any amounts properly due and payable under this Section 13.1 within such thirty (30) day time period shall constitute a failure to comply with the Franchise for the purposes of Section 14, Default, hereof. Additionally, the failure by PSE to pay any amounts properly due and payable under this Section 13.1 shall be grounds for the City to preclude the processing of any applications and/or issuing permits until payment has been fully made. Furthermore, any late payment shall also accrue interest computed at the rate of twelve percent (12%) per annum from the thirtieth day.

13.2 With respect to the payment of permit fees, PSE shall comply with all applicable payment terms set forth in applicable codes, ordinances or permits of the City, including, without

limitation, any such terms relating to the schedule for payment and the City's right to withhold permits or charge interest in connection with any payment default by PSE; provided, however, the City shall accept payment of such permit fees directly from contractors of PSE that perform work in the Franchise Area on behalf of PSE so long as PSE has notified the City in writing that the contractor is authorized to do so on PSE's behalf and PSE remains responsible for compliance with the terms of the permit.

14. Default.

14.1 If PSE shall fail to comply with the provisions of this Franchise, the City may, without limiting any injunctive relief that the City may be entitled to by applicable law, serve upon PSE a written order to so comply within thirty (30) days from the date such order is received by PSE. If PSE is not in compliance with this Franchise after the expiration of said thirty (30) day period, the City may, by ordinance, declare an immediate forfeiture of this Franchise; provided, however, if any failure to comply with this Franchise by PSE cannot be corrected with due diligence within said thirty (30) day period, 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 expressly acknowledge and agree, however, that the forgoing rights and obligations of the parties are subject in all respects to excused performance based on a Force Majeure Event (as defined in Section 21.14).

15. Nonexclusive Franchise.

15.1 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 prohibit or prevent the City from using the Franchise Area or affect the jurisdiction of the City over the same or any part thereof.

16. Franchise Term.

16.1 Each of the provisions of this Franchise shall become effective upon the Effective Date, subject to Grantee's acceptance of the terms and conditions of this Franchise and shall remain in effect for fifteen (15) years thereafter. Subsequently, this Franchise shall renew, at the written request of Grantee made at any time within two (2) years before the end of the Franchise's original fifteen (15) year term, for an additional five (5) year renewal period, unless either party expresses its intention in writing to terminate this Franchise at the conclusion of the original fifteen (15) year term.

17. Insurance: Bond.

17.1 PSE shall procure and maintain for the duration of the Franchise, the types of insurance described below against all claims for injuries to persons or damages to property to the extent caused by any negligent acts or omissions of PSE in the exercise of the rights, privileges and authority granted hereunder to PSE, its agents, representatives or employees. PSE shall

provide evidence of insurance or an insurance certificate, together with an endorsement on the Commercial General Liability policy naming the City as an additional insured, to the City for its inspection prior to the commencement of any work or installation of any Facilities pursuant to this Franchise and such insurance certificate shall evidence the following minimum coverage.

17.1.1 Commercial General Liability insurance including coverage for comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than:

- (a) Five million dollars for bodily injury or death to each person;
- (b) Five million dollars for property damage resulting from any one accident; and
- (c) Five million dollars for all other types of liability.

17.1.2 Automobile liability for owned, non-owned and hired vehicles with a limit of Two million dollars for each person and Two million dollars for each accident.

17.1.3 Worker's compensation with statutory limits and employer's liability insurance with limits of not less than One million dollars.

17.1.4 Environmental pollution liability with a limit not less than Five million dollars for each occurrence, at a minimum covering liability from sudden and/or accidental occurrences.

If coverage is purchased on a "claims made" basis, then PSE shall warrant continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three years from the termination date of this Franchise, ad/or conversion from a claims made form to an "occurrence" coverage form.

17.3 Any deductibles or self-insured retentions must be declared to the City. Payment of deductibles and self insured retentions shall be the sole responsibility of PSE. The insurance certificate required by this Section 17 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.

17.4 PSE's insurance shall be primary insurance with respect to the City, its officers, officials, employees, agents, consultants, and volunteers. Any insurance maintained by the City, its officers, officials, employees, agents, consultants, and volunteers shall be in excess of PSE's insurance and shall not contribute to it.

17.5 In addition to the coverage requirements set forth in this section, the certificate of insurance shall provide that: "The above described policy will not be canceled before the expiration date thereof without the issuing company giving thirty (30) days written notice to the certificate holder."

17.6 In lieu of the insurance requirements set forth in this Section 17, PSE may self-insure against such risks in such amounts as are consistent with good utility practice. Upon the City's request, PSE shall provide the City with reasonable written evidence that PSE is maintaining such self-insurance.

18. Assignment.

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

19. Notice.

19.1 Any notice or other communication required or permitted to be given to the parties under this Franchise shall be sent to the following addresses unless otherwise specified:

City of Mercer Island
9611 SE 36th Street
Mercer Island, W A 98040
Attn: City Manager

Puget Sound Energy
Box 90868
Bellevue, W A 98009-0868
Attn: Community Services

The City and PSE may change their respective notice addresses and designated recipient by written notice to the other party at any time.

20. No Third Party Beneficiary.

20.1 Nothing in this Franchise shall be construed to create any rights in 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 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. This Franchise shall not release or discharge any obligation or liability of any third party to either the City or PSE.

21. Miscellaneous.

21.1 If any term, provision, condition or portion of this Franchise shall be held to be invalid, or is held to be inapplicable to any person or circumstance, such invalidity shall not affect the validity of the remaining portions of this Franchise which shall continue in full force and effect, and its application to other persons and circumstances shall not be affected. The headings of sections and paragraphs of this Franchise are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the

provisions of such sections or paragraphs.

21.2 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. Without limiting the generality of the foregoing, this Franchise (including, without limitation, Section 10 above) 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 rights, benefits, privileges, obligations or duties in and under this Franchise, unless such permit, approval, license, agreement or other document specifically:

21.2.1 references this Franchise; and

21.2.2 states that it supersedes this Franchise to the extent it contains terms and conditions that change, modify, delete, add to, supplement or otherwise amend the terms and conditions of this Franchise.

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

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

21.4 PSE shall bear the cost of the publication of this Franchise Ordinance as and to the extent permitted and required under Section 13.

21.5 All of the provisions, conditions, and requirements of Section 8 "Relocation of Facilities," Section 10 "Indemnification," and Section 12 "Abandonment" shall survive the expiration or termination of this Franchise (however, such survival period extends only through the applicable statute of limitations period).

21.6 In connection with its performance of work within the Franchise Area under this Franchise, PSE shall, during the term of this Franchise, fully comply with all applicable equal employment or nondiscrimination provisions and requirements of federal, state and local laws.

21.7 PSE and the City shall, as reasonably requested by the other party from time to time, discuss and coordinate their activities with respect to construction activities within the Franchise Area in an effort to minimize public inconvenience, disruption or damages.

21.8 This Franchise shall be binding upon the parties hereto and their permitted successors and assigns.

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

21.10 The failure of either party at any time to require performance by the other party of any provision hereof shall in no way affect the right of such party thereafter to enforce the same. Nor shall the waiver by a party of any breach of any provision hereof by the other party be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision.

21.11 This Franchise shall be governed by and construed in accordance with the laws of the State of Washington both as to interpretation and performance. The venue for any dispute related to this Franchise shall be in the King County Superior Court, King County, Washington.

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

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

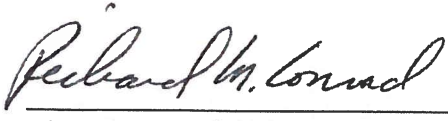
21.14 In the event that either party is prevented or delayed in the performance of any of its obligations under this Franchise by any event or circumstance beyond its reasonable control (a "Force Majeure Event"), then that party's performance shall be excused during the Force Majeure Event. Force Majeure Events shall include, without limitation, war; civil disturbance; flood, earthquake or other Act of God; storm or other condition which necessitates the mobilization of the personnel of a party or its contractors to restore utility service; sabotage; strikes or similar labor disputes involving personnel of a party, its contractors or a third party, in connection with this Franchise. Upon removal or termination of the Force Majeure Event, the party claiming a Force Majeure Event shall promptly perform the affected obligations in an orderly and expedited manner under this Franchise or procure a substitute for such obligation. The parties shall use all commercially reasonable efforts to eliminate or minimize any delay caused by a Force Majeure Event.

22. Ratification.

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

CITY OF MERCER ISLAND

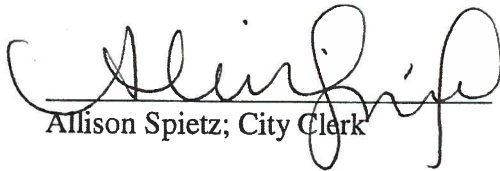
PUGET SOUND ENERGY, INC.


Richard Conrad, City Manager



ATTEST:

APPROVED AS TO FORM:


Allison Spietz, City Clerk



APPROVED AS TO FORM:


Katie Knight, City Attorney

