

## ORDINANCE NO. 3917

AN ORDINANCE 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 rights of way of the City to provide for the transmission, distribution and sale of electrical energy for power, light and such other services as may be provided by such facilities.

THE CITY COUNCIL OF THE CITY OF MOUNT VERNON, WASHINGTON, DO ORDAIN AS FOLLOWS:

**1. Definitions.** Where used in this franchise (the “Franchise”) the following terms shall mean:

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

1.2 “City” means the City of Mount Vernon, a code city of the State of Washington, and its successors and assigns.

1.3 “Director” means the Public Works Director or his/her designee.

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

1.5 “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. 70A.305.

1.6 “Facilities” means, collectively or individually, any and all electric transmission and distribution systems, including but not limited to, poles (with or without cross arms), wires, lines, conduits, ducts, cables, braces, guys, anchors and vaults, transformers, switches, 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 appertaining to any and all of the foregoing, whether the same be located over or under ground.

1.7 “Force Majeure Event” 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. A Force Majeure event shall include, without limitation, the following, to the extent also satisfying the criteria above: (a) acts of nature; (b) acts of public

enemies, terrorism, war, insurrection or sabotage; (c) any form of compulsory government action or change in Law; (d) accidents or other casualties causing damage, loss or delay; (e) labor disturbances, strikes, lock-outs or similar workforce disturbances affecting the Parties or any of their contractors, subcontractors, agents or employees; and (f) delay in obtaining or denial of any regulatory consents or approvals.

1.8 “Franchise Area” means any, every and all of the roads, streets, avenues, alleys and highways of the City as now laid out, platted, dedicated or improved; and any, every and all roads, streets, avenues, alleys and highways 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. Franchise Area shall include those public utility easements in which the City has the authority to grant such access.

1.9 “Hazardous Substance” 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.

1.10 “Joint Project” means a capital improvement project, undertaken pursuant to a valid agreement between the City and a third-party governmental entity for a special purpose district, that (a) relates to and promotes public safety functions (e.g., diking districts providing for flood prevention and mitigation, a public utility district whose projects expand or improves water systems that delivers fire suppression) and (b) for which City funds (or in-kind services such as labor) are co-mingled with the special purpose district’s funds (or in-kind services) to fund the project.

1.11 “Law” means any applicable federal, state or municipal code, statute, ordinance, regulation, rule, tariff, adopted policy, 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. The term “Law” includes the Mount Vernon Municipal Code and any other rules, codes or policies of general applicability to the use and management of the Franchisee Area as are now or may hereinafter be adopted by the City.

1.12 “Mount Vernon Design and Construction Standards” means any Mount Vernon municipal code, ordinance, resolution department regulation, or adopted policy pertaining to the usage, design or construction of facilities within the right-of-way.

1.13 “Party” means either City or PSE, and “Parties” means the City and PSE.

1.14 “Public Benefit Improvement” means any construction, installation, relocation, expansion, maintenance, repair or removal of roads, streets, sidewalks, parks, curbs, gutters, storm drainage facilities, sewer lines, water utility lines or similar capital improvement project within the Franchise Area that is undertaken by or on behalf of the City that requires relocation of Facilities within the Franchise Area and such improvement is funded by the City or with other public monies obtained by the City for such improvement (including public monies derived from LIDs, ULIDs, Transportation Benefit Districts, or similar financing mechanisms established by and wholly controlled by the City that levy special assessments on properties specially benefitted by such Public Benefit Improvement).

1.15 “Regulated Service” means 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).

1.16 “Term” has the meaning set forth in Section 19, “Franchise Term.”

1.17 “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.

## **2. Purpose.**

2.1 Grant. The City does hereby grant to PSE the non-exclusive 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 electrical energy for power, heat, light and such other purposes for which energy may be used. Nothing contained within this Franchise shall be construed to grant or convey a franchise to install Facilities in the Franchise Area to provide telecommunications, cable television or similar services to the public; provided that, for the avoidance of doubt, the foregoing is not intended to and does not restrict PSE’s right to use its communication systems installed within the Franchise Area to monitor, control or operate its electrical transmission and distribution systems or for communications reasonably required to conduct its electric business operations.

2.2 Non-Exclusive Franchise. This Franchise shall not in any manner prohibit the City from granting other or further franchises in, under, on, across, over, through, along or below the Franchise Area that do not unreasonably interfere with PSE’s rights under this Franchise. This Franchise shall, in no way, prevent or prohibit the City from using any of its Franchise Area, or affect its jurisdiction over any part of the Franchise Area, and the City retains absolute authority to make all changes, relocations, repairs, maintenance, establishments, improvements, dedications or vacations of same as the City may see fit; provided that the City exercises such authority in a manner consistent with the terms and conditions of this Franchise.

2.3 No Restriction on Municipal Operation. This Franchise shall not limit any right available to the City under Law to acquire, construct, own, operate and maintain a municipal electric utility at any time within the Franchise Area, and in all respects to exercise such right in accordance with Law. Nothing herein shall be deemed to be a release or wavier by PSE of any or all of its rights or interests in any real or personal property, including the right to just compensation for any taking, condemnation or other acquisition thereof by the City.

## **3. Facilities Within Franchise Area.**

3.1 Applicability. This Franchise shall not convey any right to PSE to install its Facilities on, under, over or across, or to otherwise use (except as permitted under Section 3.2), 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 (regardless of whether such lease or easement exists before or after the

Effective Date of this Franchise, whether inside or outside the Franchise Area, or whether granted by a private or public entity) and such Facilities are not, and will not be deemed to be, located pursuant to rights derived from this Franchise, unless and until (but in all cases solely with respect to Facilities that are located within the Franchise Area) PSE's ownership, lease or easement rights are extinguished (a) by mutual written agreement of the City and PSE, (b) pursuant to a final, non-appealable judicial condemnation order, or (c) by negotiated sale of such rights between the City and PSE in-lieu of condemnation.

3.2 Existing Facilities on City Property. Existing Facilities installed or maintained by PSE in accordance with prior franchise agreements on public grounds and places within the City, but which are not a part of the Franchise Area as defined in this Franchise, may be maintained, repaired and operated by PSE in accordance with the terms of this Franchise at the location where 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 City's prior review and approval and pursuant to the provisions of this Franchise.

#### **4. Operation of Facilities.**

4.1 No Interference. PSE's Facilities shall be installed, maintained, used and operated, within the Franchise Area so as not to unreasonably interfere with the free passage of pedestrian, bicycle and/or vehicle traffic therein or with the reasonable ingress or egress to properties abutting thereto, provided, that such ingress or egress is in accordance with Law when such Facilities are first installed.

4.2 Compliance with Law. PSE shall exercise its rights within the Franchise Area in accordance with Law; provided, however, in the event that the terms and conditions of the Mount Vernon Municipal Code (or of any rule, code or policy of general applicability to the use and management of the Franchise Area adopted by the City) shall conflict with or be inconsistent with the terms and conditions of this Franchise, the terms and conditions of this Franchise shall govern and control. Without limiting the generality of the foregoing, this Franchise shall not limit or constrain the exercise of the City's police powers, and PSE acknowledges the City's right to adopt and enforce general ordinances necessary to protect the health, safety and welfare of the public.

#### **5. Planning and Records of Installation.**

5.1 Future Construction Plans. 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 than annually unless otherwise agreed to by the Parties, the Parties will meet to discuss and coordinate regarding future construction activities then being planned by either Party within the Franchise Area, including potential Public Benefit Improvements and potential improvements, relocations and conversions of Facilities 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, nor shall such discussions or

coordination be construed as a proposal to undertake any specific improvements within the Franchise Area.

5.2 Planning for PSE Projects. Upon reasonable written request from the City, and no more than annually, PSE shall provide the City with the most recent update available of any plan of potential improvements to PSE's Facilities within the Franchise Area; provided, however, any such plan so submitted shall be for informational purposes only and shall not obligate PSE to undertake any specific improvements within the Franchise Area, nor shall such plan be construed as a proposal to undertake any specific improvements within the Franchise Area.

5.3 Coordination on Public Benefit Improvements. For any Public Benefit Improvement that the City has identified as requiring coordination, the City will notify PSE when it commences design work for the Public Benefit Improvement and identify a City representative to coordinate the Public Benefit Improvement with PSE. After receiving such notification, PSE shall promptly designate a representative to coordinate the Public Benefit Improvement with the City. The project coordinators shall cooperate and share information with respect to the Public Benefit Improvement. This information shall be reasonable in scope and content and provided with a level of detail that is appropriate for coordinated planning, and may include, but is not limited to, project contacts, project details, applicable project schedules, identification of contractors, location of affected existing and planned Facilities, project status, and detailed and dimensioned plan specifications.

5.4 Pavement Disturbances. PSE shall comply with Law when disturbing pavement within the Franchise Area. If PSE has non-emergency plans to perform work under this Franchise in the Franchise Area that will require disturbing pavement or sidewalks in the same areas the City has plans to resurface, overlay, or reconstruct roads or sidewalks as part of a Public Benefit Improvement, PSE will coordinate with the City to schedule its work to occur prior to, or in conjunction with, the City's planned project.

5.5 Records. PSE shall at all times keep records in accordance with its standard business practices ("Facility Records") showing the approximate location and size of all its Facilities within the Franchise Area. PSE shall provide the City, upon the City's reasonable request, as required for the City's effective management of the right-of-way for its project planning purposes, copies of certain available maps in use by PSE showing the approximate location of its Facilities in specific areas within the Franchise Area. The City must submit any such request by email to Map.Request@pse.com (or by such other method as PSE may reasonably direct) and ensure that any such request is reasonable in scope. Any information provided by PSE pursuant to this Section 5.5 will be for informational purposes only and will not obligate PSE to undertake any specific improvements or activities within the Franchise Area. As to any information provided pursuant to this Section 5.5, PSE does not warrant the accuracy thereof and, to the extent the location of Facilities are shown in such information, such Facilities are shown in their approximate location. 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 underground utility facilities. Notwithstanding anything in this Franchise to the contrary, PSE shall have no obligation to disclose any records, documents, or other information, in PSE's reasonable discretion, that are (a) financial, commercial, or proprietary in nature, or (b) critical energy infrastructure information as regulated under the Federal Power Act, 16 U.S.C. § 791, et seq.

5.6 Public Records Act. Nothing herein is intended (nor shall be construed) to prohibit the City from complying with chapter 42.56 RCW, or any other applicable law or court order requiring the release of public records. PSE shall timely cooperate with the City upon receipt of a Public Records Act request. PSE shall clearly mark any information that it provides to the City as “Proprietary” information if PSE believes that disclosure of that information would be exempt under an applicable exemption in RCW 42.56.270. If the City receives a request for information marked by PSE as proprietary, it will promptly, and no later than five (5) business days after identifying the record, notify PSE of the request. If PSE does not communicate in writing to the City, within ten (10) business days of receipt of the City’s notice, its intent to take action to prevent the disclosure of such information, then the City may release the documents. Once PSE provides such notice of its intent to take action, PSE must take all necessary actions to prevent disclosure in a manner so as to ensure the City’s response is not delayed or improper under the PRA or other applicable law.

## **6. Coordination and Shared Construction.**

6.1 Coordination with other Franchise Holders. PSE shall meet with the City and other franchise holders and users of the Franchise Area upon reasonable written request of the City, to coordinate construction within the Franchise Area. If the City convenes such a meeting, PSE, the City, and other franchise holders and users of the Franchise Area shall seek to agree on a plan to reasonably coordinate all construction locations, activities, and schedules in a manner that minimizes delay or disruption of each Party’s respective work.

6.2 Joint Use Policies. If PSE is excavating within the Franchise Area, then PSE shall allow the City the opportunity to share the excavation, conduit, ducts, and trenches of PSE, provided that:

6.2.1 Such joint use shall not delay or interfere with the installation, operation or maintenance of PSE’s Facilities located therein and can otherwise be accommodated in accordance with Law;

6.2.2 Such joint use shall not increase the cost for PSE in excess of that which PSE would otherwise bear; and

6.2.3 Such joint use shall be arranged and accomplished on terms and conditions satisfactory to all Parties.

6.3 Emergency Management Coordination. Upon the written request of the City, typically once per year and as reasonably necessary, PSE will (a) meet with the City’s emergency management representatives or fire department/fire marshal to coordinate emergency operations plans within the Franchise Area and update contact information, and (b) actively participate with appropriate City representatives in training, exercise, and planning activities related to emergency preparedness, response, recovery and mitigation. In connection with and as part of any such meeting to coordinate emergency operations, the Parties will, to the extent reasonably requested by the City, (i) review and discuss PSE’s relevant annual maintenance, safety and inspection plans and records relating to PSE’s Facilities located within the Franchise Area, (ii) review and discuss any reports or notices filed with the WUTC relating to the integrity or safety of PSE’s Facilities

located within the Franchise Area, and (iii) review and discuss any application by PSE for a waiver of any state or federal safety rule applicable to the integrity or safety of PSE's Facilities located within the Franchise Area.

## **7. Relocation of Facilities.**

### **7.1 City Projects.**

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

- a. provide PSE, within a reasonable time prior to the commencement of such Public Benefit Improvement, written notice requesting such relocation ("Relocation Notice"); and
- b. provide PSE with reasonable plans and specifications for such Public Benefit Improvement.

After receipt of the Relocation Notice and such plans and specifications, and consistent with the mutually agreeable timeframe established pursuant to Section 7.1.2, PSE shall relocate such Facilities within the Franchise Area at no charge to the City. If a Joint Project is to be undertaken within the Franchise Area and such Joint Project requires the relocation of any of PSE's Facilities then existing within the Franchise Area, PSE shall relocate such Facilities in accordance with Section 7.2, except that PSE will perform such relocation of its Facilities at no charge to the City for that portion of the Joint Project that is funded by the City.

### **7.1.2 Relocation Deadline for City Projects**

a. Relocation Date. The Relocation Notice shall specify the date by which relocation in accordance with Section 7.1.1 should be completed by PSE ("Relocation Date"). In calculating the Relocation Date, the City shall consult with PSE and consider the extent of the PSE Facilities to be relocated, the timing of the proposed relocation (i.e., whether the City is requesting a relocation during a peak time of year for construction and relocation projects within PSE's service territory), PSE's customer service requirements, the construction sequence for the relocation within the City's overall project construction sequence, and any constraints to safely complete the relocation within the desired timeframe. Unless otherwise agreed by the Parties in writing in advance, the City shall provide PSE with the Relocation Notice at least one hundred fifty (150) days prior to the proposed Relocation Date. If, after considering the factors set forth above for calculating the proposed Relocation Date, the City believes that the scope of PSE's relocation work will be minor and that such relocation work could reasonably be performed in less than one hundred fifty (150) days, the City may, when it provides PSE with the Relocation Notice pursuant to this Section 7.1.2(a), request that PSE perform the applicable relocation work on an expedited basis, and PSE will review in good faith the City's request to determine whether it could perform such relocation work on an expedited basis. If PSE determines that it can complete the relocation of its existing Facilities within the Franchise Area in accordance with Section 7.1.1 on or before the proposed Relocation Date (including, as applicable, on an expedited basis), then PSE

shall so inform 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 so inform the City and provide the City 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. After the Relocation Date is mutually agreed upon by the Parties, PSE shall complete the relocation of its existing Facilities within the Franchise Area in accordance with Section 7.1.1 on or before such Relocation Date, except to the extent that PSE is unable to complete such relocation due to acts or omissions of the City or any third party, a Force Majeure Event, or other factors or circumstances beyond PSE's reasonable control. If PSE's completion of the relocation of its existing Facilities within the Franchise Area by the mutually agreed upon Relocation Date becomes impossible or impracticable due to acts or omissions of the City or any third party, a Force Majeure Event, or other factors or circumstances beyond PSE's reasonable control, PSE shall notify the City of the same and propose a revised Relocation Date. In such event, the City shall review PSE's proposed revised Relocation Date, and the Parties shall mutually agree on a revised Relocation Date for such relocation. PSE shall relocate such Facilities within the Franchise Area under Section 7.1.1 at no charge to the City.

b. Reserved.

7.1.3 Subsequent Relocation. 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.

7.1.4 To facilitate active communication between the parties regarding relocation projects, and unless otherwise agreed by the parties, PSE and the City will participate in, periodic meetings at a cadence agreed upon by the parties, to gain perspective on future PSE and City projects. Additionally, PSE and the City will participate in other meetings, as necessary, which may include "Design – RFP/Bid – Construction" meetings among the parties (and other utility partners as appropriate), to ensure collaborative dialogue on current and future construction and relocation projects. Such meetings may address matters such as material, staffing, and logistics issues that may impact project and relocation completion timelines.

7.2 Other Projects.

7.2.1 Required Relocations. Whenever (a) any public or private development within the Franchise Area, other than a Public Benefit Improvement, requires the relocation of PSE's Facilities within the Franchise Area to accommodate such development, or (b) the City requires the relocation of PSE's Facilities within the Franchise Area for the benefit of any person or entity other than the City, 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, upon commercially reasonable terms acceptable to PSE, for any and all costs and expenses incurred by PSE in the relocation of PSE's Facilities and, subject to satisfaction of any such condition, shall relocate its Facilities.

7.2.2 Conditions. Any condition or requirement imposed by the City upon any person or entity, other than PSE (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), that requires the relocation of PSE's Facilities shall be a required

relocation for purposes of Section 7.2.1 above. Notwithstanding the foregoing, in the event the City reasonably determines and notifies PSE prior to commencement of any such relocation that the primary purpose of imposing such condition or requirement upon such person or entity is to cause the grading or widening of a segment of the Franchise Area on the City's behalf as part of a Public Benefit Improvement, and such grading or widening project is a City-funded project on the City's current Transportation Improvement Plan, then only those costs and expenses incurred by PSE in connecting such relocated Facilities with PSE's other Facilities shall be paid to PSE by such person or entity, and PSE shall otherwise relocate its Facilities within such segment of the Franchise Area at PSE's expense pursuant to Section 7.1.

7.3 Existing Rights. Nothing in this Section 7 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.

7.4 City Performance of Relocation Work. If the Parties mutually agree in writing that elements of relocation work involving PSE's Facilities within the Franchise Area to accommodate a Public Benefit Improvement would be most efficiently performed by the City or its contractors as part of the City's work for the underlying Public Benefit Improvement, the Parties may enter into a separate written agreement that details the elements of relocation work to be performed by the City involving PSE's Facilities. Such agreement shall require PSE to be responsible for all direct design and construction costs incurred as a result of the City's performance of such elements of relocation work and may require PSE to be responsible for PSE's pro-rata share of all reasonable indirect costs incurred by the City to perform such elements of relocation work, including, but not limited to, construction management and inspection, traffic control, mobilization, erosion and sedimentation control, trenching, backfill, and restoration as may be applicable to such elements of the relocation work. Neither Party will be obligated to enter into any such agreement for the City's performance of relocation work involving PSE's Facilities. In the absence of an agreement by which the City will relocate PSE Facilities, PSE remains fully responsible for performing all relocation work itself, consistent with this Section 7.

## **8. Work in the Franchise Area.**

8.1 Generally. All work performed by PSE or its contractors on PSE's behalf within the Franchise Area shall be accomplished in a good and workmanlike manner that minimizes interference with the free passage of traffic and the free use of adjoining property, whether public or private. PSE shall post and maintain proper barricades, flags, flaggers, lights, flares, safety devices and other measures as required to comply with 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, at its own expense, shall take such action to restore and maintain the lateral support of the Franchise Area or such adjacent properties.

8.2 Permits Required. PSE shall, prior to commencing any work or other substantial activity within the Franchise Area under this Franchise for which a permit is required by the City, apply for a permit from the City and perform such work in accordance with Law.

8.3 Utility Locates. Upon the City's reasonable request (or the reasonable request of a third party acting on behalf of the City), PSE shall verify the location of its underground Facilities then within the Franchise Area in the immediate vicinity of a planned Public Benefit Improvement project by excavating (e.g., pot holing) at no expense to the City. PSE shall provide enough detail to verify the vertical (depth) and horizontal location of its Facilities. In the event PSE performs such excavation, the City shall not require any restoration of the disturbed area in excess of restoration to the same condition as existed immediately prior to the excavation.

8.4 Emergency Repairs by PSE. In the event of an emergency in which PSE's Facilities located within the Franchise Area break or are damaged or compromised, or if PSE's Facilities within the Franchise Area are otherwise in a condition as to endanger the property, life, health or safety of any individuals or threaten system integrity, PSE shall, upon learning of such a condition, take all reasonable actions to promptly correct such condition without first applying for and obtaining a permit as required by this Franchise. PSE shall notify the City either verbally or in writing as soon as practicable following the onset of any such emergency. PSE is not relieved from the requirement of obtaining such necessary permits, and PSE shall apply for all such permits within a reasonable period of time following commencement of such repairs. In such an emergency, neither the City nor its agents shall attempt to fix, cure, remedy, work on, or take any other action with respect to PSE's Facilities in the Franchise Area; except that the City may redirect pedestrian and vehicular traffic around the vicinity of such Facilities.

8.5 Reserved.

8.6 Public Service Obligations. Nothing in this Franchise is intended, nor shall it be construed, as a hindrance to PSE's ability to take such actions as are required to discharge its public service obligations in accordance with the Law.

8.7 Vegetation Management.

8.7.1 PSE will coordinate its vegetation management activities within and/or adjacent to the Franchise Area with the City, including Public Works, Fire and Parks. Upon the request of the City, and no more often than annually, PSE and the designated City departments, will meet to coordinate the implementation of vegetation management; provided however that such commitment to coordinate with the City shall not limit PSE's right under this Franchise or duty under Law to remove or trim vegetation which, due to proximity to PSE's Facilities, poses an imminent risk to public safety. If any one or more of the designated City departments is unable to attend the coordination meeting, PSE may but is not obligated to, meet separately with such City department to coordinate its vegetation management activities with such City department.

8.7.2 PSE may trim trees and other vegetation on or overhanging the Franchise Area so as to prevent such vegetation from coming in contact with PSE's Facilities. The right to trim and remove such vegetation shall apply to the extent necessary to maintain the safe and reliable operation of PSE's Facilities. PSE's tree trimming activities shall preserve the appearance, integrity, and health of the trees to the extent reasonably possible. PSE shall be responsible for all debris removal from such activities. PSE may contract for such services, however, any firm or individual so retained must first receive City permit approval (if and as required) prior to commencing such trimming. Nothing herein grants PSE any authority to act on behalf of the City,

to enter upon any private property, or to trim any tree or natural growth not within or overhanging the Franchise Area. The City shall not be liable for any unlawful damage to any third parties' trees or natural growth caused by PSE's actions. Except in emergencies, all tree trimming must be performed under the direction of an arborist certified by the International Society of Arboriculture, unless otherwise approved by the Public Works Director or his/her designee, and accomplished equivalent to the most recent issue of "Standards of Pruning for Certified Arborists" as developed by the International Society of Arboriculture or its industry accepted equivalent (ANSI A300).

8.8 Reserved.

**9. Undergrounding of Facilities.**

9.1 Reserved.

9.2 Conversions. If the City shall request PSE to underground any of its Facilities, 15 kV or less, such undergrounding shall be arranged and accomplished subject to and in accordance with applicable tariffs on file with the WUTC (or such other regulatory agency having jurisdiction).

9.3 New Extensions of Existing Facilities. Unless otherwise agreed by the Parties or requested by a PSE customer in connection with an applicable tariff on file with the WUTC, all new extensions of existing electric Facilities, of 15 kV or less, installed within the Franchise Area during the term of this Franchise shall be located underground in accordance with and subject to applicable tariffs on file with the WUTC.

**10. Restoration After Construction.** PSE shall, after completing any work performed by PSE on its Facilities within the Franchise Area, promptly remove any obstructions from the Franchise Area that were created by PSE's work and restore the surface of the Franchise Area within the Franchise Area that was disturbed or damaged by PSE's work to at least the same condition that such Franchise Area was in immediately prior to the commencement of such work that caused such disturbance or damage to the Franchise Area. In no event shall PSE be responsible for any change, damage, or disturbance to the Franchise Area not caused by work performed by PSE on its Facilities within the Franchise Area, and the City shall not impose any fee, fine, charge, or other cost or expense on PSE for any such change, damage, or disturbance. PSE shall perform restoration work pursuant to this Section 10 consistent with requirements under the applicable permit and Law, except to the extent that any such requirements conflict with or are inconsistent with the terms and conditions contained in this Franchise. Restoration work completed pursuant to this Section 10 shall be completed to the reasonable satisfaction of the City.

**11. Attachments to PSE Electric Distribution Poles.**

11.1 City Attachments. During the Term, if the City wishes to install and maintain any City-owned overhead wires, devices, equipment, signs, or other facilities on PSE's overhead electric distribution pole Facilities within the Franchise Area for non-commercial municipal communications purposes, the City may so notify PSE in writing and, upon receipt of such request, the Parties will commence negotiation of an appropriate pole attachment agreement, consistent with Laws and PSE's then-current standards, processes, and procedures, to allow such attachments based on the type and nature of the City's requested use. Each such pole attachment agreement

will provide, among other things, that the installation and maintenance of the attachments by the City will be at its sole risk and expense, in accordance with all Laws, and subject to such reasonable requirements as PSE may specify from time to time (including, without limitation, requirements accommodating PSE's Facilities), and that PSE will have no obligation arising under the indemnification and insurance provisions of this Franchise as to any circumstances directly or indirectly caused by or related to the installation and maintenance of the attachments by the City on PSE's electric distribution pole Facilities within the Franchise Area.

11.2 Third Party Attachments. The City acknowledges that PSE is subject to and must comply with Law governing attachments of wires, devices, and other equipment owned by third parties to PSE's electric distribution pole Facilities within the Franchise Area.

11.2.1 As of the date of this Franchise, PSE and third parties having attachments of wires, devices, and other equipment to PSE's electric distribution pole Facilities within the Franchise Area use the National Joint Utilities Notification System ("NJUNS") as the means of providing official notice between them of actions required to be taken and reporting of actions taken by such third parties with respect to such attachments. To the extent consistent with Law and at the request of the City, PSE will use commercially reasonable efforts (subject to the functional capabilities and limitations of NJUNS in place from time to time) to include the City as an interested party to any notification tickets submitted by PSE in NJUNS with respect to any of PSE's electric distribution pole Facilities within the Franchise Area that are permanently no longer in use by PSE and which contain third-party attachments. The City may monitor activity associated with such third-party attachments through NJUNS.

11.2.2 The Parties shall work together to utilize commercially reasonable efforts that may be available, including by not limited to (a) exercising contractual rights stemming from applicable pole attachment agreements or franchise agreements and (b) municipal code enforcement authority, to require third parties that have third-party attachments to PSE pole Facilities within the Franchise Area that should be removed to remove such attachments in a timely manner so as to avoid or minimize impacts to any PSE relocation, removal, or undergrounding of any of PSE's Facilities within the Franchise Area pursuant to this Franchise, or to any other timeline established by this Franchise whether for a Public Benefit Improvement or other project type.

## **12. Performance and Maintenance Guarantees.**

12.1 Performance Bond. When undertaking any work within the Franchise Area requiring the posting of a bond pursuant to Section 12.1 (or such other applicable provisions) of the Mount Vernon Municipal Code, PSE shall comply with such requirements to the extent such requirements do not conflict with and are not inconsistent with the terms and conditions contained in this Franchise.

**13. Work of Contractors and Subcontractors.** PSE's contractors and subcontractors performing work on behalf of PSE within the Franchise Area shall be licensed and bonded as required by Law. Such work by PSE's contractors and subcontractors is subject to the same restrictions, limitations, and conditions as if the work were performed by PSE and shall be performed in compliance with this Franchise and Law. As between the Parties and for purposes

only of this Franchise, PSE shall be responsible for all such work performed on PSE's behalf by its contractors and subcontractors within the Franchise Area.

#### **14. Insurance.**

14.1 Insurance Term. PSE shall procure and maintain for the duration of this Franchise and as long as PSE has Facilities in the Franchise Area, insurance and/or self-insurance against claims for injuries to persons or damage to property which may arise from or in connection with this Franchise and use of the Franchise Area.

14.2 No Limitation. PSE's maintenance of insurance as required by this Franchise shall not be construed to limit the liability of PSE to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

14.3 Minimum Scope of Insurance. PSE shall obtain insurance of the types and coverage described below:

14.3.1 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, pollution, 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.

14.3.2 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.

14.3.3 Pollution Liability insurance shall be in effect throughout the term of this Franchise covering losses caused by pollution conditions that arise from the operations of PSE. Pollution Liability shall cover bodily injury, property damage, cleanup costs, and legal defense, including costs and expenses incurred in the investigation, defense, or settlement of claims. Pollution Liability coverage may be included within Commercial General Liability and/or self-insurance at the discretion of the Franchisee.

14.3.4 Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

14.3.5 Excess or Umbrella Liability insurance shall be excess over and at least as broad in coverage as 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 with respect to liability arising out of activities performed by or on behalf of PSE in connection with this Franchise to the extent of the limits required herein.

14.4 Minimum Amounts of Insurance. PSE shall maintain the following insurance limits:

14.4.1 Commercial General Liability insurance shall be written with limits no less than \$5,000,000 each occurrence, \$5,000,000 general aggregate.

14.4.2 Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$5,000,000 per accident.

14.4.3 Pollution Liability insurance shall be written in an amount of at least \$2,000,000 per loss, with an annual aggregate of at least \$2,000,000.

14.4.4 Excess or Umbrella Liability 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, self-insurance, or any combination thereof that achieves the overall required limits.

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

14.6 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.

14.7 Verification of Coverage. PSE shall furnish the City with original certificates and a copy of the amendatory endorsements at the time of Franchise acceptance and then annually, including the additional insured endorsement, evidencing the insurance requirements of this Franchise.

14.8 Subcontractors. PSE shall cause each and every subcontractor of PSE 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 such subcontractors.

14.9 Notice of Cancellation. PSE shall provide the City with written notice of any policy cancellation within ten (10) business days of their receipt of such notice. In the event of any policy cancellation, PSE shall obtain and furnish to the City evidence of replacement insurance meeting the requirements of this Section 14.3.

14.10 PSE – Self-Insurance. If PSE is self-insured or becomes self-insured during the term of this Franchise (i) the City may review PSE's financial position via its SEC filings available at <http://www.pugetenergy.com/pages/filings.html>; and (ii) PSE or its parent company is responsible for all required payments within the self-insured retention. Upon the City's request, PSE shall provide the City with reasonable written evidence that PSE is maintaining such self-insurance program in a manner that is adequate to meet the insurance coverage requirements under this Section 14.

## **15. Indemnification.**

15.1 Indemnification by PSE. PSE shall indemnify, defend and hold harmless the City, its officers, officials (elected and appointed), employees, agents and representatives, from any and all third party claims or suits, and any damages, costs, judgments, awards or liability resulting from such claims or suits, for injury or death of any person or damage to property, but only to the extent such injury or damage is caused by the negligent acts or omissions, or willful misconduct of PSE, its agents, officers or employees in exercising the rights granted to PSE in this Franchise. In the event that any such claim or demand is presented to or filed with the City, the City shall promptly notify PSE thereof, and PSE shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim or demand; provided further, that in the event any suit or action is begun 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. However, should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of PSE and the City, or their respective officers, employees, representatives, contractors, consultants, or agents, PSE's liability hereunder shall be only to the extent of PSE's negligence.

### 15.2 Reserved.

15.3 Inspection by City. 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 by PSE of any of its obligations under this Section 15.

15.4 Notice of Claim. The City's failure to notify PSE and request indemnification as required under this Section 15 shall not relieve PSE of its obligations under Sections 15.1 and 15.2, except to the extent that such failure prejudices PSE's ability to defend or compromise such claim or suit. The City may, at its cost and expense, participate in the defense of any such claim or suit using counsel of its choice. In the event that PSE refuses the tender of defense in violation of its indemnification obligations under Section 15.1 or Section 15.2, and said refusal is subsequently determined by a court of competent jurisdiction (or such other tribunal having jurisdiction that the Parties may agree in writing to decide the matter), to have been a wrongful refusal on the part of PSE, PSE shall pay the City's reasonable costs for defense of the claim or suit, including all reasonable expert witness fees and costs, and reasonable attorney's fees. In a dispute over PSE's refusal to tender defense under Sections 15.1 or 15.2, the substantially prevailing Party in such dispute shall be entitled to recover from the other Party reasonable costs and expenses, including reasonable attorney's fees.

15.5 Title 51. Solely to the extent required to enforce the indemnification provisions of this Section 15, 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. This waiver has been mutually negotiated by the Parties.

## 16. Default and Enforcement.

### 16.1 Dispute Resolution.

16.1.1 A Dispute shall be resolved in accordance with the dispute resolution procedures set forth in this Section 16.1. 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 16.1.1.

16.1.2 If the Parties cannot resolve a Dispute satisfactorily within fifteen (15) days after receipt of the initial notice in accordance with Section 16.1.1, either Party may thereafter deliver to the other Party notice initiating the dispute resolution procedures set forth in this Section 16.1.2 (the "Dispute Notice"). The Dispute Notice shall (a) contain a detailed description of the issues in Dispute, (b) identify the senior officers or administrators authorized to settle the Dispute, and (c) propose a date or dates within (30) days after the date of the Dispute Notice, on which such officers or administrators are available for a meeting to resolve such Dispute. The recipient Party shall, within three (3) business days following its 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. Commencing on the date of delivery of the respective senior officers' or administrators' schedules of availability, the senior officers or administrators so designated shall meet and confer in good-faith negotiations, as often as they deem reasonably necessary, for a period of thirty (30) days, to resolve the Dispute to the satisfaction of both Parties.

16.1.3 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 16.2 "Noncompliance; Cure".

16.1.4 Except as otherwise provided in Section 16.1.3, the Parties intend that the procedures for dispute resolution provided by Section 16.1 be exhausted before a Party exercises any other right or remedy available under this Franchise or Law.

16.2 Noncompliance; Cure. If PSE fails to comply with the provisions of this Franchise, the City may serve upon PSE a written order to so comply, and PSE shall cure the non-compliance within thirty (30) days from the date such order is received by PSE; provided, however, if any failure to comply with this Franchise by PSE cannot reasonably be corrected with due diligence within said thirty (30) 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. If PSE is not in compliance with this Franchise after expiration of the applicable cure period under this Section 16.2, the City may, by ordinance, declare an immediate forfeiture of this Franchise.

16.3 No Release. Termination of this Franchise shall not release either Party from any liability or obligation with respect to any matter arising out of this Franchise prior to such termination, nor shall such termination release PSE from any obligation to remove or secure its Facilities and restore the Franchise Area pursuant to the terms of this Franchise.

**17. Reserved.**

**18. Change in Law.**

18.1 Notice. If, during the term of this Franchise, there becomes effective any change in federal or state law (including, but not limited to, a change in any tariff filed by PSE with the WUTC) and such change (a) specifically requires or allows the City to enact a code or ordinance which conflicts with this Franchise; or (b) results in a PSE tariff that conflicts with this Franchise; then, in such event, either Party may, within ninety (90) days of the effective date of such change, notify the other Party in writing that such Party desires to commence negotiations to amend this Franchise. Such negotiations shall only address the specific terms and conditions in this Franchise that are affected by such change in federal or state law.

18.2 Negotiation. Within thirty (30) days from and after the other Party's receipt of written notice to commence such negotiations, the Parties shall, at a mutually agreeable time and place, commence such negotiations. The Parties shall thereafter conduct such negotiations in good faith and with due regard to all pertinent facts and circumstances.

18.3 Mediation. In the event the Parties are unable, through negotiation, to reach mutual agreement upon terms and conditions of such amendment, then either Party may, by written notice to the other, demand that the Parties seek to arrive at such agreement through mediation.

18.4 Franchise In Full Force. Pending such negotiations or mediation, and except as to any portion thereof which is in conflict or inconsistent with such change in federal or state law, the Franchise shall remain in full force and effect.

**19. Franchise Term.** This Franchise is and shall remain in full force and effect for a period of ten (10) years from and after the Effective Date ("Term"). The Term may be extended by mutual agreement of the Parties for two (2) successive five (5) year renewal terms (each a "Renewal Term"). PSE may, not later than six (6) months prior to the expiration of the Term (or of a Renewal Term), request the City's approval of a Renewal Term. If so approved, this Franchise shall be unchanged and extended on the same terms and conditions as set forth herein as of the Effective Date and shall remain in full force and effect for the Renewal Term. Either Party may propose changes to the Franchise terms when a Renewal Term is sought. Such proposal shall be made prior to the expiration of the then-current Term or Renewal Term and shall be considered by the non-proposing Party. Proposed changes must be approved by the non-proposing Party for the changes and renewal term to go into effect. If no proposed changes terms are made by either Party, and PSE timely requests a Renewal Term, the City shall approve such request.

**20. 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.

## **21. Decommissioned Facilities.**

21.1 Notice. If PSE determines that a PSE-owned utility pole Facility located within the Franchise Area is no longer required to provide a Regulated Service and should be decommissioned ("Decommissioned Pole"), then PSE shall so notify the City. PSE shall use commercially reasonable efforts to remove such Decommissioned Pole from the Franchise Area within sixty (60) days after the date of such notice, subject to any delay attributable to the acts or omissions of the City or a Force Majeure Event. If, however, upon receipt of any such notice from PSE, the City shall reasonably determine that such Decommissioned Pole unreasonably interferes with the free passage of pedestrian or vehicle traffic, then the City shall so notify PSE, and PSE shall use commercially reasonable efforts to remove such Decommissioned Pole from the Franchise Area within thirty (30) days after the date of such notice from the City.

21.2 City Request. If the City reasonably determines that a PSE-owned utility pole Facility located within the Franchise Area is no longer in use by PSE, then the City may request that PSE determine if such utility pole is a Decommissioned Pole. Within sixty (60) days after PSE's receipt of such request, PSE shall review the status of the utility pole Facility in question. If PSE should determine such utility pole Facility to be a Decommissioned Pole, then PSE shall give the City notice thereof, in accordance with Section 21.1. If PSE shall determine such utility pole Facility not to be a Decommissioned Pole, then PSE shall so notify the City and such notice shall explain the basis for making such determination. The Parties agree to cooperate and establish mutually agreeable procedures for the implementation of this Section 21.2 to achieve the right-of-way management objectives of the City in a manner that minimizes the administrative burdens on both Parties.

21.3 Removal. PSE shall obtain all necessary permits prior to removal of Decommissioned Facilities. PSE shall restore the Franchise Area after removing such Decommissioned Facilities consistent with Law, provided PSE shall not be responsible for any changes to the Franchise Area not caused by PSE or any person doing work for PSE. The Director shall have final approval of the condition of the Franchise Area after restoration, which approval shall not be unreasonably withheld. PSE shall be solely responsible for all costs associated with removing its Decommissioned Facilities, except as otherwise provided in Section 7.2.

## **22. Assignment.**

22.1 Consent for Assignment. PSE shall not assign this Franchise to any unaffiliated third party without the prior consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. Any assignee shall, within thirty (30) days of the date of any assignment, file written notice of the assignment with the City together with its written acceptance of all terms and conditions of this Franchise and provide the City the additional insured endorsements as required pursuant to Section 14, as applicable, and any performance or maintenance guarantees as

required by Section 12.1 (“Assignment Documents”). No assignment by PSE shall be effective prior to the City’s receipt of the Assignment Documents. Notwithstanding the foregoing, PSE shall have the right, without such notice, consent or such written acceptance or other such Assignment Documents, to mortgage its rights, benefits and privileges in and under this Franchise for the benefit of bondholders.

22.2 Successors and Assigns. All the provisions, conditions, terms and requirements contained herein shall be binding upon PSE’s successors and assigns, and all privileges, as well as all obligations of PSE, shall inure to its successors and assigns equally as if they were specifically mentioned where PSE is named in this Franchise.

22.3 No Relief from Liability. The City’s approval of the assignment of this Franchise does not relieve PSE of any liabilities arising out of the terms of this Franchise prior to the date of such assignment.

**23. Recovery of Costs.** As specifically provided in RCW 35.21.860, the City may not impose a franchise fee or any other fee or charge of whatever nature or description upon PSE as a condition of granting this Franchise. However, as provided in RCW 35.21.860, the City may recover from PSE actual administrative expenses incurred by the City that are directly related to: (a) receiving and approving a permit, license or this Franchise, (b) inspecting plans and construction, or (c) as applicable, preparing a detailed statement pursuant to Chapter 43.21C RCW. In accordance with and subject to the foregoing, PSE hereby agrees to pay such actual administrative expenses incurred by the City that are directly related to receiving and approving this Franchise pursuant to RCW 35.21.860, upon PSE’s acceptance of this Franchise in accordance with Section 26.

**24. Notice.**

24.1 Generally. All communications required or permitted by this Franchise (collectively, for purposes of this Section 24, a “Notice”) shall be in writing and directed to the recipient at the address set forth below, unless Notice of change of address is provided to the other Party. Any Notice given shall be delivered in person, via facsimile machine or other form of electronic delivery, sent by documented overnight delivery service or mailed by certified or registered mail, postage prepaid, to the appropriate Party at the addresses referenced below or the electronic email address, or to such other address as the Parties may hereinafter designate. Unless otherwise specified in this Franchise, a Notice shall be effective (and considered received for purposes of this Franchise) as follows: (a) if delivered by hand, upon delivery; (b) if by email, when acknowledged by the recipient as having been received; (c) if sent by documented overnight delivery service, on the date delivered; or (d) if mailed via certified or registered mail, three (3) days after depositing in the U.S. Mail. Effective notice to the City by any of the methods outlined above must include delivery of copies to both the City Public Works Department and to the City Attorney’s office.

To City:

City of Mount Vernon  
Attn: Public Works Director and City  
Attorney's Office  
910 Cleveland Avenue  
Mount Vernon, WA 98273  
Email: [mvengineering@mountvernon.gov](mailto:mvengineering@mountvernon.gov)

To PSE:

Puget Sound Energy, Inc.  
Municipal Relations  
P.O. Box 90734  
Bellevue, WA 98009-9734  
Attn: Municipal Liaison Manager  
Email: [Municipal.Relations@pse.com](mailto:Municipal.Relations@pse.com)

## **25. Miscellaneous.**

25.1 Entire Agreement. This Franchise constitutes the entire understanding and agreement between the Parties as to the subject matter within this Franchise and no other agreements or understandings, written or otherwise, pertaining to the subject matter of this Franchise shall be binding upon the Parties upon execution of this Franchise. 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.

25.2 Severability. If any term, provision, condition or portion of this Franchise shall be held to be invalid, such invalidity shall not affect the validity of the remaining portions of this Franchise, which shall continue in full force and effect. Upon a determination that any term, provision, condition or portion of this Franchise is invalid, 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 of the Parties under this Franchise are fulfilled to the greatest extent possible.

25.3 WUTC Tariffs. 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. If PSE makes an application for any changes in tariffs affecting the provisions of this Franchise, PSE shall notify the City in writing of said application and provide the City with access to a copy of the filing within ten (10) business days of filing with the WUTC. PSE shall thereafter provide the City with a copy of any approved tariff(s) affecting the provisions of this Franchise.

25.4 Amendments. 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 by the City Council and executed in accordance with the laws of the State of Washington. Without limiting the generality of the foregoing, this Franchise 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. If there is 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.

25.5 Governing Law; Venue. This Franchise shall be construed in accordance with the laws of the State of Washington. The United States District Court for the Western District of Washington and the Skagit County Superior Court have proper venue for any dispute related to this Franchise.

25.6 Publication. The cost of publication of this Franchise shall be borne by PSE.

25.7 No Waiver. The failure of either Party to insist upon or enforce strict performance of any of the provisions of this Franchise, or to exercise any rights under this Franchise, shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon any such provisions or rights in that or any other instance; rather, the same shall be and remain in full force and effect.

25.8 Attorneys' Fees. If a suit or other action is instituted in connection with any controversy arising out of this Franchise, each Party shall bear its own legal costs and attorney fees incurred in defending or bringing such claim or lawsuit, including all appeals, in addition to any other recovery or award provided by Law; provided, however, nothing in this Section 25.8 shall be construed to limit the City's right to indemnification under Section 15 of this Franchise.

25.9 Repeal. The Franchise between the City and PSE, as adopted by Ordinance Number 2236 (the "Prior Franchise"), is hereby superseded and replaced by this Franchise as of the Effective Date of this Franchise, and this Franchise, and all exhibits attached hereto shall constitute the entire Franchise between the Parties.

25.10 No Third-Party Beneficiary. Nothing in this Franchise shall be construed to create any rights in or duties to any third party, nor any liability to or standard 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.

25.11 Acknowledgement. PSE acknowledges, by its acceptance of this Franchise, in accordance with Section 26, that it has carefully read and fully comprehends the terms and conditions of this Franchise. The City acknowledges by granting this Franchise that it has carefully read and fully comprehends the grant of rights in this Franchise.

25.12 Survival. All of the provisions, conditions, and requirements of Section 7, "Relocation of Facilities", Section 10, "Restoration After Construction", Section 15, "Indemnification", and Section 21, "Decommissioned Facilities", of this Franchise, together with all other provisions of this Franchise which reasonably may be construed as surviving the

expiration or termination of this Franchise, shall survive the expiration or termination of this Franchise.

25.13 Force Majeure. If performance of this Franchise or of any obligation hereunder is prevented or substantially restricted or interfered with by reason of a Force Majeure Event, 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. A Force Majeure Event shall only extend 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. 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.

25.14 Disclaimer. In no event will either Party have any liability arising under this Franchise for indirect, special, consequential, or punitive damages or losses, including lost profits, loss of business, whether or not a Party has been advised of the possibility of such damage and notwithstanding the theory of liability in which an action may be brought. In no event will a Party have any liability under this Franchise for damages resulting from delays in connection with the relocation of Facilities pursuant to Section 7 unless: (a) the delay is caused by that Party or persons or entities acting on behalf of that Party; (b) that Party is notified by the other Party of the delay or the reasonable likelihood of the delay as soon as practicable; (c) the delay is on the critical path of the schedule for the applicable Facility relocation; and (d) the delay could not have been avoided or mitigated by the other Party or persons or entities acting on behalf of that Party. If there is a concurrent delay on the critical path of the schedule for the applicable Facility relocation that is attributable to both Parties, the liability for such delay will be proportionately allocated between the Parties based on the percent of impact caused by each Party.

**26. Acceptance.** This Franchise may be accepted by PSE by its filing with the City Clerk an unconditional written acceptance within sixty (60) days from the City's final approval and execution of this Franchise, in the form attached as Exhibit A. Failure of PSE to so accept this Franchise shall be deemed a rejection by PSE and the rights and privileges granted shall cease.

**27. Effective Date.** This Ordinance shall be effective on September 4, 2025, having been: (a) introduced to the Mt. Vernon City Council not less than five days before its passage; (b) first submitted to the City Attorney; (c) published at least five days prior to the date on which this Ordinance is effective and as otherwise required by Law; and (d) passed at a regular meeting of the legislative body of the City by a vote of at least five members of the Mt. Vernon City Council on August 27, 2025. This Franchise shall take effect as of the date of PSE's written acceptance thereof (the "Effective Date").

Signed and approved by the Mayor on the 28<sup>th</sup> day of August, 2025.

P. Donovan  
PETER DONOVAN, Mayor

ATTEST:

Becky Jensen  
Becky Jensen, City Clerk

APPROVED AS TO FORM:

Kevin Rogerson  
Kevin Rogerson, City Attorney

Date: 8-28-2025

Published August 30, 2025

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF SKAGIT )

I, Becky Jensen, the duly qualified City Clerk of the City of Mount Vernon a non-charter Code City, situated in the County of Skagit, State of Washington, do hereby certify that the foregoing is a full, true and correct copy of Ordinance No. 3917, an ordinance of the City of Mount Vernon, entitled:

ORDINANCE NO.3917

AN ORDINANCE granting Puget Sound Energy, Inc., a Washington corporation, its successors and assigns, the right, privilege, authority and franchise to set, erect, construct, support, attach, connect and stretch Facilities between, maintain, repair, replace, enlarge, operate and use Facilities in, upon, over, under, along, across and through the Franchise Area for purposes of transmission, distribution and sale of energy for power, light and any other purpose for which energy can be used; and to charge and collect tolls, rates and compensation for such energy and such uses.

I further certify that said Ordinance No. 3917 was: (i) introduced on the 13<sup>th</sup> day of August, 2025; (ii) submitted to the City Attorney on the 28th day of August, 2025; (iii) published on the 30<sup>th</sup> day of August, 2025, according to law; (iv) approved by a majority of the entire legislative body of the City of Mount Vernon, at a regular meeting thereof on the 27th day of August, 2025; and (v) approved and signed by the Mayor of the City of Mount Vernon on the 28<sup>th</sup> day of August, 2025.

WITNESS my hand and official seal of the City of Mount Vernon, this 28th day of August, 2025.



Becky Jensen, City Clerk

City of Mount Vernon, State of Washington



HONORABLE MAYOR AND CITY COUNCIL  
CITY OF MOUNT VERNON, WASHINGTON

In the matter of the application :  
of Puget Sound Energy, Inc., a : Franchise Ordinance No. 3917  
Washington corporation, for a :  
franchise to construct, operate :  
and maintain facilities in, upon, :  
over under, along, across and :  
through the franchise area of the : ACCEPTANCE  
City of Mount Vernon, :  
Washington :

WHEREAS, the City Council of the City of Mount Vernon, Washington, has granted a franchise to Puget Sound Energy, Inc., a Washington corporation, its successors and assigns, by enacting Ordinance No. 3917, bearing the date of August 27, 2025; and

WHEREAS, a copy of said Ordinance granting said franchise was received by the Puget Sound Energy, Inc. on August 28, 2025, from said City of Mount Vernon, Skagit County, Washington.

NOW, THEREFORE, Puget Sound Energy, Inc., a Washington corporation, for itself, its successors and assigns, hereby accepts said Ordinance and all the terms and conditions thereof, and files this, its written acceptance, with the City of Mount Vernon, Skagit County, Washington.

IN TESTIMONY WHEREOF said Puget Sound Energy, Inc. has caused this written Acceptance to be executed in its name by its undersigned \_\_\_\_\_ thereunto duly authorized on this \_\_\_\_ day of \_\_\_\_\_, 2025.

ATTEST: PUGET SOUND ENERGY, INC.

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

Copy received for the City of Mount Vernon, Washington  
on August \_\_, 2025

By: \_\_\_\_\_  
City Clerk