

After Recording Return To:

Asst. Clerk of the Council
Snohomish County Council
3000 Rockefeller, M/S 609
Everett, WA 98201

Grantor:	Snohomish County
Grantee:	Puget Sound Energy, Inc.
Tax Account No:	Not Assigned
Legal Description:	Unincorporated Snohomish County
Ref. # of Docs. Affected:	Recording Number 1984518
Document Title:	An Ordinance of Snohomish County Council Granting a Nonexclusive Franchise Authorizing Limited Use of Public Road Rights-of-Way in Snohomish County, Washington to Puget Sound Energy, Inc.

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

ORDINANCE NO. 22-074

GRANTING A NONEXCLUSIVE FRANCHISE AUTHORIZING LIMITED
USE OF THE PUBLIC ROAD RIGHTS-OF-WAY IN SNOHOMISH COUNTY,
WASHINGTON TO PUGET SOUND ENERGY, INC.

WHEREAS, Puget Sound Energy, Inc. has applied to Snohomish County, Washington, for a nonexclusive franchise to construct, maintain, operate, replace and repair natural gas systems in, on, across, over, along, under, and/or through public rights-of-way within unincorporated Snohomish County; and

WHEREAS, Puget Sound Energy, Inc., is a public service company engaged in the transmission, distribution and sale of natural gas subject to and in accordance with applicable rates and tariffs on file with the Washington Utilities and Transportation Commission; and

WHEREAS, the Washington State Constitution, by and through its general grant of police power, and Section 36.55.010 of the Revised Code of Washington authorize counties to grant franchises for use of public rights-of-way; and

WHEREAS, Section 9.20 of the Snohomish County Charter and Title 13 of the Snohomish County Code specify requirements for franchises in Snohomish County rights-of-way; and

WHEREAS, a franchise is a legislative authorization to use public rights-of-way, however, actual construction and activities in the rights-of-way will also be subject to approved right-of-way use permits after review of specific plans; and

WHEREAS, the Snohomish County Council considered the Engineer's Report of the Department of Public Works, attached to and incorporated into this ordinance by reference, which report recommends that the subject franchise be granted, and further sets out guidelines and expectations for the right-of-way use permit process; and

WHEREAS, the Snohomish County Council held a public hearing on February 8, 2023, to solicit comments from the public and to consider whether to grant the requested franchise to Puget Sound Energy, Inc.; and

WHEREAS, it has been found to be in the public interest that a franchise, authorizing use of public rights-of-way for natural gas systems be granted to Puget Sound Energy, Inc.

NOW, THEREFORE, BE IT ORDAINED:

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Section 1. Grant of Franchise.

1.1 Pursuant to Section 36.55.010 of the Revised Code of Washington (“RCW”), section 9.20 of the Snohomish County Charter and chapter 13.80 of the Snohomish County Code (“SCC”), Snohomish County, a political subdivision of the State of Washington (the “County”), hereby grants to Puget Sound Energy, Inc., a public service company, incorporated under the laws of the State of Washington, its successors and assigns (the “Grantee”), a non-exclusive franchise to use those portions of the County’s rights-of-way described in Section 1.3 below, for the purposes described in Section 1.2 below, subject to compliance with the terms and conditions contained in this franchise ordinance (“Franchise”) and with applicable provisions of the SCC and the County’s Engineering Design & Development Standards (“EDDS”) as required in Section 6, to the extent that such provisions of the SCC and the EDDS do not conflict with the terms and conditions contained in this Franchise.

1.2 This Franchise grants the Grantee the right, privilege and authority to use portions of the Public Rights-of-Way (as such term is defined below) of the County for the sole purposes of constructing, installing, locating, maintaining, using, operating, replacing, removing and repairing its natural gas transmission and distribution facilities (the “Permitted Use”) and for no other purpose or use whatsoever. The term “Public Rights-of-Way” as used in this Franchise shall mean all public streets, roads, ways, or alleys of the County as now or hereafter laid out, platted, dedicated or improved. Pursuant to this Franchise, the Grantee shall have the right to install, locate, construct, operate, maintain, use, replace and/or remove such equipment and facilities as may be reasonably necessary or convenient for the conduct of the Permitted Use 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 appertaining to any and all of the foregoing, whether the same be located over or underground (the “Grantee Facilities”), in, on, across, over, along, under or through the Public Rights-of-Way of the County, subject to all applicable provisions of this Franchise and applicable provisions of Title 13 SCC (including EDDS), Chapter 36.55 RCW as required in Section 6, and the terms and conditions of County right-of-way use permits issued pursuant to Title 13 SCC as required in Section 4 of this Franchise, to the extent that such provisions and such terms and conditions of such permits do not conflict with the terms and conditions contained in this Franchise. This Franchise merely authorizes the Grantee to occupy and use the Public Rights-of-Way, and does not transfer, convey or vest any easement, title, servitude, or other real property interest in or to any Public Rights-of-Way or portion thereof in or to the Grantee.

1.3 This Franchise covers all Public Rights-of-Way located within boundaries of unincorporated Snohomish County as now or hereafter laid out, platted, dedicated or improved. This Franchise shall not govern, or apply to, any activity of the Grantee occurring, or any Grantee Facilities located, outside of the Public Rights-of-Way, or any Grantee Facilities located on Grantee-owned or leased properties or easements, and such Grantee 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 County. In the event of a conflict between this Franchise and the specific terms of any existing real property interests and rights owned by the Grantee, such as a utility easement or other servitude, the terms of this Franchise shall be subject to the specific terms of the real property interests and rights owned by the Grantee unless and until those interests and rights are extinguished or amended by: (i) mutual agreement; (ii) condemnation; (iii) negotiated sale in-lieu of condemnation; or (iv) any other lawful means.

1.4 As used in this Franchise, the term “Decommissioned” means discontinued use of and decommissioned in place, as referenced in SCC 13.01.040(3) as of the Effective Date.

Section 2. Non-Exclusive Franchise.

2.1 This Franchise is granted upon the express condition and understanding that it shall be a non-exclusive franchise which shall not in any manner prevent or hinder the County from granting to other parties, at other times and under such terms and conditions as the County, in its sole discretion, may deem appropriate, other franchises or similar use rights in, on, to, across, over, upon, along, under or through any Public Rights-of-Way. Owners, whether public or private, of any authorized facilities or equipment installed in, on, across, over, along, under, and/or through a Public Rights-of-Way prior to the construction and/or installation of Grantee’s Facilities in the same location, shall have preference as to positioning and location of their facilities. Likewise, Grantee and any Grantee Facilities installed within the Public Rights-of-Way prior to the construction and/or installation of the facilities of any such other owners in the same location shall have preference as to positioning and location of the Grantee Facilities. The position and location of all Grantee’s Facilities in the Public Right-of-Way at the time of initial installation or any relocation pursuant to the terms of this Franchise shall be subject to the authority of the County Engineer.

2.2 This Franchise shall in no way prevent, inhibit or prohibit the County from using any of the Public Rights-of-Way covered or affected by this Franchise, nor shall this Franchise affect the County’s jurisdiction, authority or power over any of them, in whole or in part. The County expressly retains its power to make or perform any and all changes, relocations, repairs, maintenance, establishments, improvements, dedications, or vacations of or to any of the Public Rights-of-Way as the County may, in its sole and absolute discretion, deem fit, including the dedication, establishment, maintenance and/or improvement of new Public Rights-of-Way, thoroughfares and other public properties of every type and description; provided that, in doing so, the County does not harm or impair the contractual rights of the Grantee under this Franchise.

Section 3. Term; Early Termination.

3.1 The initial term of this Franchise shall be for a period of ten (10) years (the “Initial Term”), beginning on the Effective Date (as such term is defined in Section 34 of this Franchise) of this Franchise, and continuing until the date that is one day prior to the tenth (10th) anniversary of the Effective Date (the “Initial Term Expiration Date”), unless earlier terminated, revoked or modified pursuant to the provisions of this Franchise.

3.2 This Franchise shall automatically renew for an additional term of ten (10) years (the “Extended Term,” and, together with the Initial Term, the “Term”).

3.3 The County shall have the right, in its sole and absolute discretion, at any time after the Initial Term Expiration Date, to unilaterally elect to open negotiations with the Grantee regarding proposed amendments, alterations or other changes (collectively, the “Amendments”) to the terms and conditions of this Franchise. In such event, the County shall deliver written notice to the Grantee stating the County’s general desire to amend the terms and conditions of this Franchise. Within thirty (30) days after the date on which the Grantee receives the County’s notice letter, the Grantee and the County shall enter into good faith negotiations regarding potential Amendments to the terms and conditions of this Franchise. Should the parties reach agreement regarding any such Amendments, the parties shall memorialize such Amendments and seek approval of same. Such Amendments shall not become effective unless and until it is approved by County ordinance and accepted in writing by Grantee in accordance with applicable laws.

3.4 Other than the process established in Section 3.3 for Amendments and Section 30 for amendments related to Title VI (as defined below), this Franchise may be amended only upon the written consent of the County and the Grantee set forth in writing in the form of a County ordinance, signed by both parties and adopted by County Council, which states that it is an amendment to this Franchise and is approved and executed in accordance with the laws of the State of Washington.

Section 4. Regulation of Use; Permits Required.

4.1 All of Grantee’s work related to any of the Grantee Facilities occurring in, on, across, over, along, under, and/or through any Public Rights-of-Way covered by this Franchise, shall be performed in a safe and workmanlike manner, in such a way as to minimize unreasonable interference with the free flow of traffic and the use of adjacent property, whether such property is public or private.

4.2 The Grantee shall not commence any work within Public Rights-of-Way until a right-of-way use permit authorizing such work has been issued by the County pursuant to Title 13 SCC. In addition to any standards of performance imposed by this Franchise, any and all work performed by Grantee pursuant to this Franchise shall be performed in accordance with all current County standards applicable to such work, including the County approved plans and specifications for the work, and the terms and conditions of any right-of-way use permit and/or other permits and/or approvals required under Title 13 SCC in order to accomplish the work (e.g., lane closure or road detour permits) to the extent that such standards and such terms and conditions of such permits and other approvals do not conflict with the terms and conditions contained in this Franchise. Grantee understands and acknowledges that some or all of Grantee’s activities may require additional project permits and approvals under County land use codes and development regulations, and Grantee accepts full responsibility for obtaining and complying with same, to the extent that the requirements of any such permits and other approvals do not conflict with the terms and conditions contained in this Franchise.

4.3 To the extent provided by Title 13 SCC, the EDDS, and the County’s utility accommodation policies, and to the extent that such provisions of the SCC, the EDDS, and such utility accommodation policies do not conflict with the terms and conditions contained in this Franchise, in reviewing the Grantee’s application for any right-of-way use permit pursuant to this Franchise, the County Engineer may apply the following criteria in reviewing proposed utility routes and in the issuance, conditioning, or denial of such permit:

- (i) the capacity of the Public Rights-of-Way at issue to accommodate the proposed Grantee Facilities;
- (ii) the capacity of the Public Rights-of-Way at issue to accommodate additional utility, cable, telecommunications, or other public facilities if the right-of-way use permit is granted;
- (iii) the damage or disruption, if any, to public or private facilities, improvements, service, travel, or landscaping if the right-of-way use permit is granted;
- (iv) the public interest in minimizing the cost and disruption of construction within the Public Rights-of-Way at issue, including, but not limited to, coordination with future utility installation or County projects;
- (v) recent and/or proposed construction and/or improvements to the Public Rights-of-Way at issue;
- (vi) the availability of alternate routes, locations, and/or methods of construction or installation for the proposed Grantee Facilities, including, but not limited to, whether other routes are preferred; and
- (vii) whether the Grantee has received all requisite licenses, certificates, and authorizations from applicable federal, state, and local agencies with jurisdiction over the activities proposed by the Grantee.

4.4 Prior to commencing any work authorized by this Franchise in a critical area as defined by SCC 30.91C.340, the Grantee shall comply with all applicable requirements of the County’s critical areas regulations in chapters 30.62A, 30.62B, 30.62C and 30.65 SCC to the extent that such requirements of the SCC do not conflict with the terms and conditions contained in this Franchise, and shall obtain any and all required permits and approvals. The granting of this Franchise shall in no way relieve the Grantee from its responsibility for avoiding “take” of any threatened or endangered species as defined by the Endangered Species Act of 1973, 16 U.S.C. § 1531, et seq., as amended, in the performance of any work authorized by this Franchise and/or any right-of-way use permits.

Section 5. Emergency Work.

Should any of the Grantee Facilities in the Public Rights-of-Way break or become damaged such that an immediate danger to the property, life, health or safety of any individual is presented, or should any site upon which the Grantee is engaged in construction or maintenance activities pursuant to this Franchise for any reason be in such a condition that an immediate danger to the

property, life, health or safety of any individual is presented, the Grantee shall immediately, upon receiving notice thereof from the County or any third party, take such measures as are reasonably necessary to repair the Grantee Facilities at issue or to remedy the dangerous conditions on the site at issue so as to protect the property, life, health or safety of individuals. In the event of an emergency described above, the Grantee may take corrective action immediately, without first applying for or obtaining any permits or other authorizations that might otherwise have been required by the SCC and/or this Franchise. However, the emergency provisions contained in this Section 5 shall not relieve the Grantee from its obligation to obtain any permits necessary for the corrective actions taken, and the Grantee shall apply for all such permits as soon as is reasonably possible after the occurrence of the emergency. In the event of any emergency described in this Section 5, the Grantee shall notify the County of the emergency as soon as may be reasonably feasible after the Grantee discovers the emergency (such notice may be telephonic).

Section 6. Compliance with Applicable Laws; Performance Standards.

6.1 The Grantee shall at all times during the Term of this Franchise undertake the Permitted Use in compliance with all federal, state and local laws, rules and regulations (including, but not limited to, the County's comprehensive plan, zoning code, and other development regulations) that are applicable to any and all work or other activities performed by Grantee pursuant to or under authority of this Franchise as currently existing or from time to time amended; PROVIDED, in the event of a direct conflict between any such provisions and specific terms of this Franchise, the express terms and conditions of this Franchise shall govern.

6.2 When performing work within the Public Rights-of-Way related to any of the Grantee Facilities subject to this Franchise, Grantee shall use industry accepted best-practices to ensure that, to the extent reasonably feasible, such work does not impede: (i) public use of the Public Rights-of-Way at issue for vehicular and pedestrian transportation; (ii) construction and/or maintenance within Public Rights-of-Way of facilities, equipment or improvements of the County and other authorized facilities, equipment and improvements; (iii) the operation, maintenance or improvement by the County of the Public Rights-of-Way or other public property impacted by Grantee's work; or (iv) use of the Public Rights-of-Way for other governmental purposes.

6.3 During any periods of construction within Public Rights-of-Way, the Grantee shall at all times post and maintain proper barricades and comply with all applicable safety regulations as required by the SCC, the EDDS, or the laws of the State of Washington.

6.4 Before the Grantee commences any work under this Franchise which may affect any existing monuments or markers of any nature relating to subdivisions, plats, roads, or other surveys, Grantee shall reference all such monuments and markers using a method or methods approved by the County Engineer, and a complete set of reference notes for monument and other ties shall be filed with the County prior to the commencement of construction. Reference points shall be so located that they will not be disturbed during Grantee's operations. The replacement of all such monuments or markers disturbed during construction shall be made as expeditiously as conditions permit, as directed by the County Engineer, and to federal, state and local standards. All costs incurred pursuant to this Section 6.4 shall be borne by Grantee.

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6.5 If the Grantee shall at any time plan to make excavations in any Public Rights-of-Way covered by the Franchise, the Grantee shall, upon receipt of a written request to do so, provide an opportunity for the County and/or any other grantees or authorized users of the Public Rights-of-Way at issue to participate in such excavation, and shall coordinate the location and installation of its Grantee Facilities with the County or such other grantees or authorized entities, PROVIDED THAT, Grantee need not permit the County or any other party(ies) to participate in an excavation if:

- (i) such joint use would unreasonably delay the performance of Grantee's work;
- (ii) despite good-faith efforts, the parties involved are unable to agree upon reasonable terms and conditions for accomplishing such joint use; or
- (iii) valid safety reasons exist for denying a request for such joint use.

6.6 If the Grantee shall at any time plan to include communication facilities as part of the Grantee Facilities installed and operated within the Public Rights-of-Way in furtherance of the Permitted Use, the Grantee shall provide an opportunity for the County to enter into negotiations for shared use of such communication facilities, and shall coordinate negotiation of shared use of its communication facilities with the County; PROVIDED THAT, Grantee need not permit the County to enter into negotiations for such shared use of communication facilities if:

- (i) such shared use would unreasonably delay the performance of Grantee's work;
- (ii) despite good-faith efforts, the parties involved are unable to agree upon reasonable terms and conditions, including but not limited to allocation of costs amongst various parties, for accomplishing such shared use;
- (iii) valid safety reasons exist for denying a request for such shared use and/or the proposed facilities of the County are in conflict with the best practices employed by the Grantee; or
- (iv) the installation of communication facilities is for the purpose of an emergency action to protect the property, life, health or safety of individuals.

Section 7. Restoration of Public Rights-of-Way.

Promptly after completing any work in, on, under, over, across or upon any Public Rights-of-Way, including, but not limited to any excavation, installation, construction, relocation, maintenance, repair or removal of any Grantee Facilities, Grantee shall, at Grantee's sole cost and expense, restore the Public Rights-of-Way and any adjacent affected areas in accordance with any and all restoration conditions contained in the EDDS and applicable permits and approvals. This restoration shall not require the Grantee to widen the affected road cross section. The County Engineer shall have final authority to determine in each instance of restoration, whether the required restoration has been performed.

Section 8. Record Plans, Record Drawings, and Records of Grantee Facility Locations.

8.1 The Grantee agrees and covenants that it shall, at the request of the County, promptly upon substantial completion of any construction project undertaken by the Grantee within a Public Right-of-Way, provide to the County, at no cost to the County, a copy of Grantee's available plans, maps and records showing the approximate final locations and conditions of the Grantee Facilities located within such Public Right-of-Way. Additionally, the County may, at any time, deliver a written request to the Grantee for copies of available maps and records showing the approximate location of any portion of the Grantee Facilities; provided that such request is limited to Grantee Facilities at a specific location within the Public Rights-of -Way. In such event, the Grantee shall provide the County, at no cost to the County, with copies of the requested record plans, record drawings and other records (to the extent then available to Grantee and reasonable for disclosure) within a reasonable time after receiving the County's request for same. As to such record plans, record drawings, and other records so provided, the Grantee does not warrant the accuracy of the final locations and conditions shown and, to the extent the location of Grantee Facilities are shown, such Grantee Facilities are shown in their approximate location. With respect to any excavations within Public Rights-of-Way undertaken by or on behalf of Grantee or the County, nothing herein is intended (nor should be construed) to relieve either party of their respective obligations arising under Chapter 19.122 RCW and other applicable law with respect to determining the location of utility facilities. In addition to the maps and records of the Grantee Facilities at specific locations within the Public Rights-of-Way, the Grantee shall make available to the County, upon the County's reasonable request, with copies of records of construction, maintenance, or operation (to the extent available and appropriate for public disclosure) for all Grantee Facilities subject to this Franchise as may be deemed necessary by the County, in its sole discretion, to manage the county roads, Public Rights-of-Way, or other property, or to protect the public health, safety, and welfare. Notwithstanding anything in this Franchise to the contrary, Grantee shall have no obligation to disclose any records, documents, or other information, in Grantee's reasonable discretion, that is (i) financial, commercial, or proprietary in nature, or (ii) critical energy infrastructure information as regulated under the Federal Power Act, 16 U.S.C. § 791, *et seq.*

8.2 If the Grantee considers any portion of its records provided to the County, whether in electronic or hard copy form, to be protected from disclosure under law, the Grantee shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Public Records Act (the "Act"), Chapter 42.56 RCW, to inspect or copy the information so identified by the Grantee and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligations shall be to notify the Grantee (i) of the request and (ii) of the date that such information will be released to the requester unless the Grantee obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Grantee fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified. The County has, and by this section assumes, no obligation on behalf of the Grantee to claim any exemption from disclosure under the Act. The County shall not be liable to the Grantee for releasing records not clearly identified by the Grantee as confidential or proprietary. The County shall not be liable to the Grantee for any

records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

Section 9. Relocation of Grantee Facilities.

9.1 The Grantee agrees and covenants that it will promptly, at no cost or expense to the County, protect, support, temporarily disconnect, relocate, or remove from the Public Rights of Way any Grantee Facilities necessary to accommodate improvements to the Public Rights-of-Way undertaken by or on behalf of the County that is funded by the County, either directly with its own funds or with other public monies obtained by the County, related to: (i) traffic conditions; (ii) public safety; (iii) dedications of new Public Rights-of-Way and the establishment and/or improvement thereof; (iv) widening and/or improvement of existing Public Rights-of-Way; (v) vacations of Public Rights-of-Way; (vi) freeway construction; (vii) change or establishment of road grade; (viii) any maintenance and/or repair of County infrastructure; or (iv) the construction of any project identified in the County's Transportation Improvement Program (TIP) or Capital Improvement Program (CIP). The County will not require the Grantee to relocate at Grantee expense Grantee Facilities or structures more than one time, at the same location, and for the same County project, as long as relocation was completed per the approved plans. A temporary relocation as described is not considered a one-time relocation under this provision. If the County requires a subsequent relocation of the same Grantee's Facilities at the same location, for the same project within five (5) years from the date of relocation of such Facilities pursuant to this Section 9, the County shall bear the entire cost of such subsequent relocation.

9.2 To assist with determining whether a relocation is required under Section 9.1 above, the Grantee agrees to locate and, if reasonably determined to be necessary by the County, excavate and expose at its expense portions of Grantee Facilities for inspection allowing the location to be considered during a project's planning, design, and construction, provided that nothing herein is intended, nor shall be construed, to relieve either party of their respective obligations arising under applicable law with respect to determining the location of utility facilities.

9.3 Whenever the County permits a third-party to use the Public Rights-of-Way in a manner that requires the relocation of any Grantee Facilities, the County shall not be responsible for paying any costs related to such relocation. Grantee shall have the right as a condition of such relocation, to require such third-party to make payment to Grantee, at a time and upon terms acceptable to Grantee, for any and all reasonable costs and expenses incurred by the Grantee in connection with such relocation.

9.4 Upon the Grantee's request, the County shall provide the Grantee with electronic copies of the most recently adopted Capital Improvement Program (CIP) and Transportation Improvement Program (TIP) together with any referenced supporting documentation to assist Grantee in anticipating relocations of Grantee Facilities needed to accommodate a County project. Also, upon Grantee's request, the County will provide appropriate staff to meet with Grantee, at a mutually agreed time in a location determined by the County, to discuss these particular projects as identified in the provided planning documents.

9.5 If the relocation of Grantee's Facilities is required under Section 9.1, the parties shall proceed as follows:

- (i) The parties will cooperate and coordinate in connection with the proposed relocation and shall use commercially reasonable efforts to avoid the necessity for or mitigate any relocation work proposed to be performed in connection with the work, including, without limitation, in the manner set forth in Section 9.6, below.
- (ii) The County shall provide the Grantee written notice of the reason for relocation within a reasonable period of time (but not less than one hundred (100) days) prior to beginning construction or implementation of work for any reason identified under Section 9.1. Upon Grantee's request, the County Engineer will consider allowing a time extension for Grantee to accomplish relocation work, based on circumstances pertaining to the commercial feasibility of completing the relocation work within such time period. Under the following circumstances the County need only provide the Grantee with written notice as soon as may be reasonably practicable: (a) in the event of an emergency posing a threat to public safety, health or welfare; (b) in the event of an emergency beyond the control of the County and which will result in adverse financial consequences to the County; or (c) where the need to relocate the Grantee Facilities could not reasonably have been anticipated by the County. In the event that notice is provided by the County to the Grantee under any of the foregoing exceptional circumstances, Grantee will relocate Grantee Facilities as soon as reasonably practicable under such exceptional circumstances.
- (iii) The County shall provide the Grantee with copies of pertinent portions of the designs and specifications for the work for which relocation is necessary, as well as a proposed new location for the Grantee Facilities within a reasonable period of time (but not less than one hundred (100) days) prior to beginning construction or implementation of work for any reason identified under Section 9.1. The designs and specifications provided by the County must include sufficient design detail to allow Grantee to analyze and reasonably discharge its obligations hereunder. In the case of a County project, the County shall provide at least thirty-percent (30%), sixty-percent (60%) or ninety-percent (90%) design plans if such plans are available. The County and the Grantee shall, upon the request of either party, meet to discuss the plans, specifications and schedule of the work at issue at a mutually agreed time in a location determined by the County.
- (iv) Subject to Section 9.6 below, and except as otherwise provided by this Section 9, after receipt of such notice and such plans and specifications, the Grantee shall complete relocation of the Grantee's Facilities within the Public Rights-of-Way at least ten (10) days prior to beginning construction or implementation of work for any reason identified under Section 9.1 at no charge, cost or expense to the County, unless otherwise agreed to within a separate agreement executed by both Parties. Relocation shall be accomplished in such a manner as to accommodate the work for which relocation is necessary.

- (v) The County and the Grantee may (but neither shall be obligated to) enter into an agreement for the reasonable costs incurred by the County in performing such relocation work at the Grantee's request.

9.6 The Grantee may, after receipt of written notice requesting a relocation of any Grantee Facilities in accordance with Section 9.5, submit to the County proposed written alternatives to such relocation. The County shall evaluate such alternatives and advise the Grantee in writing, if one or more of the alternatives are suitable to accommodate the work. If so requested by the County, the Grantee shall submit additional information to assist the County in making such evaluation. The County Engineer shall give each alternative proposed by the Grantee full and fair consideration. In the event the County ultimately determines that there is no reasonable or feasible alternative to relocation, the Grantee shall relocate the Grantee Facilities at issue as otherwise provided in this Section 9.

9.7 Upon the request of the Grantee, the County and Grantee may enter into an agreement whereby the County agrees to incur additional costs in performing any maintenance, operation, or improvement of or to public facilities due to measures taken by the County to avoid damaging or to otherwise accommodate one or more Grantee Facilities, PROVIDED, the Grantee shall reimburse the County for the full amount of such additional costs promptly upon receiving the County's invoice for same.

9.8 Should relocation be required under Section 9.1, Grantee shall coordinate with the County or the County's third-party contractor(s) and relocate the Grantee Facilities at issue according to the relocation timelines established in the Franchise or otherwise agreed to under Section 9.5. If Grantee fails to meet those relocation timelines, Grantee shall reimburse the County for any and all reasonable costs incurred by the County resulting from Grantee's delay, actual expenses incurred by the County resulting from Grantee's delay, and/or damages paid after an award by a tribunal by the County to a County third-party contractor, resulting from the Grantee's delay, but only if, as and to the extent the delay is caused by Grantee; PROVIDED, the County first notifies Grantee in writing of any claim by the contractor and provides Grantee the opportunity to work with the third-party contractor and the County to resolve the claim for a reasonable period (not less than forty-five (45) days) prior to the County's payment of the claim. Grantee shall not be liable for any cost, expense and/or damage for a delay claim to the extent the delay is caused by: (i) the County; (ii) the Grantee's documented inability to obtain materials in a timely manner when notification of such condition has been provided to the County; (iii) a third party; (iv) the Grantee's inability to provide system balancing where the Grantee notifies the County of conflicts in system balancing for a County project at thirty percent (30%) plans and subsequent reviews; or (v) any Force Majeure event.

9.9 This Section 9 is in all respects subject to the limitations, qualifications and other requirements set forth in Section 1.3, and nothing herein shall require the Grantee to bear any cost

or expense in connection with the location or relocation of any Grantee Facilities then-existing pursuant to easement or other rights not derived from this Franchise.

Section 10. Intentionally Omitted.

Section 11. Maintenance of Grantee Facilities.

11.1 The Grantee shall maintain all Grantee Facilities subject to the rules, regulations and applicable tariffs on file with Washington Utilities and Transportation Commission and in accordance with industry accepted best practices.

11.2 The Grantee shall take necessary steps to maintain a reasonably clear area around all Grantee Facilities installed above ground within Public Rights-of-Way. If the Grantee intends to use chemical sprays within the Public Rights-of-Way to control or kill weeds and brush, the County must grant prior approval at least annually. The County may limit or restrict the types, amounts, and timing of applications of chemical sprays within the Public Rights-of-Way if a significant negative impact on the aesthetics of the area is anticipated, provided such limitations or restrictions are not in conflict with State law or prudent utility practices governing utility right-of-way maintenance.

Section 12. Hazardous Materials.

12.1 The County understands and agrees that the Permitted Use contemplated by the Grantee may involve the use by Grantee of certain chemicals and/or materials within the Public Rights-of-Way that, under one or more applicable federal, state or local laws, rules, regulations or ordinances (collectively, the “Hazardous Materials Laws”), are classified as hazardous or otherwise harmful to life, health and/or safety (any such chemical or material, a “Hazardous Material”). The Grantee shall be permitted to use such Hazardous Materials within the Public Rights-of-Way as are reasonably necessary for the Grantee’s conduct of the Permitted Use and which are customary for the industry in which the Grantee is engaged; PROVIDED, however, that the Grantee’s use of any such Hazardous Materials within the Public Rights-of-Way shall at all times be undertaken in full compliance with all Hazardous Materials Laws, including any orders or instructions issued by any authorized regulatory agencies.

12.2 The Grantee covenants and agrees that it will not cause, in any manner, the release, seepage or spill of any Hazardous Material upon, into, under, over, across or through any Public Rights-of-Way or property adjacent thereto, whether public or private, in violation of any applicable Hazardous Materials Law. Any such release, seepage or spill of any Hazardous Material within the Public Rights-of-Way that is in violation of any applicable Hazardous Materials Law and is caused by Grantee or its directors, officers, agents, employees or contractors, is, referred to as “Release.”

12.3 Should a Release occur, the Grantee shall immediately upon receiving notice thereof provide written notice of the Release to the County and if required by Hazardous Materials Laws, to the Washington State Department of Ecology. The Grantee agrees it shall indemnify, defend

and hold the County, its elected and appointed officials, employees, and agents (collectively, the “County Parties”) harmless from and against any and all claims, lawsuits, actions, judgments, awards, penalties, fines and other damages (including, but not limited to, reasonable attorneys’ fees and costs) incurred or suffered by any of the County Parties on account of a Release, to the extent the Release is caused by any act or omission of Grantee or its directors, officers, agents, employees or, contractors (collectively, the “Grantee Parties”) within Public Rights-of-Way or property adjacent thereto, whether public or private. Grantee shall be responsible, at its sole cost and expense, for completely cleaning up and remediating, as required by any governmental agency having jurisdiction, any Release caused by any Grantee Party within Public Rights-of-Way or property adjacent thereto, whether public or private. Notwithstanding the Grantee’s obligation to completely remediate same, in the event of any Release by a Grantee Party, the County may (but need not), in the interest of protecting the health, safety, welfare and property of the public, immediately take whatever reasonable actions it deems necessary or advisable, in its sole discretion, to contain, clean up or remediate the Release at issue, provided the County shall not perform work on any of Grantee’s Facilities. Should the County choose to take any actions pursuant to the preceding sentence, the County shall be entitled to repayment from the Grantee of any and all reasonable costs and expenses incurred by the County in performing such actions.

12.4 Should the Grantee cause a Release as described in Section 12.3 above, failure to promptly comply with all orders or instructions lawfully issued by any authorized regulatory agencies regarding clean-up and remediation shall constitute a material breach of this Franchise, and the County Council may terminate or suspend this Franchise in accordance with Section 23.

Section 13. Dangerous Conditions, Authority for County to Abate.

13.1 Whenever the Grantee’s excavation, construction, installation, relocation, maintenance, repair, decommissioning, or removal of Grantee Facilities has caused or contributed to a condition that, in the reasonable opinion of the County Engineer, substantially impairs the lateral support of the adjoining road or public or private property, or endangers the public, an adjoining public place, road facilities, County property or private property, the County Engineer may direct the Grantee to remedy the condition or danger to the satisfaction of the County Engineer, within a specified period of time and at the Grantee’s sole cost and expense.

13.2 In the event that the Grantee fails or refuses to promptly take the actions directed by the County Engineer, or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, in accordance with Section 13.1 above, the County may enter upon the property and take such actions as are reasonably necessary to protect the public, the adjacent roads, or road facilities, or to maintain the lateral support thereof, or actions necessary to ensure the public safety, and the Grantee shall be liable to the County for all reasonable costs and expenses incurred by the County in performing such actions; provided, however, in no event shall the County have any work performed on or relating to any Grantee Facilities that are part of the Grantee’s natural gas transmission or distribution system by any person or entity other than the Grantee.

Section 14. Decommissioning and Removal of Grantee Facilities.

14.1 In no event may all or any portion of any Grantee Facility located in, on, under, over, across or through the Public Rights-of-Way be temporarily or permanently decommissioned in place by the Grantee without the express written consent of the County Engineer. Should the Grantee desire to temporarily or permanently decommission in place all or any portion of the Grantee Facilities, the Grantee shall request the County's permission to do so by delivering a written request to the County. The Grantee's request shall specify which Grantee Facilities the Grantee desires to temporarily or permanently decommission in place. The County shall give the Grantee's request full and fair consideration taking into account, among other things, the effort and cost required to remove the Grantee Facilities, the scope of the excavation and restoration work required to complete the removal, opportunities in the future to more efficiently complete the removal as part of a subsequent project within the Public Rights-of-Way at the location of the Grantee Facilities proposed to be decommissioned in place, and, to the extent appropriate, specific utility abandonment guidelines of the County. Within a reasonable time after the date on which the County receives the Grantee's written request, the County Engineer shall deliver a written response to the Grantee setting forth the County's decision, which shall be made in the County's sole and absolute discretion. If the County denies the Grantee's request with respect to all or any portion of the Grantee Facilities at issue, then the Grantee must promptly proceed to remove those Grantee Facilities for which the Grantee's request for temporary or permanent decommissioning in place has been denied.

14.2 If the County grants its approval to the Grantee's request for temporarily or permanently decommissioning in place any Grantee Facilities, either in whole or in part, the County may impose conditions on such approval. The Grantee shall, at no cost to the County (either directly or through its agents), as directed by the County, purge the Grantee Facilities that will be temporarily or permanently decommissioned in place of any product, Hazardous Material and/or other substance so as to render such Grantee Facilities inert and safe in accordance with applicable law and applicable industry standards. The County's consent to such action by the Grantee shall not relieve the Grantee of the obligation and/or costs to remove or to alter such Facilities in the future in the event it is reasonably determined by the County that removal or alteration is necessary or advisable for the health and safety of the public, in which case the Grantee shall perform such work at no cost to the County. Any Grantee Facilities that are temporarily or permanently decommissioned in place pursuant to this Section 14 shall continue to be subject to this Franchise. This paragraph shall survive the expiration, revocation or termination of this Franchise.

14.3 Should the Grantee fail to comply with the requirements of Section 14.1 within a reasonable time after the County's denial of the Grantee's request for permission to temporarily or permanently decommission in place all or any portion of the Grantee Facilities, the Grantee shall be deemed to have permanently decommissioned in place the Grantee Facilities without authorization. The County may require Grantee to remove any unauthorized decommissioned Facilities at Grantee's sole cost and expense and to restore the Public Rights-of-Way following such removal pursuant to Section 7. For improvement projects to the Public Rights-of-Way that are addressed in Section 9.1 and other projects on which the County and Grantee are coordinating,

(i) the parties may agree that the County can perform such removal and restoration activities required by this Section 14.3 on Grantee's behalf; and (ii) if the parties agree that the County shall perform any such removal and restoration activities under subsection (i), the County shall perform such removal and restoration activities as agreed upon by the parties and in accordance with applicable laws, and Grantee shall reimburse the County for that portion of the reasonable costs and expenses incurred by the County in performing such removal and restoration activities and for which Grantee would have been responsible under this Franchise had Grantee performed such removal and restoration activities instead of the County.

Section 15. Fees, Compensation for Use of Public Rights-of-Way and Taxes.

15.1 The Grantee shall be subject to all permit fees allowed by law associated with activities undertaken within Public Rights-of-Way through the authority granted to the Grantee by this Franchise or under applicable provisions of the SCC.

15.2 Grantee shall pay itemized costs and expenses incurred by the County in the examination and report of the proposed franchise under SCC 13.80.030(4) and any other applicable fees required under chapter 13.110 SCC, as such SCC sections are enacted as of the Effective Date (collectively and as applicable, the "Administrative Fees"); except that, with respect to permits that are not Type E3U permits or other similar permits specifically applicable to utility franchises, Grantee shall pay all applicable permit fees identified in the fee schedule set forth in SCC 13.110.020 as such fee schedule is enacted at the time of the applicable permit application. If the County imposes any fees on Grantee in connection with this Franchise other than the Administrative Fees after the Effective Date, including any type of franchise fee, such action will be deemed to be a proposed amendment to this Franchise, and Grantee will not be obligated to pay any such fees until the amounts of such fees are agreed upon by the parties in writing pursuant to Section 3.4.

15.3 In addition, the Grantee shall promptly reimburse the County for any and all documented costs the County reasonably and necessarily incurs as a result of the Grantee's failure or refusal to promptly take appropriate actions that remedy the condition or danger within the time period specified by the County Engineer in response to an emergency or dangerous condition involving any Grantee Facilities. Such costs and expenses shall include, but not be limited to, the Grantee's proportionate share of the costs of County personnel assigned to review construction plans or to oversee or engage in any work in the Public Rights-of-Way as a result of the Grantee's failure or refusal to promptly take appropriate actions in response to the emergency or dangerous condition as a result of the emergency and the presence of the Grantee Facilities within the Public Rights-of-Way. Any and all such costs will be billed on an actual cost basis. The billing may be on an annual basis, but the County shall provide the Grantee with the County's itemization of costs at the conclusion of each project for informational purposes. If a third party caused the damages which resulted in the emergency as described in this section, it is the Grantees responsibility to obtain compensation from them.

Section 16. Hold Harmless and Indemnification.

16.1 Grantee agrees to indemnify, defend, and hold harmless any County Party (as such term is defined in Section 12 above) from any and all third party claims, demands, liability, suits, and judgments, including costs of defense thereof, for bodily injury to persons, death, or property damage to the extent the same is caused by the negligence or willful misconduct of any of the Grantee Parties (as such term is defined in Section 12 above) in the Grantee's use of the Public Rights-of-Way pursuant to this Franchise. In the event of liability for damages arising out of bodily injury to persons, death or property damage caused by or resulting from the concurrent negligence or willful misconduct of any County Party, Grantee's liability hereunder shall be only to the extent of Grantee's negligence or willful misconduct.

16.2 In the event that the County and Grantee dispute the tender of defense of any claim covered by the indemnification obligation in this Section 16 and the parties incur attorneys' fees, legal expenses, or other costs (whether those fees, expenses, or other costs are associated with in-house representation or by outside counsel), or judgments under this Section 16, all such fees, expenses, costs, and judgments shall be recoverable by the substantially prevailing party from the other party.

16.3 It is specifically and expressly understood that, solely to the extent required to enforce the indemnification, defense and hold harmless obligations contained in this Section 16, Grantee waives its immunity under RCW Title 51; provided, however, the foregoing waiver shall not in any way preclude Grantee from raising such immunity as a defense against any claim brought against Grantee by any of its employees. This waiver has been mutually negotiated by the parties.

16.4 The County shall give Grantee timely written notice of the matter of any claim or of the commencement of any such action, suit or other proceeding covered by the indemnification, defense and hold harmless obligations contained in this Section 16. In the event any such claim arises, the County or any other indemnified party shall tender the defense thereof to Grantee and Grantee shall have the right and duty to defend, settle or compromise any claims arising hereunder and the County shall cooperate fully therein.

16.5 The County's permitting approval, inspection, lack of inspection, or acceptance of any work performed by the Grantee Parties in connection with work authorized on Grantee Facilities, pursuant to this Franchise or pursuant to any other permit or approval issued in connection with this Franchise, shall not be grounds for avoidance of any of the indemnification, defense and hold harmless obligations contained in this Section 16, except as otherwise provided in Section 16.1 with respect to the concurrent negligence or willful misconduct of any County Parties.

16.6 The indemnification, defense and save harmless obligations contained in this Section 16 shall survive the expiration, abandonment or termination of this Franchise.

Section 17. Limitation of County Liability.

The County’s administration of this Franchise shall not be construed to create the basis for any liability on the part of the County Parties, except for and only to the extent of the negligence or willful misconduct of any County Parties.

Section 18. Insurance.

18.1 Insurance Requirements

A. Insurance Required

Grantee shall procure and maintain for the duration of this Franchise, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of work hereunder by the Grantee, its agents, representatives, employees and/or contractors /subcontractors. The Grantee or contractor/subcontractor shall pay the costs of such insurance.

The Grantee is responsible for ensuring compliance with all of the insurance requirements stated herein. Failure by the Grantee, its agents, employees, officers, contractor/subcontractors to comply with the insurance requirements stated herein shall constitute a material breach of this Franchise.

The County acknowledges that, as of the effective date of this Franchise, Grantee’s insurance policies are on a “claims made” form. If coverage is approved and purchased on a “claims made” basis, the Grantee warrants 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 date of Franchise termination, and/or conversion from a “claims made” form to an “occurrence” coverage form.

The Grantee’s maintenance of insurance as required by this Franchise shall not be construed to limit the liability of the Grantee to the coverage provided by such insurance, or otherwise limit the County’s recourse to any remedy available at law or in equity. Nothing contained in this provision shall affect and/or alter the application of any other provision contained within this Franchise.

B. Risk Assessment by Grantee

By requiring such minimum insurance, the County shall not be deemed or construed to have assessed the risks that may be applicable to the Grantee under this Franchise, nor shall such minimum limits be construed to limit the limits available under any insurance coverage obtained by the Grantee. The Grantee shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

C. Minimum Scope and limits of Insurance. Coverage shall be at least as broad as and with limits not less than the following:

(i) General Liability

Insurance Services Office form number (CG 00 01) covering COMMERCIAL GENERAL LIABILITY including XCU coverage: \$2,000,000 combined single limit per occurrence by bodily injury, personal injury, and property damage; and for those policies with aggregate limits, a \$2,000,000 aggregate limit.

(ii) Automobile Liability

Insurance Services Office form number (CA 00 01) covering COMMERCIAL AUTO COVERAGE, symbol 1 “any auto”; or the appropriate coverage provided by symbols 2, 7, 8, or 9: \$1,000,000 combined single limit per accident for bodily injury and property damage if the use of motor vehicles is contemplated.

(iii) Workers’ Compensation

Workers’ Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable federal or “Other States” state law: Statutory requirements of the state of residency.

(iv) Stop Gap/Employers Liability

Coverage shall be at least as broad as the indemnification, protection provided by the Workers’ Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the “Stop Gap” endorsement to the general liability policy: \$1,000,000.

(v) Excess or Umbrella Liability

Coverage shall be written with limits of not less than \$5,000,000 per occurrence and annual aggregate. The Excess or Umbrella Liability limits shall extend above Grantee’s Commercial General Liability, Automobile Liability and Employer’s Liability insurance limits outlined herein.

D. Minimum Limits of Insurance - Construction Period

Prior to Grantee’s commencement of construction within the Public Rights-of-Way and until such construction is complete and approved by the Grantee and the County, the Grantee shall require its construction contractor and related professionals (if any) to

procure and maintain insurance against claims for injuries to persons or damages to property which may arise from, or in connection with the activities related to this Franchise. The cost of such insurance shall be paid by the Grantee and/or any of the Grantee's contractor/subcontractors. The Grantee shall endeavor to require its construction contractor and related professionals (if any) to maintain limits no less than the following:

- (i) Commercial General Liability: \$5,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage and \$5,000,000 in the aggregate.
- (ii) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
- (iii) Workers Compensation: Statutory requirements of the state of residency.
- (iv) Stop Gap or Employers Liability Coverage: \$1,000,000.

E. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by, the County. The deductible and/or self-insured retention of the policies shall not apply to the Grantee's liability to the County and shall be the sole responsibility of the Grantee.

F. Other Insurance Provisions

The insurance policies required of the Grantee in this Franchise are to contain, or be endorsed to contain, the following provisions:

- (i) All Liability Policies except Professional and Workers Compensation.
 - a. The County, its officers, officials, employees, and agents are to be covered as additional insured as respects liability arising out of activities performed by or on behalf of the Grantee in connection with this Franchise to the extent of the limits required herein. Such coverage shall include Products-Completed Operations.
 - b. To the extent of the Grantee's negligence, the Grantee's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, and agents. Any insurance and/or self-insurance maintained by the County, its officers, officials, employees, or agents shall not contribute with the Grantee's insurance or benefit the Grantee in any way.
 - c. The Grantee's insurance shall apply separately to each insured against whom claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

(ii) All Policies

Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, except by the reduction of the applicable aggregate limit by claims paid, until after 30 days prior written notice has been given to the County. In the event of said cancellation or intent not to renew, the Grantee shall obtain and furnish to the County evidence of replacement insurance policies meeting the requirements of this Section by the cancellation date. Failure to provide proof of insurance could result in suspension of this Franchise.

G. Acceptability of Insurers

Unless otherwise approved by the County, insurance is to be placed with insurers with a Bests' rating of no less than A-VII, or, if not rated with Bests, with minimum surpluses the equivalent of Bests' surplus size VIII.

If, at any time, the foregoing policies shall fail to meet the above requirements, the Grantee shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with appropriate certificates, for approval.

H. Verification of Coverage

The Grantee shall furnish the County with confirmation of self-insurance or certificates of insurance required by this Franchise prior to commencement of any work under the Franchise. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates for each insurance policy are to be on forms approved by the County prior to the commencement of activities associated with this Franchise. The County reserves the right to require complete, certified copies of all required insurance policies related to a casualty incident.

I. Subcontractors

The Grantee shall require certificates of insurance from each subcontractor. If the Grantee is relying on the insurance coverage provided by subcontractors, then such coverage requirements and documentation shall be subject to all of the requirements stated herein.

J. Insurance Review

In consideration of the duration of this Franchise, the parties agree that the Insurance section herein, at the discretion of the County Risk Manager, may be reviewed with Grantee and adjusted with each amendment and within ninety (90) days of the end of the first ten (10) year period of the term of this Franchise and the end of each successive ten (10) year period thereafter. Any adjustments made as determined by the County Risk Manager, shall be in accordance with reasonably prudent risk management practices and insurance industry standards and shall be effective on the first day of each successive ten (10) year period.

Adjustment, if any, in insurance premium(s) shall be the responsibility of the Grantee. Any failure by the County to exercise the right to review and adjust at any of the aforementioned timings shall not constitute a waiver of future review and adjustment timings.

18.2 In satisfaction of the insurance requirements set forth in this Section 18, Grantee may self-insure against such risks in such amounts as are consistent with good utility practice. Grantee shall provide the County with reasonable written evidence that Grantee is maintaining such self-insurance.

Section 19. Performance Security.

Before undertaking any work, installation, improvements, construction, repair, relocation or maintenance authorized by this Franchise that disturbs the surface or subsurface of the Public Rights-of-Way, the Grantee shall, upon the request of the County through its permit process, provide a security device in a reasonable sum to be set and approved by the County Engineer in accordance with Title 13 SCC to ensure restoration of the Public Rights-of-Way in compliance with this Franchise following completion of the work. Grantee may, upon approval of the County Engineer, provide a single on-going franchise security device to cover all work performed by Grantee within the Public Rights-of-Way under this Franchise in such reasonable amount as is set and approved by the County Engineer.

Section 20. Annexation.

If any Public Rights-of-Way, or portion thereof, is incorporated into the limits of any city or town, it shall not be subject to the terms of this Franchise except as and to the extent provided otherwise by applicable laws.

Section 21. Vacation.

If any Public Right-of-Way, or portion thereof covered by this Franchise, is vacated, it shall not be subject to the terms of this Franchise. The County may retain a utility easement as allowed under RCW 36.87.140 when a Public Right-of-Way, or portion thereof, is vacated. In the event of any such proposed vacation, the County shall notify the Grantee at least sixty (60) days prior to taking final action. Should the Grantee desire the County to retain a utility easement in the property at issue, the Grantee may request that the County retain such an easement over the property at issue as a part of any proposed action taken by the County Council on the particular vacation. Should the Grantee make such a request, the County may retain said easement in the manner and to the extent allowed by law.

Section 22. Assignment.

22.1 PSE shall not lease, sell, assign, transfer, or otherwise dispose of this Franchise to any unaffiliated third party or change the Grantee entity to which this Franchise is granted (each, a "Transfer"), in whole or in part, without the prior written consent of the County Council, which

consent shall not be unreasonably withheld, conditioned or delayed. Should any such Transfer be approved by the County, then each and every one of the provisions, conditions, regulations and requirements contained in this Franchise shall be binding upon the approved transferee beginning on the date of the Transfer, and all privileges, as well as all obligations and liabilities of the Grantee shall inure to such transferee equally as if such transferee was specifically mentioned wherever the Grantee is named herein.

22.2 Notwithstanding the foregoing or anything in this Franchise to the contrary, the County hereby consents to and the Grantee shall have the right, without such notice or consent, to mortgage its rights, benefits and privileges in and under this Franchise for the benefit of bondholders. Further, a change in composition of Grantee's governing board shall not trigger any obligation under Section 22.1.

22.3 Any attempt by Grantee to Transfer this Franchise in violation of this Section 22 shall constitute a material breach by Grantee.

Section 23. Termination, Revocation, and Forfeiture.

If the Grantee (i) defaults on any material term or condition of this Franchise; (ii) willfully violates or fails to comply with any of the provisions of this Franchise; or (iii) through willful misconduct or gross negligence fails to heed or comply with any notice of breach or violation given the Grantee by the County under the provisions of this Franchise, and thereafter fails to cure such default, violation or noncompliance within thirty (30) days after the Grantee's receipt of written notice of noncompliance from the County (or, if the default, violation, or noncompliance cannot be cured using reasonable diligence within such thirty (30) day period, then within such period as may be reasonably necessary to effect a cure so long as the Grantee commences promptly and diligently to effect a cure), then the Grantee shall, at the election of the County Council, forfeit all rights conferred hereunder and the Franchise may be terminated by ordinance duly adopted by the County Council. Upon termination for any cause, all rights of the Grantee granted hereunder or under any right-of-way use permit shall cease, and if required by the County, the Grantee shall immediately commence to remove or decommission and leave in place all of the Grantee Facilities from the Public Rights-of-Way in accordance with Section 14 above; except that, Grantee shall not be required to remove or decommission any of Grantee's Facilities that are necessary for the safe and reliable transmission, distribution, or sale of natural gas subject to and in accordance with applicable rates and tariffs on file with the Washington Utilities and Transportation Commission.

Section 24. Remedies to Enforce Compliance; No Waiver.

24.1 In lieu of termination, revocation or forfeiture as provided in Section 23, and without prejudicing any of its other legal rights and remedies, the County may elect to obtain an order from the Superior Court or other court, tribunal, or agency having competent jurisdiction compelling the Grantee to comply with the provisions of this Franchise and to recover damages and costs incurred by the County by reason of the Grantee's failure to comply. In addition to any other remedy provided herein, the County reserves the right to pursue any remedy to compel or force the Grantee and/or its permitted successors and assigns to comply with the terms hereof, and the

pursuit of any right or remedy by the County shall not prevent the County from thereafter declaring a forfeiture or revocation for breach of the conditions herein.

24.2 Failure of the County to exercise any rights or remedies under this Franchise shall not constitute a waiver of any such right or remedy and shall not prevent the County from pursuing such right or remedy at any future time.

24.3 Nothing in this Franchise is or was intended to confer third-party beneficiary status on any person or entity to enforce the terms of this Franchise.

24.4 Nothing in this Section 24 is intended nor shall be construed to a limitation on any rights or remedies available to Grantee arising under applicable law.

Section 25. Tariffs.

This Franchise is subject to the provisions of any applicable tariff on file with the Washington Utilities and Transportation Commission (or any successor agency with the authority to regulate the rates, services, and practices of privately-owned utilities in accordance with the public service laws of the state of Washington). In the event of any conflict or inconsistency between the provisions of this Franchise and such tariff, the provisions of such tariff shall control.

Section 26. County Ordinances and Regulations – Reservation of Police Power.

Nothing in this Franchise shall restrict the County’s ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this Franchise, including, but not limited to, any ordinances adopted under the County’s police powers in the interest of public safety and for the welfare of the public, if such adoption and enforcement occurs in a manner that is consistent with the terms and conditions of this Franchise. Notwithstanding any provision of this Franchise to the contrary, this Franchise constitutes a valid and binding contract between the County and Grantee that may be amended or modified only by mutual written agreement of the parties pursuant to the terms of this Franchise. In the event of a direct conflict between specific provisions of this Franchise and any laws, rules, regulations, or ordinances adopted by the County or any permits, approvals, codes, standards, policies, or specifications adopted or issued by the County, the provisions of this Franchise shall govern and control.

Section 27. Eminent Domain, Powers of the People.

This Franchise is subject to the power of eminent domain and the right of the County Council or the people acting for themselves through initiative or referendum to repeal, amend or modify this Franchise in the interest of the public. In any proceeding under eminent domain, this Franchise itself shall have no value. Notwithstanding the foregoing, if the County Council or the people acting for themselves through initiative or referendum exercise their right to repeal, amend, or modify this Franchise in the interest of the public, such action will be deemed to be a proposed amendment to this Franchise, and the parties shall enter into good faith negotiations regarding

potential amendments to the terms and conditions of this Franchise to address such action pursuant to Section 3.3.

Section 28. Survival and Force Majeure.

28.1 Until such time as all of the Grantee Facilities have been removed from the Public Rights-of-Way in accordance with Section 14.1 above, or have been decommissioned and left in place in accordance with Sections 14 above, all of the provisions, conditions and requirements contained in the following sections of this Franchise shall survive the expiration, revocation, forfeiture or early termination of this Franchise: (i) Section 4 (Regulation of Use; Permits Required); (ii) Section 5 (Emergency Work); (iii) Section 6 (Compliance with Applicable Laws; Performance Standards); (iv) Section 7 (Restoration of Public Rights-of-Way); (v) Section 8 (Record Plans, Record Drawings, and Records of Grantee Facility Locations); (vi) Section 12 (Hazardous Materials); (vii) Section 13 (Dangerous Conditions, Authority for County to Abate); (viii) Section 14 (Decommissioning and Removal of Grantee Facilities); (ix) Section 15 (Fees, Compensation for Use of Public Rights-of-Way and Taxes); (x) Section 16 (Hold Harmless and Indemnification); (xi) Section 17 (Limitation of County Liability); (xii) Section 18 (Insurance); (xiii) Section 19 (Performance Security); and (xiv) Section 24 (Remedies to Enforce Compliance; No Waiver); and (xv) Section 25 (Tariffs).

28.2 After such time as all Grantee Facilities have been either removed from the Public Rights-of-Way or decommissioned and left in place pursuant to Section 14 above, only the following provisions shall survive the expiration or earlier termination of this Franchise: (i) Section 8 (Record Plans, Record Drawings, and Records of Grantee Facility Locations); (ii) Section 9 (Relocation of Grantee Facilities); (iii) Section 12 (Hazardous Materials); (iv) Section 16 (Hold Harmless and Indemnification); (v) Section 17 (Limitation of County Liability); and (vi) Section 25 (Tariffs).

28.3 If the Grantee is prevented or delayed in the performance of any of its obligations under this Franchise by reason of a Force Majeure, then Grantee's performance shall be excused during a Force Majeure occurrence. Upon removal or termination of the Force Majeure occurrence the Grantee shall promptly perform its obligations in an orderly and expedited manner using industry accepted best practices. Grantee's performance shall not be excused by economic hardship nor by the misfeasance or malfeasance of its directors, officers, or employees.

28.4 For the purposes of this Franchise, "Force Majeure" means any event or circumstance (or combination thereof) and the continuing effects of any such event or circumstance (whether or not such event or circumstance was foreseeable or foreseen) that delays or prevents performance by the Grantee 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 Grantee and shall include, without limitation, all of the following events and circumstances: (i) acts of nature, including volcanic eruption, landslide, earthquake, flood, lightning, tornado or other unusually severe storm or environmental conditions, perils of the sea, wildfire or any other natural disaster; (ii) acts of public enemies, armed conflicts, act of foreign enemy, acts of terrorism (whether domestic or

foreign, state-sponsored or otherwise), war (whether declared or undeclared), blockade, insurrection, riot, civil disturbance, revolution or sabotage; (iii) any form of compulsory government actions, acquisitions or condemnations, changes in applicable law, export or import restrictions, customs delays, rationing or allocations; (iv) accidents or other casualty, damage, loss or delay during transportation, explosions, fire, epidemics, pandemics, quarantine or criminal acts; (v) inability, after the use of commercially reasonable efforts, to obtain from any governmental authority any permit, approval, order, decree, license, certificate, authorization or permission to the extent required by applicable law; (vi) inability, after the use of commercially reasonable efforts, to obtain any consent or approval required by this Franchise; and (vii) third-party litigation contesting all or any portion of this Franchise or Grantee's rights under this Franchise.

Section 29. Governing Law and Stipulation of Venue.

This Franchise and all use of Public Rights-of-Way granted herein shall be governed by the laws of the State of Washington, unless preempted by federal law. Any action relating to this Franchise shall be brought in the Superior Court of Washington for Snohomish County, or in the case of a federal action, the United States District Court for the Western District of Washington at Seattle, unless an administrative agency has primary jurisdiction.

Section 30. Title VI and Non-Discrimination.

30.1 The parties acknowledge that: (i) the County's Department of Public Works receives certain Federal financial assistance from the United States Department of Transportation, which is distributed to the County by the Washington State Department of Transportation ("WSDOT"); and (ii) the County's Department of Public Works uses such Federal financial assistance to make certain road and transportation improvements to public rights-of-way within unincorporated Snohomish County (collectively, "County Federal Financial Assistance").

30.2 If (i) because this Franchise does not obligate Grantee to comply with Title VI of the Civil Rights Act, 42 U.S.C. § 2000d et seq. ("Title VI"), the County receives a formal Title VI compliance letter, a formal Title VI audit finding, or another type of written formal determination stating that the County is not in compliance with Title VI, from a state or federal agency with jurisdiction over County Federal Financial Assistance or responsibility for administrative enforcement of Title VI (each, a "Noncompliance Notice"); or (ii) a court of competent jurisdiction determines that Grantee's use of the Franchise Area pursuant to this Franchise results in Grantee being subject to Title VI because the County receives and uses County Federal Financial Assistance to make certain road and transportation improvements to public rights-of-way within the Franchise Area (a "Title VI Determination"), then the following shall apply:

- (1) If the County receives notice or reasonably believes that a Noncompliance Notice is or may be forthcoming, the County shall notify Grantee of the same in writing and, if applicable, provide a copy of the notice that the County received, within ten (10) business days of receiving such notice;

- (2) If the County receives a Noncompliance Notice, the County shall notify Grantee of the same in writing, and provide a copy of the notice that the County received, within ten (10) business days of receiving such Noncompliance Notice;
- (3) With respect to subsections (1) and (2) of this Section 30.2, the County shall provide Grantee with the opportunity to attend and participate in all meetings and other communications with representatives of the applicable state or federal agency or representative identified in subsections (i)(a) through (i)(c) of this Section 30.2 that relate to: (y) any actual or potential Noncompliance Notice or (z) the issue of whether Grantee's use of the Franchise Area pursuant to this Franchise results in Grantee being subject to Title VI because the County receives and uses County Federal Financial Assistance to make certain road and transportation improvements to public rights-of-way within the Franchise Area; and
- (4) Either party may submit a written request to the other party that the parties enter into good faith negotiations regarding potential amendments to the terms and conditions of this Franchise that are necessary to comply with Title VI and, following the receiving party's receipt of such a written request, the parties shall enter into such negotiations.

30.3 Should the parties reach agreement regarding any amendments negotiated pursuant to Section 30.2(4), the parties shall memorialize such amendments and seek approval of same. Such amendments shall not become effective unless and until approved by County ordinance and accepted in writing by Grantee in accordance with applicable laws and this Franchise. If the parties are unable to reach agreement regarding any such amendments within ninety (90) days after the date on which negotiations pursuant to Section 30.2(4) commenced, or such longer negotiation time period as may be agreed upon by the parties, then the County may terminate this Franchise by ordinance duly adopted by the County Council.

30.4 Notwithstanding the foregoing or anything in this Franchise to the contrary, (i) this Section 30 shall not, in any manner, limit or restrict Grantee's right to appeal or otherwise challenge any Noncompliance Notice, Title VI Determination, or other finding or determination that Grantee is subject to Title VI; (ii) any such appeal or challenge by Grantee shall not limit, relieve, or delay Grantee from entering into or participating in any negotiations with the County pursuant to Section 30.2(4); (iii) if the parties reach agreement regarding any amendment negotiated pursuant to Section 30.2(4) prior to the conclusion of any appeal or other challenge by Grantee as described in subsection (i) of this Section 30.4 (an "Executed Amendment"), then, following the conclusion of any such appeal or other challenge, (y) either party may submit a written request to the other party that the parties, in good faith, review whether the rights and obligations of the parties under the Executed Amendment are consistent with the outcome of any such appeal or other challenge, including whether any obligations imposed on Grantee under the Executed Amendment are not required by Title VI or other applicable federal laws, and enter negotiations regarding potential amendments to the Executed Amendment that may be desired or necessary given the outcome of any such appeal or other challenge, and (z) following the receiving party's receipt of such a written

request, the parties shall enter into such review and negotiations; and (iv) if the County terminates this Franchise pursuant to Section 30.3 and the outcome of any such appeal or challenge by Grantee determines that Grantee is not subject to Title VI or that the County is not obligated to require Grantee to comply with Title VI under this Franchise, and unless otherwise agreed by the parties in writing, the County shall promptly commence proceedings to reinstate this Franchise in the form it was in prior to the date on which negotiations pursuant to Section 30.2(4) commenced.

Section 31. Severability.

If any section, sentence, clause, phrase or provision of this Franchise or the application of such provision to any person or entity should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, phrase or provision of this Franchise nor the application of the provision at issue to any other person or entity.

Section 32. Notice and Emergency Contact.

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

SNOHOMISH COUNTY
Department of Public Works
3000 Rockefeller Avenue, M/S 607
Everett, WA 98201

PUGET SOUND ENERGY, INC.
Municipal Relations
P.O. Box 90868 BOT-2O
Bellevue, WA 98009-0868

Attn. Right-of-Way Coordinator
Phone: (425) 388-3488

Attn. Municipal Liaison Manger
Phone: (425) 424-7498

With a copy to:

PUGET SOUND ENERGY, INC.
P.O. Box 90868
Bellevue, WA 98009-0868

Attn. General Counsel

The Grantee shall also provide the County a current emergency contact name (or title) and phone number available 24-hours a day, seven days a week. The Grantee shall promptly notify the County of any change in the notice address or emergency contact (or title) and phone number.

Section 33. Acceptance.

Within ninety (90) days after the passage and approval of this Franchise by the County Council, this Franchise may be accepted by the Grantee by its filing with the County Council an unconditional written acceptance thereof. Failure of the Grantee to so accept this Franchise within

said period of time shall be deemed a rejection thereof by the Grantee, and the rights and privileges herein granted shall automatically cease and terminate, unless the time period is extended by motion duly passed for that purpose.

Section 34. Effective Date.

This Franchise shall take effect, if at all, on the date on which each and every one of the following conditions have been met (the "Effective Date"): (i) ten (10) days have passed since the County Executive executed this Franchise, or this ordinance was otherwise enacted; (ii) the Grantee executes a copy of this Franchise and returns it to the County Council within the time provided in Section 33 above; (iii) the Grantee presents to the County acceptable evidence of insurance as required in Section 18 above; and (iv) the Grantee pays all applicable fees as set forth in Section 15 above.


PASSED this 8th day of February, 2023.

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington




Council Chairperson

ATTEST:



Deputy Clerk of the Council

- (X) APPROVED
- () VETOED
- () EMERGENCY



Dave Somers
Snohomish County Executive

DATE: February 8, 2023

ATTEST:



Approved as to Form Only:

Deputy Prosecuting Attorney

Date: _____

ACCEPTANCE:

The provisions of this Franchise are agreed to and hereby accepted. By accepting this Franchise, Puget Sound Energy, Inc. covenants and agrees to perform and be bound by each and all of the terms and conditions imposed by the Snohomish County Charter, Snohomish County Code, and this Franchise.

Dated: March 1, 2023

Puget Sound Energy, Inc.

By: *Ryan Blood*

Printed Name: Ryan Blood

Title: Director, Customer & System Projects

CERTIFICATION OF COMPLIANCE WITH CONDITIONS AND EFFECTIVE DATE:

I certify that I have received confirmation that: (1) the Grantee returned a signed copy of this Franchise to the County Council within the time provided in Section 33; (2) the Grantee has presented to the County acceptable evidence of insurance as required in Sections 18 of this Franchise; and (3) the Grantee has paid all applicable processing costs and fees as set forth in Section 15 of this Franchise.

THE EFFECTIVE DATE OF THIS ORDINANCE IS:

March 14, 2023

By: *Elena Lao*

Name: Elena Lao

Title: Deputy Clerk of the Council