

**CITY OF SNOHOMISH  
SNOHOMISH, WASHINGTON**

**ORDINANCE 2372**

**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 FRANCHISE AREA TO PROVIDE FOR THE TRANSMISSION, DISTRIBUTION AND SALE OF GAS AND SUCH OTHER SERVICES AS MAY BE PROVIDED BY SUCH FACILITIES.**

**THE CITY COUNCIL OF THE CITY OF SNOHOMISH, WASHINGTON, DO ORDAIN AS FOLLOWS:**

**Section 1. Definitions.**

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

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

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

1.1.3 “Environmental Laws” means any applicable federal, state, or local statute, code, or ordinance or federal or state administrative rule, regulation, ordinance, order, decree, or other governmental authority as now or at any time hereafter in effect pertaining to the protection of human health or the environment.

1.1.4 “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.

1.1.5 “Facilities” means, collectively, any and all natural gas distribution systems, 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 under ground.

1.1.6 “Force Majeure Event” means fire, explosion, pest damage, power failures, strikes or labor disputes, acts of God, the elements, war, civil disturbances, acts of civil

or military authorities or the public enemy, fuel or energy shortages, or any other circumstance or event not within the control of the affected party.

1.1.7 “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.

1.1.8 “Snohomish Municipal Code” means, collectively, the ordinances, codes, regulations, development and other standards, and laws of the City.

1.1.9 “Public Works Improvement” means any construction, installation, relocation, expansion, maintenance, repair or removal of roads, streets, sidewalks, parks, public facilities, curbs, gutters, storm drainage facilities, sewer lines, water utility lines or other improvement project within the Franchise Area that is undertaken by or on behalf of the City and is funded by the City (either directly with its own funds or with other public monies obtained by the City). For the avoidance of doubt, the term “Public Works Improvement” shall include any such capital improvement project undertaken by the City which requires the relocation of PSE’s Facilities within the Franchise Area, even if the capital improvement project entails, in part, related work funded and/or performed by or for a third party governmental entity under a valid interlocal agreement between the City and such entity (except to the extent the relocation of PSE’s Facilities is caused by the related work funded and/or performed by or for such third party governmental entity), but shall not include, without limitation, any other improvements or repairs undertaken by or for the benefit of third party private entities.

## **Section 2. Facilities within Franchise Area.**

2.1 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 gas and other such services as may be provided by such Facilities. 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 Facilities installed within the Franchise Area to monitor, control or operate its natural gas transmission and distribution systems or for communications reasonably required to conduct its internal electric and/or natural gas business operations.

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

2.3 Existing Facilities installed or maintained by PSE in accordance with prior franchise agreements on City-owned grounds and public places (but which are not a part of the Franchise Area as defined by 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 prior review and approval of the City and pursuant to the provisions of this Franchise.

2.4 In the event the City vacates any portion of the Franchise Area during the term of this Franchise, the City shall, in its vacation procedure, reserve and grant an easement to PSE for any existing PSE Facilities in the vacated rights of way.

### **Section 3. Operation of Facilities.**

3.1 PSE's Facilities shall be installed, maintained, used and operated, within the Franchise Area (a) so as not to unreasonably interfere with the free passage of traffic and (b) in accordance with the laws of the State of Washington.

3.2 PSE shall exercise its rights within the Franchise Area, and install, operate, maintain, inspect and test its Facilities within the Franchise Area, in accordance with this Franchise and applicable provisions of the Snohomish Municipal Code that govern use and occupancy of the Franchise Area and/or that are applicable to the installation, operation, maintenance, inspection, safety and testing of such Facilities; provided, however, in the event of any conflict between such provisions of the Snohomish Municipal Code and the terms and conditions of this Franchise, the terms and conditions of this Franchise shall govern and control to the extent of such conflict; provided, further, nothing herein shall be deemed to waive, prejudice or otherwise limit any right of appeal afforded PSE by the Snohomish Municipal Code or state or federal law.

3.3 All the rights and privileges granted in this Franchise shall be governed by the terms and conditions of this Franchise. Except for and subject to the express terms and conditions of this Franchise, which are each binding on the City and may not be unilaterally altered or amended by the City, nothing herein shall be construed as a waiver, abridgment or other limitation of the City's regulatory authority and/or police power, which the City hereby expressly reserves in full.

3.4 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 (including, without limitation, Section 11) shall govern and supersede and shall not be changed, modified, deleted, added to, supplemented or otherwise amended by any permit, approval, license, agreement or other document required by or obtained from the City in conjunction with the exercise (or failure to exercise) by PSE of any

and all rights, benefits, privileges, obligations or duties in and under this Franchise, unless such permit, approval, license, agreement or other document specifically:

3.4.1 references this Franchise; and

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

In all other cases, 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.

**Section 4. Maps and Records.**

4.1 PSE shall provide the City, upon the City's reasonable request, copies of available drawings in use by PSE showing the location of its Facilities at specific locations within the Franchise Area. Further, PSE shall, upon the City's reasonable request, discuss and explore ways in which PSE and the City may cooperate and coordinate activities with respect to the development of drawing file layers compatible with the City's geographic information system which show PSE's Facilities at specific locations within the Franchise Area. As to any such drawings or file layers so provided, PSE does not warrant the accuracy thereof and, to the extent the location of Facilities are shown, such Facilities are shown in their approximate location.

4.2 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. Further, 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.

**Section 5. Relocation of Facilities.**

5.1 Whenever the City causes a Public Works Improvement to be undertaken within the Franchise Area, and such Public Works Improvement requires the relocation of PSE's then existing Facilities within the Franchise Area (for purposes other than those described in Section 5.2 below), the City shall:

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

5.1.2 provide PSE with reasonable plans and specifications for such Public Works Improvement.

No later than one hundred twenty (120) calendar days (or such shorter or longer period of time as the parties may mutually agree in writing for a given Public Works Improvement which agreement by PSE shall not be unreasonably withheld) following receipt of such notice and such reasonable plans and scope documents (the "Relocation Deadline"), PSE shall relocate such Facilities within the Franchise Area at no charge to the City provided, however, that the

Relocation Deadline will be extended as reasonably necessary if it would be impossible or impracticable for PSE to complete the relocation work by the Relocation Deadline due to circumstances beyond PSE’s reasonable control, including but not limited to any Force Majeure Events or PSE’s relocation work being dependent on the performance of other work by the City or any third party. PSE shall notify the City promptly after it becomes aware of any need to extend the Relocation Deadline.

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 5.1, the City shall bear the entire cost of such subsequent relocation. If PSE requires the relocation or improvement of Facilities in the project limits of a Public Works Improvement within five (5) years from the date of completion of that Public Works Improvement, PSE shall bear the entire cost of such subsequent relocation or improvement, and the cost of any surface restoration required by the City, such as a pavement overlay; provided that, to the extent PSE’s relocation is required under the conditions of Section 5.2, PSE shall have the right to require such third party to bear the cost of the relocation.

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

5.3 Any condition or requirement imposed by the City upon any person or entity, other than PSE, that requires the relocation of PSE's Facilities shall be a required relocation for purposes of Section 5.2 above (including, without limitation, any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits for zoning, land use, construction or development).

5.4 Consistent with Section 2.2, nothing in this Section 5 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 such other rights not derived from this Franchise.

5.5 Subject to the exclusions and requirements set forth below in this Section 5.5, and to the maximum extent provided by law, if PSE breaches its obligations under Section 5.1 with respect to relocating its Facilities within the Franchise Area by the applicable Relocation Deadline in order to accommodate a Public Works Improvement, and to the extent such breach causes a delay in the work being undertaken by the City’s third party contractor(s) on the Public Works Improvement that results in a claim by the third party contractor(s) for costs, expenses and/or damages that are directly caused by such delay and are legally required to be paid by the City (each, a “Contractor Delay Claim”), the City may at its sole option:

5.5.1 tender the Contractor Delay Claim to PSE for defense and indemnification in accordance with Section 11; or

5.5.2 require that PSE reimburse the City for any such costs, expenses, and/or damages that are legally required to be paid by the City to its third party contractor(s) as a direct result of the Contractor Delay Claim; provided that, if the City requires reimbursement by PSE under this Section 5.5.2, the City shall first give PSE written notice of the Contractor Delay Claim and give PSE the opportunity to work with the third party contractor(s) to resolve the Contractor Delay Claim for a period of not less than sixty (60) days prior to the City's payment of the Contractor Delay Claim.

Nothing in this Section 5.5 or otherwise will require PSE to bear or be responsible for any cost, expense or damage, or to defend or indemnify the City against any claim, that results from any delay in meeting the applicable Relocation Deadline for a Public Works Improvement if and to the extent the delay is caused by the City, any third party that is not an agent, subcontractor or vendor of PSE, or any Force Majeure Event.

5.6 The provisions of this Section 5 shall survive the expiration or termination of this Franchise during such time as PSE continues to operate and maintain Facilities in the Franchise Area. Additionally, the provisions of this Section 5 are applicable only so long as the Franchise Area is owned and/or controlled by the City.

## **Section 6. Work in the Franchise Area.**

6.1 All work performed by PSE or its contractors on PSE's behalf within the Franchise Area shall be accomplished, to the extent reasonably practicable, in a good and workmanlike manner and which minimizes interference with the free passage of traffic and the free use of adjoining property, whether public or private. PSE shall at all times when performing work within the Franchise Area post and maintain proper barricades, flags, flaggers, lights, flares, safety devices and other measures as required to comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or the laws of the State of Washington, including RCW 39.04.180 for the construction of trench safety systems. The provisions of this Section 6.1 shall survive the expiration of this Franchise during such time as PSE continues to operate and maintain Facilities in the Franchise Area.

6.2 Except in the case of an emergency where immediate action is needed to protect the integrity of PSE's Facilities within the Franchise Area, PSE shall, prior to commencing any work or other substantial activity within the Franchise Area for which a permit is required under the Snohomish Municipal Code, apply for a permit from the City in accordance with the Snohomish Municipal Code. As allowed under the Snohomish Municipal Code, PSE may apply for a blanket permit for certain activities in the Franchise Area. During the progress of the work, PSE shall not unnecessarily obstruct the passage or proper use of the Franchise Area, and all work by PSE in the Franchise Area shall be performed in accordance with the requirements of the permit and applicable City standards and specifications (in each case to the extent not inconsistent with the terms of this Franchise). Surface restoration work will be warranted for the applicable period specified in the Snohomish Municipal Code. In no case shall any work commence within the Franchise Area without a permit, except as otherwise provided in this Franchise.

6.3 Upon the City's reasonable request in connection with the City's design of a Public Works Improvement within the Franchise Area, PSE shall verify the location of its underground Facilities within the Franchise Area by excavating (e.g., pot holing) at no expense to the City. 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.

6.4 In the event either PSE or the City shall cause excavations to be made within the Franchise Area, the party causing such excavation shall afford the other, upon receipt of a written request to do so, an opportunity to use such excavation so long as such joint use does not unreasonably delay the work of the party causing such excavation, and such joint use is arranged and accomplished upon terms and conditions reasonably satisfactory to the party causing such excavation.

6.5 In the event of an emergency in which PSE's Facilities located within the Franchise Area break or are damaged, or if PSE's Facilities within the Franchise Area are otherwise in a condition as to immediately endanger the property, life, health or safety of any individuals, PSE shall, upon learning of such a dangerous condition, take all reasonable actions to promptly correct such dangerous condition. PSE may take emergency measures to repair its Facilities within the Franchise Area or to cure or remedy any associated dangerous conditions for the protection of property, life, health or safety of individuals 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.

6.6 PSE shall, prior to commencing new construction or major reconstruction work within the Franchise Area that will adversely impact adjacent property owners in the affected area, notify such adjacent property owners of the intended construction work in accordance with PSE's then-current standard policies and procedures.

6.7 The City expressly reserves its rights under the Snohomish Municipal Code to order the correction of any condition within the Franchise Area that is in violation of, or the discontinuance of any activity within the Franchise Area that is being undertaken contrary to, this Franchise, the Snohomish Municipal Code, or any applicable permits issued by the City; provided such order is not in conflict with the terms or conditions of this Franchise or any federal or state law, regulation or standard.

6.8 In case of any damage caused by PSE, or by PSE's Facilities, to the Franchise Area (including but not limited to all City, franchisee, and licensee owned improvements and structures existing therein) PSE agrees to repair the damage at no cost to the City. PSE shall, upon discovery of any such damage, immediately notify the City. The City will inspect the damage and provide PSE a reasonable period of time for completion of the repair. If the City discovers damage caused by PSE within the Franchise Area, the City will give PSE prompt notice of the damage and provide PSE a reasonable period of time to repair the damage. In the event PSE does not make the repair as required in this section, the City may repair the damage, to its satisfaction, at PSE's sole expense.

6.9 The City may condition the granting of any permit or other approval that is required under this Franchise, at any time, on any lawful condition or regulation, unless such condition or regulation is inconsistent or in conflict with this Franchise, applicable laws or any federal or state directive, as may be reasonably necessary to the management of the Franchise Area, including, by way of example and not limitation, bonding, maintaining proper distance from other utilities, protecting the continuity of pedestrian and vehicular traffic and protecting any right-of-way improvements, private facilities and public safety.

6.10 PSE shall meet with the City and other franchise holders and users of the Franchise Area upon written request of the City, to schedule and coordinate construction in the Franchise Area. All construction locations, activities, and schedules shall be coordinated, to the extent reasonably practicable, in a manner that minimizes public inconvenience, disruption or damages.

6.11 In connection with any work performed within the Franchise Area, each party shall comply with their respective obligations under Chapter 19.122 RCW or other applicable law with respect to determining the location of underground utility facilities.

6.12 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 laws of the State of Washington.

#### **Section 7. Restoration after Construction.**

7.1 PSE shall, in connection with any work performed by PSE on its Facilities within the Franchise Area, promptly remove any obstructions from the Franchise Area and restore the surface of the Franchise Area to at least the same condition the Franchise Area was in immediately prior to the commencement of such work, provided PSE shall not be responsible for any changes or damage to the Franchise Area not caused by PSE's work or work performed on PSE's behalf. The City Engineer or his/her designee shall have final approval of the condition of the Franchise Area after restoration. All concrete encased monuments which have been disturbed or displaced by such work shall be restored pursuant to federal, state and local standards and specifications.

7.2 If conditions (i.e. weather) do not permit the complete restoration required under this Section 7, PSE shall temporarily restore the affected portions of the Franchise Area. Such temporary restoration shall be at PSE's sole cost and expense and PSE shall promptly undertake and complete the required permanent restoration when the conditions no longer prevent such permanent restoration.

7.3 If PSE fails to restore the Franchise Area in accordance with this Section 7, the City shall provide PSE with written notice including a description of actions the City believes necessary to restore the Franchise Area. If PSE fails to restore the Franchise Area in accordance with this Section 7 within thirty (30) calendar days of PSE's receipt of the City's notice, the City, or its authorized agent, may restore the Franchise Area at PSE's sole and complete expense. The privilege granted under this section shall be in addition to others provided by this Franchise.

7.4 The provisions of this Section 7 shall survive the expiration or termination of this Franchise so long as PSE continues to operate and maintain Facilities in the Franchise Area and has not completed all restoration consistent with this Franchise.

## **Section 8. Performance and Maintenance Guarantees**

8.1 Before undertaking any work or improvements within the Franchise Area as authorized by this Franchise, PSE shall furnish a performance bond, in a sum to be reasonably set and approved by the City Engineer consistent with the applicable requirements of the Snohomish Municipal Code and as reasonably sufficient to ensure performance of PSE's obligations under this Franchise with respect to such work. Any such bond shall be conditioned so that PSE shall observe all the covenants, terms and conditions and faithfully perform all of the obligations of this Franchise with respect to such work. Further, the bond may be subject to requirements that PSE restore or replace any defective work or materials discovered in the restoration of the Franchise Area within a period of two (2) years from the final City inspection date of any such restoration. After completion of such work covered by the performance bond, PSE may request the release of the performance bond and the replacement with a maintenance bond consistent with the requirements of the Snohomish Municipal Code. PSE may satisfy the obligations of this Section 8.1 by posting a single on-going bond, unless use of more than a single bond is agreed to by the City Engineer, and the release of the bond will not occur until the completion of all projects. In the event that a bond furnished pursuant to this Section 8.1 is canceled by the surety, after proper notice and pursuant to the terms of said bond, PSE shall, prior to the expiration of said bond, procure a replacement bond which complies with the terms of this Section 8.1.

8.2 With respect to undertaking any of the work authorized by this Franchise, in the event PSE fails to perform its obligations under this Franchise relating to such work and further fails to cure its deficiency within a reasonable period of time after receipt of written notice of such deficiency by the City, then the City may use any bond(s) furnished by PSE pursuant to Section 8.1 to cure such deficiency. Neither the amount of such bond(s) nor the City's use thereof shall limit the City's full recovery from PSE of costs incurred by the City to cure such deficiency.

8.3 In the event the City makes use of the bond(s) furnished by PSE pursuant to Section 8.2, the City shall promptly provide written notice of the same to PSE. Within thirty (30) days of receipt of such notice, PSE shall replenish or replace such bond(s) in accordance with Section 8.1.

8.4 The rights reserved to the City by this Section 8 are in addition to other rights of the City whether reserved by this Franchise or authorized by law, and no action, proceeding, or exercise of right under this Section 8 shall constitute an election or waiver of any rights or other remedies the City may have.

## **Section 9. Work of Contractors and Subcontractors.**

9.1 PSE's contractors and subcontractors performing work on behalf of PSE within the Franchise Area shall be licensed and bonded in accordance with applicable State law and

City's ordinances, regulations, and requirements. 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. PSE shall be responsible for all such work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by PSE and shall ensure that all such work is performed in compliance with this Franchise and applicable law.

## **Section 10. Insurance.**

10.1 PSE shall procure and maintain, for so long as PSE has Facilities in the Franchise Area, insurance and/or self-insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of rights, privileges and authority granted hereunder to PSE, its agents representatives or employees. PSE shall procure insurance from insurers with a current A.M. Best rating of not less than A-. PSE shall provide a certificate of insurance and/or written confirmation of self-insurance and additional insured endorsement to the City for its inspection at the time of or prior to acceptance of this Franchise, and such insurance certificate shall evidence a policy of insurance that includes:

- a. Automobile Liability insurance with limits no less than \$2,000,000 combined single limit per occurrence for bodily injury and property damage;
- b. Commercial General Liability insurance, with limits no less than \$2,000,000 limit per occurrence and \$5,000,000 aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; premises; operations; independent contractors; personal injury; products and completed operations; broad form property damage; explosion, collapse and underground (XCU), and pollution legal liability;
- c. Workers' Compensation coverage to statutory limits as required by the Industrial Insurance laws of the State of Washington and employer's liability with limits not less than \$2,000,000; and
- d. Excess or Umbrella liability policy with limits not less than \$5,000,000 per occurrence and in the aggregate.

If coverage is purchased or provided on a "claims made" basis, then PSE shall warrant continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three (3) years from the termination date of this Franchise, and/or conversion from a claims made form to an "occurrence" coverage form. Further, the parties agree that the coverage limits set forth in this Section 10.1, at the request of the City, may be reviewed and adjusted by the parties on the seventh (7th) anniversary of the Effective Date of this Franchise; provided any adjustments made shall be in accordance with reasonably prudent risk management practices and insurance industry standards and shall be effective on the date the parties agree upon the adjustments and for the remainder of the term of this Franchise.

10.2 Any deductibles or self-insured retentions must be declared to and approved by the City. Such approval shall not be unreasonably withheld or delayed. Payment of deductible or self-insured retention shall be the sole responsibility of PSE. Additionally, PSE shall pay all premiums for the insurance on a timely basis. PSE may utilize self-insurance and

excess/umbrella liability insurance policies to satisfy the insurance policy limits required in this section. PSE’s umbrella liability insurance policy provides “follow form” coverage over its primary liability insurance policies and shall specifically include an Additional Insured endorsement consistent with Section 10.3.

10.3 The insurance policies with the exception of Workers’ Compensation obtained by PSE shall include the City, its officers, officials, employees, agents, and volunteers (“Additional Insureds”), as an additional insured with regard to activities performed by or on behalf of PSE. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds. In addition, the insurance policy shall contain a clause stating that coverage shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer’s liability. PSE shall provide to the City prior to or upon acceptance either (1) a true copy of the additional insured endorsement for each insurance policy required in this Section 10 and providing that such insurance shall apply as primary insurance on behalf of the Additional Insureds or (2) a true copy of the blanket additional insured clause from the policies. Receipt by the City of any certificate showing less coverage than required is not a waiver of PSE’s obligations to fulfill the requirements. PSE’s insurance shall be primary insurance as respects the Additional Insureds, and the endorsement should specifically state that the insurance is the primary insurance. Any insurance maintained by the Additional Insureds shall be in excess of PSE’s insurance and shall not contribute with it.

10.4 PSE is hereby obligated to notify the City of any cancellation or intent not to renew any insurance policy required pursuant to this Section 10, thirty (30) days prior to any such cancellation. Within thirty (30) days prior to said cancellation or intent not to renew, PSE shall obtain and furnish to the City replacement insurance policies meeting the requirements of this Section 10. Failure to provide the insurance cancellation notice and to furnish to the City replacement insurance policies meeting the requirements of this Section 10 shall be considered a material breach of this Franchise and subject to the City’s election of remedies described in Section 12 below. Notwithstanding the cure period described in Section 12, the City may pursue its remedies immediately upon a failure to furnish replacement insurance.

10.5 PSE’s maintenance of insurance as required by this Section 10 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 equity. Further, PSE’s maintenance of insurance policies required by this Franchise shall not be construed to excuse unfaithful performance by PSE.

10.6 PSE may utilize self-insurance to satisfy all or a portion of the insurance obligations described in this Section 10. The City may, from time to time, review PSE’s financial position and risk management program. Upon the City’s request, PSE shall provide the City with reasonable written evidence that PSE is maintaining such self-insurance.

**Section 11. Indemnification.**

11.1 PSE shall indemnify, defend and hold harmless the City, its officers, 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) (a) for injury or death of any

person or damage to property to the extent the same is caused by the actual or alleged negligence or willful misconduct of PSE, its agents, servants, officers or employees in the performance of this Franchise and any rights granted hereunder, or (b) to the extent such claim or demand is caused by PSE's unlawful release of Hazardous Substances into the Franchise Area in violation of any Environmental Laws in its operation of the Facilities within the Franchise Area. The indemnity under Section 11.1(b) includes each of the following to the extent the same is caused by PSE's unlawful release of Hazardous Substances into the Franchise Area in violation of applicable Environmental Laws: (i) liability for a governmental agency's costs of removal or remedial action for such release by PSE of Hazardous Substances; (ii) damages to natural resources caused by such release by PSE of Hazardous Substances, including the reasonable costs of assessing such damages; (iii) liability for any other person's costs of responding to such release by PSE of Hazardous Substances; and (iv) liability for any costs of investigation, abatement, correction, cleanup, fines, penalties, or other damages arising under any Environmental Laws that are caused by such release by PSE of Hazardous Substances.

11.2 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 11. Said indemnification obligations shall extend to claims which are not reduced to a suit and any claims which may be compromised, with PSE's prior written consent, prior to the culmination of any litigation or the institution of any litigation.

11.3 The City shall promptly notify PSE of any claim or suit for which indemnification is provided under Section 11.1 and request in writing that PSE indemnify the City. The City's failure to so notify and request indemnification shall not relieve PSE of any liability that PSE might have, except to the extent that such failure prejudices PSE's ability to defend such claim or suit. If a conflict of interest exists between the City and counsel engaged by PSE to represent PSE and the City in connection with such claim or suit, PSE's obligations under Section 11.1 will remain in full force effect and in such case PSE shall be further obligated to remedy the situation by resolving the conflict of interest or engaging (at no cost to the City) different or separate counsel that does not have a conflict of interest with the City. The City may, at its cost and expense, participate in the defense of any such action using counsel of its choice. In the event that PSE refuses the tender of defense in any suit or any claim, as required pursuant to the indemnification provisions contained herein, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal on the part of PSE, PSE shall pay all of the City's reasonable costs for defense of the action, including all expert witness fees, costs, and attorney's fees, and including costs and fees incurred in recovering under this indemnification provision.

11.4 In the event of liability for damages arising out of bodily injury or death to persons or damage to property caused by or resulting from the concurrent negligence of PSE and the City, its officers, officials, employees, and volunteers, PSE's liability hereunder shall be only to the extent of PSE's (or its subcontractor's) negligence. Solely to the extent required to enforce the indemnification provisions of this Section 11, 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.

11.5 Notwithstanding any other provisions of this Section 11, PSE assumes the risk of damage to its Facilities located in the Franchise Area from activities conducted by the City, its officers, agents, employees, volunteers, elected and appointed officials, and contractors, except to the extent any such damage is caused by or arises from any negligent, willful, malicious, or criminal actions or omissions on the part of the City, its officers, agents, employees, volunteers, or elected or appointed officials, or contractors.

11.6 In no event will either party have any liability for indirect, special, consequential, or punitive damages or losses, including but not limited to lost profits, loss of business, or third party claims for loss of profits or 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.

11.7 The provisions of this Section 11 shall survive the expiration, revocation, or termination of this Franchise.

## **Section 12. Default.**

12.1 If PSE shall fail to comply with the provisions of this Franchise, the City may serve upon PSE a written order to so comply within thirty (30) days from the date such order is received by PSE. If PSE is not in compliance with this Franchise after expiration of said thirty (30) day period, the City Council may declare an immediate termination of this Franchise; provided, however, if any failure to comply with this Franchise by PSE cannot be corrected with due diligence within said thirty (30) day period (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.

12.2 Termination of this Franchise shall not release either party from any liability or obligation with respect to any matter occurring 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.

## **Section 13. Nonexclusive Franchise.**

13.1 This Franchise is not, and shall not be deemed to be, an exclusive Franchise. This Franchise shall not in any manner prohibit the City from granting other and further franchises over, upon, and along the Franchise Area that do not interfere with PSE's rights under this Franchise. This Franchise shall not prohibit or prevent the City from using the Franchise Area or affect the jurisdiction of the City over the same or any part thereof.

## **Section 14. Franchise Term.**

14.1 This Franchise is and shall remain in full force and effect for a period of fifteen (15) years from and after the effective date of the Ordinance; provided, however, that this Franchise is accepted by PSE pursuant to Section 20.

**Section 15. Decommissioned Facilities; Post-Service Abandonment.**

15.1 In connection with PSE’s continued operation of its Facilities within the Franchise Area, PSE may from time to time decide to discontinue use of a portion of those Facilities and permanently decommission them in place. In such event, PSE shall notify the City of its decision to permanently decommission such Facilities in place and provide a plan for such decommissioning to the City. Thereafter, the parties shall meet to discuss the proposed plan and shall work together in good faith in an effort to adjust the plan and establish any additional requirements as may be reasonably necessary to address each party’s concerns. In addition to any further requirements agreed upon by the City and PSE based on their review of the proposed plan, (a) PSE shall, at PSE’s expense, decommission such Facilities so as to render the Facilities safe in accordance with applicable law, (b) such decommissioned Facilities will continue to be subject to the terms of this Franchise (including but not limited to the relocation provisions in Section 5 and the indemnification provisions in Section 11), and (c) as requested by the City, PSE shall provide the City with maps that show the approximate location of such Facilities. In no case shall PSE be permitted to permanently decommission Facilities that are located above ground or overhead within the Franchise Area. Further, and for the avoidance of doubt, all Facilities permanently decommissioned by PSE within the Franchise Area will be deemed to be operated and maintained by PSE for purposes of this Franchise and continue to be subject to the terms of this Franchise.

15.2 Notwithstanding Section 15.1, if PSE becomes aware that removal of any decommissioned Facilities of PSE within the Franchise Area is required to eliminate or prevent an emergency or hazardous condition that endangers the property, life, health or safety of any person or entity, PSE shall promptly, at no cost to the City, remove such decommissioned Facilities.

15.3 If, after the expiration or termination of this Franchise, PSE at any time ceases to provide all natural gas service within the jurisdictional boundaries of the City and ownership of the Facilities of PSE within the Franchise Area is not transferred to a replacement or substitute natural gas service provider (including, without limitation, the City), PSE will continue to be responsible for maintaining such Facilities within the Franchise Area and will remove the Facilities at no cost to the City as and to the extent requested by the City upon not less than one hundred eighty (180) days’ prior written notice to PSE.

15.4 The provisions of this Section 15 shall survive the expiration or termination of this Franchise.

**Section 16. Assignment.**

16.1 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 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 10 and any performance or maintenance guarantees as required by Section 8 (“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 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.

16.2 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.

16.3 The City’s approval of the assignment of this Franchise consistent with this Section 16 does not relieve PSE of any liabilities arising out of the terms of this Franchise.

**Section 17. Recovery of Costs.**

17.1 As specifically provided by RCW 35.21.860, the City may not impose a franchise fee or any other fee or charge of whatever nature or description upon PSE. However, as provided in RCW 35.21.860, the City may recover from PSE actual administrative expenses incurred by the City that are directly related to: (i) receiving and approving a permit, license or this Franchise, (ii) inspecting plans and construction, or (iii) preparing a detailed statement pursuant to Chapter 43.21C RCW. In accordance with and subject to the foregoing, PSE hereby agrees to pay such actual administrative expenses incurred by the City, including the City’s legal costs incurred that are directly related to receiving and approving this Franchise pursuant to RCW 35.21.860, upon or prior to PSE’s acceptance of this Franchise in accordance with Section 20.1.

17.2 The City expressly and specifically reserves all rights to recover costs and fees available to the City under applicable provisions of the Snohomish Municipal Code to the fullest extent such rights are not in conflict with the terms or conditions of this Franchise or with RCW 35.21.860 or any other federal or state law.

**Section 18. Miscellaneous.**

18.1 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. 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.

18.2 This Franchise is subject to the provisions of any applicable tariff on file with the Washington Utilities and Transportation Commission (“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 a copy of the filing within five (5) 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.

18.3 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:

18.3.1 specifically requires or allows the City to enact a code or ordinance which conflicts with this Franchise; or

18.3.2 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 encompass the specific term or condition affected by such change in federal or state law and neither party shall be obligated to reopen negotiations on any other term or condition of this Franchise. Within thirty (30) days from and after the other party's receipt of written notice to so commence such negotiations, the parties shall, at a mutually agreeable time and place, commence such negotiations. The parties shall thereafter conduct such negotiations at reasonable times, in a reasonable manner, in good faith and with due regard to all pertinent facts and circumstances; provided, however, that (a) 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 or, if no such demand has previously been submitted, terminate this Franchise upon not less than ninety (90) days prior written notice to the other party; and (b) pending such negotiations, mediation and/or termination, 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. For purposes of this Section, the term "mediation" shall mean mediation at the local offices of Judicial Arbitration and Mediation Services, Inc. ("JAMS"), or, if JAMS shall cease to exist or cease to have a local office, mediation at the local offices of a similar organization. The parties may agree on a jurist from the JAMS panel. If they are unable to agree, JAMS will provide a list of the three available panel members and each party may strike one. The remaining panel member will serve as the mediator.

18.4 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 Snohomish County Superior Court have proper venue for any dispute related to this Franchise.

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

18.6 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.

18.7 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, shall be binding upon the parties upon execution of this Franchise.

18.8 All rights and remedies provided herein shall be in addition to and cumulative with any and all other rights and remedies available to either the City or PSE. Such rights and remedies shall not be exclusive, and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.

18.9 If a suit or other action is instituted in connection with any controversy arising out of this Franchise, each party shall pay all its 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 shall be construed to limit the City's right to indemnification under Section 11 of this Franchise.

18.10 The Franchise between the City and Washington Natural Gas, a PSE predecessor, as adopted by Ordinance Number 1493 in 1982 (the "1982 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. The grant of this Franchise shall have no effect to the requirements of the 1982 Franchise to indemnify or insure the City against acts and omissions occurring during the period that the 1982 Franchise was in effect and during any period in which Franchisee's Facilities were in the Franchise Area.

#### **Section 19. No Third Party Beneficiary**

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

#### **Section 20. Acceptance.**

20.1 This Franchise may be accepted by PSE by its filing with the City Clerk an unconditional written acceptance within thirty (30) days from the City's final approval and execution of this Franchise, in the form attached as Exhibit B. As part of acceptance of this Franchise, PSE shall file the certificate of insurance and the additional insured endorsements obtained pursuant to Section 10, any performance bonds, if applicable, pursuant to Section 8, and the costs described in Section 17.1. Failure of PSE to so accept this Franchise shall be deemed a rejection by PSE and the rights and privileges granted shall cease.

#### **Section 21. Effective Date.**

21.1 This ordinance shall take effect and be in force five (5) days from and after its passage and publication as provided by law.

PASSED by the City Council and APPROVED by the Mayor on this 21<sup>st</sup> day of May, 2019.

CITY OF SNOHOMISH

John T. Kartak

John T. Kartak, Mayor

ATTEST/AUTHENTICATED:

Pat Adams

Pat Adams, City Clerk

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY:

Grant K. Weed

Grant K. Weed, City Attorney

PUBLISHED: 5/25/19

EFFECTIVE DATE: 5/30/19

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF SNOHOMISH )

I, Pat Adams, the duly qualified City Clerk of the City of Snohomish, a Non-Charter Code City, situated in the County of Snohomish, State of Washington, do hereby certify that the foregoing is a full, true and correct copy of Ordinance 2372, an ordinance of the City of Snohomish, entitled:

**ORDINANCE 2372**

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, heat, 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 2372 was: (i) introduced on the 16th day of April, 2019; (ii) submitted to the City Attorney on the 13th day of May, 2019; (iii) published on the 18th day of May, 2019, according to law; (iv) approved by a majority of the entire legislative body of the City of Snohomish, at a regular meeting thereof on the 21<sup>st</sup> day of May, 2019; and (v) approved and signed by the Mayor of the City of Snohomish on the 21st day of May, 2019.

WITNESS my hand and official seal of the City of Snohomish, this 24th day of May, 2019.

  
\_\_\_\_\_  
Pat Adams, City Clerk  
City of Snohomish, State of Washington

HONORABLE MAYOR AND CITY COUNCIL  
CITY OF SNOHOMISH, WASHINGTON

In the matter of the application :  
of Puget Sound Energy, Inc., a : Franchise Ordinance 2372  
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 Snohomish , :  
Washington :

WHEREAS, the City Council of the City of Snohomish, Washington, has granted a franchise to Puget Sound Energy, Inc., a Washington corporation, its successors and assigns, by enacting Ordinance 2372, bearing the date of May 21, 2019; and

WHEREAS, a copy of said Ordinance granting said franchise was received by the Puget Sound Energy, Inc. on \_\_\_\_\_, 2019, from said City of Snohomish, Snohomish 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 Snohomish, Snohomish 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 \_\_\_\_\_, 2019.

ATTEST: PUGET SOUND ENERGY, INC.  
\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

Copy received for City of Snohomish  
on \_\_\_\_\_, 2019.

By: \_\_\_\_\_  
Pat Adams, City Clerk