

## **ORDINANCE NO. 1242**

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAKE FOREST PARK, WASHINGTON, GRANTING PUGET SOUND ENERGY, INC. A WASHINGTON CORPORATION ITS SUCCESSORS AND ASSIGNS A NON-EXCLUSIVE, FIFTEEN YEAR FRANCHISE PROVIDING ELECTRIC AND NATURAL GAS SERVICE WITHIN THE CITY LIMITS; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE**

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**WHEREAS**, RCW 35A.11.020 grants the City of Lake Forest Park ("City") broad authority to regulate the use of the public right-of-way; and

**WHEREAS**, RCW 35A.47.040 authorizes the City to "grant nonexclusive franchises for the use of public streets, bridges or other public ways, structures or places above or below the surface of the ground for . . . poles, conduits, tunnels and structures, pipes and wires and appurtenances thereof for transmission and distribution of electrical energy, . . . for gas, . . . and other facilities for public service;" and

**WHEREAS**, Puget Sound Energy, Inc. ("PSE") currently provides electric and natural gas services for residences and businesses in the City; and

**WHEREAS**, the City Council finds that it is in the best interest of the health, safety and welfare of the residents of the City to grant a non-exclusive franchise to PSE for the operation of electrical energy and gas distribution systems within the City's boundaries; and

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKE FOREST PARK, WASHINGTON, DO ORDAIN AS FOLLOWS:**

Section 1. GRANTING OF FRANCHISE. The City Council authorizes the Mayor to execute a non-exclusive Franchise Agreement with Puget Sound Energy, Inc. to provide electrical energy and natural gas services for a period of fifteen (15) years with the City on the terms and conditions set forth in the Franchise Agreement attached hereto as Exhibit A.

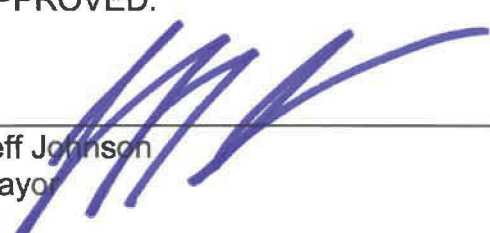
Section 2. SEVERABILITY. Should any portion of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, such decision shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 3. CORRECTIONS. The City Clerk is authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 4. EFFECTIVE DATE. This ordinance shall take effect after publication and upon acceptance by PSE as provided in Section 17 of Exhibit A.

**APPROVED BY A MAJORITY** of the Lake Forest Park City Council this 28th day of July, 2022.

APPROVED:

  
\_\_\_\_\_  
Jeff Johnson  
Mayor

ATTEST/AUTHENTICATED:

  
\_\_\_\_\_  
Matthew McLean  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Kim Adams Pratt  
City Attorney

Introduced: June 23, 2022  
Adopted: July 28, 2022  
Posted: August 2, 2022  
Published: August 2, 2022  
Effective: August 7, 2022

# EXHIBIT A to Ordinance 1242

## FRANCHISE AGREEMENT BETWEEN THE CITY OF LAKE FOREST PARK AND PUGET SOUND ENERGY, INC.

### Section 1. Definitions.

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

1.1.1 "City" means the City of Lake Forest Park, optional code city of the State of Washington, and its successors and assigns.

1.1.2 "Communication Systems" means equipment, devices, and other items used for communication purposes in connection with PSE's construction, use, operation, maintenance, repair or replacement of its Facilities in the Franchise Area and other permitted activities under this Franchise, including, without limitation, the operation and management of its natural gas and electric energy distribution systems. Communications Systems specifically excludes any equipment, devices, or systems installed or constructed to provide consumer telecommunications, cable television, or broadband data services at wholesale or retail within the City, whether by wire or wireless means, to persons other than PSE agents, employees, affiliates, contractors, or consultants.

1.1.3 "Decommissioned Pole" means a PSE owned utility pole located in the Franchise Area which is no longer needed to provide Regulated Service.

1.1.4 "Director" means the Public Works Director or their designee.

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

1.1.6 "Franchise Area" means any, every and all of the roads, streets, avenues, alleys, and highways, grounds and public places of the City as now laid out, platted, dedicated or improved; and any, every and all roads, streets, avenues, alleys, highways, grounds and public places 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 by annexation or otherwise.

1.1.7 "Facilities" means, collectively, any and all (i) natural gas distribution systems, including gas pipes, pipelines, mains, laterals, conduits, feeders, regulators, meters, meter-reading devices, and Communication Systems; (ii) electric transmission and distribution systems, including poles (with or without crossarms), wires, lines, conduits, cables, braces, guys, anchors and vaults, meter-reading devices, and Communication Systems as defined in Section 1.1.2; and (iii) 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. The decommissioning by PSE of any Facilities as defined herein shall not act to remove the same from this definition.

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

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

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

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

1.1.12 "Ordinance" means Ordinance No.1242, which sets forth the terms and conditions of this Franchise.

1.1.13 "Party" means and is a reference to either PSE or the City, and "Parties" means and is a collective reference to PSE and the City.

1.1.14 "PSE" means Puget Sound Energy, Inc., a Washington corporation, and its successors and assigns.

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



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

1.1.17 “Tariff” means the term defined in WAC 480-80-030, as amended, or such similar definition promulgated by the WUTC, describing rate schedules, rules and regulations relating to charges and services as may be currently in effect or hereinafter adopted by the WUTC.

1.1.18 “Term” means the term of this Franchise, as set forth in Section 16 “Franchise Term.”

1.1.19 “Tree” means a self-supporting woody plant characterized by one main trunk or, for certain species, multiple trunks, typically reaching at least 12 to 15 feet in height at maturity that is recognized as a tree in the nursery and arboricultural industries.

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

## **Section 2. Grant of Rights.**

2.1 Pursuant to RCW 35A.47.040, the City hereby grants to PSE the right, privilege, authority and franchise to set, erect, lay, construct, extend, support, attach, connect, maintain, repair, replace, enlarge, operate and use Facilities in, upon, over, under, along, across and through the Franchise Area to provide for the transmission, distribution and sale of gas and energy for power, heat, light and such other purposes for which gas and energy may be used.

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

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

2.4 Existing Facilities installed or maintained by PSE on public grounds and places within the City in accordance with prior franchise agreements (but which such Facilities are not within the

Franchise Area as defined in this Franchise) may continue to be maintained, repaired and operated by PSE at the location such Facilities exist as of the effective date of this Franchise for the term of this Franchise; provided, however, that no such Facilities may be enlarged, improved or expanded without the prior review and approval of the City pursuant to Law.

### **Section 3. Utility Tax and Franchise Fee**

3.1 Utility Tax. PSE acknowledges that the City is authorized under chapter 35.21 RCW, as amended, to impose a utility tax on PSE. Nothing in this franchise shall exempt nor be construed to exempt PSE from payment of this utility tax in accordance with the Lake Forest Park Municipal Code ("LFPMC").

3.2 Franchise Fee. The City acknowledges that it is precluded from imposing a franchise fee upon PSE pursuant to RCW 35.21.860, for use of the right-of-way except for administrative expenses, fees, taxes or charges authorized by chapter 35.21 RCW.

### **Section 4. PSE Use and Occupancy of Franchise Area.**

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

4.2 Prior to PSE engaging in any work on PSE's Facilities located within the Franchise Area, PSE shall apply for all necessary City permits to do such work, and shall, except to the extent contrary to or inconsistent with the terms and conditions of this Franchise, comply with all requirements and conditions of such permits. In the event of an emergency situation in which PSE's Facilities within the Franchise Area are in such a condition so as to endanger the property, life, health or safety of any individual, PSE may take immediate action to correct the dangerous condition without first obtaining any required permit, provided that PSE shall notify the Director telephonically or in person within twenty four (24) hours of the event, and provided that PSE applies for any necessary permit(s) from the City for such work as soon as reasonably practicable thereafter. For the purposes hereof, "as soon as reasonably practicable" means that the permit application shall be submitted to the City not later than ten (10) business days after the date of the commencement of the action that requires such permit, unless (i) otherwise agreed to by the Parties or (ii) delayed by a Force Majeure event consistent with Section 14.

4.3 PSE shall, after installation, construction, relocation, maintenance, removal or repair of any of PSE's Facilities within the Franchise Area, promptly restore the effected Franchise Area and any other City property situated within the Franchise Area that may be disturbed or damaged by such work, to at least the same condition as it was immediately prior to any such work. The City

shall not impose any fee, fine, charge or other cost or expense on PSE for such damage or disturbance, provided that such restoration work is completed to the reasonable satisfaction of the City. All survey monuments which are to be disturbed or displaced by such work shall be referenced and restored consistent with Law.

4.4 If it is reasonably determined that PSE has failed to restore the Franchise Area in accordance with Section 4.3, the City shall provide PSE with written notice including a description of actions the City believes are reasonably necessary to restore the Franchise Area. If the Franchise Area is not restored in accordance with the City's notice within thirty (30) days of that notice, or within a timeframe mutually agreed upon by the Parties, the City, or its authorized agent, may restore the Franchise Area. PSE shall be responsible for all costs and expenses incurred by the City in restoring the Franchise Area in accordance with this Section.

4.5 PSE shall have the right to cut, clear and remove vegetation overhanging or growing into PSE's Facilities within the Franchise Area so as to prevent such vegetation from coming in contact with such Facilities. The exercise of such right shall be subject to the City's prior permit approval, which shall not be unreasonably withheld, conditioned or delayed. PSE shall not apply any pesticide within the Franchise Area without the prior permit approval of the City, which shall not be unreasonably withheld, conditioned or delayed. Approvals for vegetation management may be requested by PSE and secured from the City by submitting to the City with an area-wide vegetation management plan. If such plan is approved by the City, no further reviews or approvals shall be required for vegetation management activities that are (a) included in the approved vegetation management plan and (b) consistent with the terms and conditions of the City's approval.

4.6 In exercising its rights pursuant to Section 4.5 and to the extent required for any of its activities pursuant to Section 4.5, PSE shall submit a utility forest management permit application to the City pursuant to chapter 16.14. LFPMC, which will provide for necessary tree maintenance and management. All pruning and removal of trees shall be done in accord with an approved utility forest management permit and chapter 16.14. LFPMC, to the extent applicable.

4.7 Except in an emergency situation, PSE shall inform residents in the immediately affected area at least ten (10) days prior to beginning work under this Section 4 that a scheduled project will commence, the dates and nature of the project, and provide a method by which residents may obtain further information. A door hanger or mailer may be used to satisfy this requirement.

4.8 PSE shall remove debris from all scheduled work performed under this Section 4 within one (1) business day of the work being performed, unless such debris removal is interrupted by an emergency situation, in which case PSE will remove such debris within one (1) business day after the end of the emergency situation. If the debris is not so removed, the City may remove the debris and PSE shall be responsible for all costs and expenses incurred by the City for said removal. The remedy granted to the City under this Section shall be in addition to those otherwise provided by this Franchise.

## **Section 5. Planning and Coordination.**

5.1 The Parties shall each exercise best reasonable efforts to coordinate construction work either may undertake within the Franchise Area so as to promote the orderly and expeditious

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

5.2 Pursuant to the Growth Management Act (GMA), chapter 36.70A RCW, the City is required to prepare and periodically update its Comprehensive Plan. RCW 36.70A.070 lists the mandatory elements that must be contained in the comprehensive plan, including a utilities element. Upon the reasonable request of the City, PSE agrees to participate in a cooperative effort with the City in updates to its utilities element to meet the GMA's requirements, to the extent such information can be provided consistent with Law.

5.3 The Parties agree to cooperate in the planning and implementation of emergency operations response procedures. PSE will engage in the City emergency planning process at the reasonable request of the City; such participation shall be for informational purposes only and shall not obligate either party.

5.4 Upon written request from the City, PSE shall provide the City with the most recent update available of any plan of potential improvements to PSE's Facilities within the Franchise Area; provided, however, any such plan so submitted shall be for informational purposes only and shall not obligate PSE to undertake any specific improvements within the Franchise Area, nor shall such plan be construed as a proposal to undertake any specific improvements within the Franchise Area.

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

5.6 PSE reserves the right to withhold information or require the City to sign a nondisclosure agreement for the release of information that is deemed Critical Electric//Energy Infrastructure Information (CEII) by the Federal Energy Regulatory Commission (FERC). CEII means information that relates to the production, generation, transportation, transmission, or distribution of energy in which the release may cause incapacity or destruction that would negatively affect security, economic security, public health, or safety, or any combination thereto. Any such withholding or nondisclosure agreement must be consistent with FERC regulations 18 CFR 388.113 (g) (5) and the Washington State Public Records Act, RCW 42.56.

5.7 In the event either PSE or the City shall cause excavations to be made within the Franchise Area, the Party causing such excavation shall afford the other, upon receipt of a written request to do so, an opportunity to use such excavation so long as such joint use does not unreasonably delay the work of the Party causing such excavation, and such joint use is arranged and accomplished upon terms and conditions reasonably satisfactory to the Party causing such excavation. With respect to any excavations by PSE or the City within the Franchise Area, nothing in this Franchise

is intended (nor shall be construed) to relieve either Party of their respective obligations arising under Law with respect to determining the location of utility facilities.

## **Section 6. City Use of PSE Facilities in Franchise Area.**

6.1 During the Term the City shall have the right, subject to PSE's prior consent (which shall not be unreasonably withheld, conditioned or delayed), to install and maintain City-owned overhead facilities on PSE's overhead electric Facilities within the Franchise Area for non-commercial municipal communications purposes. The City shall install, operate and maintain such facilities at its sole risk and expense and shall conduct all such activities in accordance with Law and consistent with such reasonable terms and conditions as PSE may specify from time to time (including requirements accommodating Facilities or the facilities of other parties having the right to use PSE's Facilities). PSE shall have no obligation under Section 11 "Indemnification and Insurance" in connection with any City-owned facilities that are installed or maintained on PSE's overhead electric Facilities. PSE shall not charge the City for use of PSE's overhead electric Facilities pursuant to this Section 6, provided however, that nothing herein shall require PSE to bear any cost or expense in connection with any such use by the City.

6.2 Notwithstanding the foregoing, if at any time during the Term the City's use of PSE's overhead electric Facilities pursuant to this Section 6 shall be determined to be a matter that is subject to the jurisdiction of the WUTC, then such use shall be arranged and accomplished in accordance with PSE's tariffs on file with the WUTC. During the Term, and with respect to poles within the Franchise Area that are owned by PSE (in whole or in part), the City may, subject to PSE's prior written consent, which shall not be unreasonably withheld, install and maintain City-owned wires, devices and other equipment on such PSE-owned poles pursuant to mutual agreement entered into between the City and PSE. Such mutual agreement may address commercial and non-commercial uses of PSE's poles by the City.

## **Section 7. Decommissioned Facilities**

### **7.1 Decommissioned Poles.**

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

7.1.2 If PSE shall determine a PSE owned utility pole located within the Franchise Area to be a Decommissioned Pole, then PSE shall so notify the City and such notice shall establish the date by which such Decommissioned Pole shall be removed from the Franchise Area. PSE shall



use commercially reasonable efforts to remove such Decommissioned Pole from the Franchise Area within one hundred-eighty (180) days of the date of such notice. If, however, upon receipt of any such notice from PSE the City shall reasonably determine that such Decommissioned Pole unreasonably interferes with the free passage of pedestrian or vehicle traffic, then the City shall so notify PSE and PSE shall use commercially reasonable efforts to remove such Decommissioned Pole from the Franchise Area within thirty (30) of the date of such notice from the City.

7.1.3 If the City reasonably determines that a PSE-owned utility pole located within the Franchise Area is no longer in use by PSE or by any authorized third-party, then the City may request that PSE determine if such utility pole is a Decommissioned Pole. Upon receipt of such request, PSE shall review the status of the utility pole in question. If PSE shall determine such utility pole to be a Decommissioned Pole, then PSE shall give the City notice thereof in accordance with Section 7.1.1. If PSE shall determine such utility pole not to be a Decommissioned Pole, then PSE shall so notify the City and such notice shall explain the basis for making such determination. The Parties agree to cooperate and establish mutually agreeable procedures for the implementation of this Section 7.1.3 that achieve the Franchise Area management objectives of the City in a manner that minimizes the administrative burdens on both Parties.

7.2 PSE shall notify the City if PSE elects to permanently decommission any of its above-ground natural gas Facilities within the Franchise Area. Upon receipt of said notice, the City will have the right to require PSE to remove such decommissioned above-ground natural gas Facilities from the Franchise Area. If so required, PSE shall remove such decommissioned Facilities from the Franchise Area within 180 days of PSE's permanent decommissioning, or in accordance with a written removal plan authorized by the City. All necessary permits must be obtained prior to such work.

7.3 PSE may, from time to time, elect to discontinue its use of underground natural gas Facilities within the Franchise Area and decommission such Facilities in place ("Decommissioned Gas Facilities"). In such event, PSE shall notify the City of its decision to decommission such Facilities and provide the City with a plan for such decommissioning. Thereafter, the parties shall review the proposed plan and jointly determine any additional requirements that are reasonably necessary to cause the Decommissioned Gas Facilities to be left in a safe condition and in compliance Law. Decommissioned Gas Facilities will continue to be subject to the terms of this Franchise (including but not limited to the relocation provisions in Section 9 and the indemnification provisions in Section 13). As requested by the City in accordance with Section 5.5, PSE shall provide the City with drawings that show the approximate location of Decommissioned Gas Facilities. PSE shall provide the approximate location of Decommissioned Gas Facilities within the Franchise Area, identified in PSE's available records, to individuals and entities locating underground utilities at the same time PSE is locating the active Facilities.

## **Section 8. Hazardous Substances.**

PSE shall comply with Environmental Laws in connection with its use and occupancy of the Franchise Area. PSE shall only use Hazardous Substances within the Franchise Area incident to PSE's normal business operations, and in all cases, (a) limited to such quantities as may be required in its normal business operations, (b) used, transported or stored per manufacturer's instructions, and (c) used, transported or stored only for its intended use. In the event PSE or its contractors



cause a release of Hazardous Substances within the Franchise Area, PSE shall notify the City within twenty-four (24) hours of its discovery. PSE shall act promptly to remediate such release of Hazardous Substances in accordance with Environmental Laws (the "Remediation Work"). All Remediation Work shall be performed at PSE's sole cost and expense.

## **Section 9. Relocation of Facilities.**

9.1 Whenever the City causes a Public Improvement Project to be undertaken within the Franchise Area, and such Public Improvement Project requires the relocation of PSE's then existing Facilities within the Franchise Area (for purposes other than those described in Section 9.2 below), the City shall:

9.1.1 as soon as possible prior to the notice to proceed for the Public Improvement Project, but not less than one-hundred twenty (120) days prior to such notice to proceed, provide PSE, written notice requesting such relocation; and

9.1.2 provide PSE with reasonable plans and specifications sufficient for initial PSE system design for such Public Improvement Project.

After receipt of such notice and such plans and specifications, PSE shall relocate such Facilities within the Franchise Area at no charge to the City and in accordance with a schedule mutually agreed upon by the City and PSE. 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 9.1, the City shall bear the entire cost of such subsequent relocation. The term "Public Improvement Project" includes any such capital improvement undertaken by the City pursuant to a valid interlocal agreement between the City and a third-party governmental entity, provided, however, any relocation of PSE's Facilities necessary to accommodate the work funded or performed by or on behalf of such third-party governmental entity shall be arranged and accomplished in accordance with Section 9.2 of this Franchise.

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

9.3 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 8.2 above (including any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits for zoning, land use, construction or development).

9.4 Nothing in this Section 8 "Relocation of Facilities" shall require PSE to bear any cost or expense in connection with the location or relocation of any Facilities then existing pursuant to easement or other rights not derived from this Franchise, regardless of whether such easement or

other rights are on public or private property and regardless of whether this Franchise co-exists with such easement or other rights.

9.5 If any person or entity obtains permission from the City to use the Franchise Area for the movement or removal of any building or other object, the City shall, prior to granting such permission, require such person or entity to arrange with PSE for the temporary adjustment of PSE's overhead wires necessary to accommodate the movement or removal of such building or other object, where the movement or removal of such building or other object will pass under PSE's overhead wires or where the movement or removal of such building or other object will otherwise require the temporary adjustment of PSE's overhead wires. The City shall require such person or entity to complete such arrangements, upon terms and conditions acceptable to PSE, not less than thirty (30) calendar days prior to the movement or removal of such building or other object. In such event, PSE shall, at the sole cost and expense of the person or entity desiring to move or remove such building or other object, adjust any of its overhead wires which may obstruct the movement or removal of such building or object.

#### **Section 10.           Undergrounding of Electric Facilities.**

PSE provides electric service on a non-preferential basis subject to and in accordance with tariffs on file with the WUTC. Subject to the availability of such service in accordance with such tariffs, if during the Term the City shall direct PSE to underground overhead electric Facilities within the Franchise Area, then such undergrounding shall be arranged and accomplished subject to and in accordance with such tariffs. This Section 10 shall govern all matters related to the undergrounding of PSE's overhead electric Facilities within the Franchise Area.

#### **Section 11.           Indemnification and Insurance.**

11.1 PSE shall indemnify and hold the City harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another, to the extent such injury or damage is caused by the negligence of PSE, its agents, servants or employees in exercising the rights granted to PSE in this Franchise; provided, however, that in the event any such claim or demand be presented to or filed with the City, the City shall promptly notify PSE thereof, and PSE shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim or demand; provided further, that in the event any suit or action is begun against the City based upon any such claim or demand, the City shall likewise promptly notify PSE thereof, and PSE shall have the right, at its election and its sole cost and expense, to settle and compromise such suit or action, or defend the same at its sole cost and expense, by attorneys of its own election.

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 of PSE's indemnification obligations.

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

11.3.1 Commercial General Liability insurance with limits not less than five million dollars (\$5,000,000) per occurrence for bodily injury or death, property damage, and public liability.

11.3.2 Automobile liability for owned, non-owned and hired vehicles with a Combined Single Limit of two million dollars (\$2,000,000) for each accident.

11.3.3 Worker's compensation with statutory limits and employer's liability insurance with limits of not less than one million dollars (\$1,000,000).

11.4 In lieu of the insurance requirements in Section 11.3, PSE may self-insure against such risks in such amounts as are consistent with this Franchise and good utility practice. Upon the City's request, PSE shall provide the City with reasonable written evidence that PSE is maintaining such self-insurance program.

## **Section 12. Performance Bond.**

12.1 During the Term PSE shall maintain a performance bond consistent with the applicable requirements of the Lake Forest Park Municipal Code and as reasonably sufficient to ensure performance of PSE's obligations under this Franchise to perform work within the Franchise Area. Such bond shall be in the sum of no more than \$250,000 and shall be executed by a corporate surety authorized to do business in the State of Washington with an A.M. Best's rating of not less than A (Excellent). The bond shall be conditioned so that PSE shall restore or replace any defective work performed by or on behalf of PSE or materials discovered in the restoration of the Franchise Area within a period of two years from the final City inspection date of any such restoration. PSE may meet the obligations of this Section with one or more bonds acceptable to the City. In the event that a bond issued pursuant to this Section 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.

12.2 In the event PSE fails to restore the Franchise Area in accordance with the terms and conditions of this Franchise 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 12.1 to cure such deficiency. In the event the City makes use of such bond(s) furnished by PSE pursuant to Section 12.1, the City shall promptly provide written notice of same to PSE. Within thirty (30) Days of receipt of such notice, PSE shall replenish or replace such bond(s).

## **Section 13. Reservation of Easement in Event of Vacation.**

In the event the City vacates any portion of the Franchise Area during the Term the City shall, through its vacation procedure, reserve an easement for PSE's Facilities that exist at the time of the street vacation. The City shall give PSE advance notice of its intent to vacate any portion of the Franchise Area and shall consult with PSE regarding the terms and conditions of the easement to be reserved for PSE's Facilities.

#### **Section 14. Force Majeure.**

If performance of this Franchise or of any obligation hereunder is prevented or substantially restricted or interfered with by reason of an event of Force Majeure, the affected Party, upon giving notice to the other Party, shall be excused from such performance to the extent of and for the duration of such prevention, restriction or interference. The affected Party shall use its reasonable efforts to avoid or remove such causes of nonperformance and shall continue performance hereunder whenever such causes are removed. Notwithstanding the foregoing, the insufficiency of funds, financial inability to perform or changes in such Party's cost of performing its obligations hereunder shall not constitute a Force Majeure event.

#### **Section 15 Dispute Resolution**

15.1 In the event of a Dispute, the Dispute shall first be referred to representatives designated by City and PSE to have oversight over the administration of this Franchise. These representatives shall meet within thirty (30) calendar days of either Party's request for a meeting, whichever request is first, and the Parties shall make a good faith effort to attempt to achieve a resolution of the Dispute.

15.2 If the Parties cannot resolve a Dispute satisfactorily pursuant to Section 15.1, either Party may thereafter deliver to the other Party a written notice (the "Dispute Notice") initiating the dispute resolution procedures set forth in this Section 15.2. The Dispute Notice shall (i) contain a detailed description of the issues in Dispute, (ii) identify the senior officers or administrators of the notifying Party who are authorized to settle the Dispute, and (iii) propose a date or dates within (30) days after the date of the Dispute Notice, on which such officers or administrators are available for a meeting to resolve such Dispute. The recipient Party shall, within three (3) business days following its receipt of the Dispute Notice, provide to the notifying Party a parallel schedule of availability of the recipient Party's senior officers or administrators duly authorized to settle the Dispute. Commencing on the date of delivery of the respective senior officers' or administrators' schedules of availability, the senior officers or administrators so designated shall meet and confer in good-faith negotiations, as often as they deem reasonably necessary, for a period of thirty (30) days, to resolve the Dispute to the satisfaction of both Parties. If at any time after the expiration of such thirty (30) day period the City shall determine that continued negotiations with PSE will not result in a resolution of the issue or issues in Dispute, and if the City reasonably believes that PSE is then in default of its obligations under this Franchise, then the City may serve upon PSE a written order to comply with the provisions of this Franchise pursuant to Section 16 "Default."

#### **Section 16. Default.**

If the Parties cannot resolve a dispute satisfactorily under Section 15, the City may serve upon PSE a written order to comply with the provisions of this Franchise within sixty (60) days from the date such order is received by PSE. If PSE is not in compliance with this Franchise after expiration of said sixty (60) day period, the City may, by ordinance, declare an immediate forfeiture of this Franchise; provided, however, if any failure to comply with this Franchise by PSE cannot be corrected with due diligence within said sixty (60) day period (PSE's obligation to comply and to proceed with due diligence being subject to unavoidable delays and events beyond its control),

then the time within which PSE may so comply shall be extended for such time as may be reasonably necessary and so long as PSE commences promptly and diligently to effect such compliance.

#### **Section 17. Franchise Term.**

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, PSE shall have no rights under this Franchise nor shall PSE be bound by the terms and conditions of this Franchise unless PSE shall, within sixty (60) days after the effective date of the Ordinance, file with the City its written acceptance of the Ordinance in the form attached to this Franchise. The City Clerk is hereby authorized and directed to forward a certified copy of this Ordinance to PSE to unconditionally accept in writing the terms of this Franchise and file such acceptance with the City Clerk. If requested in writing by PSE and upon agreement of the Parties, the term of this Franchise may be extended for up to two five (5) year periods.

#### **Section 18. Assignment.**

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

#### **Section 19. Notice of Tariff Changes.**

PSE shall when making application for any changes in Tariffs affecting the provisions of the Franchise, notify the City in writing, that the application has been submitted to the WUTC within five (5) days of filing with the WUTC. PSE shall also notify the City in writing of any approved Tariff by the WUTC, or its successor, affecting the provisions of this Franchise. 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 20. Miscellaneous.**

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

To PSE:

Puget Sound Energy, Inc.  
P.O. Box 97034  
Bellevue, WA 98009-9734  
Attn: Municipal Liaison Manager  
[justin.mcconachie@pse.com](mailto:justin.mcconachie@pse.com)



To City:

City of Lake Forest Park  
Attn: Jeff Perrigo Public Works Director  
17425 Ballinger Way NE  
Lake Forest Park, WA 98155  
  
jperrigo@ci.lake-forest-park.wa.us

Any such communication by a Party shall be deemed to have been received by the other Party (i) upon the delivery date received by the intended recipient if delivered by hand; (ii) five (5) business days after it is sent by certified mail, postage prepaid; or (iii) if sent by email transmission, when dispatched and acknowledged by the recipient as having been received in full and in legible form. A Party may change its address for purposes of this Section 20.1 by giving written notice of such change to the other Party in the manner provided in this Section 20.1.

20.2 The headings of sections and paragraphs of this Franchise are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs. Terms defined in a given number, tense or form shall have the corresponding meaning when used in this Franchise with initial capitals in another number, tense or form. References containing terms such as “hereof,” “herein,” “hereto,” “hereinafter” and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Franchise taken as a whole. “Includes” or “including” shall not be deemed limited by the specific enumeration of items, but shall be deemed without limitation. The term “or” is not exclusive.

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

20.4 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 and executed in accordance with the laws of the State of Washington. This Franchise constitutes the entire agreement between the Parties, and supersedes all other prior agreements and understandings, oral and written, between the Parties, with respect to the subject matter hereof.

20.5 As provided by RCW 35.21.860, the City may recover from PSE actual administrative expenses incurred by the City that are directly related to receiving and approving this Franchise. PSE agrees to pay the City’s invoices for the actual administrative expenses within sixty (60) days of receipt of same.



20.6 Nothing in this Franchise shall be construed to create any rights or duties to any third party, nor any liability to or standard of care with reference to any third party. This Franchise shall not confer any right or remedy upon any person 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.

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

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

20.9 All terms and conditions of this Franchise that must be reasonably construed to survive the expiration or termination of this Franchise in order to give full force and effect to the intent of the parties as set forth herein shall survive the expiration or termination of this Franchise, regardless of whether such survival is expressly specified herein. The parties also expressly agree that the provisions, conditions and requirements of Section 7. Decommissioned Facilities; Sections 4.1, 4.3 and 4.4 regarding restoration; and Section 11. Indemnification and Insurance shall survive the termination or expiration of this Franchise.

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

This Ordinance shall be effective on the Effective Date, having been: (i) introduced to the City Council not less than five days before its passage, after having been first submitted to the City Attorney; (ii) published at least five days prior to the Effective Date and as otherwise required by law; and (iii) passed at a regular meeting of the City Council by a vote of at least four members of the City Council on July 28, 2022; and accepted in writing by PSE. This Franchise shall take effect as of the date of PSE's written acceptance thereof (the "Effective Date").

HONORABLE MAYOR AND CITY COUNCIL  
CITY OF LAKE FOREST PARK, WASHINGTON

In the matter of the application )  
of Puget Sound Energy, Inc., a ) Franchise Ordinance No. 1242  
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 Lake Forest Park, )  
  
Washington )

WHEREAS, the City Council of the City of Lake Forest Park, Washington, has granted a franchise to Puget Sound Energy, Inc., a Washington corporation, its successors and assigns, by enacting Ordinance No. 1242, bearing the date of \_\_\_\_\_, 2022; and

WHEREAS, a copy of said Ordinance granting said franchise was received by the Puget Sound Energy, Inc. on \_\_\_\_\_, 2022, from said City of Lake Forest Park, King 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 Lake Forest Park, King 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 \_\_\_\_\_, 2022.

ATTEST: PUGET SOUND ENERGY, INC.

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

Copy received for City of Lake Forest Park  
on \_\_\_\_\_, 2022

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