CITY OF NORMANDY PARK
ORDINANCE NO. 798

AN ORDINANCE OF THE CITY OF NORMANDY PARK, WASHINGTON, GRANTING PUGET SOUND ENERGY, INC., A WASHINGTON CORPORATION, A NONEXCLUSIVE 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 AND LIGHT, AND ANY OTHER PURPOSES FOR WHICH GAS AND ENERGY MAY BE USED; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

THE CITY COUNCIL OF THE CITY OF NORMANDY PARK, WASHINGTON, DO ORDAIN AS FOLLOWS:

INDEX

Section 1. Definitions
Section 2. Facilities Within Franchise Area
Section 3. Non-Interference of Facilities
Section 4. City Use of Facilities
Section 5. Records of Installation and Planning
Section 6. Relocation of Facilities
Section 7. Undergrounding of Electric Facilities
Section 8. Insurance
Section 9. Indemnification
Section 10. Compliance with Federal, State and Local Regulations
Section 11. Reservation of Easement in Event of Vacation
Section 12. Moving Buildings Within the Franchise Area
Section 13. Vegetation Management
Section 14. Default and Revocation
Section 15. Dispute Resolution
Section 16. Non-exclusive Franchise
Section 17. Franchise Term
Section 18. Assignment
Section 19. Tariffs
Section 20. Severability
Section 21. Modification and Amendment
Section 22. Notification
Section 23. Direction to City Clerk and Acceptance by PSE
Section 24. Publication Costs
Section 25. Effective Date

Section 1. **Definitions.** The following terms contained herein, unless otherwise indicated, shall be defined as follows:

1.1 City: The City of Normandy Park, a municipal corporation of the State of Washington, specifically including all areas incorporated therein as of the effective date of this ordinance and any other areas later added thereto by annexation or other means.

1.2 City Manager: The City Manager of the City of Normandy Park or designee.

1.3 Days: Calendar days.

1.4 Facilities: Collectively, any and all (i) 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; (ii) electric transmission and distribution systems, including but not limited to, poles (with or without cross arms), wires, lines, conduits, cables, braces, guys, anchor and vaults, meter-reading devices, fixtures, and communication systems; 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, utilized by PSE in the operation of activities authorized by this Franchise. The abandonment by PSE of any above-ground Facilities as defined herein shall not act to remove the same from this definition.

1.5 Franchise: This ordinance, Ordinance Number 798, which sets forth the terms and conditions of this franchise.

1.6 Franchise Area: Collectively, any and all of the road, streets, avenues, alleys, 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.

1.7 PSE: Puget Sound Energy, Inc., a Washington corporation, and its successors and assigns.

1.8 Person: An entity or natural person.

1.9 Public Project: Any capital improvement or repair within the Franchise Area that is identified in the six-year Capital Improvement Plan adopted by the City and is undertaken by or on behalf of the City and funded by the City (either directly with its own funds or with other public monies obtained by the City).

1.10 Right-of-way: As used herein shall refer to the surface of and the space along, above, and below any street, road, highway, freeway, lane, sidewalk, alley, court, boulevard, parkway, drive, utility easements that allow electrical or natural gas facilities, and/or road right-of-way now or hereafter held or administered by the City of Normandy Park.

Section 2. Facilities Within Franchise Area.

2.1 All other franchises heretofore granted by the City to PSE, or its predecessors in interest of which it has acquired, for utilization of streets, avenues, rights-of-way, roads, alleys, lands or other public places within the City for gas and electrical power are hereby canceled.

2.2 Pursuant to the laws of the State of Washington (including, but not limited to, RCW 35.23.440 and RCW 80.32.010), the City hereby grants to PSE, subject to the terms and conditions set forth hereinafter, a Franchise for the period specified in Section 17, commencing upon the effective date of this Ordinance.

2.3 The City does hereby grant 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.

Section 3. Non-Interference of Facilities.

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

3.2 In the event that the City Manager reasonably determines, after providing written notice to PSE and a reasonable opportunity for PSE to respond to the City Manager's concerns, that any one or more of PSE's Facilities within the Franchise Area interfere with the free passage of pedestrian and/or vehicular traffic, then PSE shall promptly take such action as is reasonably necessary to eliminate such interference. In so doing, the City shall fully cooperate with PSE, including, without limitation, allowing changes to or modifications of the Franchise Area

(and other City property), at PSE's expense, if such changes or modifications provide the most effective or economical means of eliminating such interference. Should such interference require relocation of PSE's Facilities within the Franchise Area, such relocation shall be accomplished in accordance with Section Six "Relocation of Facilities" below.

3.3 Whenever it shall be necessary for PSE to engage in work within the Franchise Area, PSE shall inform the City of where and when such work will be done and who will be doing the work. Prior to doing any work in the Franchise Area PSE or its designee shall apply for, and obtain, all required permits from the City. PSE or its designee shall, except where expressly provided otherwise herein, comply with all requirements and conditions of such permits to the extent they are not inconsistent with this Franchise, including, but not limited to, location restrictions, security regulations as promulgated by the City, State or Federal Government, traffic control, and restoration of the Franchise Area. The City may require PSE to post a bond to ensure satisfactory restoration of the Franchise Area following the completion of PSE's work therein. In lieu of a separate bond for routine individual projects involving work in the Franchise Area, PSE may satisfy the City's bond requirements by posting a single on-going performance bond.

3.4 PSE shall maintain and provide to the City a current list of designated subcontractors who are authorized to do work under subsection 3.3 above.

3.5 PSE shall, after installation, construction, relocation, maintenance, removal or repair of any of PSE Facilities within the Franchise Area, restore the surface of the Franchise Area and any other City property within the Franchise Area which may be disturbed or damaged by such work as nearly as practical to its condition prior to such work. As part of the permitting process, the City may impose such conditions as are necessary for protecting any structures in such Rights-of-Way, and for providing for the proper restoration of such Rights-of-Way and to protect the public and the continuity of pedestrian or vehicular traffic provided that such conditions are not in conflict or inconsistent with the terms of this Franchise. The City Manager or designee shall have final approval of the condition of the Franchise Area restoration. All survey monuments which are to be disturbed or displaced by such work shall be referenced and restored by a licensed land surveyor, as per WAC 332-120, as the same now exists or may hereafter be amended, and all pertinent federal, state and local standards and specifications. All work by PSE pursuant to this section shall be performed in accordance with the permit issued by the City, together with the laws of the State of Washington, Normandy Park Municipal Code and the City of Normandy Park Public Works Construction Standards as the same now exists or as may hereafter be amended or superseded; provided that, in the event of any conflict or inconsistency between any such permit, code or standard with the terms and conditions of this Franchise, the terms and conditions of this Franchise shall govern and control.

3.6 PSE shall maintain its Facilities within the Franchise Area in accordance with all applicable federal and state laws. In the event PSE becomes or is made aware of any Facility not in compliance with such law, PSE shall promptly act to bring such Facility into compliance with same. PSE will cooperate with the City to address any such instances brought to its attention by the City.

Section 4. **City Use of Facilities.** During the term of this Franchise and with respect to poles which are Facilities located within the Right-of-way and which are wholly owned by PSE, the City may, subject to PSE's prior written consent, which consent shall not be unreasonably withheld, install and maintain City-owned overhead wires upon such poles for municipal signal interconnection and communication capabilities or other noncommercial public purpose. The foregoing rights of the City to install and maintain such wires are further subject to the following:

4.1 Such installation and maintenance shall be done by the City at its sole risk and expense in accordance with all applicable laws (including, but not limited to, RCW 70.54.090), and subject to such reasonable requirements as PSE may specify from time to time (including without limitation, requirements accommodating PSE's Facilities or the facilities of other parties having the right to use PSE's Facilities); and

4.2 PSE shall have no obligation under Section Eight (or arising under the purview of Section Eight) in connection with any City-owned wires so installed or maintained; and

4.3 PSE shall not charge the City a fee for the use of such poles in accordance with Section Four as a means of deriving revenue therefrom; provided, however, nothing herein shall require PSE to bear any cost or expense in connection with such installation and maintenance by the City.

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

5.1 PSE agrees to provide the City, upon reasonable request and without charge, copies of available drawings, in use by PSE, showing the approximate vertical and horizontal location of its Facilities within the Franchise Area, provided the request is limited to Facilities at specific locations in the Franchise Area and is made in connection with the City's planning of capital improvement projects. Further, PSE shall, upon the City's reasonable request, discuss and explore ways in which PSE and the City may cooperate and coordinate activities with respect to the development of drawing file layers compatible with the City's Geographic Information System ("GIS") which show PSE's Facilities at specific locations in the Franchise Area.

5.2 As to any such drawings and drawing file layers so provided, PSE does not warrant the accuracy thereof and, to the extent the location of Facilities are shown, such Facilities are shown in their approximate location. With respect to

any excavations within the Franchise Area undertaken by or on behalf of PSE or the City, nothing herein is intended (nor shall be construed) to relieve either party of their respective obligations arising under applicable law with respect to determining the location of utility facilities.

5.3 Upon the City's reasonable request in connection with the City's design of new streets and intersections and major renovations of existing streets and intersections, and any other Public Project, undertaken by the City, PSE shall further provide to the City (a) the location and grade of PSE's underground Facilities at those specific locations within the Franchise Area affected by the project by either field markings or by locating the Facilities in the City's design drawings, and (b) other reasonable cooperation and assistance; provided, however, that nothing in this Section 5.3 or any other provision of this Franchise is intended to (or shall) relieve any person of any obligations under applicable law with respect to determining the location of underground facilities.

5.4 PSE and the City acknowledge the benefit of working cooperatively to communicate long term plans for additions and improvements. Therefore, PSE agrees to meet with the City annually, at the request of the City, to discuss and provide copies of PSE's available long term plans for additions and improvements to its transmission and distribution systems within the City. The City agrees to provide PSE annually, at the request of PSE, copies of the City's available long term plans for its additions and improvements within the Franchise Area.

5.5 Subject to receiving advance notice, PSE will make reasonable efforts to attend and participate in meetings of the City regarding Right-of-Way issues that may impact PSE's transmission and/or distribution systems within the City.

Section 6. Relocation of Facilities.

6.1 Whenever the City causes a Public Project to be undertaken within the Franchise Area, and such Public Project requires the relocation of PSE's then existing Facilities within the Franchise Area (for purposes other than those described in Subsection 6.2 below), the City shall:

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

6.1.2 Provide PSE with reasonable plans and specifications for such Public Project.

After receipt of such notice and such plans and specifications, PSE shall relocate such Facilities within the Franchise Area at no charge or expense to the City at such time as mutually agreed by the City and PSE. PSE may, after receipt of written notice requesting a relocation of its Facilities, submit to the City written alternatives to such relocation. The City shall evaluate such alternatives and

advise PSE in writing if any of the alternatives are suitable to accommodate the Public Project. If so requested by the City, PSE shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by PSE full and fair consideration. In the event the City ultimately determines that there is no other reasonable alternative, PSE shall relocate its Facilities as provided in this Section.

If, during the construction of any such Public Project, an emergency posing a threat to public safety or welfare arises requiring the relocation of PSE's Facilities within the Franchise Area, the City shall give PSE notice of the emergency as soon as reasonably practicable. Upon receipt of such notice from the City, PSE shall endeavor to respond as soon as reasonably practicable to relocate the affected Facilities.

If the City requires the subsequent relocation of Facilities within five (5) years from the date of relocation of such Facilities pursuant to this Section, then the City shall bear the entire cost of such subsequent relocation.

6.2 Whenever (a) any public or private development within the Franchise Area, other than a Public Project, requires the relocation of PSE's Facilities within the Franchise Area to accommodate such development; or (b) the City requires the relocation of PSE's Facilities within the Franchise Area for the benefit of any person or entity other than the City, then in such event, PSE shall have the right as a condition of such relocation, to require such 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.

6.3 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 Subsection 6.2 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).

6.4 Nothing in this Section 6 "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 such other rights not derived from this Franchise.

Section 7. Undergrounding of Electric Facilities.

7.1 PSE acknowledges the City desires to encourage the undergrounding of overhead electric Facilities within the Franchise Area. The City acknowledges that PSE utilizes such overhead electric Facilities to provide electrical services on a non-preferential basis subject to and in accordance with tariffs on file with the Washington Utilities and Transportation Commission (WUTC). Subject to and in accordance with such tariffs, PSE will cooperate with the City in the formulation

of policy and development regulations concerning undergrounding of PSE's overhead electric Facilities within the Franchise Area.

7.2 If, during the term of this Franchise, the City shall direct PSE to underground existing overhead electric Facilities (of 15kV or less) within the Franchise Area, such undergrounding shall be arranged and accomplished subject to and in accordance with applicable tariffs on file with the WUTC. This section shall govern all matters related to undergrounding of PSE electric Facilities (i.e., conversion or otherwise) within the Franchise Area.

Section 8. **Insurance.** Except as otherwise provided in this Franchise, PSE shall procure and maintain for the duration of the Franchise, insurance against claims for death or injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges and authority granted hereunder to PSE, its agents or employees. A combination of self-insurance and excess liability insurance may be utilized by PSE. Upon PSE's acceptance of this Franchise, PSE shall provide to the City a certificate of insurance and/or evidence of self insurance evidencing the following required coverages and limits:

8.1 Automobile Liability insurance for owned, non-owned and hired vehicles with limits no less than $2,000,000 Combined Single Limit per accident for bodily injury and property damage; and

8.2 Excess liability insurance in an amount of coverage not less than $10,000,000 per occurrence and $10,000,000 aggregate. Coverage shall include premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. The City shall be named as an additional insured under PSE's excess liability insurance policy.

8.3 Payment of deductible or self-insured retention shall be the sole responsibility of PSE.

8.4 The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, or employees. In addition, the insurance policy shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. PSE's insurance shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of PSE's insurance and shall not contribute with it. Coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the City.

8.5 No Limitation. PSE's maintenance of insurance as required by this agreement shall not be construed to limit the liability of PSE to the coverage provided by

such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

Section 9. Indemnification.

9.1 PSE hereby agrees to indemnify, defend and hold harmless the City, its elected officials, employees, agents, and volunteers from any and all third party claims, costs, judgments, awards or liability to the extent the same is caused by the negligent acts or omissions of PSE, its agents, servants, officers or employees in performing activities authorized by this Franchise. This covenant of indemnification shall include, but not be limited by this reference, claims against the City to the extent they arise as a result of the negligent acts or omissions of PSE, its agents, servants, officers or employees in barricading, instituting trench safety systems or providing other adequate warnings of any excavation, construction, or work in any right-of-way or other public place in performance of work or services permitted under this franchise. If final judgment is rendered against the City, its elected officials, employees, agents, and volunteers, or any of them, PSE shall satisfy the same to the extent it is based on a claim or demand which is covered by PSE's indemnification obligations hereunder. In the event any claim or demand presented to, or suit or action is commenced against, the City based upon any such claim or demand, the City shall promptly notify PSE thereof, and PSE may elect, at its sole cost and expense, to settle and compromise such suit or action, or defend the same with attorneys of its choice. If any such claim or demand is subject to RCW 4.24.115 and caused by or results from the concurrent negligence of (a) the City, its elected or appointed officials, or its agents or employees; and (b) PSE, or PSE's agents or employees, then in such event the defense and indemnity provisions provided for in the preceding Section 7.1 shall be valid and enforceable only to the extent of PSE's negligence.

9.2 The City shall not be liable upon, and pursuant to Subsection 9.1 PSE shall indemnify and defend the City from and against, any third party claim to the extent the same is caused by the negligent acts or omissions of PSE in exercising its rights under this Franchise and is asserted by any person against the City for injury to any person or damage to property, to the extent such claim is asserted solely on the basis of the City's ownership or control of the Right-of-way or the City's grant of this Franchise to PSE.

9.3 Solely to the extent required to enforce the indemnification provided herein, PSE waives its immunity under RCW Title 51; 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. It is expressly agreed and understood that the foregoing waiver is limited solely to claims against the City arising by virtue of PSE's negligent

acts or omissions in exercising its rights set forth in this Franchise and excludes claims against PSE or claims arising from and to the extent of the negligent acts or omissions of the City, its officials, employees or agents. The obligations of PSE under this Franchise have been mutually negotiated by the parties hereto, and PSE acknowledges that the City would not enter into this Franchise without PSE waiver thereof.

Section 10. Compliance with Federal, State and Local Regulations.

10.1 PSE shall comply with all federal, state and local laws or regulations applicable to the exercise of Franchise functions or Franchise obligations; provided that, in the event of any conflict or inconsistency between any local laws or regulations and the terms and conditions of this Franchise, the terms and conditions of this Franchise shall govern and control. Upon written inquiry, PSE shall provide a specific reference to either federal, state or local law or the WUTC order or action, of any, establishing a basis for PSE's actions related to a specific Franchise issue.

10.2 PSE is hereby notified that there are asbestos cement pipes within the Franchise Area and that PSE needs to comply with applicable statutes, regulations and standards relating to the handling of such, if encountered by PSE.

10.3 This Franchise shall not limit, and the City hereby reserves, all lawful powers and Franchise authority available to it under its general police authority; provided, however, such authority shall be exercised in a manner consistent with this Franchise.

Section 11. Reservation of Easement in Event of Vacation. 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 a public utility easement for PSE's Facilities, unless it is determined by the City Council not to do so for good and/or lawful cause.

Section 12. Moving Buildings Within the Franchise Area. If any person or entity obtains permission from the City to use the Franchise Area for the moving or removal of any building or other object, the City shall, prior to granting such permission, require such person or entity to make any necessary arrangements with PSE for the temporary adjustment of PSE's electric Facilities to accommodate the moving or removal of said building or other object. Such necessary arrangements with PSE shall be made, to PSE's satisfaction, not less than fourteen (14) days prior to the moving or removal of said building or other object. In such event, PSE shall, at the expense of the person or entity desiring to move or remove such building or other object, adjust any of its electric Facilities which may obstruct the moving or removal of such building or other object, provided that:

(1) the moving or removal of such building or other object which necessitates the adjustment of electric Facilities shall be done at a reasonable time and in a reasonable manner so as not to unreasonably interfere with PSE's business;

(2) where more than one route is available for the moving or removal of such building or other object, such building or other object shall be moved or removed along the route approved by the City; and

(3) the person or entity obtaining such permission from the City to move or remove such building or other object shall be required to indemnify and save PSE harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another arising out of or in conjunction with the moving or removing of such building or other object, to the extent such injury or damage is caused by the negligence of the agents, servants or employees of the person or entity moving or removing such building or other object.

(4) In the event that adjustment of any PSE wire would not otherwise be necessitated for the moving or removal of such building or other object except for the height of such wire being below the applicable minimum vertical distance of the National Electric Safety Code, then such wire shall be adjusted and thereafter positioned in accordance with current applicable PSE standards at PSE's expense.

Section 13. Vegetation Management

13.1 The City is aware of the need for PSE to provide ongoing regular maintenance of vegetation near PSE electric Facilities. Trees which may interfere with ungrounded supply conductors should be trimmed or removed. PSE shall coordinate its routine vegetation management activities with the City. All trimming or removal shall be done at the recommendation and direction of a certified Arborist, and in compliance with all applicable City ordinances, regulations, resolutions and rules. PSE shall use commercially reasonable efforts to provide advance notice to the record owners of property adjacent to electric Facilities of PSE within the Franchise Area where vegetation removal is planned to be conducted by PSE or its designee. However, such obligation to coordinate and comply shall not limit PSE's right under this Franchise to cut, trim or otherwise remove vegetation at any time within the franchise Area which, due to proximity to PSE's electric Facilities, poses an imminent threat to property, public safety or continuity of electrical service.

13.2 In maintaining its Facilities (including, without limitation, vegetation management activities), PSE shall not apply any pesticide, herbicide, or hazardous material within the Franchise Area without prior written approval of the City. Approval shall not be unreasonably withheld by the City, but must be in conformance with the City's Stormwater Management Plan and the manufacturer's specifications for use and frequency of use of the specific pesticide, herbicide or hazardous material. If PSE first obtains the City's approval to apply a specific product in accordance with a defined procedure on an ongoing basis throughout the Franchise Area, it shall not thereafter be necessary for PSE to obtain the City's approval on each occasion the product is applied in accordance with such procedure unless changes occur in State or

Federal law or regulation that would require or necessitate such subsequent approval. PSE shall notify the City of any accident by PSE involving PSE's use of hazardous materials within the Franchise Area.

13.3 Upon notice or discovery of a significant release of any hazardous substance caused by PSE or expressly authorized by PSE to occur upon the Franchise Area and Facilities covered by this Franchise, PSE shall notify the City within twenty-four (24) hours of discovery. If the encountered or suspected hazardous substances are not the result of acts or omissions of PSE, the City shall, at its own expense, determine if the material is hazardous, in accordance with applicable law. If the materials should prove to be hazardous, then the City shall, at its own expense, if possible, remove, dispose, or otherwise handle such hazardous substances, as necessary, in accordance with applicable law. If hazardous substances are removed, the City also shall provide substitute non-hazardous material to replace the removed material for PSE to use in its operation, if necessary. Upon approval by the City to proceed, PSE shall proceed with the operations at its own cost, with no recourse against the City for the cost of schedule delays incurred due to the delay in operation. If the encountered or suspected hazardous substances within the Franchise Area are the results of the acts or omissions of PSE, then the City's characterization of the substances involved and the removal, disposal, or other handling costs incurred in connection with the removal, disposal, or handling of the hazardous substances will be at PSE's expense. Any environmental mitigation requirements imposed, by operation of applicable law or otherwise, as a result of the exercise or any right or obligation of PSE hereunder shall be the sole responsibility and expense of PSE.

Section 14. Default and Revocation.

14.1 If PSE willfully violates or fails to comply with any of the provisions of this Franchise, and thereafter through willful misconduct or gross negligence fails to correct such violation or noncompliance within thirty (30) days, or less if the City determines an emergency situation exists, after written notice of such violation or noncompliance is given to PSE by the City, then PSE shall, upon the City's adoption of an ordinance declaring an immediate forfeiture of this Franchise, forfeit all rights conferred hereunder; 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.

Section 15. Dispute Resolution.

15.1 The parties recognize that cooperation and communication are essential to resolving issues quickly and efficiently. If any dispute arises in regard to the terms or conditions of this Franchise, then the parties shall meet and engage in

good faith discussions with the objective of settling the dispute within ten (10) days after either party requests such a meeting. If the parties cannot resolve the dispute within such ten (10) day period, the parties will, upon the written request of either party, seek to resolve the dispute in accordance with the following dispute resolution process:

Level One -- A representative from PSE and the City's Public Works Director shall meet to discuss and attempt to resolve the dispute in a timely manner. If these representatives cannot resolve the dispute within fourteen (14) calendar days after referral of the dispute to Level One, either party may by written notice to the other party refer the dispute to Level Two.

Level Two -- In the event either party properly refers the dispute to Level Two, a new PSE representative and the City Manager shall meet to discuss and attempt to resolve the dispute in a timely manner. . If these representatives cannot resolve the dispute within fourteen (14) calendar days after referral of the dispute to Level Two, either party may by written notice to the other party refer the dispute to Level Three.

Level Three -- In the event either party properly refers the dispute to Level Three, the parties shall refer the dispute to mediation using a mediator mutually agreeable to the parties. If these representatives cannot resolve the dispute within fourteen (14) calendar days after referral of the dispute to Level Three, either party may by written notice to the other party refer the dispute to Level Four.

Level Four -- In the event either party properly refers the dispute to Level Four or the dispute is not resolved at Level Three within fourteen (14) calendar days after referral of that dispute to Level Three, either party may seek resolution of the dispute through litigation or other judicial proceedings in any court having jurisdiction over the dispute.

15.2 Notwithstanding Subsection 15.1 or any other provision of this Franchise to the contrary, with respect to any dispute arising under this Franchise, either party may commence litigation or other judicial proceedings within thirty (30) days prior to the date after which the commencement of litigation could be barred by any applicable statute of limitations or other law, rule, regulation, or order of similar import or in order to request injunctive or other equitable relief necessary to prevent irreparable harm. In such event, the Parties will (except as may be prohibited by judicial order) nevertheless continue to follow the procedures set forth in this Section 15.

Section 16. Non-exclusive Franchise. 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, under 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 17. **Franchise Term.** This Franchise is and shall remain in full force and effect for a period of twenty (20) 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 thirty (30) days after the effective date of the Ordinance, file with the City its written acceptance of the Ordinance.

Section 18. **Assignment.** PSE shall not have the right to assign its rights, benefits and privileges in and under this Franchise without the prior written consent of the City, which consent shall not be unreasonably withheld. 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. Notwithstanding the foregoing, PSE shall have the right, without such notice or such written consent, to mortgage its rights, benefits and privileges in and under this Franchise for the benefit of bondholders.

Section 19. **Tariffs.** This Franchise is subject to the provisions of any applicable tariff on file with the WUTC or its successor. In the event of any conflict or inconsistency between the provisions of this Franchise and such tariff, the provisions of such tariff shall control, subject only to Section 21 with respect to any such tariff which is adopted after the date of this Franchise.

Section 20. **Severability.** If any Section, sentence, clause or phrase of this Franchise should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other Section, sentence, clause or phrase of this Franchise. The Parties may amend, repeal, add, replace, or modify any provision of this Franchise to preserve the intent of the parties as expressed herein prior to any finding of invalidity or unconstitutionality.

Section 21. **Modification and Amendment.**

21.1 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 Washington State.

21.1 If, during the term of this Franchise, there becomes effective any change in federal or state law including changes approved by the WUTC which:

(a) affords either party the opportunity to negotiate in good faith a term or condition of this Franchise which term or condition would not have, prior to such change, been consistent with federal or state law; or

(b) pre-empts or otherwise renders null and void any term or condition of this Franchise which has theretofore been negotiated in good faith;

then, in such event, either party may, within one hundred and eight (180) 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 encompass only the specific term or condition affected by such change in federal or state law and neither party shall be obligated to re-open negotiations on any other term or condition of this Franchise. Within

thirty (30) days from and after the other party's receipt of such written notice, the parties shall, at a mutually agreeable time and place, commence such negotiations. Pending completion of such negotiations resulting in mutually agreeable amendment of this Franchise, adoption of such amendment by Ordinance by the City and acceptance of such Ordinance by PSE, and except as to any portion thereof which has been pre-empted or otherwise rendered null and void by such change in federal or state law, the Franchise shall remain in full force and effect.

Section 22. **Notification.** PSE shall notify the City in writing within five (5) days of filing any proposed tariff or schedule that would effect the terms of this Franchise or any rights of the City thereunder. The intent of this section is to provide the City with timely notice of its opportunity to comment on, or become a party to, WUTC consideration of such filing if the City so chooses.

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

Puget Sound Energy	City Manager
P.O. Box 90868	City of Normandy Park
Bellevue, WA 98009-0868	801 S.W. 174th Street
Attn: Community Services	Normandy Park, WA 98166

Section 23. **Directions to City Clerk and Acceptance by PSE.** The City Clerk is hereby directed to forward a certified copy of this ordinance to PSE within ten (10) days of its Effective Date. PSE shall file with the City Clerk, within sixty (60) days from receipt of the certified copy of this ordinance, a written unconditional acceptance of the Franchise granted to PSE in this ordinance, in a form similar to the attached acceptance form herein incorporated by reference, or this Franchise will be null and void.

Section 24. **Publication Costs.** In accordance with state law, this ordinance shall be published in full. The costs of said publication shall be borne by PSE.

Section 25. **Effective Date.** This Ordinance shall take effect on September 24, 2007, having been: (i) introduced to the City Council not less than five days before its passage; (ii) first submitted to the City Attorney on July 12, 2007; (iii) published at least five days prior to the above-referenced effective date and as otherwise required by law; and (iv) passed at a regular meeting of the City Council by at least five members on September 11, 2007.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 14th DAY OF AUGUST 2007, AND SIGNED IN AUTHENTICATION OF ITS PASSAGE THIS 14th DAY OF AUGUST, 2007.

CITY OF NORMANDY PARK

Shawn McEvoy, Mayor

ATTEST/AUTHENTICATED:

Debbie Burke, City Clerk

APPROVED AS TO FORM:

James Haney, City Attorney

Vote	McEvoy	Hadley	Creighton	Enersen	Lindquist	Rankin	Brant
Ayes:	✓	✓	✓	✓		✓	✓
Nays:							
Abstentions:							
Absent:					✓		

PUBLISHED: September 19, 2007

EFFECTIVE: September 24, 2007

STATE OF WASHINGTON)
)
COUNTY OF KING) ss.

I, Debbie Burke, the duly qualified City Clerk of the City of Normandy Park, a municipal corporation of the second class, situated in the County of King, State of Washington, do hereby certify that the foregoing is a full, true and correct copy of Ordinance No. 798, an ordinance of the City of Normandy Park, entitled:

ORDINANCE NO. 798

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 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 No. 798 was: (i) introduced on the 24th day of July, 2007; (ii) submitted to the City Attorney on the 12th day of July, 2007; (iii) published on the 19th day of September, 2007, according to law; (iv) approved by at least five members of the City Council at a regular meeting thereof on the 11th day of September, 2007; and (v) approved and signed by the Mayor of the City of Normandy Park on the 11th day of September, 2007.

WITNESS my hand and official seal of the City of Normandy Park, this 11th day of September, 2007.

Debbie Burke, City Clerk
City of Normandy Park, State of Washington

HONORABLE MAYOR AND CITY COUNCIL
CITY OF NORMANDY PARK, WASHINGTON

In the matter of the application of Puget Sound Energy, Inc. a Washington corporation, for a franchise to construct, operate and maintain facilities in, upon, over under, along, across and through the franchise area of the City of Normandy Park, Washington	:	Franchise Ordinance No. 798 ACCEPTANCE

WHEREAS, the City Council of the City of Normandy Park, Washington, has granted a franchise to Puget Sound Energy, Inc., a Washington corporation, its successors and assigns, by enacting Ordinance No. 798, bearing the date September 11, 2007; and

WHEREAS, a copy of said Ordinance granting said franchise was received by the Puget Sound Energy, Inc. on September 14, 2007, from said City of Normandy 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 Normandy Park, King County, Washington.

IN TESTIMONEY WHEREOF said Puget Sound Energy, Inc. has caused this written Acceptance to be executed in its name by its undersigned MARK BOWMAN thereunto duly authorized on this 27th day of September, 2007.

ATTEST:

PUGET SOUND ENERGY, INC.

By: Mark Bowman

Copy received for City of Normandy Park on September 28, 2007.

By: _____
Debbie Burke, City Clerk