1398-ORD
07/30/14

ORIGINAL

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 6176

AN ORDINANCE of the City of Bellevue, Washington, granting Puget Sound Energy, Inc., a Washington corporation, the right, privilege and authority and franchise to set, erect, construct, support, attach, connect and stretch facilities between, maintain, repair, replace, enlarge, operate and use facilities in, upon, under, along and across the franchise area for purposes of transmission, distribution and sale of natural gas.

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Definitions. Where used in this Franchise Ordinance (the "Franchise") the following terms shall mean:

1.1 "City" means the City of Bellevue, a municipal corporation of the State of Washington, and its respective successors and assigns.

1.2 "Facilities" means, collectively, any and all natural gas systems, including but not limited to gas pipes, pipelines, mains, laterals, conduits, feeders, regulators, valves, meters, meter-reading devices, fixtures, and communication systems and any and all other equipment, appliances, attachments, appurtenances and other items necessary, convenient, or in any way appertaining to any and all of the foregoing for the purpose of transmission, distribution and sale of natural gas , whether the same be located over or under ground.

1.3 "Franchise" means the grant of rights, privileges and authority embodied in this Ordinance.

1.4 "Franchise Area" means all rights-of-way for public roads, streets, avenues, alleys, and highways of the City as now laid out, platted, dedicated, acquired or improved; all rights-of-way for public roads, streets, avenues, alleys, and highways that may hereafter be laid out, platted, dedicated, acquired or improved within the present limits of the City and as such limits may be hereafter extended, and; all City owned utility easements dedicated for the placement and location of various utilities provided such easement would permit PSE to fully exercise the rights granted under this Franchise within the area covered by the easement.

1.5 "Ordinance" means this Ordinance No. 6176, which sets forth the terms and conditions of this Franchise.

1.6 "Party" or "Parties" means collectively the City and PSE, and individually either the City or PSE.

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

1.8 "Public Works Project" means, any City capital improvement or the construction, relocation, expansion, repair, maintenance, or removal of any part of the Franchise Area or City owned Facilities located on or in the Franchise Area for: parks; roads and/or streets; sidewalks; curbs; pedestrian and/or vehicle traffic; sewers, storm water drains; water Facilities, and; City owned fiber optic cable, conduit or network Facilities.

1.9 "Tariff" means tariff as that term is defined in WAC 480-80-030(3), or such similar definition describing rate schedules, rules and regulations relating to charges and service as may hereinafter be adopted by the regulatory authority with jurisdiction, under the laws of the State of Washington, over public service companies.

1.10 "Third Party" means any person, party or entity other than the City and PSE.

1.11 "WUTC" means the Washington Utilities and Transportation Commission or such successor regulatory agency having jurisdiction over public service companies.

Section 2. Grant of Franchise

2.1 Pursuant to the laws of the State of Washington including, but not limited to, RCW 35A.47.040, the City hereby grants to PSE, subject to the terms and conditions as set forth herein, a Franchise for a period of ten (10) years commencing upon the effective date of this Ordinance and subsequent acceptance of such ordinance and Franchise by PSE. This Franchise is granted upon the express condition that PSE, within thirty (30) days after the adoption of this Ordinance, shall file with the clerk of the City a written acceptance of the same. If PSE fails to do so within the time frame above, this Ordinance and Franchise shall be null and void. This Franchise may be renewed, at the sole discretion of the Bellevue City Council, for one additional five (5) year period upon the written request of PSE, such request to be submitted not more than two (2) years nor less than one-hundred-eighty (180) days prior to the expiration of the initial ten (10) year term.

2.2 PSE specifically agrees to comply with the provisions of any applicable City codes, ordinances, regulations, standards, procedures, permits or approvals, as from time to time amended; provided, however, that in the event of a conflict or inconsistency between any such provisions and this Franchise, the express terms and conditions of this Franchise shall govern. The express terms and conditions of the Franchise constitute a valid and enforceable contract between the Parties.

2.3 Upon the effective date of this Ordinance and acceptance of such Ordinance and Franchise by PSE, all prior franchises between the City and PSE, or

its predecessors in interest, which it has acquired for the transmission, distribution and sale of natural gas shall be deemed repealed.

Section 3. Non-Franchise Area City Property

3.1 This Franchise shall not convey any right to PSE to install Facilities on or to otherwise use City-owned or leased properties or easements outside the Franchise Area.

3.2 Existing Facilities installed or maintained by PSE in accordance with prior franchise agreements on public grounds and places within the City (but which are not a part of the Franchise Area as defined by this Franchise) may be maintained, repaired and operated by PSE at the location where such Facilities exist as of the effective date of this Franchise for the term of this Franchise; provided, however, that no such Facilities may be enlarged, improved or expanded without the prior review and approval of the City pursuant to the provisions of any applicable City codes, ordinances, regulations, standards, procedures and/or permits, as now exist or as may be hereafter amended or superseded, provided that such provisions are not in conflict or inconsistent with the express terms and conditions of this Franchise.

Section 4. Nonexclusive Franchise

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

4.2 The City reserves the right to acquire, construct, own, operate and maintain a municipal natural gas utility to serve all or any portion of the City, at any time during the term of this Franchise and to fully exercise such right in accordance with applicable law.

Section 5. Noninterference of Facilities/Restoration

5.1 PSE's Facilities shall be located and maintained within the Franchise Area so as not to interfere with the free passage of pedestrian and/or vehicle traffic therein, or with the reasonable ingress or egress to the properties abutting the Franchise Area as they exist at the time of installation of the Facilities. Any relocation of PSE Facilities that may be necessary to accommodate a Third Party shall be subject to Section 6 below.

5.2 PSE shall, after installation, construction, relocation, maintenance, removal or repair of any of PSE's 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, to at least the same condition as

it was immediately prior to any such work. The City shall have final approval of the condition of the Franchise Area after restoration pursuant to the provisions of applicable City codes, ordinances, regulations, standards and procedures, as now exist or as may be hereafter amended or superseded, provided that such provisions are not in conflict or inconsistent with the express terms and conditions of this Franchise.

5.3 The City may require PSE to post an appropriate bond, as determined by the City, to ensure satisfactory restoration of the Franchise Area following the completion of PSE's work therein. In lieu of separate bonds 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. PSE may satisfy the requirement of this Section 5.3 using a bond posted by PSE (if any) pursuant to Section 5.3 of City Ordinance 5443.

5.4 All survey monuments which are disturbed or displaced by PSE in its performance of any work under this Franchise shall be referenced and restored by PSE, as per WAC 332-120, as from time to time amended, and all pertinent federal, state and local standards and specifications.

5.5 Except as otherwise provided in this Section 5.5, in the event PSE permanently ceases use of any of its Facilities within the Franchise Area, PSE shall, within one hundred and eighty days (180) after such permanent cessation of use, or such additional time as is agreed to between the parties, remove such Facilities at its sole cost and expense; provided that with the express written consent of the City, PSE may leave such Facilities in place subject to the conditions set forth in this Section 5.5. Any such Facilities to be left in place shall be made inert by purging all natural gas from such Facilities (including displacement of natural gas with an appropriate inert gas) and disconnecting and sealing such Facilities, all in compliance with applicable regulations and industry standards. The City's consent shall not relieve PSE of the obligation and/or costs to subsequently remove or alter such Facilities in the event the City reasonably determines that such removal or alteration is necessary or advisable for the health and safety of the public, in which case PSE shall perform such work at no cost to the City. The obligations contained in this Section 5.5 shall survive the expiration, revocation or termination of this Franchise.

5.6 All work by PSE pursuant to this Section shall be performed in accord with the permit(s) issued by the City, together with the laws of the State of Washington, the provisions of any applicable City codes, ordinances, regulations, standards and procedures as now exist or as may be hereafter amended or superseded, provided that such provisions are not in conflict or inconsistent with the express terms and conditions of this Franchise.

Section 6. Relocation of Facilities

6.1 Whenever the City causes the construction of any Public Works Project within the Franchise Area, or on public grounds and places described in

Section 3.2, and such construction necessitates the relocation of PSE's Facilities from their existing location within the Franchise Area or on such public grounds and places, such relocation will be at no cost to the City.

6.2 The City and PSE shall work cooperatively to accomplish any such relocation of PSE's Facilities consistent with procedures contained in the Memorandum of Understanding (City of Bellevue Record No. 34154), mutually agreed to, and as from time to time amended by mutual agreement of the Parties.

6.3 In the event an emergency posing a threat to public safety or welfare requires 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.

6.4 Subject to Section 6.5, whenever any Third Party requires the relocation of PSE's Facilities to accommodate work of such Third Party within the Franchise Area or on such public grounds and places described in Section 3.2, then PSE shall have the right as a condition of any such relocation to require 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.

6.5 Any condition or requirement imposed by the City upon any Third Party (including, without limitation, any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits obtained pursuant to any zoning, land use, construction or other development regulation) which requires the relocation of PSE's Facilities within the Franchise Area shall be a condition or requirement causing relocation of PSE's Facilities to occur subject to the provisions of Section 6.4 above; provided, however in the event the City reasonably determines and notifies PSE that the primary purpose of imposing such condition or requirement upon such Third Party is to cause or facilitate the construction of a Public Works Project to be undertaken within a segment of the Franchise Area on the City's behalf and consistent with the City's Capital Investment Plan; Transportation Improvement Program; or the Transportation Facilities Program, then only those costs and expenses incurred by PSE in reconnecting such relocated Facilities with PSE's other Facilities shall be paid to PSE by such Third Party, and PSE shall otherwise relocate its Facilities within such segment of the Franchise Area in accordance with Section 6.1.

6.6 As to any relocation of PSE's Facilities whereby the cost and expense thereof is to be borne by PSE in accordance with this Section 6, PSE may, after receipt of written notice requesting such relocation, submit in writing to the City alternatives to relocation of its Facilities. Upon the City's receipt from PSE of such written alternatives, the City shall evaluate such alternatives and shall advise PSE in writing if one or more of such alternatives is suitable to accommodate the work which would otherwise necessitate relocation of PSE's Facilities. In evaluating such alternatives, the City shall give each alternative proposed by PSE full and fair consideration with due regard to all facts and circumstances which bear upon the

practicality of relocation and alternatives to relocation. No alternative proposed by PSE shall be evaluated by the City in an arbitrary or capricious manner. In the event the City reasonably determines that such alternatives are not appropriate, PSE shall relocate its Facilities as otherwise provided in Section 6.1 and 6.2.

6.7 If the City requires the subsequent relocation of any Facilities within five (5) years from the date of relocation of such Facilities pursuant to Section 6.1 and Section 6.5 (when such Section 6.5 relocation would be considered a Section 6.1 relocation), the City shall bear the entire cost of such subsequent relocation.

6.8 Nothing in this Section 6 shall require PSE to bear any cost or expense in connection with the relocation of any Facilities existing under benefit of easement (other than City owned utility easements described in Section 1.4) or other rights not arising under this Franchise, nor shall anything in this Section 6 require the City to bear any such cost or expense. Nothing in this Section 6 shall be construed to be a waiver of any right of either PSE or the City to contest any claim or assertion by the other of responsibility to pay such cost or expense.

Section 7. Records of Installation and Planning

7.1 Upon the City's reasonable request, PSE shall provide to the City copies of any plans prepared by PSE for potential improvements, relocations and conversions to its Facilities within the Franchise Area; provided, however, any such plans 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.

7.2 Upon the City's reasonable request, PSE shall provide to the City copies of available drawings in use by PSE showing the location of its Facilities at specific locations within the Franchise Area. As to any such drawings so provided, PSE does not warrant the accuracy thereof and, to the extent the locations of Facilities are shown, such Facilities are shown in their approximate location. Further, the City and PSE shall work cooperatively, consistent with the Memorandum of Understanding (City of Bellevue Record No. 34155, hereby incorporated by reference) mutually agreed to, and as from time to time amended by mutual agreement of the Parties, to pursue changes in applicable law which would facilitate provision by PSE to the City of such drawings of PSE's Facilities.

7.3 Upon the City's reasonable request, in connection with the design of any Public Works Project, PSE shall verify the location of its underground Facilities within the Franchise Area by excavating (e.g., pot holing) at no expense to the City. In the event PSE performs such excavation, the City shall not require any restoration of the disturbed area in excess of restoration to the same condition as existed immediately prior to the excavation.

7.4 Any drawings and/or information concerning the location of PSE's Facilities provided by PSE shall be used by the City solely for management of the

Franchise Area. The City shall take all prudent steps reasonably necessary to prevent disclosure or dissemination of such drawings and/or information to any Third Party, without the prior express consent of PSE, to the extent permitted by law.

7.5 Notwithstanding the foregoing, nothing in this Section 7 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.

7.6 Upon the City's reasonable request and consistent with the Natural Gas System Integrity and Safety Memorandum of Understanding mutually agreed to and from time to time amended by mutual agreement of the Parties, PSE will make available for review by the City information, records and reports concerning or related to maintenance, inspection and safety of PSE's natural gas Facilities located within the Franchise Area.

Section 8. Coordination, Shared Excavations

8.1 PSE and the City shall each exercise all best reasonable efforts to coordinate any construction work that either may undertake within the Franchise Areas so as to promote the orderly and expeditious performance and completion of such work as a whole. Such efforts shall include, at a minimum, reasonable and diligent efforts to keep the other party and other utilities within the Franchise Areas informed of its intent to undertake such construction work. PSE and the City shall further exercise best reasonable efforts to minimize any delay or hindrance to any construction work undertaken by themselves or other utilities within the Franchise Area.

8.2 If, at any time or from time to time, either PSE or the City shall cause excavations to be made within the Franchise Area, the party causing such excavation to be made shall afford the other, upon receipt of a written request to do so, an opportunity to use such excavation, provided that: (1) such joint use shall not unreasonably delay the work of the party causing the excavation to be made; and (2) such joint use shall be arranged and accomplished on terms and conditions satisfactory to both Parties.

Section 9. Dispute Resolution

9.1 If there is any dispute or alleged default with respect to performance under this Franchise, the City shall notify PSE in writing, stating with reasonable specificity the nature of the dispute or alleged default. Within seven (7) days of its receipt of such notice, PSE shall provide written response to the City that shall acknowledge receipt of such notice and state PSE's intentions with respect to how PSE shall respond to such notice. PSE shall further have thirty (30) days (the "cure period") from its receipt of such notice to:

A. Respond to the City, contesting the City's assertion(s) as to the dispute or any alleged default and requesting a meeting in accordance with Section 9.2, or:

B. Resolve the dispute or cure the default, or;

C. Notify the City that PSE cannot resolve the dispute or cure the default within thirty (30) days, due to the nature of the dispute or alleged default. Notwithstanding such notice, PSE shall promptly take all reasonable steps to begin to resolve the dispute or cure the default and notify the City in writing and in detail as to the actions that will be taken by PSE and the projected completion date. In such case, the City may set a meeting in accordance with Section 9.2.

9.2 If any dispute is not resolved or any alleged default is not cured or a meeting is requested or set in accordance with Section 9.1., then the City shall promptly schedule a meeting between the City and PSE to discuss the dispute or any alleged default. The City shall notify PSE of the meeting in writing and such meeting shall take place not less than ten (10) days after PSE's receipt of notice of the meeting. Each Party shall appoint a representative who shall attend the meeting and be responsible for representing the Party's interests. The representatives shall exercise good faith efforts to resolve the dispute or reach agreement on any alleged default and/or any corrective action to be taken. Any dispute (including any dispute concerning the existence of or any corrective action to be taken to cure any alleged default) that is not resolved within ten (10) days following the conclusion of the meeting shall be referred by the Parties' representatives in writing to the senior management of the Parties for resolution. In the event senior management is unable to resolve the dispute within twenty (20) days of such referral (or such other period as the Parties may agree upon), each Party may pursue resolution of the dispute or any alleged default through other legal means consistent with Section 10 of this Franchise. All negotiations pursuant to these procedures for the resolution of disputes shall be confidential and shall be treated as compromise and settlement negotiations for purposes of the state and federal rules of evidence.

9.3 If, at the conclusion of the steps provided for in Section 9.1 and 9.2 above, the City and PSE are unable to settle the dispute or agree upon the existence of a default or the corrective action to be taken to cure any alleged default, the City or PSE (as PSE may have authority to do so) may:

A. Take any enforcement or corrective action provided for in City code, as from time to time amended; provided such action is not otherwise in conflict with the provisions of this Franchise, and/or;

B. Demand arbitration, pursuant to Section 10 below, for disputes arising out of or related to Sections 2.2 (or such other sections with respect to the existence of conflicts or inconsistencies with the express terms and conditions of this Franchise and any applicable City codes, ordinances, regulations, standards and procedures as now exist or as may be hereafter amended or superseded), 3, 5, 6 (excluding project delay claims exceeding $30,000), 7, 13, and 19 of this Franchise (the "Arbitrable Claims"), and/or;

C. By ordinance, declare an immediate forfeiture of this Franchise for a breach of any material, non-arbitrable, obligations under this Franchise and/or;

D. Take such other action to which it is entitled under this Franchise or any applicable law.

9.4 Unless otherwise agreed by the City and PSE in writing, the City and PSE shall, as may reasonably be practicable, continue to perform their respective obligations under this Franchise during the pendency of any dispute.

Section 10. Arbitration

10.1 The Parties agree that any dispute, controversy, or claim arising out of or relating to the Arbitrable Claims, shall be referred for resolution to the American Arbitration Association in accordance with the rules and procedures in force at the time of the submission of a request for arbitration.

10.2 The arbitrators shall allow such discovery as is appropriate to the purposes of arbitration in accomplishing a fair, speedy and cost-effective resolution of the dispute(s). The arbitrators shall reference the Washington State Rules of Civil Procedure then in effect in setting the scope and timing of discovery. The Washington State Rules of Evidence shall apply in toto. The arbitrators may enter a default decision against any Party who fails to participate in the arbitration proceedings.

10.3 The arbitrators shall have the authority to award compensatory damages, including consequential damages. Such damages may include, but shall not be limited to: all costs and expenses of materials, equipment, supplies, utilities, consumables, goods and other items; all costs and expenses of any staff; all costs and expenses of any labor (including, but not limited to, labor of any contractors and/or subcontractors); all pre-arbitration costs and expenses of consultants, attorneys, accountants, professional and other services; and all taxes, insurance, interest expenses, overhead and general administrative costs and expenses, and other costs and expenses of any kind incurred in connection with the dispute. The arbitrator may award equitable relief in those circumstances where monetary damages would be inadequate.

10.4 Any award by the arbitrators shall be accompanied by a written opinion setting forth the findings of fact and conclusions of law relied upon in reaching the decision. The award rendered by the arbitrators shall be final, binding and non-appealable, and judgment upon such award may be entered by any court of competent jurisdiction.

10.5 Except as provided in Section 10.7 below, each Party shall pay the fees of its own attorneys, expenses of witnesses and all other expenses and costs in connection with the presentation of such Party's case including, without limitation, the cost of any records, transcripts or other things used by the Parties for the

arbitration, copies of any documents used in evidence, certified copies of any court, property or City documents or records that are placed into evidence by a Party.

10.6 Except as provided in Section 10.7 below, the remaining costs of the arbitration, including without limitation, fees of the arbitrators, costs of records or transcripts prepared for the arbitrator's use in the arbitration, costs of producing the arbitrator's decision and administrative fees shall be borne equally by the Parties.

10.7 Notwithstanding the foregoing Sections 10.5 and 10.6, in the event either Party is found during the term of this Franchise to be the prevailing party in any two (2) arbitration proceedings brought by such Party pursuant to this Section 10, or under any Memorandum of Understanding provided for in Sections 6 and 7 of this Franchise or any other Memorandum of Understanding between the Parties that provides therefore, then such Party shall thereafter be entitled to recover all reasonably incurred costs, fees and expenses, including attorney fees, for any subsequent arbitration brought by them in which they are found to be the prevailing party.

10.8 In the event a Party desires to make a copy of the transcript of an arbitration proceeding for its use in writing a post-hearing brief, or a copy of an arbitration decision to append to a lawsuit to reduce the award to judgment, etc., then that Party shall bear the cost thereof, except to the extent such cost might be allowed by a court as court costs.

Section 11. Alternative Remedies

No provision of this Franchise shall be deemed to bar the right of the City or PSE to seek or obtain judicial relief from a violation of any provision of the Franchise or any rule, regulation, requirement or directive promulgated thereunder for non-arbitrable claims. Neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City or PSE to recover monetary damages for such violations by the other Party, or to seek and obtain judicial enforcement of the other Party's obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

Section 12. Indemnification

12.1 PSE shall indemnify, defend and hold the City, its agents, officers or employees harmless from and against any and all claims, demands, liability, loss, cost, damage or expense of any nature whatsoever including all costs and attorneys' fees, made against the City, its agents, officers or employees on account of injury, harm, death or damage to persons or property which is caused by, in whole or in part, and then only to the extent of the negligent acts or omissions of PSE or its agents, servants, employees, contractors, or subcontractors in the exercise of the rights granted to PSE by this Franchise. Provided, however, such indemnification shall not extend to that portion of any claims, demands, liability, loss, cost, damage or expense of any nature whatsoever including all costs and attorneys' fees caused

by the negligence of the City, its agents, employees, officers, contractors or subcontractors.

12.2 PSE's indemnification obligations pursuant to this Section 12 shall include assuming potential liability for actions brought by PSE's own employees and the employees of PSE's agents, representatives, contractors, and subcontractors even though PSE might be immune under Title 51 RCW from direct suit brought by such employees. It is expressly agreed and understood that this assumption of potential liability for actions brought by the aforementioned employees is limited solely to claims against the City arising by virtue of PSE's exercise of the rights set forth in this Agreement. The obligations of PSE under this section have been mutually negotiated by the Parties hereto, and PSE acknowledges that the City would not enter into this Agreement without PSE's waiver thereof. To the extent required to provide this indemnification and this indemnification only, PSE waives its immunity under Title 51 RCW as provided in RCW 4.24.115.

12.3 In the event any matter (for which the City intends to assert its rights under this Section 12) is presented to or filed with the City, the City shall promptly notify PSE thereof and PSE shall have the right, at its election and at its sole costs and expense, to settle and compromise such matter as it pertains to PSE's responsibility to indemnify, defend and hold harmless the City, its agents, officers or employees. In the event any suit or action is started against the City based upon any such matter, the City shall likewise 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 suit or action, or defend the same at its sole cost and expense, by attorneys of its own election, as it pertains to PSE's responsibility to indemnify, defend and hold harmless the City, its agents, officers or employees.

Section 13. Emergency Management

Annually, upon the request of the City, PSE will meet with the City Fire/Emergency Preparedness Department to coordinate emergency management operations and, at least once a year, at the request of the City, PSE personnel will actively participate with either the Fire Department or the City Emergency Operations Center in emergency preparedness drills or planning sessions.

Section 14. Assignment of Franchise

All of the provisions, conditions and requirements herein contained shall be binding upon PSE and the City. PSE may not assign or otherwise transfer its rights, privileges, authority and Franchise herein conferred without the prior written authorization and approval of the City, which shall not be unreasonably withheld. The City hereby authorizes and approves the mortgage by PSE of its rights, privileges, authority and Franchise in and under this Franchise to the trustee for its bondholders.

Section 15. Severability and Survival

15.1 If any term, provision, condition or portion of this Franchise shall be held to be invalid such invalidity shall not affect the validity of the remaining portions of this Franchise which shall continue in full force and effect. The headings of the 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.

15.2 All provisions, conditions and requirements of this Franchise that may be reasonably construed to survive the termination or expiration of this Franchise shall survive the termination or expiration of the Franchise. Subject to Section 14 above, the Parties' respective rights and interests under this Franchise shall inure to the benefit of their respective successors and assigns.

Section 16. Amendments to Franchise

16.1 This Franchise may be amended only by mutual agreement thereto, set forth in writing in the form of a City ordinance, 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. Without limiting the generality of the foregoing, this Franchise (including, without limitation the Sections addressing indemnification and insurance) shall govern and supersede and shall not be changed, modified, deleted, added to, supplemented or otherwise amended by any permit, approval, license, agreement or other document required by or obtained from the City in conjunction with the exercise (or failure to exercise) by PSE of any and all of its rights, benefits, privileges, obligations or duties in and under this Franchise, unless such permit, approval, license, agreement or other document specifically:

A. References this Franchise; and

B. States that it contains terms and conditions which change, modify, delete, add to, supplement or otherwise amend the terms and conditions of this Franchise.

Section 17. No Third Party Beneficiary

Nothing in this Franchise shall be construed to create or confer any right or remedy upon any person(s) other than the City and PSE. No action may be commenced or prosecuted against any Party by any Third Party claiming as a Third Party beneficiary of this Franchise. This Franchise shall not release or discharge any obligation or liability of any Third Party to either Party.

Section 18. Insurance

18.1 PSE shall procure and maintain for the duration of the Franchise, insurance, or provide self-insurance, against all 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 hereunder to PSE, its agents, representatives or employees. PSE shall provide evidence of self-insurance and/or an insurance certificate, together with an endorsement naming the City, its officers, elected officials, agents, employees, representatives, engineers, consultants and volunteers as additional insureds, to the City for its inspection prior to the commencement of any work or installation of any Facilities pursuant to this Franchise, and such self-insurance and/or insurance certificate shall evidence the following minimum coverages:

A. Comprehensive general liability insurance including coverage for premises - operations, explosions and collapse hazard, underground hazard and products completed hazard, with limits not less than:

(1) $5,000,000 for bodily injury or death to each person;

(2) $5,000,000 for property damage resulting from any one accident; and

(3) $5,000,000 for general liability.

B. Automobile liability for owned, non-owned and hired vehicles with a limit of $2,000,000 for each person and $2,000,000 for each accident;

C. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than $2,000,000;

D. Environmental pollution liability with a limit not less than $5,000,000 for each occurrence, at a minimum covering liability from sudden and/or accidental occurrences.

If coverage is purchased on a "claims made" basis, then PSE shall warrant continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three years from the date termination of this Franchise, and/or conversion from a "claims made" form to an "occurrence" coverage form.

18.2 Any deductibles or self-insured retentions must be declared to the City. Payment of deductibles and self-insured retentions shall be the sole responsibility of PSE. The insurance certificate required by this Section 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.

18.3 PSE's insurance shall be primary insurance with respect to the City, its officers, officials, employees, agents, consultants, and volunteers. Any insurance maintained by the City, its officers, officials, employees, consultants, agents, and volunteers shall be in excess of PSE's insurance and shall not contribute with it.

18.4 In addition to the coverage requirements set forth in this Section, the certificate of insurance shall provide that:

> "The above described policies will not be canceled before the expiration date thereof, without the issuing company giving sixty (60) days written notice to the certificate holder."

In the event of said cancellation or intent not to renew, PSE shall obtain and furnish to the City evidence of replacement insurance policies meeting the requirements of this Section by the cancellation date.

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 of the application and provide City with a copy of the submitted application within five (5) days of filing with the WUTC. PSE shall further provide the City with a copy of any actual approved tariff(s) affecting the provision of this Franchise.

Section 20. Force Majeure

In the event that either Party is prevented or delayed in the performance of any of its obligations under this Franchise by reason beyond its reasonable control (a "Force Majeure Event"), then that Party's performance shall be excused during the Force Majeure Event. Force Majeure Events shall include, without limitation, war; civil disturbance; flood, earthquake or other Act of God; storm, earthquake or other condition which necessitates the mobilization of the personnel of a Party or its contractors to restore utility service to customers; laws, regulations, rules or orders of any governmental agency; sabotage; strikes or similar labor disputes involving personnel of a Party, its contractors or a Third Party; or any failure or delay in the performance by the other Party, or a Third Party who is not an employee, agent or contractor of the Party claiming a Force Majeure Event, in connection with this Franchise. Upon removal or termination of the Force Majeure Event, the Party claiming a Force Majeure Event shall promptly perform the affected obligations in an orderly and expedited manner under this Franchise or procure a substitute for such obligation. The Parties shall use all commercially reasonable efforts to eliminate or minimize any delay caused by a Force Majeure Event.

Section 21. Memorandum of Understanding

21.1 The Parties agree to develop and maintain in effect for the term of this Franchise certain Memoranda of Understanding as provided for in Sections 6 and 7 of this Franchise. These Memoranda of Understanding shall, among other things, detail the expectation of the Parties regarding their respective responsibilities and performance relating to the subject matter thereof.

21.2 In the event any of the Memoranda of Understanding provided for by this Section 21 are not in place (by mutual agreement of the Parties) within 180 days

ORIGINAL

of effective date of this Ordinance then the City may, at its option and by ordinance, declare a forfeiture of this Franchise.

21.3 In the event of performance by either Party which is, or which may be asserted or construed to be, inconsistent with the expectations contained in any of the Memoranda of Understanding provided for by this Section 21, such performance shall not be, nor shall such performance be construed to be, a failure to perform any material obligation under this Franchise for the purposes of Section 9 and Section 10 of this Franchise.

Section 22. Effective Date

This Ordinance shall be effective on August 12, 2014, having first been submitted to the City Attorney, having been introduced to the City Council not less than five days before its passage; having been passed at a regular meeting of the City Council by an approving vote of at least a majority thereof; and having been published at least once in a newspaper of general circulation in the City.

Passed by the City Council this 4th day of August, 2014, and signed in authentication of its passage this 4th day of August, 2014.

(SEAL)

Claudia Balducci, Mayor

Approved as to form:

Lori M. Riordan, City Attorney

Jerome Y. Roaché, Assistant City Attorney

Attest:

Myrna L. Basich, City Clerk

Published August 7, 2014

1398-ORD
08/05/14

ACCEPTANCE OF ORDINANCE NO. 6176

OF THE CITY OF BELLEVUE WASHINGTON

The undersigned, Puget Sound Energy, a Washington corporation, hereby accepts Ordinance No. 6176, which was passed by the City Council of the City of Bellevue Washington on August 4, 2014 and is entitled:

AN ORDINANCE of the City of Bellevue, Washington, granting Puget Sound Energy, Inc., a Washington corporation, the right, privilege and authority and franchise to set, erect, construct, support, attach, connect and stretch facilities between, maintain, repair, replace, enlarge, operate and use facilities in, upon, under, along and across the franchise area for purposes of transmission, distribution and sale of natural gas.

IN TESTIMONY WHEREOF said Puget Sound Energy has caused this written Acceptance to be executed in its name by its undersigned authorized signer, thereunto duly authorized on this 11 day of August, 2014.

ATTEST:

PUGET SOUND ENERGY

By S B Hempstead
Susan Hempstead
Dir. of Customer & Community Engagement

On this day personally appeared before me SUSAN HEMPSTEAD & ANDY SWAYNE to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that she signed the same as her free and voluntary act and deed for the uses and purposes therein mentioned.

Given under my hand and official seal this 11TH day of AUGUST 2014.

Print Name DENISE STEENDAHL Notary Public in and for the State of Washington, Residing at KING COUNTY, BELLEVUE
My commission expires NOVEMBER 1, 2017

DENISE C. STEENDAHL
Commission Expires
NOTARY PUBLIC
11-01-2017
STATE OF WASHINGTON

Copy received for City of Bellevue on August 13, 2014

By Charmaine Arbuckle for
Myrna L. Basich, City Clerk