



Legislation Passed September 15, 2015

The Tacoma City Council, at its regular City Council meeting of September 15, 2015, adopted the following resolutions and/or ordinances. The summary of the contents of said resolutions and/or ordinances are shown below. To view the full text of the document, click on the bookmark at the left of the page.

Resolution No. 39268

A resolution authorizing the execution of an Interlocal Agreement with local governments within the Green/Duwamish Watershed in King County, in an amount up to \$230,000, budgeted from the Water Operating Fund, for a ten-year period from January 1, 2016 through December 31, 2025, to support salmon recovery efforts in the Green River.
[Greg Volkhardt, Operations Manager; Linda McCrea, Water Superintendent]

Resolution No. 39269

A resolution setting Tuesday, October 13, 2015, at approximately 5:30 p.m., as the date for a public hearing by the City Council on the proposed Development Regulation Agreement with Metro Parks Tacoma, to manage the development of Point Defiance Park under its 20-Year Master Plan.
[Ian Munce, Special Assistant to the Director; Peter Huffman, Director, Planning and Development Services]

Ordinance No. 28316

An ordinance vacating a one-foot portion of right-of-way running along Commerce Street, South 15th Street, and Pacific Avenue to cure a building foundation encroachment for the Waddell Building.
(Tacoma Hospitality, LLC; File No. 124.1356)
[Phyllis Macleod, Hearing Examiner]

Ordinance No. 28318

An ordinance granting a nonexclusive franchise to Puget Sound Energy, Inc. to construct, operate, maintain, remove, replace, and repair pipeline facilities in public rights-of-way, for the transportation, distribution and sale of natural gas.
[Jennifer Hines, Assistant Division Manager; Kurtis D. Kingsolver, P.E., Director, Public Works]



RESOLUTION NO. 39268

1 A RESOLUTION relating to the Department of Public Utilities, Water Division
2 (d.b.a. "Tacoma Water"); authorizing the execution of an Interlocal
3 Agreement between the City and local governments within the
4 Green/Duwamish Watershed in King County for a ten-year period, from
5 January 1, 2016, through December 31, 2025, in an amount up to \$230,000,
6 budgeted from the Water Operating Fund, to support salmon recovery efforts
7 in the Green River.

8 WHEREAS, in 2001, 17 local governments, including the City of Tacoma,
9 Department of Public Utilities, Water Division (d.b.a. "Tacoma Water"), entered into
10 an Interlocal Agreement ("ILA") to form the Water Resource Inventory Area
11 ("WRIA") 9 Ecosystem Forum ("Forum") for the purpose of restoring salmon
12 populations in the Green River/Duwamish Watershed ("Watershed") in King County,
13 and

14 WHEREAS the ILA partners share in the operating costs for the WRIA 9
15 Lead Entity, which oversees the distribution and use of approximately \$2.5 million
16 annually in grant funds from federal, state, and local sources for said purposes, and

17 WHEREAS the current ILA will expire on December 31, 2015, and

18 WHEREAS Tacoma Water is requesting approval to enter into a ten-year
19 renewal of the ILA, from January 1, 2016, through December 31, 2025, to continue
20 participation in and support of the Forum, and

21 WHEREAS the Water Superintendent or designee would serve as the City's
22 representative on the Forum, and

23 WHEREAS Tacoma Water would be responsible for approximately
24 4.4 percent to 5 percent of the total annual ILA cost share, with costs anticipated to
25 be up to \$230,000 over a ten-year period, and
26



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

WHEREAS RCW 39.34.030 requires that interlocal agreements be approved by the Public Utility Board and the City Council, and

WHEREAS, by adoption of Public Utility Board Resolution No. U-10800 on August 26, 2015, the proposed ILA was approved, pending confirmation from the City Council; Now, Therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

That the City of Tacoma, Department of Public Utilities, Water Division (d.b.a. "Tacoma Water") is hereby authorized to enter into an Interlocal Agreement with local governments within the Green/Duwamish Watershed in King County for a ten-year period, from January 1, 2016, through December 31, 2025, in an amount up to \$230,000, budgeted from the Water Operating Fund, to support salmon recovery efforts in the Green River, said document to be substantially in the form of the Interlocal Agreement on file in the office of the City Clerk.

Adopted _____

Mayor

Attest:

City Clerk

Approved as to form:

Chief Deputy City Attorney

Requested by Public Utility Board
Resolution No. U-10800



RESOLUTION NO. 39269

1 A RESOLUTION relating to the Metropolitan Park District; setting Tuesday,
2 October 13, 2015, at approximately 5:30 p.m., as the date for a public
3 hearing on the proposed Development Regulation Agreement which, if
4 approved, will serve as an agreement between the City and Metro Parks
Tacoma to manage the development of Point Defiance Park under its
20-Year Master Plan.

5 WHEREAS Metro Parks Tacoma ("Metro Parks") has completed "Destination
6 Point Defiance," a 20-Year Master Plan for Point Defiance Park, and

7
8 WHEREAS, in late 2014, Metro Parks submitted a formal application for a
9 Development Regulation Agreement ("DRA") pursuant to Tacoma Municipal Code
10 ("TMC") 13.05.095, which, if approved, will serve as an agreement between
11 Metro Parks and the City to manage the development of Point Defiance Park
12 under its 20-Year plan, and

13
14 WHEREAS the Master Plan expands upon a 2008 Conceptual Plan, and
15 includes additional details on potential program elements, and locations, and

16
17 WHEREAS, if pursued individually, the projects would require a series of
18 overlapping Conditional Use Permits, a process which would not encompass the
19 extent of the scope of work nor comprehensively manage all of the elements that
20 might be affected by the individual projects, and

21
22 WHEREAS state law allows for an optional application procedure that can
23 authorize certain major projects in key locations to be reviewed, rated, and
24 approved with conditions, to the extent that the projects advance Comprehensive
25 Plan goals and policies and, additionally, document specific compliance with
26 policies and standards set forth in the Comprehensive Plan, and



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

WHEREAS the City has adopted the optional application procedure under RCW 36.70B.170-210, and provided a Comprehensive Policy, Policy No. OS-SP-2, which supports the use of the DRA process for Point Defiance Park, and

WHEREAS the City desires to fix a time and date for public hearing for the purpose of considering the proposed DRA; Now, Therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

Section 1. That a public hearing, for the purpose of considering the proposed Development Regulation Agreement, which, if approved, will serve as an agreement between the City and Metro Parks Tacoma to manage the development of Point Defiance Park under its 20-Year Master Plan, shall be held before the City Council in the Council Chambers on the first floor of the Tacoma Municipal Building, 747 Market Street, Tacoma, Washington, on Tuesday, October 13, 2015, at approximately 5:30 p.m., or as soon thereafter as the same may be heard.

Section 2. That the Clerk of the City of Tacoma shall give proper notice of the time and place of said hearing.

Adopted _____

Mayor

Attest:

City Clerk

Approved as to form:

Deputy City Attorney



ORDINANCE NO. 28316

1
2
3 AN ORDINANCE related to the vacation of City right-of-way; vacating a
4 one-foot portion of right-of-way running along Commerce Street,
5 South 15th Street, and Pacific Avenue to cure a building foundation
6 encroachment for the Waddell Building, previously permitted through
7 Street Occupancy Permit No. 140; and adopting the Hearing Examiner's
8 Findings, Conclusions, and Recommendations related thereto.

9 WHEREAS all steps and proceedings required by law and by resolution
10 of the City Council to vacate the portion of the right-of-way hereinafter
11 described have been duly taken and performed; Now, Therefore,

12 BE IT ORDAINED BY THE CITY OF TACOMA:

13 Section 1. That the City Council hereby adopts the Hearing Examiner's
14 Findings, Conclusions, and Recommendations as contained in the Hearing
15 Examiner's Report and Recommendation to the City Council bearing File
16 No. 124.1356 and dated July 17, 2015, which Report is on file in the office of
17 the City Clerk.
18
19



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Section 2. That a one-foot portion of right-of-way running along
Commerce Street, South 15th Street, and Pacific Avenue, described as follows:

The Westerly 1.00 foot of Pacific Avenue lying adjacent to and being contiguous with the Northerly 34.37 feet of Block 1504, of the Map of New Tacoma, according to the plat recorded February 3, 1875, in Volume 1 of plats, page 1, records of Pierce County, Washington;

AND

The Easterly 1.00 foot of Commerce Street lying adjacent to and being contiguous with the Northerly 35.57 feet of said Block 1504;

AND

The Southerly 1.00 foot of South 15th Street lying adjacent to and being contiguous with Lot 1 of said Block 1504;

TOGETHER WITH the Southerly 1.00 foot of said South 15th Street lying adjacent to and contiguous with said Westerly 1.00 foot of Pacific Avenue;

AND TOGETHER WITH the Southerly 1.00 foot of said South 15th Street lying adjacent to and contiguous with said Easterly 1.00 foot of Commerce Street;

Situate in the City of Tacoma, Pierce County, Washington;

is hereby vacated, and the land so vacated is hereby surrendered and attached to the property bordering thereon, as a part thereof, and all right or



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

title of the City in and to the portion of the right-of-way so vacated does hereby vest in the owners of the property abutting thereon, all in the manner provided by law.

Passed _____

Mayor

Attest:

City Clerk

Approved as to form:

Deputy City Attorney

Property description approved:

Chief Surveyor
Public Works Department

Location: A one-foot portion of right-of-way running along Commerce Street, South 15th Street, and Pacific Avenue
Petitioner: Tacoma Hospitality, LLC
Vacation Req. No. 124.1356



ORDINANCE NO. 28318

1 AN ORDINANCE granting Puget Sound Energy, Inc., a Washington corporation, its
2 successors, grantees and assigns the nonexclusive right, privilege, authority
3 and franchise to construct, operate, maintain, remove, replace, and repair
4 pipeline facilities in public rights-of-way within the corporate limits of the City
5 of Tacoma as defined in this franchise, together with all facilities, equipment
6 and appurtenances thereto, for the transportation, distribution and sale of
7 natural gas within and through those certain right-of-way areas, streets and
8 public property within the City of Tacoma.

9 WHEREAS Puget Sound Energy, Inc., (hereinafter "Grantee") was assigned
10 those franchise rights granted to the Washington Natural Gas Company in 1984,
11 pursuant to City of Tacoma Ordinance No. 23256 (the "1984 Franchise"), which
12 allowed Grantee to operate and maintain natural gas pipelines within City of
13 Tacoma rights-of-way, and

14 WHEREAS the 1984 Franchise expired, and has been in holdover status
15 since June 2009, and the City and Grantee desire to enter into a new franchise
16 agreement/ordinance to replace the 1984 Franchise pursuant to the terms and
17 conditions contained herein (herein this "Franchise") to operate and maintain
18 natural gas pipelines in Public Rights-of-Way within the corporate limits of the City
19 of Tacoma as defined, herein, (the City of Tacoma is hereinafter referred to as the
20 "City" or "Grantor"), and

21 WHEREAS the Tacoma City Charter authorizes the City to grant
22 nonexclusive franchises for the use of City rights-of-way, streets and public
23 property; Now, Therefore,

24
25
26



BE IT ORDAINED BY THE CITY OF TACOMA:

1 Section 1. Purpose.

2 The City grants this nonexclusive Franchise to Grantee to operate and
3 maintain a natural gas pipeline distribution system, including, but not limited to, gas
4 pipes, pipelines, mains, laterals, conduits, regulators, meters, meter-reading
5 devices, communication systems, and related equipment, appliances, attachments,
6 appurtenances and other facilities reasonably necessary to the foregoing and to
7 operate and maintain the pipeline as a natural gas pipeline distribution system for
8 Grantee's business (the "Pipeline System"). This Franchise is conditioned upon the
9 terms and conditions contained herein and Grantee's compliance with any
10 applicable federal or state regulatory programs that currently exist or may hereafter
11 be enacted by any federal or state regulatory agencies with jurisdiction over the
12 Grantee. The purpose of this Franchise is to delineate the conditions relating to
13 Grantee's use of the Public Rights-of-Way (as defined below) and to create a
14 foundation for the parties to work cooperatively in the public's best interests after
15 this ordinance becomes effective. By granting this Franchise, the City is not
16 assuming any risks or liabilities therefrom.

17
18
19
20 Section 2. Right Conveyed.

21
22 2.1 Grantor hereby grants, under the terms and conditions contained
23 herein, to Grantee, a corporation organized and existing under and by virtue of the
24 laws of the state of Washington, and which is registered and authorized to transact
25 business within the state of Washington, its successors and assigns, which shall be
26 bound hereto, the right, privilege, authority and franchise to construct, set, lay,



1 extend, support, attach, connect, enlarge, use, operate, maintain, remove, replace
2 and repair the Pipeline System, together with all equipment and appurtenances as
3 may be necessary thereto, for the transportation, distribution, sale and handling of
4 natural gas, within the corporate limits of the City of Tacoma, and in, upon, over,
5 under, along, across and through the "Public Rights-of-Way" as defined as follows:
6 "Public Right(s)-of-Way" mean(s) any, every and all public streets, roads, avenues,
7 alleys, highways and City-owned right-of-way easements which, under the City
8 Charter, the Tacoma Municipal Code, City ordinances and applicable laws the City
9 has authority over to grant franchises, permits, or licenses for use thereof or has
10 regulatory authority thereover, as the same are now laid out, platted, dedicated or
11 improved, and any, every and all roads, streets, avenues, alleys, highways and
12 City-owned right-of-way that may hereafter be laid out, platted, dedicated or
13 improved within the present limits of the City and as such limits may be hereafter
14 extended, excluding railroad right-of-way areas, and airport, and harbor areas.
15 Public Rights-of-Way, for the purpose of this Franchise, do not include buildings,
16 parks, poles, or similar facilities, structures, or property owned by or leased to the
17 City, including, by way of example and not limitation, City-owned or leased
18 structures in the Public Rights-of-Way. Those areas constituting the Public
19 Rights-of-Way are hereinafter, at times, also collectively referred to as the
20 "Franchise Area."
21
22
23

24 2.2 This Franchise is only intended to convey a limited right and interest
25 as to Public Rights-of-Way in which the City has an actual interest. It is not a
26 warranty of title or interest in City road right-of-way areas, nor is it a warranty of



1 Grantee's right to locate in any such area. None of the rights granted herein shall
2 affect the City's ability or jurisdiction over its property, streets or right-of-way areas;
3 provided that the City acknowledges that this Franchise constitutes a binding
4 agreement between the City and Grantee that may be amended only by mutual
5 written agreement of both parties and the rights granted to Grantee may not be
6 abrogated, impaired, modified or limited by unilateral action of the City.

7 2.3 Existing facilities of the Grantee that are installed or maintained by the
8 Grantee on public grounds and places within the City in accordance with prior
9 franchises (but are not within the Franchise Area as defined in this Franchise) may
10 continue to be maintained, repaired and operated by the Grantee at the location
11 such facilities exist as of the effective date of this Franchise for the term of this
12 Franchise unless relocation or removal is required pursuant to this Franchise; and
13 provided that no such facilities may be enlarged, improved or expanded without the
14 prior review and approval of the City pursuant to applicable ordinances, codes,
15 resolutions, standards and procedures. When either Grantee or Grantor discovers
16 any such existing facilities, the discovering party shall notify the other and the
17 parties shall work cooperatively to either add such facilities to the Franchise Area or
18 document the facilities by a separate easement.
19
20

21 2.4 This Franchise shall not apply to non-right-of-way facilities located on
22 Grantee-owned or leased properties or easements (whether inside or outside the
23 Franchise Area, whether granted by a private or public entity, and whether now
24 existing or hereafter acquired), and such facilities are not, and will not be deemed to
25
26



1 be, located pursuant to rights derived from this Franchise or pursuant to rights
2 otherwise granted by the City.

3 Section 3. Term.

4 Each of the provisions of this Franchise shall become effective upon
5 Grantee's acceptance of the terms and conditions of this Franchise (the "Effective
6 Date") and shall remain in effect for twenty-five (25) years thereafter.

7 Subsequently, and in accordance with the terms and provisions of Tacoma Charter
8 Article VIII, the City Council may consider renewing this Franchise, at the written
9 request of Grantee, for an additional renewal period at any time within two (2) years
10 before the end of the Franchise's original twenty-five (25) year term, unless either
11 party expresses its intention in writing to terminate this Franchise at the conclusion
12 of the original twenty-five (25) year term.

13 Section 4. Compliance with Laws and Standards.

14 Grantee shall, in carrying out any authorized activities under the privileges
15 granted herein, comply with all applicable federal, state and local laws, rules and
16 regulations of any governmental entity with jurisdiction over the Pipeline System
17 and its operations within the Franchise Area (herein "Applicable Laws"). This
18 obligation (and all other obligations in this Franchise that require compliance with all
19 Applicable Laws) shall include all Applicable Laws existing at the Effective Date of
20 this Franchise or that may be subsequently enacted by any governmental entity
21 with jurisdiction over Grantee and/or the Pipeline System; provided that,
22 notwithstanding the foregoing or any other provision of this Franchise to the
23 contrary, in the event any local laws, rules or regulations enacted by the City after
24
25
26



1 the effective date of this Franchise materially impairs Grantee's rights hereunder,
2 the terms of this Franchise will govern and control; and further provided that the
3 exercise of Grantee's rights does not otherwise conflict with state or federal laws,
4 rules, or regulations. In addition, Grantee's activities shall comply with all
5 applicable commercially acceptable industry standards.

6 Section 5. Construction on Public Properties.

7 5.1 This Section 5 shall apply to all construction done by Grantee in the
8 Franchise Area. Except in the event of an emergency, Grantee shall provide
9 Grantor at least ten (10) calendar days' written notice prior to any alteration,
10 integrity testing, repair, replacement, removal, or other substantial activity, other
11 than routine inspections and maintenance, by Grantee, its agents, employees or
12 contractors on Grantee's Pipeline System within the Franchise Area. Said written
13 notice shall include, at a minimum, a detailed description of the proposed work and
14 anticipated time of the work. Such work shall only commence upon the issuance of
15 applicable permits by the City, which permits shall not be unreasonably withheld or
16 delayed. In the event of an emergency requiring immediate action by Grantee for
17 the protection of the Pipeline System, Grantor's property or other persons or
18 property, Grantee may take such action upon such notice to Grantor as is
19 reasonable under the circumstances. A subsequent report of work performed must
20 be delivered to the City as soon as possible after the emergency work is completed.

21 5.2 All work done hereunder by Grantee or upon Grantee's direction or on
22 Grantor's behalf shall be undertaken and completed in a workmanlike manner and
23 in accordance with the descriptions, plans and specifications provided to, and
24
25
26



1 approved by, Grantor. Grantee's activities shall be conducted in such a manner as
2 to avoid damage or interference with other utilities, drains or other structures,
3 including both public and private infrastructure, and to not unreasonably interfere
4 with public travel, or other municipal uses. The Grantee's construction,
5 maintenance and repairs shall be conducted in compliance with all Applicable
6 Laws. Additionally, Grantee shall place markers underground demarcating the
7 pipeline's location each time Grantee trenches along the pipeline for a length of
8 six (6) feet or more or when installing new facilities.

9
10 5.3 The City may condition the granting of any permit or other approval
11 that is required under this Franchise, at any time, on any lawful condition or
12 regulation, unless such condition or regulation is inconsistent or in conflict with this
13 Franchise, Applicable Laws or any federal or state directive, as may be reasonably
14 necessary to the management of the Public Rights-of-Way or the Grantor's
15 property, including, by way of example and not limitation, bonding, maintaining
16 proper distance from other utilities, protecting the continuity of pedestrian and
17 vehicular traffic and protecting any right-of-way improvements, private facilities and
18 public safety.

19
20 5.4 Whenever it shall be necessary in constructing, maintaining, repairing,
21 relocating, removing or replacing any of the Grantee's Pipeline System in any
22 Public Right-of-Way, the Grantee shall without delay, as soon as is commercially
23 reasonable, and at no cost to the City, remove all debris and restore the surface of
24 the Public Right-of-Way in the area directly disturbed by the Grantee's work as
25 nearly as practicable to as good or better condition as it was in before the work
26



1 began in compliance with the City's right-of-way restoration policy. Grantee shall
2 replace any property corner monuments, survey reference or hubs that were
3 disturbed or destroyed during Grantee's work in the areas covered by this
4 Franchise. Such restoration shall be done in a manner consistent with applicable
5 codes and laws, under the supervision of the City's Director of Public Works or his
6 authorized designee and to the City's reasonable satisfaction and specifications.

7 5.5 As and to the extent required by Applicable Laws, both Grantee and
8 the City shall continuously be a member of the state of Washington one number
9 locator service under RCW 19.122, or approved equivalent, and shall comply with
10 all such applicable rules and regulations. Grantee shall provide reasonable notice
11 to the City, through the permitting process, prior to commencing any work or
12 construction within the Franchise Area under this Franchise. Grantee shall also
13 provide notice to those owners or other persons in control of property abutting the
14 Franchise Area, in accordance with Grantee's then-current notification processes
15 and procedures, when such work or construction within the Franchise Area will
16 materially affect access to or use of such abutting property or otherwise adversely
17 impact the private or public improvements within said area.

18 5.6 Grantee shall make available to the City, upon the City's written
19 request and at no cost to the City, copies of any maps and records in use by
20 Grantee showing the then-current location and condition of Grantee's facilities at
21 specific locations within the Franchise Area in connection with a public
22 improvement project (as defined in Section 8 below) being planned and undertaken
23 by the City. As to any such maps or records so provided, Grantee does not warrant
24
25
26



1 the accuracy thereof, and to the extent the location of facilities is shown, such
2 facilities are shown in their approximate location. The foregoing notwithstanding,
3 nothing in this Section 5.6 or in any other provision of this Franchise is intended
4 (nor shall be construed) to relieve either party of their respective obligations arising
5 under Applicable Laws with respect to determining the location of utility facilities.

6 5.7 Nothing in this Franchise shall be deemed to impose any duty or
7 obligation upon Grantor to determine the adequacy or sufficiency of Grantee's plans
8 and designs or to ascertain whether Grantee's proposed or actual construction,
9 testing, maintenance, repairs, replacement or removal is in conformance with the
10 plans and specifications reviewed by Grantor. Grantee shall be solely and
11 completely responsible for its compliance with Applicable Laws relating to
12 workplace safety and safe working practices on its job sites within the Franchise
13 Area.
14

15 Section 6. Operations, Maintenance, Inspection and Testing.

16 6.1 Grantee shall operate, maintain, inspect and test its Pipeline System
17 within the Franchise Area in full compliance with the applicable provisions of all
18 Applicable Laws, as now enacted or hereafter amended, and any other current or
19 future laws or regulations that are applicable to the operation, maintenance,
20 inspection and testing of Grantee's Pipeline System.
21

22 Section 7. Notice and Reporting.

23 If reasonably requested by Grantor in writing, which request may not be
24 made more frequently than once in any calendar year, Grantee shall provide to
25 Grantor a list of reports relating to pipeline integrity for the Pipeline System within
26



1 the Franchise Area that Grantee has submitted to governmental entities during the
2 previous year.

3 Section 8. Relocation.

4 8.1 Relocation for Public Improvement Projects. In the event that Grantor
5 undertakes or approves the construction of or changes to the grade or location of
6 any water, electrical, public communications, sewer or storm drainage line, street,
7 sidewalk or other City improvement project or any governmental agency or any
8 person or entity acting in a governmental capacity, or on the behalf of, under the
9 authority of, or at the request of the Grantor or any other governmental agency,
10 undertakes any improvement project within the Franchise Area, and the Grantor
11 determines that the project might reasonably require the relocation of Grantee's
12 Pipeline System, Grantor shall provide the Grantee at least ninety (90) calendar
13 days' prior written notice or such additional time as may reasonably be required, of
14 such project requiring relocation of Grantee's Pipeline System.
15

16
17 8.1.1 The City shall provide the Grantee (a) with written notice of any
18 required relocation in accordance with the TMC, and (b) with reasonable plans and
19 specifications for the public improvement project.

20 8.1.2 Grantee may, after receipt of written notice requesting a
21 relocation of its Pipeline System under this Section 8.1, submit to the City written
22 alternatives to such relocation within fifteen (15) calendar days of receiving the
23 corresponding plans and specifications. The City shall evaluate such alternatives
24 and advise Grantee in writing if one or more of the alternatives are suitable to
25 accommodate the work that would otherwise necessitate relocation of the Pipeline
26



1 System. If so requested by the City, Grantee shall submit additional information to
2 assist the City in making such evaluation. The City shall give each alternative
3 proposed by Grantee full and fair consideration, but the City retains full discretion to
4 decide for itself whether to utilize its original plan or an alternative proposed by
5 Grantee. In the event the City ultimately determines that there is no other
6 reasonable alternative, Grantee shall relocate the affected portion of its Pipeline
7 System at its own cost and expense.

8 8.1.3 Grantor shall work cooperatively with Grantee in determining a
9 viable and practical route within which Grantee may relocate its Pipeline System
10 under this Section 8, in order to minimize costs while meeting the public
11 improvement project's objectives. Upon receipt of Grantor's notice, plans and
12 specifications for a public improvement project pursuant to Section 8.1.1, the
13 Grantee shall relocate the affected portion of its Pipeline System within the
14 Franchise Area at no charge to the City. Grantee shall complete relocation of the
15 designated portion of the Pipeline System so as to accommodate the public
16 improvement project at least ten (10) calendar days prior to commencement of the
17 public improvement project or such other time as the parties may agree in writing.

18 8.1.4 Nothing in this Section 8.1 shall be deemed to require that
19 Grantee be responsible for the relocation costs of any public agency, entity or
20 governmental jurisdiction other than the City (a) with which Grantee has an effective
21 agreement regarding allocation of facility relocation responsibilities, or (b) with
22 which Grantee is able to reach agreement after a relocation request regarding
23 allocation of facility relocation responsibilities, or (c) when such agency, entity or
24
25
26



1 other governmental jurisdiction engages in a public improvement project within the
2 Franchise Area requiring Grantee to relocate in the same location more than once
3 in a five (5) year period. In all cases where Grantee either has an existing
4 agreement regarding relocation responsibilities or reaches an agreement prior to
5 relocation, Grantor will take such agreement into account in determining Grantee's
6 responsibility for relocation costs,

7 8.2 Reservation of Rights. Nothing in this Section 8 shall require Grantee
8 to bear any cost or expense in connection with the location or relocation of its
9 Pipeline System existing at the time of a relocation request pursuant to easement or
10 other rights not derived from this Franchise, regardless of whether such easement
11 or other rights are on public or private property and regardless of whether this
12 Franchise co-exists with such easement or other rights.

13 8.3 Emergencies. In the event of an emergency, or where the Pipeline
14 System or related facility(ies) creates or is contributing to an imminent danger to
15 health, safety, or property, the City may take reasonable action to protect its utility
16 lines in the Public Rights-of-Way and the health of its citizens.

17 8.4 Relocation for Other than Public Projects. Whenever any non-public
18 development occurs within the Franchise Area that requires the relocation of
19 Grantee's Pipeline System to accommodate such development, Grantee shall have
20 the right as a condition of such relocation, to require such developer, person or
21 entity to make payment to Grantee, at a time and upon terms acceptable to
22 Grantee, for any and all costs and expenses incurred by Grantee in the relocation
23 of Grantee's Pipeline System.



1 8.5 Redesign Option. As an alternative to relocation of its Pipeline
2 System in connection with any public improvement project, Grantee may, in
3 addition to the ability to offer other alternatives under Subsection 8.1.2 above,
4 propose an alternative design for the pending public improvement project in order to
5 avoid any relocation of Grantee's Pipeline System. Such redesign proposal shall
6 be subject to review and approval by the City and all costs of the redesign,
7 including, without limitation, the costs actually incurred in the public improvement
8 project as a result of the redesign requested by Grantee shall be solely for
9 Grantee's account. Approval and acceptance of any such redesign proposal shall
10 be at the sole discretion of the City.
11

12 8.6 Delay. Subject to compliance by the City with the terms of this
13 Section 8, and to the maximum extent provided by law, Grantee shall reimburse the
14 City for any costs, expenses, and/or damages that are legally required to be paid by
15 the City to its third-party contractor(s) as a direct result of a delay in meeting the
16 mutually established schedule for the relocation work required to accommodate any
17 public improvement project, but only if, as, and to the extent the delay is directly
18 caused by Grantee's breach of its obligations under this Franchise with respect to
19 the relocation of Grantee's Pipeline System within the Franchise Area in
20 accordance with the mutually established schedule for the relocation work required
21 to accommodate the public improvement project; provided the City first gives
22 Grantee written notice of any such claim by the third-party contractor(s) and gives
23 Grantee the opportunity to work with the third-party contractor(s) to resolve the
24 claim for a period of not less than sixty (60) days prior to the City's payment of the
25
26



1 claim. For purposes of clarity, nothing in this Section 8 will require Grantee to bear
2 or be responsible for any cost, expense or damage that results from any delay in
3 meeting the schedule for a public improvement project if, as, and to the extent the
4 delay is caused by the City, any third party, or any other cause or condition outside
5 of the reasonable control of Grantee should Grantee fail to relocate its facilities by
6 the time specified by Grantor, then Grantee shall be responsible for any costs
7 incurred by Grantor as a result of such delay.

8 Section 9. Leaks, Spills, and Emergency Response.

9 Grantee will maintain the Pipeline System within the Franchise Area in
10 accordance with all Applicable Laws, including, but not limited to, applicable
11 regulations provided in 49 CFR 191, 49 CFR 192, RCW 81.88, and 480-93 WAC,
12 as hereafter amended. To that end, Grantee will maintain a "Leakage Program"
13 and "Distribution Integrity Management Program," in accordance with Applicable
14 Laws, as hereafter amended.
15

16 Section 10. Dispute Resolution.

17 10.1 In the event of a dispute between Grantor and Grantee arising by
18 reason of this Franchise, or any obligation hereunder, the dispute shall first be
19 referred to the operational officers or representatives designated by Grantor and
20 Grantee to have oversight over the administration of this Franchise. Said officers or
21 representatives shall meet within thirty (30) calendar days of either party's request
22 for said meeting, whichever request is first, and the parties shall make a good faith
23 effort to attempt to achieve a resolution of the dispute.
24
25
26



1 10.2 In the event that the parties are unable to resolve the dispute under
2 the procedure set forth in Section 10.1, then the parties may mutually agree to refer
3 the matter to mediation. In such event, the parties shall mutually agree upon a
4 mediator to assist them in resolving their differences. If the parties are unable to
5 agree upon a mediator, the parties shall jointly obtain a list of seven (7) mediators
6 from a reputable dispute resolution organization and alternate striking mediators on
7 that list until one remains. A coin toss shall determine who may strike the first
8 name. If a party fails to notify the other party of which mediator it has stricken
9 within two (2) business days, the other party shall have the option of selecting the
10 mediator from those mediators remaining on the list. Any expenses incidental to
11 mediation shall be borne equally by the parties.
12

13 10.3 If the parties do not agree to refer the matter to mediation or, once
14 referred to mediation, either party is dissatisfied with the outcome of the mediation,
15 either party may then pursue any available judicial remedies, provided, that if the
16 party seeking judicial redress does not substantially prevail in the judicial action, it
17 shall pay the other party's reasonable legal fees and costs incurred in the judicial
18 action.
19

20 Section 11. Decommissioning or Removal of Facilities.

21 In the event of abandonment or Grantee's permanent cessation of use of its
22 Pipeline System, or any portion thereof within the City of Tacoma, the Grantee shall
23 accomplish abandonment or removal of the Pipeline System in accordance with
24 Applicable Laws.
25
26



Section 12. Non-Exclusive Franchise.

1 This Franchise is non-exclusive. Grantor reserves the right to grant other
2 franchises, easements, licenses, permits or other approvals to others, subject to the
3 rights granted herein.
4

5 Section 13. Indemnification.

6 13.1 General Indemnification. Grantee shall indemnify, defend and hold
7 harmless Grantor from any and all third party claims and demands, and any
8 resulting liability, loss, damage, cost or expense, arising on or after the date of
9 acceptance of this Franchise, whether at law or in equity, that are made on account
10 of injury or damage to the person or property of another, to the extent such injury or
11 damage is caused by the negligence or willful misconduct of Grantee, its agents,
12 servants or employees in exercising the rights granted to Grantee under this
13 Franchise; provided, however, that in the event any such claim or demand be
14 presented to or filed with the City, the City shall promptly notify Grantee thereof,
15 and Grantee shall have the right, at its election and at its sole cost and expense, to
16 settle and compromise such claim or demand; provided further, that in the event
17 any suit or action is begun against the City based upon any such claim or demand,
18 the City shall likewise promptly notify Grantee thereof, and Grantee shall have the
19 right, at its election and its sole cost and expense, to settle and compromise such
20 suit or action, or defend the same at its sole cost and expense, by attorneys of its
21 own election. Notwithstanding the foregoing, Grantee may not compromise or
22 settle any claim, suit or action without the City's consent (such consent not to be
23 unreasonably withheld or delayed) if the proposed compromise or settlement would
24
25
26



1 require the City to pay monetary damages not reimbursed by Grantee or violate
2 applicable law or if the compromise or settlement would adversely impact the City.

3 13.2 Environmental Indemnification. Grantee shall indemnify, defend and
4 hold harmless Grantor from and against any and all third party claims and
5 demands, and any resulting liability, loss, damage, expense or costs, to the extent
6 such claim or demand is caused by Grantee's breach of any Environmental Laws
7 (as defined below) in its operation of the Pipeline System within the Franchise Area.

8 This indemnity includes, but is not limited to, any claim or demand based on each of
9 the following to the extent the same is caused by Grantee's violation of any
10 Environmental Laws or unlawful release of hazardous substances (as defined
11 below) into the Franchise Area in violation of applicable Environmental Laws:

12 (a) liability for a governmental agency's costs of removal or remedial action for such
13 violation or release by Grantee of hazardous substances; (b) damages to natural
14 resources caused by such violation or release by Grantee of hazardous
15 substances, including the reasonable costs of assessing such damages; (c) liability
16 for any other person's costs of responding to such violation or release by Grantee
17 of hazardous substances; (d) liability for any costs of investigation, abatement,
18 correction, cleanup, fines, penalties, or other damages arising under any
19 environmental laws that are caused by such breach or release by Grantee of
20 hazardous substances; and (e) liability for personal injury, property damage, or
21 economic loss arising under any statutory or common-law theory that are caused by
22 such breach or release by Grantee of hazardous substances.
23
24
25
26



13.3 Definitions.

1 13.3.1 “Hazardous Substance” means any hazardous, toxic, or
2 dangerous substance, material, waste, pollutant, or contaminant, including all
3 substances designated under the Resource Conservation and Recovery Act,
4 42 U.S.C. § 6901 et seq.; the Comprehensive Environmental Response,
5 Compensation and Liability Act, 42 U.S.C. § 9601 et seq.; the Hazardous Materials
6 Transportation Act, 49 U.S.C. § 1801 et seq.; the Federal Water Pollution Control
7 Act, 33 U.S.C. § 1257 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the
8 Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Federal Insecticide,
9 Fungicide, Rodenticide Act, 7 U.S.C. § 136 et seq.; the Washington Hazardous
10 Waste Management Act, Chapter 70.105 RCW; and the Washington Model Toxics
11 Control Act, Chapter 70.105D, RCW; all as may be amended from time to time; or
12 any other federal, state, or local statute, code or ordinance or lawful rule, regulation,
13 order, decree, or other governmental authority as now or at any time hereafter in
14 effect.
15
16
17

18 13.3.2 “Environmental Laws” shall include the Resource Conservation
19 and Recovery Act, 42 U.S.C. § 6901 et seq.; the Comprehensive Environmental
20 Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq.; the
21 Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Federal
22 Water Pollution Control Act, 33 U.S.C. § 1257 et seq.; the Clean Air Act,
23 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601
24 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136
25 et seq.; the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq.; the
26



1 Washington Hazardous Waste Management Act, Chapter 70.105 RCW; and the
2 Washington Model Toxics Control Act, Chapter 70.105D RCW; all as amended from
3 time to time; or any other federal, state, or local statute, code, or ordinance or
4 federal or state administrative rule, regulation, ordinance, order, decree, or other
5 governmental authority as now or at any time hereafter in effect pertaining to the
6 protection of human health or the environment.

7 Section 14. Insurance Performance Bond and Security.

8 14.1 Insurance. The Grantee shall procure and maintain for the duration of
9 this Franchise, insurance, or in lieu thereof provide self-insurance, against claims
10 for injuries to persons or damages to property which may arise from or in
11 connection with the exercise of the rights, privileges and authority granted
12 hereunder to the Grantee in this Franchise. The Grantee's maintenance of
13 insurance as required by this Franchise shall not be construed to limit the liability of
14 the Grantee to the coverage provided by such insurance, or otherwise limit the
15 City's recourse to any remedy available at law or in equity. The Grantee shall
16 obtain insurance of the type described below with the following insurance limits (at
17 a minimum):

20 A. Commercial general liability insurance, which shall be written on
21 Insurance Services Office ("ISO") occurrence form CG 00 01 (12/2007) or a custom
22 form providing coverage equal to or broader than the CG 00 01 (12/2007) and shall
23 include stop gap liability. There shall be no endorsement or modification of the
24 Commercial General Liability insurance for liability arising from explosion, collapse
25 or underground property damage. The City shall be named as an additional
26



1 insured, without limitation, under the Grantee's Commercial General Liability
2 insurance policy using ISO Additional Insured – State or Political Subdivisions –
3 Permits CG 20 12 or a substitute endorsement providing equivalent coverage. The
4 commercial general liability insurance shall be written with limits no less than
5 \$100,000,000 each occurrence, \$100,000,000 general aggregate and
6 \$100,000,000 products-completed operations aggregate limit. In addition, the
7 Grantee shall maintain liability insurance with limits not less than \$100,000,000
8 each occurrence and \$100,000,000 annual aggregate to protect against claims for
9 bodily injury or property damage arising from natural gas vapor releases and
10 Grantee's obligations concerning environmental indemnification as provided herein.
11

12 B. Automobile liability insurance, which shall cover all owned,
13 non-owned, hired and leased vehicles. Coverage shall be written on ISO form
14 CA 00 01 (11/2008) or a substitute form providing equivalent liability coverage, or in
15 lieu thereof provide self-insurance. The automobile insurance shall have combined
16 single limit for bodily injury and property damage of no less than \$2,000,000 per
17 accident.
18

19 C. Insurance coverage shall include, but is not limited to, all defense
20 costs. Such insurance shall include, but is not limited to, pollution liability coverage,
21 at a minimum covering liability from pollution incidents, subject to time element
22 reporting requirements, and such other applicable pollution coverage as is
23 reasonably available in the commercial marketplace. Pollution liability shall include
24 coverage for incidents occurring onsite, offsite, and during transportation. In the
25 event that a deductible applies to the insurance herein, Grantee agrees to pay the
26



1 amount of that deductible. All required liability policies shall be maintained for a
2 period of not less than three years following termination of this Franchise.

3 The insurance policies are to contain, or be endorsed to contain, the
4 following provisions for Commercial General Liability insurance: (1) the Grantee's
5 insurance coverage shall be primary insurance as respects the City; any insurance,
6 self-insurance or insurance pool coverage maintained by the City shall be excess of
7 the Grantee's insurance and shall not contribute with it; and (2) the Grantee's
8 insurance shall be endorsed to state that coverage shall not be cancelled by either
9 party, except after thirty (30) days' prior written notice by certified mail, return
10 receipt requested, has been given to the City. Insurance is to be placed with
11 insurers with a current A.M. Best rating of not less than A: VIII.

13 14.2 Self-Insurance Option. In lieu of the insurance requirements set forth
14 in this Section 14, the Grantee may self-insure against such risks in such amounts
15 as are consistent with good utility practice. Upon the City's request, the Grantee
16 shall provide the City with reasonable written evidence that the Grantee is
17 maintaining and funding such self-insurance at a level to adequately fund up to the
18 liability limits required in this Section 14.

20 14.3 Proof of insurance and a copy of the insurance policy or reasonable
21 proof of self-insurance funding, including, but not limited to, coverage terms and
22 claims procedures, shall be provided to the Grantor prior to the beginning of any
23 substantial work, testing or construction or reconstruction on the Pipeline System.

25 All required liability policies shall be maintained for a period of not less than
26 three (3) years following termination of this Franchise. The indemnity and



1 insurance provisions set forth under Sections 13 and 14 shall survive the
2 termination of this Franchise and shall continue for as long as the Grantee's
3 Pipeline System and related facilities shall remain in or on the Franchise Area or
4 until the parties execute a new franchise agreement which modifies or terminates
5 these indemnity or insurance provisions.

6 14.4 Performance Bond.

7 Within thirty (30) days of acceptance of this Franchise, the Grantee shall
8 furnish a bond executed by the Grantee and a corporate surety authorized to do
9 surety business in the state of Washington, in favor of the City in the amount of
10 \$1,000,000 in order to ensure performance of the Grantee's obligations under this
11 Franchise (the "Performance Bond"). The Performance Bond shall be in favor of
12 the City conditioned that Grantee shall well and truly observe, fulfill, and perform
13 each term and condition of this Franchise. At all times during the effective term of
14 this Franchise, provided that Grantee is not otherwise in default of any obligation,
15 the Performance Bond shall also satisfy any City bonding requirement with respect
16 to specific work, installation, improvements, construction, repair, relocation or
17 maintenance conducted pursuant to this Franchise. The bond shall be conditioned
18 so that the Grantee shall observe all of the covenants, terms and conditions of this
19 Franchise, and faithfully perform all of the obligations of this Franchise, and to erect
20 or replace any defective work or materials discovered in the replacement of the
21 Public Rights-of-Way within a period of two (2) years from the date of the
22 replacement and acceptance of such repaired Public Rights-of-Way by the City.
23 This bond shall be conditioned that in the event Grantee shall fail to comply with
24
25
26



1 any one or more of the provisions of this Franchise, then there shall be recoverable
2 jointly and severally from the principal and surety of such bond, any damages
3 suffered by the Grantor as a result thereof, including the full amount of any
4 compensation, indemnification, or cost of removal, relocation or abandonment of
5 property/facilities as prescribed herein; said condition to be a continuing obligation
6 for the duration of this Franchise and thereafter until Grantee has satisfied all of its
7 obligations with the City that may have arisen from the acceptance of the Franchise
8 by Grantee or from its exercise of any privilege herein granted. Written evidence of
9 payment of required premiums shall be filed and maintained with the City. In lieu of
10 the bond, Grantee may provide for a letter of credit or similar arrangement to be
11 established giving the City rights substantially the same as the rights of the City in
12 relation to the bond, the provisions of which letter of credit or other arrangement
13 shall be subject to the approval of legal counsel for the City.
14

15
16 Neither the provisions of this section, any bond accepted by the City
17 pursuant hereto, or any damages recovered by the City thereunder shall be
18 construed to excuse faithful performance by Grantee or to limit the liability of
19 Grantee under this Franchise or for damages, either to the full amount of the bond
20 or otherwise, except as otherwise provided herein.
21

22 14.5 Validity of Bond. If at any time during the term of this Franchise, the
23 condition of the entity issuing the bond shall change in such a manner as to render
24 the bond unsatisfactory to the City, Grantee shall replace such bond by a bond of
25 like amount and similarly conditioned, issued by an entity satisfactory to the City.
26

The City Council, from time to time, may authorize or require appropriate and



1 reasonable adjustments in the amount of the bond; provided, however, that prior to
2 any required increase in the amount of the bond, the City shall give Grantee at least
3 sixty (60) days' prior notice thereof stating the exact reason for the requirement.

4 Such reasons must demonstrate a change in Grantee's business practices or other
5 financial or safety related circumstances, which would materially prohibit or impair
6 its ability to comply with the terms of the Franchise or afford compliance therewith.

7 14.6 Security Fund.

8 14.6.1 Within thirty (30) days after the effective date of this Franchise,
9 Grantee shall deposit into a bank account, established by the City, and maintained
10 through the term of this Franchise with interest running to Grantee, the sum of
11 \$50,000, as security for compliance with all orders, permits and directions of any
12 agency/department of the City, and for the payment of any claims, liens and taxes
13 due the City or liquidated damages imposed by the City which arise by reason of
14 the construction, operation or maintenance of the Pipeline System or related
15 facilities or pursuant to any other terms of this Franchise.
16

17 14.6.2 Within thirty (30) days after notice to it that any amount has
18 been withdrawn by the City from the security fund pursuant to this Section 14.6,
19 Grantee shall deposit a sum of money sufficient to restore such security fund to the
20 original amount in the account at the time of withdrawal.
21

22 14.6.3 If Grantee fails, after ten (10) days' notice, to pay the City any
23 delinquent fees, taxes or other amounts due and unpaid according to the terms of
24 this Franchise; or, fails to repay to the City, after such ten (10) days' notice, any
25 damages, costs or expenses which the City shall be compelled to pay by reason of
26



1 any act or default of Grantee in connection with this Franchise; or fails, after
2 45 days' notice of such failure by the City to comply with any provision of the
3 Franchise which the City reasonably determines can be remedied by an
4 expenditure of the security, the City may immediately withdraw the amount thereof,
5 with interest and any penalties, from the security fund. Upon such withdrawal, the
6 City shall notify Grantee of the amount and date thereof and Grantee shall
7 immediately redeposit an amount equal to that so withdrawn.

8 14.6.4 The security fund deposited pursuant to this section shall
9 become the property of the City in the event that this Franchise is canceled by
10 reason of the default of Grantee or revoked for cause. Grantee, however, shall be
11 entitled to the return of such security fund, or portion thereof as remains on deposit
12 at the expiration of the term of this Franchise, or upon termination of this Franchise
13 at an earlier date, upon payment of all sums then due from Grantee to the City
14 hereunder.
15

16 14.6.5 The rights reserved to the City with respect to the security
17 fund are in addition to all other rights of the City whether reserved by this
18 Franchise or authorized by law, and no action, proceeding or exercise of a right
19 with respect to such security fund shall affect any other right the City may have.
20

21 14.6.7 In lieu of the security fund provided for herein, Grantee may
22 provide for a letter of credit or similar arrangement to be established giving the City
23 rights substantially the same as the rights of the City in relation to the security fund,
24 the provisions of which letter of credit or other arrangement shall be subject to the
25 approval of legal counsel for the City.
26



Section 15. Administrative Fees.

1 15.1 As specifically provided in RCW 35.21.860, the City may not impose a
2 franchise fee or any other fees or charge of whatever nature or description upon
3 Grantee. However, as expressly provided and permitted in RCW 35.21.860,
4 Grantee shall pay Grantor its actual administrative expenses incurred that are
5 directly related to Grantor receiving and approving a permit, license, and the
6 Franchise, to inspecting plans and construction, or to the preparation of a detailed
7 statement pursuant to chapter 43.21C RCW.
8

9 15.2 Grantee agrees that it will obtain, pursuant to the City's currently
10 effective code and rates and the applicable provisions of this Franchise, any and all
11 licenses, permits or other approvals necessary for Grantee to operate, maintain or
12 repair its Pipeline System in the Franchise Area. This shall include, by way of
13 example only and not limitation, inspection and permit costs associated with
14 Grantee's work in the Public Rights-of-Way as permitted by Applicable Laws. The
15 administrative fees set forth in this section do not include any generally applicable
16 taxes that the Grantor may legally levy.
17
18

19 Section 16. Notice.

20 All notices, demands, requests, consents and approvals which may, or are
21 required to be given by any party to any other party hereunder, shall be in writing
22 and shall be deemed to have been duly given if delivered personally, sent by
23 facsimile, sent by a nationally recognized overnight delivery service, or if mailed or
24 deposited in the United States mail and sent by registered or certified mail, return
25 receipt requested, postage prepaid to:
26



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Grantor: Director of Public Works
City of Tacoma
747 Market Street, #408
Tacoma, WA 98402

with copy to: City Attorney
City of Tacoma
747 Market Street, #1120
Tacoma, WA 98402

Grantee: Puget Sound Energy, Inc.
3130 South 38th Street
Tacoma, WA 98409
Attn: Municipal Liaison Manager

with copy to: Puget Sound Energy, Inc.
10885 N.E. 4th Street
P.O. Box 97034
Bellevue, WA 98009-9734
Attn: General Counsel

or to such other address as the foregoing parties hereto may from time-to-time designate in writing and deliver in a like manner. All notices shall be deemed complete upon actual receipt or refusal to accept delivery. Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission shall be the same as delivery of an original document.

Section 17. Assignment and Transfer of Franchise.

17.1 In accordance with Tacoma City Charter Article VIII, Section 8.5, this Franchise shall not be leased, assigned or otherwise alienated without the express consent of the Grantor by ordinance, which approval shall not be unreasonably withheld. Notwithstanding the foregoing, Grantee shall have the right, without such consent, to mortgage its rights, benefits and privileges in and under this Franchise



1 for the benefit of bondholders; provided said mortgage does not adversely impact
2 Grantee's ability to meet its obligations pursuant to this Franchise.

3 17.2 Subject to the foregoing, Grantee and any proposed assignee or
4 transferee shall provide and certify the following to the City not less than 120 days
5 prior to the proposed date of transfer:

6 17.2.1 Complete information setting forth the nature, terms and
7 conditions of the proposed assignment or transfer;

8 17.2.2 All information reasonably required by the City of a franchise
9 applicant under Tacoma City Charter Article VIII and any applicable provisions of
10 the Tacoma Municipal Code, with respect to the proposed assignee or transferee;

11 17.2.3 Any other information reasonably required by the City; and

12 17.2.4 An application fee which shall be set by the City, plus any
13 other costs actually and reasonably incurred by the City in processing and
14 investigating the proposed assignment or transfer.
15

16
17 17.3 No transfer shall be approved unless the assignee or transferee has
18 at least the legal, technical, financial, and other requisite qualifications to carry on
19 the activities of the franchisee granted hereunder.

20 17.4 Any transfer or assignment of this Franchise without the prior written
21 consent of the City as set forth herein shall be void and shall result in revocation of
22 the existing permit or franchise.
23

24 Section 18. Transfers of Control.

25 If Grantee intends to enter into a transaction which would result in a change
26 of the operational control of Grantee, the City shall be notified and given



1 ninety (90) days within which to provide written comments and identify any issues
2 of concern to the City. Grantee will reimburse Grantor for actual and reasonable
3 expenses to perform due diligence with regard to the legal, financial and technical
4 experience and qualifications of the proposed new operator, provided that
5 reimbursement shall not exceed Twenty-five Thousand Dollars (\$25,000.00).
6 Grantee shall provide reasonable cooperation to Grantor during Grantor's due
7 diligence. Grantee shall respond in writing within sixty (60) days to any written
8 comments submitted by Grantor regarding the transfer of operational control.

9 Section 19. Reservation of Police Power.

10 All the rights and privileges granted in this Franchise shall be governed by
11 the terms and conditions of this Franchise; provided that the City reserves all its
12 police powers to enact ordinances that are necessary to protect the health, safety
13 and welfare of the general public.

14 Section 20. Termination.

15 20.1 Grantor may terminate this Franchise (ultimately by a revocation
16 ordinance), upon the occurrence of any of the following events:
17

18 20.1.1 If Grantee materially breaches or otherwise fails to perform,
19 comply with or otherwise observe any of the terms and conditions of this Franchise
20 or fails to maintain all required licenses and approvals from federal, state, and local
21 jurisdictions, and fails to cure such breach or default within thirty (30) calendar days
22 of Grantor's providing Grantee written notice thereof, or, if not reasonably capable
23 of being cured within thirty (30) calendar days, within such other reasonable period
24
25
26



of time as may be reasonably necessary so long as Grantee commences promptly
1 and diligently to effect such compliance; or

2 20.1.2 A single uncontained release of any product from the
3 pipeline within the City of Tacoma if such release would subject the City to
4 environmental remediation/response costs in excess of \$50,000 or if any such
5 release of the Pipeline System's product does other damage to the property of the
6 City of Tacoma or its citizens in an amount exceeding \$50,000 and remains
7 unaddressed/unremediated by Grantee for more than ten (10) business days from
8 discovery; or
9

10 20.1.3 Grantee becomes insolvent, unable or unwilling to pay its
11 debts, or is adjudged bankrupt.
12

13 20.2 This Franchise shall not be terminated, for whatever reason, except
14 upon a majority vote of the City Council, after reasonable notice to Grantee and an
15 opportunity to be heard, provided that if exigent circumstances necessitate
16 immediate termination, the hearing may be held as soon as possible after the
17 termination.
18

19 20.3 In the event of termination of this Franchise under this Section 20,
20 Grantee shall continue to comply with all Applicable Laws relating to the
21 modification, reduction or discontinuance in the operation of the Pipeline System
22 through the Franchise Area.
23

24 20.4 Termination of this Franchise shall not release either party from any
25 liability or obligation with respect to any matter occurring prior to such termination,
26



nor shall such termination release Grantee from any obligation to remove or secure the Pipeline System and restore the Franchise Area pursuant to Section 11 hereof.

Section 21. Legal Relations.

21.1 Grantee accepts any privileges granted hereunder by Grantor under this Franchise to the Franchise Area in an “as is” condition. Grantee agrees that the City has never made any representations, implied or express warranties or guarantees as to the suitability, security or safety of Grantee’s location of its Pipeline System within the Franchise Area or possible hazards or dangers arising from other uses of the public right-of-way or other public property by the City or the general public. Grantee shall remain solely and separately liable for the function, testing, maintenance, replacement and/or repair of the Pipeline System in the Franchise Area or other activities of Grantee permitted hereunder, except to the extent of any damage or loss caused by the negligence or willful misconduct of the City, its employees, agents or contractors, or any third party.

21.2 Grantee hereby waives immunity under Title 51 RCW in any cases involving the Grantor; provided, however, the foregoing waiver shall not in any way preclude Grantee from raising such immunity as a defense against any claim brought directly against Grantee by any of its employees. Grantor and Grantee have specifically negotiated this provision, to the extent it may apply.

21.3 This Franchise may be subject to the provisions of any applicable tariff on file with the Washington Utilities and Transportation Commission or its successor. In the event of any conflict or inconsistency between the provisions of this Franchise and any such tariff, the provisions of such tariff shall govern and



control to the extent such tariff is deemed to preempt the City of Tacoma's
1 regulatory authority.

2 21.4 This Franchise ordinance shall not create any duty on the City or any
3 of its officials, employees or agents and no liability shall arise from any action or
4 failure to act by the City or any of its officials, employees or agents in the exercise
5 of powers reserved herein. Further, this ordinance is not intended to acknowledge,
6 create, imply or expand any duty or liability of the Grantor with respect to any
7 function in the exercise of its police power or for any other purpose. Any duty that
8 may be deemed to be created in the City hereunder shall be deemed a duty to the
9 general public and not to any specific party, group or entity.
10
11

12 21.5 This Franchise shall be governed by, and construed in accordance
13 with, the laws of the state of Washington and the parties agree that, in any such
14 action brought hereunder, except actions based on federal questions, venue shall
15 lie exclusively in Pierce County, Washington.
16

17 Section 22. Grantee's Acceptance.

18 This Franchise ordinance shall be completely void if Grantee shall not file its
19 unconditional acceptance of this Franchise within thirty (30) calendar days from the
20 final passage of same by the City Council. Grantee shall file its unconditional
21 acceptance with the City's Finance Director and a copy of same with the City
22 Attorney's Office.
23

24 Section 23. Specific Performance.

25 The parties acknowledge that the covenants set forth herein are essential to
26 this Franchise, and, but for the mutual agreements of the parties to comply with



1 such covenants, the parties would not have entered into this Franchise. The parties
2 further acknowledge that they may not have an adequate remedy at law if the other
3 party materially breaches such covenants. Therefore, the parties shall have the
4 right, in addition to any other rights they may have, to seek in any court of
5 competent jurisdiction injunctive relief to restrain any material breach or threatened
6 material breach of any such covenants or otherwise to specifically enforce any of
7 such covenants contained herein should the other party fail to perform them after
8 notice as provided in Section 16 and Section 20.1.1.

9
10 Section 24. Miscellaneous Provisions.

11 24.1 All the provisions, conditions, terms and requirements contained
12 herein shall be binding upon the Grantee's successors and assigns. All of
13 Grantee's privileges, obligations, and liabilities shall inure to its successors and
14 assigns equally as if they were specifically mentioned in this Franchise wherever
15 the Grantee is so mentioned.
16

17 24.2 Any modification, change or alteration to this Franchise shall only be
18 effective if set forth in a written instrument, signed by both parties, which specifically
19 states that it is an amendment to this Franchise and is approved and executed in
20 accordance with the laws of the state of Washington. Without limiting the generality
21 of the foregoing, this Franchise (including, without limitation, Section 13 above)
22 shall govern and supersede and shall not be changed, modified, deleted, added to,
23 supplemented or otherwise amended by any permit, approval, license, agreement
24 or other document required by or obtained from the City in conjunction with the
25 exercise (or failure to exercise) by Grantee of any and all rights, benefits, privileges,
26



1 obligations or duties in and under this Franchise, unless such permit, approval,
2 license, agreement or other document specifically: (a) references this Franchise;
3 and (b) states that it supersedes this Franchise to the extent it contains terms and
4 conditions that change, modify, delete, add to, supplement or otherwise amend the
5 terms and conditions of this Franchise. In the event of any conflict or inconsistency
6 between the provisions of this Franchise and the provisions of any such permit,
7 approval, license, agreement or other document, the provisions of this Franchise
8 shall control.

9 24.3 No failure by any of the foregoing parties to insist upon the strict
10 performance of any covenant, duty, agreement, or condition of this Franchise or to
11 exercise any right or remedy consequent upon a breach thereof shall constitute a
12 waiver of any such breach or any other covenant, agreement, term or condition.
13 Any party hereto, by notice, and only by notice as provided herein may, but shall be
14 under no obligation to, waive any of its rights or any conditions to its obligations
15 hereunder, or any duty, obligation or covenant of any other party hereto. No waiver
16 shall affect or alter this Franchise, and each and every covenant, agreement, term
17 and condition of this Franchise shall continue in full force and effect with respect to
18 other then existing or subsequent breaches hereof.
19
20
21
22
23
24
25
26



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

24.4 The captions of this Franchise ordinance are for convenience and reference only and in no way define, limit, or describe the scope or intent of this Franchise.

Passed _____

Mayor

Attest:

City Clerk

Approved as to form:

Deputy City Attorney



FRANCHISE ACCEPTANCE BY GRANTEE:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

I, the undersigned official of Puget Sound Energy, Inc. ("PSE"), am authorized to bind PSE and to accept the terms and conditions of the foregoing franchise (Ordinance No. _____), which are hereby accepted by PSE this _____ day of _____, 201___. The foregoing date shall constitute the "Effective Date" of the Ordinance.

Puget Sound Energy, Inc.

By: _____

Name: _____

Title: _____

Subscribed and sworn to before me this _____ day of _____, 201__.

Notary Public in and for the
State of Washington
My commission expires _____

Received on behalf of the City this _____ day of _____, 201__.

Name: _____

Title: _____