

**CITY OF MAPLE VALLEY, WASHINGTON**

**ORDINANCE NO. O-06-323**

**AN ORDINANCE GRANTING PUGET SOUND ENERGY, INC., A WASHINGTON CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE, AUTHORITY AND A NON-EXCLUSIVE FRANCHISE TO SET, ERECT, LAY, CONSTRUCT, EXTEND, SUPPORT, ATTACH, CONNECT, MAINTAIN, REPAIR, REPLACE, ENLARGE, OPERATE AND USE FACILITIES IN, UPON, OVER, UNDER, ALONG, ACROSS AND THROUGH THE FRANCHISE AREA TO PROVIDE FOR THE TRANSMISSION, DISTRIBUTION AND SALE OF ELECTRIC ENERGY FOR POWER, HEAT AND LIGHT, AND ANY OTHER PURPOSES FOR WHICH ELECTRIC ENERGY MAY BE USED, PROVIDING FOR SEVERABILITY, AND ESTABLISHING AN EFFECTIVE DATE**

WHEREAS, the City Council of the City of Maple Valley finds that the general public health, safety, welfare, necessity and convenience require that Facilities to provide for transmission, distribution and sale of energy for power, heat and light, and other purposes for which energy may be used, be constructed, maintained and repaired in an orderly manner when such Facilities are located in, under, on or along City rights-of-way; and

WHEREAS, in 1997 the City Council of the City of Maple Valley previously enacted Ordinance No. O-97-29 granting a franchise to Puget Sound Power and Light (the predecessor in interest to Puget Sound Energy, Inc.) through August 31, 2004 for the provision of electric energy to properties within the City of Maple Valley; and

WHEREAS, in 2004 the City Council of the City of Maple Valley enacted Ordinance No. O-04-278 extending the Puget Sound Energy franchise for the provision of electric energy until August 23, 2005; and

WHEREAS, through this ordinance herein the City Council of the City of Maple Valley and Puget Sound Energy will enter into a new franchise for the provision of electric energy services to properties located within Maple Valley for a term of fifteen (15) years from the effective date of this ordinance.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MAPLE VALLEY, DO ORDAIN AS FOLLOWS:**

**Section 1. Definitions.**

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

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

1.1.2 "City" means the City of Maple Valley, a code city of the State of Washington, and its successors and assigns.

1.1.3 "Franchise Area" means any, every and all of the roads, streets, avenues, alleys, highways and public rights-of-way controlled by the City as now laid out, platted, dedicated or improved; and any, every and all roads, streets, avenues, alleys, highways and public rights-of-way controlled by the City that may hereafter be laid out, platted, dedicated or improved within the present limits of the City and as such limits may be hereafter extended.

1.1.4 "Facilities" means, collectively, any and all electric transmission and distribution systems, including but not limited to, poles (with or without crossarms), wires, lines, conduits, cables, braces, guys, anchors and vaults, 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 pertaining to any and all of the foregoing, whether the same be located overhead or underground.

1.1.5 "Communication Systems" means equipment, devices and other items used for communication purposes in connection with PSE's construction, use, operation, maintenance, repair or replacement of its Facilities in the Franchise Area and other permitted activities under this Franchise, including, without limitation, the operation and management of its electric transmission and distribution systems.

1.1.6 "Ordinance" means Ordinance No. O-06-323 which sets forth the terms and conditions of this Franchise.

1.1.7 "Public Improvement" means any capital improvement or repair within the Franchise Area that is undertaken by or on behalf of the City and is funded by the City (either directly with its own funds or with other public monies obtained by the City). For the avoidance of doubt, the term "Public Improvement" shall include any such capital improvement or repair undertaken by the City which requires the relocation of PSE's Facilities within the Franchise Area, even if the capital improvement or repair entails, in part, related work performed for a third party county or municipality under a valid interlocal agreement between the City and such county or municipality (except to the extent the relocation of PSE's Facilities is caused by the work done for such third party), but shall not include, without limitation, any other improvements or repairs undertaken by or for the benefit of third party private entities.

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

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

2.2 This Franchise shall not convey any right to PSE to install its Facilities outside the Franchise Area; provided, however, that PSE shall retain the right to maintain, repair and operate Facilities installed pursuant to prior franchise agreements with the City regardless of whether said Facilities are outside the Franchise Area, but such right shall be subject to the provisions of Section 2.3.

2.3 Existing Facilities installed or maintained by PSE on public grounds and places within the City in accordance with prior franchise agreements (but which such Facilities are not within the Franchise Area as defined in this Franchise) may continue to be maintained, repaired and operated by PSE at the location such Facilities exist as of the effective date of this Franchise for the term of this Franchise; provided, however, that no such Facilities may be enlarged, improved or expanded without the prior review and approval of the City pursuant to applicable ordinances, codes, resolutions, standards and procedures.

### **Section 3. Noninterference and Maintenance of Facilities.**

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

3.2 Any repair of PSE's Facilities within the Franchise Area shall be made within the time and in a manner which conforms with generally accepted customs, practices and standards in the industry. In the event of any emergency in which PSE's Facilities located in or under the Franchise Area break or are damaged, or if PSE's Facilities within the Franchise Area are otherwise in a condition as to immediately endanger the property, life, health or safety of any individual, PSE shall, upon receipt of notification from the City of the existence of such condition, take all reasonable actions to correct the dangerous condition.

3.3 Whenever PSE permanently discontinues use of any above ground or at grade Facilities within the Franchise Area, such as poles (with or without crossarms), braces, guys, anchors and vaults, due to modifications or upgrades to PSE's Facilities within the Franchise Area, the discontinued Facilities shall be removed promptly after all utility attachments have been disconnected and removed from such Facilities and in a manner consistent with any contractual

obligations to third party users of such Facilities. At any rate, once all utility attachments have been disconnected and removed from such Facilities, the removal shall occur within thirty (30) days after PSE's receipt of notice from the City demanding removal.

#### **Section 4. Permits; Restoration.**

4.1 Whenever it shall be necessary for PSE to engage in any work within the Franchise Area, PSE shall apply for all necessary City permits to do such work, and shall, except to the extent inconsistent with the terms and conditions of this Franchise or where expressly provided otherwise herein, comply with all requirements and conditions of such permits, including but not limited to location restrictions, traffic control, and restoration, repair or other work to restore the surface of the Franchise Area, as nearly as practicable, to its condition immediately prior to the work, or as otherwise specified in the permit issued by the City in connection with the work. Such restoration responsibility shall continue for a period of time to correspond to the remaining life of the existing structure, pavement and/or surface in which the work was accomplished, but shall not apply to any subsequent repair or restoration made necessary by the acts or omissions of the City or any third party. It is further provided that in the event that PSE has any work in the Franchise Area completed by any of its authorized agents or subcontractors, PSE shall remain fully responsible for the permit, permitted work and any other permit requirements, notwithstanding any provisions of this Franchise to the contrary.

4.2 In the event of an emergency situation in which PSE's Facilities within the Franchise Area are in such a condition so as to immediately endanger the property, life, health or safety of any individual, PSE may take immediate action to correct the dangerous condition without first obtaining any required permit, provided that PSE shall notify the City telephonically or in person within twenty-four (24) hours of the event, and provided that PSE applies for any necessary permit(s) from the City for such work as soon as reasonably practicable thereafter. For the purposes hereof, "as soon as reasonably practicable" means that the permit application shall be submitted to the City not later than ten (10) business days after the date of the commencement of the action that requires such permit.

4.3 Nothing in this Franchise is intended, nor shall it be construed, as a hindrance to PSE's ability to take such actions as it deems necessary to discharge

its public service obligations in accordance with the laws of the State of Washington.

## **Section 5. Maps and Drawings.**

5.1 PSE shall provide the City, upon the City's reasonable request, copies of available drawings in use by PSE showing the location of its Facilities within the Franchise Area, provided the request is limited to Facilities at specific locations in the Franchise Area and is made in connection with the City's planning of capital improvement projects. Further, PSE shall, upon the City's reasonable request, discuss and explore ways in which PSE and the City may cooperate and coordinate activities with respect to the development of drawing file layers compatible with the City's Geographic Information System ("GIS") which show PSE's Facilities at specific locations in the Franchise Area.

5.2 As to any such drawings and drawing file layers so provided, PSE does not warrant the accuracy thereof and, to the extent the location of Facilities are shown, such Facilities are shown in their approximate location. With respect to any excavations within the Franchise Area undertaken by or on behalf of PSE or the City, nothing herein is intended (nor shall be construed) to relieve either party of their respective obligations arising under applicable law with respect to determining the location of utility facilities.

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

## **Section 6. Right to Complete Work.**

6.1 In the event that PSE fails to perform any work to restore the surface of the Franchise Area to enable the free passage of traffic by the traveling public as required by this Franchise or any permit issued by the City relating to

such work, and such failure continues for a period of ten (10) days after PSE receives written notice from the City regarding such failure (or, in the event of an emergency situation, such shorter period of time after receipt of notice from the City as is reasonably required in the circumstances), the City may, but in no event is obligated to, perform or contract for such work and, thereafter, PSE shall, upon the City's written request, reimburse the City for the reasonable costs incurred by the City in having such work performed.

### **Section 7. Relocation of Facilities.**

7.1 Whenever the City causes a Public Improvement to be undertaken within the Franchise Area, and such Public Improvement requires the relocation of PSE's then existing Facilities within the Franchise Area (for purposes other than those described in Section 7.2 below), the City shall:

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

7.1.2 Provide PSE with reasonable plans and specifications for such Public Improvement.

After receipt of such notice and such plans and specifications, PSE shall relocate such Facilities within the Franchise Area at no charge to the City. If the City requires the subsequent relocation of any Facilities within five (5) years from the date of relocation of such Facilities pursuant to this Section 7.1, the City shall bear the entire cost of such subsequent relocation.

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

7.3 Any condition or requirement imposed by the City upon any person or entity, other than PSE, that requires the relocation of PSE's Facilities shall be a

required relocation for purposes of Section 7.2 above (including, without limitation, any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits for zoning, land use, construction or development).

7.4 Nothing in this Section 7 "Relocation of Facilities" shall require PSE to bear any cost or expense in connection with the location or relocation of any Facilities then existing pursuant to easement or such other rights not derived from this Franchise.

### **Section 8. Undergrounding of Facilities.**

8.1 PSE acknowledges the City desires to encourage the undergrounding of overhead electrical Facilities within the Franchise Area. The City acknowledges that PSE utilizes such overhead Facilities to provide electrical service on a non-preferential basis subject to and in accordance with tariffs on file with the Washington Utilities and Transportation Commission. Subject to and in accordance with such tariffs, PSE will cooperate with the City in the formulation of policy and regulations concerning the undergrounding of PSE's overhead electrical Facilities within the Franchise Area. If, during the term of this Franchise, the City shall direct PSE to underground overhead electrical Facilities within the Franchise Area, such undergrounding shall be arranged and accomplished subject to and in accordance with tariffs on file with the Washington Utilities and Transportation Commission. This Section 8 shall govern all matters related to the undergrounding of PSE's overhead electrical Facilities within the Franchise Area.

### **Section 9. Indemnification.**

9.1 PSE shall indemnify, defend and hold harmless the City, its elected and appointed officials, officers, employees, agents, representatives, engineers, and consultants from any and all claims, costs, judgments, awards, or liability to any person arising from injury or death of any person or damage to property to the extent the same is caused by the negligent acts or omissions of PSE, its agents, servants, officers, or employees in performing under this Franchise. This covenant of indemnification shall include, but not be limited by this reference, to claims against the City arising as a result of the negligent acts or omissions of PSE, its agents, servants, officers, or employees in barricading, instituting trench safety systems or providing other adequate warnings of any excavation,

construction, or work in the Franchise Area or in any other public place in performance of work or services permitted under this Franchise.

9.2 In the event any claim or demand for which indemnification is provided under Section 9.1 is presented to, or suit or action is commenced against, the City based upon any such claim or demand, the City shall promptly notify PSE thereof, and PSE may elect, at its sole cost and expense, to settle and compromise such suit or action, or defend the same with attorneys of its choice. In the event that PSE refuses the tender of defense in any suit or any claim for which indemnification is provided under Section 9.1, said tender having been made pursuant to this indemnification clause, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter) to have been a wrongful refusal on the part of PSE, then PSE shall pay all of the City's costs for defense of the action, including all reasonable expert witness fees and reasonable attorneys' fees and the reasonable costs of the City, including reasonable attorneys' fees of recovering under this indemnification clause.

9.3 In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of PSE and the City, its officers, employees and agents, PSE's liability hereunder shall be only to the extent of PSE's negligence. It is further specifically and expressly understood that, solely to the extent required to enforce the indemnification provided herein, PSE waives its immunity under RCW Title 51; provided, however, the foregoing waiver shall not in any way preclude PSE from raising such immunity as a defense against any claim brought against PSE by any of its employees. This waiver has been mutually negotiated by the parties.

9.4 In the event it is determined that RCW 4.24.115 applies to this Franchise, PSE's indemnification obligations under Section 9.1 shall apply to the maximum extent permitted thereunder, to the full extent of PSE's negligence. Further, in any such action, the City shall have the right to participate, at its sole cost and expense, through its own attorney in any suit or action which arises pursuant to this Franchise when the City determines that such participation is in the City's best interest.

9.5 The provisions in this Section 9 shall survive the expiration or termination of this Franchise with respect to any claim, demand, suit or action for

which indemnification is provided under Section 9.1 and which is based on an act or omission that occurred during the term of this Franchise.

#### **Section 10. Reservation of Rights.**

10.1 In the event the City vacates any portion of the Franchise Area during the term of this Franchise, the City shall, in its vacation procedure, reserve and grant an easement to PSE for PSE's existing Facilities unless the City reasonably determines that to do so would be impracticable in light of the nature of the vacation. In cases where the City determines that reserving and granting an easement to PSE is impracticable, the City will notify PSE thirty (30) business days prior to any final vacation action.

10.2 The existence of this Franchise shall not preclude the City from acquiring by condemnation, in accordance with applicable law, all or any portions of PSE's Facilities within the Franchise Area.

#### **Section 11. Moving Buildings within the Franchise Area.**

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

#### **Section 12. Use of Facilities by City.**

12.1 During the term of this Franchise, the City may, subject to PSE's prior written consent which shall not be unreasonably withheld, install and maintain City-owned overhead wires for traffic signalization and police and fire

communications upon PSE's poles which are Facilities located within the Franchise Area. The foregoing rights of the City to install and maintain such wires are further subject to the following:

12.1.1 The City shall perform such installation and maintenance at its sole risk and expense in accordance with all applicable laws and in accordance with such reasonable terms and conditions as PSE may specify from time to time (including, without limitation, requirements accommodating Facilities or the facilities of other parties having the right to use the Facilities); and

12.1.2 PSE shall have no obligation under Section 9 in connection with any City-owned wires installed or maintained on PSE's poles.

### **Section 13. Vegetation Management.**

13.1 PSE shall not apply any pesticide or herbicide within the Franchise Area without prior approval of the City. If PSE first obtains such approval from the City to apply a specific product in accordance with the defined procedure on an ongoing basis throughout the Franchise Area, PSE shall not thereafter be required to obtain the City's approval on each occasion such product is so applied unless changes occur in State or Federal law or regulation that would require or necessitate such subsequent approval. Trees which may interfere with ungrounded supply conductors should be trimmed or removed. PSE shall coordinate its routine vegetation management activities with the City and shall trim vegetation in close proximity to its Facilities within the Franchise Area in compliance with all City ordinances, regulations, resolutions and rules. PSE shall, upon the City's reasonable request, use commercially reasonable efforts to provide advance notice to the record owners of property adjacent to Facilities of PSE within the Franchise Area where major vegetation removal is planned to be conducted by PSE. However, such obligation to coordinate and comply shall not limit PSE's right under this Franchise to cut, trim or otherwise remove vegetation at any time within the Franchise Area which, due to proximity to PSE's Facilities, poses an imminent threat to property, public safety or continuity of electrical service.

### **Section 14. Street Lighting.**

14.1 PSE shall install, operate and maintain street lighting as requested by the City in accordance with applicable schedules and tariffs on file with the

Washington Utilities and Transportation Commission (or such other regulatory agency having jurisdiction). Subject to the terms and conditions of the aforementioned schedules or tariffs, PSE shall apply its best efforts to replace individual street lamps (which PSE is otherwise required to replace in accordance with such schedules and tariffs) promptly after receipt of notice from the City.

#### **Section 15. Recovery of Costs; Permit Fees.**

15.1 As specifically provided by RCW 35.21.860, the City may not impose a franchise fee or any other fee or charge of whatever nature or description upon PSE as a result of this Franchise. However, as provided in RCW 35.21.860, the City may recover from PSE the actual administrative expenses incurred by the City that are directly related to: (i) receiving and approving a permit, license or this Franchise, (ii) inspecting plans and construction, or (iii) preparing a detailed statement pursuant to Chapter 43.21C RCW. With respect to its payment of such administrative expenses, the City shall submit to PSE statements/billings which specify the amounts due. PSE shall make payment to the City in reimbursement of such expenses within thirty (30) days of the receipt of such statements/billings. Failure by PSE to pay such amount within such thirty (30) day time period shall constitute a failure to comply with the Franchise for the purposes of Section 16, Default, hereof. Additionally, the failure by PSE to timely pay said amounts shall be grounds for the City to preclude the processing of any applications and/or issuing permits until payment has been fully made. Furthermore, any late payment shall also accrue interest computed at the rate of twelve percent (12%) per annum from the thirtieth day.

15.2 With respect to the payment of permit fees, PSE shall comply with all applicable payment terms set forth in applicable codes, ordinances or permits of the City, including, without limitation, any such terms relating to the schedule for payment and the City's right to withhold permits or charge interest in connection with any payment default by PSE; provided, however, the City shall accept payment of such permit fees directly from contractors of PSE that perform work in the Franchise Area on behalf of PSE so long as PSE has notified the City in writing that the contractor is authorized to do so on PSE's behalf and PSE remains responsible for compliance with the terms of the permit.

**Section 16. Default.**

16.1 If PSE shall fail to comply with the provisions of this Franchise, the City may serve upon PSE a written order to so comply within thirty (30) days from the date such order is received by PSE. If PSE is not in compliance with this Franchise after the expiration of said thirty (30) day period, the City may, by ordinance, declare an immediate forfeiture of this Franchise. The parties expressly acknowledge and agree, however, that the forgoing rights and obligations of the parties are subject in all respects to excused performance based on a Force Majeure Event (as defined in Section 21.13).

**Section 17. Nonexclusive Franchise.**

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

**Section 18. Franchise Term.**

18.1 This Franchise is and shall remain in full force and effect for a period of fifteen (15) years from and after the effective date of the Ordinance; provided, however, PSE shall have no rights under this Franchise nor shall PSE be bound by the terms and conditions of this Franchise unless PSE shall, within sixty (60) days after the effective date of the Ordinance, file with the City its written acceptance of the Ordinance. It is further provided that upon PSE's request for an extension, this Franchise may be extended by the City, for one five (5) year extension, provided that PSE is in full compliance with the terms and conditions of the Franchise. In any such extension, the terms and conditions of this Franchise shall remain in full force and effect, except as may be otherwise mutually agreed by the parties hereto.

**Section 19. Insurance; Bond.**

19.1 PSE shall maintain the following liability insurance coverages, insuring both PSE and the City, and its elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers as additional insured's against claims for injuries to persons or damages to property

which may arise from or in connection with the exercise of the rights, privileges, and authority granted to PSE:

19.1.1 General liability insurance with limits not less than:

- (a) Five million dollars for bodily injury or death to each person;
- (b) Five million dollars for property damage resulting from any one accident; and
- (c) Five million dollars for all other types of liability.

19.1.2 Automobile liability for owned, non-owned and hired vehicles with a limit of \$3,000,000 for each person and \$3,000,000 for each accident.

19.1.3 Worker's compensation with statutory limits and employer's liability insurance with limits of not less than \$1,000,000.

19.1.4 Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than \$3,000,000.

19.2 The liability insurance described herein shall be maintained by PSE throughout the term of this Franchise, and such other period of time during which PSE is operating its Facilities within the Franchise Area without a franchise, or is engaged in the removal of its Facilities from the Franchise Area. Payment of deductibles and self-insured retentions shall be the sole responsibility of PSE. Coverage under this policy 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. The City shall be named as an insured under PSE's Commercial General Liability insurance policy. PSE shall be the primary insured as respects 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.

19.3 The liability insurance described herein, and any subsequent replacement policies, shall provide that insurance shall not be cancelled or

materially changed so as to be out of compliance with these requirements without first providing thirty (30) days written notice to the City. If the insurance is cancelled or materially altered so as to be out of compliance with the requirements of this subsection within the term of this Franchise, PSE shall provide a replacement policy. PSE agrees to maintain continuous uninterrupted insurance coverage, in at least the amounts required for the duration of this Franchise and, in the case of the Commercial General Liability, for at least three (3) years after expiration of the term of this Franchise. Any lapse in the required insurance coverage shall be cause for termination of this Franchise.

19.4 In lieu of the insurance requirements set forth in this Section 19, PSE may self-insure against such risks in such amounts as are consistent with good utility practice. Upon the City's request, PSE shall provide the City with reasonable written evidence that PSE is maintaining such self-insurance.

#### **Section 20. Assignment.**

20.1 PSE shall not assign or transfer its rights, benefits and privileges in and under this Franchise without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. Prior to any assignment, the intended assignee shall, within thirty (30) days of the proposed date of any assignment, file written notice of the intended assignment with the City together with its written acceptance of all terms and conditions of this Franchise. Notwithstanding the foregoing, PSE shall have the right, without such notice or such written acceptance, to mortgage its rights, benefits and privileges in and under this Franchise for the benefit of bondholders.

#### **Section 21. Miscellaneous.**

21.1 If any term, provision, condition or portion of this Franchise shall be held to be invalid, or is held to be inapplicable to any person or circumstance, such invalidity shall not affect the validity of the remaining portions of this Franchise which shall continue in full force and effect, and its application to other persons and circumstances shall not be affected. The headings of sections and paragraphs of this Franchise are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.

21.2 This Franchise may be amended only by written instrument, signed by both parties, which specifically states that it is an amendment to this Franchise

and is approved and executed in accordance with the laws of the State of Washington. Without limiting the generality of the foregoing, this Franchise (including, without limitation, Section 9 above) shall govern and supersede and shall not be changed, modified, deleted, added to, supplemented or otherwise amended by any permit, approval, license, agreement or other document required by or obtained from the City in conjunction with the exercise (or failure to exercise) by PSE of any and all rights, benefits, privileges, obligations or duties in and under this Franchise, unless such permit, approval, license, agreement or other document specifically:

21.2.1 references this Franchise; and

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

In the event of any conflict or inconsistency between the provisions of this Franchise and the provisions of any such permit, approval, license, agreement or other document, the provisions of this Franchise shall control.

21.3 This Franchise is 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 such tariff, the provisions of such tariff shall control, subject only to Section 23 with respect to any such tariff which is adopted after the date of this Franchise.

21.4 In connection with its performance of work under this Franchise, PSE shall, during the term of this Franchise, fully comply with all applicable equal employment or non-discrimination provisions and requirements of federal, state and local laws.

21.5 During the term of this Franchise, each party shall notify and keep the other party apprised of its local address for the service of notices by mail. All notices and other communications given or required to be given under this Franchise shall be sent postage prepaid to such respective address and such notices shall be effective upon receipt. The City and PSE may change their respective addresses by written notice to the other party at any time.

21.6 PSE and the City shall, as reasonably requested by the other party from time to time, discuss and coordinate their activities with respect to construction which may affect the public ways in any manner in an effort to minimize public inconvenience, disruption or damages.

21.7 This Franchise shall be binding upon the parties hereto and their permitted successors and assigns.

21.8 Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party, act toward third persons or the public in any manner that would indicate any such relationship with the other.

21.9 The failure of either party at any time to require performance by the other party of any provision hereof shall in no way affect the right of such party thereafter to enforce the same. Nor shall the waiver by a party of any breach of any provision hereof by the other party be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision.

21.10 This Franchise shall be governed by and construed in accordance with the laws of the State of Washington. The venue and jurisdiction over any dispute related to this Franchise shall be with the King County Superior Court, Regional Justice Center, Kent, Washington (or, if the Regional Justice Center is no longer in operation, such other local facility as is then operated by the King County Superior Court).

21.11 If either party shall be required to bring any action to enforce any provision of this Franchise, or shall be required to defend any action brought by the other party with respect to this Franchise, and in the further event that one party shall prevail in such action, the other party shall, in addition to all other payments required therein, pay all of the prevailing party's reasonable costs in connection with such action, including such sums as the court or courts may adjudge reasonable as attorney's fees in the trial court and in any appellate courts.

21.12 This Franchise represents the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior oral negotiations between the parties.

21.13 In the event that either party is prevented or delayed in the performance of any of its obligations under this Franchise by any event or circumstance 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 or other condition which necessitates the mobilization of the personnel of a party or its contractors to restore utility service; 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 22. Dispute Resolution.**

22.1 The parties recognize that cooperation and communication are essential to resolving issues quickly and efficiently. If any dispute arises in regard to the terms or conditions of this Franchise, then the parties shall meet and engage in good faith discussions with the objective of settling the dispute within ten (10) days after either party requests such a meeting. If the parties cannot resolve the dispute within such ten (10) day period, the parties will, upon the written request of either party, seek to resolve the dispute in accordance with the following dispute resolution process:

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

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

dispute to Level Two, either party may by written notice to the other party refer the dispute to Level Three.

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

Level Four – In the event either party properly refers the dispute to Level Four or the dispute is not resolved at Level Three within fourteen (14) calendar days after referral of that dispute to Level Three, either party may seek resolution of the dispute through litigation or other judicial proceedings in the court specified in Section 21.10.

22.2 Notwithstanding Section 22.1 or any other provision of this Franchise to the contrary, with respect to any dispute arising under this Franchise, either party may commence litigation or other judicial proceedings within thirty (30) days prior to the date after which the commencement of litigation could be barred by any applicable statute of limitations or other law, rule, regulation, or order of similar import or in order to request injunctive or other equitable relief necessary to prevent irreparable harm. In such event, the Parties will (except as may be prohibited by judicial order) nevertheless continue to follow the procedures set forth in this Section 22.

### **Section 23. Changes in Laws.**

23.1 If, during the term of this Franchise, there becomes effective any change in federal or state law (including, but not limited to, a change in any tariff filed by PSE with the Washington Utilities & Transportation Commission) and such change:

23.1.1 specifically requires the City to enact a code or ordinance which conflicts or is inconsistent with any provision of this Franchise; or

23.1.2 results in a PSE tariff which conflicts or is inconsistent with any provision of this Franchise;

then, in such event, either party may, within ninety (90) days of the effective date of such change, notify the other party in writing that such party desires to commence negotiations to amend this Franchise. Such negotiations shall only encompass the specific term or condition affected by such change in federal or state law and neither party shall be obligated to reopen negotiations on any other term or condition of this Franchise. Within thirty (30) days from and after the other party's receipt of written notice to so commence such negotiations, the parties shall, at a mutually agreeable time and place, commence such negotiations. The parties shall thereafter conduct such negotiations at reasonable times, in a reasonable manner, in good faith and with due regard to all pertinent facts and circumstances; provided, however, that (a) in the event the parties are unable, through negotiation, to reach mutual agreement upon terms and conditions of such amendment, then either party may, by written notice to the other, demand that the parties seek to arrive at such agreement through mediation or, if no such demand has previously been submitted, terminate this Franchise upon not less than ninety (90) days prior written notice to the other party; and (b) pending such negotiations, mediation and/or termination, and except as to any portion thereof which is in conflict or inconsistent with such change in federal or state law, the Franchise shall remain in full force and effect. For purposes of this Section, the term "mediation" shall mean mediation at the local offices of Judicial Arbitration and Mediation Services, Inc. ("JAMS"), or, if JAMS shall cease to exist or cease to have a local office, mediation at the local offices of a similar organization. The parties may agree on a jurist from the JAMS panel. If they are unable to agree, JAMS will provide a list of the three available panel members and each party may strike one. The remaining panel member will serve as the mediator.

23.2 PSE shall, in connection with any application for changes in its tariffs that would be in conflict or inconsistent with the provisions of this Franchise or would modify the rights or responsibilities of either party under this Franchise, notify the City in writing of the application promptly after it is filed with the Washington Utilities & Transportation Commission.

#### **Section 24. Severability.**

24.1 If any section, sentence, clause or phrase of this Ordinance shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

**Section 25. Ratification.**

25.1 Any act of the City consistent with the authority granted by the City prior to the effective date of this Ordinance is hereby ratified and affirmed by the City.

**Section 26. Effective Date.**

26.1 This Ordinance shall be effective on May 7, 2006, having been: (i) introduced to the City Council not less than five days before its passage; (ii) first submitted to the City Attorney on April 13, 2006; (iii) published at least five days prior to the above-referenced effective date and as otherwise required by law; and (iv) passed at a regular meeting of the legislative body of the City of Maple Valley by a vote of at least five members of the City Council on April 24, 2006.

INTRODUCED: April 17, 2006

PASSED: April 24, 2006

APPROVED: \_\_\_\_\_

\_\_\_\_\_  
LAURE A. IDDINGS, Mayor

ATTEST:

\_\_\_\_\_  
Irvalene M. Moni, City Clerk

Date: May 25, 2006

APPROVED AS TO FORM:

\_\_\_\_\_, City Attorney

Date: 6/2/06

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I, IRVALENE MONI, the duly qualified City Clerk of the City of Maple Valley, a Non-charter Code City, situated in King County, State of Washington, do hereby certify that the foregoing is a full, true and correct copy of Ordinance No. O-06-323, an ordinance of the City of Maple Valley, entitled:

CITY OF MAPLE VALLEY, WASHINGTON  
ORDINANCE NO. O-06-323

AN ORDINANCE granting Puget Sound Energy, Inc., a Washington corporation, its successors and assigns, the right, privilege, authority and franchise to set, erect, construct, support, attach, connect and stretch Facilities between, maintain, repair, replace, enlarge, operate and use Facilities in, upon, over, under, along, across and through the Franchise Area for purposes of transmission, distribution and sale of electric energy for power, heat, light and any other purpose for which electric energy can be used.

I further certify that said Ordinance No. O-06-323 was: (i) introduced on the 17th day of April, 2006; (ii) submitted to the City Attorney on the 13th day of April, 2006; (iii) published on the 2nd day of May, 2006, according to law; (iv) approved by a majority of the entire legislative body of the City of Maple Valley, at a regular meeting thereof on the 24th day of April, 2006; and (v) approved and signed by the Mayor of the City of Maple Valley on the 27th day of April, 2006.

WITNESS my hand and official seal of the City of Maple Valley, this 25th day of May, 2006.

IRVALENE M. MONI City Clerk  
City of Maple Valley, State of Washington

HONORABLE MAYOR AND CITY COUNCIL  
CITY OF MAPLE VALLEY, WASHINGTON

In the matter of the application	:	
of Puget Sound Energy, Inc., a	:	Franchise Ordinance No. <i>0-06-323</i>
Washington corporation, for a	:	
franchise to construct, operate	:	
and maintain facilities in, upon,	:	
over under, along, across and	:	
through the franchise area of the	:	ACCEPTANCE
City of Maple Valley ,	:	
Washington	:	

WHEREAS, the City Council of the City of Maple Valley, Washington, has granted a franchise to Puget Sound Energy, Inc., a Washington corporation, its successors and assigns, by enacting Ordinance No. O-06-323, bearing the date of *April 24*, 2006; and

WHEREAS, a copy of said Ordinance granting said franchise was received by the Puget Sound Energy, Inc. on \_\_\_\_\_, 2006, from said City of Maple Valley and King County, Washington.

NOW, THEREFORE, Puget Sound Energy, Inc., a Washington corporation, for itself, its successors and assigns, hereby accepts said Ordinance and all the terms and conditions thereof, and files this, its written acceptance, with the City of Maple Valley and King County, Washington.

COPY

IN TESTIMONY WHEREOF said Puget Sound Energy, Inc. has caused this written Acceptance to be executed in its name by its undersigned \_\_\_\_\_ thereunto duly authorized on this \_\_\_\_ day of \_\_\_\_\_, 2006.

ATTEST:

PUGET SOUND ENERGY, INC.

\_\_\_\_\_

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

Copy received for City of Maple Valley

on \_\_\_\_\_, 2006

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

ORIGINAL  
COPY

HONORABLE MAYOR AND CITY COUNCIL  
CITY OF MAPLE VALLEY, WASHINGTON

In the matter of the application :  
of Puget Sound Energy, Inc., a : Franchise Ordinance No. 0-06-323  
Washington corporation, for a :  
franchise to construct, operate :  
and maintain facilities in, upon, :  
over under, along, across and :  
through the franchise area of the : ACCEPTANCE  
City of Maple Valley , :  
Washington :

WHEREAS, the City Council of the City of Maple Valley, Washington, has granted a franchise to Puget Sound Energy, Inc., a Washington corporation, its successors and assigns, by enacting Ordinance No. O-06-323, bearing the date of April 24, 2006; and

WHEREAS, a copy of said Ordinance granting said franchise was received by the Puget Sound Energy, Inc. on June 14, 2006, from said City of Maple Valley and King County, Washington.

NOW, THEREFORE, Puget Sound Energy, Inc., a Washington corporation, for itself, its successors and assigns, hereby accepts said Ordinance and all the terms and conditions thereof, and files this, its written acceptance, with the City of Maple Valley and King County, Washington.

IN TESTIMONY WHEREOF said Puget Sound Energy, Inc. has caused this written Acceptance to be executed in its name by its undersigned MARK BOWMAN thereunto duly authorized on this 22 day of June, 2006.

ATTEST:

PUGET SOUND ENERGY, INC.

\_\_\_\_\_

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

Copy received for City of Maple Valley

on June 23, 2006

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

**CITY OF MAPLE VALLEY, WASHINGTON**  
**ORDINANCE NO. O-06-326**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
MAPLE VALLEY, WASHINGTON, AMENDING ORDINANCE NO. O-  
06-323, ADOPTING THE PUGET SOUND ENERGY NON-EXCLUSIVE  
FRANCHISE FOR PROVISION OF ELECTRIC ENERGY SERVICES,  
CORRECTING A SCRIVENER'S ERROR AND ESTABLISHING AN  
EFFECTIVE DATE**

WHEREAS, the City Council adopted Ordinance 0-06-323 on April 24, 2006 granting a non-exclusive franchise to Puget Sound Energy for the provision of electric energy services to properties located within Maple Valley; and

WHEREAS, subsequent to Ordinance 0-06-323 being signed, it was discovered that its preamble erred by referencing natural gas service instead of electric energy services; and

WHEREAS, the City Council desires to amend Ordinance 0-06-323 to correct the preamble;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MAPLE VALLEY, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Revisions. The City of Maple Valley hereby revises the preamble of Ordinance 0-06-323 to read as follows:

WHEREAS, the City Council of the City of Maple Valley finds that the general public health, safety, welfare, necessity and convenience require that Facilities to provide for transmission, distribution and sale of energy for power, heat and light, and other purposes for which energy may be used, be constructed, maintained and repaired in an orderly manner when such Facilities are located in, under, on or along City rights-of-way; and

WHEREAS, in 1997 the City Council of the City of Maple Valley previously enacted Ordinance No. O-97-29 granting a franchise to Puget Sound Power and Light (the predecessor in interest to Puget Sound Energy, Inc.) through August 31, 2004 for the provision of electric energy to properties within the City of Maple Valley; and

WHEREAS, in 2004 the City Council of the City of Maple Valley enacted Ordinance No. O-04-278 extending the Puget Sound Energy franchise for the provision of electric energy until August 23, 2005; and

WHEREAS, through this ordinance herein the City Council of the City of Maple Valley and Puget Sound Energy will enter into a new franchise for the provision of electric energy services to properties located within Maple Valley for a term of fifteen (15) years from the effective date of this ordinance.

Section 2. Severability. Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by State or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 3. Effective Date. This ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 8TH DAY OF MAY, 2006.

CITY OF MAPLE VALLEY

\_\_\_\_\_  
Laure A. Iddings, Mayor

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
Irvalene M. Moni, CMC, PRP, City Clerk

Approved as to form:

\_\_\_\_\_  
Bruce Disend, City Attorney

Date of Publication: May 16, 2006

Effective Date: May 21, 2006