

**CITY OF GOLD BAR, WASHINGTON
ORDINANCE #707**

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

THE CITY COUNCIL OF THE CITY OF GOLD BAR, WASHINGTON, DO ORDAIN AS FOLLOWS:

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Section I 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 Gold Bar, 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, and highways, grounds and public places of the City as now laid out, platted, dedicated or improved; and any, every and all roads, streets, avenues, alleys, highways, grounds and public places that may hereafter be laid out, platted, dedicated or improved within the present limits of the City and as such limits may be hereafter extended.

1.1.4 "Facilities" means, collectively, any and all (i) natural gas distribution systems, including but not limited to, gas pipes, pipelines, mains, laterals, conduits, feeders, regulators, meters, meter-reading devices, and communication systems; (ii) 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, and communication systems; and (iii) any and all other equipment, appliances, attachments, appurtenances and other items necessary, convenient, or in any way appertaining to any and all of the foregoing, whether the same be located over or under ground.

1.1.5 "Ordinance" means Ordinance No.707, which sets forth the terms and conditions of this Franchise.

Section II Grant of Rights

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

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

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

Section III Compliance with Laws

3.1 PSE shall exercise its rights within the Franchise Area in accordance with all applicable federal and state laws and regulations and all applicable City codes and ordinances governing use and occupancy of the Franchise Area; provided, however, in the event of any conflict or inconsistency of such City codes and ordinances with the terms and conditions of this Franchise, the terms and conditions of this Franchise shall govern and control; provided, further, nothing herein shall be deemed to waive, prejudice or otherwise limit any right of appeal afforded PSE by such City codes and ordinances.

Section IV Relocation of Facilities

4.1 Whenever the City causes a Public Improvement Project (as defined below) to be undertaken within the Franchise Area, and such Public Improvement Project requires the relocation of PSE's then existing Facilities within the Franchise Area (for purposes other than those described in Section 4.2 below), the City shall:

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

4.1.2 provide PSE with reasonable plans and specifications for such Public Improvement Project.

After receipt of such notice and such plans and specifications, PSE shall relocate such Facilities within the Franchise Area at no charge to the City. 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 4.1, the City shall bear the entire cost of such subsequent relocation. As used herein, the

term "Public Improvement Project" is a City-funded capital improvement to the public right of way identified in the "transportation" element of the City's Comprehensive Plan.

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

4.3 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 4.2 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).

4.4 Nothing in this Section 4 "Relocation of Facilities" shall require PSE to bear any cost or expense in connection with the location or relocation of any Facilities then existing pursuant to easement or other rights not derived from this Franchise, regardless of whether such easement or other rights are on public or private property and regardless of whether this Franchise co-exists with such easement or other rights.

Section V Permits; Records

5.1 Before any construction work is undertaken by PSE within the Franchise Area under this Franchise, except in emergencies, PSE shall first file with the City an application for a permit to do such work, accompanied by a drawing showing the approximate location of all Facilities sought to be constructed, laid, installed or erected within the Franchise Area and their relative positions and locations within the Franchise Area. In the event of an emergency, PSE may immediately commence necessary work and apply for a permit as soon as practicable thereafter.

5.2 PSE shall, in each permit application, specify the class and type of material to be used, the equipment to be used and the mode of safeguarding and facilitating public traffic during construction. PSE shall pay to the City all reasonable costs of and expenses incurred in the examination, inspection and supervision of such work on account of the granting of the permit, as and to the extent such costs and expenses are recoverable in accordance with Section 8.

5.3 PSE shall at all times keep complete records showing the relative location and size of all Facilities of PSE within the Franchise Area. Such records shall be kept current annually by PSE to show thereon the relative location of new Facilities of PSE installed within the Franchise Area. 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 at specific locations within the Franchise Area in connection with a planned Public Improvement Project. As to any such drawings so provided, PSE does not warranty the accuracy thereof and, to the extent the location of Facilities are shown, such Facilities are shown in their approximate location. Nothing herein is intended (nor shall be construed) to relieve either party of their representative obligations arising under applicable law with respect to determining the location of utility facilities.

Section VI Restoration

6.1 After installing any Facilities or undertaking construction work within the Franchise Area that disturbs the surface or subsurface of the Franchise Area, PSE shall leave the Franchise Area in as good

and safe structural condition in all respects as it was in before commencement of such work by PSE. In case of any damage to the Franchise Area that is caused by such work performed by PSE, PSE shall promptly repair said damage at no cost to the City. Such repairs shall be completed in compliance with applicable state code and regulations and shall be subject to the final inspection and approval by the City. If PSE's failure to complete such repairs creates a condition dangerous to life or property, and PSE thereafter fails to remedy the condition within thirty (30) days after its receipt of written demand from the City, the City may perform any work reasonably necessary to restore the Franchise Area to a safe condition and PSE, upon demand, shall reimburse the City for all reasonable costs incurred by the City to complete such restoration.

Section VII Indemnification

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

Section VIII Recovery of Costs

8.1 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. However, as provided in RCW 35.21.860, the City may recover from PSE 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 34.21C RCW.

Section IX Reservation of Easement in Event of Vacation

9.1 In the event the City considers vacating any portion of the Franchise Area during the term of this Franchise, the City shall give PSE advance written notice of the same to allow PSE the opportunity to review and comment on the proposed vacation. Thereafter, unless otherwise requested by PSE, the City shall, in its vacation procedure, reserve and grant an easement to PSE for PSE's facilities based on the input received from PSE.

Section X Default

10.1 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 sixty (60) days from the date such order is received by PSE. If PSE is not in compliance with this Franchise after expiration of said sixty (60) day period, the City may, by ordinance, declare an immediate forfeiture of this Franchise; provided, however, if any failure to comply with this Franchise by PSE cannot be corrected with due diligence within said sixty (60) day period (PSE's obligation to comply and to proceed with due diligence being subject to unavoidable delays and events beyond its control), then the time within which PSE may so comply shall be extended for such time as may be reasonably necessary and so long as PSE commences promptly and diligently to effect such compliance.

Section XI Franchise Term

11.1 This Franchise is and shall remain in full force and effect for a period of thirty (30) 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.

Section XII Assignment

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

Section XIII Miscellaneous

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

13.2 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 7 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 references this Franchise and 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.

13.3 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.

13.4 Neither party will be liable for, or be considered in breach of or default under this Franchise on account of any delay or failure to perform as required by this Franchise caused by or contributed to by an condition, circumstance, event, or occurrence beyond such party's reasonable control, including, but not limited to, fire, explosion, accident, acts of God, flood, epidemic, riot, rebellion, interruption or rationing of fuel supply, or war ("Force Majeure"); provided that, in the event of a Force Majeure, the effected party must notify the other party in writing as soon as reasonably practicable, together with a plan to mitigate the effect of the event.

Section XIV Effective Date

This ordinance shall take effect from, and after, its passage, approval, and publication as provided by law.

Passed by the City Council of the City of Gold Bar this _____ day of _____, 2017.

Attest:

Lisa Stowe, Clerk/Treasurer

Attest:

Lee Hodo, Mayor

First Reading: _____

Posted: _____

Second Reading: _____

Passed: _____

Published: _____