

ORDINANCE NO. 2163

AN ORDINANCE OF THE CITY OF REDMOND, WASHINGTON, GRANTING PUGET SOUND ENERGY, INC., A WASHINGTON CORPORATION, THE RIGHT, PRIVILEGE AND AUTHORITY AND FRANCHISE TO SET, ERECT, CONSTRUCT, SUPPORT, ATTACH, CONNECT AND STRETCH FACILITIES BETWEEN, MAINTAIN, REPAIR, REPLACE, ENLARGE, OPERATE AND USE FACILITIES IN, UPON, UNDER, ALONG AND ACROSS THE FRANCHISE AREA FOR PURPOSES OF TRANSMISSION, DISTRIBUTION AND SALE OF ELECTRICAL ENERGY FOR POWER, HEAT, LIGHT AND ANY OTHER PURPOSE FOR WHICH SUCH ENERGY CAN BE USED.

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THE CITY COUNCIL OF THE CITY OF REDMOND, WASHINGTON, DO  
ORDAIN AS FOLLOWS:

Section 1.     Definitions

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

1.     "Puget" means Puget Sound Energy, Inc., a Washington corporation, and its respective successors and assigns.
2.     "City" means the City of Redmond, a municipal corporation of the State of Washington, and its respective successors and assigns.
3.     "Franchise" means the grant of rights, privileges and authority embodied in this Ordinance.
4.     "Franchise Area" means: all rights-of-way for public roads, streets, avenues, alleys, and highways within the City as now laid out, platted, dedicated, acquired or improved; all rights-of-way for public roads, streets, avenues, alleys, and highways that may hereafter be laid out, platted, dedicated, acquired or improved

within the present limits of the City and as such limits may be hereafter extended; and all City owned easements used for such rights-of-way and/or dedicated for the placement and location of utilities, provided such easements would allow PSE to fully exercise the rights granted under this Franchise within the area covered by such easements.

5. "Facilities" means poles (with or without cross arms), including Puget-owned street lighting poles and luminaires, wires, lines, conduits, cables, communication and signal lines, braces, guys, anchors, switches, transformers, ducts, vaults and all necessary facilities and appurtenances thereto, whether the same be located over or under ground.

6. "Ordinance" means this Ordinance No. 2163, which sets forth the terms and conditions of this Franchise.

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

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

## Section 2. Facilities Within the Franchise Area

A. The City hereby grants to Puget 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 and across the Franchise Area for purposes of transmission, distribution and sale of electrical energy for power, heat, light and any other purpose for which such energy can be used.

B. Puget acknowledges the City's desire and intent that City rights-of-way be free of encumbrance by rights held by others, including Puget, and that the City requires that rights-of-way dedicated by property owners to the City be free of such encumbrances. All rights-of-way so dedicated shall be Franchise Area and Facilities thereafter placed by Puget therein shall be subject to the terms and conditions of this Franchise. Where new right-of-way is to be added to the Franchise Area through dedication by property owners, Puget agrees that any new Facilities placed within this new right-of-way shall be subject to the terms of this Franchise.

C. In areas of existing right-of-way or new right-of-way purchased by the City, where Puget has a prior existing easement or other right not derived from this Franchise or a prior franchise granted by the City within a portion of the Franchise Area, and Puget desires to install Facilities within such prior right, then Puget will provide notice of same to the City prior to such installation. The City may request that Puget instead install its Facilities within the Franchise Area pursuant to rights granted by this Franchise. Puget will consider the facts and conditions that bear upon such request and will respond to the City, including meeting with the City to discuss such request, prior to installation of Puget's Facilities. When reasonably determined by Puget to be consistent with prudent utility practice, Puget will install its Facilities as so requested by the City.

Section 3. Non-Franchise Area City Property

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

B. Existing Facilities installed or maintained by Puget 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 by this Franchise) may be maintained,

operated, repaired and/or replaced in like kind by Puget at the location where such Facilities exist as of the effective date of this Franchise for the term of this Franchise; provided, however, that no such Facilities may be enlarged, improved or expanded without the prior review and approval of the City pursuant to applicable ordinances, codes, resolutions, standards, and procedures.

Section 4. Noninterference of Facilities/Restoration

A. Puget's Facilities shall be located and maintained, within the Franchise Area so as not to interfere with the free and safe passage of pedestrian and/or vehicle traffic therein or with the reasonable ingress or egress to properties abutting thereto. Puget's Facilities shall be maintained in accordance with the laws of the State of Washington, Redmond Municipal Code, and applicable regulations and standards of the City.

B. In the event that the City's Public Works Director reasonably determines, after providing written notice to Puget and a reasonable opportunity for Puget to respond to the Public Works Director's concerns, that any one or more of Puget's Facilities within the Franchise Area interfere with the free and safe passage of pedestrian and vehicular traffic therein or with the reasonable ingress or egress to properties abutting thereto, then Puget shall promptly take such action as is reasonably necessary to eliminate such interference. In so doing, the City shall fully cooperate with Puget, including, without limitation, allowing changes to or modifications of the Franchise Area (and other City property), at Puget's expense, if such changes or modifications provide the most effective or economical means of eliminating such interference. In the event such interference requires relocation of Puget's Facilities within the Franchise Area, such relocation shall be accomplished in accordance with Section 10 below (any such interference resulting from new development ingress or egress to

properties abutting the Franchise Area in proximity to PSE's Facilities existing within the Franchise Area prior to the development shall be subject to Section 10(B)).

C. Puget shall, after installation, construction, relocation, maintenance, removal or repair of any of Puget's Facilities within the Franchise Area, restore the surface of the Franchise Area and any other City property within the Franchise Area which may be disturbed or damaged by such work, to at least the same condition as the Franchise Area was in immediately prior to any such work. The Public Works Director shall have final approval of the condition of the Franchise Area after restoration. All survey monuments which are to be disturbed or displaced by such work shall be referenced and restored, as per WAC 332-120, as the same now exists or may hereafter be amended, and all pertinent federal, state and local standards and specifications, including, but not limited to, the City of Redmond Benchmark System's second order, first class specifications. All work by Puget pursuant to this Section shall be performed in accord with the permit issued by the City, together with the laws of the State of Washington, Redmond Municipal Code and applicable regulations and standards of the City as the same now exists or as may be hereafter amended or superseded.

Section 5.     Undergrounding of Facilities

A. Puget acknowledges that the City desires to promote a policy of undergrounding of Facilities within the Franchise Areas. The City acknowledges that Puget provides electrical service on a non-preferential basis subject to and in accordance with applicable Tariffs on file with the WUTC. Subject to and in accordance with such Tariffs, Puget will cooperate with the City in the formulation of policy and development regulations concerning undergrounding of Puget's Facilities within the Franchise Area.

B. New extensions of Facilities (of 15kV or less) constructed by Puget during the term of this Franchise shall be located underground subject to and in accordance with applicable Tariffs on file with the WUTC.

C. If, during the term of this Franchise, the City shall direct Puget to underground existing Facilities (of 15kV or less) within the Franchise Area, such undergrounding shall be arranged and accomplished subject to and in accordance with applicable Tariffs on file with the WUTC.

D. This Section 5 shall govern all matters related to undergrounding of Puget's Facilities within the Franchise Area.

Section 6. Compliance with State and Local Regulations

A. Puget shall comply with all federal, state, and local laws or regulations applicable to the exercise of Puget's rights and obligations under this Franchise. Upon written inquiry, Puget shall provide a specific reference to either the federal, state, or local law or the WUTC order or action establishing a basis for Puget's actions related to the exercise of such rights and obligations.

B. This Franchise shall not limit the City, and the City hereby reserves all lawful powers and franchise authority available to it under its general police authority; provided, however, such authority shall be exercised in a manner consistent with and so as not to impair the rights, privileges, authority and franchise conferred to Puget by this Franchise.

Section 7. Records of Installation and Planning

A. Upon the City's reasonable request, Puget shall provide the City copies of available plans of improvements, relocations and conversions to its Facilities within the Franchise Area; provided, however, any such plans so submitted shall be for informational

purposes only and shall not obligate Puget to undertake any specific improvements within the Franchise Area, nor shall such plan be construed as a proposal to undertake any specific improvements within the Franchise Area.

B. Upon the City's reasonable request, Puget shall provide to the City copies of available drawings in use by Puget showing the approximate location of Puget's Facilities at specified locations within the Franchise Area. Puget shall further provide, 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, field marking of Puget's underground Facilities within the Franchise Area, if such Facilities can be so field marked with reasonable accuracy using devices designed to respond to the presence of Puget's underground Facilities. Notwithstanding the foregoing, however, Puget does not warrant the accuracy or sufficiency of any such field markings or drawings or other information provided by Puget, and Puget will not be liable to the City or others for any errors or defects in the same.

In addition, whenever Puget and the City agree that it is mutually beneficial to both parties in connection with the design of new streets and intersections and major renovations of existing streets and intersections, Puget will verify the actual location of its underground Facilities within the Franchise Area by excavating, including pot holing, at no expense to the City.

Notwithstanding the foregoing, nothing in this Section 7 is intended (nor shall be construed) to relieve either party of their respective obligations arising under applicable law with respect to determining the location of utility facilities.

Section 8.      Coordination, Shared Excavations

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

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

Section 9. City Use of Facilities. During the term of this Franchise, and with respect to poles which are Facilities and which are (a) wholly owned by Puget and (b) within the Franchise Area, the City, subject to Puget's prior written consent which shall not be unreasonably withheld, may install and maintain City-owned overhead wires upon such poles for police, fire, traffic control and other noncommercial municipal communications purposes. The foregoing rights of the City to install and maintain such wires and cable are further subject to the following:

A. Such installation and maintenance shall be done by the City at its sole risk and expense, in accordance with all applicable laws, and subject to such reasonable



requirements as Puget may specify from time to time (including, without limitation, requirements accommodating Puget's Facilities or the facilities of other parties having the right to use Puget's Facilities);

B. Puget shall have no obligation arising under the indemnity and insurance provisions of this Franchise as to any circumstances directly or indirectly caused by or related to such City-owned wires or the installation or maintenance thereof; and

C. Puget shall not charge the City a fee for the use of such poles in accordance with this Section 9 as a means of deriving revenue therefrom; provided, however, nothing herein shall require Puget to bear any cost or expense in connection with such installation and maintenance by the City.

Section 10. Relocation of Facilities

A. Whenever the City undertakes (or causes to be undertaken at City expense) the construction of any public works improvement within the Franchise Area, or the Public Works Director reasonably determines that Puget's Facilities interfere with the free and safe passage of pedestrian and/or vehicular traffic pursuant to Section 4 above, and such public works improvement or interference necessitates the relocation of Puget's then existing Facilities within the Franchise Area, the City shall:

1. provide Puget, within a reasonable time prior to the City's commencement of activities requiring such public works improvement, written notice requesting such relocation; and

2. provide Puget with copies of relevant portions of the City's plans and specifications for such public works improvement.

After receipt of such notice and such plans and specifications, Puget shall relocate such Facilities within the Franchise Area at no charge to the City. If, during the construction of any such public works improvement, an emergency posing a threat to public safety or welfare, or a substantial risk of severe economic consequences to the City, arises requiring the relocation of Puget's Facilities within the Franchise Area, the City shall give Puget notice of the emergency as soon as reasonably practicable. Upon receipt of such notice from the City, Puget shall endeavor to respond as soon as reasonably practicable to relocate the affected Facilities.

The City shall act in good faith and shall use its best efforts to provide sufficient space within the Franchise Area for the safe and efficient installation, operation, repair and maintenance of the relocated Facilities. Puget shall act in good faith and shall use its best efforts to install relocated Facilities in such space within the Franchise Area, consistent with prudent utility practice. If the City and Puget agree that there is not sufficient space for the relocated Facilities in the existing Franchise Area, then, unless otherwise mutually agreed by the City and PSE, the City shall provide sufficient space for the relocated Facilities by obtaining additional right-of-way or other equivalent rights mutually agreeable to the City and Puget, which shall be Franchise Area, title of which shall be in the City's name.

If, i) notwithstanding the use of best efforts by the City and Puget as outlined above, the City and Puget do not agree whether there is or will be sufficient space within the Franchise Area for the relocated Facilities, or ii) locating such relocated Facilities within such space within the Franchise Area would be inconsistent with prudent utility practice, then Puget may install those Facilities on property outside of the Franchise Area, the rights for which shall be obtained by Puget at no expense to the City. The City and Puget shall each act in

good faith and use their respective best efforts to mutually agree on the location of such relocated Facilities outside of the Franchise Area. Absent such mutual agreement, nothing in this Section 10(A) shall limit the rights of the City or Puget with respect to acquisition or use of property rights outside of the Franchise Area.

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 10(A), the City shall reimburse Puget for all costs incurred by Puget in connection such subsequent relocation.

B. Whenever:

1. any person or entity, other than the City, requires the relocation of Puget's Facilities to accommodate the work of such person or entity within the Franchise Area, including but not limited to, activities relating to development, roadway frontage improvements or mitigation of impacts; or

2. the City requires any person or entity to undertake work (other than work undertaken at the City's cost and expense) within the Franchise Area and such work requires the relocation of Puget's Facilities within the Franchise Area;

Then Puget shall have the right as a condition of any such relocation to require such person or entity to make payment to Puget, at a time and upon terms acceptable to Puget, for any and all costs and expenses incurred by Puget in the relocation of Puget's Facilities.

C. Any condition or requirement imposed by the City upon any other person or entity (including, without limitation, any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits obtained pursuant to any zoning, land use, construction or other development regulation) which requires the relocation of Puget's Facilities within the Franchise Area shall be a condition or requirement causing

relocation of Puget's Facilities to occur subject to the provisions of Section 10(B) above; provided, however:

1. in the event the City reasonably determines and notifies Puget that the primary purpose of imposing such condition or requirement upon such person or entity is to cause the construction of a public works improvement within a segment of the Franchise Area on the City's behalf, and
2. such public works improvement is otherwise reflected in the City's adopted Capital Improvement Program; Transportation Improvement Program; or Transportation Facilities Program;

Then only those costs and expenses incurred by Puget in connecting such relocated Facilities with Puget's other Facilities shall be paid to Puget by such person or entity, and Puget shall otherwise relocate its Facilities within such segment of the Franchise Area in accordance with Section 10(A).

D. As to any relocation of Puget's Facilities whereby the cost and expense thereof is to be borne by Puget in accordance with Section 10(A), Puget may, after receipt of written notice requesting such relocation, submit in writing to the City alternatives to relocation of its Facilities. Upon the City's receipt from Puget of such written alternatives, the City shall evaluate such alternatives and shall advise Puget in writing if one or more of such alternatives is suitable to accommodate the work which would otherwise necessitate relocation of Puget's Facilities. In evaluating such alternatives, the City shall give each alternative proposed by Puget full and fair consideration with due regard to all facts and circumstances which bear upon the practicality of relocation and alternatives to relocation. No alternatives proposed by Puget shall be evaluated by the City in an arbitrary or capricious manner. In the

event the City determines that such alternatives are not appropriate, Puget shall relocate its Facilities as otherwise provided in Section 10(A).

E. Nothing in this Section 10 shall require Puget to bear any cost or expense in connection with the location or relocation of any Facilities existing under benefit of easement or, except for the rights described in Section 3(B), other prior rights.

Section 11. Right-of-Way Use Permit. Prior to beginning any work within the Franchise Area, Puget agrees for itself and agrees to require any contractor performing such work for Puget, to obtain a Right-of-Way Use Permit from the City and to pay any applicable fees associated with such Permit in accordance with Redmond Municipal Code or other relevant City authority. In the event such fees are not paid in a timely manner, the City reserves the right to suspend issuance of Right-of-Way Use Permits to Puget and its contractors.

Section 12. Indemnification

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

contractors or subcontractors.

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

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

Section 13. Moving Buildings Within the Franchise Area. If any person or

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

A. the moving or removal of such building or other object which necessitates the adjustment of wires shall be done at a reasonable time and in a reasonable manner so as not to unreasonably interfere with Puget's business; and

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

Section 14. Default. If Puget shall fail to materially comply with any of the provisions of this Franchise, unless otherwise provided for herein, the City may serve upon Puget a written order to so comply within thirty (30) days from the date such order is received

by Puget. If Puget is not in material compliance with this Franchise after expiration of said thirty (30) day period, the City may declare an immediate forfeiture of this Franchise, provided, however, if any failure to materially comply with this Franchise by Puget cannot be corrected with due diligence within said thirty (30) day period then the time within which Puget may so comply may be extended for a period of time as may be reasonably necessary and as agreed upon by the parties, so long as Puget commences promptly and diligently to effect such material compliance. Notwithstanding Puget's obligation to comply and to proceed with due diligence to correct any default, the City recognizes that unavoidable delays and events beyond Puget's control may occur. In such event the parties agree that Puget shall make a good faith effort to expeditiously remedy the default. In the event of a declaration of forfeiture, should either party commence litigation against the other to appeal (in the case of Puget) or enforce (in the case of the City) such declaration of forfeiture, the prevailing party in any such litigation shall be entitled to recover its costs, including reasonable attorneys' fees.

Section 15. Nonexclusive Franchise. This Franchise is not and shall not be deemed to be an exclusive Franchise. This Franchise shall not in any manner prohibit the City from granting other and further franchises upon, under and across the Franchise Area which do not interfere with Puget'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 16. Term of Franchise/Acceptance. This Franchise is and shall remain in full force and effect for a period of fifteen (15) years from the effective date of the Ordinance. This Franchise is granted upon the express condition that Puget, within sixty (60) days after the adoption of this Ordinance, shall file with the clerk of the City a written



acceptance of the same, and when so accepted by Puget, shall constitute a contract between the City and Puget for all the purposes herein set forth. If Puget fails to do so within the time frame above, this Ordinance and Franchise shall be null and void.

Section 17. Recovery of Franchise Costs. 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 Puget, except, as provided in RCW 35.21.860, a fee that recovers from Puget 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 RCW 43.21C. Promptly following adoption of this Ordinance, the City shall provide to Puget a statement of the actual administrative expenses incurred by the City that are directly related to approval of this Franchise, and thereafter Puget shall promptly reimburse the City for such expenses. Notwithstanding any other provision of this Franchise, no acceptance by Puget of this Franchise shall be effective in the absence of such reimbursement. Subsequent to such reimbursement, any fees and/or charges imposed by the City upon Puget shall be as specified above. Nothing in this section shall preclude the City from collecting from Puget fees lawfully imposed by the City (related to this Franchise or otherwise) such as permits and inspections.

Section 18. Utility Tax. Puget acknowledges that the City is authorized under the laws of Washington State to impose certain taxes upon Puget. Nothing in this Section 18 shall exempt (nor shall be construed to exempt) Puget from payment of any and all such taxes lawfully imposed by Redmond Municipal Code, as may hereafter be lawfully amended or superseded, and due from Puget; provided, nothing in this Section 18 shall be construed in any many as a waiver of Puget's rights to contest the validity of any such tax or the amount of any tax

due. If payment of such taxes is not made by Puget in a timely manner, the City reserves the right, at its sole option, to suspend the rights granted to Puget by this Franchise until such time that Puget pays such taxes or Puget and the City otherwise resolve any matter concerning payment thereof.

Section 19. Assignment of Franchise. All of the provisions, conditions and requirements herein contained shall be binding upon Puget and the City. Puget may not assign or otherwise transfer its rights, privileges, authority and franchise herein conferred without the prior written authorization and approval of the City, which such authorization and approval shall not be unreasonably withheld. The City hereby authorizes and approves Puget to mortgage its rights, privileges, authority and franchise in and under this Franchise to the Trustee for its bondholders.

Section 20. Severability and Survival

A. If any term, provision, condition or portion of this Franchise shall be held to be invalid such invalidity shall not affect the validity of the remaining portions of this Franchise which shall continue in full force and effect. The headings of the sections and paragraphs of this Franchise are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.

B. All provisions, conditions and requirements of this Franchise that may be reasonably construed to survive the termination or expiration of this Franchise shall survive the termination or expiration of the Franchise. Subject to Section 6 above, the parties' respective rights and interests under this Franchise shall inure to the benefit of their respective successors and assigns.

Section 21. Amendments to Contract

A. This Franchise may be amended only by mutual agreement thereto, set forth in writing in the form of a City ordinance, signed by both parties, which specifically states that it is an amendment to this Franchise and is approved and executed in accordance with the laws of the State of Washington. Without limiting the generality of the foregoing, this Franchise (including, without limitation the Sections addressing indemnification and insurance) shall govern and supersede and shall not be changed, modified, deleted, added to, supplemented or otherwise amended by any permit, approval, license, agreement or other document required by or obtained from the City in conjunction with the exercise (or failure to exercise) by Puget of any and all of its rights, benefits, privileges, obligations or duties in and under this Franchise, unless such permit, approval, license, agreement or other document specifically:

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

B. This Franchise is subject to the provisions of any applicable Tariff on file with and accepted by the WUTC. In the event of any conflict or any inconsistency between the provisions of this Franchise and such Tariff, the provisions of such Tariff shall control.

Section 22. No Third Party Beneficiary. Nothing in this Franchise shall be construed to create any rights in or duties to any third party, nor any liability to or standard of care with reference to any third party. This Franchise shall not confer any right or remedy

upon any person other than the parties. No action may be commenced or prosecuted against any party by any third party claiming as a third party beneficiary of this Franchise. This Franchise shall not release or discharge any obligation or liability of any third party to either party.

Section 23. Insurance. Puget shall procure and maintain for the duration of the Franchise, insurance, or in lieu thereof provide self-insurance, against all claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges and authority granted hereunder to Puget, its agents, representatives or employees. Puget shall provide certificate(s) of insurance (Form CG2010 ISO or equivalent) and/or evidence of self-insurance, together with an endorsement naming the City, its officers, elected officials, agents, employees, representatives, engineers, consultants and volunteers as additional insureds, to the City for its inspection prior to the commencement of any work or installation of any facilities pursuant to this Franchise. Such certificate(s) of insurance and/or evidence of self-insurance shall evidence the following minimum coverages:

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

- (1) \$2,000,000 for bodily injury or death to each person; and
- (2) \$2,000,000 for property damage resulting from any one accident.

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

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

The liability insurance policies required by this Section shall be maintained by Puget throughout the term of this Franchise. Any deductibles or self-insured retentions must be declared to and approved by the City. Payment of deductibles and self-insured retentions shall be the sole responsibility of Puget. The insurance certificate required by this Section shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

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

In addition to the coverage requirements set forth in this Section, the cancellation clause of the certificate(s) of insurance (ACORD Form 25 or equivalent) shall be modified to read as follows:

“Should any of the above described policies be canceled before the expiration date thereof, the issuing company will mail sixty (60) days written notice to the certificate holder.”

Within thirty (30) days after receipt by the City of said notice, and in no event later than fifteen (15) days prior to said cancellation or intent not to renew, Puget shall obtain and furnish to the City replacement insurance policies meeting the requirements of this Section.

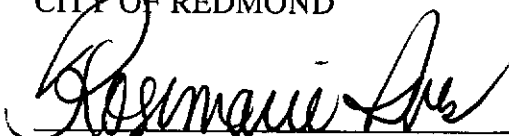
Section 24. Notice of Tariff Changes. Puget shall, when making application for any changes in Tariffs affecting the provisions of the Franchise, notify the City in writing

of the application and provide the Public Works Director with a copy of the submitted application within five (5) days of filing with the WUTC. Puget shall further provide the Public Works Director with a copy of any approved Tariff change affecting the provisions of this Franchise.

Section 25. Repealer. Upon the effective date of this ordinance and acceptance of such ordinance and franchise by Puget, Ordinance No. 308 shall be deemed repealed.

Section 26. Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

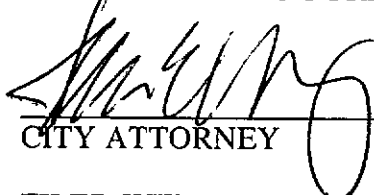
CITY OF REDMOND

  
MAYOR, ROSEMARIE IVES

ATTEST/AUTHENTICATED:

  
CITY CLERK, BONNIE MATTSON

APPROVED AS TO FORM:

  
CITY ATTORNEY

FILED WITH THE CITY CLERK: May 15, 2003  
PASSED BY THE CITY COUNCIL: June 3, 2003  
SIGNED BY THE MAYOR: June 3, 2003  
PUBLISHED: June 6, 2003  
EFFECTIVE DATE: June 11, 2003  
ORDINANCE NO: 2163