ORDINANCE NO. 876

AN ORDINANCE of the City Council of the City of Carnation, Washington, granting Puget Sound Energy, Inc., a Washington corporation, its successors and assigns, the nonexclusive 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 natural gas.

THE CITY COUNCIL OF THE CITY OF CARNATION, WASHINGTON, 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 Carnation, 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 public roads, streets, avenues, alleys, and highways of the City as now laid out, platted, dedicated or improved; and any, every and all public roads, streets, avenues, alleys and highways 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 natural gas distribution systems, including but not limited to, gas pipes, pipelines, mains, laterals, conduits, feeders, regulators, valves, meters, meter-reading devices, fixtures and communication systems; and any and all other equipment, appliances, attachments, appurtenances and other items necessary, convenient, or in any way appertaining to any and all of the foregoing, whether the same be located over or under ground.

1.1.5 "Ordinance" means Ordinance No. 876, which sets forth the terms and conditions of this Franchise.

1.1.6 "Public Works Improvement" means any construction, installation, relocation, expansion, maintenance, repair or removal of roads, streets, sidewalks, parks, curbs, gutters, storm drainage facilities, sewer lines, water utility lines or other capital improvement project 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 Works Improvement" shall include any such capital improvement project undertaken by the City which requires the relocation of PSE's Facilities within the Franchise Area, even if the capital improvement project entails, in part, related work

funded and/or performed by or for a third party governmental entity under a valid interlocal agreement between the City and such entity (except to the extent the relocation of PSE's Facilities is caused by the related work funded and/or performed by or for such third party governmental entity), 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 nonexclusive 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 other such services as may be provided by such Facilities.

2.2 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.

2.3 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 3. Noninterference of Facilities.

3.1 PSE's Facilities shall be maintained, used and operated 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. PSE shall exercise its rights within the Franchise Area in accordance with applicable City codes, policies and ordinances governing use and occupancy of the Franchise Area; provided, however, in the event of any conflict or inconsistency of such codes, policies and ordinances with the terms and conditions of this Franchise, the terms and conditions of this Franchise shall govern and control to the extent of such conflict or inconsistency; 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.

3.2 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. As to any such drawings 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. Further, upon the City's reasonable request in connection with the City's design of a Public Works Improvement within the Franchise Area, PSE shall provide field markings of its underground Facilities within the Franchise Area, if such Facilities can be so marked with reasonable accuracy. 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.

Section 4. Relocation of Facilities.

4.1 Whenever the City causes a Public Works Improvement to be undertaken within the Franchise Area, and such Public Works Improvement requires, in the City's reasonable determination, 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 Works Improvement, written notice requesting such relocation; and

4.1.2 provide PSE with reasonable plans and scope documents for such Public Works Improvement.

No later than one hundred twenty (120) days (or such shorter or longer period of time as the parties may mutually agree in writing for a given Public Works Improvement) following receipt of such notice and such reasonable plans and scope documents (the "Relocation Deadline"), PSE shall relocate such Facilities within the Franchise Area at no charge to the City (even if, for the avoidance of doubt, the Public Works Improvement is undertaken by the City in conjunction with related work funded and/or performed by or for a third party governmental entity that is subject to the relocation requirements set forth in Section 4.2 below); provided, however, that the Relocation Deadline will be equitably extended as reasonably necessary for up to three hundred sixty (360) days (or such shorter or longer period of time as the parties may mutually agree in writing for a given Public Works Improvement) if it would be impossible or impracticable for PSE to complete the relocation work by the original Relocation Deadline due to factors and/or circumstances beyond PSE's reasonable control, including, but not limited to, PSE's actual inability (despite using its best efforts) to obtain materials in a timely manner or PSE's relocation work being dependent on the performance of other work by the City or any third party. If the City requires the subsequent relocation of the same Facilities within five (5) years from the date of relocation of such Facilities pursuant to this Section 4.1, then PSE shall relocate such Facilities in accordance with this Section, but the City shall bear the entire cost of such subsequent relocation.

4.2 Whenever (i) any public or private development within the Franchise Area, other than a Public Works 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.

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 Subject to the exclusions and requirements set forth below in this Section 4.4, and to the maximum extent provided by law, if PSE breaches its obligations under Section 4.1 with respect to relocating its Facilities within the Franchise Area by the applicable Relocation Deadline in order to accommodate a Public Works Improvement, and to the extent such breach causes a delay in the work being undertaken by the City's third party contractor(s) on the Public Works Improvement that results in a claim by the third party contractor(s) for costs, expenses and/or damages that are directly caused by such delay and are legally required to be paid by the City (each, a "Contractor Delay Claim"), the City may at its sole option:

4.4.1 tender the Contractor Delay Claim to PSE for defense and indemnification in accordance with Section 7; or

4.4.2 require that PSE reimburse the City for any such costs, expenses, and/or damages that are legally required to be paid by the City to its third party contractor(s) as a direct result of the Contractor Delay Claim; provided that, if the City requires reimbursement by PSE under this Section 4.4.2, the City shall first give PSE written notice of the Contractor Delay Claim and give PSE the opportunity to work with the third party contractor(s) to resolve the Contractor Delay Claim for a period of not less than sixty (60) days prior to the City's payment of the Contractor Delay Claim.

Nothing in this Section 4.4 or otherwise will require PSE to bear or be responsible for any cost, expense or damage, or to defend or indemnify the City against any claim, that results from any delay in meeting the applicable Relocation Deadline for a Public Works Improvement if and to the extent the delay is caused by the City, any third party that is not an agent of PSE, or any other cause, event or circumstance beyond the reasonable control of PSE.

4.5 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 such other rights not derived from this Franchise regardless of whether such easement or other rights are on public or private property.

Section 5. Shared Use of Excavations.

5.1 In the event either PSE or the City shall cause excavations to be made within the Franchise Area, the party causing such excavation shall afford the other, upon receipt of a written request to do so, an opportunity to use such excavation so long as such joint use does not unreasonably delay the work of the party causing such excavation, and such joint use is arranged and accomplished upon terms and conditions reasonably satisfactory to the party causing such excavation.

Section 6. Reservation of Easement in Event of Vacation.

6.1 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, to the extent that the Carnation City Council determines that such reservation and grant is in the public interest.

Section 7. Indemnification.

7.1 PSE shall indemnify, defend and hold harmless the City, its officers, officials and employees, from any and all third party claims, suits and demands, and any damages, judgments, losses, costs, including attorneys' fees, resulting from such claims, suits and demands (collectively, "Claims"), including without limitation Claims on account of injury or damage to the person or property, to the extent such Claims are caused by the negligence or willful misconduct of PSE, its agents, servants or employees in exercising the rights granted to PSE in this Franchise, and/or PSE's violation of any of the provisions of this Franchise; provided, however, that in the event any such Claim 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; provided further, that in the event any suit or action is begun against the City based upon any such Claim, 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 Claim, or defend the same at its sole cost and expense, by attorneys of its own election.

7.2 Inspection or acceptance by the City of any work performed by PSE at the time of completion of construction shall not be grounds for avoidance by PSE of any of PSE's obligations under this Section 7. Said indemnification obligations shall extend without limitation to Claims which are not reduced to a suit and any Claims which may be compromised prior to the culmination of any litigation or the institution of any litigation.

7.3 Without prejudice to the foregoing, in the event that PSE refuses the tender of defense with respect to any Claim, said tender having been made pursuant to the indemnification provisions contained herein, and said refusal is subsequently determined by a court of competent jurisdiction (or such other tribunal that the parties may 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 Claim, including without limitation all expert witness fees, costs and attorneys' fees, including costs and fees incurred in recovery under this indemnification provision.

7.4 In the event of liability for damages arising out of injury or damage to the person or property caused by or resulting from the concurrent negligence of PSE and the City, PSE's liability hereunder shall be only to the extent of PSE's negligence.

7.5 Solely to the extent required to enforce the indemnification provisions of this Section 7, PSE waives its immunity under Title 51 RCW, Industrial Insurance; 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.

7.6 Subject to Section 4.4 and the City's option thereunder, the indemnification provided herein shall specifically include, without limitation, Contractor Delay Claims.

7.7 The provisions of this Section shall survive the expiration or termination of this Franchise.

Section 8. Default and Forfeiture.

8.1 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 9. Nonexclusive Franchise.

9.1 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 10. Franchise Term.

10.1 This Franchise is and shall remain in full force and effect for a period of twenty (20) 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 11. Assignment.

11.1 PSE shall have the right to assign its rights, benefits and privileges in and under this Franchise, upon 30 days written notice to, and approval by, the City, which shall not be unreasonably withheld. Any assignee shall, prior to the effective date of any assignment, file written notice of the assignment with the City together with its written acceptance of all terms and conditions of this Franchise, and shall, without limitation of the foregoing, furnish the City with evidence of all insurance coverage certificates and bonds required hereunder. No

assignment by PSE shall be deemed effective prior to the City's receipt of the afore-referenced acceptance, insurance coverage certificates and bonds. 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 12. Recovery of Costs.

12.1 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 43.21C RCW. In accordance with and subject to the foregoing, PSE agrees to remit payment to the City in the amount of $8,500.00 to defray the City's staff and legal expenses incurred in receiving and approving this Franchise prior to execution hereof. Nothing herein shall be construed as preventing the City from imposing a utility tax per RCW 35.21.865.

Section 13. 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:

13.2.1 references this Franchise; and

13.2.2 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.

13.3 This Franchise is subject to the provisions of any applicable tariff on file with the Washington Utilities and Transportation Commission ("WUTC") 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 to the extent of such conflict or inconsistency.

13.4 PSE shall, when making application for any changes in tariffs affecting the provisions of this Franchise, notify the City in writing of said application and provide the City with a copy of the same within five (5) days of filing with the WUTC. PSE shall thereafter provide the City with a copy of any approved tariff(s) affecting the provisions of this Franchise.

Section 14. No Third Party Beneficiary.

14.1 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 City and PSE. No action may be commenced or prosecuted against either the City or PSE 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 the City or PSE.

Section 15. Plan, Design, Construction and Installation of PSE's Facilities; Permits, Restoration and Notice of Excavation.

15.1 All Facilities installed or used by PSE within the Franchise Area under authority of this Franchise shall be used, constructed, operated, repaired and maintained in accordance with applicable federal, state and City laws, codes and regulations, specifically including without limitation all laws, codes and regulations regarding safety; provided, however, in the event of any conflict or inconsistency between any such City laws, codes or regulations and the terms and conditions of this Franchise, the terms and conditions of this Franchise shall govern and control to the extent of such conflict or inconsistency; provided, further, nothing herein shall be deemed to waive, prejudice or otherwise limit any right of appeal afforded PSE by such City laws, codes or regulations.

15.2 Except in the case of an emergency, PSE shall, prior to commencing new construction or major reconstruction work within the Franchise Area, apply for a right of way permit from the City in accordance with applicable regulatory standards and procedures. PSE will fully abide by all applicable ordinances and all rules, regulations and requirements of the City consistent with applicable law and this Franchise, and the City may inspect the manner of such work and require remedies as may be reasonably necessary to assure compliance. Notwithstanding the foregoing, PSE shall not be obligated to obtain, in advance, a permit to perform emergency repairs, but PSE shall apply for and obtain all applicable permit(s) following the completion of such repairs.

15.3 All Facilities of PSE within the Franchise Area shall be located so as to not unreasonably interfere with the use of the Franchise Area by the general public and shall be

constructed, installed, maintained, renovated or replaced in accordance with applicable code, policies, ordinances and regulations of the City and this Franchise; provided, however, in the event of any conflict or inconsistency between any such code, policies, ordinances or regulations of the City and the terms and conditions of this Franchise, the terms and conditions of this Franchise shall govern and control to the extent of such conflict or inconsistency; provided, further, nothing herein shall be deemed to waive, prejudice or otherwise limit any right of appeal afforded PSE by such code, policies, ordinances or regulations of the City. For purposes of clarity, nothing in this Section 15.3 is intended to, or will, limit in any way PSE's rights under Section 4 or any other provision of this Franchise with respect to work undertaken by PSE to accommodate any third party's use of the Franchise Area.

15.4 If, during the course of work on its Facilities within the Franchise Area, PSE causes damage to or alters the Franchise Area, PSE shall replace and restore the Franchise Area at PSE's expense to a condition reasonably comparable to the condition of the Franchise Area that existed immediately prior to such damage or alteration. All replacement and restoration work under this section shall be subject to the inspection, approval and acceptance of the City.

15.5 PSE shall have the right to temporarily excavate within the Franchise Area subject to reasonable conditions and requirements of the City consistent with this Franchise. Before undertaking any trenching or excavation work within the Franchise Area, each party shall first notify the other of such work by written notice.

15.6 Before commencing any street improvements or other work within the Franchise Area that will directly affect PSE's Facilities, the City shall give written notice to PSE.

Section 16. Emergency Response.

16.1 PSE's emergency response plans and procedures shall designate PSE's emergency response personnel and a direct 24-hour emergency contact number and shall furnish any updates as to responsible personnel, or emergency numbers annually or as needed.

16.2 Annually, upon request of the City, PSE shall meet with the City's public safety personnel to coordinate emergency response procedures and, if requested by the City, to actively participate in emergency preparedness drills and/or planning sessions.

Section 17. Insurance.

17.1 PSE shall procure and maintain for the duration of this Franchise, insurance, or provide self-insurance, against all claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges and authority granted hereunder to PSE, its agents, representatives or employees. PSE shall provide evidence of self-insurance and/or an insurance certificate, together with an endorsement naming the City, its officers, elected officials, agents and employees, as additional insureds, to the City for its inspection prior to the commencement of any work or installation of any Facilities pursuant to

this Franchise, and such self-insurance and/or insurance certificate shall evidence the following minimum coverages;

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

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

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

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

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

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

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

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

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

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

17.4 In addition to the coverage requirements set forth in this Section, the certificates of insurance furnished by PSE shall provide that:

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

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

17.5 In lieu of the insurance requirements set forth in this Section 17, above, PSE may self-insure against such risks in such amounts as are consistent with prudent utility practice and that provide comparable coverage to the coverage types and amounts specified herein. The parties mutually acknowledge that PSE has provided the City with reasonable written evidence that PSE is maintaining such self-insurance prior to the effective date of this Franchise.

Section 18. Bonding Requirement.

18.1 Before undertaking any of the work within the Franchise Area authorized by this Franchise, PSE shall, if requested by the City, furnish a bond executed by PSE and a corporate surety authorized to do surety business in the State of Washington, in a sum to be set and approved by the Public Works Director as reasonably sufficient to ensure performance of PSE's obligations under this Franchise with respect to such work. The bond may be subject to reasonable conditions imposed by the Public Works Director relating to the performance of such work by PSE, including without limitation a requirement that PSE shall restore or replace any defective work or materials discovered in the restoration of the Franchise Area within a period of two (2) years from the final City inspection date of any such restoration. PSE may satisfy the obligations of this Section with one (1) or more bonds acceptable to the City. In the event that a bond furnished pursuant to this Section is canceled by the surety, after proper notice and pursuant to the terms of said bond, PSE shall, prior to the expiration of said bond, procure a replacement bond which complies with the terms of this Section.

18.2 With respect to undertaking any of the work within the Franchise Area authorized by this Franchise, in the event PSE fails to perform its obligations under this Franchise with respect to such work and further fails to cure its deficiency within a reasonable period of time after receipt of written notice of such deficiency by the City, then the City may use any bond(s) furnished by PSE pursuant to this Section to cure such deficiency. Neither the amount of such bond(s) nor the City's use thereof shall limit the City's full recovery from PSE of costs incurred by the City to cure such deficiency.

18.3 In the event the City makes use of such bond(s) furnished by PSE pursuant to this Section, the City shall promptly provide written notice of same to PSE. Within thirty (30) days of receipt of such notice, PSE shall replenish or replace such bond(s) as provided herein.

18.4 The rights reserved to the City by this Section are in addition to other rights of the City whether reserved by this Franchise or authorized by law, and no action, proceeding, or exercise of right under this Section shall constitute an election or waiver of any rights or other remedies the City may have.

Section 19. State Highways.

19.1 The City and PSE will each comply with the provisions of Chapter 47.24 RCW and associated regulations of the Washington State Department of Transportation (WSDOT), including future amendments thereto, as they relate to any public rights-of-way within the Franchise Area that are part of the state highway system. Any applicable provision of Chapter 47.24 RCW and associated regulations that is required by law to be included in this Franchise shall be deemed so included by this reference. The foregoing, however, will not and is not intended to waive any rights or recourse of any kind available to either party under any other federal or state law or regulation or any tariff now or hereafter on file with the WUTC.

Section 20. Venue, Governing Law and Attorneys' Fees.

20.1 This Franchise shall be governed by the laws of the State of Washington. The exclusive venue for any litigation arising out of this Franchise shall be the Superior Court for King County, Washington. The substantially prevailing party in such litigation shall be entitled to an award of its reasonable attorneys' fees.

Section 21. Remedies; Regulatory Authority Reserved.

21.1 No provision of this Franchise shall be deemed to bar the right of either party to seek or obtain judicial relief from a violation of any provision of the Franchise. Neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of either party to recover monetary damages for such violations by the other party, and/or to seek and obtain judicial enforcement of the other party's obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

21.2 Except for and subject to the express terms and conditions of this Franchise, which are each binding on the City and may not be altered or amended by the City, nothing herein shall be construed as a waiver, abridgment or other limitation of the City's regulatory authority and/or police power, which the City hereby expressly reserves in full.

Section 22. Decommissioned Facilities; Post-Service Abandonment.

22.1 In connection with PSE's continued operation of its Facilities within the Franchise Area, PSE may from time to time decide to discontinue use of a portion of those Facilities and permanently decommission them in place. In such event, PSE shall notify the City of its decision to permanently decommission such Facilities in place and provide a plan for such decommissioning to the City. Thereafter, the parties shall meet to discuss the proposed plan and shall work together in good faith in an effort to adjust the plan and establish any additional requirements as may be reasonably necessary to address each party's concerns. In addition to any further requirements agreed upon by the City and PSE based on their review of the proposed plan, (a) PSE shall, at PSE's expense, decommission such Facilities so as to render the Facilities safe in accordance with applicable law, (b) such decommissioned Facilities will continue to be

subject to the terms of this Franchise (including but not limited to the relocation provisions in Section 4), and (c) PSE shall provide the City with maps that show the approximate location of such Facilities. In no case shall PSE be permitted to permanently decommission Facilities that are located above ground or overhead within the Franchise Area.

22.2 If, after the expiration or termination of this Franchise, PSE at any time ceases to provide all natural gas service within the jurisdictional boundaries of the City and ownership of the Facilities of PSE within the Franchise Area is not transferred to a replacement or substitute natural gas service provider (including, without limitation, the City), PSE will continue to be responsible for maintaining such Facilities within the Franchise Area and will remove the Facilities at no cost to the City as and to the extent requested by the City upon not less than one hundred eighty (180) days' prior written notice to PSE.

22.3 The provisions of this Section shall survive the expiration or termination of this Franchise.

Section 23. Effective Date.

23.1 This Ordinance shall be effective on August 1, 2016, having been: (i) introduced to the City Council not less than five days before its passage; (ii) first submitted to the City Attorney on November 30, 2015; (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 Carnation City Council by an approving majority of the entire legislative body of the City of Carnation on July 19, 2016.

APPROVED by the Carnation City Council this 19th day of July, 2016.

Jim Berger

Jim Berger, Mayor

ATTEST:

Mary Madole

Mary Madole, City Clerk

APPROVED AS TO FORM:

J. Zachary Lell, City Attorney

Date: 8/1/16