

**ATTACHMENT C to PSE's Response to
Bench Request No. 001**

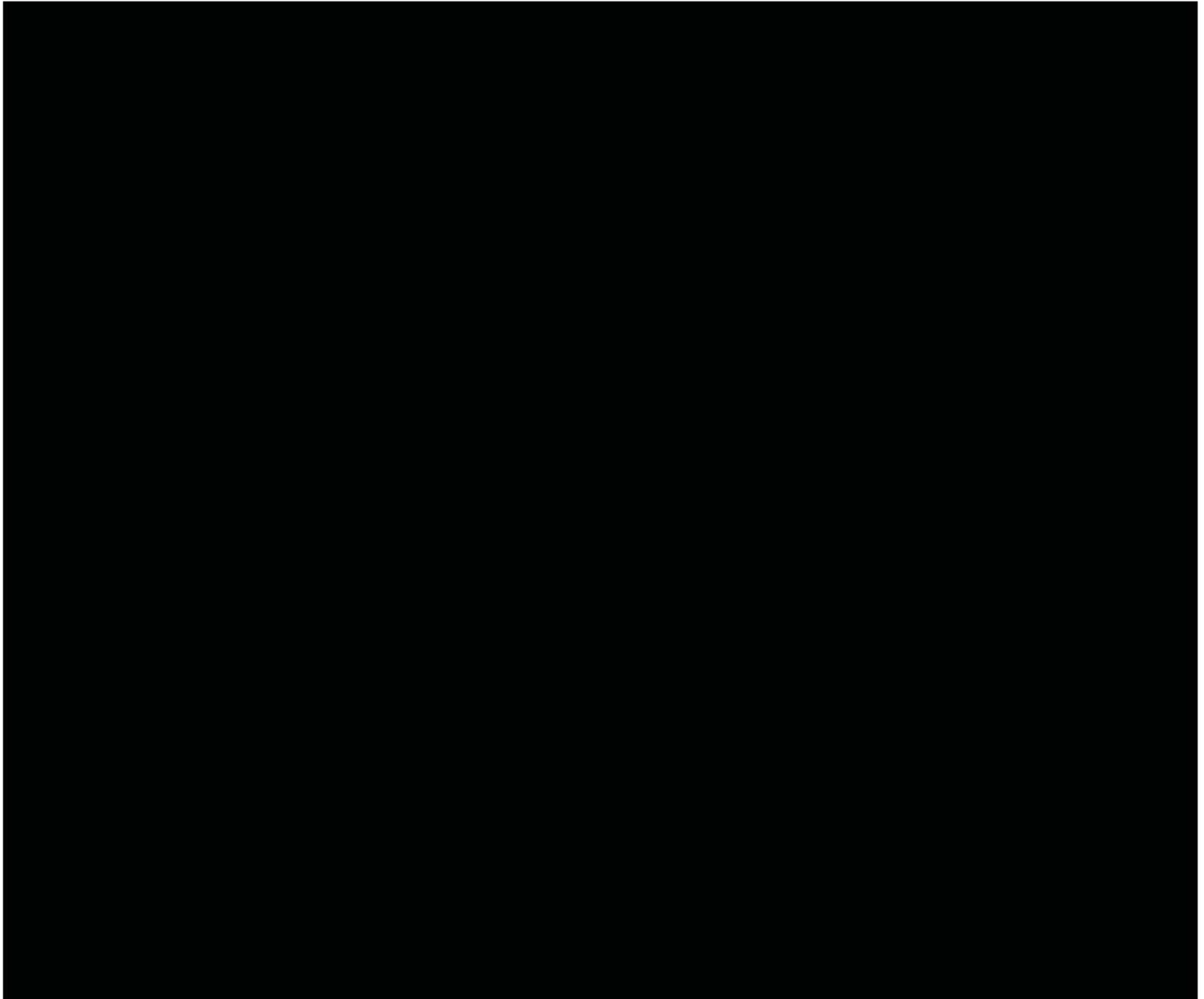
CONFIDENTIAL

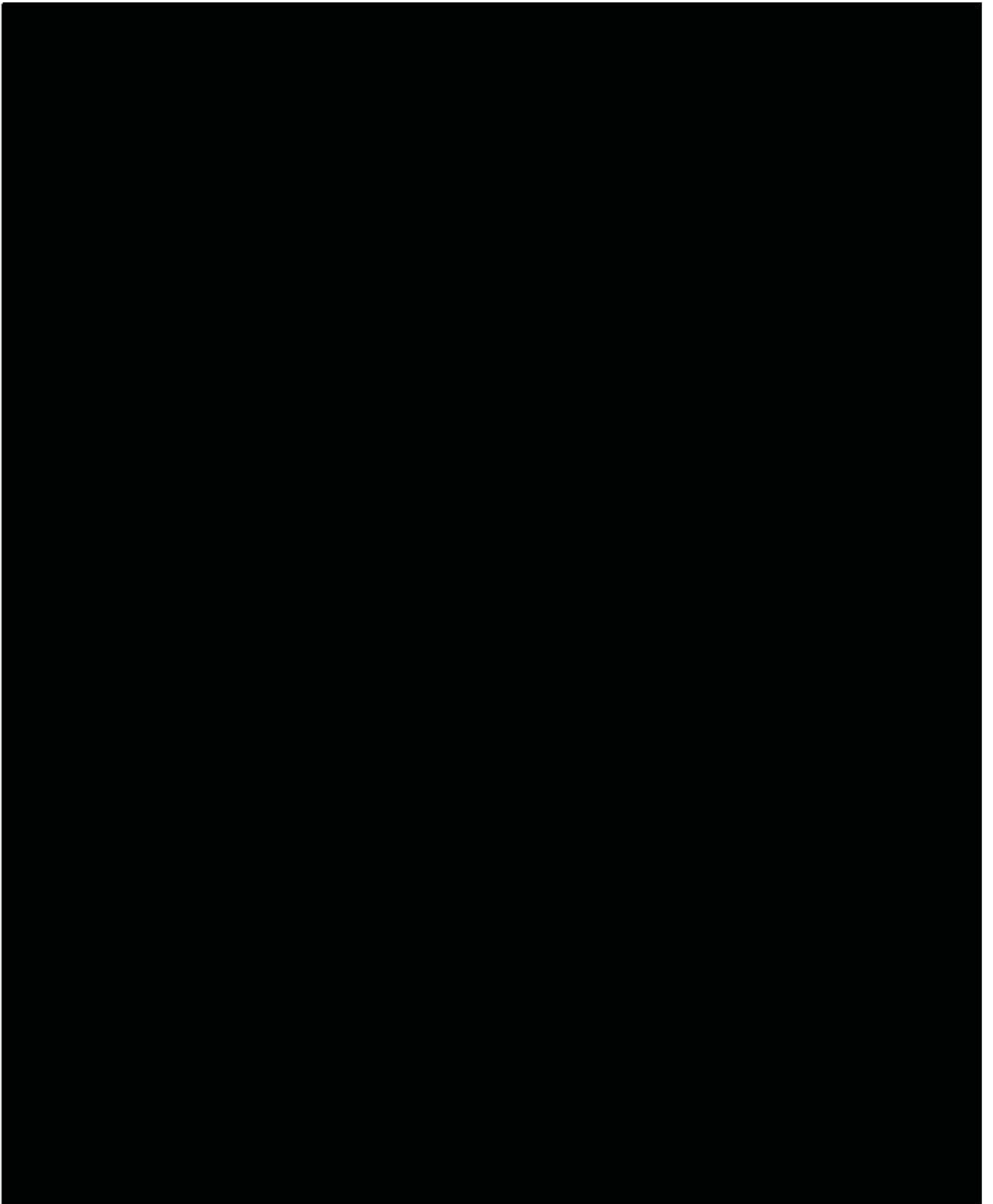
August 15, 2019

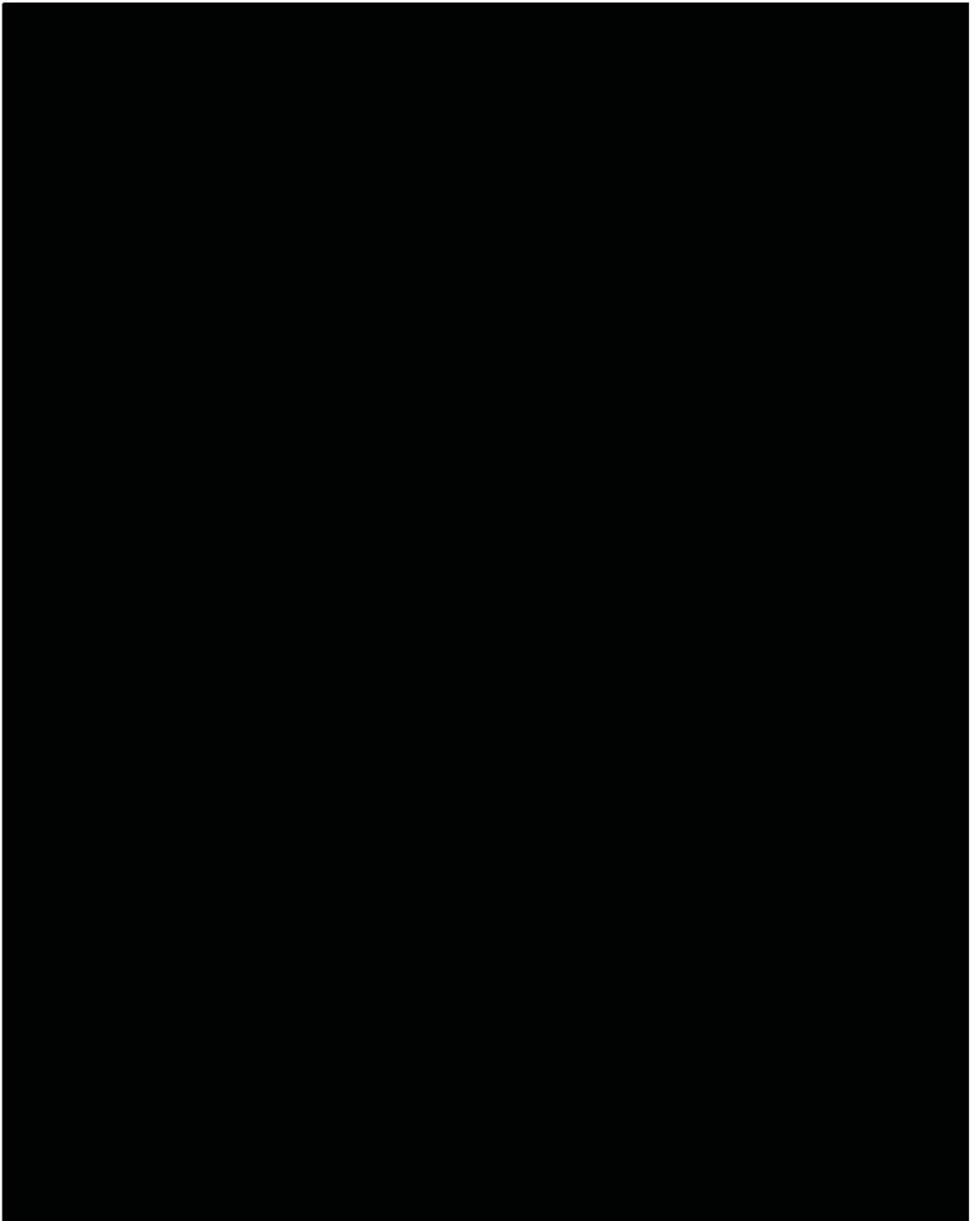
Puget Sound Energy, Inc.
Attn: Lori Roth
10885 NE 4th Street, PSE-10N
PO Box 97034
Bellevue, WA 98004-5591

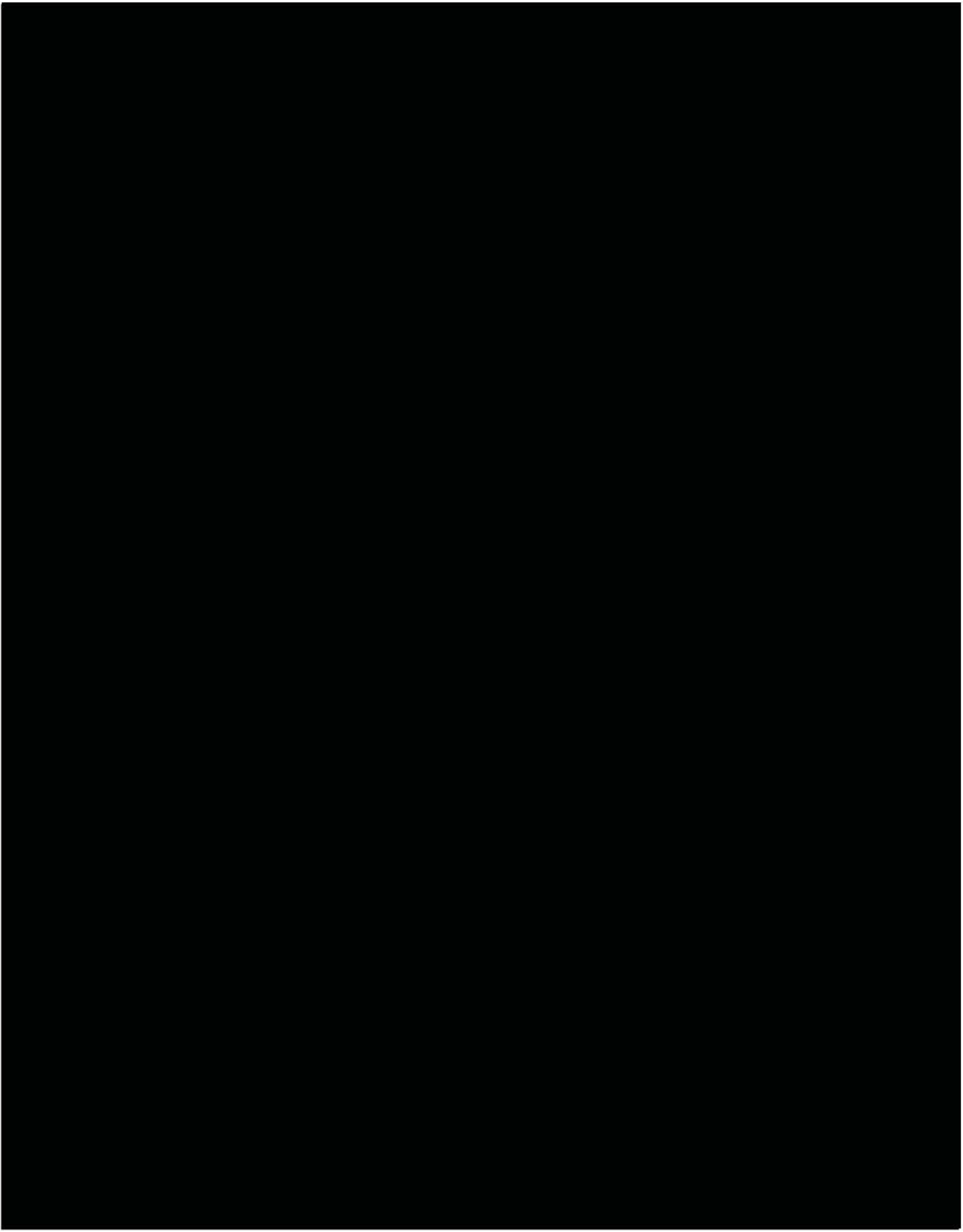
Re: Proposal to Purchase Assets of Natural Gas Water Heater Rental Service (collectively,
the "**Business**") of Puget Sound Energy, Inc. (the "**Company**")

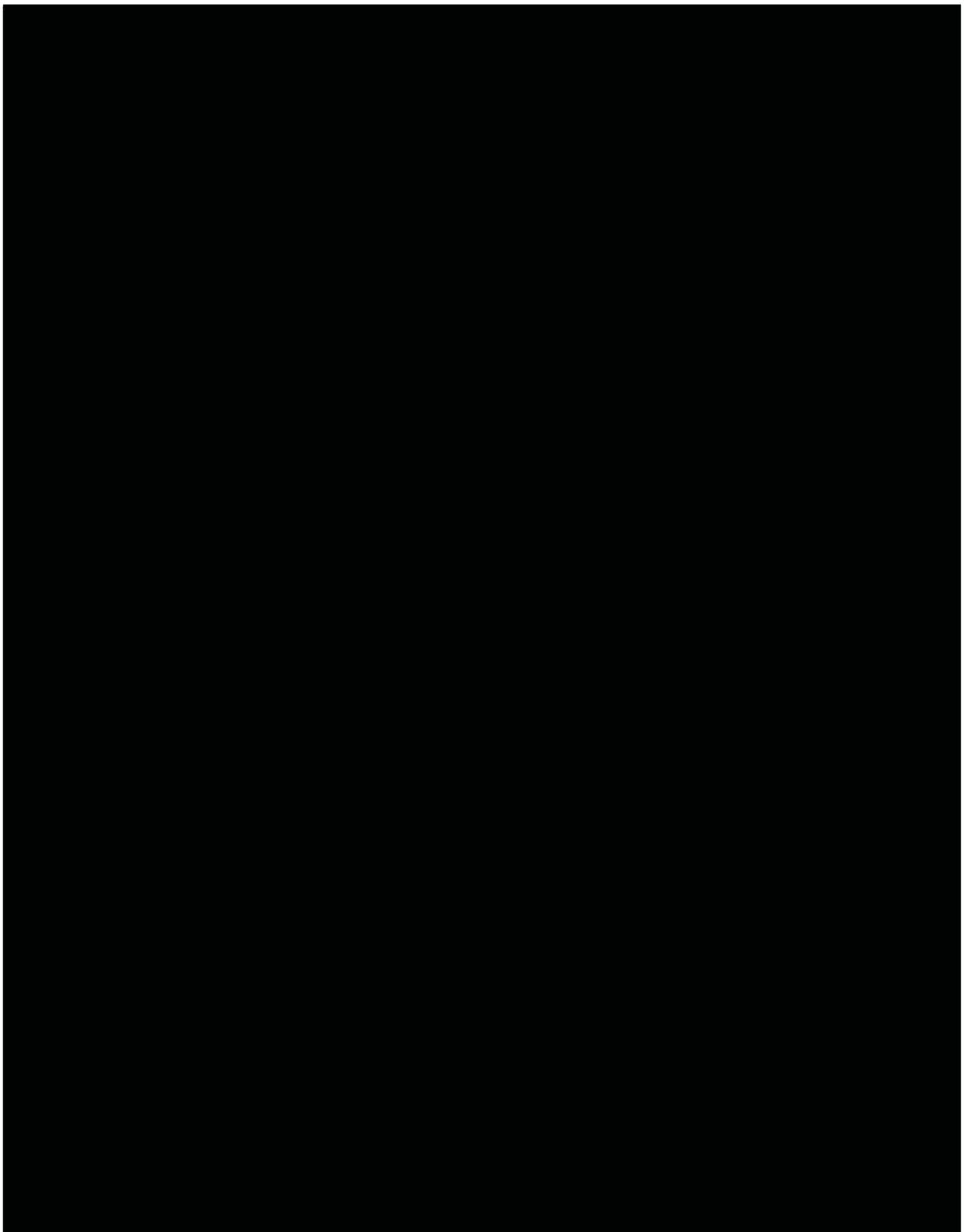
Dear Lori Roth:







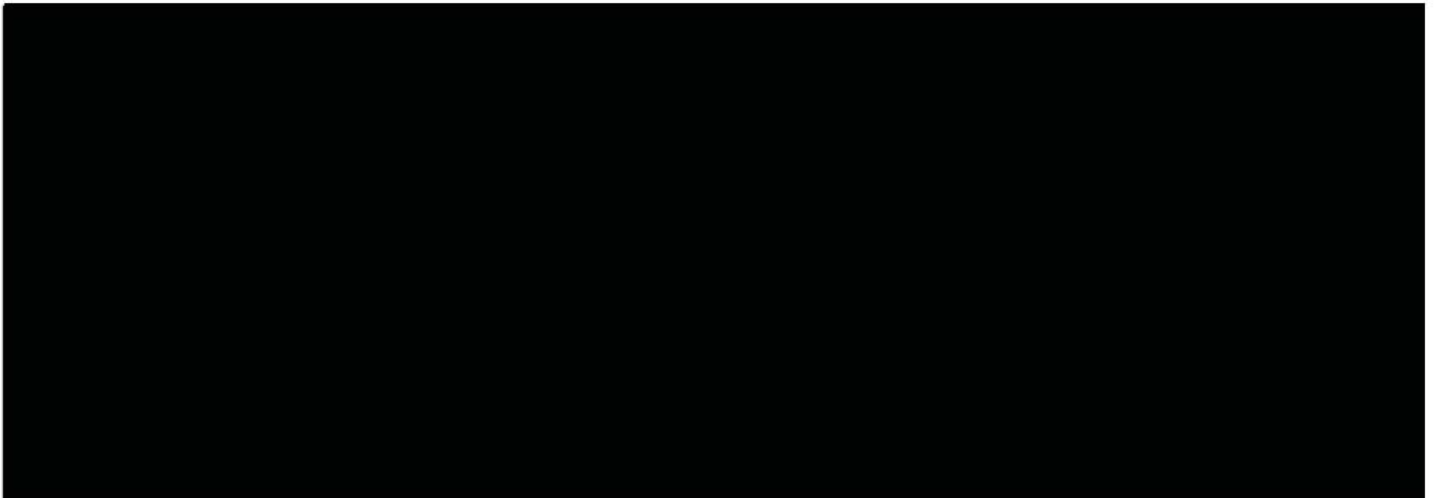






(signature page to follow)

Very truly yours,



COMPANY: Puget Sound Energy, Inc.

By: _____

Name: _____

Title: _____



1.855.754.0530 • info@grandhvacleasing.com

GHL USA Management Overview

History

Grand HVAC Leasing Ltd, and Grand HVAC Leasing USA LLC (GHL) were founded by Bill Lane, Jordan Colby, and Richard Courtemanche. The founding partners have over 75 years of combined experience in the HVAC industry, including product selection, installation, service, and maintenance of residential and commercial equipment. Bill Lane has experience transitioning over 800,000 customers from Union Gas during deregulation in 1999. In addition, Grand HVAC Leasing successfully transitioned a portfolio of customers from Liberty Utilities scattered throughout NH in October 2018.

GHL provides rental and leasing solutions to residential, commercial and multi-family residential segments across North America. GHL programs provide a 100% no-capital solution, worry-free service parts and labor protection, and includes regular annual safety and integrity checks¹.

Dealer Network

GHL exclusively uses 100% third party local Authorized Dealers who are vetted and approved by GHL prior to working on any equipment. Our local dealers (contractors) deal with every aspect of our equipment, including:

- Equipment selection
- Installation
- Service
- Maintenance

Service & Maintenance

GHL offers 24-hour emergency service to customers through an Authorized Dealer Network. All service calls come in through a call center and are dispatched directly to the Authorized Dealers, based on operational protocol 24 hours a day. GHL's North American service standards dictate call priority, dispatch process, and Dealer response requirements for each call type by priority status.

Regular maintenance is completed on qualifying equipment to ensure they are working safely and efficiently. GHL contractors contact customers directly to agree on a date and time that works for them to complete respective maintenance calls.

Equipment Selection

GHL is not limited in equipment selection, either by brand, fuel, or equipment type. GHL has long-standing relationships with manufacturers, distributors and contractors across North America.

Billing

All customer billing is completed within North America using North American programs chosen by GHL. Billing might be slightly different and customized to accommodate large regional, county, or state housing providers.

¹ Regular maintenance is provided on qualifying equipment only

www.grandhvacleasing.com

REDACTED VERSION



Grand HVAC Leasing

If it appreciates buy it - If it depreciates lease it

1.855.754.0530 • info@grandhvacleasing.com

Call Center/Customer Management

Grand HVAC Leasing's call center and customer management is outsourced to a call center with locations scattered across North America. All customer inquiries are live answer, with several dedicated reps and supervisors to manage and operate our account needs. Our operational design simplifies North American expansion with unlimited possibilities for scale and location.

www.grandhvacleasing.com

REDACTED VERSION

ASSET PURCHASE AGREEMENT

between

PUGET SOUND ENERGY

and

[REDACTED]

dated as of

[•], 2019

This document has been prepared to facilitate discussions regarding a proposed transaction. This document does not constitute an offer, acceptance for a contract or an agreement of any type. This document is not intended to create any legally binding or enforceable obligations.

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ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this “Agreement”), dated as of [●], 2019, is entered into between Puget Sound Energy, Inc., a Washington corporation (“Seller”) and [REDACTED] (“Buyer”).

RECITALS

WHEREAS, Seller is engaged in the business of owning, renting and maintaining natural gas tank water heaters for residential, commercial and industrial customers (the “Business”); and

WHEREAS, Seller wishes to sell and assign to Buyer, and Buyer wishes to purchase and assume from Seller, certain operating assets, rights and interests relating to the Business, on the terms and conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller agree as follows:

ARTICLE I DEFINITIONS

As used in this Agreement, the following terms have the meanings specified or referred to in this Article I:

“Acquired Customers” are all Water Heater Customers except for the Excluded Customers.

“Additional Contracts” has the meaning set forth in Section 2.1(b).

“Affiliate” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“Agreement” has the meaning set forth in the preamble.

“Allocation Schedule” has the meaning set forth in Section 2.6.

“Assigned Contracts” has the meaning set forth in Section 2.1(b).

“Assignment and Assumption Agreement” has the meaning set forth in Section 3.2(a)(ii).

“Assumed Liabilities” has the meaning set forth in Section 2.3.

“Bill of Sale” has the meaning set forth in Section 3.2(a)(i).

“Books and Records” has the meaning set forth in Section 2.1(f).

“Business” has the meaning set forth in the recitals.

“Business Day” means any day except Saturday, Sunday or any other day on which commercial banks located in Seattle, Washington are authorized or required by Law to be closed for business.

“Buyer” has the meaning set forth in the preamble.

“Buyer Closing Certificate” has the meaning set forth in Section 7.3(d).

“Buyer Identification Sticker” has the meaning set forth in Section 6.4(d).

“Closing” has the meaning set forth in Section 3.1.

“Closing Date” has the meaning set forth in Section 3.1.

“Code” means the Internal Revenue Code of 1986, as amended.

“Confidentiality Agreement” means the Confidentiality Agreement, dated as of [REDACTED] between Buyer and Seller.

“Contracts” means all legally binding written and oral contracts, leases, licenses, instruments, commitments, undertakings, and other agreements.

“Customer Contracts” has the meaning set forth in Section 2.1(a).

“Data Room” means the electronic documentation site established by Perkins Coie LLP on behalf of Seller and located at [URL].

“Direct Claim” has the meaning set forth in Section 8.5(c).

“Disclosure Schedules” means the Disclosure Schedules delivered by Seller and Buyer concurrently with the execution and delivery of this Agreement.

“Dollars or \$” means the lawful currency of the United States.

“Drop Dead Date” has the meaning set forth in Section 9.1(b)(i).

“Equipment” means the gas water heater tank and all accessories required to complete the installation including but not limited to earthquake straps, [REDACTED]-bracing, and sediment trap. Excluded from this definition includes but not limited to expansion tanks, power vents, water shutoff valves, [REDACTED]-pressure reduction valves, and other Water Heater Tank Customer owned items required during installation of the water heater tank.

“Encumbrance” means any lien, pledge, mortgage, deed of trust, security interest, charge, claim, easement, encroachment or other similar encumbrance.

“Excluded Assets” has the meaning set forth in Section 2.2.

“Excluded Customers” has the meaning set forth in Section 6.3(d).

“Excluded Liabilities” has the meaning set forth in Section 2.4.

“FIRPTA Certificate” has the meaning set forth in Section 7.2(e).

“GAAP” means United States generally accepted accounting principles in effect from time to time.

“Governmental Authority” means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction, including, for the avoidance of doubt, the WUTC.

“Governmental Order” means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

“Indemnified Party” has the meaning set forth in Section 8 [REDACTED].

“Indemnifying Party” has the meaning set forth in Section [REDACTED].

“Knowledge of Seller or Seller’s Knowledge” or any other similar knowledge qualification, means the actual knowledge of those persons listed on Schedule 1.1(b). [REDACTED]

“Law” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority.

“Lease Agreements” means all Contracts to which Seller and any Water Heater Customer are parties pursuant to which Equipment is being leased to Water Heater Customer by Seller as of the date of this Agreement.

“Losses” means actual out-of-pocket losses, damages, liabilities, costs or expenses, including reasonable attorneys’ fees.

“Material Adverse Effect” means any event, occurrence, fact, condition or change that is materially adverse to (a) the business, results of operations, financial condition or assets of the Business, taken as a whole, or (b) the ability of Seller to consummate the transactions contemplated hereby; provided, however, that “Material Adverse Effect” shall not include any event, occurrence, fact, condition or change, directly or indirectly, arising out of or attributable to: (i) general economic or political conditions; (ii) conditions generally affecting the industries in which the Business operates; (iii) any changes in financial, banking or securities markets in general, including any disruption thereof and any decline in the price of any security or any market index or any change in prevailing interest rates; (iv) acts of war (whether or not declared), armed hostilities or terrorism, or the escalation or worsening thereof; (v) any action required or permitted by this Agreement or any action taken (or omitted to be taken) with the written consent of or at the written request of Buyer; (vi) any matter of which Buyer is aware on the date hereof; (vii) any changes in applicable Laws or accounting rules (including GAAP) or the enforcement, implementation or interpretation thereof; (viii) the announcement, pendency or completion of the transactions contemplated by this Agreement, including losses or threatened losses of employees, customers, suppliers, distributors or others having relationships with the Seller and the Business; (ix) any natural or man-made disaster or acts of God; or (x) any failure by the Business to meet any internal or published projections, forecasts or revenue or earnings predictions (provided that the underlying causes of such failures (subject to the other provisions of this definition) shall not be excluded).

[REDACTED]

“Opt-Out Notice” has the meaning set forth in Section 6.3(d).

“Permits” means all permits, licenses, franchises, approvals, authorizations and consents required to be obtained from Governmental Authorities.

“Person” means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association or other entity.

“Purchase Price” has the meaning set forth in Section 2.5.

“Purchased Assets” has the meaning set forth in Section 2.1.

“Relating to the Business” means required for or used, or held or employed for use, primarily or exclusively in the operation or conduct of the Business as conducted prior to the date hereof.

“Release” means any actual or threatened release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, abandonment, disposing or allowing to escape or migrate into or through the environment (including, without limitation, ambient air (indoor or outdoor), surface water, groundwater, land surface or subsurface strata or within any building, structure, facility or fixture).

“Representative” means, with respect to any Person, any and all directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.

[REDACTED]

“Seller” has the meaning set forth in the preamble.

“Seller Closing Certificate” has the meaning set forth in Section 7.2(d).

[REDACTED]

“Services” means the rental of large volume commercial and residential natural gas water heater tanks including inspection, repair, replacement, or removal of such natural gas water heater tanks twenty-four hours a day, seven days per week.

[REDACTED]

“Transaction Notice” has the meaning set forth in Section 6.3(d).

[REDACTED]

“Taxes” means all federal, state, local, foreign and other income, gross receipts, sales, use, production, ad valorem, transfer, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, severance, environmental, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, customs, duties or other taxes of any kind whatsoever, together with any interest, additions or penalties with respect thereto.

“Tax Return” means any return, declaration, report, claim for refund, information return or statement or other document required to be filed with a Governmental Authority with respect to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“Third-Party Claim” has the meaning set forth in Section 8.5(a).

“Transaction Documents” means this Agreement, the Bill of Sale, the Assignment and Assumption Agreement, and the other agreements, instruments and documents required to be delivered at the Closing.

“Transfer Taxes” has the meaning set forth in Section 6.8(a).

[REDACTED]

“Water Heater Customers” means any customer of Seller to whom Seller provides the Services.

“WUTC” means the Washington Utilities and Transportation Commission.

ARTICLE II PURCHASE AND SALE OF ASSETS

Section 2.1 Purchase and Sale. Subject to the terms and conditions of this Agreement, at the Closing, Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase from Seller, free and clear of all Encumbrances, all of Seller’s right, title and interest in and to all of the assets, properties, rights, used exclusively in the Business, whether tangible or intangible, wherever located (collectively, the “Purchased Assets”), including the following assets and rights:

(a) any and all Lease Agreements with the [REDACTED] Customers (collectively, the “Customer Contracts”);

(b) the Contracts Related to the Business as set forth on Schedule 2.1(b)¹ (the “Additional Contracts,” and together with the Customer Contracts, the “Assigned Contracts”);

(c) the prepaid expenses, credits, advance payments, security, deposits, charges, sums and fees Relating to the Business (excluding in respect of Taxes) set forth on Schedule 2.1(c);

(d) all Equipment that has not been, as of the Closing Date, (i) purchased by or conveyed to an Excluded Customer, or (ii) removed from the premises of an Excluded Customer;

(e) all of Seller’s rights under warranties, indemnities and all similar rights against third parties to the extent transferable and Relating to the Business, any Purchased Asset or Assumed Liability;

(f) all books and [REDACTED] s related to the operations of the Business as of the Closing Date as set forth on Schedule 2.1(e) (and excluding books and [REDACTED] in respect of Taxes) (the “Books and Records”)

[REDACTED]

[REDACTED]

The Allocation Schedule shall be deemed final unless Buyer notifies Seller in writing that Buyer objects to one or more items reflected in the Allocation Schedule within forty-five (45) days after delivery of the Allocation Schedule to Buyer. In the event of any such objection, Seller and Buyer shall negotiate in good faith to resolve such dispute; provided, however, that if Seller and Buyer are unable to resolve any dispute with respect to the Allocation Schedule within thirty (30) days after the delivery of the Allocation Schedule to Buyer, such dispute shall be resolved by [●] or, if [●]²³ is unable to serve, another impartial independent certified public accounting firm mutually appointed by Buyer and Seller. The fees and expenses of such accounting firm shall be borne equally by Seller and Buyer. Seller and Buyer agree to file their respective IRS Forms 8594 and all federal, state and local Tax Returns in accordance with the Allocation Schedule.

ARTICLE III CLOSING

Section 3.1 Closing. The consummation of the transactions contemplated by this Agreement (the "Closing") shall take place at the offices of Perkins Coie, 1201 Third Avenue, Seattle, Washington 98101 at 9 A.M. local time, on the second Business Day after all of the conditions to Closing set forth in Article VII are either satisfied or waived (other than conditions which, by their nature, are to be satisfied on the Closing Date), or at such other time, date or place as Seller and Buyer may mutually agree upon in writing. The date on which the Closing is to occur is herein referred to as the "Closing Date".

Section 3.2 Closing Deliverables.

(a) At the Closing, Seller shall deliver to Buyer the following:

- (i) a Bill of Sale in the form of Exhibit A, duly executed by Seller;
- (ii) an Assignment and Assumption Agreement in the form of Exhibit B, duly executed by Seller;
- (iii) the Seller Closing Certificate; [REDACTED]
- (iv) the FIRPTA Certificate; [REDACTED]

[REDACTED]

(b) At the Closing, Buyer shall deliver to Seller the following:

- (i) the Purchase Price by wire transfer of immediately available funds to an account designated in writing by Seller to Buyer no later than two Business Days prior to the Closing Date;
- (ii) the Assignment and Assumption Agreement duly executed by Buyer;
- (iii) the Buyer Closing Certificate; and

²³Note to Draft: Accounting firm to be discussed.

(iv) [the certificates of the Secretary or Assistant Secretary of Buyer required
by Section 7.3(e).]

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SELLER

Except as set forth in the Disclosure Schedules, Seller represents and warrants to Buyer that the statements contained in this Article IV are true and correct as of the date hereof.

Section 4.1 Organization and Qualification of Seller. Seller is a corporation duly organized, validly existing and in good standing under the Laws of the state of Washington and has all necessary corporate power and authority to own, operate or lease the Purchased Assets and to carry on the Business as currently conducted. Seller is duly qualified to do business in the state of Washington.

Section 4.2 Authority of Seller. Seller has all necessary corporate power and authority to enter into this Agreement and the other Transaction Documents to which Seller is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Seller of this Agreement and any other Transaction Document to which Seller is a party, the performance by Seller of its obligations hereunder and thereunder and the consummation by Seller of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Seller. This Agreement has been duly executed and delivered by Seller, and (assuming due authorization, execution and delivery by Buyer) this Agreement constitutes a legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity). When each other Transaction Document to which Seller is or will be a party has been duly executed and delivered by Seller (assuming due authorization, execution and delivery by each other party thereto), such Transaction Document will constitute a legal and binding obligation of Seller enforceable against it in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity).

Section 4.3 No Conflicts; Consents. The execution, delivery and performance by Seller of this Agreement and the other Transaction Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) result in a violation or breach of any provision of the certificate of incorporation or by-laws of Seller; (b) result in a violation or breach of any provision of any Law or Governmental Order applicable to Seller, the Business or the Purchased Assets; or (c) except as set forth in Section 4.3 of the Disclosure Schedules, require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default under or result in the acceleration of any [REDACTED]; except in the cases of clauses (b) and (c), where the violation, breach, conflict, default, acceleration or failure to give notice would not have a Material Adverse Effect. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Seller in connection with the execution and delivery of this Agreement or any of the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, except as set forth in Section 4.3 of the Disclosure Schedules and such consents, approvals, Permits, Governmental Orders, declarations, filings or notices which, in the aggregate, would not have a Material Adverse Effect.

Section 4.4 [REDACTED] s. All [REDACTED] are valid and binding obligation of Seller and, to Seller's Knowledge, to each other party thereto. All of the [REDACTED] are in full force and effect, and, to Seller's Knowledge, each other party thereto has performed all material obligations imposed on it thereunder. There are not, under any [REDACTED] any material defaults or material events of default on the part of Seller or, to Seller's Knowledge, any party thereto. Seller has not received written notice that any party to any [REDACTED] intends to cancel, terminate or refuse to renew or enter into the Assigned [REDACTED].

Section 4.5 Purchased Assets. [Except as set forth in Section [REDACTED] of the Disclosure Schedules.] Seller is the sole and exclusive owner of, and has the sole and exclusive right to use, free and clear of any obligation or other Encumbrances, all of the Purchased Assets.

Section 4.6 Sufficiency of Assets. The Purchased Assets are sufficient for the continued conduct of the Business after the Closing in substantially the same manner as presently conducted and constitute all of the rights, property and assets necessary to conduct the Business as currently conducted.

Section 4.7 Legal Proceedings; Governmental Orders.

(a) There are no actions, suits, claims, investigations or other legal proceedings pending or, to Seller's Knowledge, threatened against or by [REDACTED] relating to or affecting the Business, the Purchased Assets or the Assumed Liabilities, which if determined adversely to Seller would result in a Material Adverse [REDACTED].

(b) [Except as set forth in Section [REDACTED] (b) of the Disclosure Schedules.] There are no outstanding Governmental Orders and no unsatisfied judgments, penalties or awards against or affecting the Business or the Purchased Assets which would have a Material Adverse Effect.

Section 4.8 Compliance with Laws; Permits.

(a) [Except as set forth in Section 4.74(a) of the Disclosure Schedules.] Seller is in compliance with all Laws applicable to the conduct of the Business as currently conducted or the ownership and use of the Purchased Assets, except where the failure to be in compliance would not have a Material Adverse Effect. [REDACTED]

(b) All Permits required for Seller to conduct the Business as currently conducted or for the ownership and use of the Purchased Assets have been obtained by Seller and are valid and in full force and effect, except where the failure to obtain such Permits would not have a Material Adverse Effect.

Section 4.9 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any other Transaction Document based upon arrangements made by or on behalf of Seller.

[REDACTED]

[REDACTED] No Other Representations and Warranties. Except for the representations and warranties contained in this Article IV (including the related portions of the Disclosure Schedules), neither Seller nor any other Person has made or makes any other express or implied representation or warranty, either written or oral, on behalf of Seller, including any representation or warranty as to the accuracy or completeness of any information regarding the Business and the Purchased Assets furnished or made available to Buyer and its Representatives (including any information, documents or material delivered to Buyer or made available to Buyer in the Data Room, management presentations or in any other form in expectation of the transactions contemplated hereby) or as to the future revenue, profitability or success of the Business, or any representation or warranty arising from statute or otherwise in law.

ARTICLE V REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller that the statements contained in this Article V are true and correct as of the date hereof.

Section 5.1 Organization and Authority of Buyer. Buyer is a [REDACTED] [REDACTED] duly organized, validly existing and in good standing under the Laws of the state of [REDACTED]

Section 5.2 Authority of Buyer. Buyer has all necessary corporate power and authority to enter into this Agreement and the other Transaction Documents to which Buyer is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Buyer of this Agreement and any other Transaction Document to which Buyer is a party, the performance by Buyer of its obligations hereunder and thereunder and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Buyer. This Agreement has been duly executed and delivered by Buyer, and (assuming due authorization, execution and delivery by Seller) this Agreement constitutes a legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity). When each other Transaction Document to which Buyer is or will be a party has been duly executed and delivered by Buyer (assuming due authorization, execution and delivery by each other party thereto), such Transaction Document will constitute a legal and binding obligation of Buyer enforceable against it in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity).

Section 5.3 No Conflicts; Consents. The execution, delivery and performance by Buyer of this Agreement and the other Transaction Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) result in a violation or breach of any provision of the certificate of incorporation or by-laws of Buyer; (b) result in a violation or breach of

any provision of any Law or Governmental Order applicable to Buyer; or (c) except as set forth in Section 5.3 of the Disclosure Schedule, require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default under or result in the acceleration of any agreement to which Buyer is a party, except in the cases of clauses (b) and (c), where the violation, breach, conflict, default, acceleration or failure to give notice would not have a material adverse effect on Buyer's ability to consummate the transactions contemplated hereby. Except as set forth on Section 5.3 of the Disclosure Schedule, no consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Buyer in connection with the execution and delivery of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby.

Brokers. [REDACTED] broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any other Transaction Document based upon arrangements made by or on behalf of Buyer.

Sufficiency of Funds. Section 5.5 Buyer has sufficient cash on hand or other sources of immediately available funds to enable it to make payment of the Purchase Price and consummate the transactions contemplated by this Agreement.

Solvency. Section 5.6 Immediately after giving effect to the transactions contemplated hereby, Buyer shall be solvent and shall: (a) be able to pay its debts as they become due; (b) own property that has a fair saleable value greater than the amounts required to pay its debts (including a reasonable estimate of the amount of all contingent liabilities); and (c) have adequate capital to carry on its business. No transfer of property is being made and no obligation is being incurred in connection with the transactions contemplated hereby with the intent to hinder, delay or defraud either present or future creditors of Buyer. [REDACTED] In connection with the transactions contemplated hereby, Buyer has not incurred, nor plans to incur, debts beyond its ability to pay as they become absolute and matured.

Legal Proceedings. Section 5.7 There are no actions, suits, claims, investigations or other legal proceedings pending or, to Buyer's knowledge, threatened against or by Buyer or any Affiliate of Buyer that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement.

Section 5.8 Independent Investigation. [REDACTED]

[REDACTED] Assets and the express representations and warranties of Seller set forth in Article IV of this Agreement (including related portions of the Disclosure Schedules); and (b) neither Seller nor any other Person has made any representation or warranty as to Seller, the Business, the Purchased Assets or this Agreement, except as expressly set forth in Article IV of this Agreement (including the related portions of the Disclosure Schedules).

Management and Business Experience. Section 5.9 Buyer acknowledges and agrees that it [REDACTED] water heater equipment, (ii) [REDACTED] years of experience repairing, replacing or removing residential water heater equipment and (iii) [REDACTED] field installers or technicians with an average industry experience of [REDACTED] years.

Section 5.10 Billing Systems. [No changes to Buyer's accounting and billing systems are required to accommodate recurring monthly billing.]

Section 5.11 Operations. [Buyer [REDACTED] currently [REDACTED] in the [REDACTED] Washington [REDACTED] will need to expand operations [REDACTED] to support the Business.] [Buyer acknowledges and agrees that it does not need to enter into new or amend existing agreements with [REDACTED] tank distributors [REDACTED] to support the Business.] Buyer maintains [REDACTED] all necessary local, state, and federal licenses, Permits and certifications that may be required in order to operate the Business under all applicable Laws and perform the Services to the Acquired Customers.

Section 5.12 Insurance. Buyer maintains Commercial General Liability with coverage of not less than \$ [REDACTED] per occurrence and \$ [REDACTED] 0 in the aggregate for bodily injury and property damage.

Section 5.13 Customer Service. [Buyer employs sufficient customer service personnel in order to support the Business and provide the customer service to the Acquired Customers at all times.]

ARTICLE VI COVENANTS

Section 6.1 Conduct of Business Prior to the Closing. From the date hereof until the Closing, except as otherwise provided in this Agreement or consented to in writing by Buyer (which consent shall not be unreasonably withheld or delayed), Seller shall (a) conduct the Business in the ordinary course of business; and (b) use commercially reasonable efforts to maintain and preserve its existing business relationships with customers, suppliers, subcontractors and others having relationships with the Business.

Section 6.2 Confidentiality

(a) Buyer acknowledges and agrees that the Confidentiality Agreement remains in full force and effect and, in addition, covenants and agrees to keep confidential, in accordance with the provisions of the Confidentiality Agreement, information provided to Buyer pursuant to this Agreement. If this Agreement is, for any reason, terminated prior to the Closing, the Confidentiality Agreement and the provisions of this Section 6.2 shall nonetheless continue in full force and effect.

Section 6.3 Governmental Approvals and Consents

(a) Each party shall, as promptly as possible, use its reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other party in doing, all things necessary, proper or advisable to timely make all filings and obtain all consents, authorizations, orders and approvals from all Governmental Authorities required by [REDACTED] to be made or obtained in order to consummate the Transaction, including for the avoidance of doubt,

approval by the WUTC. Each party shall cooperate fully with the other party and its Affiliates in promptly seeking to obtain all such consents, authorizations, orders and approvals.

(b) All analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals made by or on behalf of either party before any Governmental Authority or the staff or regulators of any Governmental Authority, in connection with the transactions contemplated hereunder (but, for the avoidance of doubt, not including any interactions between Seller or Buyer with Governmental Authorities in the ordinary course of business, any disclosure which is not permitted by Law or any disclosure containing confidential information) shall be disclosed to the other party hereunder in advance of any filing, submission or attendance, it being the intent that the parties will consult and cooperate with one another, and consider in good faith the views of one another, in connection with any such analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals. Each party shall give notice to the other party with respect to any meeting, discussion, appearance or contact with any Governmental Authority or the staff or regulators of any Governmental Authority, with such notice being sufficient to provide the other party with the opportunity to attend and participate in such meeting, discussion, appearance or contact.

(c) Seller and Buyer shall use commercially reasonable efforts to give all notices to, and obtain all consents from, all third parties that are described in Section 4.3 and Section 5.3 of the Disclosure Schedules; provided, however, that Seller shall not be obligated to pay any consideration therefor to any third party from whom consent or approval is requested.

(d) [As soon as practicable after Seller submits to the WUTC its application for approval of the transactions contemplated hereby, Seller shall use its reasonable best efforts to deliver to each Water Heater Customer (i) a written notice of the transactions contemplated hereby in substantially the form attached hereto as Exhibit D (the "Transaction Notice"), ~~(ii) a~~

~~(ii) a~~ option to opt-out of the assignment or deemed assignment of any Lease Agreement applicable to such Water Heater Customer in substantially the form attached hereto as Exhibit EF (the "Opt-Out Notice"). No later than five (5) Business Days prior to the Closing Seller will deliver to Buyer a schedule setting forth the number of Water Heater Customers that have (i) either ~~(i)~~ delivered the Opt-Out Notice, or ~~(ii)~~ have terminated, or have indicated to Seller an intention to terminate, their Lease Agreement (such Water Heater Customers, the "Excluded Customers")-

Section 6.4 Billing and Operations.

³⁴ Note to Draft: Process for notice to be discussed.

(b) Buyer shall enter into new or amend existing agreements

to Seller no later than Business Days prior to Closing.

(c) To support the Business and provide the Services to the Acquired Customers, Buyer shall complete hiring and training field personnel no later than Closing.

(d) Buyer agrees to contact the Acquired Customers following the customer transition plan shown on Schedule 6.4(d) ("Transition Plan") prior to or following the Closing to inform them of the change in service, establish billing, and provide Buyer's contact information for Services. Buyer an identification sticker to be placed on the rental equipment and a mock-up to the Seller (the "Buyer Identification Sticker"). Buyer shall send the Identification Sticker with the Transition Plan and shall cause its employees or agents to replace any stickers belonging to Seller on any tank or other related equipment with a Buyer Identification Sticker on Buyer's first service call to any Acquired Customer.

(e) Buyer agrees that it will respond within (i) hours of a request for Services by an Acquired Customer and (ii) in the case of an emergency repair to provide hot water or if an Acquired Customer's health or safety would be impaired without such emergency repair.

(f) Buyer agrees that an Acquired Customer's request for installation, replacements or repairs shall be completed within Business Days of such Acquired Customer's

(g) To ensure a smooth transition for Acquired Customers, Buyer agrees to accept telephone calls from Acquired Customers requesting Services and transferred by Seller to Buyer for a period of no less than six (6) months following the Closing.

(h) For a period of months following the Closing, Buyer agrees that it will not raise the prices for the Services as listed on Schedule 6.4(h) as they apply to the Acquired Customers.

Section 6.5 Books and Records.

(a) In order to facilitate the resolution of any claims made against or incurred by Seller prior to the Closing, or for any other reasonable purpose, for a period of the Closing, Buyer shall:

(i) retain the Books and Records relating to periods prior to the Closing in a manner reasonably consistent with the prior practices of Seller; and

(ii) upon reasonable notice, afford the Seller's Representatives reasonable access (including the right to make, at Seller's expense, photocopies), during normal business hours, to such Books and Records.

(b) In order to facilitate the resolution of any claims made by or against or incurred by Buyer after the Closing, or for any other reasonable purpose, for a period [REDACTED] after the Closing, Seller shall:

(i) retain the books and records of Seller which relate to the Business and its operations for periods prior to the Closing; and

(ii) upon reasonable notice, afford the Buyer's Representatives reasonable access (including the right to make, at Buyer's expense, photocopies), during normal business hours, to such books and records.

(c) Neither Buyer nor Seller shall be obligated to provide the other party with access to any books or records (including personnel files) pursuant to this Section 6.5 where such access would violate any Law.

Section 6.6 Closing Conditions. From the date hereof until the Closing, each party shall use commercially reasonable efforts to take such actions as are necessary to expeditiously satisfy the closing conditions set forth in Article VII.

Section 6.7 Public Announcements. Unless otherwise required by applicable Law or stock exchange requirements (based upon the reasonable advice of counsel), no party to this Agreement shall make any public announcements in respect of this Agreement or the transactions contemplated hereby or otherwise communicate with any news media without the prior written consent of the other party (which consent shall not be unreasonably withheld or delayed), and the parties shall cooperate as to the timing and contents of any such announcement.

Section 6.8 Transfer Taxes:

(a) Transfer Taxes. All transfer, documentary, sales, use, stamp, registration, value added and other such Taxes and fees (including any penalties and interest) incurred in connection with this Agreement and the other Transaction Documents (including any real property transfer tax and any other similar Tax) ("Transfer Taxes") shall be borne and paid by Buyer when due. Buyer shall, at its own expense, timely file any Tax Return or other document with respect to such Transfer Taxes or fees (and Seller shall cooperate with respect thereto as necessary).

(b) Excise taxes. Any excise tax not covered under Section 6.8(a), the Buyer and the Seller will bear and paid its own excise taxes attributable to its period of ownership.

(c) Property taxes pertaining to the Purchased Assets or the Business shall be prorated on the basis of the number of days of the relevant Tax year or period which have elapsed through the Closing Date, determined without reference to any change of ownership occasioned by the consummation of the transactions contemplated herein. Seller shall be responsible for that portion of such amounts relating to the period prior to the Closing Date and Buyer shall be responsible for that portion of such amounts relating to the period on or after the Closing Date). As a matter of expedience, the Buyer and the Seller agree to use the Seller's 2019 property tax payment (based on its January 1, 2018 lien date) as a proxy for the Seller's 2020 property tax payment (based on its January 1, 2019 lien date). The funds will be transferred at the time of closing and will not be subject to future adjustment should the actual 2020 tax payment be higher or lower than the proxy.

Section 6.9 Further Assurances. Following the Closing, each of the parties hereto shall, and shall cause their respective Affiliates to, execute and deliver such additional documents, instruments,

conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement and the other Transaction Documents.

ARTICLE VII CONDITIONS TO CLOSING

Section 7.1 Conditions to Obligations of All Parties. The obligations of each party to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, at or prior to the Closing, of each of the following conditions:

(a) No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Governmental Order which is in effect and has the effect of making the transactions contemplated by this Agreement illegal, otherwise restraining or prohibiting consummation of such transactions or causing any of the transactions contemplated hereunder to be rescinded following completion thereof.

(b) Seller shall have received all consents, authorizations, orders and approvals from the Governmental Authorities referred to in Section 4.3 (including, for the avoidance of doubt, approval from the WUTC) and Buyer shall have received all consents, authorizations, orders and approvals from the Governmental Authorities referred to in Section 5.3, in each case, in form and substance reasonably satisfactory to Buyer and Seller, and no such consent, authorization, order and approval shall have been revoked or subject to conditions that are unacceptable to either Seller Buyer.

Section 7.2 Conditions to Obligations of Buyer. The obligations of Buyer to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Buyer's waiver, at or prior to the Closing, of each of the following conditions:

(a) The representations and warranties of Seller contained in Article IV shall be true and correct in all respects as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, which shall be true and correct in all respects as of that specified date), except where the failure of such representations and warranties to be true and correct would not have a Material Adverse Effect.

(b) Seller shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the other Transaction Documents to be performed or complied with by it prior to or on the Closing Date.

(c) Seller shall have delivered to Buyer duly executed counterparts to the Transaction Documents (other than this Agreement) and such other documents and deliveries set forth in Section 3.2(a).

(d) Buyer shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of Seller, that each of the conditions set forth in (a) and (b) have been satisfied (the "Seller Closing Certificate").

(e) Buyer shall have received a certificate pursuant to Treasury Regulations Section 1.1445-2(b) (the "FIRPTA Certificate") that Seller is not a foreign person within the meaning of Section 1445 of the Code duly executed by Seller.



Section 7.3 Conditions to Obligations of Seller. The obligations of Seller to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Seller's waiver, at or prior to the Closing, of each of the following conditions:

(a) The representations and warranties of Buyer contained in Article V shall be true and correct in all respects as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, which shall be true and correct in all respects as of that specified date), except where the failure of such representations and warranties to be true and correct would not have a material adverse effect on Buyer's ability to consummate the transactions contemplated hereby.

(b) Buyer shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the other Transaction Documents to be performed or complied with by it prior to or on the Closing Date.

(c) Buyer shall have delivered to Seller the Purchase Price, duly executed counterparts to the Transaction Documents (other than this Agreement) and such other documents and deliveries set forth in Section 3.2(b).

(d) Seller shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of Buyer, that each of the conditions set forth in (a) and (b) have been satisfied (the "Buyer Closing Certificate").

(e) Seller shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Buyer certifying that attached thereto are true and complete copies of all resolutions adopted by the board of directors of Buyer authorizing the execution, delivery and performance of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby.

ARTICLE VIII INDEMNIFICATION

Section 8.1 Survival. Subject to the limitations and other provisions of this Agreement, the representations and warranties contained herein [REDACTED]

[REDACTED]. None of the covenants or other agreements contained in this Agreement shall survive the Closing Date other than those which by their terms contemplate performance after the Closing Date, and each such surviving covenant and agreement shall survive the Closing for the period contemplated by its terms. Notwithstanding the foregoing, any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the [REDACTED] prior to the expiration date of the applicable survival period shall not thereafter be barred by the expiration of such survival period and such claims shall survive until finally resolved.

Section 8.2 Indemnification by Seller. Subject to the other terms and conditions of this Article VIII, Seller shall indemnify Buyer against, and shall hold Buyer harmless from and against, any and all Losses incurred or sustained by, or imposed upon, Buyer based upon, arising out of, with respect to or by reason of:

- (a) any inaccuracy in or breach of any of the representations or warranties of Seller contained in this Agreement;
- (b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Seller pursuant to this Agreement; or
- (c) any Excluded Asset or any Excluded Liability.

Section 8.3 Indemnification by Buyer. Subject to the other terms and conditions of this Article VIII, Buyer shall indemnify Seller against, and shall hold Seller harmless from and against, any and all Losses incurred or sustained by, or imposed upon, Seller based upon, arising out of, with respect to or by reason of:

- (a) any inaccuracy in or breach of any of the representations or warranties of Buyer contained in this Agreement;
- (b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Buyer pursuant to this Agreement; or
- (c) any Assumed Liability.

Section 8.4 Certain Limitations. The party making a claim under this Article VIII is referred to as the "Indemnified Party", and the party against whom such claims are asserted under this Article VIII is referred to as the "Indemnifying Party". The indemnification provided for in Section 8.2 and Section 8.3 shall be subject to the following limitations:

- (a) Seller shall not be liable to Buyer for indemnification under Section 8.2(a) until the aggregate amount of all Losses in respect of indemnification under Section 8.2(a) exceeds

[REDACTED] in which event Seller shall only be required to pay or be liable for Losses in excess of the Deductible. [REDACTED]

[REDACTED] With respect to any claim as to which Buyer may be entitled to indemnification under Section 8.2(a) Seller shall not be liable for any individual or series of related Losses which do not exceed [REDACTED] Losses shall not be counted toward the Deductible).

(b) The aggregate amount of all Losses for which an Indemnifying Party shall be liable pursuant to Section 8.2(a) or Section 8.3(a), as the case may be, [REDACTED].

(c) Payments by an Indemnifying Party pursuant to Section 8.2 or Section 8.3 in respect of any Loss shall be limited to the amount of any liability or damage that remains after deducting therefrom any insurance proceeds and any indemnity, contribution or other similar payment received or reasonably expected to be received by the Indemnified Party in respect of any such claim. The Indemnified Party shall use its commercially reasonable efforts to recover under insurance policies or indemnity, contribution or other similar agreements for any Losses prior to seeking indemnification under this Agreement.

(d) Payments by an Indemnifying Party pursuant to Section 8.2 or Section 8.3 in respect of any Loss shall be reduced by an amount equal to any Tax benefit realized or reasonably expected to be realized as a result of such Loss by the Indemnified Party.

[REDACTED]

(e) ~~(f)~~ Each Indemnified Party shall take, and cause its Affiliates to take, all reasonable steps to mitigate any Loss upon becoming aware of any event or circumstance that would be reasonably expected to, or does, give rise thereto, including incurring costs only to the minimum extent necessary to remedy the breach that gives rise to such Loss.

[REDACTED]

(a) Third-Party Claims. If any Indemnified Party receives notice of the assertion or commencement of any action, suit, claim or other legal proceeding made or brought by any Person who is not a party to this Agreement or an Affiliate of a party to this Agreement or a Representative of the foregoing (a "Third-Party Claim") against such Indemnified Party with respect to which the Indemnifying Party is obligated to provide indemnification under this Agreement, the Indemnified Party shall give the Indemnifying Party prompt written notice thereof. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Third-Party Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have the right to participate in, or by giving written notice to the Indemnified Party, to assume

the defense of any Third-Party Claim at the Indemnifying Party's expense and by the Indemnifying Party's own counsel, and the Indemnified Party shall cooperate in good faith in such defense. In the event that the Indemnifying Party assumes the defense of any Third-Party Claim, subject to (b), it shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third-Party Claim in the name and on behalf of the Indemnified Party. The Indemnified Party shall have the right, at its own cost and expense, to participate in the defense of any Third-Party Claim with counsel selected by it subject to the Indemnifying Party's right to control the defense thereof. If the Indemnifying Party elects not to compromise or defend such Third-Party Claim or fails to promptly notify the Indemnified Party in writing of its election to defend as provided in this Agreement, the Indemnified Party may, subject to (b), pay, compromise, defend such Third-Party Claim and seek indemnification for any and all Losses based upon, arising from or relating to such Third-Party Claim. Seller and Buyer shall cooperate with each other in all reasonable respects in connection with the defense of any Third-Party Claim, including making available (subject to the provisions of Section 6.2) records relating to such Third-Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third-Party Claim.

(b) Settlement of Third-Party Claims. Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not enter into settlement of any Third-Party Claim without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld or delayed), except as provided in this (b). If a firm offer is made to settle a Third-Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party and provides, in customary form, for the unconditional release of each Indemnified Party from all liabilities and obligations in connection with such Third-Party Claim and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give written notice to that effect to the Indemnified Party. If the Indemnified Party fails to consent to such firm offer within fifteen days after its receipt of such notice, the Indemnified Party may continue to contest or defend such Third-Party Claim and, in such event, the maximum liability of the Indemnifying Party as to such Third-Party Claim shall not exceed the amount of such settlement offer. If the Indemnified Party fails to consent to such firm offer and also fails to assume defense of such Third-Party Claim, the Indemnifying Party may settle the Third-Party Claim upon the terms set forth in such firm offer to settle such Third-Party Claim. If the Indemnified Party has assumed the defense pursuant to (a), it shall not agree to any settlement without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

(c) Direct Claims. Any claim by an Indemnified Party on account of a Loss which does not result from a Third-Party Claim (a "Direct Claim") shall be asserted by the Indemnified Party giving the Indemnifying Party prompt written notice thereof. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have 30 days after its receipt of such notice to respond in writing to such Direct Claim. During such 30-day period, the Indemnified Party shall allow the Indemnifying Party and its professional advisors to investigate the matter or circumstance alleged to give rise to the Direct Claim, and whether and to what extent any amount is payable in respect of the Direct Claim and the Indemnified Party shall assist the Indemnifying Party's investigation by giving such information and assistance (including access to the Indemnified Party's premises and personnel and the right to examine and copy any accounts, documents or records) as the Indemnifying Party or any of its professional advisors may

reasonably request. If the Indemnifying Party does not so respond within such 30-day period, the Indemnifying Party shall be deemed to have rejected such claim, in which case the Indemnified Party shall be free to pursue such remedies as may be available to the Indemnified Party on the terms and subject to the provisions of this Agreement.

Section 8.6 Tax Treatment of Indemnification Payments. All indemnification payments made under this Agreement shall be treated by the parties as an adjustment to the Purchase Price for Tax purposes, unless otherwise required by Law.

Section 8.7 Exclusive Remedies. Subject to Section 10.11, the parties acknowledge and agree that their sole and exclusive remedy with respect to any and all claims (other than claims arising from intentional fraud on the part of a party hereto in connection with the transactions contemplated by this Agreement) for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement, shall be pursuant to the indemnification provisions set forth in this Article VIII. In furtherance of the foregoing, each party hereby waives, to the fullest extent permitted under Law, any and all rights, claims and causes of action for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement it may have against the other parties hereto and their Affiliates and each of their respective Representatives arising under or based upon any Law, except pursuant to the indemnification provisions set forth in this Article VIII. Nothing in this Section 8.7 shall limit any Person's right to seek and obtain any equitable relief to which any Person shall be entitled pursuant to Section 10.11 or to seek any remedy on account of any intentional fraud by any party hereto.

ARTICLE IX TERMINATION

Section 9.1 Termination. This Agreement may be terminated at any time prior to the Closing:

- (a) by the mutual written consent of Seller and Buyer;
- (b) by Buyer by written notice to Seller if:

- (i) Buyer is not then in material breach of any provision of this Agreement and there has been a material breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Seller pursuant to this Agreement that would give rise to the failure of any of the conditions specified in Article VII and such breach, inaccuracy or failure cannot be cured by Seller by [May 20, 2020] (the "Drop Dead Date"); or

- (ii) any of the conditions set forth in Section 7.1 or Section 7.2 have not been fulfilled by the Drop Dead Date, unless such failure shall be due to the failure of Buyer to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing;

- (c) by Seller by written notice to Buyer if:

- (i) Seller is not then in material breach of any provision of this Agreement and there has been a material breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Buyer pursuant to this Agreement that would give rise to the failure of any of the conditions specified in Article VII and such breach, inaccuracy or failure cannot be cured by Buyer by the Drop Dead Date; or

(ii) any of the conditions set forth in Section 7.1 or Section 7.3 shall not have been fulfilled by the Drop Dead Date, unless such failure shall be due to the failure of Seller to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing; or

(d) by Buyer or Seller in the event that:

(i) there shall be any Law that makes consummation of the transactions contemplated by this Agreement illegal or otherwise prohibited; or

(ii) any Governmental Authority shall have issued a Governmental Order not approving, restraining or enjoining the transactions contemplated by this Agreement, and such Governmental Order shall have become final and non-appealable.

(iii) any Governmental Authority shall have issued a Governmental Order approving the transactions contemplated hereby on a conditional basis, and the conditions in such approval are unacceptable to either Buyer or Seller.

Section 9.2 Effect of Termination. In the event of the termination of this Agreement in accordance with this Article, this Agreement shall forthwith become void and there shall be no liability on the part of any party except:

(a) as set forth in this Article IX and Article X; and

(b) that nothing herein shall relieve any party hereto from liability for any intentional breach of any provision hereof.

ARTICLE X MISCELLANEOUS

Section 10.1 Expenses. Except as otherwise expressly provided herein, all costs and expenses, including, without limitation, fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses, whether or not the Closing shall have [REDACTED]

Section 10.2 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 10.2):

If to Seller: Puget Sound Energy, Inc.
10885 NE 4th Street, PSE-10N
Bellevue, WA 98004-5591
E-mail: will.einstein@pse.com
Attention: Will Einstein

with a copy to:

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
E-mail: msandoval@perkinscoie.com
Attention: Martha Sandoval

If to Buyer:

[REDACTED]

[REDACTED]

[REDACTED]

Section 10.3 Interpretation. For purposes of this Agreement, (a) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; and (c) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Articles, Sections, Disclosure Schedules and Exhibits mean the Articles and Sections of, and Disclosure Schedules and Exhibits attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Disclosure Schedules and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

Section 10.4 Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 10.5 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

Section 10.6 Entire Agreement. This Agreement and the other Transaction Documents constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous representations, warranties,

understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and those in the other Transaction Documents, the Exhibits and Disclosure Schedules (other than an exception expressly set forth as such in the Disclosure Schedules), the statements in the body of this Agreement will control.

Section 10.7 Successor and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. No assignment shall relieve the assigning party of any of its obligations hereunder.

Section 10.8 No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 10.9 Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

Section 10.10 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.

(a) This Agreement shall be governed by and construed in accordance with the internal laws of the State of Washington without giving effect to any choice or conflict of law provision or rule (whether of the State of Washington or any other jurisdiction).

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY BE INSTITUTED IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA OR THE COURTS OF THE STATE OF WASHINGTON IN EACH CASE LOCATED IN THE CITY OF SEATTLE AND COUNTY OF KING, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE OTHER

TRANSACTION DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.10(c).

Section 10.11 Specific Performance. The parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

Section 10.12 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

Section 10.13 Non-recourse. This Agreement may only be enforced against, and any claim, action, suit or other legal proceeding based upon, arising out of, or related to this Agreement, or the negotiation, execution or performance of this Agreement, may only be brought against the entities that are expressly named as parties hereto and then only with respect to the specific obligations set forth herein with respect to such party. No past, present or future director, officer, employee, incorporator, manager, member, partner, stockholder, Affiliate, agent, attorney or other Representative of any party hereto or of any Affiliate of any party hereto, or any of their successors or permitted assigns, shall have any liability for any obligations or liabilities of any party hereto under this Agreement or for any claim, action, suit or other legal proceeding based on, in respect of or by reason of the transactions contemplated hereby.

The remainder of this page is intentionally left blank.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of
the date first written above by their respective officers thereunto duly authorized.

PUGET SOUND ENERGY, INC.

By _____
Name:
Title:

+

[REDACTED]

By _____
Name:
Title:

Document comparison by Workshare 9.5 on September 24, 2019 3:46:38 PM

Input:	
Document 1 ID	file://G:\FDH Data\G\Grand HVAC Leasing USA LLC (19X1653) asset pur Pudget Sound Energy, Inc\PSE - Asset Purchase Agreement 9.10.19.DOCX
Description	PSE - Asset Purchase Agreement 9.10.19
Document 2 ID	file://G:\FDH Data\G\Grand HVAC Leasing USA LLC (19X1653) asset pur Pudget Sound Energy, Inc\PSE - Asset Purchase Agreement 2019.09.24 (v.2).docx
Description	PSE - Asset Purchase Agreement 2019.09.24 (v.2)
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
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Style change	
Format change	
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Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	218
Deletions	181
Moved from	5
Moved to	5
Style change	0
Format changed	0
Total changes	409



Shaded information is designated as HIGHLY CONFIDENTIAL
per Protective Order in Docket UG-200112



REDACTED VERSION





