

**ORDINANCE NO. 613  
CITY OF DAYTON, OREGON**

*An Ordinance authorizing the City to enter into a franchise with Portland General Electric Company to use City rights of way for the purpose of providing electric services in the City and declaring an emergency*

**WHEREAS**, the Franchise Agreement between the City of Dayton (City) and Portland General Electric Company (PGE), Ordinance No. 469 was effective as of May 1, 1992 and was set to terminate at the expiration of twenty years from said date (Existing Agreement); and

**WHEREAS**, the City extended the Existing Agreement in May 2012 to enable the City and PGE to continue to negotiate a new franchise; and

**WHEREAS**, the City and PGE have agreed to the terms and conditions set forth in the new Franchise Agreement attached as Exhibit A; and

**WHEREAS**, the City finds that an emergency should be declared so that this Ordinance may take effect immediately upon its adoption by the Council and approval by the Mayor.

**The City of Dayton ordains as follows:**

**Section 1:** The City of Dayton grants to PGE a ten year franchise to use City rights of way for the provision of electric service on the terms contained in the attached Exhibit A.

**Section 2:** Because it is necessary for the peace, health and safety of the people of the City of Dayton, that this renewal be effective immediately, an emergency is hereby declared to exist, and this ordinance shall be in full force and effect upon its passage by the Council and approval by the Mayor as provided by the Charter of the City of Dayton.

Date of first reading: March 4, 2013 In full \_\_\_\_\_ or by title only

Date of second reading: April 1, 2013 In full \_\_\_\_\_ or by title only

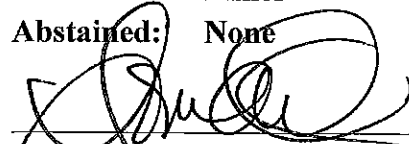
**ADOPTED** this 1<sup>st</sup> day of **April, 2013**.

**In Favor:** Blackburn, Collins, Frank, Utt, White, Wytoski

**Opposed:** None

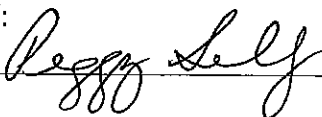
**Absent:** Bixler

**Abstained:** None

  
\_\_\_\_\_  
Jolie White  
Mayor

5/21/13  
\_\_\_\_\_  
Date of Signing

ATTESTED BY:

  
\_\_\_\_\_  
Peggy Selberg,  
City Recorder

4/1/2013  
\_\_\_\_\_  
Date of Enactment

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**FRANCHISE AGREEMENT**

This Franchise Agreement grants Portland General Electric Company ("Grantee") a non-exclusive franchise for ten years to erect, construct, maintain, repair, update and operate an electric light and power system within the City of Dayton ("City"), sets the terms and conditions of the franchise and provides an effective date.

**WHEREAS**, Grantee has been providing electric light and power service within the City; and

**WHEREAS**, Grantee is duly authorized by the Oregon Public Utility Commission ("OPUC") to supply electric light and power within the City; and

**WHEREAS**, the City has the authority to regulate the use of the Public ROW (as defined below) within the City and to receive compensation for the use of the Public ROW; and

**WHEREAS**, the City and Grantee both desire Grantee to continue to be able to provide electrical service within the City and to establish the terms by which Grantee shall use and occupy the Public ROW;

**NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

**SECTION 1. NATURE AND TERM OF FRANCHISE.**

**(A) Scope.** The City hereby grants to Grantee and its successors and assigns, subject to the terms and conditions in this Franchise, a nonexclusive franchise to erect, construct, repair, maintain, upgrade and operate an electric light and power system within the City as it now exists or may be extended in the future and Grantee Facilities (as defined below). This Franchise includes the privilege to install, repair, maintain, upgrade and operate Facilities necessary for the operation of Grantee's Electric Light and Power System (as defined below) upon, over, along, and across the surface of and the space above and below the streets, alleys, roads, highways, sidewalks, bridges, and other public ways over which the City has jurisdiction (collectively, "Public ROW"), as well as Public

1 Utility Easements ("PUEs") on third party property on which a preliminary  
2 subdivision plat has been approved by the City, and which will be managed by  
3 the City thereafter, for the provision of public utility services within the City as  
4 Grantee's Electric Light and Power System now exists or is extended or  
5 upgraded in the future. Nothing in this Franchise limits the City from granting  
6 others the right to carry on activities similar to, or different from the ones  
7 described in this Franchise. This Franchise is subject to all recorded deeds,  
8 easements, dedications, conditions, covenants, restrictions, encumbrances, and  
9 claims of title of record that may affect the Right of Way. Nothing in this  
10 Franchise shall be deemed to grant, convey, create, or vest in Grantee a real  
11 property interest in land, including any fee, leasehold interest, or easement.

12 **(B) Existing Facilities.** All Grantee Facilities in possession of Grantee currently  
13 or during the Term (as defined in Section 2(B)) that are located within the Public  
14 ROW are covered by this Franchise and existing City laws and regulations and  
15 the location and placement thereof is hereby approved for the purposes of this  
16 Franchise. The City may require relocation of Grantee Facilities as further  
17 specified in Section 8.

18 **(C) Park Property.** This Franchise also includes the privilege to repair, maintain,  
19 upgrade and operate Grantee Facilities located in City park property that are  
20 existing as of the effective date of this Franchise. Grantee's right to install new  
21 Grantee Facilities in City park property on or after the effective date of this  
22 Franchise, and to repair, maintain, upgrade and operate such Grantee Facilities,  
23 shall be subject to the City's separate written approval and any other applicable  
24 land use restrictions, or easements on or regarding the park property. With  
25 respect to Grantee Facilities located in City park property existing as of the  
26 effective date of this Franchise, and Grantee Facilities installed in City park  
27 property on or after the effective date of this Franchise in accordance with the  
28 City's written approval, City park property shall be treated the same as the Public  
29 ROW for purposes of Sections 4, 6, 7, 8, 10, 12, 14, 16, 18 and 19.

30 **(D)Limited Franchise.** Should Grantee offer telecommunications or cable  
31 services to the public, Grantee agrees that it will obtain all necessary and

1 applicable authorizations from the OPUC and enter into a separate franchise  
2 agreement with the City for the use of the Public ROW for such purpose.

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4 **SECTION 2. TERM AND EFFECTIVE DATE.**

5 **(A) Effective Date.** The effective date of this Franchise shall be March 5, 2013.  
6 ("Effective Date").

7 **(B) Duration of Franchise.** The term of this Franchise ("Term") shall commence  
8 on the Effective Date and all rights and obligations pertaining thereto shall expire  
9 ten (10) years after the Effective Date, unless renegotiated or terminated as  
10 provided herein. The Term may be extended for 10 years upon mutual written  
11 consent of City and Grantee. Either party may provide the other party written  
12 notice of its desire to extend the Term prior to the expiration of the Term and the  
13 other party shall respond to the notice within thirty (30) days after receiving  
14 notice.

15 **(C) City Charter and Ordinances to Apply.** To the extent authorized by law,  
16 this Franchise is subject to the Charter of the City of Dayton and general  
17 ordinance provisions passed pursuant thereto, including the applicable provisions  
18 of Chapter 7 and the City's Public Works Design Standards requiring  
19 underground utilities in subdivisions or partitions, and state statutes and  
20 regulations existing during the Term. Nothing in this Franchise shall be deemed  
21 to waive the requirements of the various codes, rules, regulations and ordinances  
22 of the City, including but not limited to: published construction or building permit  
23 requirements, design standards, and licensing requirements, fees to be paid that  
24 are generally applicable to other similar businesses operating within the City, or  
25 the manner of construction. Grantee's rights hereunder are subject to the police  
26 powers of the City to adopt and enforce ordinances necessary for the safety,  
27 health, good order, comfort and general welfare of the public, and as may be  
28 deemed necessary in the exercise of its police power. Grantee agrees to comply  
29 with all laws and ordinances of general applicability enacted, or hereafter  
30 enacted, by the City or any other legally constituted governmental unit having  
31 jurisdiction over the subject matter hereof.

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**SECTION 3. DEFINITIONS.**

**(A) Captions.** Throughout this Franchise, captions to sections are intended solely to facilitate reading and to reference the provisions of this Franchise. The captions shall not affect the meaning and interpretation of this Franchise.

**(B) Definitions.** For purposes of this Franchise, the following terms, phrases, and their derivations shall have the meanings given below unless the context indicates otherwise. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

**(1) "City"** means the City of Dayton, Oregon, a municipal corporation, and all of the territory within its corporate boundaries, as such may change from time to time.

**(2) "City Council"** means the Council of the City.

**(3) "City Engineer"** means the City Engineer of the City.

**(4) "City Administrator"** means the City Administrator or City Manager of the City.

**(5) "City Recorder"** means the Recorder of the City.

**(6) "Director of Finance"** means the Director of Finance of the City.

**(7) "Emergency"** means a situation involving: (a) an unscheduled outage affecting one or more customers, or (b) imminent danger to public safety. Emergency also includes situations where the failure of Grantee to act would result in (a) or (b).

**(8) "Franchise"** means this Franchise Agreement as fully executed by the City and Grantee and adopted by the City Council pursuant to **Ordinance No. 613.**

**(9) "Grantee"** means Portland General Electric Company, an Oregon corporation.

**(10) "Grantee Facility"** means any tangible component of Grantee's Electric Light and Power System, including but not limited to any poles, guy

1 wires, anchors, wire, fixtures, equipment, conduit, circuits, vaults, switch  
2 cabinets, transformers, secondary junction cabinets, antennas, communication  
3 equipment and other property necessary or convenient to supply electric light  
4 and power by Grantee within the City.

5 (11) "Grantee's Electric Light and Power System" means all real property  
6 and Grantee Facilities used by Grantee in the transmission and distribution of its  
7 services that are located inside the boundaries of the City.

8 (12). "Gross Revenues" shall be deemed to include any and all revenues  
9 derived by Grantee within the City from Grantee's Electric Light and Power  
10 System, and includes, but is not limited to, the sale of and use of electricity and  
11 electric service, and the use, rental, or lease of Grantee Facilities, after  
12 adjustment for the net write-off of uncollectible accounts. Gross Revenues do  
13 not include proceeds from the sale of bonds, mortgages or other evidence of  
14 indebtedness, securities or stocks, or sales at wholesale by one public utility to  
15 another of electrical energy when the utility purchasing such electrical energy is  
16 not the ultimate consumer. Gross Revenues also do not include revenue from  
17 joint pole use. For purposes of this Franchise, revenue from joint pole use  
18 includes any revenue collected by Grantee from other franchisees, permittees, or  
19 licensees of the City for the right to attach wires, cable or other facilities or  
20 equipment to Grantee's poles or place them in Grantee's conduits located within  
21 the City limits.

22 (13) "NESC" means the National Electrical Safety Code.

23 (14) "OPUC" means the Oregon Public Utility Commission.

24 (15) "Term" shall have the meaning described in Section 2(B).

25 (16) "Person" means any individual, sole proprietorship, partnership,  
26 association, corporation, cooperative, People's Utility District, or other form of  
27 organization authorized to do business in the State of Oregon, and includes any  
28 natural person.

29 (17) "Public ROW" shall have the meaning described in Section 1(A).

30 (18) "PUE" shall have the meaning described in Section 1(A).

1           (19) "year," "annual," or "annually" means the period consisting of a full  
2 calendar year, beginning January 1 and ending December 31, unless otherwise  
3 provided in this Franchise.

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5 **SECTION 4. CONSTRUCTION**

6 **(A) Construction.** Subject to the NESC, Grantee's Electric Light and Power  
7 System shall be constructed and maintained in such manner as not to interfere  
8 with sewers, water pipes, or any other property of the City, or with any other  
9 pipes, wires, conduits or other facilities that may have been laid in the Public  
10 ROW by or under the City's authority. Grantee shall comply with all applicable  
11 City permit requirements associated with Grantee's construction activities prior to  
12 commencing construction in the Public ROW. Grantee shall at its own expense  
13 repair, renew, remove, relocate, change or improve its Facilities from time to time  
14 as may be necessary to accomplish this purpose. Assuming there is sufficient  
15 space in the Public ROW that meets the Grantee's construction standards as  
16 provided to the OPUC and NESC requirements, all poles shall be placed  
17 between the sidewalk and the edge of the Public ROW unless another location is  
18 approved by the City Engineer. For any land use development in the City  
19 requiring Grantee's services, the City shall notify Grantee of such pending land  
20 use development and Grantee shall notify the City of Grantee's construction  
21 standards that are provided to the OPUC and NESC requirements that are  
22 applicable to the pending land use development. Subject to limitations on the  
23 City's authority, the City shall impose a condition on its land use development  
24 approval that the developer either (i) provide a sufficient location in the Public  
25 ROW located in the land use development for Grantee Facilities that meet the  
26 applicable construction standards and NESC requirements, or (ii) provide or  
27 obtain an easement for Grantee Facilities that meet the applicable construction  
28 standards and NESC requirements.

29 **(B) Acquisition.** Subsequent to the Effective Date, upon Grantee's acquisition  
30 of additional Grantee Facilities in the Public ROW, or upon any addition or  
31 annexation to the City of any area, in which Grantee retains Grantee Facilities in

1 the Public ROW of such addition or annexation, Grantee shall submit to the City  
2 a statement describing all Grantee Facilities involved, whether authorized by a  
3 franchise agreement or upon any other form of prior right, together with a map,  
4 as described in Section 5, specifying the location of all such Grantee Facilities.  
5 Such Grantee Facilities shall immediately be subject to the terms of this  
6 Franchise.

7 **(C) Emergency Repairs.** In the event Emergency repairs to Grantee Facilities  
8 are necessary, Grantee shall as soon as reasonably possible notify the City of  
9 the need for such repairs. Grantee may immediately initiate such Emergency  
10 repairs and, if permits are required by City, apply for appropriate permits the next  
11 business day or as soon as reasonably possible following discovery of the  
12 Emergency. In the event excavation is necessary in conjunction with the repairs,  
13 Section 6 shall also apply. The Grantee will provide the City with the name and  
14 24-hour telephone numbers of Grantee's emergency contacts available to  
15 respond during emergencies.

16 **(D) Reasonable Care.** All work completed by Grantee within the Public ROW  
17 shall be conducted with reasonable care and with the goal of minimizing the risk  
18 to those using the Public ROW and to minimize the risk of damage to public and  
19 third party property. All work shall be performed in accordance with all applicable  
20 laws and regulations, including but not limited to the NESC. Any work completed  
21 by Grantee within the Public ROW may be inspected by the City to determine  
22 whether it has been placed in its approved location according to Grantee's permit  
23 issued by the City. If Emergency work has been completed by Grantee in the  
24 Public ROW and the City determines such work was not completed in a City-  
25 approved location or in accordance with the City's applicable published  
26 standards, ordinances, rules or regulations, the City shall notify Grantee and  
27 provide Grantee with sixty (60) days after the Emergency has passed (or less if  
28 the public safety is threatened) to reperform the work in a City approved location,  
29 in accordance with the NESC.

30 **(E) Cooperation between Grantee and City.** In accordance with state and local  
31 law, rules and regulations, for purposes of this Franchise, including but not



1 limited to Sections 4, 8 and 10, Grantee and City shall work together during any  
2 design process affecting the Public ROW to establish suitable locations for  
3 Grantee's Facilities and to cooperate to minimize the economic impact to  
4 Grantee and the City associated with any relocation of Grantee Facilities.  
5 Grantee shall provide City with a report on or before December 31 no more than  
6 once per year which lists any parties or corporate entities using or attaching to  
7 Grantee's Facilities located in the Public ROW. To the extent such information is  
8 on record with Grantee, such report shall include the appropriate physical  
9 addresse(s), email addresse(s) and telephone number(s) of the person(s) or the  
10 appropriate departments responsible for managing the pole attachment for such  
11 attaching parties or entities. Additionally, Grantee agrees to require each joint  
12 pole user who enters into a Facilities Attachment Agreement with Grantee on or  
13 after the Effective Date of this Franchise to warrant that it has the necessary  
14 authority, including permits, licenses, franchises or any other applicable  
15 regulatory requirement, to operate its business where Grantee's Facilities are  
16 located.

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18 **SECTION 5. SUPPLYING MAPS.** Grantee shall maintain maps and data  
19 pertaining to the location of Grantee Facilities on file at its corporate offices or at  
20 an office in Oregon. After providing Grantee with twenty-four (24) hours prior  
21 notice, the City may inspect the maps (excluding Grantee proprietary information)  
22 at any time during Grantee's business hours. Upon request of the City and  
23 without charge, Grantee shall furnish current maps to the City by electronic data  
24 in read-only format showing the general location of Grantee Facilities, excluding  
25 Grantee proprietary information. Unless required by law, the City will not sell or  
26 provide Grantee prepared maps or data to third parties without written permission  
27 from Grantee. Upon request of Grantee, the City will make available to Grantee  
28 any relevant City prepared maps or data. Such maps and data will be provided  
29 at no charge to Grantee if no cost is incurred by City to produce and deliver them  
30 to Grantee.

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1    **SECTION 6. EXCAVATION.** Subject to Sections 4 and 7, and after obtaining  
2 any permits, licenses or permission required by the City, as well as complying  
3 with ORS 757.542 et seq. (Oregon Utility Notification Center) as they may be  
4 amended from time to time, Grantee may make all necessary excavations within  
5 the Public ROW for the purpose of installing, repairing, upgrading or maintaining  
6 Grantee Facilities; except that in the case of an Emergency, no permit shall be  
7 required prior to excavation. Should there be a direct conflict between any terms  
8 and conditions stated in a permit granted by the City and the terms of this  
9 Franchise, the terms of this Franchise shall control unless such term or condition  
10 is required under state law. All excavations made by Grantee in the Public ROW  
11 shall be properly safeguarded for the prevention of accidents. All of Grantee's  
12 work under this Section shall be completed in compliance with all applicable  
13 rules, regulations and ordinances of the City and State. Should a customer of  
14 Grantee be required, pursuant to Grantee's tariff on file with the OPUC, to make  
15 excavations that are located in the Public ROW, Grantee shall not be responsible  
16 or liable for any failure of such customer to comply with any applicable rules,  
17 regulations, ordinances of the City and/or with City standards. Notwithstanding  
18 the above, Grantee shall be liable for any work done by Grantee or Grantee's  
19 agents, that fails to comply with applicable published rules, regulations,  
20 ordinances or standards of the City.

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22    **SECTION 7. RESTORATION AFTER EXCAVATION.** Except as otherwise  
23 provided for in this Section, Grantee (including any Grantee subcontractors or  
24 agents) shall restore the surface of the Public ROW in the area disturbed by any  
25 excavation or by any work done by Grantee, its subcontractors or agents, to at  
26 least the same condition that it was in prior to excavation, in accordance with  
27 generally applicable published City standards; provided, however, Grantee shall  
28 not be required, at Grantee's expense, to pave a gravel street that was gravel  
29 prior to the excavation, install sidewalk panels or curbs that did not exist prior to  
30 the excavation, or construct additional improvements in the Public ROW that did  
31 not exist prior to the excavation. If Grantee fails to restore the Public ROW to at

1 least the same condition that it was in prior to the excavation, in accordance with  
2 generally applicable published City standards, the City shall give Grantee written  
3 notice and provide Grantee a reasonable period of time, not to exceed thirty (30)  
4 days, to restore the Public ROW. If the work of Grantee creates a public safety  
5 hazard as determined by the City Engineer, Grantee may be required to repair or  
6 restore the Public ROW within twenty-four (24) hours notice from the City, or  
7 within such other period of time as agreed upon between the City Engineer and  
8 Grantee, taking into consideration weather and other relevant factors. Should  
9 Grantee fail to make such repairs or restorations within the aforementioned time  
10 frames, the City may, after providing notice to Grantee and a reasonable  
11 opportunity to cure, refill or repave (as applicable) any opening made by Grantee  
12 in the Public ROW and the expense thereof shall be paid by Grantee within 30  
13 days of demand for payment from the City. The City reserves the right, after  
14 providing notice to Grantee, to remove or repair any work completed by Grantee,  
15 which, in the determination of the City Engineer is inadequate, using a qualified  
16 contractor in accordance with applicable state and federal safety laws and  
17 regulations, and Grantee's construction standards as provided to the OPUC.  
18 The cost thereof, including the cost of inspection and supervision, shall be paid  
19 by Grantee. In the event that Grantee's work is coordinated with other  
20 construction work in the Public ROW, the City Engineer, in his or her sole  
21 discretion, may excuse Grantee from restoring the surface of the Public ROW,  
22 providing that as part of the coordinated work, the Public ROW is restored to  
23 good order and condition.

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25 **SECTION 8. RELOCATION.**

26 **(A)Permanent Relocation Required by City.** This subsection covers  
27 permanent relocation of overhead Grantee Facilities that will remain overhead,  
28 and underground Grantee Facilities that will remain underground. Subject to the  
29 applicable provisions of ORS Chapter 758, the City shall have the right to require  
30 Grantee to change the location of Grantee's Electric Light and Power System  
31 located in the Public ROW when it is necessary or in the interest of the public,

1 and, unless otherwise agreed to by the City and Grantee, the expenses thereof  
2 shall be paid by Grantee. However, when the City requests a subsequent  
3 relocation of all or part of the same Grantee Facilities less than two years after  
4 the initial relocation that is necessary for a public project, and not at the request  
5 of or to accommodate a third party, the subsequent relocation shall be at the  
6 expense of the City unless the subsequent relocation is the result of an  
7 Emergency. This Section 8(A) shall not apply if either of the following is true: (1)  
8 the project or improvement necessitating the change in location will not be owned  
9 by the City, county, state or federal government; or (2) the majority of the funding  
10 for the project or improvement does not come from the City, state or federal  
11 government sources. Should Grantee fail to relocate any such Grantee Facilities  
12 within sixty (60) days after the date established by the City, or sixty (60) days  
13 after Grantee's acquisition of an easement pursuant to Section 8(B), or within  
14 another mutually agreed upon time period, the City may cause or effect such  
15 relocation, performed by a qualified contractor in accordance with applicable  
16 state and federal safety laws and regulations, and the Grantee's standards as  
17 provided to the OPUC, and the expense thereof shall be paid by Grantee no later  
18 than 30 days after a demand for payment from the City.

19 **(B)Notice and Cooperation.** The City will endeavor to provide as much notice  
20 prior to requiring Grantee to relocate Grantee Facilities as reasonably possible.  
21 The notice shall specify the date by which the existing Grantee Facilities must be  
22 relocated. Grantee shall provide a proposed schedule for completing such  
23 relocation within a reasonable time after receiving City's notice regarding  
24 relocation; however, Grantee's completion of the relocation shall occur no later  
25 than the timeframe specified in paragraph Section 8 (A) above, unless a later  
26 date is mutually-agreed upon by City and Grantee. Nothing in this provision shall  
27 prevent the City and Grantee from agreeing, either before or after notice is  
28 provided, to a mutually-acceptable schedule for relocation. Grantee and City  
29 shall diligently work together in good faith during the design process for any  
30 project necessitating the relocation of Grantee's Facilities to establish a suitable  
31 location in the Public ROW , or PUE, for Grantee's Facilities that meet the

1 Grantee's construction standards as provided to the OPUC, the NESC and  
2 generally applicable standards published by the City in order for Grantee to  
3 maintain sufficient service and to minimize the economic impact to Grantee and  
4 City associated with such relocation of Grantee's Facilities. **(C) Permanent**  
5 **Relocation - Undergrounding.** The City may require Grantee to convert any  
6 overhead Grantee Facilities to underground Grantee Facilities at the same or  
7 different locations, subject to the NESC and Grantee's engineering and safety  
8 standards. This subsection shall not apply to Grantee Facilities used for or in  
9 connection with the transmission of electric energy at nominal voltages in excess  
10 of 35,000 volts or to pedestals, cabinets or other related above-ground  
11 equipment. The expense of such a conversion shall be paid by Grantee, and  
12 Grantee may recover its costs from its customers in accordance with state law,  
13 administrative rule, or regulation. The City may designate that Grantee collect  
14 such costs from only a portion of its customers within the boundaries of the City  
15 in accordance with OAR 860-022-0046(4) as it may be amended from time to  
16 time. Nothing in this subsection prevents the City and Grantee from agreeing to  
17 a different form of cost recovery consistent with applicable statutes,  
18 administrative rules, City Code or City Charter and Grantee's tariff on file with the  
19 OPUC on a case-by-case basis.

20 **(D) Temporary Relocation at Request of City.** Subject to the applicable  
21 provisions of ORS Chapter 758 and the applicable City ordinances, rules, and  
22 regulations, the City may require Grantee to temporarily remove and relocate  
23 Grantee Facilities, by giving twenty (20) days' notice to Grantee. The cost of  
24 relocation of Grantee Facilities that is necessary for public projects shall be paid  
25 by Grantee; however, when relocation is to be temporary and both the initial and  
26 the subsequent relocation are necessary for public projects, including but not  
27 limited to those involving installation or relocation of essential government owned  
28 services, such as sewer, water and storm drainage, and not at the request of or  
29 to accommodate a third party, the initial relocation shall be at the expense of  
30 Grantee and subsequent relocations occurring less than two years after the initial  
31 relocation shall be at the expense of the City unless the relocation is

1 necessitated by a natural disaster that is not precipitated by the actions of the  
2 City or City's agent.

3 **(E) Permanent Relocation at Request of or to Accommodate Third Party.** In  
4 the event that any relocation is requested by or for a third party, Grantee shall  
5 seek reimbursement from the third party and not from the City. If relocation of  
6 Grantee Facilities is caused or required by the conditions placed by the City on  
7 approval for projects of third parties, such relocation shall in no event fall under  
8 the provisions of subsections (A), (C) or (D) of this Section 8.

9 **(F) Temporary Relocation at Request of Third Parties.** Whenever it is  
10 necessary to temporarily relocate or rearrange any Grantee Facility in order to  
11 permit the passage of any private and non-City owned building, machinery or  
12 other object, Grantee shall perform the work after receiving sixty (60) business  
13 days written notice from the persons desiring to move the building, machinery or  
14 other object. The notice shall: (1) demonstrate that the third party has acquired  
15 at its expense all necessary permits from the City; (2) detail the route of  
16 movement of the building, machinery, or other object; (3) provide that the person  
17 requesting the temporary relocation shall be responsible for Grantee's costs;  
18 (4) provide that the requestor shall indemnify and hold harmless the City and  
19 Grantee from any and all damages or claims resulting either from the moving of  
20 the building, machinery or other object or from the temporary relocation of  
21 Grantee Facilities; and (5) be accompanied by a cash deposit or other security  
22 acceptable to Grantee for the costs of relocation. Grantee in its sole discretion  
23 may waive the security obligation. The cash deposit or other security shall be in  
24 an amount reasonably calculated by Grantee to cover Grantee's costs of  
25 temporary relocation and restoration. All temporary relocations under this  
26 subsection shall comply with ORS 757.805.

27

28 **SECTION 9. PUBLIC ROW VACATION.** If all or a portion of the Public ROW  
29 used by Grantee is vacated by the City during the Term, the City shall either  
30 condition the approval of the vacation on the reservation of an easement for  
31 Grantee Facilities in their then-current location that prohibits any use of the

1 vacated property that interferes with Grantee's full enjoyment and use of its  
2 easement, or permit Grantee Facilities to remain in a PUE. If neither of these  
3 options is reasonably possible, Grantee shall, after notice from the City and  
4 without expense to the City, remove Grantee Facilities from such vacated Public  
5 ROW, restore, repair or reconstruct the Public ROW where such removal has  
6 occurred in accordance with Section 7. In the event of failure, neglect or refusal  
7 of Grantee, after City has provided Grantee with ninety (90) days prior written  
8 notice, to repair, restore, or reconstruct such Public ROW, the City may complete  
9 such work or cause it to be completed by a qualified contractor in accordance  
10 with applicable state and federal safety laws and regulations, and the cost  
11 thereof shall be paid by the Grantee within 30 (thirty) days after City's demand for  
12 payment. Upon request, the City will use reasonable efforts to cooperate with  
13 Grantee in identifying alternative locations within the Public ROW for Grantee  
14 Facilities if they are not permitted to remain in the vacated area.

15

16 **SECTION 10. CITY PUBLIC WORKS AND IMPROVEMENTS.** Nothing in this  
17 Franchise shall be construed in any way to prevent the City from excavating,  
18 grading, paving, planking, repairing, widening, altering, or completing any work  
19 that may be needed or convenient in the Public ROW. The City shall inform  
20 Grantee of any such work which may cause an obstruction or any injury to  
21 Grantee Facilities. City shall be responsible for the costs to repair any damage  
22 to Grantee Facilities caused by such City's work. Nothing in this Section relieves  
23 either party from its obligations set forth in Sections 4(E) and 8.

24

25 **SECTION 11. USE OF GRANTEE FACILITIES.** City shall maintain attachment  
26 agreements and permits to string wires on Grantee's poles or run wires in  
27 Grantee's trenches and/or available conduit for municipal purposes and to attach  
28 fire and police alarm and communication equipment to Grantee's poles, provided  
29 that such wires and equipment: a) do not unreasonably interfere with Grantee  
30 operations; b) conform to the NESC; and c) the City's excess capacity on such  
31 wires and equipment is not leased to, sold to or otherwise used by non-

1 governmental third parties. Grantee shall not charge the City for such  
2 attachments to its poles or in its conduits; however, the City shall be responsible  
3 to pay Grantee's reasonable and standard fees for any make-ready and  
4 inspections Grantee must perform in order to provide access to Grantee Facilities  
5 for City wires and equipment in accordance with the NESC. Should any of the  
6 City's attachments to Grantee Facilities violate the NESC, the City shall work with  
7 Grantee to address and correct such violations in an agreed-upon period of time.  
8 The City shall indemnify and hold Grantee harmless from loss or damage  
9 resulting from the presence of City's wires and equipment on or in Grantee  
10 Facilities. This duty to indemnify shall not extend to any negligence or willful  
11 misconduct by Grantee and shall be subject to the tort limitations of the Oregon  
12 Tort Claims Act and the Oregon Constitution. Grantee shall provide City with  
13 prompt notice of any such claim. For purposes of this Franchise, "make-ready"  
14 shall mean engineering or construction activities necessary to make a pole,  
15 conduit, or other support equipment available for a new attachment, attachment  
16 modifications, or additional facilities.

17

18 **SECTION 12. PAYMENT FOR USE OF PUBLIC ROW.**

19 **(A) Use of Public ROW.** In consideration for its use of the Public ROW in  
20 accordance with the terms of this Franchise, Grantee agrees to pay the City an  
21 amount equal to 3 1/2 percent of the Gross Revenue received by Grantee . The  
22 franchise fee shall be based on the Gross Revenue collected by Grantee during  
23 the previous calendar year, and shall be paid on a yearly basis by April 1. To the  
24 extent permissible under state law and regulation, the payment imposed by this  
25 subsection shall be considered an operating expense of Grantee and shall not be  
26 itemized or billed separately to consumers within the City. However, should the  
27 percentage of Gross Revenue permitted to be considered an operating expense  
28 of Grantee be increased by regulation of the OPUC during the Term of this  
29 Agreement, the City shall have the right to require the percentage amount paid  
30 by Grantee under this subsection (A) be increased, not to exceed the maximum



1 amount permitted to be included in Grantee's operating expenses by regulation  
2 at that time.

3 **(B) Property Tax Limitations Do Not Apply.** The payment described in this  
4 Section 12 is not subject to the property tax limitations of Article XI, Sections  
5 11(b) and 11(19) of the Oregon Constitution and is not a fee imposed on property  
6 or property owners by fact of ownership.

7 **(C) Privilege Tax.** The City shall retain the right, as permitted by Oregon law, to  
8 charge a privilege tax based on a percentage of the Gross Revenue, in addition  
9 to the payment amounts set forth in subsection (A). Should the maximum  
10 percentage amount permitted by law and applicable to Grantee be increased  
11 during the Term of this Agreement, the City shall have the right to increase any  
12 privilege tax it charges Grantee as long as the combined amounts charged under  
13 this subsection (C) and the amounts charged under subsection (A) do not exceed  
14 the maximum amount permitted by law. The City shall provide Grantee at least  
15 ninety (90) days notice prior to any privilege tax or increase in privilege tax  
16 becoming effective. Grantee shall follow state regulations regarding the inclusion  
17 of such privilege tax as an itemized charge on the electricity bills of its customers  
18 within the City.

19 **(D) Remittance of Quarterly Payment.** If applicable for the privilege tax,  
20 Grantee shall remit to the Director of Finance the payment required in this  
21 Section for each quarter ending March 31, June 30, September 30, and  
22 December 31, or fraction thereof, within forty-five (45) days after the close of  
23 such quarter, or fraction thereof. Payment must be made in immediately available  
24 federal funds. No later than the due date of such payments, Grantee shall  
25 provide the City a statement, under oath, showing the Gross Revenue for the  
26 preceding quarter.

27 **(E) Acceptance of Payment.** Acceptance by the City of any payment due  
28 under this Section shall not be a waiver by the City of any breach of this  
29 Franchise occurring prior to the acceptance, nor shall the acceptance by the City  
30 preclude the City from later establishing that a larger amount was actually due, or  
31 from collecting the balance due to the City.

1 **(F) Late Payments.** Interest on late payments shall accrue from the due date  
2 based on Grantee's cost of debt as approved by the OPUC plus 100 basis points  
3 as of the due date, and shall be computed based on the actual number of days  
4 elapsed from the due date until payment. Interest shall accrue without regard to  
5 whether the City has provided notice of delinquency.

6 **(G) No Exemption From Other Fees or Taxes.** Payment of the amounts  
7 described in this Section 12 shall not exempt Grantee from the payment of any  
8 other license fee, tax or charge on the business, occupation, property or income  
9 of Grantee that may be lawfully imposed by the City or any other taxing authority,  
10 except as may otherwise be provided in the ordinance or laws imposing such  
11 other license fee, tax or charge.

12 **(H) Direct Access and Volumetric Methodologies.** The City may, consistent  
13 with state law, direct that the payments made under this Section 12 be based on  
14 volume-based methodologies as specifically described in ORS 221.655 instead  
15 of the formula set out in subsections 12 (A) and (C). Notice must be given to  
16 Grantee in writing for the subsequent payments to be made using volume-based  
17 methodology. The volumetric calculation shall apply to payments made in one  
18 calendar year (based on January 1 to December 31 billings from the previous  
19 calendar year). The choice to use volumetric methodology must be renewed  
20 annually by the City. No notice is necessary if the City chooses to remain on the  
21 revenue-based calculation.

22 **(I) Payment Obligation Survives Franchise.** If, prior to the expiration of this  
23 Franchise, the parties do not finish negotiation of a new franchise agreement or  
24 renew this Franchise Agreement, the obligations under this Agreement shall  
25 survive expiration of this Franchise until a new franchise agreement becomes  
26 effective and supersedes this Franchise; provided both parties have entered into  
27 good faith negotiations. Either party may terminate negotiations for a new  
28 franchise agreement by providing notice of such desire to the other party. If a  
29 party terminates negotiations for a new franchise agreement, this Agreement  
30 shall terminate. In the event this Franchise is terminated before expiration,

1 Grantee shall make the remaining payments owed, if any, within ninety (90) days  
2 of the termination date.

3 (J) **Additional Franchises.** The Grantee acknowledges and agrees that the City  
4 reserves the right to grant additional franchises or other similar lawful  
5 authorization to other qualified electric and light providers.

6

7 **SECTION 13. AUDIT.**

8 (A) **Audit Notice and Record Access.** The City may audit Grantee's  
9 calculation of Gross Revenues. Within ten (10) business days after receiving a  
10 written request from the City, or such other time frame as agreed by both parties,  
11 Grantee shall furnish the City and any auditor retained by the City: (1) information  
12 sufficient to demonstrate that Grantee is in compliance with this Franchise; and  
13 (2) access to all books, records, maps and other documents maintained by  
14 Grantee with respect to Grantee Facilities that are necessary for the City to  
15 perform such audit. Grantee shall provide access to such information to City  
16 within the City, or the Portland, Oregon metropolitan area, during regular Grantee  
17 business hours.

18 (B) **Audit Payment.** If the City's audit shows that the amounts due to the City  
19 are higher than those based on the Grantee's calculation of Gross Revenue, then  
20 Grantee shall make a payment for the difference within sixty (60) days after the  
21 delivery to Grantee of the audit results. In addition to paying any underpayment,  
22 Grantee shall pay interest at the prevailing annual average yield of the State of  
23 Oregon's local government interest pool (also called the Oregon Short-Term  
24 Fund – OSTF), but not penalties, as specified in this Franchise, from the original  
25 due date. In the event the City's audit shows that Grantee's calculation of Gross  
26 Revenue resulted in an overpayment to the City by five percent (5%) or more in  
27 any one year, the Grantee may deduct such overpayment from the next quarterly  
28 franchise fee payment. If the City's audit shows that the amounts due to the City  
29 based on the Grantee's calculation of Gross Revenue were underpaid by five  
30 percent (5%) or more in the audit period, Grantee shall reimburse the City for its  
31 reasonable documented costs of the audit

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**SECTION 14. TERMINATION AND REMEDIES.**

**(A) By City for Cause.** If Grantee ceases to maintain Grantee Facilities in accordance with the maintenance commitments outlined in the Service Quality Measures Review filed with the OPUC, and this causes an increase in the risk to the public of personal injury or property damage, the City shall notify Grantee and Grantee shall have thirty (30) days after the date of the notice to eliminate such risk or, if such risk can not be eliminated within thirty (30) days, such mutually-agreed upon time period as is required to eliminate such risk and Grantee shall bear all costs related to remedying the risk. If Grantee does not eliminate the risk in accordance with the preceding sentence, the City may then terminate this Franchise by providing Grantee written notice of termination.

**(B) By City if City Will Provide Service.** The City may terminate this Franchise upon one year's written notice to Grantee in the event that the City decides to engage in public ownership of the electric facilities located in the Public ROW and the public distribution of electric energy to customers throughout the City in accordance with ORS 758.470.

**(C) City Reserves Right to Terminate.** In addition to any other rights provided for in this Franchise, the City reserves the right, subject to subsections 14 (E) and (F), to terminate this Franchise in the event that:

- (1) The Grantee materially violates any material provision of this Franchise;
- (2) The Grantee is found by a court of competent jurisdiction to have practiced any material fraud or deceit upon the City;
- (3) There is a final determination that Grantee has failed, refused, neglected or is otherwise unable to obtain or maintain Grantee's service territory designation required by any federal or state regulatory body regarding Grantee's operation of Grantee's Electric Light and Power System; or
- (4) Grantee becomes unable or unwilling to pay its debts, or is adjudged bankrupt.

1 **(D) Material Provisions.** For purposes of this Section 14, the following are  
2 material provisions of this Franchise, allowing the City to exercise its rights under  
3 this Section 14 or as set forth elsewhere in this Franchise:

4 (1) The invalidation, failure to pay or any suspension of Grantee's  
5 payments of franchise fees or privilege taxes to the City for use of the Public  
6 ROW under this Franchise;

7 (2) Any failure by Grantee to submit timely reports as may be requested  
8 by the City, regarding the calculation of its franchise fees or privilege taxes paid  
9 or to be paid to the City;

10 (3) Any failure by Grantee to maintain the liability insurance or self  
11 insurance required under this Franchise;

12 (4) Any failure by Grantee to provide copies of requested information as  
13 provided under Sections 4, 5, and 13 above; and

14 (5) Any failure by Grantee to otherwise substantially comply with the  
15 requirements of Section 4 through Section 20 of this Franchise, unless otherwise  
16 agreed.

17 **(E) Notice and Opportunity to Cure.** The City shall provide Grantee thirty (30)  
18 days prior written notice of its intent to exercise its rights under this Section 14,  
19 stating the reasons for such action. If Grantee cures the basis for termination to  
20 City's reasonable satisfaction or if Grantee initiates efforts satisfactory to the City  
21 to remedy the basis for termination and the efforts continue in good faith within  
22 the thirty (30) day notice period, the City shall not exercise its remedy rights. If  
23 Grantee fails to cure the basis for termination or if Grantee does not undertake  
24 and/or maintain efforts satisfactory to the City to remedy the basis for  
25 termination within the thirty (30) day notice period, then the City Council may  
26 impose any or all of the remedies available under this Section 14.

27 **(F) Remedies.** In determining which remedy or remedies are appropriate, the  
28 City shall consider the nature of the violation, the person or persons burdened by  
29 the violation, the nature of the remedy required in order to prevent further such  
30 violations, and any other matters the City deems appropriate.

1 **(G) Financial Penalty.** In addition to any rights set out elsewhere in this  
2 Franchise, as well as its rights under the City Code or other law, the City  
3 reserves the right at its sole option to impose a financial penalty of up to \$500.00  
4 per day per material violation of a material provision of this Franchise, as long as  
5 the Grantee has been granted a 30 day opportunity, or other mutually agreed  
6 upon cure period, to cure and has not cured or made substantial progress  
7 towards curing within such cure period.

8

9 **SECTION 15. ASSIGNMENT OF FRANCHISE.** Grantee may not sell, assign,  
10 transfer, or convey this Franchise to a third party without the City Council giving  
11 its consent in a duly passed ordinance or resolution. Upon obtaining such  
12 consent, this Franchise shall inure to and bind such third party. Grantee shall not  
13 sell or assign this Franchise to an entity that is not authorized by the OPUC to  
14 provide electric service to retail consumers in the City or is not otherwise  
15 authorized to provide electric service to retail consumers under Oregon law.  
16 Prior to any proposed transfer, Grantee shall be in full compliance with this  
17 Franchise and the proposed transferee shall agree in writing to be bound by this  
18 Franchise. In the event Grantee is purchased by or merged into another entity  
19 and Grantee survives such purchase or merger as a public utility, Grantee shall  
20 provide notice to the City of such purchase or merger, but shall have no  
21 obligation under this Franchise to obtain the consent of the City Council for such  
22 purchase or merger.

23

24 **SECTION 16. REMOVAL OF FACILITIES.** If this Franchise is terminated or  
25 expires on its own terms and is not renewed or replaced by a new franchise  
26 agreement or similar authorization, the City may determine whether Grantee  
27 Facilities are to be removed, at Grantee's expense, from the Public ROW or  
28 remain in place. The City shall provide written notice of any requirement to  
29 remove Grantee Facilities and shall provide Grantee sixty (60) days to comment  
30 on such requirement to remove Grantee Facilities. Following consideration of

1 any such comments, the City Council may issue an order requiring removal of  
2 Grantee Facilities no sooner than nine (9) months after such order is declared.

3

4 **SECTION 17. NONDISCRIMINATION.** Grantee shall provide service to electric  
5 light and power consumers in the City without undue discrimination or undue  
6 preference or disadvantage, in accordance with Oregon law.

7

8 **SECTION 18. INDEMNIFICATION.** To the extent permitted by state law, each  
9 party hereby agrees and covenants to indemnify, defend, and hold the other  
10 party, its elected and appointed officials, officers, directors, agents, and  
11 employees harmless from any claims for injury, damage, loss, liability, cost, or  
12 expense, including court and appeal costs and attorney fees or expenses, arising  
13 from any negligent act or omission or willful misconduct of the indemnifying  
14 party. The duty to indemnify shall not extend to any negligence or willful  
15 misconduct by the indemnified party, its elected and appointed officials, officers,  
16 directors, agents, and employees. The indemnified party shall provide the  
17 indemnifying party with prompt notice of any such claim, which the indemnifying  
18 party shall defend at the indemnifying party's sole cost and expense. The  
19 indemnified party and its agents, employees, and contractors shall consult and  
20 cooperate with the indemnifying party while the indemnifying party is conducting  
21 its defense. The indemnified party may, at its own cost, defend or participate in  
22 the defense of a claim.

23

24 **SECTION 19. INSURANCE.** Grantee shall obtain and maintain in full force and  
25 effect, for the entire Term, the following insurance, covering risks associated with  
26 Grantee's ownership and use of Grantee Facilities and the Public ROW and  
27 consistent with Grantee's risk management practices:

28 **(A)** Commercial General Liability insurance covering all operations, subject to  
29 policy terms, conditions and exclusions, by or on behalf of Grantee for Bodily  
30 Injury and Property Damage, including Completed Operations and Contractors

1 Liability coverage, in an amount not less than Two Million Dollars  
2 (\$2,000,000.00) per occurrence and in the aggregate.

3 **(B) Business Automobile Liability insurance** to cover any vehicles used in  
4 connection with its activities under this Franchise, with a combined single limit  
5 not less than One Million Dollars (\$1,000,000.00) per accident.

6 **(C) Workers' Compensation coverage** as required by law and Employer's Liability  
7 Insurance with limits of One Million Dollars (\$1,000,000).

8 **(D) The insurance shall be without prejudice to coverage otherwise existing**  
9 **and, with the exception of Workers' Compensation and Employers Liability, shall**  
10 **name as additional insureds the City, its elected and appointed officials, its**  
11 **officers, agents, and employees; provided, however, that such additional insured**  
12 **status shall only extend to the extent of Grantee's contractually assumed**  
13 **indemnity obligation as outlined under Section 18 of this Franchise Agreement.**  
14 **Notwithstanding the naming of additional insureds, the insurance shall protect**  
15 **each insured in the same manner as though a separate policy had been issued**  
16 **to each, but nothing in this subsection shall operate to increase the insurer's**  
17 **liability as set forth elsewhere in the policy beyond the amount or amounts for**  
18 **which the insurer would have been liable if only one person or interest had been**  
19 **named as insured. The coverage must apply as to claims between insureds on**  
20 **the policy. The insurance shall provide that the insurance shall not be canceled**  
21 **without thirty (30) days' prior written notice first being given to the City. If the**  
22 **insurance is canceled or materially altered within the term of this Franchise,**  
23 **Grantee shall provide a replacement policy with the same terms as required by**  
24 **this Franchise. Grantee shall maintain continuous uninterrupted coverage, in the**  
25 **terms and amounts required, upon and after the effective date of this Franchise.**  
26 **Grantee shall provide the City with a certificate of insurance evidencing such**  
27 **coverage as a condition of this Franchise and shall provide updated certificates**  
28 **upon request.**

29 **(D) In Lieu of Insurance.** In lieu of the insurance policies required by  
30 this Section 19, Grantee shall have the right to self-insure any and all of  
31 the coverage outlined hereunder. If Grantee elects to self-insure, it shall



1 do so in an amount at least equal to the coverage requirements of this  
2 Section 19 in a form acceptable to the City and such coverage shall have  
3 the same protections for City and requirements of Grantee as provided in  
4 Section 19 above. Grantee shall provide proof of self-insurance to the City  
5 before this Franchise takes effect and thereafter upon request by the City.  
6

7 **SECTION 21. LIMITATION ON PRIVILEGES.** All rights and authority  
8 granted to Grantee by the City under this Franchise are conditioned on the  
9 understanding and agreement that the privileges in the Public ROW shall  
10 not be an enhancement of Grantee's properties or an asset or item of  
11 ownership of Grantee.  
12

13 **SECTION 22. FRANCHISE NOT EXCLUSIVE.** This Franchise is not  
14 exclusive and shall not be construed to limit the City from granting rights,  
15 privileges and authority to other persons similar to or different from those  
16 set forth in this Franchise.  
17

18 **SECTION 23. REMEDIES AND PENALTIES NOT EXCLUSIVE.** All  
19 remedies and penalties under this Franchise, including termination, are  
20 cumulative and not exclusive, and the recovery or enforcement by one  
21 available remedy or imposition of a penalty is not a bar to recovery or  
22 enforcement by any other remedy or imposition of any other penalty. The  
23 City reserves the right to enforce the provisions of any City ordinance or  
24 resolution and to avail itself to any and all remedies available at law or in  
25 equity. Failure to enforce any term, condition or obligation of this  
26 Franchise shall not be construed as a waiver of a breach of any term,  
27 condition or obligation of this Franchise. A specific waiver of a particular  
28 breach of any term, condition or obligation of this Franchise shall not be a  
29 waiver of any other, subsequent or future breach of the same or any other  
30 term, condition or obligation of this Franchise.  
31

1 **SECTION 24. SEVERABILITY CLAUSE.** If any section, subsection,  
2 sentence, clause, phrase, or other portion of this Franchise is, for any  
3 reason, held to be invalid or unconstitutional by a court of competent  
4 jurisdiction, all portions of this Franchise that are not held to be invalid or  
5 unconstitutional shall remain in effect until this Franchise is terminated or  
6 expired. After any declaration of invalidity or unconstitutionality of a  
7 portion of this Franchise, either party may demand that the other party  
8 meet to discuss amending the terms of this Franchise to conform to the  
9 original intent of the parties. If the parties are unable to agree on a  
10 revised franchise agreement within ninety (90) days after a portion of this  
11 Franchise is found to be invalid or unconstitutional, either party may  
12 terminate this Franchise by delivering one hundred and eighty (180) days  
13 notice to the other party.

14  
15 **SECTION 26. NOTICE.** Any notice provided for under this Franchise  
16 shall be sufficient if in writing and (1) delivered personally to the following  
17 addressee, (2) deposited in the United States mail, postage prepaid,  
18 certified mail, return receipt requested, (3) sent by overnight or  
19 commercial air courier (such as Federal Express or UPS), or (4) sent by  
20 facsimile transmission with verification of receipt, addressed as follows, or  
21 to such other address as the receiving party hereafter shall specify in  
22 writing:

23 **If to the City: City Manager – Dayton**

24 **416 Ferry Street**  
25 **Dayton, Oregon 97114**  
26 **FAX: (503) 864-2956**

27 **With a copy to: City Attorney – Beery, Elsner & Hammond**

28 **1750 SW Harbor Way, Ste 380**  
29 **Portland, Oregon 97201**

30 **If to the Grantee: Government Affairs – Portland General Electric**  
31 **Company**

1           **121 SW Salmon St., 1WTC0301**

2           **Portland, Oregon 97204**

3           **FAX: (503) 464-2354**

4   **With a copy to: Portland General Electric Company**

5           **Attn: General Counsel**

6           **One World Trade Center, 17<sup>th</sup> Floor**

7           **121 SW Salmon Street**

8           **Portland, Oregon 97204**

9           **FAX: (503) 464-2200**

10 Any such notice, communication or delivery shall be deemed effective and  
11 delivered upon the earliest to occur of actual delivery, three (3) business  
12 days after depositing in the United States mail, one (1) business day after  
13 shipment by commercial air courier or the same day as confirmed  
14 facsimile transmission (or the first business day thereafter if faxed on a  
15 Saturday, Sunday or legal holiday).

16

17   **Section 27. Amendment.** At any time during the term of this Franchise, the  
18 City, through its City Council, or Grantee may propose amendments to this  
19 Franchise by giving thirty (30) days written notice to the other party of the  
20 proposed amendment(s) desired, and both parties thereafter, through their  
21 designated representatives, will, within a reasonable time, negotiate in good faith  
22 in an effort to agree upon mutually satisfactory amendment(s). No amendment  
23 or amendments to this Franchise shall be effective until mutually agreed upon by  
24 the City and Grantee and formally adopted as an ordinance amendment, which is  
25 accepted in writing by Grantee.

26

27

28   **Section 30. Successors and Assigns; Subcontractors.** The provisions of this  
29 Franchise shall be binding upon and shall inure to the benefit of the parties  
30 hereto, and their respective successors and, assigns.

31

32

1            IN WITNESS WHEREOF, the parties, through their duly authorized  
2 representatives, have executed this Franchise as of the dates indicated  
3 below.

4

PORTLAND GENERAL ELECTRIC            CITY OF DAYTON  
COMPANY (u)

By: Bill Nicholson  
Name: Bill Nicholson  
Title: Sr. VP Cust. Svc. Transm.  
Date: 5/2/13 + Dist.

By: Scott Pingel  
Name: Scott Pingel  
Title: City Manager  
Date: 4-2-13

5