

**RESOLUTION NO. 2208**

**A RESOLUTION OF THE CITY OF NORTH PLAINS, OREGON, AUTHORIZING A 20-YEAR, NON-EXCLUSIVE FRANCHISE TO PORTLAND GENERAL ELECTRIC COMPANY FOR PROVISION OF ELECTRICITY AND ELECTRIC SERVICES**

**WHEREAS**, Portland General Electric Company (“PGE”) has been providing electricity and electric services within the City of North Plains (“City”); and

**WHEREAS**, PGE is duly authorized by the Oregon Public Utility Commission (“OPUC”) to supply electricity and electric services within the City; and

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

**WHEREAS**, the City and PGE both desire PGE to continue to be able to provide electrical service within the City.

**NOW, THEREFORE, THE CITY OF NORTH PLAINS RESOLVES AS FOLLOWS:**

**Section 1.** The City Council authorizes a non-exclusive, 20-year franchise to Portland General Electric Company, marked Exhibit A and attached hereto and by this reference incorporated herein.

**Section 2.** This Resolution is and shall be effective from and after its enactment by the City Council.

**INTRODUCED AND ADOPTED** this 5th day of December, 2022.

**CITY OF NORTH PLAINS, OREGON**



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Teri Lenahan, Mayor

ATTEST:



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Lori Lesmeister, City Recorder

## FRANCHISE AGREEMENT

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

**WHEREAS**, Grantee has been providing electricity and electric services within the City; and

**WHEREAS**, Grantee is duly authorized by the Oregon Public Utility Commission (“OPUC”) to supply electricity and electric services 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**, in accordance with that authority, the City has enacted Chapter 50 of the North Plains Municipal Code (“NPMC”).

**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) 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 system within the City as it now exists or may be extended in the future, including related Grantee Facilities (as defined below). This Franchise includes the privilege to, consistent with all applicable federal, state and local laws and regulations, install, repair, maintain, upgrade and operate Grantee Facilities upon, over, along, and across the surface of and the space above and below the streets, alleys, roads, highways, sidewalks, bridges, City park property and other public ways (collectively, “Public ROW”), as well as public utility easements on third party property on which a preliminary subdivision plat has been approved by the City, and which will be managed

by the City thereafter (“PUEs”), for the provision of public utility services within the City. Nothing in this Franchise limits the City from granting others the right to carry on activities similar to, or different from, the ones described in this Franchise.

- (B) All Grantee Facilities in possession of Grantee currently or during the Term (as defined in Section 2(A)) that are located within the Public ROW are covered by this Franchise and are deemed lawfully placed in their current locations. The City may require relocation of Grantee Facilities as further specified in Section 8.

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

- (A) **Effective Date.** The effective date of this Franchise shall be thirty (30) days after it has been signed by Grantee and the City Council passes an ordinance adopting this Franchise.
- (B) **Duration of Franchise.** The term of this Franchise, and all rights and obligations pertaining thereto, shall be ten (10) years from the effective date of the Franchise (“Term”) unless renegotiated or terminated as provided herein. The Term shall automatically extend for two (2) five (5) year periods, unless either party provides at least 180 days prior written notice to the other party that it does not desire to extend the Term. If such notice is provided by either party, the Term shall expire at the end of the then current Term.
- (C) **Charter and General Ordinances to Apply.** To the extent authorized by law, this Franchise is subject to the Charter of the City of North Plains and general ordinance provisions passed pursuant thereto, including the applicable provisions of NPMC Chapter 50 and 155, and in particular NPMC Section 155.627(6) which requires all utility facilities, including electric power facilities, be placed underground, except for surface-mounted transformers (but for which the City retains approval authority over the location of all surface-mounted transformers), surface-mounted connection boxes and meter cabinets, temporary utility service facilities during construction, high capacity electric and communication feeder lines, and utility transmission lines operating at 50,000 volts or more. Nothing in this Franchise shall be deemed to waive the

requirements of the various codes and ordinances of the City regarding permits, fees to be paid that are generally applicable to other similar businesses operating within the City, or the manner of construction.

### **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 North Plains, 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 Manager" means the 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) "Franchise" means this Franchise Agreement as fully executed by the City and Grantee.
  - (8) "Grantee" means Portland General Electric Company, an Oregon corporation.
  - (9) "Grantee Facility" means any tangible component of Grantee's Electric System, including but not limited to any poles, guy wires, anchors, wire, fixtures, equipment, conduit, circuits, vaults, switch

cabinets, transformers, secondary junction cabinets, antennas, communication equipment and other property necessary or convenient to supply electric light and power by Grantee within the City. "Grantee Facility" includes "Equipment" as defined by NPMC Section 50.21

- (10) "Grantee's Electric System" means all real property and Grantee Facilities used by Grantee in the provision of its services that are approved and regulated by the Oregon Public Utilities Commission, that are located inside the boundaries of the City and includes all Grantee's "Equipment" as defined by NPMC Section 50.21.
- (11) "Gross Revenues" means any and all revenues derived by Grantee within the City from Grantee's Electric System, and includes, but is not limited to, the sale of and use of electricity and electric services, and the use, rental, or lease of Grantee Facilities, after adjustment for the net write-off of uncollectible accounts. Gross Revenues do not include proceeds from the sale of bonds, mortgages or other evidence of indebtedness, securities or stocks, or sales at wholesale by one public utility to another of electrical energy when the utility purchasing such electrical energy is not the ultimate consumer. Gross Revenues also do not include revenue from joint pole use. For purposes of this Franchise, revenue from joint pole use includes any revenue collected by Grantee from other franchisees, permittees, or licensees of the City for the right to attach wires, cable or other facilities or equipment to Grantee's poles or place them in Grantee's conduits.
- (12) "NESC" means the National Electrical Safety Code.
- (13) "NEC" means the National Electrical Code.
- (14) "OPUC" means the Oregon Public Utility Commission.
- (15) "Term" shall have the meaning described in Section 2.
- (16) "Person" means any individual, sole proprietorship, partnership, association, corporation, cooperative, People's Utility District, or other form of organization authorized to do business in the State of

- Oregon, and includes any natural person.
- (17) "Public ROW" shall have the meaning described in Section 1 (A) and includes all "Rights-of-Way" as defined by NPMC Section 50.21.
  - (18) "PUE" shall have the meaning described in Section 1 (A).
  - (19) "Year," "annual," or "annually" means the period consisting of a full calendar year, beginning January 1, and ending December 31, unless otherwise provided in this Franchise.

#### **SECTION 4. CONSTRUCTION.**

- (A) **Construction.** Subject to the NESC, Grantee's Electric System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of the City, or with any other pipes, wires, conduits, communications equipment or other facilities that may have been laid in the Public ROW by or under the City's authority. Grantee and the City shall work together during any design process affecting the Public ROW to establish suitable locations for Grantee's Facilities. Assuming there is sufficient space in the Public ROW, all poles shall be placed between the sidewalk and the edge of the Public ROW unless another location is approved by the City Engineer. If there is not sufficient space in the Public ROW, the City agrees to use commercially reasonable efforts to provide or obtain a suitable alternative location, , which includes a minimum or maximum square footage set by Grantee and the required easements from private property owners to accommodate Grantee's Facilities in order to maintain sufficient service. The alternative location may include a private easement that is required by the City's approval of a third party land use application. Unless the City otherwise expressly agrees in writing, the City shall bear no costs or expenses in securing any such alternative locations for Grantee. Except as otherwise agreed to by parties, Grantee may complete work in the Public ROW between the hours of 8:00am-5:00pm Monday through Friday.
- (B) **Annexation.** Subsequent to the effective date of this Franchise, upon any annexation to the City of any area in which Grantee retains Grantee

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

- (C) **Emergency Repairs.** In the event emergency repairs to Grantee Facilities are necessary, Grantee shall as soon as reasonably possible notify the City of the need for such repairs. Grantee may immediately initiate such emergency repairs and apply for appropriate permits the next business day or as soon as reasonably possible following discovery of the emergency.
- (D) **Reasonable Care.** All work completed by Grantee within the Public ROW shall be conducted with reasonable care and with the goal of minimizing the risk to those using the Public ROW and to minimize the risk of damage to public and third-party property. All work shall be performed in accordance with all applicable laws and regulations, including but not limited to the NESC. Any work completed by Grantee within the Public ROW may be inspected by the City to determine whether it has been placed in its approved location according to Grantee's permit issued by the City. If emergency work has been completed by Grantee in the Public ROW and the City determines such work was not completed in a City approved location, the City shall notify Grantee and provide Grantee with sixty (60) days after the emergency has passed to reperform the work in a City approved location, subject to the NESC.

**SECTION 5. SUPPLYING MAPS.**

- (A) Grantee shall maintain maps and data pertaining to the location of Grantee Facilities on file at its corporate offices or at an office in Oregon. Upon request of the City and without charge, Grantee shall furnish current maps to the City by electronic data in read-only format showing the general location of Grantee Facilities, excluding Grantee proprietary information. Unless required by law, the City will not sell or provide Grantee prepared maps or data to third parties without written permission from Grantee. Upon request

of Grantee, the City will make available to Grantee any existing and relevant City prepared maps or data in the City's possession at no charge to Grantee.

**SECTION 6. EXCAVATION AND RESTORATION AFTER EXCAVATION.**

- (A) **Excavation.** Subject to Sections 4 and 7, and after obtaining any permits required by the City, Grantee may make all necessary excavations within the Public ROW for the purpose of installing, repairing, upgrading or maintaining Grantee Facilities, except that in the case of an emergency, no permit shall be required prior to excavation. Notwithstanding any terms or conditions stated in a permit granted by the City, the terms of this Franchise shall control. All excavations made by Grantee in the Public ROW shall be properly safeguarded for the prevention of accidents. All of Grantee's work under this Section 6 shall be completed in compliance with all applicable rules, regulations and ordinances of the City. Should a customer of Grantee be required, pursuant to Grantee's tariff on file with the OPUC, to make excavations that are located in the Public ROW, the City agrees that Grantee shall not be responsible or liable for any failure by such customer to comply with any applicable rules, regulations, ordinances of the City and/or with City standards.
- (B) **Restoration after Excavation.** Except as otherwise provided for in this Section, Grantee shall restore the surface of the Public ROW disturbed by any excavation by Grantee to at least the same condition that it was in prior to excavation. If Grantee excavates the surface of the Public ROW, Grantee shall be responsible for restoration of the Public ROW and the area affected by the excavation. If Grantee fails to restore the Public ROW to at least the same condition that it was in prior to the excavation, the City shall give Grantee written notice and provide Grantee a reasonable period of time, not to exceed thirty (30) days, to restore the Public ROW. If the work of Grantee creates a public safety hazard as determined by the City Engineer, Grantee may be required to repair or restore the Public ROW within twenty-four (24) hours notice from the City, or such time as agreed between the City Engineer and Grantee, taking into consideration weather and other relevant factors. Should Grantee fail to make such repairs or restorations



within the aforementioned time frames, the City may, after providing notice to Grantee and a reasonable opportunity to cure, refill or repave any opening made by Grantee in the Public ROW and the expense thereof shall be paid by Grantee. The City reserves the right, after providing notice to Grantee, to remove or repair any work completed by Grantee which, in the determination of the City Engineer is inadequate, using a qualified contractor in accordance with applicable state and federal safety laws and regulations. The cost thereof, including the cost of inspection and supervision, shall be paid by Grantee. In the event that Grantee's work is coordinated with other construction work in the Public ROW, the City Engineer may excuse Grantee from restoring the surface of the Public ROW; provided that as part of the coordinated work, the Public ROW is restored to good order and condition.

**SECTION 7. VEGETATION MANAGEMENT.** The City agrees not to limit Grantee or its contractor from pruning and/or removing all trees and vegetation which present the risk of growing-in, overhanging, or falling-into Grantee's overhead electrical system, whether such trees or vegetation originate within or outside the Public ROW, to prevent the branches or limbs or other part of such trees or vegetation from interfering with Grantee Facilities. Such pruning and removal shall comply with the American National Standard for Tree Care Operation (ANSI A300) and be conducted under the direction of an arborist certified with the International Society of Arboriculture. A growth inhibitor treatment may be used within the Public ROW for trees and vegetation species that are fast-growing and problematic. Nothing contained in this Section shall prevent Grantee, when necessary and with the approval of the owners of the property on which they may be located, from cutting down and removing any trees which overhang or pose a risk of falling-in or overstriking the Grantee's overhead electrical system, regardless of whether the vegetation is located within the Public ROW. Grantee's vegetation management practices shall comply with all vegetation management requirements established by the OPUC.

**SECTION 8. RELOCATION.**

- (A) **Permanent Relocation Required by City** – This subsection covers relocation of overhead Grantee Facilities that will remain overhead, and

underground Grantee Facilities that will remain underground. The City shall have the right to require Grantee to change the location of Grantee's Electric System when necessary or convenient in the interest of the public as determined by the City and, unless otherwise agreed to in writing, the expenses thereof shall be paid by Grantee. The City shall provide Grantee a reasonable amount of time, based on Grantee's reasonable determination, to adequately design such relocation. The City agrees to provide a suitable location in the Public ROW for Grantee Facilities that includes a minimum or maximum square footage set by Grantee. If sufficient space is not available in the Public ROW for Grantee Facilities, the City agrees to obtain sufficient easements from private property owners to accommodate Grantee Facilities in order to maintain service and permit upgrades of Grantee Facilities. Unless the City otherwise expressly agrees in writing, the City shall bear no costs or expenses in securing any such easements. Should Grantee fail to remove or relocate any such Grantee Facilities within ninety (90) days after the date established by the City, which, except in the event of public emergency, shall not occur sooner than ninety (90) days after the City provides written notice to remove/relocate to Grantee or such longer time in the event the design of such relocation will take longer to complete based on Grantee's reasonable determination, the City may cause or effect such removal or relocation, performed by a qualified contractor in accordance with applicable state and federal safety laws and regulations, including the NESC and the expense thereof shall be paid by Grantee.

- (B) **Notice.** The City will endeavor to provide as much notice prior to requiring Grantee to relocate Grantee Facilities as possible. The notice shall specify the date by which the existing Grantee Facilities must be removed or relocated. Nothing in this provision shall prevent the City and Grantee from agreeing, either before or after notice is provided, to a schedule for relocation.
- (C) **Permanent Relocation - Undergrounding.** As permitted by, and in accordance with City ordinance and any applicable law, administrative rule, or regulation, as discussed above, the City may require Grantee to convert any overhead

Grantee Facilities to underground Grantee Facilities at the same or different locations, subject to Grantee's engineering and safety standards. This section shall not apply to Grantee Facilities used for or in connection with the transmission of electric energy at nominal voltages in excess of 35,000 volts or to pedestals, cabinets or other above ground equipment. Any such relocation shall be consistent with applicable long-term development plans or projects of the City, or as approved by the City. The expense of such a conversion shall be paid by Grantee; provided, however, City shall remain responsible for certain ancillary costs as set forth in Grantee's tariff approved by the OPUC (e.g., expenses associated with the pathway, conduit, vaults, etc.). Additionally, nothing in this section limits Grantee's ability to recover its costs from its customers in accordance with its tariff approved by the OPUC, state law, administrative rule, or regulation. The City agrees to provide a suitable location in the Public ROW that includes a minimum or maximum square footage set by Grantee and if sufficient space is not available in the Public ROW, then the City will obtain sufficient easements from private propertyowners to accommodate Grantee Facilities in order to maintain service and permit upgrades of Grantee Facilities. Unless the City otherwise expressly agrees in writing, the City shall bear no costs or expenses in securing any such easements. Nothing in this subsection prevents the City and Grantee from separately agreeing to a different form of cost recovery consistent with applicable statutes, administrative rules, or regulations on a case-by-case basis, however any such separate agreement must be in writing and signed by both parties.

- (D) Temporary Relocation at Request of Third Parties.** Whenever it is necessary to temporarily relocate or rearrange any Grantee Facility in order to permit the passage of any building, machinery or other object, Grantee shall perform the work after receiving sixty (60) business days written notice from the persons desiring to move the building, machinery or other object. The notice shall: (1) demonstrate that the third party has acquired at its expense all necessary permits; (2) detail the route of movement of the building, machinery, or other object; (3) provide that the

person requesting the temporary relocation shall be responsible for Grantee's costs; (4) provide that the requestor shall indemnify and hold harmless the City and Grantee from any and all damages or claims resulting either from the moving of the building, machinery or other objector from the temporary relocation of Grantee Facilities; and (5) be accompanied by a cash deposit or other security acceptable to Grantee for the costs of relocation. Grantee in its sole discretion may waive the security obligation. The cash deposit or other security shall be in an amount reasonably calculated by Grantee to cover Grantee's costs of temporary relocation and restoration.

All temporary relocations under this subsection shall comply with ORS 757.805.

- (E) Temporary Relocation at Request of City.** The City may require Grantee to temporarily remove and relocate Grantee Facilities by giving sixty (60) days' notice to Grantee. Prior to such relocation, the City agrees to provide a suitable location that includes a minimum or maximum square footage set by Grantee in the Public ROW for such relocated Grantee Facilities sufficient to maintain service and permit upgrades to such Grantee Facilities. The City will obtain easements from private property owners if sufficient square footage is not available in the Public ROW. The cost of removal or relocation of Grantee Facilities that is necessary or convenient for public projects shall be paid by Grantee; however, when relocation is to be temporary and both the initial and the subsequent relocation are necessary or convenient for public projects and not at the request of or to accommodate a third party, the initial relocation shall be at the expense of Grantee and subsequent relocations occurring less than two (2) years after the initial relocation shall be at the expense of the City.
- (F) Permanent Relocation at Request of Third Party.** In the event that any relocation is requested by or is to accommodate a third party, Grantee shall seek reimbursement from the third party and not from the City. Such relocation shall be consistent with an applicable long-term development plan or projection of the City or approved by the City. The City and Grantee agree to cooperate to minimize the economic impact of such relocation on each party. The City shall not take a legal position that prevents or frustrates

Grantee in seeking reimbursement from the third party.

**SECTION 9. PUBLIC ROW VACATION.** If all or a portion of the Public ROW used by Grantee is vacated by the City during the Term, and if reasonably possible, the City shall either condition the approval of the vacation on the reservation of an easement for Grantee Facilities in their then-current location that prohibits any use of the vacated property that interferes with Grantee's full enjoyment and use of its easement, or permit Grantee Facilities to remain in a PUE. If neither of these options is reasonably possible, Grantee shall, after notice from the City and without expense to the City, remove Grantee Facilities from such vacated Public ROW, restore, repair or reconstruct the Public ROW where such removal has occurred, and place the Public ROW in good order and condition as may be required by the City. In the event of failure, neglect or refusal of Grantee, after providing Grantee with ninety (90) days prior written notice, to repair, restore, or reconstruct such Public ROW, the City may complete such work or cause it to be completed by a qualified contractor in accordance with applicable state and federal safety laws and regulations, and the cost thereof shall be borne by the Grantee. Upon request, the City will cooperate with Grantee to identify alternative locations within the Public ROW for Grantee Facilities if they are not permitted to remain in the vacated area or provide reasonable assistance to Grantee in obtaining easements to maintain Grantee Facilities in the same location.

**SECTION 10. CITY PUBLIC WORKS AND IMPROVEMENTS.** Nothing in this Franchise shall be construed in any way to prevent the City from excavating, grading, paving, planking, repairing, widening, altering, or completing any work that may be needed or convenient in the Public ROW that is consistent with the NESC. The City shall coordinate any such work with Grantee to avoid, to the extent reasonably foreseeable, any obstruction, injury or restrictions on the use by Grantee of any Grantee Facilities, and the City shall be responsible for the costs to repair any damage to Grantee Facilities arising out of such work. Nothing in this Section relieves Grantee from its obligations stated in Section 8.

**SECTION 11. USE OF GRANTEE FACILITIES.** City shall maintain attachment agreements and permits to string wires on Grantee's poles or run wires in Grantee's trenches and/or conduit for municipal purposes and to attach fire and police alarm and communication equipment to Grantee's poles; provided that such wires and equipment:

a)do not unreasonably interfere with Grantee operations; b) conform to the NESC; and c) the City’s excess capacity on such wires and equipment is not leased to, sold to or otherwise used by non-governmental third parties. Grantee shall not charge the City for such attachments to its poles or in its conduits; however, the City shall be responsible for paying for any make-ready and inspections Grantee must perform in order to provide access to Grantee Facilities for City wires and equipment in accordance with the NESC. Should any of the City’s attachments to Grantee Facilities violate the NESC, the City shall work with Grantee to address and correct such violations in an agreed-upon period of time. The City shall indemnify and hold Grantee harmless from loss or damage resulting from the presence of City’s wires and equipment on or in Grantee Facilities. For purposes of this Franchise, “make-ready” shall mean engineering or construction activities necessary to make a pole, conduit, or other support equipment available for a new attachment, attachment modifications, or additional facilities.

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

- (A) **Use of Public ROW.** In consideration for its use of the Public ROW in accordance with the terms of this Franchise, Grantee agrees to pay the City an amount equal to 3 1/2 percent (3.5%) of the Gross Revenue received by Grantee from its customers within the City (“Franchise Fee”). The payment for each year shall be based on the Gross Revenue collected by Grantee during the previous calendar year, and shall be paid on an annual basis. To the extent permissible under state law and regulation, the payment imposed by this subsection shall be considered an operating expense of Grantee and shall not be itemized or billed separately to consumers within the City.
- (B) **Property Tax Limitations Do Not Apply.** The payment described in this Section 12 is not subject to the property tax limitations of Article XI, Sections 11(b) and 11(19) of the Oregon Constitution and is not a fee imposed on property or property owners by fact of ownership.
- (C) **Privilege Tax.** The City has imposed, as permitted by Oregon law, a one and one half percent (1.5%) privilege tax based on the Gross Revenue earned from Grantee’s customers within the City in addition to the payment amounts set forth in subsection (A). To the extent any change to applicable laws and regulations authorize the City to charge more than the amount

currently imposed by NPMC Section 50.22, the City reserves the right to increase that amount accordingly. The City shall provide Grantee at least ninety (90) days notice prior to such change to the privilege tax imposed by NPMC Section 50.22 becoming effective. Grantee shall follow state regulations regarding the inclusion of such privilege tax as an itemized charge on the electricity bills of its customers within the City.

- (D) **Remittance of Annual Payment.** Grantee shall remit to the Director of Finance all payments in accordance with NPMC Section 50.22. Payment must be made in immediately available federal funds. With its annual payment, Grantee shall provide the City a statement showing the Gross Revenue for the preceding year.
- (E) **Late Payments.** Interest on late payments shall accrue from the due date on all outstanding amounts owed, regardless of whether construed as a privilege tax or a franchise fee, or any combination thereof, as provided in NPMC Section 50.23. Interest shall accrue without regard to whether the City has provided notice of delinquency.
- (F) **No Exemption From Other Fees or Taxes.** Payment of the amounts described in this Section 12 shall not exempt Grantee from the payment of any other license fee, tax or charge on the business, occupation, property or income of Grantee that may be lawfully imposed by the City or any other taxing authority, except as may otherwise be provided in the ordinance or laws imposing such other license fee, tax or charge.
- (G) **Payment Obligation Survives Franchise.** If prior to the expiration of this Franchise the parties do not finish negotiation of a new franchise agreement, the obligation to make the payments imposed by this Section 12 shall survive expiration of this Franchise until a new franchise agreement becomes effective and supersedes this Franchise. In the event this Franchise is terminated before expiration, Grantee shall make the remaining payments owed, if any, within ninety (90) days of the termination date.

### **SECTION 13. AUDIT.**

- (A) **Audit Notice and Record Access.** The City may audit Grantee's calculation of Gross Revenues for the prior three (3) calendar years, alone or in

conjunction and collaboration with other public bodies with which Grantee holds a franchise. Within ten (10) business days after receiving a written request from the City, or such other time frame as agreed by both parties, Grantee shall furnish the City and any auditor retained by the City information sufficient to demonstrate that Grantee is in compliance with this Franchise. Grantee shall provide access to such information to City within the City, or the Portland, Oregon metropolitan area, during regular Grantee business hours.

- (B) **Audit Payment.** If the City's audit shows that the amounts due to the City are higher than those based on the Grantee's calculation of Gross Revenue, then Grantee shall make a payment for the difference within sixty (60) days after the delivery to Grantee of the audit results. In addition to paying any underpayment, Grantee shall pay interest on all outstanding amounts owed, regardless of whether construed as a privilege tax or a franchise fee, or any combination thereof, as provided in NPMC Section 50.23. In the event the City's audit shows that Grantee's calculation of Gross Revenue resulted in an overpayment to the City by five percent (5%) or more in any one year, the Grantee may deduct such overpayment from the next annual franchise fee payment. If the City's audit shows that the amounts due to the City based on the Grantee's calculation of Gross Revenue deviated by five percent (5%) or more in any one year from the City's calculation during the audit, Grantee shall reimburse City for the City's actual cost of the audit, not to exceed twenty thousand dollars (\$20,000.00).

#### **SECTION 14. TERMINATION AND REMEDIES.**

- (A) **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.
- (B) **City Reserves Right to Terminate.** In addition to any other rights provided for in this Franchise, the City reserves the right, subject to subsections (D) and (E) of this Section 14, below, 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 System; or
  - (4) Grantee becomes unable or unwilling to pay its debts, or is adjudged bankrupt.
- (C) **Notice and Opportunity to Cure.** The City shall provide Grantee thirty (30) days prior written notice of its intent to exercise its right to terminate, stating the reasons for such action. If Grantee cures the basis for termination or if the Grantee initiates efforts satisfactory to the City to remedy the basis for termination and the efforts continue in good faith within the thirty (30) day notice period, the City shall not exercise its termination right. If Grantee fails to cure the basis for termination or if the Grantee does not undertake and/or maintain efforts satisfactory to the City to remedy the basis for termination within the thirty (30) day notice period, then the City Council may impose any or all of the remedies available under this Section 14.
- (D) **Remedies.** In determining which remedy or remedies are appropriate, the City shall consider the nature of the violation, the person or persons burdened by the violation, the nature of the remedy required in order to prevent further such violations, and any other matters the City deems appropriate. Financial penalties and termination of this Franchise, as provided in this Section 14, are not mutually exclusive and the City shall have the right to impose either or both remedies, in its sole discretion.
- (E) **Financial Penalty.** In addition to any rights set out elsewhere in this Franchise, as well as its rights under the City Code or other law, the City reserves the right at its sole option to impose a financial penalty of up to \$500.00 per day for a violation of a material provision of this Franchise

when the opportunity to cure has passed. Each day a violation exists shall be construed as a separate violation, subject to a separate penalty, and shall include all days during the notice period provided in Section 14 (C), above, that the violation is not cured.

**SECTION 15. ASSIGNMENT OF FRANCHISE.** Grantee shall not sell, assign, transfer, or convey this Franchise to a third party without the City Council giving its prior consent in a duly passed ordinance or resolution. No sale, assignment, transfer or conveyance prior to the City Council's shall be valid until such consent is obtained. Any attempted sale, assignment, transfer or conveyance without City Council consent being granted is void. Upon obtaining such consent, this Franchise shall inure to and bind such third party. Grantee shall not sell or assign this Franchise to an entity that is not authorized by the OPUC to provide electric service to retail consumers in the City or is not otherwise authorized to provide electric service to retail consumers under Oregon law. Prior to seeking the consent of the City Council for any proposed transfer, Grantee shall be in full compliance with this Franchise and the proposed transferee shall agree in writing to be bound by this Franchise. In the event Grantee is purchased by or merged into another entity and Grantee survives such purchase or merger as a public utility, Grantee shall provide notice to the City of such purchase or merger, but shall have no obligation under this Franchise to obtain the consent of the City Council for such purchase or merger, to the extent the purchase or merger complies with all applicable federal and Oregon laws and regulations.

**SECTION 16. REMOVAL OF FACILITIES.** If this Franchise is terminated or expires on its own terms and is not replaced by a new franchise agreement or similar authorization, the City may determine whether Grantee Facilities are to be removed from the Public ROW or remain in place, in its sole discretion. The City shall provide written notice of any requirement to remove some or all of the Grantee Facilities and shall provide Grantee thirty (30) days to comment on such requirement to move Grantee Facilities. Following consideration of any such comments, the City Manager may issue an order requiring removal of Grantee Facilities within six (6) months after such order is declared.

## **SECTION 17. NONDISCRIMINATION AND EQUAL OPPORTUNITY.**

- (A) **Nondiscrimination of Customers.** Grantee shall provide service its cost-of-service electric light and power consumers in the City without undue discrimination or undue preference or disadvantage, in accordance with applicable Oregon and federal laws and regulations.
- (B) **Equal Opportunity Employer.** Grantee is committed to a workplace free of discrimination based on race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability or any other protected status in accordance with all federal, state or local laws. Grantee shall not, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability, refuse to hire, discharge, promote, demote or discriminate in matters of compensation, against any person otherwise qualified. Grantee is committed to undertaking programs that identify, consider and develop persons of color, women and members of other under-represented groups for positions at any skill and management levels within Grantee's organization. In order to enhance the diversity of the employees of Grantee, Grantee is committed to recruiting diverse employees by strategies such as collaborating with colleges, universities and technical schools with diverse student populations, utilizing diversity-specific media to advertise employment opportunities, internships, and engaging recruiting firms with diversity-specific expertise. Additionally, in order to enhance opportunities for advancement of persons of color, women and members of other under-represented groups, Grantee will offer training and development opportunities to its employees, including mentoring programs, trainings programs, classroom training and leadership programs.
- (C) **Contracting and Economic Development.** Grantee is committed to make available to minority and women owned business enterprises and other small and/or disadvantaged business enterprises the maximum practical opportunity to compete with other service providers, contractors, vendors and suppliers in the marketplace. Grantee is committed to increase the

proportion of Grantee contracts awarded to minority and women owned business enterprises and other small and/or disadvantaged business enterprises for services, construction, equipment and supplies to the maximum extent consistent with the efficient and economic operation of Grantee.

**SECTION 18. INDEMNIFICATION.** To the fullest extent permitted by law, Grantee shall indemnify and hold harmless the City against any and all claims, damages, costs and expenses, including attorney's fees and costs, to which the City may be subjected as a result of any negligent or willful misconduct of Grantee, or its affiliates, officers, employees, agents, contractors or subcontractors, arising out of the rights and privileges granted by this Franchise. The obligations imposed by this Section are intended to survive termination of this Franchise.

**SECTION 19. INSURANCE.** Grantee shall maintain in full force and effect, for the entire Term, the following insurance covering risks associated with Grantee's ownership and use of Grantee Facilities and the Public ROW:

- (A) Commercial General Liability insurance covering all operations by or on behalf of Grantee for Bodily Injury and Property Damage, including Completed Operations and Contractual Liability coverage, in an amount not less than Two Million Dollars (\$2,000,000.00) per occurrence and in the aggregate.
- (B) Business Automobile Liability insurance to cover any vehicles used in connection with its activities under this Franchise, with a combined single limit not less than One Million Dollars (\$1,000,000.00) per accident.
- (C) Workers' Compensation coverage as required by law and Employer's Liability Insurance with limits of One Million Dollars (\$1,000,000).
- (D) With the exception of Workers' Compensation and Employers Liability coverage, Grantee shall include the City as an additional insured on all applicable policies. Unless Grantee self-insures in accordance with Section 19(E), Grantee agrees to provide City with thirty (30) days prior written notice if any of Grantee's insurance policies under this Franchise will be canceled. Grantee shall provide the City with a certificate of insurance evidencing such coverage as a condition of this Franchise and shall provide

updated certificates upon request.

- (E) **In Lieu of Insurance.** In lieu of the insurance policies required by this Section 19, Grantee shall have the right to self-insure any and all of the coverage outlined hereunder. If Grantee elects to self-insure, it shall do so in an amount at least equal to the coverage requirements of this Section 19 in a form acceptable to the City. Grantee shall provide proof of self-insurance to the City before this Franchise takes effect and annually thereafter.

**SECTION 20. DAMAGE TO FACILITIES.** The City shall not be liable for any consequential damages or losses resulting from any damage to or loss of any Grantee facility as a result of or in connection with any work by or for the City unless the damage or loss is the direct and proximate result of willful, intentionally tortious, negligent or malicious acts or omissions by the City, its employees, officers, contractors, agents or volunteers. In such case, the City shall indemnify and hold harmless Grantee against any and all claims, damages, costs and expenses, including attorney's fees and costs, arising therefrom, subject to any applicable limitations in the Oregon Constitution and the Oregon Tort Claims Act. The obligations imposed by this Section are intended to survive termination of this Franchise.

**SECTION 21. FRANCHISE NOT EXCLUSIVE.** This Franchise is not exclusive and shall not be construed to limit the City from granting rights, privileges and authority to other persons similar to or different from those set forth in this Franchise.

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

**SECTION 23. SEVERABILITY CLAUSE.** If any section, subsection, sentence, clause, phrase, or other portion of this Franchise is, for any reason, held to be invalid or unconstitutional by a court of competent jurisdiction, all portions of this Franchise that are not held to be invalid or unconstitutional shall remain in effect until this Franchise is terminated or expired. After any declaration of invalidity or unconstitutionality of a portion of this Franchise, either party may demand that the other party meet to discuss amending the terms of this Franchise to conform to the original intent of the parties. If the parties are unable to agree on a revised franchise agreement within ninety (90) days after a portion of this Franchise is found to be invalid or unconstitutional, either party may terminate this Franchise by delivering one hundred and eighty (180) days' notice to the other party.

**SECTION 24. NOTICE.** Any notice provided for under this Franchise shall be sufficient if in writing and (1) delivered personally to the following addressee, (2) deposited in the United States mail, postage prepaid, certified mail, return receipt requested, or (3) sent by overnight or commercial air courier (such as Federal Express or UPS), or to such other address as the receiving party hereafter shall specify in writing:

**If to the City:**

**City Manager, City of North Plains  
31360 NW Commercial Street  
North Plains, Oregon 97133**

**With a copy to:**

**City Attorney Beery, Elsner & Hammond, LLP  
1804 NE 45<sup>th</sup> Avenue  
Portland, OR 97213**

**If to the Grantee:**

**Regional Manager Portland General Electric Company  
PGE – Beaverton Operations Center  
2213 SW 153<sup>rd</sup> Dr,  
Beaverton, OR 97006**

**With a copy to:**

**Portland General Electric Company Attn:  
General Counsel  
One World Trade Center, 17<sup>th</sup> Floor  
121 SW Salmon Street  
Portland, Oregon 97204**

Any such notice, communication or delivery shall be deemed effective and delivered upon the earliest to occur of actual delivery, three (3) business days after depositing in the United States mail or one (1) business day after shipment by commercial air courier.

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

PORTLAND GENERAL ELECTRIC COMPANY	CITY
By: _____	By: _____
Name: <u>Bradley Jenkins</u>	Name: <u>Teri Lenahan</u>
Title: <u>Vice President, Utility Operations</u>	Title: <u>Mayor of North Plains</u>
Date: _____	Date: _____