

City of St. Helens
ORDINANCE NO. 3247

AN ORDINANCE GRANTING TO PORTLAND GENERAL ELECTRIC COMPANY A FRANCHISE TO OPERATE AN ELECTRIC LIGHT AND POWER SYSTEM WITHIN THE CITY OF ST. HELENS, OREGON AND DECLARING AN EMERGENCY

THE CITY OF ST. HELENS ORDAINS AS FOLLOWS:

Section 1. The City of St. Helens hereby grants a franchise to Portland General Electric Company to operate under the terms and conditions as set forth in the Franchise Agreement which is attached hereto as **Exhibit A** and incorporated herein by reference.

Section 2. Emergency. Conditions in the City of St. Helens are such that this Ordinance is necessary for the immediate preservation of the public health, peace, and safety. An emergency is hereby declared to exist by unanimous vote of the Council, and this Ordinance shall be in full force and effect after its passage and approval.

Read the first time: February 5, 2020
Read the second time: February 5, 2020

APPROVED AND ADOPTED by the City Council this 5th day of February, 2020, by the following vote:

Ayes: Locke, Carlson, Topaz, Morten, Scholl

Nays: None



Rick Scholl, Mayor

ATTEST:



Kathy Payne, City Recorder

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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 St. Helens (“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)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, including related communication equipment 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, City park property and other public ways over which the City has jurisdiction (collectively, “Public ROW”), as well as Public Utility Easements (“PUEs”) 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, for the provision of public utility services within the City as Grantee’s Electric Light and Power System now exists or is extended or upgraded in the future. 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. The rights granted herein do not include the right to build or site electric generating facilities in the Public ROW.

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

5 (C) Grantee may provide telecommunications services via Grantee's Electric Light and
6 Power System if it obtains all necessary and applicable authorizations from the OPUC
7 regarding the provision of telecommunications service to the public and obtains any
8 necessary, lawful and applicable authorization from the City for use of the Public
9 ROW for such provision, including entering into a separate franchise with the City.

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

11 (A) **Effective Date.** The effective date of this Franchise shall be February 5, 2020
12 immediately after the City Council passes an ordinance adopting this Franchise and
13 Grantee accepts this Franchise in writing in accordance with Section 25 herein; and if
14 such written acceptance is not so filed within said period, this Franchise shall be null
15 and void.

16 (B) **Duration of Franchise.** The term of this Franchise, and all rights and obligations
17 pertaining thereto, shall be ten years from the effective date of the Franchise ("Term")
18 unless renegotiated or terminated as provided in this Franchise. The Term shall
19 automatically renew for an additional ten years after the expiration of the initial
20 Term; unless either party provides the other party written notice, at least 180 days
21 prior to the expiration of the initial Term, that it does not desire to renew this
22 Franchise.

23 (C) **Charter and General Ordinances to Apply.** To the extent authorized by law, this
24 Franchise is subject to the Charter of the City of St. Helens and general ordinance
25 provisions passed pursuant thereto, including the applicable provisions of the St.
26 Helens Municipal Code requiring underground utilities in subdivisions or partitions,
27 and state statutes and regulations existing during the Term. Nothing in this Franchise
28 shall be deemed to waive the requirements of the various codes and ordinances of the
29 City regarding permits, fees to be paid that are generally applicable to other similar
30 businesses operating within the City, or the manner of construction.

31 **SECTION 3. DEFINITIONS.**

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

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

- 1 (1) "City" means the City of St. Helens, Oregon, a municipal corporation, and all of
2 the territory within its corporate boundaries, as such may change from time to
3 time.
- 4 (2) "City Council" means the Council of the City.
- 5 (3) "City Engineer" means the City Engineer of the City.
- 6 (4) "City Administrator" means the City Administrator of the City.
- 7 (5) "City Recorder" means the Recorder of the City.
- 8 (6) "Director of Finance" means the Director of Finance of the City.
- 9 (7) "Emergency" means a situation involving (a) an unscheduled outage affecting one
10 or more customers, or (b) danger to public safety. Emergency also includes
11 situations where the failure of Grantee to act would result in (a) or (b).
- 12 (8) "Franchise" means this Franchise Agreement as fully executed by the City and
13 Grantee and adopted by the City Council pursuant to Ordinance No. _____.
- 14 (9) "Grantee" means Portland General Electric Company, an Oregon corporation.
- 15 (10) "Grantee Facility" means any tangible component of Grantee's Electric Light and
16 Power System, including but not limited to any poles, guy wires, anchors, wire,
17 fixtures, equipment, conduit, circuits, vaults, switch cabinets, transformers,
18 secondary junction cabinets, antennas, communication equipment and other
19 property necessary or convenient to supply electric light and power by Grantee
20 within the City.
- 21 (11) "Grantee's Electric Light and Power System" means all real property and Grantee
22 Facilities used by Grantee in the transmission and distribution of its services that
23 are located inside the boundaries of the City.
- 24 (12) "Gross Revenues" shall be deemed to include any and all revenues derived by
25 Grantee within the City from Grantee's Electric Light and Power System, and
26 includes, but is not limited to, the sale of and use of electricity and electric
27 service, and the use, rental, or lease of Grantee Facilities, after adjustment for the
28 net write-off of uncollectible accounts. Gross Revenues do not include proceeds
29 from the sale of bonds, mortgages or other evidence of indebtedness, securities or
30 stocks, or sales at wholesale by one public utility to another of electrical energy
31 when the utility purchasing such electrical energy is not the ultimate consumer.
32 Gross Revenues also do not include revenue from joint pole use. For purposes of
33 this Franchise, revenue from joint pole use includes any revenue collected by
34 Grantee from other franchisees, permittees, or licensees of the City for the right to
35 attach wires, cable or other facilities or equipment to Grantee's poles or place
36 them in Grantee's conduits.
- 37 (13) "NESC" means the National Electrical Safety Code.
- 38 (14) "OPUC" means the Oregon Public Utility Commission.
- 39 (15) "Term" shall have the meaning described in Section 2(A).

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

4 (17)"Public ROW" shall have the meaning described in Section 1.1(A).

5 (18)"PUE" shall have the meaning described in Section 1.1(A).

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

9 **SECTION 4. CONSTRUCTION**

10 (A) **Construction.** Subject to the NESC, Grantee's Electric Light and Power System
11 shall be constructed and maintained in such manner as not to interfere with sewers,
12 water pipes, or any other property of the City, or with any other pipes, wires, conduits
13 or other facilities that may have been laid in the Public ROW by or under the City's
14 authority. Grantee and the City shall work together during any design process
15 affecting the Public ROW to establish suitable locations for Grantee's Facilities.
16 Assuming there is sufficient space in the Public ROW that meets the Grantee's
17 construction standards as provided to the OPUC and NESC requirements, all poles
18 shall be placed between the sidewalk and the edge of the Public ROW unless another
19 location is approved by the City Engineer. If there is not sufficient space in the Public
20 ROW, the City agrees to provide a suitable alternative location, as mutually agreed,
21 that meets Grantee's construction standards as provided to the OPUC and NESC
22 requirements, and either the required easements from private property owners or
23 PUEs to accommodate and permit upgrade of Grantee's Facilities in order to maintain
24 sufficient service. The foregoing sentence shall not apply if the Grantee's
25 construction activities are undertaken by Grantee for a system improvement or an
26 addition to Grantee's Electric Light and Power System.

27 (B) **Acquisition.** Subsequent to the effective date of this Franchise, upon Grantee's
28 acquisition of additional Grantee Facilities in the Public ROW, or upon any addition
29 or annexation to the City of any area in which Grantee retains Grantee Facilities in
30 the Public ROW of such addition or annexation, Grantee shall submit to the City a
31 statement describing all Grantee Facilities involved, whether authorized by a
32 franchise agreement or upon any other form of prior right, together with a map, as
33 described in Section 5, specifying the location of all such Grantee Facilities. Such
34 Grantee Facilities shall immediately be subject to the terms of this Franchise.

35 (C) **Emergency Repairs.** In the event Emergency repairs to Grantee Facilities are
36 necessary, Grantee shall as soon as reasonably possible, notify the City of the need
37 for such repairs. Grantee may immediately initiate such Emergency repairs and, if
38 permits are required by City, apply for appropriate permits the next business day or as
39 soon as reasonably possible following discovery of the Emergency. In the event
40 excavation is necessary in conjunction with the repairs, Section 6 shall also apply.

1 (D) **Reasonable Care.** All work completed by Grantee within the Public ROW shall be
2 conducted with reasonable care and with the goal of minimizing the risk to those
3 using the Public ROW and to minimize the risk of damage to public and third party
4 property. All work shall be performed in accordance with all applicable laws and
5 regulations, including but not limited to the NESC. Any work completed by Grantee
6 within the Public ROW may be inspected by the City to determine whether it has
7 been placed in its approved location according to Grantee's permit issued by the
8 City. If Emergency work has been completed by Grantee in the Public ROW and the
9 City determines such work was not completed in a City approved location, the City
10 shall notify Grantee and provide Grantee with sixty (60) days after the Emergency
11 has passed to reperform the work in a City approved location, subject to the NESC.

12 **SECTION 5. SUPPLYING MAPS.** Grantee shall maintain maps and data pertaining to
13 the location of Grantee Facilities on file at its corporate offices or at an office in Oregon.
14 After providing Grantee with twenty-four (24) hours prior notice, the City may inspect
15 the maps (excluding Grantee proprietary information) at any time during Grantee's
16 business hours. Upon request of the City and without charge, Grantee shall furnish
17 current maps to the City by electronic data in read-only format showing the general
18 location of Grantee Facilities, excluding Grantee proprietary information. Unless
19 required by law, the City will not sell or provide Grantee prepared maps or data to third
20 parties without written permission from Grantee. Upon request of Grantee, the City will
21 make available to Grantee any relevant City prepared maps or data at no charge to
22 Grantee. Additional requests for maps or data will be satisfied at the current rate charged
23 by the City for such services, except where as part of the permitting process, the City has
24 required that Grantee provide maps that include the location of facilities owned or under
25 the jurisdiction of the City.

26 **SECTION 6. EXCAVATION.** Subject to Sections 4 and 7, and after obtaining any
27 permits required by the City, as well as complying with ORS 757.542 et seq. (Oregon
28 Utility Notification Center) as they may be amended from time to time, Grantee may
29 make all necessary excavations within the Public ROW for the purpose of installing,
30 repairing, upgrading or maintaining Grantee Facilities, except that in the case of an
31 Emergency, no permit shall be required prior to excavation. Should there be a direct
32 conflict between any terms or conditions stated in a permit granted by the City and the
33 terms of this Franchise, the terms of this Franchise shall control. All excavations made
34 by Grantee in the Public ROW shall be properly safeguarded for the prevention of
35 accidents. All of Grantee's work under this Section shall be completed in strict
36 compliance with all applicable rules, regulations and ordinances of the City. Should a
37 customer of Grantee be required, pursuant to Grantee's tariff on file with the OPUC, to
38 make excavations that are located in the Public ROW, the City agrees that Grantee shall
39 not be responsible or liable for any failure by such customer to comply with any
40 applicable rules, regulations, ordinances of the City and/or with City standards.
41

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

25 **SECTION 8. RELOCATION**

26 **(A) Permanent Relocation Required by City –** This subsection (A) covers permanent
27 relocation of overhead Grantee Facilities that will remain overhead, and underground
28 Grantee Facilities that will remain underground. The City shall have the right to
29 require Grantee to change the location of Grantee's Electric Light and Power System
30 located in the Public ROW when it is necessary for any public project or
31 improvement in the Public ROW, and, unless otherwise agreed, the expenses thereof
32 shall be paid by Grantee. The foregoing sentence shall not apply if either of the of the
33 following is true: a) the project or improvement necessitating the change in location
34 will not be owned by the City; or b) the majority of the funding for the project or
35 improvement does not come from City, county, state, or federal government sources,
36 including but limited to System Development Charges paid to the City. The City
37 agrees to provide a suitable location in the Public ROW, as mutually agreed, or,
38 failing that, to provide either the necessary easements from the private property
39 owners or PUEs for Grantee Facilities that meet the Grantee's construction standards
40 as provided to the OPUC and NESC requirements to accommodate and permit
41 upgrade of Grantee Facilities in order to maintain sufficient service. Should Grantee
42 fail to remove or relocate any such Grantee Facilities within ninety (90) days after the
43 date established by the City, which, except in the event of public Emergency, shall
44 not occur sooner than ninety (90) days after the City provides written notice to

1 remove/relocate to Grantee, the City may cause or effect such removal or relocation,
2 performed by a qualified contractor in accordance with applicable state and federal
3 safety laws and regulations, and the Grantee's construction standards as provided to
4 the OPUC, and the expense thereof shall be paid by Grantee. However, when the
5 City requests a subsequent relocation of all or part of the same Grantee Facilities less
6 than two years after the initial relocation that is necessary or convenient for a public
7 project, and not at the request of or to accommodate a third party, the subsequent
8 relocation shall be at the expense of the City.

9 **(B) Notice.** The City will endeavor to provide as much notice prior to requiring Grantee
10 to relocate Grantee Facilities as possible. The notice shall specify the date by which
11 the existing Grantee Facilities must be removed or relocated. Nothing in this Section
12 8 shall prevent the City and Grantee from agreeing, either before or after notice is
13 provided, to a mutually acceptable schedule for relocation. The City and Grantee
14 agree to cooperate in the design phase to minimize the economic impact of such
15 relocation on Grantee and the City.

16 **(C) Permanent Relocation - Undergrounding.** This subsection (C) applies to
17 conversions of Grantee Facilities from overhead to underground regardless of
18 whether or not such conversion is made in conjunction with a public project. As
19 permitted by, and in accordance with City ordinance and any applicable law,
20 administrative rule, or regulation, the City may require Grantee to convert any
21 overhead Grantee Facilities to underground Grantee Facilities at the same or different
22 locations, subject to NESC and Grantee's engineering and safety standards. This
23 subsection shall not apply to Grantee Facilities used for or in connection with the
24 transmission of electric energy at nominal voltages in excess of 35,000 volts or to
25 pedestals, cabinets or other above-ground equipment. Any such underground
26 relocation shall be consistent with applicable long-term development plans or projects
27 of the City, or as approved by the City. The expense of such a conversion shall be
28 paid by Grantee, and Grantee may recover its costs from its customers in accordance
29 with state law, administrative rule, or regulation. The City agrees to provide a
30 suitable location in the Public ROW, as mutually agreed, or, failing that, to provide
31 either the necessary easements from the private property owners or PUEs for Grantee
32 Facilities that meet the Grantee's construction standards as provided to the OPUC and
33 NESC requirements to accommodate and permit upgrade of Grantee Facilities in
34 order to maintain sufficient service. Nothing in this subsection prevents the City and
35 Grantee from agreeing to a different form of cost recovery on a case-by-case basis
36 consistent with applicable statutes, administrative rules, or regulations.

37 **(D) Temporary Relocation at Request of Third Parties.** Whenever it is necessary to
38 temporarily relocate or rearrange any Grantee Facility in order to permit the passage
39 of any building, machinery or other object, Grantee shall perform the work after
40 receiving sixty (60) business days written notice from the persons desiring to move
41 the building, machinery or other object. The notice shall: (1) demonstrate that the
42 third party has acquired at its expense all necessary permits from the City; (2) detail
43 the route of movement of the building, machinery, or other object; (3) provide that the
44 person requesting the temporary relocation shall be responsible for Grantee's costs;

1 (4) provide that the requestor shall indemnify and hold harmless the City and Grantee
2 from any and all damages or claims resulting either from the moving of the building,
3 machinery or other object or from the temporary relocation of Grantee Facilities; and
4 (5) be accompanied by a cash deposit or other security acceptable to Grantee for the
5 costs of relocation. Grantee in its sole discretion may waive the security obligation.
6 The cash deposit or other security shall be in an amount reasonably calculated by
7 Grantee to cover Grantee's costs of temporary relocation and restoration. All
8 temporary relocations under this subsection shall comply with ORS 757.805.

9 **(E) Temporary Relocation at Request of City.** This subsection (E) covers temporary
10 relocation of overhead Grantee Facilities that will remain overhead, as well as
11 underground Grantee Facilities that will remain underground. The City may require
12 Grantee to temporarily remove and relocate Grantee Facilities by giving sixty (60)
13 days notice to Grantee. Prior to such relocation, the City agrees to provide a suitable
14 location in the Public ROW, as mutually agreed, or a temporary construction
15 easement that meets the Grantee's construction standards as provided to the OPUC
16 and NESC requirements, and that allows the Grantee to place its Facilities on the
17 easement in order to maintain sufficient service until such time as the Grantee moves
18 its Facilities to their permanent location. The cost of temporary removal or relocation
19 of Grantee Facilities that is necessary or convenient for public projects, as well as
20 cost of replacing Grantee Facilities in their permanent location, shall be paid by
21 Grantee. However, when the City requests a subsequent relocation of all or part of the
22 same Grantee Facilities less than two years after the initial relocation, that is
23 necessary or convenient for a public project and not at the request of or to
24 accommodate a third party, the subsequent relocation shall be at the expense of the
25 City.

26 **(F) Relocation at Request of or to Accommodate Third Party.** In the event that
27 any relocation of Grantee Facilities is requested by or is to accommodate a third
28 party, the City and the Grantee agree to cooperate to minimize the economic impact
29 of such relocation on the Grantee. The Grantee shall seek reimbursement from the
30 third party consistent with the Grantee's tariff on file with the OPUC and not from the
31 City. Such relocation shall be consistent with any applicable long-term development
32 plan or projection of the City or approved by the City; however, if relocation of
33 Grantee Facilities is caused or required by the conditions placed by the City on
34 approval for projects of third parties, such relocation shall in no event fall under the
35 provisions of subsections (A), (C) or (E) of this Section 8.

36 **SECTION 9. PUBLIC ROW VACATION.** If all or a portion of the Public ROW
37 used by Grantee is vacated by the City during the Term, and if reasonably possible, the
38 City shall either condition the approval of the vacation on the reservation of an easement
39 for Grantee Facilities in their then-current location that prohibits any use of the vacated
40 property that interferes with Grantee's full enjoyment and use of its easement, or permit
41 Grantee Facilities to remain in a PUE. If neither of these options is reasonably possible,
42 Grantee shall, after notice from the City and without expense to the City, remove Grantee
43 Facilities from such vacated Public ROW, restore, repair or reconstruct the Public ROW
44 where such removal has occurred, and place the Public ROW in good order and condition

1 as may be required by the City. In the event of failure, neglect or refusal of Grantee, after
2 providing Grantee with ninety (90) days prior written notice, to repair, restore, or
3 reconstruct such Public ROW, the City may complete such work or cause it to be
4 completed by a qualified contractor in accordance with applicable state and federal safety
5 laws and regulations, and the cost thereof shall be born by the Grantee. Upon request, the
6 City will cooperate with Grantee to identify alternative locations within the Public ROW
7 for Grantee Facilities if they are not permitted to remain in the vacated area.

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

17 **SECTION 11. USE OF GRANTEE FACILITIES.** City shall maintain attachment
18 agreements and permits to string wires on Grantee's poles or run wires in Grantee's
19 trenches and/or conduit for municipal purposes and to attach fire and police alarm and
20 communication equipment to Grantee's poles, provided that such wires and equipment: a)
21 do not unreasonably interfere with Grantee operations; b) conform to the NESC; and c)
22 the City's excess capacity on such wires and equipment is not leased to, sold to or
23 otherwise used by non-governmental third parties. Grantee shall not charge the City for
24 such attachments to its poles or in its conduits; however, the City shall be responsible to
25 pay for any make-ready and inspections Grantee must perform in order to provide access
26 to Grantee Facilities for City wires and equipment in accordance with the NESC. Should
27 any of the City's attachments to Grantee Facilities violate the NESC, the City shall work
28 with Grantee to address and correct such violations in an agreed-upon period of time.
29 The City shall indemnify and hold Grantee harmless from loss or damage resulting from
30 the presence of City's wires and equipment on or in Grantee Facilities. For purposes of
31 this Franchise, "make-ready" shall mean engineering or construction activities necessary
32 to make a pole, conduit, or other support equipment available for a new attachment,
33 attachment modifications, or additional facilities.

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

35 **(A) Use of Public ROW.** In consideration for its use of the Public ROW in accordance
36 with the terms of this Franchise, Grantee agrees to pay the City an amount equal to 3
37 1/2 percent of the Gross Revenue received by Grantee from its customers within the
38 City. The payment for each year shall be based on the Gross Revenue collected by
39 Grantee during the previous calendar year from Grantee's customers, and shall be
40 paid on an annual basis. To the extent permissible under state law and regulation, the
41 payment imposed by this subsection shall be considered an operating expense of
42 Grantee and shall not be itemized or billed separately to consumers within the City.
43 However, should the percentage of Gross Revenue permitted to be considered an

1 operating expense of Grantee be increased by regulation of the OPUC during the
2 Term of this Agreement, the City shall have the right to require the percentage
3 amount paid by Grantee under this subsection (A) be increased, not to exceed the
4 maximum amount permitted by regulation at that time.

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

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

21 **(D) Remittance of Annual Payment.** Grantee shall remit to the Director of Finance on
22 or before the first (1st) day of April of each year, the annual 3 ½% franchise fee
23 payment, as well as payment of any additional privilege tax, to be made in such year.
24 Payment must be made in immediately available federal funds. With its annual
25 payment, Grantee shall provide the City a statement under oath showing the Gross
26 Revenue for the preceding year.

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

32 **(F) Late Payments.** Interest on late payments shall accrue from the due date based on
33 the one year U.S. treasury bill rate as of the due date, and shall be computed based on
34 the actual number of days elapsed from the due date until payment. Interest shall
35 accrue without regard to whether the City has provided notice of delinquency.
36

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

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

15 (I) **Payment Obligation Survives Franchise.** If prior to the expiration of this Franchise
16 the parties do not finish negotiation of a new franchise agreement, the obligation to
17 make the payments imposed by this Section 12 shall survive expiration of this
18 Franchise until a new franchise agreement becomes effective and supersedes this
19 Franchise. In the event this Franchise is terminated before expiration, Grantee shall
20 make the remaining payments owed, if any, within ninety (90) days of the termination
21 date.

22 **SECTION 13. AUDIT.**

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

32 (B) **Audit Payment.** If the City's audit shows that the amounts due to the City are higher
33 than those based on the Grantee's calculation of Gross Revenue, then Grantee shall
34 make a payment for the difference within sixty (60) days after the delivery to Grantee
35 of the audit results. In addition to paying any underpayment, Grantee shall pay
36 interest at the prevailing one year U.S. Treasury bill rate, but not penalties, as
37 specified in this Franchise, from the original due date. In the event the City's audit
38 shows that Grantee's calculation of Gross Revenue resulted in an overpayment to the
39 City by five percent (5%) or more in any one year, the Grantee may deduct such
40 overpayment from the next annual franchise fee payment. If the City's audit shows
41 that the amounts due to the City based on the Grantee's calculation of Gross Revenue

1 deviated by five percent (5%) or more in any one year from the City's calculation
2 during the audit, Grantee shall reimburse City for the cost of the audit, not to exceed
3 one percent (1%) of the total annual franchise payment for the applicable audit
4 period.

5 **SECTION 14. TERMINATION AND REMEDIES.**

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

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

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

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

32 **(D) Material Provisions.** For purposes of this Section 14, the following are material
33 provisions of this Franchise, allowing the City to exercise its rights under this Section
34 14 or as set forth elsewhere in this Franchise:

- 35 (1) The invalidation, failure to pay or any suspension of Grantee's payments of
36 franchise fees or privilege taxes to the City for use of the Public ROW under this
37 Franchise;
38 (2) Any failure by Grantee to submit timely reports as may be requested by the City,
39 regarding the calculation of its franchise fees or privilege taxes paid or to be paid
40 to the City;

- 1 (3) Any failure by Grantee to maintain the liability insurance or self insurance
2 required under this Franchise;
- 3 (4) Any failure by Grantee to provide copies of requested information as provided
4 under Sections 4, 5, and 13 above; and
- 5 (5) Any failure by Grantee to otherwise substantially comply with the requirements of
6 Section 4 through Section 20 of this Franchise, unless otherwise agreed.

7 **(E) Notice and Opportunity to Cure.** The City shall provide Grantee thirty (30) days
8 prior written notice of its intent to exercise its rights under this Section 14, stating the
9 reasons for such action. If Grantee cures the basis for termination or if the Grantee
10 initiates efforts satisfactory to the City to remedy the basis for termination and the
11 efforts continue in good faith within the thirty (30) day notice period, the City shall
12 not exercise its remedy rights. If Grantee fails to cure the basis for termination or if
13 the Grantee does not undertake and/or maintain efforts satisfactory to the City to
14 remedy the basis for termination within the thirty (30) day notice period, then the
15 City Council may impose any or all of the remedies available under this Section 14.

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

20 **(G) Financial Penalty.** In addition to any rights set out elsewhere in this Franchise, as
21 well as its rights under the City Code or other law, the City reserves the right at its
22 sole option to impose a financial penalty of up to \$500.00 per day per material
23 violation of a material provision of this Franchise when the opportunity to cure has
24 passed.

25 **SECTION 15. ASSIGNMENT OF FRANCHISE.** Grantee shall not sell, assign,
26 transfer, or convey this Franchise to a third party without the City Council giving its
27 consent in a duly passed ordinance. Upon obtaining such consent, this Franchise shall
28 inure to and bind such third party. Grantee shall not sell or assign this Franchise to an
29 entity that is not authorized by the OPUC to provide electric service to retail consumers
30 in the City or is not otherwise authorized to provide electric service to retail consumers
31 under Oregon law. Prior to any proposed transfer, Grantee shall be in full compliance
32 with this Franchise and the proposed transferee shall agree in writing to be bound by this
33 Franchise. In the event Grantee is purchased by or merged into another entity and
34 Grantee survives such purchase or merger as a public utility, Grantee shall provide notice
35 to the City of such purchase or merger, but shall have no obligation under this Franchise
36 to obtain the consent of the City Council for such purchase or merger.

37 **SECTION 16. REMOVAL OF FACILITIES.** If this Franchise is terminated or
38 expires on its own terms and is not replaced by a new franchise agreement or similar
39 authorization, the City may determine whether Grantee Facilities are to be removed from
40 the Public ROW or remain in place. The City shall provide written notice of any
41 requirement to remove Grantee Facilities and shall provide Grantee sixty (60) days to

1 comment on such requirement to move Grantee Facilities. Following consideration of
2 any such comments, the City Manager may issue an order requiring removal of Grantee
3 Facilities within nine (9) months after such order is declared.

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

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

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

17 (A) Commercial General Liability insurance covering all operations by or on behalf of
18 Grantee for Bodily Injury and Property Damage, including Completed Operations and
19 Contractors Liability coverage, in an amount not less than Two Million Dollars
20 (\$2,000,000.00) per occurrence and in the aggregate.

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

24 (C) Workers' Compensation coverage as required by law and Employer's Liability
25 Insurance with limits of \$1,000,000. With the exception of Workers' Compensation
26 and Employers Liability coverage, Grantee shall name the City as an additional
27 insured on all applicable policies. All insurance policies shall provide that they shall
28 not be canceled or modified unless thirty (30) days prior written notice is provided to
29 the City. Grantee shall provide the City with a certificate of insurance evidencing
30 such coverage as a condition of this Franchise and shall provide updated certificates
31 upon request.

32 (C) **In Lieu of Insurance.** In lieu of the insurance policies required by this
33 Section 19, Grantee shall have the right to self-insure any and all of the
34 coverage outlined hereunder. If Grantee elects to self-insure, it shall do so in
35 an amount at least equal to the coverage requirements of this Section 19 in a
36 form acceptable to the City. Grantee shall provide proof of self-insurance to
37 the City before this Franchise takes effect and thereafter upon request by the
38 City.
39

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

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

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

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

28 **SECTION 24. SEVERABILITY CLAUSE.** If any section, subsection, sentence,
29 clause, phrase, or other portion of this Franchise is, for any reason, held to be invalid or
30 unconstitutional by a court of competent jurisdiction, all portions of this Franchise that
31 are not held to be invalid or unconstitutional shall remain in effect until this Franchise is
32 terminated or expired. After any declaration of invalidity or unconstitutionality of a
33 portion of this Franchise, either party may demand that the other party meet to discuss
34 amending the terms of this Franchise to conform to the original intent of the parties. If
35 the parties are unable to agree on a revised franchise agreement within ninety (90) days
36 after a portion of this Franchise is found to be invalid or unconstitutional, either party
37 may terminate this Franchise by delivering one hundred and eighty (180) days notice to
38 the other party.
39

1

2 **SECTION 25. NOTICE.** Any notice provided for under this Franchise shall be
3 sufficient if in writing and (1) delivered personally to the following addressee, (2)
4 deposited in the United States mail, postage prepaid, certified mail, return receipt
5 requested, (3) sent by overnight or commercial air courier (such as Federal Express or
6 UPS), or (4) sent by facsimile transmission with verification of receipt, addressed as
7 follows, or to such other address as the receiving party hereafter shall specify in writing:

8 **If to the City: City Administrator City of St. Helens, Oregon**
9 **265 Strand Street**
10 **St. Helens, Oregon 97051**
11 **FAX # (503) 397-4016**

12 **With a copy to: City Attorney**
13 **City of St. Helens, Oregon**
14 **Jordan Ramis PC**
15 **Two Centerpointe Drive Ste #600**
16 **Lake Oswego OR 97035**

17 **If to the Grantee: Regional Manager**
18 **Portland General Electric Company**
19 **2213 SW 153rd Drive**
20 **Beaverton, Oregon 97006**
21 **FAX: (503) 672-5595**

22 **With a copy to: Portland General Electric Company**
23 **Attn: General Counsel**
24 **One World Trade Center, 17th Floor**
25 **121 SW Salmon Street**
26 **Portland, Oregon 97204**
27 **FAX: (503) 464-2200**

28
29 **Portland General Electric,**
30 **Attn: Local Government Affairs**
31 **One World Trade Center, 3rd Floor**
32 **121 SW Salmon Street**
33 **Portland, Oregon 97204**

34
35 **Portland General Electric, Beaverton Line Center Attn: Manager of Line Design**
36 **and Crew Coordination**
37 **2213 S.W. 153rd Dr.**
38 **Beaverton, OR 97003**

39 Any such notice, communication or delivery shall be deemed effective and delivered
40 upon the earliest to occur of actual delivery, three (3) business days after depositing in the

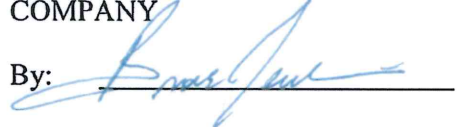
1 United States mail, one (1) business day after shipment by commercial air courier or the
2 same day as confirmed facsimile transmission (or the first business day thereafter if faxed
3 on a Saturday, Sunday or legal holiday).
4

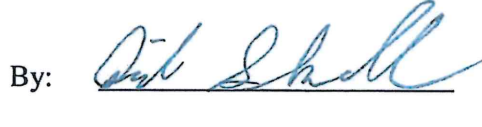
1 Section 26. EFFECTIVE DATE AND REPEAL OF PRIOR ORDINANCE. This
2 ordinance is effective on February 5, 2020. Ordinance No. 2607 is repealed, effective on
3 February 5, 2020.

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

PORTLAND GENERAL ELECTRIC CITY OF ST. HELENS
COMPANY

(11)

By: 

By: 

Name: Brad Jenkins

Name: Rick Scholl _____

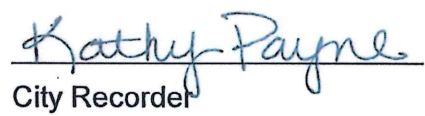
Title: Vice President, Utility Operations

Title: Mayor _____

Date: 2/24/2020

Date: 2/5/2020

Attest:


City Recorder

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