



Molalla City Council

Meeting located at: Molalla Adult Community Center
315 Kennel Avenue Molalla, OR 97038

February 27, 2013

Regular Meeting Agenda

Work session: 5:30 p.m. The Council will review and discuss agenda items for the business meeting.

Business meeting: The meeting will begin at 7 p.m. The Council has adopted Public Participation Rules. Copies of these rules and public comment cards are available at the entry desk. Public comment cards must be turned into to the City Recorder prior to the start of the Council meeting.

The City will endeavor to provide a qualified bilingual interpreter, at no cost, if requested at least 48 hours prior to the meeting. To obtain services call the City Recorder at (503) 829-6855.

1,010th Regular Meeting

1. CALL TO ORDER

- A. Flag Salute
- B. Roll Call

2. COMMUNICATIONS

3. AWARDS & RECOGNITIONS

4. PUBLIC HEARINGS

5. CONTINUING BUSINESS

6. NEW BUSINESS

- A. Park and Receptions Master Plan Proposed Amendments
- B. Molalla Sanitary Container Rates

7. **ORDINANCES** - *Public Comment on proposed Ordinance 2013-02: An Ordinance of the City of Molalla Establishing a Privilege Tax on Electric Utilities*

- A. 2013-02: An Ordinance Of The City Of Molalla Establishing A Privilege Tax On Electric Utilities

8. **RESOLUTIONS**

- A. 2013-04: PGE Franchise Agreement

9. **PROCLAMATIONS**

10. **REPORTS AND ANNOUNCEMENTS**

- A. City Manager Report - Memo Included in Packet
- B. Upcoming Council Agenda Items:

- 1. Special Council Meeting on 03/06/13 at 6:30PM at Molalla City Hall RE: Adult Center and Foothills Church; PAL Building
- 2. Ecomnomic Improvement District
- 3. Telecommunication Franchise Ordinance
- 4. Council Goals – Revisit (March 28, 2013)
- 5. Urban Renewal – Minor Amendment between City of Molalla and Fire Dist. 73
- 6. Planning Commission Meeting on 02/26/13: Review of proposed annexation ordinance and a land use appeal. Ordinance to go to Council March 13, 2013

11. **EXECUTIVE SESSION**

12. **ADJOURNMENT**

City Of Molalla

City Council Meeting

Agenda Category: Resolution

Subject: Addendum Consideration for language change in City of Molalla Parks Master Plan

Staff Recommendation: Council to Adopt Addendum

Date of Meeting to be presented: February 27, 2013 - Parks Board Members are present.

Fiscal Impact: \$0.00

Background:

The parks board would like to add some language to the Parks Master Plan. Below is the new proposed language, that if approved by city council this evening will be inserted into the parks master plan for the City of Molalla.

Addendum to Parks and Recreation Master Plan: The addendum is part of the Parks and Recreation Master Plan in accordance with the agreement between the City of Molalla and the Rotary Club of Molalla in section E of the "Bohlander Field Agreement" that was put into effect on June 8, 2011.

The Parks and Recreation Master Plan to reserve use of Bohlander Field for parking of vehicles during scheduled events at the Buckaroo Grounds and, in the event fields are developed at Bohlander Field, to ensure that no permanent structures, such as curbing, flower beds, shrubbery, backstops or goals, are erected that would impair parking of vehicles. It is understood that if backstops or goal structures, if erected, would be confined to the periphery of the field.

SUBMITTED BY: Melissa Georgesen, Community Services Director
APPROVED BY: Mark Gervasi, City Manager

ADMIN USE ONLY

Agenda Item

ALL AGENDA ITEMS MUST BE SUBMITTED BY NOON THE WEDNESDAY BEFORE THE SCHEDULED COUNCIL MEETING. ALL ITEMS MUST BE SUBMITTED TO THE CITY MANAGER FOR CONSIDERATION.

Addendum to Parks and Recreation Master Plan

The addendum is part of the Parks and Recreation Master Plan in accordance with the agreement between the City of Molalla and the Rotary Club of Molalla in section E of the “Bohlander Field Agreement” that was put into effect on June 8, 2011

The Parks and Recreation Master Plan to reserve use of Bohlander Field for parking of vehicles during scheduled events at the Buckeroo Grounds and, in the event fields are developed at Bohlander Field, to ensure that no permanent structures, such as curbing, flower beds, shrubbery, backstops or goals, are erected that would impair parking of vehicles. It is understood that if backstops or goal structures, if erected, would be confined to the periphery of the field.

February 6, 2013

Ms. Debbie Rogge & City Council Members
City of Molalla
117 N. Molalla Ave.
Molalla, OR 97038

Re: Molalla Sanitary Services, Inc. Rate Adjustment – Uniform Drop Box Service Fees Only

Dear Ms. Rogge:

We appreciate the confidence the City of Molalla has placed in Molalla Sanitary Services, Inc. Throughout our history with the City we have made every effort to provide the highest level of service possible.

Annually, we review all our services and rates in Molalla. For another year, we do not need to increase our cart and container rates.

However, our current return on revenues with the rate increase for uniform Drop Box Service Fees is projected to be slightly above 8%. Allowable returns on revenue range between 8% and 12%. We are on the low end of the acceptable range based on a summary of comparative rates – see Attachment “B.” Uniform Drop Box Services Fees need to be increased between 23-33% in order to maintain a healthy rate. Attachment “A” is the new fee schedule.

Molalla Sanitary Services, Inc. has been able to maintain the same cart and container rates since 2005 due to a number of cost effective strategies. Some of those strategies include:

- Disposal fees – changing from South Metro to Coffin Butte. This reduced disposal fees which are approximately 30% of the cost of service.
- Relocation of Shop Facilities to Molalla. This increased overall service efficiencies.
- Automated equipment. By acquiring this equipment company efficiency increased dramatically.
- Greater customer density

It was not any one item that allowed us to maintain the rates rather it was the cumulate effect of the above cost effective strategies implemented.

Like all other companies we have experienced increases in the cost of providing services. Some of these costs include:

- Wages and Benefits
- Health Insurance
- Equipment upgrades and replacement
- Fuel
- Disposal Fees

We have attached a comparative rate schedule (see Attachment "B") for solid waste of neighboring cities for your information. In the future we plan to meet with the city on an annual basis to review rates and inform the city as to what trends or issues are happening within the solid waste industry. We believe this is important because of our partnership relationship.

Very truly yours,

Michael E. McCoy CPA, CBA, CVA, CFF

Attachment A

Uniform Drop Box Service Fees:

Industrial/Commercial Open Drop Box

Size	Open	Compactor	
20 CuYds	\$123.00	\$128.00	+Disposal Fee
30 CuYds	\$130.00	\$169.00	+Disposal Fee
40 CuYds	\$147.00	\$196.00	+Disposal Fee

Multifamily customers add monthly service fee per schedule below.

Other Charges that May Apply to Above Fees

(Rates Effective: March 1, 2013)

Rental Charge

Occasional: \$6.30 per day after 2 working days at one site or \$63.00 per month
Which ever is less, if less than one load per week is hauled.

Industrial/Commercial/Multifamily: \$50.00 per month each box

Delivery Charge \$25.00

For the Occasional Customer: The delivery charge shall be made for the first drop box at a given location within a 30-day period.

For the Repeat Customer: The charge shall be made for service at different locations.

Incidental service charges: \$7.00 per 5 minute increment

Stand by time: Charged when waiting for the box to be cleared, cars to be moved, etc.

Leveling load: If a driver has to spend time getting the load level to haul it safely.

Wash out \$30.00 Assessed when customer requests the service. Also assessed when drop box is contaminated and requires cleaning before delivering to a new site.

Compactor

turn-around: \$25.00 For compactors requiring repositioning on truck to enable collection and tip.

Dry Run: \$25.00 Assessed when the scheduled collection is prevented because the box is blocked or the customer is not ready.

DeadHead

Round Trip: \$25.00 To be used for specialized boxes that cannot be exchanged.

Attachment B

**Molalla Sanitary Services, Inc.
 Summary of Comparative Rates
 Portland and Coffin Butte Disposal Region
 Fiscal Year 2012- 2013**

Service	Clackamas					Oregon		
	Molalla	County	Albany	Canby	Portland	Salem	Silverton	City
Residential								
<u>Weekly Pickup</u>								
20 Gal. Can/Cart	\$ 14.17	\$ 26.35	\$ -	\$ 18.95	\$ 25.80	\$ 18.95	\$ 21.25	\$ 20.63
32-35 Gal. Cart	\$ 19.25	\$ 30.35	\$ 17.40	\$ 22.57	\$ 28.20	\$ 20.90	\$ 24.30	\$ 25.83
60-65 Gal. Cart	\$ 27.54	\$ 46.25	\$ -	\$ 36.12	\$ 37.80	\$ 27.90	\$ 29.40	\$ 35.55
90-95 Gal. Cart	\$ 31.90	\$ 45.00	\$ 27.37	\$ 40.05	\$ 43.80	\$ -	\$ 31.45	\$ 38.55

ORDINANCE 2013 -02

AN ORDINANCE OF THE CITY OF MOLALLA ESTABLISHING A PRIVILEGE TAX ON ELECTRIC UTILITIES

- WHEREAS:** the Molalla City Council approved Resolution No 2013-04 on February 13, 2013, granting a non-exclusive electric franchise to Portland General Electric Company ("PGE"), effective February 13, 2013 (the "Franchise"); and
- WHEREAS:** the Section 12(A) of the Franchise provides for compensation to be paid to the City for use of the Public ROW in an amount of three and one half percent (3.5%) of the Grantee's gross revenues earned within the City; and
- WHEREAS:** Section 12(C) of the Franchise acknowledges the City's authority to enact a privilege tax in addition to the compensation set forth in Section 12(A) and requires ninety days notice to PGE prior to the effective date of the privilege tax; and
- WHEREAS:** the City Council finds it is in the best interest of the City and its citizens to increase the compensation due for operating within the City of Molalla from three and one half percent (3.5%) to five percent (5%) to provide fair and reasonable compensation for the management and use of the public right of way.

NOW, THEREFORE, the City of Molalla ordains as follows:

Section 1. There is hereby imposed on Portland General Electric Company a privilege tax of 1.5% per annum on the gross revenues derived by it from its electric light and power system in the City of Molalla, to be paid by Portland General Electric Company in addition to the existing 3.5% franchise fee, in order to reach a combined annual fee total of 5% per annum.

SECTION 2: The privilege tax shall be due and payable on or before the first day of April of each year.

SECTION 3: This ordinance is effective ninety days after its passage.

Adopted this ____ day of _____, 2013.

Approved:

Debbie Rogge, Mayor

ATTEST this ____ day of _____ 2013.

Sadie Cramer, City Recorder

2011 ORS § 294.160¹

Opportunity for public comment on new fee or fee increase

- (1) The governing body of a city, county or other unit of local government shall provide an opportunity for interested persons to comment on the enactment of any ordinance or resolution prescribing a new fee or a fee increase or an increase in the rate or other manner in which the amount of a fee is determined or calculated.
- (2) Where a local government exercises authority to assume the responsibility for a program delivered by the state, the local government shall provide an opportunity to comment on the difference between the fee amount charged by the state for such service and the proposed local fee for the service. [1995 c.576 §5; 2007 c.71 §90]

...

(No annotations for this section.)

Related Statutes³

- 223.309
Preparation of plan for capital improvements financed by system development charges
- 291.055
Agency fee approval required
- 455.210
Fees

¹ Legislative Counsel Committee, *CHAPTER 294—County and Municipal Financial Administration*, <http://www.leg.state.or.us/ors/294.html> (2011) (last accessed Mar. 25, 2012).

City of Molalla-Residential Annual kWh and Amt

Privilege Tax Rate: 1.50%

Label	Sum	N	Mean	Median	Minimum	Maximum	Annual Per Customer	Avg per customer per month
RATE=07								
ANNL_KWH	30,780,550	2,915	10,559	9,625	-	44,640		
ANNL_AMT	3,339,943	2,915	1,146	1,031	-	4,909	17.19	1.43

Label	Sum	N	Mean	Median	Minimum	Maximum	Annual Per Customer	Avg per customer per month
RATE=12								
ANNL_KWH	20,040	2	10,020	10,020	8,013	12,027		
ANNL_AMT	2,174	2	1,087	1,087	896	1,278	16.30	1.36

Label	Sum	N	Mean	Median	Minimum	Maximum	Annual Per Customer	Avg per customer per month
Res 7 & 12								
ANNL_KWH	30,800,590	2,917	10,559	9,625	-	44,640		
ANNL_AMT	3,342,117	2,917	1,146	1,031	-	4,909	17.19	1.43

Actual data through November 2012 billing cycle, ANNL amounts are preceeding 12 months.

Streets

Project	Project Cost	Funding Source- O&MorSDC
Robbins Street Resurface (2013) (From Grange to Molalla Ave).	\$80K	STP Funds - (in progress)
Sun Rise Acres, Rehab (2011-15)	\$1Million	Capital Outlay/STP/Grant Design in spring of 2013

Resurface List of Streets: Funding Source- Offset costs / 1.5 percent in Street Fund stemming from PGE utility Franchise totaling approx. 80 K annual.

West 5th. 10 K

Lynn Lane - 10K

West 4th 10K

Section Street between Molalla Ave & Hart 15K

West 3rd 10K

West 7th - 10K



STAFF REPORT

TO: Honorable Mayor and Members of the City Council

FROM: Mark J. Gervasi, Interim City Manager

DATE: February 27, 2013

SUBJECT: FRANCHISE AGREEMENT BETWEEN PORTLAND GENERAL ELECTRIC (PGE) AND THE CITY OF MOLALLA

ISSUE BEFORE THE COUNCIL: This Franchise Agreement – Resolution No. 2013 - 04 grants Portland General Electric Company a non-exclusive franchise for ten (10) years to erect, construct, maintain, repair, update and operate an electric light and power system within the City of Molalla, sets the terms and conditions of the franchise and provides an effective date.

RECOMMENDATION: Approve Resolution No. 2013-04 Franchise Agreement between the City of Molalla and Portland General Electric

EXECUTIVE SUMMARY:

- Legal Review - Reviewed by Nancy Werner Attorney with Beery, Elsner & Hammond
- Facts – discussions regarding this Agreement date back to June 17th, 2012 when the current 20 year agreement was set to expire. There have been two (2) six month extensions to the current agreement that the City Council approved. One in June of 2012 and the second extension in November of 2012.
- New Agreement calls for the Grantee (PGE) to pay the City an amount equal to 3 ½ percent of the gross revenue. The 3 ½ percent is the same percent in the current agreement.
- Past direction of Council – staff to negotiate a new Franchise Agreement with PGE.

FINANCIAL IMPLICATIONS:

- Amount – New Franchise Agreement is estimated to be \$187,600 in revenue in 2013 for 2012.
- Attachments: A. Resolution 2013 - 04

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF MOLALLA TO EXECUTE A NON-EXCLUSIVE FRANCHISE AGREEMENT WITH PORTLAND GENERAL ELECTRIC TO ERECT, CONSTRUCT, MAINTAIN, AND OPERATE AN ELECTRIC LIGHT AND POWER SYSTEM WITHIN THE CITY

WHEREAS, Portland General Electric (“PGE”) has been providing electric light and power service within the City of Molalla (“City”); and

WHEREAS, PGE is duly authorized by the Oregon Public Utility Commission 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 in Attachment A) within the City and to receive compensation for the use of the Public ROW; and

WHEREAS, the City and PGE both desire for PGE continue to provide electrical service within the City and to establish the terms by which PGE shall use and occupy the Public ROW; and

WHEREAS, the City and PGE have been negotiating in good faith to replace the existing agreement with a new authorization for PGE use of the Public ROW;

IT IS HEREBY RESOLVED by the City of Molalla Council as follows:

1. The City authorizes and directs the Mayor of the City of Molalla to execute the attached non-exclusive franchise agreement with PGE (Attachment A) for the provision of electric light and power service in the City.
2. The terms of the attached franchise agreement shall supersede all previous franchise agreements between City and PGE.
3. This resolution shall take effect upon adoption.

ADOPTED this 27th day of February, 2013 by the Molalla City Council.

Debbie Rogge
Mayor

ATTEST:

Sadie Cramer
City Recorder

ATTACHMENT A

1

FRANCHISE AGREEMENT

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

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

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

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

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

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

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

18 (A) The City hereby grants to Grantee and its successors and assigns, subject to the terms
19 and conditions in this Franchise, a nonexclusive franchise to erect, construct, repair,
20 maintain, upgrade and operate an electric light and power system within the City as it
21 now exists or may be extended in the future, including related Grantee Facilities (as
22 defined below). This Franchise includes the privilege to install, repair, maintain, upgrade
23 and operate Facilities necessary for the operation of Grantee's Electric Light and Power
24 System (as defined below) upon, over, along, and across the surface of and the space
25 above and below the streets, alleys, roads, highways, sidewalks, bridges and other public
26 ways over which the City has jurisdiction (collectively, "Public ROW"), as well as Public
27 Utility Easements ("PUEs") on third party property on which a preliminary subdivision
28 plat has been approved by the City, and which will be managed by the City thereafter, for

1 the provision of public utility services within the City as Grantee's Electric Light and
2 Power System now exists or is extended or upgraded in the future. Nothing in this
3 Franchise limits the City from granting others the right to carry on activities similar to, or
4 different from the ones described in this Franchise. The rights granted herein do not
5 include the right to build or site electric generating facilities in the Public ROW.

6 **(B)** All Grantee Facilities in possession of Grantee currently or during the Term (as
7 defined in Section 2(A) that are located within the Public ROW are covered by this
8 Franchise. The City may require relocation of Grantee Facilities as further specified in
9 Section 8.

10 **(C)** This Franchise also includes the privilege to repair, maintain, upgrade and operate
11 Grantee Facilities located in City park property that are existing as of the effective date of
12 this Franchise. This Franchise does not grant Grantee any right to install Grantee
13 Facilities in City park property on or after the effective date of this Franchise, which shall
14 be subject to separate permit from the City. With respect to Grantee Facilities located in
15 City park property existing as of the effective date of this Franchise, City park property
16 shall be treated the same as the Public ROW for purposes of Sections 4, 6, 7, 10, 12, 14,
17 16, 18, 19 and 21.

18 **(D)** This Franchise does not authorize Grantee to provide telecommunications services
19 via Grantee's Electric Light and Power System. Grantee agrees that prior to providing
20 telecommunications services in the City, it must obtain all necessary and applicable
21 authorizations from the OPUC regarding the provision of telecommunications service to
22 the public and obtain any necessary, lawful and applicable authorization from the City for
23 use of the Public ROW for such provision, including entering into a separate franchise
24 with the City and paying a separate franchise fee to the City.

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

26 **(A) Effective Date.** The effective date of this Franchise shall be February 27, 2013
27 ("Effective Date").

28 **(B) Duration of Franchise.** The term of this Franchise ("Term") shall commence on the
29 Effective Date and all rights and obligations pertaining thereto shall expire 10 years after
30 the Effective Date, unless renegotiated or terminated as provided herein. The term may
31 be extended for two consecutive 5 year terms upon mutual consent of the City and

1 Grantee. Either party may provide the other party written notice of its desire to extend the
2 Term at least 180 days prior to the expiration of the Term and the other party shall
3 respond to the notice within thirty (30) days after receiving the notice.

4 **(C) Charter and General Ordinances to Apply.** To the extent authorized by law, this
5 Franchise is subject to the Charter of the City of Molalla and general ordinance
6 provisions, and state statutes and regulations existing during the Term. Nothing in this
7 Franchise shall be deemed to waive the requirements of the various codes and ordinances
8 of the City regarding permits, fees to be paid that are generally applicable to other similar
9 businesses operating within the City, or the manner of construction.

10 **SECTION 3. DEFINITIONS.**

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

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

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

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

23 **(3) "City Manager"** means the City Manager of the City.

24 **(4) "City Recorder"** means the Recorder of the City.

25 **(5) "Director of Finance"** means the Director of Finance of the City.

26 **(6) "Emergency"** means a situation involving (a) an unscheduled outage affecting one or
27 more customers, or (b) danger to public safety. Emergency also includes situations
28 where the failure of Grantee to act would result in (a) or (b) within 24 hours.

29 **(7) "Franchise"** means this Franchise Agreement as fully executed by the City and
30 Grantee and adopted by the City Council pursuant to Resolution No ____.

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

1 (9) "Grantee Facility" means any tangible component of Grantee's Electric Light and
2 Power System, including but not limited to any poles, guy wires, anchors, wire, fixtures,
3 equipment, conduit, circuits, vaults, switch cabinets, transformers, secondary junction
4 cabinets, antennas, communication equipment and other property necessary or convenient
5 to supply electric light and power by Grantee within the City.

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

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

21 (12) "NESC" means the National Electrical Safety Code.

22 (13) "OPUC" means the Oregon Public Utility Commission.

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

26 (15) "Public ROW" shall have the meaning described in Section 1(A).

27 (16) "published" shall mean written and readily accessible.

28 (17) "Public Works Director" means the Public Works Director of the City.

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

30 (19) "Term" shall have the meaning described in Section 2(B).

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

4 **SECTION 4. CONSTRUCTION.**

5 **(A) Construction.** Grantee's Electric Light and Power System shall be constructed and
6 maintained in accordance with the NESC and in such manner as not to interfere with
7 sewers, water pipes, or any other property of the City, or with any other pipes, wires,
8 conduits or other facilities that may have been laid in the Public ROW by or under the
9 City's authority. Grantee shall comply with all applicable published City requirements
10 prior to commencing any construction in the Public ROW. Assuming there is sufficient
11 space in the Public ROW that meets the Grantee's construction standards as provided to
12 the OPUC, NESC requirements, and generally applicable published City requirements,
13 all poles shall be placed between the sidewalk and the edge of the Public ROW unless
14 another location is approved by the Public Works Director. Subject to any constitutional
15 limitations on the City's authority, City shall impose a condition in its development
16 process that the developer either (i) provide a sufficient location in the Public ROW
17 located in the land use development for Grantee Facilities that meet the Grantee's
18 construction standards as provided in the OPUC and NESC requirements, or (ii) provide
19 or obtain an easement for Grantee Facilities that meets the construction standards as
20 provided to the OPUC and NESC requirements.

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

29 **(C) Emergency Repairs.** In the event Emergency repairs to Grantee Facilities are
30 necessary, Grantee shall as soon as reasonably possible notify the City of the need for
31 such repairs. Grantee may immediately initiate such emergency repairs and, if permits

1 are required by City, apply for appropriate permits the next business day or as soon as
2 reasonably possible following discovery of the emergency. In the event excavation is
3 necessary in conjunction with the repairs, Section 6 shall also apply.

4 **(D) Reasonable Care.** All work completed by Grantee within the Public ROW shall
5 be conducted with reasonable care and with the goal of minimizing the risk to those using
6 the Public ROW and to minimize the risk of damage to public and third party property.
7 All work shall be performed in accordance with all applicable laws and regulations,
8 including but not limited to the NESC, Grantee's construction standards as provided to
9 the OPUC, the conditions contained in the City work permit, and generally applicable
10 published City standards. Any work completed by Grantee within the Public ROW may
11 be inspected by the City to determine whether it has complied with the permit issued by
12 the City. If work has been completed by Grantee in the Public ROW and the City
13 determines such work was not completed in accordance with the permit issued by the
14 City, the City shall notify Grantee and provide Grantee with sixty (60) days to re-perform
15 the work in accordance with the permit.

16 **(E) Cooperation between Grantee and City.** In accordance with ORS 758.025,
17 Grantee and City shall work together during any design process affecting the Public
18 ROW to establish suitable locations for Grantee's Facilities and cooperate to minimize
19 the economic impact associated with any relocation of Grantee Facilities.

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

1 facilities, excluding City confidential or proprietary information. Unless required by
2 law, the Grantee will not sell or provide City prepared maps or data to third parties
3 without written permission from the City.

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

19 **SECTION 7. RESTORATION AFTER EXCAVATION.** Except as otherwise
20 provided for in this Section, Grantee shall restore the surface of the Public ROW in the
21 area disturbed by any excavation by Grantee to at least the same condition that it was in
22 prior to excavation, in accordance with generally applicable published City standards and
23 the permit issued by the City; provided, however, Grantee shall not be required, at
24 Grantee's expense, to pave a gravel street that was gravel prior to the excavation, install
25 sidewalk panels or curbs that did not exist prior to the excavation, or construct additional
26 improvements in the Public ROW that did not exist prior to the excavation. If Grantee
27 fails to restore the Public ROW to at least the same condition that it was in prior to the
28 excavation, in accordance with generally applicable published City standards and the
29 permit issued by the City, the City shall give Grantee written notice and provide Grantee
30 a reasonable period of time, not to exceed thirty (30) days, to restore the Public ROW. If
31 the work of Grantee creates a public safety hazard as determined by the Public Works

1 Director, Grantee may be required to repair or restore the Public ROW within twenty-
2 four (24) hours notice from the City, or such time as agreed between the Public Works
3 Director and Grantee, taking into consideration weather and other relevant factors.
4 Should Grantee fail to make such repairs or restorations within the aforementioned time
5 frames, the City may, after providing notice to Grantee and a reasonable opportunity to
6 cure, refill or repave (as applicable) any opening made by Grantee in the Public ROW
7 and the expense thereof shall be paid by Grantee. The City reserves the right, after
8 providing notice to Grantee, to remove or repair any work completed by Grantee, which,
9 in the determination of the Public Works Director is inadequate, using a qualified
10 contractor in accordance with applicable state and federal safety laws and regulations,
11 and Grantee's construction standards as provided to the OPUC. The cost thereof,
12 including the cost of inspection and supervision, shall be paid by Grantee. In the event
13 that Grantee's work is coordinated with other construction work in the Public ROW, the
14 Public Works Director may excuse Grantee from restoring the surface of the Public
15 ROW, providing that as part of the coordinated work, the Public ROW is restored to good
16 order and condition.

17 **SECTION 8. RELOCATION.**

18 (A) Permanent Relocation Required by City – This subsection (A) covers permanent
19 relocation of overhead Grantee Facilities that will remain overhead, and underground
20 Grantee Facilities that will remain underground. The City shall have the right to require
21 Grantee to change the location of Grantee's Electric Light and Power System located in
22 the Public ROW when it is necessary for any public project or public improvement and,
23 unless otherwise agreed, the expenses thereof shall be paid by Grantee. The foregoing
24 sentence shall not apply if any of the following is true: a) the project or improvement
25 necessitating the change in location will not be publicly owned; or b) the majority of the
26 funding for the project or improvement does not come from City, county, state or federal
27 government sources. Should Grantee fail to remove or relocate any such Grantee
28 Facilities within sixty (60) days after the date established by the City, which, except in
29 the event of a public emergency, shall not occur sooner than sixty (60) days after the City
30 provides written notice to remove/relocate to Grantee, the City may cause or effect such
31 removal or relocation, performed by a qualified contractor in accordance with applicable

1 state and federal safety laws and regulations, and the Grantee's construction standards as
2 provided to the OPUC, and the expense thereof shall be paid by Grantee. However, when
3 the City requests a subsequent relocation of all or part of the same Grantee Facilities less
4 than two years after the initial relocation that is necessary or convenient for a public
5 project, and not at the request to accommodate a third party, the subsequent relocation
6 shall be at the expense of the City, unless the relocation is necessitated by an event or
7 circumstance beyond the reasonable control of the City, including, but not limited to Acts
8 of God, earthquake, severe storm, flood or other natural disaster.

9 **(B) Notice and Cooperation.** The City will endeavor to provide as much notice prior
10 to requiring Grantee to relocate Grantee Facilities as possible. The notice shall specify
11 the date by which the existing Grantee Facilities must be removed or relocated. Nothing
12 in this Section 8 shall prevent the City and Grantee from agreeing, either before or after
13 notice is provided, to a mutually acceptable schedule for relocation. Grantee and City
14 shall diligently work together in good faith during the design process for any project
15 necessitating the relocation of Grantee's Facilities under this Section 8 to identify a
16 suitable location for Grantee's Facilities in the Public ROW, or PUE, that meet Grantee's
17 construction standards as provided to the OPUC, the NESC and generally applicable
18 published City standards in order for Grantee to maintain sufficient service and to
19 minimize the economic impact to Grantee and the City associated with such relocation of
20 Grantee's Facilities.

21 **(C) Permanent Relocation - Undergrounding.** This subsection (C) applies to
22 conversions of Grantee Facilities from overhead to underground regardless of whether or
23 not such conversion is made in conjunction with a public project. In accordance with any
24 applicable law or administrative rule, the City may require Grantee to convert any
25 overhead Grantee Facilities to underground Grantee Facilities at the same or different
26 locations, subject to the NESC and Grantee's engineering and safety standards. This
27 subsection shall not apply to Grantee Facilities used for or in connection with the
28 transmission of electric energy at nominal voltages in excess of 35,000 volts or to
29 pedestals, cabinets or other above-ground equipment. Any such underground relocation
30 shall be consistent with applicable development plans or projects of the City, or as
31 approved by the City. The expense of such a conversion shall be paid by Grantee, and

1 Grantee may recover its costs from its customers in accordance with state law,
2 administrative rule, or regulation. Nothing in this subsection prevents the City and
3 Grantee from agreeing to a different form of cost recovery on a case-by-case basis
4 consistent with applicable statutes, administrative rules, or regulations.

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

22 **(E) Relocation at Request of or to Accommodate Third Party.** In the event that any
23 relocation of Grantee Facilities is requested by or is to accommodate a third party,
24 Grantee may seek reimbursement from the third party consistent with the Grantee's tariff
25 on file with the OPUC and shall not seek reimbursement from the City. Such relocation
26 shall be consistent with any applicable development plan or projection of the City or
27 approved by the City. If the relocation of Grantee Facilities is caused or required by the
28 conditions placed by the City on approval for projects of third parties, such relocation
29 shall in no event fall under the provisions of subsections (A), (C) or (D) of this Section 8.

30 **(F) Temporary Relocation at Request of Third Parties.** Whenever it is necessary to
31 temporarily relocate or rearrange any Grantee Facility in order to permit the passage of

1 any building, machinery or other object, Grantee shall perform the work after receiving
2 sixty (60) business days written notice from the persons desiring to move the building,
3 machinery or other object. The notice shall: (1) demonstrate that the third party has
4 acquired at its expense all necessary approvals and permits from the City; (2) detail the
5 route of movement of the building, machinery, or other object; (3) provide that the person
6 requesting the temporary relocation shall be responsible for Grantee's costs; (4) provide
7 that the requestor shall indemnify and hold harmless the City and Grantee from any and
8 all damages or claims resulting either from the moving of the building, machinery or
9 other object or from the temporary relocation of Grantee Facilities; and (5) be
10 accompanied by a cash deposit or other security acceptable to Grantee for the costs of
11 relocation. Grantee in its sole discretion may waive the security obligation. The cash
12 deposit or other security shall be in an amount reasonably calculated by Grantee to cover
13 Grantee's costs of temporary relocation and restoration. All temporary relocations under
14 this subsection shall comply with ORS 757.805.

15 **SECTION 9. PUBLIC ROW VACATION.** If all or a portion of the Public ROW
16 used by Grantee is vacated by the City during the Term, and if reasonably possible, the
17 City shall either condition the approval of the vacation on the reservation of an easement
18 for Grantee Facilities in their then-current location that prohibits any use of the vacated
19 property that interferes with Grantee's full enjoyment and use of its easement, or permit
20 Grantee Facilities to remain in a PUE. If neither of these options is reasonably possible,
21 Grantee shall, after notice from the City and without expense to the City, remove Grantee
22 Facilities from such vacated Public ROW, restore, repair or reconstruct the Public ROW
23 where such removal has occurred in accordance with Section 7. In the event of failure,
24 neglect or refusal of Grantee, after providing Grantee with sixty (60) days prior written
25 notice, to repair, restore, or reconstruct such Public ROW, the City may complete such
26 work or cause it to be completed by a qualified contractor in accordance with applicable
27 state and federal safety laws and regulations, and the cost thereof shall be borne by the
28 Grantee. Upon request, the City will cooperate with Grantee to identify alternative
29 locations within the Public ROW for Grantee Facilities if they are not permitted to remain
30 in the vacated area.

1 **SECTION 10. CITY PUBLIC WORKS AND IMPROVEMENTS.** Nothing in this
2 Franchise shall be construed in any way to prevent the City from excavating, grading,
3 paving, planking, repairing, widening, altering, constructing, maintaining or completing
4 any work that may be needed or convenient in the Public ROW. The City shall coordinate
5 any such work with Grantee to avoid, to the extent reasonably foreseeable, any
6 obstruction, injury or restrictions on the use by Grantee of any Grantee Facilities arising
7 out of such work. Nothing in this Section relieves either party from its obligations set
8 forth in Sections 4(E) and 8.

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

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

30 **(A) Use of Public ROW.** In consideration for its use of the Public ROW in accordance
31 with the terms of this Franchise, Grantee agrees to pay the City an amount equal to 3 1/2

1 percent of the Gross Revenue. The amount of the current year's franchise fee shall be
2 based on Gross Revenue collected by Grantee during the previous calendar year and shall
3 be paid on an annual basis for Grantee's rights under this Agreement for the full calendar
4 year in which the payment is made. To the extent permissible under state law and
5 regulation, the payment imposed by this subsection shall be considered an operating
6 expense of Grantee and shall not be itemized or billed separately to consumers within the
7 City.

8 **(B) Property Tax Limitations Do Not Apply.** The payment described in this Section
9 12 is not subject to the property tax limitations of Article XI, Sections 11(b) and 11(19)
10 of the Oregon Constitution and is not a fee imposed on property or property owners by
11 fact of ownership.

12 **(C) Privilege Tax.** The City shall retain the right, as permitted by Oregon law, to charge
13 a privilege tax based on a percentage of the Gross Revenue in addition to the payment
14 amounts set forth in subsection (A). The City shall provide Grantee at least ninety (90)
15 days notice prior to any privilege tax or increase in privilege tax becoming effective.
16 Grantee shall follow state regulations regarding the inclusion of such privilege tax as an
17 itemized charge on the electricity bills of its customers within the City.

18 **(D) Remittance of Payment.** Grantee shall remit to the Director of Finance on or
19 before the first (1st) day of April of each year, the annual 3 1/2 % franchise fee payment
20 to be made in such year that covers Grantees rights under this Agreement for the full
21 calendar year in which the payment is made. Payment must be made in immediately
22 available federal funds. No later than the date of the payment, Grantee shall provide the
23 City a statement, under oath, showing the Gross Revenue for the preceding year.

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

29 **(F) Late Payments.** Interest on late payments shall accrue from the due date based on
30 the statutory rate designated in ORS 82.010 as of the due date and shall be computed

1 based on the actual number of days elapsed from the due date until payment. Interest
2 shall accrue without regard to whether the City has provided notice of delinquency.

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

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

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

23 **SECTION 13. AUDIT.**

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

1 information to City within the City, or the Portland, Oregon metropolitan area, during
2 regular Grantee business hours.

3 **(B) Audit Payment.** If the City's audit shows that the amounts due to the City are
4 higher than those based on the Grantee's calculation of Gross Revenue, then Grantee
5 shall make a payment for the difference within sixty (60) days after the delivery to
6 Grantee of the audit results. In addition to paying any underpayment, Grantee shall pay
7 interest based on Grantee's cost of debt as approved by the OPUC plus 100 basis points
8 (1.0%), but not penalties, as specified in this Franchise, from the original due date. In
9 the event the City's audit shows that Grantee's calculation of Gross Revenue resulted in
10 an overpayment to the City by five percent (5%) or more in any one year, the Grantee
11 may deduct such overpayment from the next annual franchise fee payment. If the City's
12 audit shows that the amounts due to the City based on the Grantee's calculation of Gross
13 Revenue deviated by five percent (5%) or more in any one year from the City's
14 calculation during the audit, Grantee shall reimburse the City for the incremental cost
15 associated with the audit, not to exceed one percent (1%) of the total annual franchise fee
16 payment for the applicable audit period.

17 **SECTION 14. TERMINATION AND REMEDIES.**

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

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

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

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

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

- 15 **(1)** The invalidation, failure to pay or any suspension of Grantee's payments of franchise
16 fees or privilege taxes to the City for use of the Public ROW under this Franchise;
- 17 **(2)** Any failure by Grantee to submit timely reports as may be requested by the City,
18 regarding the calculation of its franchise fees or privilege taxes paid or to be paid to the
19 City;
- 20 **(3)** Any failure by Grantee to maintain the liability insurance or self-insurance required
21 under this Franchise;
- 22 **(4)** Any failure by Grantee to provide copies of requested information as provided under
23 Sections 4, 5, and 13 above; and
- 24 **(5)** Any failure by Grantee to otherwise substantially comply with the requirements of
25 Section 4 through Section 20 of this Franchise, unless otherwise agreed.

26 **(E) Notice and Opportunity to Cure.** The City shall provide Grantee thirty (30) days
27 prior written notice of its intent to exercise its rights under this Section 14, stating the
28 reasons for such action. If Grantee cures the basis for termination or if Grantee initiates
29 efforts satisfactory to the City to remedy the basis for termination and the efforts continue
30 in good faith within the thirty (30) day notice period, the City shall not exercise its
31 remedy rights. If Grantee fails to cure the basis for termination or if Grantee does not

1 undertake and/or maintain efforts satisfactory to the City to remedy the basis for
2 termination within the thirty (30) day notice period, then the City Council may impose
3 any or all of the remedies available under this Section 14.

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

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

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

24 **SECTION 16. REMOVAL OF FACILITIES.** If this Franchise is terminated or
25 expires on its own terms and is not replaced by a new franchise agreement or similar
26 authorization, the City may determine whether Grantee Facilities are to be removed from
27 the Public ROW or remain in place. The City shall provide written notice of any
28 requirement to remove Grantee Facilities and shall provide Grantee sixty (60) days to
29 comment on such requirement to remove Grantee Facilities. Following consideration of
30 any such comments, the City Manager may issue an order requiring removal of Grantee
31 Facilities within nine (9) months after such order is declared.

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

4 **SECTION 18. INDEMNIFICATION AND DISCLAIMER OF CONSEQUENTIAL**
5 **DAMAGES.**

6 (A) To the fullest extent permitted by law, each party shall indemnify and hold
7 harmless the other party, its elected and appointed officials, officers, agents and
8 employees against any and all claims, damages, costs and expenses, including
9 attorney's fees and costs, to which the indemnified party may be subjected as a
10 result of any negligent or willful misconduct of the indemnifying party, or its
11 affiliates, officers, employees, agents, contractors or subcontractors. The
12 obligations imposed by this Section shall survive termination of this Franchise.

13 (B) IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER
14 PARTY HERETO FOR ANY LOST OR PROSPECTIVE PROFITS OR ANY
15 OTHER SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL,
16 INCIDENTAL OR INDIRECT LOSSES OR DAMAGES (IN TORT,
17 CONTRACT OR OTHERWISE) UNDER OR IN RESPECT OF THIS
18 AGREEMENT OR FOR ANY FAILURE OF PERFORMANCE RELATED
19 HERETO HOWSOEVER CAUSED, WHETHER OR NOT ARISING FROM
20 SUCH PARTY'S SOLE, JOINT OR CONCURRENT NEGLIGENCE.

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

24 (A) Commercial General Liability insurance covering all operations by or on behalf of
25 Grantee for Bodily Injury and Property Damage, including Completed Operations and
26 Contractors Liability coverage, in the amount of Two Million Dollars (\$2,000,000.00)
27 per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate.

28 (B) Business Automobile Liability insurance to cover any vehicles used in connection
29 with its activities under this Franchise, with a combined single limit of One Million
30 Dollars (\$1,000,000.00) per accident.

1. (C) Workers' Compensation coverage as required by law and Employer's Liability
2 Insurance with limits of One Million Dollars (\$1,000,000.00).

3 (D) With the exception of Workers' Compensation and Employer's Liability coverage,
4 Grantee shall include the City as an additional insured on all applicable policies;
5 provided, however, that such additional insured requirements shall only apply to
6 Grantee's contractually assumed indemnity obligation under this Agreement. All
7 insurance policies shall provide that they shall not be canceled or modified unless thirty
8 (30) days prior written notice is provided to the City. Grantee shall provide the City with
9 a certificate of insurance evidencing such coverage as a condition of this Franchise and
10 shall provide updated certificates upon request.

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

17 **SECTION 20. LIMITATION ON PRIVILEGES.** All rights and authority
18 granted to Grantee by the City under this Franchise are conditioned on the
19 understanding and agreement that the privileges in the Public ROW shall not be
20 an enhancement of Grantee's properties or an asset or item of ownership of
21 Grantee.

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

26 **SECTION 22. REMEDIES AND PENALTIES NOT EXCLUSIVE.** All
27 remedies and penalties under this Franchise, including termination, are
28 cumulative and not exclusive, and the recovery or enforcement by one available
29 remedy or imposition of a penalty is not a bar to recovery or enforcement by any
30 other remedy or imposition of any other penalty. The City reserves the right to
31 enforce the penal provisions of any City ordinance or resolution and to avail itself

1 to any and all remedies available at law or in equity. Failure to enforce any term,
2 condition or obligation of this Franchise shall not be construed as a waiver of a
3 breach of any term, condition or obligation of this Franchise. A specific waiver of
4 a particular breach of any term, condition or obligation of this Franchise shall not
5 be a waiver of any other, subsequent or future breach of the same or any other
6 term, condition or obligation of this Franchise.

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

19 **SECTION 24. NOTICE.** Any notice provided for under this Franchise shall be
20 sufficient if in writing and (1) delivered personally to the following addressee, (2)
21 deposited in the United States mail, postage prepaid, certified mail, return receipt
22 requested, (3) sent by overnight or commercial air courier (such as Federal
23 Express or UPS), or (4) sent by facsimile transmission with verification of receipt,
24 addressed as follows, or to such other address as the receiving party hereafter
25 shall specify in writing:

26 **If to the City:**
27 **City Manager City of Molalla, Oregon**
28 **117 N. Molalla Avenue**
29 **Molalla, Oregon 97038**
30 **FAX # (503) 829-3676**

1 **With a copy to: Attorney for the City of Molalla**
2 **Beery Elsner & Hammond, LLP 1750 SW Harbor Way, Suite 380**
3 **Portland, OR 97201**
4 **FAX # (503) 226-2348**

5 **If to the Grantee: Regional Manager**
6 **Portland General Electric Company**
7 **Att: Government Affairs**
8 **121 SW Salmon St 1WTC0301**
9 **Portland, Oregon 97204**
10 **FAX: (503) 464-2354**

11 **With a copy to: Portland General Electric Company**
12 **Attn: General Counsel**
13 **One World Trade Center, 17th Floor**
14 **121 SW Salmon Street**
15 **Portland, Oregon 97204**
16 **FAX: (503) 464-2200**

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

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

24

PORTLAND GENERAL ELECTRIC
COMPANY

CITY

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

25