RESOLUTION
(10- 2015)

A RESOLUTION OF THE FAIRVIEW CITY COUNCIL AUTHORIZING THE CITY ADMINISTRATOR TO SIGN A FRANCHISE AGREEMENT WITH PORTLAND GENERAL ELECTRIC COMPANY TO PROVIDE ELECTRIC LIGHT AND POWER SERVICE WITHIN THE CITY

WHEREAS, on September 17, 2003, the City of Fairview adopted Ordinance 11-2003, an Ordinance granting a non-exclusive electric franchise to Portland General Electric Company ("PGE") effective January 1, 2004 ("Franchise"); and

WHEREAS, the Franchise, as extended, expired on March 1, 2014, however the terms of the expired Franchise have governed and will continue to govern PGE's use of the City rights of way until the effective date of the new franchise agreement; and

WHEREAS, the City and PGE have been negotiating a new franchise agreement and have now reached agreement on its terms; and

WHEREAS, the City Council finds it is in the public interest to grant PGE a franchise on the terms and conditions contained in the attached Exhibit A, for a period of ten years commencing as of July 1, 2014.

NOW, THEREFORE, BE IT RESOLVED BY THE FAIRVIEW CITY COUNCIL AS FOLLOWS:

Section 1 The City Administrator is hereby authorized and directed to sign the franchise agreement with Portland General Electric Company attached hereto as Exhibit A.

Section 2 This resolution is and shall be effective from and after the day of its passage.

Resolution adopted by the City Council of the City of Fairview, this 4th day of February, 2015.

Mayor, City of Fairview
Ted Tosterud

ATTEST

City Recorder, City of Fairview
Devree Leymaster

Exhibit A

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FRANCHISE AGREEMENT

This Franchise Agreement ("Franchise") is made and entered into by and between the City of Fairview, and Oregon municipal corporation ("City") and Portland General Electric Company, a corporation ("Grantee").

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 electric 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 place, install, repair, maintain, upgrade and operate Grantee's Electric Light and Power System (as hereinafter defined) within the City as it now exists or may be extended in the future, upon, over, along, and across the surface of and the space above and below the streets, alleys, roads, highways, sidewalks, bridges, and other public ways over which the City has jurisdiction, as well as Public Utility Easements on third party property on which a preliminary subdivision plat has been approved by the City, and which will be managed by the City thereafter ("PUEs"), (collectively, "Public ROW") for the provision of utility services within the City as Grantee's Electric Light and Power System now exists or is extended or upgraded in the future. The Franchise permits use of the Public ROW only to the extent of the City's right, title, interest and authority to grant a franchise to occupy and use such areas for electric facilities. 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.

(B) Existing facilities. All Grantee Facilities in possession of Grantee as of the Effective Date or during the Term (as defined in Section 1(C)) that are located within the Public ROW are covered by this Franchise and are hereby approved for the purposes of this Franchise, subject to Grantee's acknowledgement that the City has not inventoried or evaluated Grantee Facilities to ensure their compliance with applicable local, state and federal laws, regulations and orders. The City may require relocation of Grantee Facilities as further specified in Section 8. This Agreement also includes the privilege to repair, maintain, upgrade and operate Grantee Facilities located in City park property that are existing as of the Effective Date of this Agreement. Installation of Grantee Facilities in City park property on or after the Effective Date of this Agreement, and to repair, maintain, upgrade and operate such after-installed Grantee Facilities, shall be subject to separate written permission from the City. With respect to Grantee Facilities located in City park property existing as of the Effective Date of this Agreement, City park property shall be treated the same as the Public ROW for purposes of Sections 4(C), 4(D), 5, 6, 7 and 8 herein.

(C) Term. The effective date of this Franchise shall be July 1, 2014 (the "Effective Date"), and shall expire 10 years after the Effective Date, unless renegotiated or terminated as provided herein ("Term"). Upon becoming effective, this Franchise shall supersede and replace any and all other franchise agreements that may be or have been in place between Grantee and the City as of or prior to the Effective Date.

SECTION 2. PERFORMANCE. Except as provided elsewhere in this Agreement, during the Term, Grantee agrees to comply with all lawful terms and conditions of the Charter of the City of Fairview and general ordinance provisions passed pursuant thereto existing as of the effective date of this Agreement or hereafter enacted. All work performed under the terms of this Franchise, including work performed by Grantee, the City, or under the City's direction shall comply with the requirements of the NESC and Grantee's construction and operating standards in effect at the time of installation. Nothing in this Franchise shall be deemed to waive the requirements of the various codes and ordinances of the City regarding permits, fees to be paid that are generally applicable to other similar businesses operating within the City, or the manner of construction. Should there be a direct conflict between any terms or conditions stated in a permit granted by the City and the terms of this Franchise, the terms of this Franchise shall control.

SECTION 3. DEFINITIONS.

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

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

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

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

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

(4) "City Administrator" means the City Administrator of the City.

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

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

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

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

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

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

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

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

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

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

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

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

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

(18) "Term" shall have the meaning described in Section 1(C).

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

SECTION 4. CONSTRUCTION

(A) New Construction. Grantee's Electric Light and Power System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of the City, or with any other pipes, wires, conduits or other facilities that may have been laid in the Public ROW by or under the City's authority. Grantee shall comply with all applicable City permitting requirements, including payment of applicable permit fees. Grantee shall construct Grantee Facilities in accordance with the terms and conditions of the City permit, including installation in the location approved in the permit. If any work has been completed by Grantee in the Public ROW and the City determines such work was not completed in a City approved location as required in the permit, or otherwise was not in compliance with the permit, the City shall notify Grantee and provide Grantee with sixty (60) days to re-perform the work. Unless otherwise agreed to in writing by the City, whenever any existing electric, cable or telecommunications facilities are located underground in the area in which Grantee is installing new Grantee Facilities, Grantee shall install Grantee Facilities underground at its own expense. This requirement shall not apply to Grantee Facilities used for the transmission of electric energy at nominal voltages in excess of 35,000 volts or to pedestals, cabinets or other above-ground equipment. The City reserves the right to require written approval of the location of any such above-ground equipment in the Public ROW. To the extent the City has the authority to do so, the City shall impose a condition on its land use development approval that the developer either (i) provide a sufficient location in the Public ROW located in the land use development for Grantee Facilities that meet the Grantee's construction standards as provided to the OPUC and NESC requirements, or (ii) provide or obtain an easement for Grantee Facilities that meets the construction standards as provided to the OPUC, and NESC requirements.

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

(C) Emergency Repairs. In the event Emergency repairs to Grantee Facilities located in the Public ROW are necessary, Grantee shall as soon as reasonably possible notify the City of the need for such repairs. If permits are required by City, Grantee shall apply for appropriate permits the next business day or as soon as reasonably possible following discovery of the Emergency. In the event excavation is necessary in conjunction with the repairs, Section 6 shall also apply. After Emergency work has been completed by Grantee in the Public ROW, the City may inspect such work and if the City determines such work was not completed in a manner or location acceptable to the City in accordance with this Franchise, the City shall notify Grantee and provide Grantee with sixty (60) days after the Emergency has passed to re-perform the work in a City approved manner and location that conforms to the requirements of the NESC.

(D) Reasonable Care. All work completed by Grantee within the Public ROW under the provisions of this Franchise Agreement, shall be conducted with reasonable care and with the goal of minimizing the risk to those using the Public ROW and to minimize the risk of damage to public and third party property. Grantee shall comply with all applicable City permitting requirements, including payment of applicable permit fees. All work shall be performed in accordance with the terms and conditions of the City permit and all applicable laws and regulations, including but not limited to the NESC. Any work completed by Grantee within the Public ROW may be inspected by the City to determine whether it has been placed in its approved location according to Grantee's permit issued by the City. If any work has been completed by Grantee in the Public ROW and the City determines such work was not completed in a City approved location as required in the permit, or otherwise was not in compliance with the permit, the City shall notify Grantee and provide Grantee with sixty (60) days to re-perform the work.

(E) Cooperation between Grantee and City. In accordance with ORS 758.025, for purposes of this Franchise, including but not limited to Sections 4, 8 and 10, Grantee and City shall coordinate during the planning and design phase of any project affecting Grantee's Facilities in the Public ROW to discuss the project's scope and schedule, including options to minimize or eliminate the costs to the City and to Grantee. The City is not required to avoid or minimize costs to Grantee in a way that materially affects the project's scope, costs or schedule. The Grantee and City shall endeavor to meet at least annually to forecast potential construction, relocation and other activities which may be subject to this Franchise.

(F) Responsibility for Work Performed. Grantee shall be responsible for all work, including but not limited to construction, relocation, excavation and restoration, performed pursuant to this Franchise by Grantee, its employees, contractors, subcontractors or agents.

SECTION 5. SUPPLYING MAPS. Grantee shall maintain maps and data pertaining to the location of Grantee Facilities on file at its corporate offices or at an office in Oregon. After providing Grantee with twenty-four (24) hours prior notice, the City may inspect the maps and data (excluding Grantee proprietary information) at any time during Grantee's business hours. Upon request of the City and without charge, Grantee shall furnish current maps and data to the City by electronic data in read-only format showing the general location of Grantee Facilities,

excluding Grantee proprietary information. Unless required by law, the City will not sell or provide Grantee prepared maps or data to third parties without written permission from Grantee. Upon request of Grantee, the City will make available to Grantee any relevant City prepared maps or data, at no charge to Grantee, showing the general location of City-owned facilities in the Public ROW, excluding information exempt from public disclosure. Grantee will not sell or provide City prepared maps or data to third parties without written permission from the City.

SECTION 6. EXCAVATION. Subject to Sections 4 and 7, and after obtaining any permits required by the City, as well as complying with ORS 757.542 et seq. (Oregon Utility Notification Center) as they may be amended from time to time, Grantee may make all necessary excavations within the Public ROW for the purpose of installing, repairing, upgrading or maintaining Grantee Facilities. All excavations made by Grantee in the Public ROW shall be properly safeguarded for the prevention of accidents.

SECTION 7. RESTORATION AFTER EXCAVATION. Except as otherwise provided for in this Section, Grantee shall restore the surface of the Public ROW in the area disturbed by any excavation by Grantee to at least the same condition that it was in prior to excavation, in accordance with generally applicable published City standards and the permit issued by the City; provided, however, Grantee shall not be required, at Grantee's expense, to pave a gravel street that was gravel prior to the excavation, install sidewalk panels or curbs that did not exist prior to the excavation, or construct additional improvements in the Public ROW that did not exist prior to the excavation. If Grantee fails to restore the Public ROW to at least the same condition that it was in prior to the excavation, in accordance with generally applicable published City standards and the permit issued by the City, the City shall give Grantee written notice and provide Grantee a reasonable period of time, not to exceed thirty (30) days, to restore the Public ROW. If the work of Grantee creates a public safety hazard as determined by the City Engineer, Grantee may be required to repair or restore the Public ROW within twenty-four (24) hours notice from the City, or such time as agreed between the City Engineer and Grantee, taking into consideration weather and other relevant factors. Should Grantee fail to make such repairs or restorations within the aforementioned time frames, the City may, after providing notice to Grantee, make such repairs or restorations and the cost thereof shall be paid by Grantee. The City reserves the right, after providing notice to Grantee, to remove or repair any work completed by Grantee which, in the determination of the City Engineer, does not meet City standards for street repair or restoration. If in the process the City's work affects Grantee Facilities, the City shall use a qualified contractor and the work shall be performed in accordance with applicable state and federal safety laws and regulations, Grantee's construction standards as provided to the OPUC and NESC requirements. The cost of the work performed by the City pursuant to the preceding two sentences, including the cost of inspection and supervision, shall be paid by Grantee. In the event that Grantee's work is coordinated with other construction work in the Public ROW, the City Engineer may excuse Grantee from restoring the surface of the Public ROW, providing that as part of the coordinated work, the Public ROW is restored to good order and condition.

SECTION 8. RELOCATION.

(A) Permanent Relocation Required by City – This subsection (A) covers permanent relocation of overhead Grantee Facilities that will remain overhead, and underground Grantee Facilities that will remain underground. The City shall have the right, when consistent with its legal

authority, to require Grantee to remove or relocate Grantee's Electric Light and Power System located in the Public ROW for any public project, and, unless otherwise agreed, the expenses thereof shall be paid by Grantee.

(B) Notice. The City will endeavor to provide as much notice as possible prior to requiring Grantee to remove or relocate Grantee Facilities pursuant to subsections (A) and (C). The notice shall specify the date by which the existing Grantee Facilities must be removed or relocated. Nothing in this Section 8 shall prevent the City and Grantee from agreeing, either before or after notice is provided, to a mutually acceptable schedule for relocation

(C) Permanent Relocation - Undergrounding. This subsection (C) applies to conversions of Grantee Facilities from overhead to underground regardless of whether or not such conversion is made in conjunction with a public project. The City may require Grantee to convert any overhead Grantee Facilities to underground Grantee Facilities at the same or different locations, subject to the NESC and Grantee's engineering and safety standards. This subsection shall not apply to Grantee Facilities that are necessary in connection with the transmission of electric energy at nominal voltages in excess of 35,000 volts or to pedestals, cabinets or other above-ground equipment. Any such underground relocation shall be consistent with applicable long-term development plans or projects of the City, or as approved by the City. The expense of such a conversion shall be paid by Grantee, and Grantee may recover its costs from its customers in accordance with state law, administrative rule, or regulation. Nothing in this subsection prevents the City and Grantee from agreeing to a different form of cost recovery on a case-by-case basis consistent with applicable statutes, administrative rules, or regulations.

(D) Temporary Relocation at Request of City. This subsection (D) covers temporary relocation of overhead Grantee Facilities that will remain overhead, as well as underground Grantee Facilities that will remain underground. The City may require Grantee to temporarily remove and relocate Grantee Facilities by giving sixty (60) days notice to Grantee. The cost of such temporary removal or relocation, as well as cost of replacing Grantee Facilities in their permanent location, shall be paid by Grantee when such temporary removal or relocation is for a public project and is consistent with the City's legal authority. The City may provide a temporary construction easement that meets NESC requirements and the Grantee's construction standards provided to the OPUC, and on which the Grantee may place its Facilities until such time as the Grantee moves its Facilities to their permanent location.

(E) Relocation at Request of or to Accommodate Third Party. In the event that any relocation of Grantee Facilities is requested by or is to accommodate a third party, Grantee shall seek reimbursement from the third party consistent with the Grantee's tariff on file with the OPUC and not from the City. If the relocation of Grantee Facilities is caused or required by the conditions placed by the City on approval for projects of third parties, Grantee shall pay the costs of such relocation to the extent required by the provisions of subsections (A), (C) or (D) where the improvements requiring relocation are (i) within existing Public ROW or are conditioned by the City to be dedicated as Public ROW (except when PGE has a private right, such as an easement, to be in the location that will be dedicated as Public ROW, in which case the private right shall control), and (ii) included in any master plan, transportation systems plan or comprehensive plan or regulation adopted or approved in a public process by the City as of the Effective Date.

(F) Temporary Relocation at Request of Third Parties. Whenever it is necessary to temporarily relocate or rearrange any Grantee Facility at the request of a third party in order to permit the passage of any building, machinery or other object, Grantee shall perform the work after receiving sixty (60) business days written notice from the persons desiring to move the building, machinery or other object. The notice shall: (1) demonstrate that the third party has acquired at

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

(G) Relocation or Conversion Delays. Should Grantee fail to remove, relocate or convert any Grantee Facilities within the time required in this Section 8, or another mutually agreed-upon schedule, the City may, after providing notice to Grantee, perform such relocation using a qualified contractor in accordance with applicable state and federal safety laws and regulations, and Grantee's construction standards as provided to the OPUC and NESC requirements. Grantee shall reimburse all reasonable documented costs incurred by the City to complete such relocation, including delay damages incurred by the City. However, the City shall attempt to mitigate the delay damages for which the Grantee could be responsible under this subsection by attempting to limit its liability in public contracts for delay damages in the event that the delay is caused by a force majeure event that prevents Grantee from removing or relocating its facilities in accordance with the schedule provided by the City.

(H) Subsequent Relocation. When the City requests a subsequent relocation of all or part of the same Grantee Facilities less than one (1) year after the initial relocation pursuant to subsection (A), and not at the request of or to accommodate a third party or the result of events or conditions beyond the City's choice or control, including but not limited to Acts of God, severe storms, earthquakes, floods and other natural disasters, the subsequent relocation shall not be at Grantee's expense.

SECTION 9. PUBLIC ROW VACATION. If all or a portion of the Public ROW used by Grantee is vacated by the City during the Term, the City shall, to the extent reasonably possible, either condition the approval of the vacation on the reservation of an easement for Grantee Facilities in their then-current location that prohibits any use of the vacated property that interferes with Grantee's full enjoyment and use of its easement, or permit Grantee Facilities to remain in a PUE. If neither of these options is reasonably possible, Grantee shall, after notice from the City, remove Grantee Facilities from such vacated Public ROW, restore, repair or reconstruct the Public ROW where such removal has occurred in accordance with Section 7. Should Grantee fail to do so, the City may, after providing Grantee with ninety (90) days prior written notice, complete such work or cause it to be completed by a qualified contractor in accordance with applicable state and federal safety laws and regulations, and the cost thereof shall be borne by the Grantee. Upon request, the City will cooperate with Grantee to identify alternative locations within the Public ROW for Grantee Facilities if they are not permitted to remain in the vacated area.

SECTION 10. CITY PUBLIC WORKS AND IMPROVEMENTS. Nothing in this Franchise shall be construed in any way to prevent the City from constructing, installing, excavating, grading, paving, planking, repairing, widening, altering, or completing any work that may be needed or convenient in the Public ROW. Should any of this work be in proximity to Grantee's Facilities, the work will be performed consistent with the NESC. The City shall be responsible for the costs

to repair any damage to Grantee Facilities arising out of such work. Nothing in this Section relieves either party from its obligations set forth in Sections 4(E) and 8.

SECTION 11. USE OF GRANTEE FACILITIES. City shall maintain permits to string wires on Grantee's poles or run wires in Grantee's trenches and/or available conduit for municipal purposes and to attach fire and police alarm and communication equipment to Grantee's poles, provided that such wires and equipment: a) do not unreasonably interfere with Grantee operations; b) conform to the NESC; and c) the City's excess capacity on such wires and equipment is not leased to, sold to or otherwise used by non-governmental third parties. Grantee shall not charge the City for such attachments to its poles or in its conduits; however, the City shall be responsible to pay for any make-ready and inspections Grantee must perform in order to provide access to Grantee Facilities for City wires and equipment in accordance with the NESC. Should any of the City's attachments to Grantee Facilities violate the NESC, the City shall work with Grantee to address and correct such violations in an agreed-upon period of time. The City shall indemnify and hold Grantee harmless from loss or damage resulting from the presence of City's wires and equipment on or in Grantee Facilities, except to the extent such loss or damage is caused by the negligence or willful misconduct of Grantee, its agents or contractors.

For purposes of this Franchise, "make-ready" shall mean engineering or construction activities necessary to make a pole, conduit, or other support equipment available for a new attachment, attachment modifications, or additional facilities.

SECTION 12. PAYMENT FOR USE OF PUBLIC ROW.

(A) Use of Public ROW. In consideration for its use of the Public ROW in accordance with the terms of this Franchise, Grantee agrees to pay the City an amount equal to 3 ½ percent of its Gross Revenue. The amount of the current year's franchise fee shall be based on Gross Revenue collected by Grantee during the previous calendar year, and shall be paid on an annual basis for Grantees' rights under this Agreement for the full calendar year in which the payment is made.

To the extent permissible under state law and regulation, the payment imposed by this subsection shall be considered an operating expense of Grantee and shall not be itemized or billed separately to consumers within the City.

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

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

(D) Remittance of Annual Payment. Grantee shall remit-to the Director of Finance on or before the first (1st) day of April of each year, the annual 3 ½% franchise fee payment to be made in such year that covers Grantee's rights under this Agreement for the full calendar year in which the payment is made. Payment must be made in immediately available federal funds. No later than the first (1st) day of March of each year, Grantee shall provide the City a statement, under oath, showing the Gross Revenue for the preceding year.

(E) Acceptance of Payment. Acceptance by the City of any payment due under this Section shall not be a waiver by the City of any breach of this Franchise occurring prior to the

acceptance, nor shall the acceptance by the City preclude the City from later establishing that a larger amount was actually due, or from collecting the balance due to the City.

(F) Late Payments. Interest on late payments shall accrue from the due date at 9% per annum, and shall be computed based on the actual number of days elapsed from the due date until payment. Interest shall accrue without regard to whether the City has provided notice of delinquency.

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

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

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

SECTION 13. AUDIT.

(A) Audit Notice and Record Access. The City may audit or review Grantee's calculation of Gross Revenues. Within ten (10) business days after receiving a written request from the City, or such other time frame as agreed by both parties, Grantee shall furnish the City and any auditor or third party retained by the City: (1) information sufficient to demonstrate that Grantee is in compliance with this Franchise; and (2) access to all books, records, maps and other documents maintained by Grantee with respect to Grantee Facilities that are necessary for the City to perform such audit or review. Grantee shall provide access to such information to City within the City, or the Portland, Oregon, metropolitan area, during regular Grantee business hours. The City may not audit or review Grantee more than once for Gross Revenue calculations made during a specific period of time.

(B) Audit Payment. If the City's audit or review shows that the amounts due to the City are higher than those based on the Grantee's calculation of Gross Revenue, then Grantee shall make a payment for the difference within sixty (60) days after the delivery to Grantee of the audit or review results. In addition to paying any underpayment, Grantee shall pay interest from the original due date, based on Grantee's cost of debt as approved by the OPUC as of the due date, plus 100 basis points, but not penalties, as specified in this Franchise. If the City's audit or review shows that the amounts due to the City based on the Grantee's calculation of Gross Revenue deviated by five percent (5%) or more in any one year from the City's calculation during the audit or review, Grantee shall reimburse the City for the cost associated with the audit or review, not to exceed one percent (1%) of the total annual franchise fee payment for the applicable audit or review period.

SECTION 14. TERMINATION AND REMEDIES.

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

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

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

(1) The Grantee materially violates any material provision of this Franchise;

(2) The Grantee is found by a court of competent jurisdiction to have practiced any material fraud or deceit upon the City;

(3) There is a final determination that Grantee has failed, refused, neglected or is otherwise unable to obtain or maintain Grantee's service territory designation required by any federal or state regulatory body regarding Grantee's operation of Grantee's Electric Light and Power System; or

(4) Grantee becomes unable or unwilling to pay its debts, or is adjudged bankrupt.

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

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

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

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

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

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

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

(F) Remedies. In determining which remedy or remedies are appropriate, the City shall consider the nature of the violation, the person or persons burdened by the violation, the

nature of the remedy required in order to prevent further such violations, and any other matters the City deems appropriate.

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

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

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

SECTION 17. INDEMNIFICATION. To the fullest extent permitted by law, Grantee shall defend, indemnify and hold harmless the City and its officers, officials, employees, and agents against any and all third party claims, damages, costs and expenses, including attorney's fees and costs, to which the City may be subjected as a result of any acts, omissions, negligence, gross negligence or willful misconduct of Grantee, or its affiliates, officers, employees, agents, contractors or subcontractors, except to the extent that such claims, damages, costs and expenses are caused by the negligence, gross negligence or willful misconduct of the City. The obligations imposed by this Section are intended to survive termination of this Franchise.

SECTION 17(A). DISCLAIMER OF CONSEQUENTIAL DAMAGES. EXCEPT AS OTHERWISE SPECIFICALLY REQUIRED IN SECTION 8(G), IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY HERETO FOR ANY LOST OR PROSPECTIVE PROFITS OR ANY OTHER SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, INCIDENTAL OR INDIRECT LOSSES OR DAMAGES (IN TORT, CONTRACT OR OTHERWISE) UNDER OR IN RESPECT OF THIS AGREEMENT, OR FOR ANY FAILURE OF PERFORMANCE RELATED HERETO HOWSOEVER CAUSED, WHETHER OR NOT ARISING FROM SUCH PARTY'S SOLE, JOINT OR CONCURRENT NEGLIGENCE.

SECTION 18. INSURANCE. Grantee shall maintain in full force and effect, for the entire Term of this Agreement, the following insurance covering risks associated with Grantee's ownership and use of Grantee Facilities and the Public ROW:

(A) General Liability insurance covering operations by or on behalf of Grantee for Bodily Injury and Property Damage, including Completed Operations and Contractors' Liability coverage, in an amount equal to Two Million Dollars ($2,000,000.00) per occurrence and in the aggregate.

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

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

(D) With the exception of Workers' Compensation and Employers Liability coverage, Grantee shall include the City as an additional insured on all applicable policies. Grantee agrees that its insurance policies shall not be canceled unless thirty (30) days prior written notice is provided to the City by Grantee. Grantee shall provide the City with a certificate of insurance evidencing such coverage as a condition of this Franchise and shall provide updated certificates upon written request by the City.

(E) In Lieu of Insurance. In lieu of the insurance policies required by this Section 18, Grantee shall have the right to self-insure any and all of the coverage outlined hereunder. If Grantee elects to self-insure, it shall do so in an amount at least equal to the coverage requirements of this Section 18 in a form acceptable to the City and consistent with Grantee's risk management practices. Grantee shall provide proof of self-insurance to the City before this Franchise takes effect and thereafter upon written request by the City.

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

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

SECTION 21. SEVERABILITY CLAUSE. If any section, subsection, sentence, clause, phrase, or other portion of this Franchise is, for any reason, held to be invalid or unconstitutional by a court of competent jurisdiction, all portions of this Franchise that are not held to be invalid or unconstitutional shall remain in effect until this Franchise is terminated or expired. After any declaration of invalidity or unconstitutionality of a portion of this Franchise, either party may demand that the other party meet to discuss amending the terms of this Franchise to conform to the original intent of the parties. If the parties are unable to agree on a revised franchise agreement within ninety (90) days after a portion of this Franchise is found to be invalid or unconstitutional, either party may terminate this Franchise by delivering one hundred and eighty (180) days notice to the other party.

SECTION 22. ACCEPTANCE. Within thirty (30) days after the resolution adopting this Franchise is passed by the City Council, Grantee shall file with the City Recorder its written unconditional acceptance or rejection of this Franchise. The signature of Grantee's authorized representative in the signature block at the end of this Franchise shall be considered written unconditional acceptance for purposes of this Section 22. If Grantee files a rejection, or fails to file a written unconditional acceptance within thirty (30) days, this Franchise shall be null and void.

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

If to the City: City Administrator City of Fairview, Oregon
1300 NE Village Street
Fairview, Oregon 97024
FAX # (503) 666-0888
With a copy to: City Attorney, City of Fairview, Oregon
Beery, Elsner & Hammond, LLP
1750 SW Harbor Way, Suite 380
Portland, OR 97201
FAX # (503) 226-2348

If to the Grantee: Government Affairs
Portland General Electric Company
121 SW Salmon St.
Portland, Oregon 97204
FAX: (503) 464-2354
With a copy to: Portland General Electric Company
Attn: General Counsel
One World Trade Center, 17th Floor
121 SW Salmon Street
Portland, Oregon 97204
FAX: (503) 464-2200

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

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

PORTLAND GENERAL ELECTRIC COMPANY	CITY OF FAIRVIEW
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____