CITY OF TIGARD, OREGON
TIGARD CITY COUNCIL
ORDINANCE NO. 13-09

AN ORDINANCE GRANTING A RENEWAL OF THE NON-EXCLUSIVE FRANCHISE WITH PORTLAND GENERAL ELECTRIC COMPANY (PGE) TO OPERATE AN ELECTRIC UTILITY SYSTEM IN THE CITY OF TIGARD, OREGON, INCLUDING THE RIGHT TO PLACE AND OPERATE THIS SYSTEM IN THE PUBLIC RIGHTS-OF-WAY; FIXING THE TERMS AND CONDITIONS FOR SAIDFRANCHISE, REPEALING ORDINANCE NO. 93-07, AUTHORIZING THE MAYOR TO SIGN THIS AGREEMENT, AND DECLARING AN EMERGENCY.

WHEREAS, the Tigard Municipal Code ("TMC") Section 15.06.060 allows the City Council to grant a non-exclusive utility franchise to any person providing utility services which meets the requirements of the TMC; and

WHEREAS, Portland General Electric Company (PGE) last held a 20-year franchise agreement with the City from 2/23/1993 through 6/23/2013 at which time it will expire; and

WHEREAS, PGE and the City of Tigard have negotiated a new 10-year franchise agreement; and

WHEREAS, the existing franchise granted by Ordinance No. 93-07 will expire on June 23, 2013, and the City Council finds that it is in the public interest to maintain continuous electric service within the City and to assure continuous management of and receipt of compensation for the use of the City's rights of way by PGE, and as such an emergency should be declared so that a franchise may remain in effect upon the expiration of the current agreement.

NOW, THEREFORE, THE CITY OF TIGARD ORDAINS AS FOLLOWS:

SECTION 1: A new, ten-year franchise for Portland General Electric Company (PGE) is hereby granted, including all of the terms and conditions as set forth in the agreement attached as Exhibit A to this ordinance.

SECTION 2: The Mayor is authorized and directed to sign the agreement attached to this ordinance as Exhibit A on behalf of the Council.

SECTION 3: The City Council determines that the fee imposed by this franchise is not a tax subject to the limitations of Article XI, Section 11 (b) and 11 (19) of the Oregon Constitution and is not a fee imposed on property or property owners by fact of ownership.

SECTION 4: This ordinance shall replace and repeal the prior franchise with PGE, Ordinance No. 93-07, adopted on February 23, 1993, which Ordinance remained in effect until the effective date of this ordinance.

SECTION 5: Because of the need to maintain continuous electric service to citizens of Tigard and a stable flow of revenue from franchise fees, an emergency is declared and this ordinance shall take effect upon its passage and signing of the agreement attached as Exhibit A to the ordinance.

PASSED: By Unanimous vote of all council members present after being read by number and title only, this 28th day of May, 2013.

Catherine Wheatley

Catherine Wheatley, City Recorder

APPROVED: By Tigard City Council this 28th day of May, 2013.

John L. Cook, Mayor

Approved as to form:

Special Counsel

5/20/13

Date

CITY OF TIGARD, OREGON
FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT ("Agreement") is made and entered into by and between the City of Tigard, an Oregon municipal corporation, ("City") and Portland General Electric Company, a corporation, ("Franchisee") qualified to do business in Oregon.

RECITALS

1. Pursuant to Federal law, State statutes, and City Charter and local ordinances, the City is authorized to grant non-exclusive franchises to occupy the rights-of-way as defined in Chapter 15.06 of the Tigard Municipal Code ("TMC"), in order to place and operate a Utility System within the municipal boundaries of the City of Tigard ("Franchise Area"); and

2. Franchisee has requested a franchise to place and operate an electric light and power system (a "Utility System" as further defined in TMC 15.06.020), within the Franchise Area;

3. The City has found that Franchisee meets all lawful requirements to obtain a franchise, and therefore approves the application.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

AGREEMENT

SECTION 1. GRANT OF AUTHORITY. The City grants Franchisee the non-exclusive right to occupy City rights-of-way to place and install, repair, maintain, upgrade and operate Facilities necessary for the operation of Franchisee's Electric Light and Power System (as defined below) upon, over, along, and across the surface of and the space above and below the streets, alleys, roads, sidewalks, trails, paths, bridges, and all other public ways over which the City has jurisdiction or manages (collectively, "Public ROW") as defined in TMC 15.06.020(5), as well as Public Utility Easements ("PUEs") on third party property which will be managed by the City thereafter, for the provision of Franchisee's Electric Light and Power System within the City for a term of ten (10) years from and after the Effective Date of this Agreement (the "Term"), except as set forth below. All Franchisee Facilities in possession of Franchisee currently or during the Term that are located within the Public ROW are covered by this Franchise and the location and placement thereof are hereby acknowledged 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 state and federal laws, regulations and orders.

SECTION 2. PERFORMANCE. Except as provided elsewhere in this Agreement, during the Term, Franchisee agrees to comply with all lawful terms and conditions of the Charter of the City of Tigard and general ordinance provisions passed pursuant thereto existing as of the effective date of this Agreement. All work performed under the terms of this Franchise, including work performed by PGE, the City, or under the City's direction shall comply with the requirements of the NESC and PGE's construction and operating standards in effect at the time of installation.

Any requirements for provision of financial security or performance bond by the Franchisee related to work performed under the terms of this Franchise, including TMC Chapters 15.04.135-3-c and 15.04.140 are hereby waived by the City.

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. TAXES. Nothing contained in this Agreement shall be construed to exempt Franchisee from any license fee, permit fee, occupation tax, privilege tax, excise tax or assessment, or other City fee or tax which is or may be lawfully imposed on Franchisee.

SECTION 4. INSURANCE. On or before the Effective Date of this Agreement, Franchisee shall provide a certificate of insurance that names the City, its officers, directors, and employees as an additional insured but only to the extent of Franchisee's contractually assumed indemnity obligation under this Agreement and TMC 15.06.190. Franchisee insurance shall offer the following coverage:

(A) Commercial General Liability insurance covering all operations by or on behalf of Franchisee for Bodily Injury and Property Damage, including Completed Operations and Contractors Liability coverage, in an amount equal to at least Three Million Dollars ($3,000,000) per occurrence and Five Million Dollars ($5,000,000) in the aggregate.

(B) Business Automobile Liability insurance to cover any vehicles used in connection with its activities under this Franchise, with a combined single limit equal to at least Three Million Dollars ($3,000,000) per occurrence and Five Million Dollars ($5,000,000) in the aggregate.

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

(D) Franchisee shall have the right to self-insure any of the foregoing insurance requirements under this Agreement, in compliance with TMC 15.06.180, excepting the requirement for 30 days notice of cancellation.

SECTION 5. SEVERABILITY. If any section, subsection, sentence, paragraph, term, or provision hereof is determined to be invalid, or unenforceable by any court of competent jurisdiction, such determination shall have no effect on the validity of any other section, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Agreement. If any material portion of the Agreement becomes invalid or unenforceable so that the intent of the Agreement is frustrated, the parties agree to negotiate replacement provisions to fulfill the intent of the Agreement consistent with applicable law. 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 unenforceable, either party may terminate this Franchise by delivering one hundred and eighty (180) days' notice to the other party. In such case, to the extent Franchisee continues to provide electricity service in the City using Franchisee Facilities within Public ROW, the Franchisee's operations and Facilities shall be subject to lawful applicable state and local laws and regulations.

SECTION 6. REMEDIES.

(A) 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.

(B) Failure to enforce any term, condition or obligations imposed upon Franchisee shall not be construed as a waiver of a breach of any term, condition or obligation imposed upon Franchisee by or pursuant to this Agreement. A specific waiver of a particular breach of any term, condition or obligation imposed upon Franchisee by or pursuant to this Agreement shall not be a waiver of any other, subsequent or future breach of the same or of any other term, condition or obligation, or a waiver of the term, condition or obligation itself.

SECTION 7. DEFINITIONS. In addition to the definitions contained in TMC Chapter 15.06, the following are made part of this Franchise.

(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 Tigard, Oregon, a municipal corporation, and all of the territory within its corporate boundaries, as such may change from time to time.
(2) "City Council" means the Council of the City.
(3) "City Engineer" means the City Engineer of the City.
(4) "City Manager" means the City Manager of the City.
(5) "City Recorder" means the Recorder of the City.
(6) "Director of Finance" means the Director of Finance of the City.
(7) "Emergency" shall have the definition contained in in TMC 15.06.020.
(8) "Franchise" means this Franchise Agreement as fully executed by the City and Franchisee and adopted by the City Council pursuant to Ordinance No. 13-___.
(9) "Franchisee" means Portland General Electric Company, an Oregon corporation.
(10) "Franchisee Facility" means any physical component of Franchisee's Electric Light and Power System subject to this Franchise, including but not limited to any poles, guy wires, anchors, wire/conductor, fixtures, meters, 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 Franchisee within the Franchise Area.
(11) "Franchisee's Electric Light and Power System" means all Franchisee Facilities used by Franchisee in the transmission and distribution of its services that are located within the Franchise Area.
(12) "Gross Revenues" shall be deemed to include any and all revenues received by Franchisee within the City from Franchisee'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 Franchisee 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 Franchisee from other franchisees, permittees, or licensees of the City for the right to attach wires, cable or other facilities or equipment to Franchisee's poles or place them in Franchisee's conduits. To the extent that the City's authority to tax Gross Revenues of the Franchisee is limited by ORS 221.410 through 221.655, the City shall apply the statutory limitation to the definition of "Gross Revenues."

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

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

(15) "Person" means any natural person, individual, firm, sole proprietorship, partnership, copartnership, association, corporation, cooperative, entity or other form of organization authorized to do business in the State of Oregon.

(16) "Public ROW" shall have the meaning described in Section 1, and, in addition, includes the subsurface under and airspace over the areas described.

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

(18) "TMC" shall mean the Tigard Municipal Code.

(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 8. CONSTRUCTION.

(A) Construction. Assuming there is sufficient space in the Public ROW that meets the City's and the Franchisee's construction standards and NESC requirements, all facilities shall be placed between the curb and the sidewalk or the adjacent PUE, unless another location is approved by the City Engineer. For any land use development in the City requiring Franchisee's services, the City shall notify Franchisee of such pending land use development and Franchisee shall notify the City of Franchisee's construction standards that are provided to the OPUC and NESC requirements that are applicable to the pending land use development. To the extent the City has 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 Franchisee's Facilities that meet the applicable Franchisee construction standards and NESC requirements, or (ii) provide or obtain an easement for Franchisee Facilities that meet the applicable Franchisee construction standards and NESC requirements.

(B) Emergency Repairs. In the event Emergency repairs to Franchisee Facilities are necessary and require excavation within the Public ROW, Franchisee shall notify the utility one-call notification system prior to making any excavations. Franchisee may initiate such Emergency repairs including any excavations necessary to effect such repairs upon making the necessary notification to the utility one –call notification center. If Emergency work has been completed by Franchisee in the Public ROW and the City determines such work was not completed in a City approved manner in accordance with TMC 15.04.120, the City shall notify Franchisee and provide Franchisee with thirty (30) days or as agreed to by the City

Engineer after the Emergency repairs are completed to reperform the work in a City approved manner.

(C) Cooperation between Franchisee and City. In accordance with state law, rules and regulations, for purposes of this Franchise, including but not limited to Sections 8, 9, 10, 11 and 12, Franchisee and City shall work together and timely respond to each party's informational requests during any design process affecting the Public ROW including construction, relocation, excavation and restoration to establish suitable locations for Franchisee's Facilities and cooperate to minimize the economic and public inconvenience impacts associated with any such work. The Franchisee and City shall meet at least annually to forecast potential construction, relocation and other activities which may be subject to this Franchise. To the extent each party has independent authority to control review times, Franchisee and City agree to respond to any proposed improvement plans submitted to each other and which may impact either party's facilities within 30 days of submission of improvement plans by one party to the other; provided, however, the parties acknowledge the land use response timelines may be shorter than 30 days and the parties will endeavor to respond in accordance with such land use response timelines. Additionally, the Franchisee and the City may mutually agree to a longer period of time to respond to plan submittals in order to allow adequate time to review a larger or more complex project or as otherwise agreed to by the City Engineer and PGE.

SECTION 9. SUPPLYING MAPS. After providing Franchisee with twenty-four (24) hours prior notice, the City may inspect Franchisee maps (excluding Franchisee proprietary information) at any time during Franchisee's business hours. Upon request of the City and without charge, Franchisee shall furnish current maps to the City by electronic data in read-only format showing the general location of Franchisee Facilities, excluding Franchisee proprietary information. Unless required by law, the City will not sell or provide Franchisee prepared maps or data to third parties without written permission from Franchisee, except that City may furnish the publicly available portions of said maps or data to Persons employed by or under contract to the City for the performance of services related to Public ROW. Upon request of Franchisee, the City will make available to Franchisee any relevant maps or data prepared by or held by the City and related to the Public ROW at no charge to Franchisee.

SECTION 10. EXCAVATION. For Public ROW not subject to the four (4) year "no cut" moratorium contained in TMC 15.04.135, and where boring operations are deemed impractical, Franchisee may make all necessary excavations within the Public ROW for the purpose of installing, repairing, upgrading or maintaining Franchisee Facilities subject to the requirements of TMC 15.04.135. All borings and excavations made by Franchisee in the Public ROW shall be properly safeguarded for the prevention of accidents in accordance with adopted City Public Works construction standards. Except to the extent waived by the City pursuant to this Agreement or otherwise, Franchisee's work under this Section shall be completed in strict compliance with all applicable rules, regulations and ordinances of the City.

SECTION 11. RESTORATION AFTER EXCAVATION. Whenever Franchisee performs any excavation or other work affecting Public ROW, as required by TMC 15.04.120 and this Franchise, Franchisee shall at its own expense restore the Public ROW to the same or better condition as the area was in prior to Franchisee's work. Franchisee shall not be required, at Franchisee'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. This Section 11 shall in no way limit any conditions set forth in an approval from the City of a Franchisee land use application. If Franchisee fails to restore and properly maintain for two years following acceptance of the restoration the Public ROW to at least the same or better condition that it was in prior to the excavation, in accordance with generally applicable published City standards, the City shall give Franchisee written notice and provide Franchisee a reasonable period of time, not to exceed thirty (30) days, to restore the Public ROW. If the work of Franchisee creates a public safety hazard as determined by the City Engineer, Franchisee 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 Franchisee, taking into consideration weather and other relevant factors. Should Franchisee fail to make such repairs or restorations within the aforementioned time frames, the City may, after providing notice to Franchisee and a reasonable opportunity to cure, refill or repave (as applicable) any opening made by Franchisee in the Public ROW and the expense thereof shall be paid by Franchisee. The City reserves the right, after providing notice to Franchisee, to remove or repair any work completed by Franchisee, which, in the determination of the City Engineer is inadequate, using a qualified contractor. The cost thereof, including the cost of inspection and supervision, shall be paid by Franchisee within 30 (thirty) days after receipt of an invoice from the City. In the event that Franchisee's work is coordinated with other construction work in the Public ROW, the City Engineer may temporarily excuse Franchisee 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 12. RELOCATION.

(A) Permanent Relocation Required by City. This subsection (A) covers permanent relocation of overhead Franchisee Facilities that will remain overhead, and underground Franchisee Facilities that will remain underground. The City has authority to require removal, relocation, change or alteration of a Franchisee Facility under TMC 15.06.260. The City shall not exercise such authority if the project or improvement necessitating the change in location will not be owned or managed by the City or another public entity. Should Franchisee fail to remove or relocate any such Franchisee Facilities within ninety (90) days after the date established by the City, which, except in the event of a public Emergency, shall not occur sooner than ninety (90) days after the City provides written notice to remove/ relocate to Franchisee, the City may cause or effect such removal or relocation, performed by a qualified contractor, and the expense thereof shall be paid by Franchisee. However, when the City requests a subsequent relocation of all or part of the same Franchisee Facilities less than one year after the initial relocation that is necessary or convenient for a public project, and not at the request of or to accommodate a third party, the subsequent relocation shall be at the expense of the City.

(B) Notice. The City will endeavor to provide as much notice prior to requiring Franchisee to relocate Franchisee Facilities as possible. The notice shall specify the date by which the existing Franchisee Facilities must be removed or relocated. Nothing in this Section 12 shall prevent the City and Franchisee from agreeing, either before or after notice is provided, to a mutually acceptable schedule for relocation. Franchisee and City shall diligently work together in good faith during the design process for any project necessitating the relocation of Franchisee's Facilities to establish a suitable location for Franchisee's Facilities in the Public ROW, or PUE, that meet Franchisee's construction standards as

provided to the OPUC, the NESC and generally applicable published City standards in order for Franchisee to maintain sufficient service and to minimize the economic impact to Franchisee and the City associated with such relocation of Franchisee's Facilities.

(C) Permanent Relocation - Undergrounding. This subsection (C) applies to conversions of Franchisee Facilities from overhead to underground regardless of whether or not such conversion is made in conjunction with a public project. As permitted by, and in accordance with City ordinance and any applicable law, administrative rule, or regulation, the City may require Franchisee to convert any overhead Franchisee Facilities to underground Franchisee Facilities at the same or different locations, subject to the NESC and Franchisee's engineering and safety standards. This subsection shall not apply to Franchisee Facilities used for or in connection with the transmission of electric energy at nominal voltages in excess of 35,000 volts or to pedestals, cabinets or other above ground equipment installed in accordance with Franchisee's standard design criteria and any applicable City standards. Any such underground relocation shall be consistent with applicable approved or adopted development plans or projects of the City, or as approved by the City. The expense of such a conversion shall be paid by Franchisee, and Franchisee may recover its costs from its customers in accordance with state law, administrative rule, or regulation. Nothing in this subsection prevents the City and Franchisee 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 Franchisee Facilities that will remain overhead, as well as underground Franchisee Facilities that will remain underground. The City may require Franchisee to temporarily remove and relocate Franchisee Facilities by giving sixty (60) days notice to Franchisee. Prior to such relocation, the City agrees to provide a suitable location in the Public ROW, as mutually agreed, or a temporary construction easement that meets the Franchisee's construction standards and NESC requirements, and that allows the Franchisee to place its Facilities on the easement in order to maintain sufficient service until such time as the Franchisee moves its Facilities to their permanent location. The cost of temporary removal or relocation of Franchisee Facilities that is necessary for public projects, as well as cost of replacing Franchisee Facilities in their permanent location, shall be paid by Franchisee. However, when the City requests a subsequent relocation of all or part of the same Franchisee Facilities less than one year after the initial relocation, that is necessary or convenient for a public project and not at the request of or to accommodate a third party, the subsequent relocation shall be at the expense of the City.

(E) Relocation at Request of or to Accommodate Third Party. In the event that any relocation of Franchisee Facilities is requested by or is to accommodate a third party, Franchisee shall seek reimbursement from the third party consistent with the Franchisee's tariff on file with the OPUC and not from the City. Such relocation shall be consistent with any applicable long-term development plan or projection of the City or approved by the City. If the relocation of Franchisee Facilities is caused or required by the conditions placed by the City on approval for projects of third parties, such relocation shall in no event fall under the provisions of subsections (A), (C) or (D) of this Section 12.

(F) Temporary Relocation at Request of Third Parties. Whenever it is necessary to temporarily relocate or rearrange any Franchisee Facility in order to permit the passage of any building, machinery or other object, Franchisee 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 Franchisee's costs; (4) provide that the requestor shall indemnify and hold harmless the City and Franchisee 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 Franchisee Facilities; and (5) be accompanied by a cash deposit or other security acceptable to Franchisee for the costs of relocation. Franchisee in its sole discretion may waive the security obligation. The cash deposit or other security shall be in an amount reasonably calculated by Franchisee to cover Franchisee's costs of temporary relocation and restoration. All temporary relocations under this subsection shall comply with ORS 757.805.

SECTION 13. PUBLIC ROW VACATION. If all or a portion of the Public ROW used by Franchisee is vacated by the City during the Term, the City shall either condition the approval of the vacation on the reservation of an easement for Franchisee Facilities in their then-current location that prohibits any use of the vacated property that interferes with Franchisee's full enjoyment and use of its easement, or permit Franchisee Facilities to remain in a PUE. If the facilities to remain in the easement or PUE are underground at the time of the vacation, they shall remain underground and subsequent upgrades or expansions shall also be placed underground.

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

SECTION 15. USE OF FRANCHISEE FACILITIES.

(A) City shall maintain attachment agreements and permits to string wires on Franchisee's poles or run wires in Franchisee's trenches and/or available conduit for municipal purposes and to attach fire and police alarm and communication equipment to Franchisee's poles, provided that such wires and equipment: a) do not unreasonably interfere with Franchisee 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. Franchisee 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 Franchisee must perform in order to provide access to Franchisee Facilities for City wires and equipment in accordance with the NESC. Should any of the City's attachments to Franchisee Facilities violate the NESC, the City shall work with Franchisee to address and correct such violations in an agreed-upon period of time. To the extent permitted by law, the City shall indemnify and hold Franchisee harmless from loss or damage resulting from the presence of City's wires and equipment on or in Franchisee Facilities. For purposes of

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

(B) Franchisee shall provide City with a report upon request by the City that lists utility operators as defined in Tigard Municipal Code 15.06.020(11) using or attaching to Franchisee Facilities located in the Public ROW. To the extent such information is on record with Franchisee, such report shall include the appropriate address(es), email address(es) and telephone number(s) of the person(s) or appropriate departments responsible for managing the pole attachments for such attaching Persons.

SECTION 16. ACQUISITION AND ANNEXATION. Subsequent to the Effective Date, upon Franchisee's acquisition of additional Franchisee Facilities in the Public ROW, or upon any addition or annexation to the City of any area in which Franchisee retains Franchisee Facilities in the Public ROW of such addition or annexation, Franchisee shall submit to the City a statement describing all Franchisee Facilities involved, whether authorized by a franchise agreement or upon any other form of prior right, together with a map, as described in Section 9, specifying the location of all such Franchisee Facilities. Such Franchisee Facilities shall immediately be subject to the terms of this Franchise.

SECTION 17. 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, Franchisee agrees to pay the City an amount equal to 3½ percent of the Gross Revenue. The amount of the current year's franchise fee shall be based on the Gross Revenue collected by Franchisee during the previous calendar year within the City, and shall be paid on an annual basis for Franchisee's 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 Franchisee 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 17 is not subject to the property tax limitations of Article XI, Sections 11(b) and 11(19) of the Oregon Constitution and is not a fee imposed on property or property owners by fact of ownership.

(C) Privilege Tax. The City has retained and shall continue to retain the right, as permitted by Oregon law, to charge a privilege tax based on a percentage of the Gross Revenue in addition to the payment amounts set forth in subsection (A). As of the date of this Franchise, the City has enacted a 1½ percent privilege tax. The City shall provide Franchisee at least ninety (90) days' notice prior to any increase in privilege tax becoming effective. Franchisee 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 Franchise Fee and Privilege Tax Payment. Franchisee shall remit payment of the annual 3½% franchise fee to the Director of Finance on or before the first (1st) day of April of each year. Payment must be made in immediately available federal funds. No later than the date of the annual payment, Franchisee shall provide the City a statement, under oath, showing the Gross Revenue for the preceding year. Franchisee shall

remit payment of the 1½% privilege tax to the Director of Finance on or before the 45th day following each calendar quarter period. Payment must be made in immediately available federal funds. No later than the date of the quarterly payment, Franchisee shall provide the City a statement, under oath, showing the Gross Revenue for the preceding quarter.

(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 based on Franchisee's cost of debt as approved by the OPUC as of the due date, plus 100 basis points, 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 17 shall not exempt Franchisee from the payment of any other license fee, permit fee, tax or charge on the business, occupation, property or income of Franchisee 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 fee, tax or charge.

(H) Direct Access and Volumetric Methodologies. The City may, consistent with state law, direct that the payments made under this Section 17 be based on volume-based methodologies as specifically described in ORS 221.655 instead of the formula set herein. Notice must be given to Franchisee in writing for the subsequent payments to be made using volume-based methodology, which notice may require semi-annual payment to the City. 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 17 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, Franchisee shall make the remaining payments owed, if any, within ninety (90) days of the termination date. In either such case, where Franchisee is operating in the City without a franchise agreement, the provisions of the Tigard Municipal Code Chapters 15.04 and 15.06 shall apply to Franchisee and its operations in the City with the exception of the timing of franchise fee payment which shall be annually and the privilege tax shall be quarterly.

SECTION 18. AUDIT.

(A) Audit Notice and Record Access. The City may audit Franchisee'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, Franchisee shall furnish the City and any auditor retained by the City: (1) information sufficient to demonstrate that Franchisee is in compliance with this Franchise; and (2) access to all books, records, maps

and other documents maintained by Franchisee with respect to Franchisee Facilities that are necessary for the City to perform such audit. Franchisee shall provide access to such information to City within the City, or the Portland, Oregon metropolitan area, during regular Franchisee business hours.

(B) Audit Payment. If the City's audit shows that the amounts due to the City are higher than those based on the Franchisee's calculation of Gross Revenue, then Franchisee shall make a payment for the difference within sixty (60) days after the delivery to Franchisee of the audit 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. In the event the City's audit shows that Franchisee's calculation of Gross Revenue resulted in an overpayment to the City by five percent (5%) or more in any one year, the Franchisee may deduct such overpayment from the next franchise fee payment. If the City's audit shows that the amounts due to the City based on the Franchisee's calculation of Gross Revenue deviated by five percent (5%) or more in any one year from the City's calculation during the audit, Franchisee shall reimburse the City for the incremental cost associated with the audit, not to exceed one percent (1%) of the total annual franchise fee payment for the applicable audit period.

SECTION 19. TERMINATION AND PENALTIES. In addition to the provisions of TMC 15.06.310-330 the City may terminate this Franchise upon one year's written notice to Franchisee 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.

SECTION 20. ASSIGNMENT. All rights and privileges granted and duties imposed by this Agreement upon Franchisee shall extend to and be binding upon Franchisee's successors, legal representatives and assigns. Franchisee 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. Upon obtaining such consent, this Franchise shall inure to and bind such third party. Franchisee 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, Franchisee 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 Franchisee is purchased by or merged into another entity and Franchisee survives such purchase or merger as a public utility, Franchisee 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 21. 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 Franchisee Facilities are to be removed from the Public ROW or remain in place. The City shall provide written notice of any requirement to remove Franchisee Facilities and shall provide Franchisee sixty (60) days to comment on such requirement to move Franchisee Facilities. Following consideration of any such comments, the City Manager may issue an order requiring removal of Franchisee Facilities within nine (9) months after such order is declared.

SECTION 22. NONDISCRIMINATION. Franchisee shall provide service to electric light and power consumers in the City without undue discrimination or undue preference or disadvantage, in accordance with Oregon law.

SECTION 23. DAMAGE TO FACILITIES. The City shall not be liable for any consequential damages or losses resulting from any damage to or loss of any facility as a result of or in connection with any work by or for the City unless the damage or loss is the direct and proximate result of willful, intentionally tortious, negligent or malicious acts or omissions by the City, its employees, or agents. In such case, the City shall indemnify and hold harmless Franchisee against any and all claims, damages, costs and expenses, including attorney's fees and costs, arising from, subject to any applicable limitations in the Oregon Constitution and the Oregon Tort Claims Act. The obligations imposed by this Section are intended to survive termination of this Franchise.

SECTION 24. 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 25. LIMITATION ON PRIVILEGES. All rights and authority granted to Franchisee 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 Franchisee's properties or an asset or item of ownership of Franchisee.

SECTION 26. GOVERNING LAW. The law of the State of Oregon governs the validity of this Agreement, and its interpretation, performance and enforcement. Any action or suit to enforce or construe any provision of this Agreement by any party shall be brought in the Circuit Court of the State of Oregon for Washington County, or the United States District Court for the District of Oregon.

SECTION 27. EFFECTIVE DATE. The effective date of this Agreement ("Effective Date") shall be the date signed by Franchisee's authorized representative. 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 28. NOTICE. Unless specifically provided otherwise herein, 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:

All notices shall be sent to the following addresses or to such other addresses as Franchisee or the City may designate in writing:

If to the City:
City of Tigard
Attention: City Manager
13125 SW Hall Blvd.
Tigard, Oregon 97223
FAX: (503) 684-7297

If to the Franchisee:
Government Affairs
Portland General Electric Company
121 SW Salmon St, 1WTC03
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 TIGARD, OREGON**
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____