

**CITY OF WEST RICHLAND
ORDINANCE NO. 9-15**

AN ORDINANCE OF THE CITY OF WEST RICHLAND, WASHINGTON, GRANTING BENTON RURAL ELECTRIC ASSOCIATION, A WASHINGTON NON-PROFIT CORPORATION, ITS SUCCESSORS, GRANTEES AND ASSIGNS THE NONEXCLUSIVE RIGHT, PRIVILEGE, AUTHORITY AND FRANCHISE TO SET, ERECT, CONSTRUCT, SUPPORT, ATTACH, CONNECT OPERATE, MAINTAIN, REMOVE, REPLACE, REPAIR AND USE FACILITIES, INCLUDING COMMUNICATION SYSTEMS, IN, UPON, UNDER, ALONG, AND ACROSS THE FRANCHISE AREA FOR PURPOSES OF TRANSMISSION, DISTRIBUTION AND SALE OF ELECTRICAL ENERGY FOR POWER, HEAT, LIGHT AND ANY OTHER PURPOSE FOR WHICH SUCH ENERGY CAN BE USED.

THE CITY COUNCIL OF THE CITY OF WEST RICHLAND, WASHINGTON DO ORDAIN AS FOLLOWS:

Section I. Definitions. Where used in this Franchise Ordinance (the "Franchise") the following terms shall mean:

- 1.1 **"BREA"** means Benton Rural Electric Association, a Washington non-profit corporation, and its respective successors and assigns.
- 1.2 **"City"** means the City of West Richland, a municipal corporation of the State of Washington, and its respective successors and assigns.
- 1.3 **"Effective Date"** means the date designated herein, after passage, approval and legal publication of this Ordinance and acceptance by Grantee, upon which the rights, duties and obligations shall come in effect and the date from which the time requirement for any notice, extension and/or renewal will be measured.
- 1.4 **"Facilities"** means, collectively, any and all of BREA's electric transmission and distribution systems, including but not limited to, poles, wires, lines, conduits, ducts, cables, braces, guys, anchors, vaults, transformers, switches, meters, meter-reading devices, fixtures, communication systems; and any and all other equipment appliances, attachments, appurtenances and other items necessary, convenient, or in any way appertaining to any and all of the foregoing, whether the same be located over or under ground within the Franchise Area.
- 1.5 **"Franchise"** means the grant of rights, privileges and authority embodied in this Ordinance.
- 1.6 **"Franchise Area"** means all right-of-ways for public roads, streets, avenues, alleys, and highways of the City as now laid out, platted, dedicated, acquired or improved, and; all right-of-ways for public roads, streets, avenues, alleys, and highways that may hereafter be laid out, platted, dedicated, acquired or improved within the present limits of the City and as such limits may be hereafter extended and; all City owned utility easements dedicated for the placement and location of various utilities.
- 1.7 **"Main Feeder"** means those Facilities the primary use of which is to transmit or deliver power to, or through, an area for ultimate distribution to end use consumers. Main Feeders located within the Franchise Area as of the Effective Date are identified on

Attachment A, and will be updated from time to time by BREA to reflect Main Feeders constructed during the term of the Franchise.

- 1.8 **"Lateral Facilities"** means those facilities that extend from, or tap the Main Feeder and serve the end use consumer.
- 1.9 **"Secondary Services"** means the facilities that interconnect the transformers on the Lateral Facilities to the metering point of the end consumer.
- 1.10 **"Ordinance"** means this Ordinance which sets forth the terms and conditions of this Franchise.
- 1.11 **"Party"** or **"Parties"** means collectively the City and BREA, and individually either the City or BREA.
- 1.12 **"Public Works"** means City owned facilities, or any part thereof, located on or in the Franchise Area for: parks, streets, sidewalks, curbs, pathways, pedestrian and/or vehicle traffic, sewer facilities, storm water facilities, water facilities, and City owned fiber optic cable, conduit or network facilities.
- 1.13 **"Public Works Project"** means any capital improvement or construction, relocation, expansion, repair, maintenance, or removal of City owned facilities, or any part thereof, located on or in the Franchise Area for: parks, streets, sidewalks, curbs, pathways, pedestrian and/or vehicle traffic, sewer facilities, storm water facilities, water facilities, and City owned fiber optic cable, conduit or network facilities.
- 1.14 **"Third Party"** means any person or entity other than the City and BREA.

Section 2. Grant of Franchise.

- 2.1 Pursuant to the laws of the State of Washington including, but not limited to, RCW 35A.47.040 and RCW 80.32.010, the City hereby grants to BREA, subject to the terms and conditions as set forth herein, a Franchise for a period of twenty-five (25) years commencing upon the Effective Date of this Ordinance. This Franchise is granted upon the express condition the BREA, within sixty (60) days after the adoption of this Ordinance, shall file with the clerk of the City a written acceptance of the same. If BREA fails to do so within the time frame above, this Ordinance and Franchise shall be null and void.
- 2.2 BREA specifically agrees to comply with the provisions of any applicable City codes, Ordinances, regulations, standards, procedures, permits or approvals, as from time to time amended; provided, however, that in the event of a conflict or inconsistency between any such provisions and this Franchise, the express terms and conditions of this Franchise shall govern. The express terms and conditions of the Franchise constitute a valid and enforceable contract between Parties.
- 2.3 Upon the effective date of this Ordinance, the Streetlight Operation and Maintenance Agreement dated September 5, 2006, Amendment No. 1 to the Streetlight Operation and Maintenance Agreement and all prior franchises between the City and BREA, or its predecessors in interest, which it has acquired for the distribution and sale of electrical energy within the City shall be deemed repealed.
- 2.4 BREA shall be required to obtain a City permit(s) for work performed within the Franchise Area. These permits shall be issued in a timely manner by the City.

Section 3. Non-Franchise Area City Property

- 3.1 This Franchise shall not convey any right to BREA to install Facilities on or to otherwise use City-owned or leased property or easements outside the Franchise Area.

Section 4. Non-exclusive Franchise

- 4.1 This Franchise is not and shall not be deemed to be an exclusive Franchise. This Franchise shall not in any manner prohibit the City from granting other and further franchises upon, under and across the Franchise Area which do not interfere with BREA's rights under this Franchise. This Franchise shall not prohibit or prevent the City from using the Franchise Area for any lawful purpose or affect the jurisdiction of the City over the same or any part thereof.
- 4.2 The City reserves the right to acquire, construct, own, operate and maintain a municipal electrical utility to serve all or any portion of the City, at any time during the term of this Franchise and to fully exercise such right in accordance with applicable law, recognizing that duplication of electrical facilities is discouraged by Washington law.

Section 5. Non-interference of Facilities/Restoration

- 5.1 Facilities shall be located and maintained so as not to interfere with the free passage of pedestrian and/or vehicle traffic therein, or with the reasonable ingress or egress to the properties abutting the Franchise Area as they exist at the time of installation of Facilities. Any relocation of Facilities that may be necessary to accommodate a Third Party shall be subject to Section 7 of this Franchise.
- 5.2 BREA shall, after installation, construction, relocation, maintenance, removal or repair of any of Facilities, restore the surface of the Franchise Area and any other City property within the Franchise Area which may be disturbed or damaged by such work, to at least the same condition as it was immediately prior to any such work. The City shall have final approval of the condition of the Franchise Area after restoration pursuant to the provisions of applicable City codes, ordinances, regulations, standards and procedures, as now exist or as may be hereafter amended or superseded, provided that such provisions are not in conflict or inconsistent with the express terms and conditions of this Franchise.
- 5.3 All survey monuments which are disturbed or displaced by BREA in its performance of any work under this Franchise shall be referenced and restored by BREA, as per WAC 332-120, as from time to time amended, and all pertinent federal, state, and local standards and specifications.
- 5.4 All work by BREA pursuant to this Section shall be performed in accordance with the permit(s) issued by the City, together with the laws of the State of Washington, the provisions of any applicable City codes, ordinances, regulations, standards and procedures as now exist or as may be hereafter amended or superseded, provided that such provisions are not in conflict or inconsistent with the express terms and conditions of this Franchise.

Section 6. Under grounding of Facilities

6.1 It is especially found and determined by the City that the general public necessity, convenience, health, safety and welfare require that electrical facilities be constructed underground in an orderly manner in accordance with the requirements specified in this section.

6.2 Subject to the exceptions set forth in subsection 6.3, this section shall apply to all electrical facilities.

6.3 The following Facilities are exceptions from the underground requirements of the section:

- A. Electric utility substations, voltage regulators, pad-mounted transformers, secondary electrical pedestals, and switching facilities;
- B. Electrical "Main Feeders"(including poles and wires);
- C. Street lighting standards or associated circuitry;
- D. Temporary services for construction.

6.4 Lateral Facilities. All electrical facilities shall be installed underground by BREA in the following cases:

- A. All new construction and subdivision development.
- B. When any electrical facilities are extended beyond those Lateral Facilities existing on the effective date of this franchise;

6.5 Secondary Services. All new electrical secondary services installed by BREA shall be installed underground. All rebuilt or relocated electrical service lines from an overhead or underground facility to service connections of structures shall be installed underground unless such rebuilding or relocation involves only the change in the overhead service line without a change in the corresponding service entrance facilities

6.6 Variance. A variance from the underground installation requirements of Section 6- "Undergrounding of Facilities" may be granted to BREA by the City's Director of Public Works upon demonstration by BREA to the satisfaction of the Director of Public Works that the variance is in the interest of the general health, welfare and safety of the residents of the community and the traveling public and one of the following conditions exist:

- 1. There is a technological difficulty associated with such Facilities or with the real property involved to require under grounding of a particular facility or in a particular location; or
- 2. The cost of the underground construction outweighs the general welfare consideration in requiring underground construction; or
- 3. The growth pattern in the geographical area has not been sufficiently established to determine the ultimate service requirements or major service routes.

When granting a variance, the City's Director of Public Works may attach conditions to the granting of said variance including placing a time limit on the duration of such variance.

If the City's Director of Public Works denies such a variance request, BREA shall have the right to appeal such ruling to the City Council.

Section 7. Relocation of Facilities

- 7.1 Except as provided in Section 7.2, whenever the City causes the construction of any Public Works Project within the Franchise Area and such construction necessitates the relocation of facilities from their existing location, and those facilities are not on private property or not otherwise covered by a valid easement secured by BREA, such relocation will be at no cost to the City.
- 7.2 Whenever the City causes the construction of any Public Works Project, and such construction necessitates the relocation of Facilities from their existing location within a City owned utility easement dedicated for the placement and location of various utilities or on private property or within a valid easement that was secured by BREA, the City shall bear the entire cost of such relocation.
- 7.3 The City and BREA shall work cooperatively to accomplish any such relocation of Facilities to minimize the total costs of such relocation.
- 7.4 Whenever any Third Party requires the relocation of Facilities to accommodate work of such Third Party within the Franchise Area or on such public grounds and places, then BREA shall have the right as a condition of any such relocation to require payment to BREA, at a time and upon terms acceptable to BREA, for any and all costs and expenses incurred by BREA in the relocation of Facilities.
- 7.5 As to any relocation of Facilities whereby the cost and expense thereof is to borne by BREA in accordance with this Section 7, BREA may, after receipt of written notice requesting such location, submit in writing to the City alternatives to relocation of its Facilities. Upon the City's receipt from BREA of such written alternatives, the City shall evaluate such alternatives and shall advise BREA in writing if one or more of such alternatives are suitable to accommodate the work which would otherwise necessitate relocation of Facilities. In evaluating such alternatives, the City shall give each alternative proposed by BREA full and fair consideration with due regard to all the facts and circumstances which bear upon the practicality of relocation and alternatives to relocation, and in a manner that minimizes the total costs of any such relocation. In the event the City reasonably determines that such alternatives are not appropriate, BREA shall relocate its Facilities as otherwise provided in Section 7.1, 7.2 and 7.3.
- 7.6 If the City requires the subsequent relocation of any Facilities within twenty five (25) years from the date of relocation of such Facilities pursuant to Section 7.1, the City shall bear the entire cost of such subsequent relocation.
- 7.7 Nothing in this Section 7 shall require BREA to bear any cost or expense in connection with the relocation of any Facilities existing under benefit of easement or other rights not arising under this Franchise

Section 8. Records of Installation and Planning

- 8.1 Upon the City's or BREAs reasonable request, Parties shall meet and share any plans prepared by the Parties for potential improvements, relocations and conversions of Facilities and Public Works; provided, however, any such plans shared shall be for informational purposes only and shall not obligate either Party to undertake any specific improvements within the Franchise Area, nor shall sharing of plans be construed as a proposal to undertake any specific improvements within the Franchise Area.
- 8.2 Upon the City's or BREAs reasonable request, the Party receiving such request will provide to the requesting Party during normal business hours and at the providing Party's place of business access to the available drawings then in use showing the location of Facilities and Public Works at specific locations within the Franchise Area. The Parties do not warrant the accuracy thereof and, to the extent the locations of Facilities are shown, such Facilities are shown in their approximate location.
- 8.3 Upon the City's reasonable request, in connection with the design of any Public Works Project, BREAs shall verify the location of its underground Facilities where the Public Works Project is situated at no expense to the City. In the event BREAs performs such verification by excavation, the City shall not require any restoration of the disturbed area in excess of restoration to the same condition as existed immediately prior to the excavation.
- 8.4 Any drawings and/or information concerning the location of Facilities provided by BREAs shall be used by the City solely for management of the Franchise Area. The City shall take all prudent steps reasonably necessary to prevent disclosure or dissemination of such drawings and/or information to any Third Party, without the prior written consent of BREAs, to the extent permitted by law. In any event the City shall notify BREAs immediately regarding any public information requests that have been filed to secure information regarding any Facilities
- 8.5 On an annual basis, on or about the anniversary of the Effective Date of this Franchise or as otherwise mutually agreed by the Parties, BREAs shall present to the City Council general information regarding BREAs past and future operations, construction, maintenance, and community activities within the Franchise Area.
- 8.6 Notwithstanding the foregoing, nothing in this Section 8 is intended (nor shall be construed) to relieve either Party of their respective obligations arising under applicable law with respect to determining the location of utility facilities.

Section 9. Coordination, Shared Excavations

- 9.1 BREAs and the City shall exercise all reasonable efforts to coordinate any construction work that either may undertake within the Franchise Area so as to promote the orderly and expeditious performance and completion of such work as a whole. Such efforts shall include, at a minimum, reasonable and diligent efforts to keep the other Party and other utilities within the Franchise Area informed of its intent to undertake such construction work. BREAs and the City shall further exercise reasonable efforts to minimize any delays or hindrances to any construction work undertaken by themselves or others within the Franchise Area.

- 9.2 If, at any time or from time to time, either BREa or the City shall cause excavations to be made within the Franchise Area, the Party causing such excavation to be made shall afford the other Party, upon receipt of a written request to do so, an opportunity to use such excavation, provide that: (1) such joint use shall not unreasonably delay the work of the Party causing the excavation to be made; and (2) such joint use shall be arranged and accomplished on terms and conditions satisfactory to both Parties.
- 9.3 BREa shall consider financially participating in the installation of spare utility conduit banks for future use by BREa on new or reconstructed arterial roadways in the Franchise Area. BREa fully understands and accepts that permit(s) to cut asphalt pavement will not be issued by the City on newly constructed or reconstructed roadways, residential or arterial roadways, for a period of seven years from the date of roadway construction completion and acceptance by City Council, unless such action is requested pursuant to Section 7.1 or 7.2 hereof.

Section 10. City Use of Facilities

- 10.1 During the term of this Franchise, and with respect to poles that are owned by BREa (in whole or in part), the City may, subject to BREa's prior written consent, which shall not be unreasonably withheld, install and maintain City-owned communications equipment, wires and/or fiber. The City's use of BREa's poles shall be at no cost to the City conditioned on such wires or fibers shall be for non-commercial municipal communication purposes only. Prior to making any such attachments for non-commercial municipal communications purposes, the City shall execute a General Agreement for Joint Use of Wood Pole, which agreement shall govern all aspects of such attachments, including without limitation installation, maintenance, indemnity and insurance.

Section 11. Dispute Resolution

- 11.1 If there is any dispute or alleged default with respect to performance under this Franchise, the aggrieved Party shall notify the accused Party in writing, stating with reasonable specificity the nature of the dispute or alleged default. Within seven (7) working days of its receipt of such notice, the accused Party shall provide written response to the aggrieved Party that shall acknowledge receipt of such notice. The accused Party shall have thirty (30) working days from its receipt of such notice to:
- A. Respond to the aggrieved Party, contesting the aggrieved Party's assertion(s) as to the dispute or any alleged default in whole or in part, and requesting a meeting in accordance with Section 11.2 and/or:
 - B. For those disputed matters or alleged default not contested by the aggrieved Party, the proposed resolution of the dispute or proposed cure of the default.
- 11.2 If any dispute is not resolved or any alleged default is not cured or a meeting is requested in accordance with Section 11.1, then the aggrieved Party shall promptly schedule a meeting between the aggrieved Party and the accused Party to discuss any unresolved disputed matter or any alleged default. The aggrieved Party shall notify the accused Party of the meeting date and location in writing and such meeting shall take place not less than ten (10) working days after the accused Party's receipt of notice of the meeting. Each

Party shall appoint a representative who shall attend the meeting. The representatives shall in good faith attempt to resolve the dispute or reach agreement on any alleged default and/or any corrective action to be taken.

- 11.3 Any dispute or alleged default that is not resolved within ten (10) working days following the conclusion of the meeting conducted pursuant to Section 11.2 shall be referred by the Parties' representatives in writing to the senior management of each of the Parties for resolution. In the event senior management is unable to resolve the dispute within twenty (20) working days of such referral (or such other period as the Parties may agree upon), each Party may pursue resolution of the dispute or any alleged default through other legal means available to it. All negotiations and discussion conducted pursuant to this Section 11 shall be treated as confidential, and the Parties agree that such negotiations and discussions are in aid of compromise and settlement of potential litigation for purposes of discovery and use as evidence in any subsequent proceeding, as provided in Washington and federal rules of procedure.
- 11.4 Unless otherwise agreed by the City and BREa in writing, the City and BREa shall, as may be reasonably practicable, continue to perform their respective obligations under this Franchise during the pendency of any dispute.

Section 12. Arbitration

- 12.1 Nothing in this Ordinance shall be interpreted as prohibiting the Parties from utilizing mediation, non-binding or binding arbitration under such terms and conditions as the Parties may subsequently agree upon.

Section 13. Alternative Remedies

- 13.1 No provision of this Franchise shall be deemed to bar the right of the City or BREa to seek or obtain judicial relief from a violation of any provision of the Franchise or any rule, regulation, requirement or directive promulgated there under. Neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or to otherwise limit the right of the City or BREa to recover monetary damages for such violations by the other Party, or to seek and obtain judicial enforcement of the other Party's obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

Section 14. Indemnification

- 14.1 BREa shall indemnify, defend and hold the City, its agents, elected officials and employees harmless from and against any and all claims, demands, liability, loss, cost, damage, or expense of any nature whatsoever including all costs and attorneys' fees, made against the City, its agents, officers, elected officials, or employees on account of injury, harm, death or damage to persons or property which is caused by, in whole or in part, and then only to the extent of, the willfully tortuous or negligent acts or omissions of BREa or its agents, servants, employees, contractors, or subcontractors in the exercise of the rights or obligations under this Franchise. Provided, however, such indemnification shall not extend to that portion of any claims, demands, liability, loss, cost, damage or

expense of any nature whatsoever including all costs, and attorneys' fees caused by the negligence of the City, its agents, employees, officers, contractors, or subcontractors.

- 14.2 The City shall indemnify, defend and hold BREa, its agents, officers, board members and employees harmless from and against any and all claims, demands, liability, loss, cost, damage, or expense of any nature whatsoever including all costs and attorneys' fees, made against the BREa, its agents, officers, board members or employees on account of injury, harm, death or damage to persons or property which is caused by, in whole or in part, and then only to the extent of, the willfully tortuous or negligent acts or omissions of the City or its agents, servants, employees, contractors, or subcontractors in the exercise of the rights or obligations granted in this Franchise. Provided, however, such indemnification shall not extend to that portion of any claims, demands, liability, loss, cost, damage or expense of any nature whatsoever including all costs, and attorney fees caused by the negligence of the BREa, its agents, employees, officers, contractors, or subcontractors.
- 14.3 Each Party's indemnification obligations pursuant to this Section 14 shall include assuming potential liability for actions brought by either Party's own employees and the employees of either Party's agents, representatives, contractors, and subcontractors even though either Party might be immune under Title 51 RCW from direct suit brought by such employee. It is expressly agreed and understood that this assumption of potential liability for actions brought by the aforementioned employees is limited solely to claims against one Party arising by virtue of the other Party's exercise of the rights set forth in this Franchise. The obligations of both Parties under this section have been mutually negotiated between the Parties hereto, and each party acknowledges that the other Party would not enter into this Franchise without the other Party's waiver thereof. To the extent required to provide this indemnification and this indemnification only, both Parties waive their immunity under Title 51 RCW as provided in RCW 4.24.115.

Section 15. Right of Way and Tree Clearing Plan

- 15.1 The Parties recognize that any appropriate right of way and tree clearing should adequately balance safety, reliability, vegetation health and community aesthetic concerns and the clearance between vegetation and Facilities necessary for public safety and operational reliability.
- 15.2 BREa will coordinate its right of way and tree clearing activities within the Franchise Area with the City. Upon the request of the City, but no more often than quarterly, BREa will meet with the City to update the City regarding these right of way and tree clearing activities; provided however that such commitment to update the City shall not limit BREa's right under this Franchise or duty under law to remove or trim vegetation which, due to proximity to Facilities, poses an imminent risk to employee and public safety.
- 15.3 Trimming and removal of vegetation within the Franchise Area will be performed using standard utility practices pursuant to Revised Code of Washington, Chapter 64.12, Waste and Trespass, addressing safety concerns, vegetation health and aesthetics.

15.4 BREA will, in coordination with the City, identify vegetation species appropriate for location in proximity to BREA Facilities and shall cooperatively act with the City to promote use of such identified species in proximity to those Facilities.

Section 16. Emergency Management

16.1 Annually, upon the request of the City, BREA will meet with the City Fire/Emergency Preparedness Department to coordinate emergency management operations and, at least once a year, at the request of the City, BREA personnel will actively participate with either the Fire Department or the City Emergency Operations Center in emergency preparedness drills or planning sessions.

Section 17. Moving Buildings within the Franchise Area

17.1 If any person or entity other than the City obtains permission in the form of a permit from the City to use the Franchise Area for the moving or removal of any building or other object, the City shall, prior to granting such permission, require such person or entity to make any necessary arrangements with BREA for the temporary adjustment of Facilities to accommodate the moving or removal of such building or other object. Such necessary arrangements with BREA shall be made, to BREA's satisfaction, not less than fourteen (14) working days prior to the moving or removal of said building or other object.

17.2 In such event, BREA shall have the right as a condition to require payment to BREA, at a time and upon terms acceptable to BREA, for any and all costs and expenses incurred by BREA for a Third Party desiring to move or remove such building or other object, adjust any of its Facilities which may obstruction the moving or removal of such building or other object, provided that:

- A. The moving or removal of such building or other object which necessitates the adjustment of Facilities shall be done at a reasonable time and in a reasonable manner so as not to unreasonable interfere with BREA's business; and
- B. The person or entity obtaining such permission from the City to move or remove such building or other object shall be required to indemnify and hold BREA harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another arising out of or in conjunction with the moving or removal of such building or other object, to the extent such injury or damage is caused by the negligence of the person or entity moving or removing such building or other object or the negligence of the agents, servants, or employees of the person or entity moving or removing such building or other object.

Section 18. Street Lights

18.1 The City shall own the Streetlights (bulbs, ballasts, refractors, photo controls, standards (street light pole), fixtures (head), and the circuitry beyond the fuse or disconnect and the associated disconnect.

- 18.2 Repair, replacement, maintenance and operation of all streetlights shall be governed by the terms of the Streetlight Operation and Maintenance Agreement between City of West Richland and Benton Rural Electric Association,.
- 18.3 BREA will not be responsible for any traffic controls or traffic light installation, repair, or associated labor/materials
- 18.4 The City shall be responsible for the trimming and removal of vegetation associated with the City's street lights and traffic signals in locations where there are no conflicts with overhead electrical facilities.

Section 19. Assignment of Franchise

- 19.1 All of the provisions, conditions and requirements herein contained shall be binding upon the Parties. Neither Party may assign or otherwise transfer its rights, privileges, authority and the Franchise herein conferred without the prior written authorization and approval of the other Party, which shall not be unreasonably withheld.

Section 20. Severability and Survival

- 20.1 If any term, provision, condition or portion of this Franchise shall be held to be invalid such invalidity shall not affect the validity of the remaining portions of this Franchise which shall continue in full force and effect. The heading of the sections and paragraphs of this Franchise are for the convenience of reference only and are not intended to restrict, affect or be any weight in the interpretation or construction of the provisions of such sections or paragraphs.
- 20.2 All provisions, conditions or requirements of this Franchise that may be reasonably construed to survive the termination or expiration of this Franchise shall survive the termination or expiration of the Franchise. Subject to Section 19 above, the Parties' respective rights and interests under this Franchise shall inure to the benefit of their respective successors and assigns.

Section 21. Amendments to Franchise

- 21.1 This Franchise may be amended only by mutual agreement thereto, set forth in writing in the form of a City ordinance, signed by both Parties, which specifically states that it is an amendment to this franchise and is approved and executed in accordance with the laws of the State of Washington. Without limiting the generality of the foregoing, this Franchise (including, without limitation the Sections addressing indemnification and insurance) shall govern and supersede and shall not be changed, modified, deleted, added to, supplemented or otherwise amended by any permit, approval, license, agreement or other document required by or obtained from the City in conjunction with the exercise (or failure to exercise) by BREA of any and all of its rights, benefits, privileges, obligations or duties in and under this Franchise.

Section 22. No Third Party Beneficiary

22.1 Nothing in this Franchise shall be construed to create or confer any right or remedy upon any person(s) other than the City and BREa. No action may be commenced or prosecuted against any Party by any Third Party claiming as a Third Party beneficiary of this Franchise. This Franchise shall not release or discharge any obligation or liability of any Third Party to either Party.

Section 23. Insurance

23.1 BREa shall procure and maintain for the duration of the Franchise, insurance, or provide self-insurance, against all claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges and authority granted hereunder to BREa, their agents, representatives or employees. Upon the City request, BREa shall provide evidence of self-insurance and/or insurance certificate, together with an endorsement naming the City, its officers, elected officials, agents, employees, representatives, engineers, consultants and volunteers as additional insured, to the City for its inspection. Such self-insurance and/or insurance certificate shall evidence the following minimum coverage's:

A. Comprehensive general liability insurance including coverage for premises-operations, explosions and collapse hazard, underground hazard and products completed hazard, written on an occurrence basis, with limits not less than:

1. \$2,000,000 for bodily injury or death of each person;
2. \$2,000,000 for property damages resulting from any accident; and
3. \$2,000,000 for general liability.

B. Automobile liability for owned, non-owned and hired vehicles with a limit of \$2,000,000 for each person and \$2,000,000 for each accident;

C. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than \$2,000,000;

23.2 Any deductibles or self-insured retentions must be declared to the City. Payment of deductibles and self-insured retentions shall be the sole responsibility of BREa. The insurance certificate required by this Section shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought.

23.3 BREa's insurance shall be primary insurance with respect to the City, its officers, officials, employees, agents, consultants, and volunteers. Any insurance maintained by the City, its officers, officials, employees, consultants, agents and volunteers shall be in excess of BREa's insurance and shall not contribute with it. Upon BREa's request, the City shall provide evidence of insurance.

23.4 In addition to the coverage requirements set forth in this Section, the certificate of insurance shall provide that:

"The above described policies will not be canceled before the expiration date thereof, without the issuing company giving sixty (60) days written notice to the certificate holder."

In the event of said cancellation or intent not to renew, BREa shall obtain and furnish to the City evidence of replacement insurance policies meeting the requirements of this Section by the cancellation date.

Section 24. Force Majeure

In the event that either Party is prevented or delayed in the performance of any of its obligations under this Franchise by an event that is beyond its reasonable control (a "Force Majeure Event"), then that Party's performance shall be excused for the duration of the Force Majeure Event. Force Majeure Events shall include, without limitation, war; civil disturbances; flood, earthquake or other Act's of God; storm, earthquake or other condition which necessitates the mobilization of the personnel of a Party or its contractors to restore utility services to customers; laws, regulations, rules or orders of any government agency; sabotage; strikes or similar labor disputes involving personnel of a Party, its contractors or a Third Party; or any failure or delay in the performance by the other Party, or a third Party who is not an employee, agent or contractor of the Party claiming a Force Majeure Event, in connection with this Franchise, but shall not include the failure to make payment to a Party when due. Upon removal or termination of the Force Majeure Event, the Party claiming a Force Majeure Event shall promptly perform the affected obligations in an orderly and expedited manner under this Franchise or procure a substitute for such obligation. The Parties shall use all reasonable efforts to eliminate or minimize any delay caused by a Force Majeure Event.

Section 25. Notification & Effective Date

25.1 Whenever this Franchise calls for notice to or notification by any party, the same (unless otherwise specifically provided) shall be in writing and directed to the recipient at the address set forth in this Section, unless written notice of change of address is provided to the other party. If the date for making any payment or performing any act is a legal holiday, payment may be made or the act performed on the next succeeding business day which is not a legal holiday.

Notices shall be directed to the parties as follows:

To the Grantor:

City of West Richland
3801 W. Van Giesen
West Richland, WA. 99353
Attn: City Clerk

To the Grantee:

Benton Rural Electric Association
PO Box 1150
Prosser, WA. 99350
Attn: Manager

25.2 The Effective Date of this Franchise shall be the **1st** day of April, 2015, after passage, approval and legal publication of this Ordinance as provided by law, and provided it has been duly accepted by Grantee as herein above provided.

PASSED BY CITY COUNCIL OF THE CITY OF WEST RICHLAND, WA this 17th day of March, 2015.



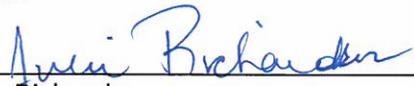
Brent Gerry
Mayor

Approved as to form:



Bronson Brown
City Attorney

Attest:

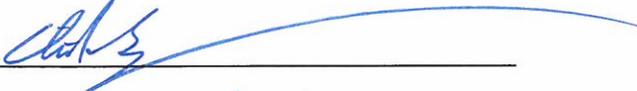


Julie Richardson
City Clerk

Date of Publication: 3-21-15

BENTON RURAL ELECTRIC FRANCHISE AGREEMENT ACCEPTANCE:

The provisions of this Franchise are agreed to and hereby accepted. By accepting this Franchise, Franchisee covenants and agrees to perform and be bound by each and all of the terms and conditions imposed by the franchise and the municipal code and ordinances of the City.

By: 

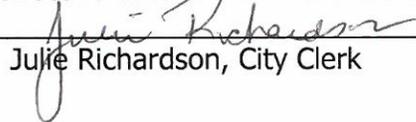
Printed Name: Clint Gerkenmeyer

Title: General Manager

CERTIFICATION OF COMPLIANCE WITH CONDITIONS AND EFFECTIVE DATE:

I certify that I have received confirmation that: (1) the Franchisee returned a signed copy of this Franchise to the City Council in accordance with this Franchise; (2) the Franchisee has presented to the City acceptable evidence of insurance and security as required in this Franchise; and (3) the Franchisee has paid all applicable processing costs set forth in the franchise.

The effective date of this Franchise ordinance is: March 26, 2015.

By: 
Julie Richardson, City Clerk