

City of St. Helens
ORDINANCE NO. 3270

AN ORDINANCE GRANTING TO COLUMBIA RIVER PEOPLE'S
UTILITY DISTRICT A FRANCHISE TO OPERATE AN ELECTRIC
UTILITY AND DISTRIBUTION SYSTEM WITHIN THE CITY OF ST.
HELENS, OREGON

THE CITY OF ST. HELENS ORDAINS AS FOLLOWS:

Section 1. The City of St. Helens hereby grants a franchise to Columbia River People's Utility District to operate an electric utility and distribution system under the terms and conditions as set forth in the Franchise Agreement which is attached hereto as **Exhibit A** and incorporated herein by reference.

Read the first time: September 1, 2021
Read the second time: September 15, 2021

APPROVED AND ADOPTED by the City Council this 15th day of September, 2021, by the following vote:

Ayes:

Nays:

Rick Scholl, Mayor

ATTEST:

Kathy Payne, City Recorder

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT (“Agreement”), made and entered into this ____ day of _____, 2021, and with an effective date of January 1, 2021 (the “Effective Date”), by and between the CITY OF ST. HELENS, a municipal corporation of the State of Oregon, (“CITY”), and the COLUMBIA RIVER PEOPLE'S UTILITY DISTRICT, an Oregon people’s utility district organized under Oregon Revised Statute (“ORS”) Chapter 261 (“CRPUD”). The CITY and CRPUD are collectively referred to herein as “Parties”.

RECITALS:

WHEREAS, CRPUD has and continues to operate an electric utility and distribution system within the city limits of CITY; and

WHEREAS, CRPUD and CITY desire to enter into this Agreement for the mutual benefit of the citizens and businesses within the city limits of CITY as the same now exists, or may be hereafter constituted; and

WHEREAS, CRPUD and CITY desire to enter into this Agreement consistent with municipal regulation of utilities under ORS 221.420, *et seq.* that is not inconsistent with ORS 261, including the payment of franchise fees for CRPUD’s use and occupancy of CITY street rights of way in lieu of a privilege tax; and

NOW, THEREFORE, for consideration hereinafter named, and as provided in the Recitals which are incorporated into this Agreement as if fully set forth below, CRPUD and CITY agree as follows:

Section 1. CITY hereby grants to CRPUD, subject to the terms and conditions hereof, the non-exclusive franchise right and privilege to erect, construct, maintain, repair, replace, and operate an electric utility system within the corporate limits of CITY as the same now exists, or may be hereafter constituted, and the franchise right and privilege to erect, construct, maintain, repair, replace, and operate poles, wires, fixtures, equipment, underground ducts and circuits, and other facilities (“Facilities”) necessary or convenient to supply CITY and the inhabitants thereof and other persons and territories with electric utility services and products upon, over, along, under, and across the streets, alleys, roads, sidewalks, public easements and rights-of-way within the corporate limits of CITY (“CITY Rights-of-Way”) as the same now are or hereafter constituted.

All Facilities owned or in possession of CRPUD located within the corporate limits of CITY as of the Effective Date of this Agreement shall be deemed to be covered by the terms of this Agreement, and the location and placement thereof is hereby approved.

Section 2. All rights and privileges hereby granted shall be effective as of the Effective Date and shall be effective for a term of ten (10), unless renegotiated or terminated as provided in this Agreement. (“Term”). The Term shall automatically renew for an additional ten (10) year period after the expiration of the initial Term; unless either party provides the other party written notice, at least 180 days prior to the expiration of the initial Term, that it desires to renegotiate this Agreement or does not desire to renew this Agreement.

If CRPUD fails, neglects, or refuses to perform any or all of the obligations or requirements set forth in this Agreement or otherwise fails to maintain Facilities in

compliance with industry-standard prudent utility practices which causes an immediate or imminent safety risk to the public, then CITY shall provide CRPUD written notice that CRPUD has sixty (60) days to comply with its obligations under this Agreement and/or eliminate such safety risk. If CRPUD is unable to remedy any default within sixty (60) days of receipt of notice, or does not commence and diligently pursuing remedying the default within the sixty (60) day period, CRPUD may request additional time and the City's consent shall not be unreasonably withheld.

Section 3. Before CRPUD may conduct underground work involving excavation or construction or major relocation work in any CITY Right-of-Way, CRPUD shall notify CITY by complying with the rules and regulations adopted by the Oregon Utility Notification Center and shall comply with any special conditions relating to scheduling, coordination, and public safety as may be reasonably requested by CITY.

Upon request by CITY, CRPUD shall provide to CITY Engineer, or other CITY official designated by CITY, maps or sketches showing any proposed construction work to be done by CRPUD within the corporate limits of CITY, at no expense to CITY.

Upon request by CITY, CRPUD shall, as soon as reasonably possible after completion of said construction work, but in no case more than sixty (60) days thereafter, provide to CITY Engineer, or other CITY official designated by CITY, as-built drawings showing the location of any construction, extension or relocation of its Facilities and services in any CITY Rights-of-Way at no expense to CITY. Within sixty (60) days of a request of CITY or CRPUD, the other party shall provide current updated utility maps, either in a hard

copy printed form or by electronic data transfer, at no expense to the other party.

Section 4. CRPUD, after written notice to the CITY, may make all necessary excavations in any CITY Rights-of-Way for the purpose of erecting, constructing, repairing, maintaining, replacing, removing, and relocating poles, facilities and other supports for its wires, conductors, lights, or street lights; and laying, repairing, and maintaining its underground conduits and pipes; and for placing, repairing, maintaining, and operating its wires and conductors. If practical and consistent with all safety regulations and prudent utility practices, all poles of CRPUD shall be erected within the CITY Rights-of-Way and at the outside edge of the sidewalk, in compliance with City Public Works Design Standards, unless otherwise directed by the proper CITY authorities to another position within the CITY Rights-of-Way.

Section 5. For any excavation performed by CRPUD, CRPUD shall restore the portion of CITY Rights-of-Way to not less than the same condition it was prior to the excavation thereof and in compliance with City Public Works Design Standards.

Section 6. Notwithstanding Section 12(g), CITY shall have the right to cause CRPUD to relocate any Facilities within CITY Rights-of-Way to the same or another CITY Right-of-Way, whenever the relocation thereof shall be necessary for any public project or improvement so long as CRPUD has the right to recover the incremental costs of such move. CRPUD and City shall mutually develop a reasonable timeframe for such relocation. If CRPUD fails to relocate the Facilities within ninety (90) days of the mutually agreed date and refuses to relocate the Facilities on a reasonable timeframe thereafter, CITY may cause

such relocation, performed by a qualified contractor, in accordance with applicable state and federal safety laws and regulations, and the expense of which shall be paid by CRPUD. The City and qualified contractor shall indemnify and hold CRPUD harmless of and from any and all damages or claims of whatsoever kind or nature caused directly or indirectly from such relocation of CRPUD Facilities.

Section 7. Nothing in this Agreement shall be construed in any way to prevent CITY from sewerage, grading, paving, planking, repairing, widening, altering, or doing any work that may be desirable in any of CITY Rights-of-Way. All such work by CITY shall be done, if possible, in a manner that does not interfere or impact the use and safe operation of CRPUD's electric utility system. CITY shall provide notice, as early as possible, of any proposed property development or construction near CRPUD's Facilities which may impact the safe operation of CRPUD's electric utility system or any of its Facilities. CITY shall coordinate with CRPUD to prevent outages, damage, or unsafe operating conditions.

Section 8. Upon sixty (60) days written notice from City, CRPUD shall temporarily move CRPUD Facilities for sewerage, grading, or in making any other improvement in any CITY Rights-of-Way. In the event CRPUD is not able to move such Facilities within sixty (60) days, CRPUD may request an additional thirty (30) day extension from CITY. To the extent that CRPUD's request is reasonable, for example, a pre-existing scheduling of work crews would not permit the requested move to be completed within the thirty-day period, CITY's consent to CRPUD's request for additional time shall not be unreasonably withheld.

Section 9. CITY shall provide CRPUD with a minimum ten (10) foot wide non-exclusive utility corridor where there is transmission under-built and a minimum ten (10) foot wide non-exclusive utility corridor in all new street layouts whenever reasonably possible and shall provide CRPUD with the opportunity to review all new street and subdivision designs prior to plat approval by CITY.

Section 10. Whenever it becomes necessary to temporarily rearrange, remove, lower, or raise the aerial cables or wires or other Facilities of CRPUD to permit the passage of any building, machinery, or other object, CRPUD will perform such rearrangement on sixty (60) days written notice from the person or persons desiring to move said building, machinery or other objects. The notice must bear appropriate CITY approval and must detail the route of movement of the building, machinery or other objects. The costs incurred by CRPUD described in this Section 10 shall be the responsibility of the person or persons giving said notice and CRPUD shall have the right to demand the costs in advance of any work. The notice shall further provide that the person or persons giving said notice will indemnify and hold CRPUD harmless of and from any and all damages or claims of whatsoever kind or nature caused directly or indirectly from such temporary arrangement of CRPUD Facilities. If requested by CRPUD, the notice shall be accompanied by a cash deposit in an amount sufficient to pay any and all costs as estimated by CRPUD.

Section 11.

(a) In consideration of the rights and privileges granted by this Agreement, CRPUD shall pay to CITY for each calendar year during the Term of this

Agreement a Franchise Fee of five percent (5%) of CRPUD's Gross Revenue from customers with nominal demand less than 1,000 kW and one percent (1%) of the Gross Revenue from customers with nominal demand greater than or equal to 1,000 kW. Gross Revenue as used in this Agreement shall include any revenue earned within CITY from the sale of electric energy by CRPUD after adjustment for the net write-off of uncollectable accounts computed on the average annual rate for all CRPUD customers and excluding sales of electric energy sold by CRPUD to any public utility when the public utility purchasing such electric energy is not the ultimate consumer. Gross Revenue shall also include revenues from the use, rental, or lease of CRPUD Facilities other than residential type space and water heating equipment. Gross Revenue does not include proceeds from the sale of bonds, mortgages, other evidences of indebtedness or securities, energy sales by third party energy providers, or revenue from joint pole use. A public utility is any individual, partnership, cooperative, corporation, or government agency buying electric energy and distributing such electric energy to other customers or users.

(b) CITY agrees that no license, permit fees, tax or charge on the business, occupation, or franchise of CRPUD shall be imposed upon, exacted from or required of CRPUD by CITY during the Term of this Agreement, but this provision shall not exempt the property of CRPUD from lawful ad valorem taxes. This provision does not apply, however, to CRPUD contractors working within CITY who are required to have CITY licenses and permits, building permits issued directly to CRPUD, or any utility charge (i.e., water, sewer, etc.) due to CITY by CRPUD as a utility customer of CITY or any other fee owed to CITY

that is not directly attributable to the provisions contained within this Agreement.

(c) On or before March 1 of each year during the Term of this Agreement, CRPUD shall file with CITY Recorder a statement under oath showing the amount of CRPUD's Gross Revenue for the calendar year immediately preceding the calendar year. The Franchise Fee for the calendar year in which the statement is filed shall be computed on the gross revenue so reported. CRPUD shall remit payment of the Franchise Fee on or before April 1 of each year. CITY Recorder shall issue a receipt to CRPUD for payment of annual Franchise Fee. Either party may audit the amount of gross revenue and payment amounts under this Franchise and request correction for any errors within two (2) years of payment as provided in this section. After the expiration of two (2) years from the date a payment is made under this Agreement, the payment shall be deemed final and no further corrections or modifications to the amount paid shall be made or requested. Notwithstanding the above, if an audit shows that the franchise fees paid under this Agreement are overpaid or underpaid by more than ten (10) percent, the parties may audit and request correction for any errors for two (2) additional years.

(d) CITY's acceptance of any payment under this Agreement shall not be considered a waiver by CITY of any breach of this Agreement.

(e) CRPUD shall be required to maintain accurate financial records for the Term of this Agreement. CITY shall have the right, at CITY's expense, to inspect and audit CRPUD's calculation of Gross Revenues and payment amounts. Within fifteen (15) days after receiving a written notice from CITY, CRPUD shall provide CITY access, during

CRPUD's business hours, to CRPUD's financial records applicable to the City, including computer retrieval information, and any other documents maintained by CRPUD with respect to this Agreement that are necessary for CITY to perform such audit.

(f) In the event the CITY's audit shows that the amounts due to the CITY are higher than those based on CRPUD's calculation of Gross Revenue, then CRPUD shall make a payment for the difference within sixty (60) days after delivery to CRPUD of the audit results. In addition to paying any underpayment, CRPUD shall pay interest at the prevailing one-year U.S. Treasury bill rate, but not penalties, from the original due date. In the event the CITY's audit shows CRPUD's calculation of Gross Revenue resulted in an overpayment to CITY, CRPUD may deduct such overpayment from the next annual franchise fee payment.

Section 12. CITY shall enter into pole attachment agreement(s) with CRPUD if CITY desires to string wires on poles of CRPUD for municipal fire, police and water departments, and for municipal telephone, fiber optic, cable, and traffic signal systems and ornamental or seasonal lights.

Section 13. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, and their respective agents, subcontractors, successors and assigns. CRPUD shall not during the Term of this Agreement, sell, assign, transfer, or convey this franchise without the written consent of CITY.

Section 14. CRPUD shall make its services available without discrimination and shall not give any person any preference or advantage not available to all persons similarly situated. CRPUD shall comply at all times with all other applicable Federal, State, and local laws and all executive and administrative orders relating to non-discrimination.

Section 15. CITY shall provide a procedure for building permit applicants to

notify CRPUD about building permits within CRPUD service area at the time of the permit application.

(a) CRPUD shall at all times during the Term of this Agreement maintain a paystation within CITY limits at which customers may pay their electric bills during normal business hours.

(b) Whenever work is performed in any CITY Rights-of-Way, CRPUD shall take all reasonable precautions to minimize interruptions to traffic flow, damage to property, or creation of any hazardous condition.

(c) CRPUD Facilities shall at all times be constructed, operated, and maintained so as to protect and safeguard the health and safety of the public, and CRPUD shall observe all regulations and laws pertaining thereto including without limitation any revision or edition of the National Electric Safety Code.

Section 16. CITY shall render the following assistance to CRPUD on request and as CITY resources reasonably permit:

(a) To assist CRPUD in controlling traffic upon city streets during emergency procedures, including opening and closing streets to vehicular traffic, erecting barricades, diverting traffic, and police assistance to allow CRPUD's work crews to operate safely and efficiently.

(b) To notify CRPUD of any brush control or tree trimming activities conducted by CITY near CRPUD's power lines and to cooperate, to the extent feasible, in such trimming activities with CRPUD to prevent damage to CRPUD Facilities and outages and

minimize and share the total amount of trimming costs to the mutual benefit of the Parties.

(c) To provide notice, as early as possible, of any new construction or expansion of existing commercial or industrial properties which may significantly increase the need for electrical power within CRPUD's boundaries.

(d) To make good faith effort to notify CRPUD of any request for new cable TV franchises or expansion or renewal of existing cable franchises with CITY and to allow CRPUD to participate in all public sessions of such cable franchise negotiations, insofar as attachment of cable or wires to CRPUD's utility poles is concerned. Any request to attach to CRPUD poles shall require a pole attachment agreement with CRPUD.

(e) To provide advance notice, as early as possible, of any plans to widen streets, relocate public ways, or other major public improvements within CITY which could require poles, wires, or other electrical equipment to be moved and to cooperate in arranging for the relocation of such poles, wires and equipment, if relocation is necessary.

(f) To give notice of any plans to vacate a street or roadway or other easement owned by CITY, if CRPUD's equipment, poles, or wires are located upon such street, roadway, or easement and to cooperate with CRPUD to avoid unnecessary relocation of equipment, poles, or wires. In the event of a vacation by CITY, CITY will provide CRPUD the opportunity to obtain a portion of the vacated Rights-of-Way for a utility easement.

(g) To require that existing facilities in CITY Rights-of-Way that must be

moved, be moved at the expense of the entity requiring the move insofar as CITY shall have the power and authority to require the entity to pay for the moving.

(h) CITY shall waive business license fees and building permits for pole or line installation, repair, or relocation above or below ground; however, this does not apply to contractors working within CITY who are required to have CITY licenses and permits.

Section 17. CITY reserves the right, subject to the terms of this section, to terminate this Agreement in the event that there is a final determination that CRPUD has terminated, lost or transferred its exclusive territory designation from the Public Utility Commission of Oregon regarding CRPUD's provision of electric services within the City.

Section 18. CRPUD shall indemnify, defend and hold CITY, its officers, agents, employees and volunteers, harmless against all liability, claims, losses, demands, suits, fees and judgments that may be based on, or arise from any act or omission of CRPUD, its agents or employees under this Agreement, to the extent that such claims are not caused by the gross negligence or willful misconduct of CITY. City shall indemnify, defend and hold CRPUD, its officers, agents, employees and volunteers, harmless against all liability, claims, losses, demands, suits, fees and judgments that may be based on, or arise from any act or omission of City, its agents or employees under this Agreement, to the extent that such claims are not caused by the gross negligence or willful misconduct of CRPUD.

Section 19. CRPUD shall obtain and maintain for the Term of this Agreement the following insurance policies. The insurance shall be without prejudice to coverage otherwise existing and, with the exception of Workers' Compensation and Employers Liability, shall name as additional insureds the CITY, its elected and appointed officials, its officers, agents, and

employees. Any insurance policy shall not be canceled without thirty (30) days' prior written notice to CITY. If the insurance is canceled or materially altered within the Term of this Agreement, CRPUD shall provide a replacement policy with the same terms as required by this Agreement. CRPUD shall provide CITY with a certificate of insurance evidencing such coverage as a condition of this Agreement and shall provide updated certificates upon request.

(a) Commercial General Liability insurance covering all operations, subject to policy terms, conditions and exclusions, by or on behalf of CRPUD for Bodily Injury and Property Damage, including Completed Operations and Contractors Liability coverage, in an amount not less than Three Million Dollars (\$3,000,000.00) aggregate and in an amount not less than Two Million Dollars (\$2,000,000) per occurrence;

(b) Business Automobile Liability insurance to cover any vehicles used in connection with its activities under this Agreement, with a combined single limit not less than Two Million Dollars (\$2,000,000) aggregate and not less than One Million Dollars (\$1,000,000.00) per accident; and

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

Section 20. The privilege to operate in CITY Rights-of-Way shall not be an enhancement of CRPUD's properties or values or to be an asset or item of ownership in any appraisal thereof.

Section 21. All new electric utility lines to serve new developments, including lines to streetlights and related facilities, shall be placed underground if safe and consistent with prudent utility practices. In the event CRPUD is unable to reasonably place such facilities underground,

CRPUD may request to place such facilities in an alternative location consistent with prudent utility practices, and CITY's consent shall not be unreasonably withheld. Notwithstanding, this undergrounding requirement does not apply to routine maintenance, repair activities, replacements, off-site system upgrades, requests to move facilities at the request of the City, or improvements needed to serve a new development. The undergrounding requirement is subject to the following conditions:

- (a) The location of all new facilities shall be placed: (1) as outlined in the CITY Public Works Design Standards Typical Utility Placement Detail, if any exists, and so long as such standards are consistent with all safety regulations and laws and prudent utility practices; or (2) as mutually agreed upon;
- (b) Prior to placement of any new underground facilities, the CITY Engineer, or other CITY official designated by CITY, shall review and approve the location;
- (c) New surface mounted transformers, surface-mounted connection boxes, and meter cabinets may be placed above ground; and,
- (d) Temporary utility service facilities or transmission lines operating at 35,000 volts or above may be placed above ground.

Section 22. In the event a dispute arises concerning any aspect of this Agreement, the Parties agree that prior to commencing any arbitration to resolve such dispute, the Parties shall first engage the services of a professional mediator to meet with such senior representatives to facilitate a negotiated resolution of the dispute. Either party may request the appointment of a mediator. If the Parties are unable to agree upon a mediator within ten (10) days of such request, either party may request the appointment of a mediator by the Arbitration Service of Portland or

a comparable agency. The Parties commit to use reasonable good faith efforts in the mediation process and to complete work with the mediator within thirty (30) days of the mediator's appointment. Each party shall pay one-half of the mediator's fees and expenses and all of its own attorney's fees, costs, and expenses.

If the Parties are unable to reach a mediated resolution of their dispute, the Parties agree to submit their dispute to binding arbitration before a single arbitrator. If the Parties are unable to agree upon an arbitrator, either party may request the appointment of an arbitrator by the Arbitration Service of Portland or a comparable agency. In any case, the arbitration shall be conducted under the rules of the Arbitration Service of Portland, unless the Parties otherwise agree. Each party shall pay one-half of the arbitrator's fees and expenses and all of its own attorney's fees, costs, and expenses, unless the arbitrator orders otherwise in the interests of justice. The arbitrator's award may be entered and enforced as a judgment as provided by Oregon law.

Unless otherwise agreed, any mediation or arbitration shall take place in Columbia County, Oregon.

Section 23. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.

Section 24. All notices or other communications required or permitted hereunder shall be in writing, and shall be considered as properly given if (a) mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, (b) by delivering same in person to the intended addressee, (c) by delivery to an independent third party commercial delivery service for same day or next day delivery and providing for

evidence of receipt at the office of the intended addressee, or (d) by electronic mail at the electronic mail address commonly used by the recipient in the conduct of communications between the Parties. Notice sent pursuant to clause (a) shall be effective three (3) business days after its deposit with the United States Postal Service; notice sent pursuant to clause (b) shall be effective upon receipt by the intended recipient; notice sent pursuant to clause (c) shall be effective upon the date delivered by such a commercial delivery service; notice given by email delivery pursuant to clause (d) shall be effective upon being sent by the sender. Any Party may designate a different address by giving notice to the other Parties delivered in accordance with the provisions of this Paragraph.

If to CRPUD:

General Manager
Columbia River People's Utility
District
PO Box 1193
St. Helens, OR 97051

If to CITY:

City Administrator
City of St. Helens
265 Strand Street
St. Helens, OR 97051

Section 25. This Agreement constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, among the Parties with respect to the subject matter hereof, including, but not limited to that certain Franchise Agreement between CITY and CRPUD dated July 1, 1997, and February 23, 2001 which agreement CITY and CRPUD expressly terminate as of the Effective Date of this Agreement.

Section 26. If CRPUD intends to provide any new services as allowed under Oregon law, in addition to the provision of electric utility service, and such new services require CRPUD to erect, construct, maintain or operate Facilities upon, over, along, under and across CITY Rights-of-Way as the same now are or may be hereafter constituted, CRPUD shall first seek permission from CITY to erect, construct, maintain or operate Facilities upon, over, along, under and across CITY Rights-of-Way and CRPUD agrees to pay fair compensation for such permission. Such permission shall only be granted through a negotiated agreement for an additional franchise that grants CRPUD the right and privilege to erect, construct, maintain and operate Facilities necessary or convenient to provide said new services upon, over, along, under and across CITY Rights-of-Way as the same now are or may be hereafter constituted.

Section 27. This Agreement may be modified, amended or supplemented only by written agreement executed by both CITY and CRPUD and adopted as an ordinance amendment.

Section 28. If any provision of this Agreement is found to be invalid or unenforceable, the invalidity or unenforceability of that provision shall not affect the validity

or enforceability of any other provision of this Agreement, which shall remain in full force and effect. CITY and CRPUD agree to negotiate in good faith to replace any provision held invalid or unenforceable with a valid and enforceable provision that is as similar as possible in substance to the invalid or unenforceable provision.

Executed the date first mentioned above pursuant to authority granted by ordinance/resolution of the respective governing bodies.

APPROVED AS TO FORM:

APPROVED AS TO FORM:

CITY ATTORNEY

By _____

CITY
CITY OF ST. HELENS, OR

By _____
Mayor

CRPUD
COLUMBIA RIVER PEOPLE'S
UTILITY DISTRICT

By _____
General Manager