

**AN ORDINANCE CREATING ALBANY MUNICIPAL CODE (AMC) CHAPTER 3.03, TO EXEMPT CONSUMERS POWER FROM THE PRIVILEGE TAX OBLIGATIONS SET FORTH IN AMC 3.04 AND ESTABLISHING A ELECTRICAL UTILITY FRANCHISE AND GENERAL UTILITY EASEMENT FOR CONSUMERS POWER; AND DECLARING AN EMERGENCY.**

**WHEREAS**, AMC Chapter 3.04 currently establishes a privilege tax applicable to any company, corporation, association, partnership or individual operating an electrical power and light business; and

**WHEREAS**, Consumers Power (“Consumers Power” or “Company” or “Grantee”), is a regulated public utility that provides electric power and energy to the citizens of the City of Albany (the “City” or “Grantor”) and other surrounding areas; and

**WHEREAS**, providing electrical power and energy requires the installation, operation and maintenance of power poles and other related facilities to be located within the public ways of the City; and

**WHEREAS**, the City and Consumers Power wish to agree to the terms and conditions by which Consumers Power will use the public ways of the City; and

**WHEREAS**, the parties desire to establish a negotiated franchise to replace the privilege tax obligations to which Consumers Power would otherwise be obligated pursuant to the terms of AMC 3.04.010 through 3.04.080.

**NOW, THEREFORE**, THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

**SECTION 1. Creating Title 3.03 of AMC.** Chapter 3.03 of the Albany Municipal Code shall hereinafter be titled: “Electrical Power and Light Business Privilege Tax and Franchise Applicable to Consumers Power.

**SECTION 2. Creation of AMC 3.03.010 "Definitions".** AMC 3.03.010 is hereby created to read as follows:

**3.03.010 Definitions.**

In construing the provisions of this chapter, the following definitions shall be applied, unless otherwise stated:

- (1) “Person” means any company, corporation, association, partnership or individual.
- (2) “Taxpayer” means any person subject to the payment of the tax herein provided.
- (3) “Electrical power and light business” means the business of selling, at wholesale or retail, electrical energy.
- (4) “Gross operating revenue” means revenue accruing from the electrical power business transacted within the corporate limits of the City. In case the taxpayer is a public utility, subject to regulation under the statutes of Oregon, gross operating revenue means that amount required to be credited by the taxpayer to the taxpayer’s operation within the City under the uniform system of accounts prescribed by the regulatory body of the State having jurisdiction. There shall be no deduction for the cost of

commodity, cost of materials used, labor, interest, discount, delivery costs and other expenses, unless otherwise provided in this chapter. (Ord. 3404 § 1, 1969)

**SECTION 3. Creation of AMC 3.03.020 to Exclude Consumers Power from Privilege Tax Obligations.** AMC 3.03.020 is hereby created to read as follows:

**3.03.020 Amount of Tax.**

The occupational tax upon the electric light and power business for the privilege of engaging in business within the City is hereby continued. The tax shall be in an amount equal to five percent of the gross revenue of the business during the calendar month next preceding the date of payment of tax, less the deductions and exclusions herein provided. (Ord. 4961 § 1, 1989; Ord. 3404 § 3, 1969). **So long as Consumers Power, or its successor or assignee operates an electrical power and light business pursuant to the terms of the negotiated franchise agreement set forth at AMC 3.03.090 through 3.03.310 as hereafter set forth or as may subsequently be amended, it shall not be subject to the privilege tax obligations of AMC 3.04.020 through 3.04.080.**

**SECTION 4. Grant of Electric Utility Franchise and General Utility Easement to Consumers Power.** AMC 3.03.090 through 3.03.310 is hereby created to read as follows:

**3.03.090 Grant of Franchise and General Utility Easement.**

The City hereby grants to Consumers Power the right, privilege and authority to construct, maintain, operate, upgrade, and relocate its electrical distribution and transmission lines and related appurtenances, including underground conduits and structures, poles, towers, wires, guy anchors, vaults, transformers, transmission lines, and communication lines (collectively referred to herein as "Electric Facilities") in, under, along, over and across the present and future streets, alleys, public ways and public places (collectively referred to herein as "Public Ways") within the City, for the purpose of supplying and transmitting electric power and energy to the inhabitants of the City and persons and corporations beyond the limits of the City. Notwithstanding the foregoing, the City shall have the authority to prescribe which Public Ways will be used and the location of Electric Facilities within the Public Ways as may be reasonably necessary to minimize public inconvenience. The provisions of AMC ~~3.04.090~~ **3.03.090** to AMC ~~3.04.300~~ **3.03.300** shall set forth this franchise.

*Scrivener's error. Corrected 10-13-2015. Mary Dibble*

**3.03.100 Term.**

The term of this Franchise and General Utility Easement is for ten (10) years commencing on the date of acceptance by the Company as set forth in AMC 3.03.110 below.

**3.03.110. Acceptance by Consumers Power.**

Consumers Power has filed an unqualified written acceptance of all terms of this Ordinance with the City Recorder.

**3.03.120 Non-Exclusive Franchise.**

The right to use and occupy the Public Ways of the City are nonexclusive and the City reserves the right to use the Public Ways for itself or any other entity that provides service to City residences; provided, however, that such use will not unreasonably interfere with Consumers Power's Electric Facilities or Consumers Power's rights granted herein.

**3.03.130. City Regulatory Authority.**

In addition to this Franchise, the City reserves the right to adopt such additional ordinances and regulations as may be deemed necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties or exercise any other rights, powers, or

duties required or authorized, under the Constitution of the State of Oregon, the laws of Oregon or City Ordinances.

**3.03.140. Indemnification.**

The City will in no way be liable or responsible for any loss or damage to property or any injury to, or death, of any person that may occur in the construction, operation or maintenance by Consumers Power of its Electric Facilities. Consumers Power will indemnify, defend and hold the City harmless from and against claims, demands, liens and all liability or damage of whatsoever kind arising out of or in connection with Consumers Power's use of the Public Ways within the City, and will pay the costs of defense plus reasonable attorneys' fees for any such claim, demand or lien. The City will: (a) give prompt written notice to Consumers Power of any claim, demand or lien with respect to which the City seeks indemnification hereunder; and (b) unless in the City's judgment a conflict of interest exists between the City and Consumers Power with respect to such claim, demand or lien, allow Consumers Power to assume the defense of such claim, demand, or lien. Consumers Power will notify City of its intent to assume defense of any claim, demand or lien within ten (10) business days upon receipt of same. If such defense is not assumed by Consumers Power due to any action or inaction by City, Consumers Power will not be subject to liability for any settlement made without its consent. If Consumers Power elects not to assume defense of the demand, claim or lien, Consumers Power will be subject to liability for any settlement made. Notwithstanding any provision to the contrary, Consumers Power will not indemnify, defend or hold the City harmless to the extent any claim, demand or lien arises out of or in connection with any negligent or willful act or failure to act of the City or any of its officers or employees.

**3.03.150. Annexation.**

(1) **Extension of City Limits.** Upon the annexation of any territory to the City, the rights granted under this Franchise will extend to the annexed territory to the extent the City has such authority. All Electrical Facilities owned, maintained, or operated by Consumers Power located within any public ways of the annexed territory will then be subject to this Franchise.

(2) **Annexation.** When any territory is approved for annexation to the City, the City will, not later than ten (10) working days after passage of an ordinance approving the proposed annexation, provide by certified mail to Consumers Power: (a) each site address to be annexed as recorded on county assessment and tax rolls; (b) a legal description of the proposed boundary change; and (c) a copy of the City's ordinance approving the proposed annexation. The notice will be mailed to:

Consumers Power, Inc.  
Attn: Director of Member Services  
6990 West Hills Road  
P.O. Box 1180  
Philomath, Oregon 97370

With a copy to:  
Consumers Power, Inc.  
Attn: General Counsel  
6990 West Hills Road  
P.O. Box 1180  
Philomath, Oregon 97370

Additional or increased fees or taxes, other than ad valorem taxes, imposed on Consumers Power as a result of an annexation of territory to the City will become effective on the effective date of the annexation provided notice is given to Consumers Power in accordance with ORS 222.005, as amended from time to time.

**3.03.160. Construction, Maintenance, and Relocation**

All Electric Facilities will be located so as to cause minimum interference with the Public Ways and be constructed, installed, maintained, cleared of vegetation, renovated or replaced in accordance with applicable rules, ordinances, and regulations.

**(1) Permits.**

- (a) Subject to applicable regulations of the City, Grantee may perform all necessary construction to construct, operate and maintain its Electric Facilities. All construction and maintenance of any and all Electric Facilities within or on the Public Ways shall, regardless of who performs installation and/or construction, be and remain the responsibility of Grantee. Grantee shall apply for and obtain all permits necessary for installation, maintenance, and/or construction of any such Facilities, and for excavation and installation of any Electric Facilities within the Public Ways, which permits shall not be unreasonably withheld, conditioned, or delayed. Grantee shall pay all applicable fees due for City construction permits.
- (b) Grantee may make excavations in the Public Ways needed for the construction, maintenance, and operation of Grantee's Electric Facilities, subject to obtaining permits from the City. Prior to doing such work, Grantee must apply for, and obtain, appropriate permits from the City.
- (c) In the event that emergency repairs are necessary for its Electric Facilities in the Public Ways, Grantee shall immediately notify the City of the need for such repairs. Grantee may immediately initiate such emergency repairs, and shall apply for appropriate permits as soon as possible, not to exceed five (5) business days following discovery of the emergency. Grantee must comply with all ordinance provisions relating to such excavations or construction, including the payment of permits or license fees and compliance with permit conditions.
- (d) The City shall have the right to observe and inspect all construction or installation of Grantee's Electric Facilities subject to the provisions of this ordinance and to make such inspections as it shall find necessary to ensure compliance with governing laws, rules, and regulations. Grantee is responsible for all work performed, by or for Grantee or its agents.

**(2) Locates.** Grantee shall comply with the most current requirements of ORS 757.542-757.562 and ORS 757.993, and the rules and regulations promulgated thereunder in OAR Chapter 952. On any City project, if the Grantee fails to properly identify the location of its Electric Facilities which results in time delays or additional costs on the project, the City reserves the right to remedy the situation and the Grantee shall pay the full costs of such remedy.

### **(3) Relocation.**

- (a) Pursuant to a reasonable relocation schedule, mutually agreed to by Grantee and City or as otherwise established by the City as described in section b below, the City shall have the right to require Grantee to relocate its Electric Facilities within the Public Ways when the public convenience requires such change and the expense thereof shall be paid by Grantee. (However payment by Grantee shall in no way limit Grantee's right, if any, to seek reimbursement for such costs from any third party, provided that should any third party use such reimbursement as a basis for a claim of any kind against the City, Grantee must defend and fully indemnify the City for all direct and/or indirect costs related to such a claim except to the extent the claim is based on the negligent or willful misconduct of the City or a contractual obligation between the City and such third party that specifically states that the City is responsible for Electric Facility relocation costs). If in requiring relocation, the City imposes additional specifications regarding materials or design for Grantee's Electric Facilities, the additional marginal increase shall not be considered relocation costs that are the Grantee's responsibility. Should Grantee fail to relocate any such Electric Facilities by the date established by the relocation schedule, the City may cause and/or effect such relocation by Qualified Workers and the reasonable expense thereof shall be paid by Grantee, including all direct, indirect and/or consequential costs and expenses incurred by the City due to Grantee's delay (However, payment by Grantee shall in no way limit Grantee's right, if any, to seek reimbursement for such costs from any third party, provided that should any third party use such reimbursement as a basis for a claim of any kind against the City, Grantee must defend and fully indemnify the City for all direct and/or indirect costs related to such a claim except to the extent the claim is based on the negligent or willful misconduct of the City or a contractual obligation between the City and such third party that specifically states that the City is responsible for Electric Facility relocation costs). Improvements for the public convenience may eliminate space available for Grantee's existing Electric Facilities within the Public Ways. If space is eliminated, the City will work with the Grantee to identify an alternate location.
- (b) During the planning and design phase of a City project, the Grantor will coordinate with the Grantee to review project scope and schedule. The Grantor and the Grantee agree to work together in an attempt to establish a mutually acceptable relocation schedule for Electric Facilities. Failure of the Grantee to respond to, or participate in, the coordination effort does not affect the ability of the Grantor to proceed with design and construction of the project. In the event that the parties are unable to reach agreement regarding a relocation schedule for Electric Facilities, the Grantor will establish the schedule. Emergency relocations (including isolation of a work area), temporary or permanent, will require an immediate response or relocation by Grantee. As used in this section, emergency relocations include circumstances where Electric Facilities are encountered within the work zone while responding to an emergency involving other public utilities including, but not limited to, water, wastewater, and stormwater infrastructure.

### **(4) Maintenance of System.**

- (a) Grantee's Electric Facilities shall be constructed, maintained and repaired in such manner as not to interfere with sewers, storm drains, water pipes, or any other property of the City, or with other facilities that may have been laid in the Public Ways by or

under the City's authority. The Electric Facilities constructed, owned or controlled by Grantee shall be of good quality and workmanship and shall be maintained in good repair and efficiency.

- (b) The Grantee shall maintain emergency repair service locally on a 24-hours-per-day, seven-days-a-week basis. Such emergency service shall be easily reached by phone during normal business hours and through answering service at all other times.

**(5) Underground Conversion.** As permitted by state statute, administrative rule, or regulation, the City may require Grantee to remove any overhead Electric Facilities and replace those Facilities with underground Facilities at the same or different locations subject to Grantee's engineering and safety standards. The expense of such a conversion shall be paid by Grantee, but Grantee may recover its costs from its customers in accordance with state statute, administrative rule or regulation, including but not limited to OAR 860-022-0046 (as may change from time-to-time). Nothing in this paragraph shall prevent the City and Grantee from agreeing on a case-by-case basis to a different form of cost recovery or another mechanism for funding an underground project that is consistent with state statutes, administrative rules or regulations.

**(6) Underground Extension.**

- (a) In addition to the installation of underground electric distribution lines as provided by applicable state law and regulations, Grantee's Electrical Facilities will be placed underground in accordance with the Albany Development Code, or other applicable City Ordinance.
- (b) Electrical Facilities shall be located in dedicated utility easements, and installed in conjunction with other utilities, as required by City code, standard, or regulation.
- (c) In cases of new construction or property development where Electric Facilities are to be placed underground, Grantee will coordinate with developers or property owners to perform joint trenching where applicable and install Electric Facilities in a timely manner.

Costs of trenching, right-of-ways, and easements required to bring service to the development shall be borne by the developer or property owner.

**(7) Pole Vacation or Abandonment Coordination** In the event Grantee vacates or abandons a pole, Grantee shall provide written notification at least thirty (30) business days prior to vacation or abandonment of the pole to the City, and all other utilities sharing the pole through a joint use agreement. Grantee agrees to promptly notify other utilities when Grantee's attachments have been removed or relocated and other utilities shall remove or relocate their attachments. The Grantee also agrees to require through its joint use agreements that other utilities remove or relocate their attachments within thirty (30) business days following notice by the Grantee that said attachments shall be moved.

**(8) Rearrangement of Facilities to Permit Moving of Buildings and Other Objects**

- (a) Upon notice in writing from any person desiring to move a building or other object, Grantee shall respond within five business days to establish a mutually agreed upon schedule to temporarily raise, lower or remove its Electric Facilities upon any street, bridge, or Public Ways within the City, when necessary to permit the person to move the

building or other object across or along such street, bridge or Public Way. The raising, lowering, or removal of the Electric Facilities of the Grantee shall be in accordance with all applicable ordinances and regulations of the City.

- (b) The notice required by subsection (a) of this section shall bear the approval of the City of Albany, shall detail the route of movement of the building or other object and shall provide that the actual expense incurred by the Grantee in making the temporary rearrangement of its facilities, including the cost to the Grantee of any interruption of service to its customers caused thereby, will be borne by the person giving the notice. It shall further provide that the person giving said notice will indemnify and save said Grantee harmless from any and all damages or claims of whatsoever kind or nature caused directly or indirectly from such temporary rearrangement of Grantee's facilities.
- (c) Grantee, before making the temporary rearrangement of its facilities, may require the person desiring the temporary rearrangement to deposit cash or adequate security, at the option of the person, to secure payment of the costs of rearrangement as estimated by the Grantee.

**(9) Maps.** Grantee shall provide the City, upon written request of the City, copies of maps showing the general location of Grantee's Electric Facilities within the Public Ways in the service area not more than twenty (20) days after a request for the same. The level of detail in maps provided by Grantee shall be limited to that which is needed for the City's administration of the Public Ways and to protect Grantee's confidential business information and the security of Grantee's Electric Energy System.

**(10) Annual Report.** Grantee will provide an annual report to the City upon request regarding all new services created within the City boundaries during the term of this Franchise. The City will be given the opportunity to provide written confirmation of the accuracy of the report and/or any corrections thereto to Grantee within a reasonable time following receipt of the report.

### **3.03.170. Restoration of Public Ways.**

**(1) Public Rights of Way Repairs.** Work within Public Ways requires permits as outlined in AMC 3.03.160. Whenever Grantee disturbs the surface of any Public Ways for any purpose, Grantee shall promptly restore the Public Ways to a condition consistent with the most recent version of the City's Standard Construction Specifications. Where no standard exists, it shall be restored to at least a condition comparable to that which existed before the work commenced, to the satisfaction of the City. Where pedestrian facilities are within the disturbed area, the facilities shall be restored consistent with the current Americans with Disabilities Act standards. When any opening is made by Grantee in a hard surface pavement in any Public Ways, Grantee shall promptly refill the opening and restore the surface to a condition satisfactory to the City.

If, during the course of work on its Electric Facilities, Grantee causes damage to or alters the Public Ways or public property, Grantee shall (at its own cost and expense and in a manner approved by the City) promptly replace and restore it to a condition consistent with the most recent version of the City's Standard Construction Specifications. Where no standard exists, it shall be restored to at least a condition comparable to that which existed before the work commenced, to the satisfaction of the City. Where pedestrian facilities are within the disturbed area, the facilities shall be restored consistent with the current Americans with Disabilities Act standards.

**(2) Excavation Repairs.** If Grantee excavates the surface of any Public Ways, Grantee shall be responsible for prompt restoration of the Public Way and its surface within the area affected by the excavation. If Grantee fails to do so, the City may, after providing notice and reasonable opportunity to cure to Grantee, refill and/or repave any opening made by Grantee in the Public Ways, and the expense thereof shall be paid by Grantee. The City reserves the right, after providing notice and reasonable opportunity to cure to Grantee, to remove and/or repair any work done by Grantee which does not conform to the requirements of this section. The City also reserves the right, if the restoration is not made promptly, to restore the area affected by the excavation. The cost thereof, including the cost of inspection and supervision, shall be paid by the Grantee. All excavations made by Grantee in the Public Ways shall be properly safeguarded for the prevention of accidents. All of Grantee's work shall be done in strict compliance with all applicable rules, regulations and ordinances of the City. Grantee's responsibility for maintaining repairs to any surface areas disturbed by Grantee's work shall end upon completion of standard warranty periods as defined in the City's Standard Construction Specifications.

**AMC 3.03.180. Reservation of City Public Ways.**

**(1)** Nothing in this Franchise shall be construed to prevent the City from constructing, grading, paving, repairing and/or altering any Public Ways; laying down, repairing or removing water, storm drain, or sewer pipes; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to injure or prevent the unrestricted use and operation of the Grantee's Electric Facilities under this Franchise. In the event any works performed by the City causes damage to Grantee's Electric Facilities, City shall reimburse Grantee the reasonable costs to perform necessary repairs, except to the extent such damage is the result of Consumers Power, or its designee or assigns, improperly locating such facilities. If the construction or repair of any Public Ways or public improvement, including construction, repair or removal of a sewer, storm drain, or water main, is expected to interfere with any portion of the Grantee's Electric Facilities, the City may direct Grantee to relocate as provided in AMC 3.03.160 (3).

**(2)** Whenever the City shall excavate or perform any work in any of the present and future Public Ways, or shall contract or issue permits for such excavation or work where such excavation or work may disturb Grantee's underground Electric Facilities, the City will notify Grantee in writing sufficiently in advance of such contemplated excavation or work to enable Grantee to take such measures as may be deemed necessary to protect such underground Electric Facilities from damage and possible inconvenience to the public.

**(3)** City will construct and authorize the construction of any structures, buildings or signs in Public Ways for erection below and near Consumers Power's facilities only in a manner that is consistent with all applicable federal and state laws and regulations. Without limiting the foregoing and for City's convenience only, at each anniversary of this Franchise, Grantee will notify City of the clearance requirements Grantee deems applicable to construction below or near Grantee's facilities located in Public Ways. The City may direct Grantee to relocate as provided in AMC 3.03.160 (3) in order to gain compliance with said laws and regulations.



**AMC 3.03.190. Use of Grantee's Facilities by City.**

The City may without cost use Grantee poles within Public Ways for City-owned attachments used in connection with its fire alarms, police signal systems, or other communication lines used for governmental purposes; provided, however, any such uses must be for activities owned, operated or used by the City for a public purpose and must not include the provision of CATV, internet, or similar services to the public. Consumers Power assumes no liability nor will it incur, directly or indirectly, any additional expense in connection therewith, and the use of said poles by the City will be in such a manner as to prevent safety hazards or interferences with Consumers Power's use of same. Nothing in this Franchise will be construed to require Consumers Power to increase pole size, or alter the manner in which Consumers Power attaches its equipment to poles, or alter the manner in which it operates and maintains its Electric Facilities. City attachments must be installed and maintained in accordance with the reasonable requirements of Consumers Power and the current edition of the National Electrical Safety Code pertaining to such construction. Further, City attachments may only be attached or installed after written approval by Consumers Power.

**AMC 3.03.200. Vacation of Public Ways.**

Upon receipt of any request for vacation of any Public Ways or portion thereof used by Grantee, the City shall provide the Grantee with the standard notice provided for Public Ways vacations. If any Public Ways or portion thereof used by Grantee is vacated by the City during the term of this Franchise, unless the City Council specifically reserves to Grantee the right to continue its installation in the vacated Public Ways area or Grantee secures such right from the third party that will have title to the area in which Grantee has its Electric Facilities, Grantee shall, without expense to the City, remove its Facilities from such Public Ways, restore, repair or reconstruct the Public Ways area where such removal has occurred, and place the Public Ways area in such a condition which shall be no worse than the condition of such Public Ways immediately prior to removal. In the event of failure, neglect or refusal of Grantee, after thirty (30) days notice by City, to repair, improve or maintain such Public Ways portions, the City may do such work or cause it to be done, and the cost thereof, shall be paid by the Grantee.

Notwithstanding the foregoing, for facilities that require relocation, the terms of AMC 3.03.160 (3) apply.

**AMC 3.03.210. Subdivision/Partition Plat Application Notification.**

The City will notify Consumers Power of new Subdivision and Partition applications received by the City. Notification of such application will be mailed to Consumers Power:

Consumers Power, Inc.  
Attn: Director of Member Services  
6990 West Hills Road  
P.O. Box 1180  
Philomath, Oregon 97370

Mutually agreed upon alternative methods of notification, such as via e-mail, are acceptable.

**AMC 3.03.220. Vegetation Management.**

(1) When Permits Needed. Upon obtaining a written permit from the City Urban Forester, Grantee may prune or cause to be pruned, using proper utility arboricultural practices and in accordance with such permit, any tree in or overhanging the Public Ways which interferes with Grantee's Facilities. Such pruning shall comply with the *American National Standard for Tree Care Operation*

(ANSI A300) and be conducted under the direction of an arborist certified with the International Society of Arboriculture. A growth inhibitor treatment may be used for publicly owned trees and vegetation species that are fast-growing and problematic. Nothing contained in this section will prevent Consumers Power, when necessary and with the approval of the owner of the property on which they may be located and in compliance with Albany Municipal Code and Albany Development Code, from cutting down and removing any trees which overhang streets.

Except in emergencies or by special written permission of the City Urban Forester, Grantee may not prune trees until ten (10) days after written notice has been given to the owner or occupant of the premises abutting the Public Rights of Way in or over which the tree is growing. The owner or occupant shall have one week from receipt of notice to have such trees pruned by a qualified line clearance arborist at his or her own expense in accordance with Grantee's standards for reliable utility service, provided that the owner or occupant agrees to use tree pruning personnel that are qualified to work in close proximity to power lines. If the owner or occupant fails to do so in compliance with the notice, Grantee may prune such tree at its expense.

(2) Blanket Permits. The City Urban Forester may, at the City Urban Forester's discretion, waive the notification and single tree permit process and issue a blanket tree pruning permit if Grantee adequately demonstrates to the City Urban Forester's satisfaction the ability to consistently apply proper utility arboricultural practices to the pruning of trees. Before any blanket permit may be issued, any contractor of Grantee shall be subject to the approval of the City Urban Forester. The City Urban Forester shall have discretion to cancel the blanket permit, notification and single tree permit process if, at any time, the Grantee or its agents fail to either use proper utility arboricultural practices or to properly notify the public as specified in AMC 3.03.220(1).

(3) Emergencies. Notwithstanding the permit and notice requirements of AMC 3.03.220, in the event of an emergency, Grantee may prune a tree or trees as necessary to abate the emergency. For purposes of this section, emergencies exist when it is necessary to prune a tree or trees in order to restore electrical services, or to protect the public from imminent danger, or to prevent the imminent destruction of property.

### **AMC 3.03.230. Compensation.**

(1) In consideration of the rights, privileges, and franchise hereby granted, Consumers Power will pay to the City from and after the effective date of the acceptance of this franchise, seven percent (7%) of its gross revenues derived from within the corporate limits of City. "Gross revenue" means any revenue of Consumers Power derived from the retail sale and use of electric power and energy within the municipal boundaries of the City after adjustment for the net write-off of uncollectible accounts and corrections of rendered bills. All amounts paid under this section will be subject to review by the City; provided that only payments that occurred during a period of thirty-six (36) months before the date the City notifies Consumers Power of its intent to conduct a review may be subject to such review. Notwithstanding any provision to the contrary, at any time during the term of this Franchise, the City may opt to increase the franchise fee amount as may then be allowed by state law. The City will provide Consumers Power with prior written notice of such increase following adoption of the change in percentage by the City. The increase may be effective no earlier than sixty (60) days after City has provided such written notice to Consumers Power.

(2) The franchise fee is not in addition to any other license, occupation, franchise or excise taxes or charges that might otherwise be levied or collected by the City from Consumers Power with respect to Consumers Power's electric business or the exercise of this Franchise within the corporate

limits of the City and the amount due to the City under any such other license, occupation, franchise or excise taxes or other charges for corresponding periods will be reduced by deducting there from the amount of said franchise fee paid hereunder.

**AMC 3.03.240. Renewal.**

At least 120 days before the expiration of this Franchise, Consumers Power and the City will agree to either extend the term of this Franchise for a mutually acceptable period of time or use best faith efforts to renegotiate a replacement Franchise. Consumers Power may continue to use the Public Ways of the City under the same terms and conditions in the event an extension or replacement Franchise is not entered into upon expiration of this Franchise as long as Consumers Power and City are continuing to negotiate an extension or new franchise. Either party may declare that negotiations have ended by giving written notice ("Negotiation Termination Notice") to the other party. The parties will operate under the most recent Franchise for a period of twenty-four (24) months from the date of the Negotiation Termination Notice. The Franchise will then terminate upon the expiration of the twenty-four month period.

**AMC 3.03.250 No Waiver.**

Neither the City nor Consumers Power will be excused from complying with any of the terms and conditions of this Franchise by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions.

**AMC 3.03.260 Transfer of Franchise.**

Consumers Power will not transfer or assign any rights under this Franchise to another entity, except transfers and assignments by operation of law, unless the City first gives its approval in writing, which approval will not be unreasonably withheld; provided, however, inclusion of this Franchise as property subject to the lien of Consumers Power's mortgage(s) does not constitute a transfer or assignment.

**AMC 3.03.270. Amendment.**

At any time during the term of this Franchise, the City, through its City Council, or Consumers Power may propose amendments to this Franchise by giving thirty (30) days written notice to the other of the proposed amendment(s), and both parties, through their designated representatives, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s). No amendment(s) to this Franchise will be effective until mutually agreed upon by the City and Consumers Power and formally adopted as an ordinance amendment.

**AMC 3.03.280. Non-Contestability--Breach of Contract.**

(1) Neither the City nor Consumers Power will take any action for the purpose of securing modification of this Franchise before either the Oregon Public Utility Commission or any court of competent jurisdiction; provided, however, that neither will be precluded from taking any action it deems necessary to resolve difference in interpretation of the Franchise nor will Consumers Power be precluded from seeking relief from the courts in the event Oregon Public Utility Commission orders, rules or regulations conflict with or make performance under the Franchise illegal.

(2) In the event Consumers Power or the City fails to fulfill any of their respective obligations under this Franchise, the City or Consumers Power will have a breach of contract claim and remedy against the other in addition to any other remedy provided by law, provided that no remedy that would

have the effect of amending the specific provisions of this Franchise will become effective without such action that would be necessary to formally amend the Franchise.

**AMC 3.03.290. Notices.**

Unless otherwise specified herein, all notices from Consumers Power to the City under or concerning this Franchise will be delivered to the City Recorder's Office. Unless otherwise specified herein, all notices from the City to Consumers Power under or concerning this Franchise will be delivered to the Director of Member Services, and such other office as Consumers Power may advise the City of by written notice.

**AMC 3.03.300 Severability.**

If any section, sentence, paragraph, term or provision of this Franchise is for any reason determined to be illegal, invalid, or superseded by other lawful authority including any state or federal regulatory authority having jurisdiction or unconstitutional, illegal or invalid by any court of common jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such determination will have no effect on the validity of any other section, sentence, paragraph, term or provision, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

**AMC 3.03.310. Waiver of Jury Trial.**

To the fullest extent permitted by law, each of the parties hereto waives any right it may have to a trial by jury in respect of litigation directly or indirectly arising out of, under or in connection with this agreement. Each party further waives any right to consolidate any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.

**SECTION 5. Emergency Clause.** In as much as this ordinance is necessary for the immediate preservation of the public peace, health, and safety of the City of Albany, or to facilitate the prompt and timely completion of important City business, an emergency is hereby declared to exist; and this Ordinance shall take effect and be in full force and effect when signed by the Mayor.

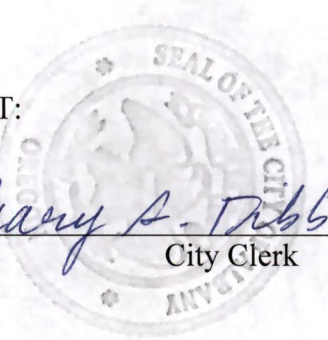
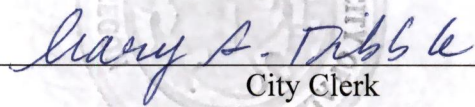
Passed by the Council: Sept 23, 2015

Approved by the Mayor: Sept 23, 2015

Effective Date: Sept 23, 2015

  
\_\_\_\_\_  
Mayor

ATTEST:

  
  
\_\_\_\_\_  
City Clerk