

ORDINANCE NO. 912

AN ORDINANCE RELATING TO THE DELIVERY OF POWER WITHIN THE CITY OF SCAPPOOSE AND GRANTING A NON-EXCLUSIVE FRANCHISE TO COLUMBIA RIVER PUBLIC UTILITY DISTRICT.

WHEREAS, CRPUD is a utility formed pursuant to ORS Chapter 261 operating within the city limits of CITY; and

WHEREAS, CRPUD is authorized by Oregon statute to enter into a franchise agreement with CITY; and

WHEREAS, CRPUD and CITY desire to enter into a franchise 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's existing franchise agreement is set to expire in 2024; and

WHEREAS, CRPUD and CITY intend a franchise agreement consistent with municipal regulation of utilities under ORS 221.420, *et seq.*, that is not inconsistent with ORS Chapter 261, including the payment of franchise fees for use of CITY street rights of way in lieu of a privilege tax;

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

Section 1. The franchise agreement is attached as Exhibit A and both parties agree to the terms and duration of the agreement.

Section 2. The City Council authorizes the City Manager to execute the agreement.

First reading: April 3, 2023

Second reading: April 17, 2023

CITY OF SCAPPOOSE, OREGON



Mayor Joseph A. Backus

Attest:



City Recorder Susan M. Reeves, MMC

Exhibit A

**FRANCHISE AGREEMENT
Between
COLUMBIA RIVER PEOPLE'S
UTILITY DISTRICT
And
CITY OF SCAPPOOSE
July 1, 2023**

FRANCHISE AGREEMENT

THIS AGREEMENT, made, entered, and effective as of this 1st day of July, 2023, by and between the CITY OF SCAPPOOSE, a municipal corporation of the State of Oregon, hereinafter referred to as CITY, and the COLUMBIA RIVER PEOPLE'S UTILITY DISTRICT, a municipal corporation of the State of Oregon, hereinafter referred to as CRPUD,

WITNESSETH:

WHEREAS, CRPUD is a utility formed pursuant to ORS Chapter 261 operating within the city limits of CITY; and

WHEREAS, CRPUD is authorized by Oregon statute to enter into a franchise agreement with CITY; and

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

NOW, THEREFORE, for consideration hereinafter named, CRPUD and CITY agree as follows:

Section 1. That CITY give permission for CRPUD, subject to the terms and conditions hereof, to erect, construct, maintain and operate poles, wires, fixtures, equipment, underground circuits, and other property necessary or convenient to supply CITY and the inhabitants thereof and other persons and territory with electric services and products upon, over, along, under, and across the streets, alleys, roads, and other public ways and places within the corporate limits of CITY as the same now are or hereafter constituted.

All poles, wires, fixtures, equipment, underground circuits, and other property owned or in possession of CRPUD now located within the corporate limits of CITY shall be deemed to be covered by the terms of this Franchise Agreement and to be located in accordance therewith, 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) years, 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 60 days prior to the expiration of the initial Term, that it desires to renegotiate this Agreement or does not desire to renew this Agreement.

Section 3. Before CRPUD may conduct underground work involving excavation or construction or major relocation work in any public right-of-way, property, or place, 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 required by CITY. As a prerequisite to conducting underground work, CRPUD shall obtain an approved right-of-way permit from the

City except in cases of emergency resulting from any one of the following conditions:

- "1) Any acts of God, including, but without restricting the generality thereof, lightning, earthquakes, storms, epidemics, and landslides, floods, fires, explosions, or washouts;"
- "2) Any acts of the enemies of the state, sabotage, wars, blockades, insurrections, riots, civil disturbances, arrests, or restraints."

CITY shall process any permit application filed by CRPUD pursuant to this Section 3 in a timely manner and, at no charge to CRPUD pursuant to Section 12(h).

That CRPUD shall, if requested so to do, file with the 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, and such construction work shall be done in a reasonable, safe manner subject to the approval of the official designated by the Council of CITY and in accordance with requirement of applicable State laws and CITY ordinances.

If requested by CITY, CRPUD shall, as soon as reasonably possible after completion of said construction work, but in no case more than thirty (30) days thereafter, file "as built" drawings showing the location of any construction, extension, or relocation of its facilities and services in any public right-of-way, property, or place in CITY. Within thirty (30) days from a request of CITY, CRPUD shall provide current updated utility maps either in a hard copy printed form or if CITY maintains compatible data base capability, then by electronic data transfer incorporating completed construction to CITY at no expense to CITY.

Section 4. That CRPUD, under the direction of CITY or its properly constituted authorities, may make all necessary excavations in any street, alley, road, or other public way or place for the purpose of erecting, constructing, repairing, maintaining, removing, and relocating poles and other supports for its wires, conductors, lights or streetlights; and laying, repairing, and maintaining its underground conduits and pipes; and for placing, maintaining,

and operating its wires and conductors. All poles of CRPUD shall be erected within the right-of-way and installed at the outside edge of the sidewalk, unless otherwise directed by the proper CITY authorities to another position within the right-of-way.

Section 5. That when an excavation shall be made pursuant to the provisions of this Franchise Agreement, CRPUD shall restore the portion of the street, alley, road, or public way or place to not less than the same condition to which it was prior to the excavation thereof and all work shall be done in compliance with the rules, regulations, ordinance or orders which may be adopted from time to time during the continuance of this Franchise by the Common Council of the CITY or as may be otherwise provided by law. Restorations for items that pose a safety concern will receive a temporary patch until such time as the permanent restoration can be completed within seven (7) business days after receiving notice from the city. If CRPUD fails to correct a safety concern after the seven (7) days, the city may then make the temporary patch and charge CRPUD actual and documented costs incurred.

Section 6. Notwithstanding Section 12(g), CITY shall have the right to cause CRPUD to move the location of any facility within the right-of-way whenever the relocation thereof shall be for public necessity, and the expense thereof shall be paid by CRPUD. Said poles and facilities shall be moved by CRPUD within thirty (30) days of written notice from CITY. In the event CRPUD is unable to move such facilities within thirty (30) days, CRPUD may request additional time from the City. City's consent to CRPUD's request for additional time shall not be unreasonably withheld. For purposes of this Section, the "public necessity" shall mean that the relocation of CRPUD facilities must be required for the safety or welfare of the entire community and not the welfare of a specific individual or class of persons.

Section 7. That nothing in this Franchise Agreement shall be construed in any way to

prevent CITY from trenching, grading, paving, planking, repairing, widening, altering, or doing any work that may be desirable on any of the streets, alleys, roads, or public ways or places; but all such work shall be done, if possible, in such manner as not to obstruct, injure, or prevent free use and operation of said electric utility system of CRPUD. CITY shall maintain clearance from CRPUD facilities in accordance with state and federal regulations. CITY shall provide notice, as early as possible, of any proposed property development or construction near CRPUD's substations or high voltage wires.

Section 8. That whenever it shall be necessary in trenching, grading, or in making any other improvement in any street, alley, road, or other public way or place, to remove any pole, underground conduit or equipment belonging to CRPUD or on which any light, wire or circuit of CRPUD shall be stretched or fastened, CRPUD shall, upon thirty (30) days written notice from CITY, or its properly constituted authorities, remove such pole, underground conduit, equipment, light, wire or circuit. In the event CRPUD is unable to move such facilities within thirty (30) days, CRPUD may request additional time from the City. City's consent to CRPUD's request for additional time shall not be unreasonably withheld and if CRPUD refuses to move facilities, CRPUD will write a letter of explanation to the council of the city.

Section 9. That CITY shall provide CRPUD and others with a minimum ten (10) foot wide non-exclusive utility corridor where there is transmission under-build, and a minimum eight (8) foot wide non-exclusive utility corridor in all new street layouts whenever reasonably possible and shall provide CRPUD and others 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 overhead facilities cables, wires, or other apparatus of CRPUD to permit the passage of any

building, machinery or other object, CRPUD will perform such rearrangement on thirty (30) days written notice from the person or persons desiring to move said building, machinery, or other objects, if reasonably possible, but additional time shall be given upon the request of CRPUD if it determines that additional time is needed to move such facilities. Said notice shall bear the approval of such officials as the Common Council may designate, shall detail the route of movement of the building, machinery, or other objects, shall provide that the costs incurred by CRPUD in making such arrangements will be borne by the person or persons giving said notice, and shall further provide that the person or persons giving said notice will indemnify and save 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 the utility facilities of CRPUD, and, if required by CRPUD, shall be accompanied by a cash deposit or a good and sufficient bond to pay any and all such costs as estimated by CRPUD.

Section 11. That the rights and privileges granted by this Franchise Agreement are granted upon the conditions herein contained and also upon the following considerations and conditions to- wit:

(a) That in consideration of the rights and privileges herein granted, CRPUD shall pay to CITY for each calendar year during the life of this franchise beginning on the effective date, an annual fee of five percent (5%) of the 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.

(b) Gross revenue as used in this Franchise Agreement shall be deemed to 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. A public utility as defined herein is any individual, partnership, cooperative, corporation, or government agency buying electric energy and distributing such electric energy to other customers or users. Gross revenues shall include revenues from the use, rental, or lease of operating facilities of CRPUD 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.

(c) That in consideration of the agreement of CRPUD to make such payments, 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 Franchise Agreement, but this provision shall not exempt the property of CRPUD from lawful *ad valorem* taxes.

(d) That on or before March 1 of each year during the term of this Franchise Agreement, CRPUD shall file with the CITY Recorder a statement under oath showing the amount of gross revenue of CRPUD within CITY on the basis outlined in paragraph (a) herein for the calendar year immediately preceding the calendar year in which the statement is filed. The annual franchise fee for the calendar year in which the statement is filed shall be computed on the gross revenue so reported. Such franchise fee shall be payable annually on or before April 1 in each year. Upon receipt of such annual payment, the CITY Recorder shall issue a receipt.

Any controversy that may arise as to the amount of gross revenue within the meaning of this Franchise Agreement shall be resolved in accordance with the dispute resolution process described below in Section 16. Except in the event that a party has invoked the dispute resolution process described in Section 16, any difference of payment due either CITY or CRPUD through error or otherwise shall be payable within fifteen (15) days of discovery of such error. Except in the event that a party has invoked the dispute resolution process described in Section 16, should CRPUD fail or neglect to pay any of said annual payments provided for in this Section for thirty (30) days after any annual payment shall become due and payable and after thirty (30) days written notice from CITY, CITY, by its properly constituted authority, may, at its option and without waiving the right to collect earned franchise payments, either continue this franchise or declare a forfeiture of this franchise.

In the event that a party has invoked the dispute resolution process described in Section 16, the final resolution of that process shall control the respective rights of the Parties under this Section. Either party may audit the amount of gross revenue and payment amounts under this Franchise Agreement and request correction for any errors within one (1) year of payment as provided in this section. After the expiration of one (1) year from the date a payment is made under this Franchise Agreement, the payment shall be deemed final and no further corrections or modifications to the amount paid shall be made or requested.

CITY may inspect the books of account, including computer retrieval information, at any time during CRPUD's business hours and may audit the books, at CITY expense, from time to time but no more frequently than semi-annually.

(e) That CRPUD shall permit CITY to string wires on poles of CRPUD

upon signing a Joint Use Agreement acceptable to both parties for municipal fire, police, and water departments, and for municipal telephone, fiber optic, telegraph, cable, and traffic signal systems and attach to any pole city fire alarm, and police signals, and ornamental or seasonal lights authorized by CITY, provided that such wires and signals shall be strung so as to interfere as little as possible with the wires of CRPUD and to conform to the provisions of the National Electrical Safety Code; and further, that CITY shall indemnify and hold CRPUD harmless from loss or damage resulting from damage to property or injury or death to CITY employees or the public arising from or connected with the use of said poles by CITY.

(f) That CRPUD shall not, during the term of this franchise, sell, assign, transfer or convey this franchise without the consent of the Common Council of CITY expressed by agreement first obtained, and that upon obtaining such consent all of the provisions shall inure to and bind the successors and assigns of CRPUD; and whenever CRPUD shall be mentioned in this Franchise Agreement, it shall be understood to include such successors or assigns in interest of CRPUD as shall have been so consented to by the Common Council.

(g) That CRPUD shall render the service hereby authorized to be supplied upon equal terms without unjust discrimination or undue preference to any users within CITY including rates to be charged to CITY by CRPUD for electric services.

(h) That CITY shall provide a procedure for building permit applicants to notify CRPUD about building permits within CRPUD service area at the beginning of the permit process.

(i) CRPUD shall at all times during the term of this franchise maintain a

pay-station within CITY limits at which customers may pay their electric bills during normal business hours as long as the CITY provides a location for a pay station free of charge.

(j) That whenever work is performed in any public right-of-way, property, or place, CRPUD shall take all reasonable precautions to minimize interruptions to traffic flow, damage to property or creation of any hazardous condition.

(k) The facilities of CRPUD 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 rules pertaining thereto including without limitation any revision or edition of the National Electric Safety Code, approved by the American National Standards Institute.

Section 12. That 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 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. The provision of Electric Service to any new construction or expansion of existing commercial or industrial properties shall be made under CRPUD's adopted rules, policies, and rate schedules, including CRPUD's line extension

policy, as amended or superseded from time to time.

(d) To notify CRPUD of any request for new cable 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. CRPUD may allow use of its poles, in its sole discretion, under a Joint Use or pole attachment agreement acceptable to 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 to 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 13. That CRPUD hereby agrees and covenants to indemnify and save harmless

CITY and the officers thereof against all damages, costs and expenses whatsoever to which it or they may be subjected in consequence of negligence of CRPUD, or its agents or servants, in any manner arising from the rights and privileges hereby granted.

Section 14. That all rights, authority, and grants herein contained or conferred are also conditioned upon the understanding and agreement that these privileges in the streets, alleys, roads and other public ways and places of CITY are not to operate in any way so as to be an enhancement of CRPUD's properties or values or to be an asset or item of ownership in any appraisal thereof.

Section 15. All new electric utility lines constructed under CRPUD's line extension policy to serve new developments, including lines to streetlights and related facilities; shall be placed underground. 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. However, this undergrounding requirement does not apply to routine maintenance, repair activities, off-site system upgrades 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 as outlined in the CITY

Public Works Design Standards Typical Utility Placement Detail, if any exist, or 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 apparatuses such as but not limited to transformers, switches, meter cabinets, protective devices, etc., 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 16. In case of any dispute arising under this Agreement which cannot be settled by direct negotiation between senior representatives of each party, the Parties agree that prior to commencing any arbitration to resolve such dispute, they shall first engage the services of 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 attorneys' 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

attorneys' 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 17. The Parties agree to comply with all laws and regulations of the United States, the State of Oregon, the CITY, and any other authorized public authority. If any ordinance/resolution of the respective governing bodies is in conflict with this Franchise Agreement, this Franchise Agreement will govern and control.

Section 18. Unless otherwise agreed to in writing, all correspondence shall be addressed to the parties as follows:

If to CRPUD:
Attn: General Manager
Columbia River People's Utility District
PO Box 1193
St. Helens, OR 97051

If to CITY:
Attn: City Manager
City of Scappoose
33568 East Columbia Avenue
Scappoose, OR 97056

Section 19. This Franchise 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 effective March 30, 2004, which agreement CITY and CRPUD expressly terminate as of the date of this Franchise Agreement.

Section 20. This Franchise Agreement may be modified, amended, or supplemented only by written agreement executed by both CITY and CRPUD.

Section 21. If any provision of this Franchise 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 Franchise 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.

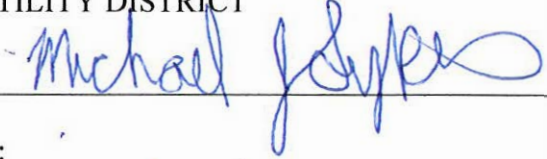
APPROVED AS TO FORM BY
CITY OF SCAPPOOSE



By: Alexandra Reins, City Manager

Date: 4/18/2023

APPROVED AS TO FORM BY
COLUMBIA RIVER PEOPLE'S
UTILITY DISTRICT



By: _____

Date: 4/19/2023