

ORDINANCE NO. 20-186-07

AN ORDINANCE GRANTING OREGON TRAIL ELECTRIC CONSUMERS COOPERATIVE, INC. THE RIGHT AND PRIVILEGE TO PLACE, ERECT, AND MAINTAIN POLES, WIRES, AND OTHER APPLIANCES AND CONDUCTORS FOR THE TRANSMISSION AND DISTRIBUTION OF ELECTRICITY IN, ON, AND UNDER THE STREETS, ALLEYS, AVENUES, THOROUGHFARES, AND PUBLIC HIGHWAYS IN THE CITY OF JOHN DAY, OREGON, AND TO EXERCISE THE PRIVILEGE OF ENGAGING IN THE GENERAL BUSINESS OF GENERATING, TRANSMITTING, AND DISTRIBUTING ELECTRICAL ENERGY.

WHEREAS, Oregon Trail Electric Consumers Cooperative, Inc. (“OTEC”), an Oregon cooperative d/b/a Oregon Trail Electric Cooperative, currently transmits and distributes electrical energy within City of John Day (“City”), an Oregon municipal corporation, in accordance with the terms and conditions of Ordinance No. 10-143-03 (the “Original Franchise”);

WHEREAS, according to Section 6.1 of the Original Franchise, the Original Franchise expires on November 10, 2020; and

WHEREAS, by passage of this Ordinance No. 20-186-07 (this “Ordinance”), City grants OTEC the right and privilege to place, erect, and maintain poles, wires, and other appliances and conductors for the transmission and distribution of electricity in, on, and/or under the streets, alleys, avenues, thoroughfares, and public highways inside City’s incorporated limits, subject to the terms and conditions contained in this Ordinance.

NOW, THEREFORE, THE CITY OF JOHN DAY ORDAINS AS FOLLOWS:

1. GRANT OF FRANCHISE

1.1 Grant of Franchise. Subject to the terms and conditions contained in this Ordinance, City grants OTEC the right and privilege to place, erect, lay, maintain, and operate in, on, under, and over the Public Right-of-Way (as defined below) Electrical Facilities (as defined below) for the generation, transmission, and distribution of electricity. OTEC will enter in, on, under, and over the Public Right-of-Way only for the purposes described in the immediately preceding sentence. Notwithstanding anything contained in this Ordinance to the contrary, (a) OTEC’s use of the Public Right-of-Way is limited to operation of the Electrical Facilities, (b) OTEC will operate the Electrical Facilities at all times subject to and in compliance with the ~~Laws~~[Legal Regulations \(as defined below\)](#), and (c) nothing contained in this Ordinance will (x) abrogate City’s right to perform any public works or public improvements of any description or nature whatsoever, (y) constitute a waiver of any ~~Legal Regulations (as defined below)~~, and/or (z) waive and/or release City’s rights in and to the Public Right-of-Way. For purposes of this Ordinance, the term “Public Right-of-Way(s)” means the public streets, alleys, avenues, thoroughfares, and highways located within City which are owned and/or controlled by City; the term “Electrical Facility” and “Electrical Facilities” means poles, wires, conductors, appliances, and related equipment OTEC requires to transmit and distribute electrical energy.

1.2 Franchise Non-Exclusive. The franchise granted by City under this Ordinance is and will be construed as a non-exclusive franchise. City reserves the right to grant franchises, licenses, permits, and/or other similar rights to other persons to use and/or place, erect, lay, maintain, and/or operate in, on, over, or under the Public Right-of-Way for similar or different purposes allowed under this Ordinance.

2. LOCATION, RELOCATION, AND REMOVAL

2.1 Location of Electrical Facilities. [City has the authority to prescribe \(a\) which Public Right-of-Ways will be used by OTEC for the Electrical Facilities, and \(b\) the location of the Electrical Facilities within the Public Right-of-Ways.](#) For any new installation of Electrical Facilities where existing utilities are located underground within a particular Public Right-of-Way, City may require OTEC to locate its Electrical Facilities underground.

2.2 Relocation. Whenever utilities are located or relocated underground within a particular Public Right-of-Way, OTEC will be required to relocate its Electrical Facilities underground concurrently with the other affected utilities to minimize disruption of the Public Right-of-Way. ~~Notwithstanding anything contained in this Ordinance to the contrary, City will have the authority to prescribe (a) which Public Right-of-Ways will be used by OTEC for the Electrical Facilities, and (b) the location of the Electrical Facilities within the Public Right-of-Ways (whether such Electrical Facilities are newly constructed, replaced, repaired, or otherwise).~~ 2.2 Relocation. Except in the case of an Emergency (as defined below), within thirty (30) days after City's request, OTEC will, at OTEC's cost and expense, remove, relocate, change, and/or alter the position or location of any Electrical Facilities within the Public Right-of-Way whenever City has determined that such removal, relocation, change, and/or alteration is necessary for any of the following reasons: (a) an Emergency; (b) the construction, repair, installation, and/or maintenance of any City or other public work or improvement; (c) the operations of City or other governmental entity in, on, or under the Public Right-of-Way reasonably requires the removal, relocation, change, and/or alteration of the Electrical Facilities; and/or (d) the removal, relocation, change, and/or alteration is required for public convenience ~~_____~~ and necessity. If any moving and/or relocation work is done for or at the request of a private individual, entity, developer, or development, the costs of such moving or relocation work will be borne by the requesting private individual, entity, developer, or development. Nothing contained in this Ordinance will be construed in any way to prevent City from sewerage, grading, planing, rock, paving, repairing, altering, and/or improving any Public Right-of-Way in and/or on which the Electrical Facilities are or will be placed. If OTEC is required to complete any removal, relocation, change, and/or alteration work under this Section 2.2 due to Emergency, OTEC will exercise its best efforts to complete such work promptly and without delay but in no event later than five days after City's request to perform the removal, relocation, change, and/or alteration work (unless City consents in writing to provide OTEC additional time). If OTEC fails to timely remove, relocate, change, and/or alter the position or location of any Electrical Facilities when required under this Section 2.2, City may remove, relocate, change, and/or alter the Electrical Facilities and OTEC will pay City any and all costs and expenses incurred by City to complete such removal, relocation, change, and/or alteration immediately upon City's demand.

2.3 Moving Aerials. Notwithstanding anything contained in this Ordinance to the contrary, whenever it becomes necessary to temporarily rearrange, remove, lower, and/or raise the Electrical Facilities to permit the passage of any building, machinery, and/or other object moved over any Public Right-of-Way (a "Temporary Adjustment"), OTEC will perform the Temporary Adjustment within seventy-two (72) hours after OTEC's receipt of written notice from the owner or contractor-mover desiring to move such building, machinery, and/or other object (the "Move Notice"). The Move Notice will (a) bear the approval of City, (b) detail the route of movement of the building, machinery, and/or object, (c) provide that the costs incurred by OTEC in making the Temporary Adjustment will be borne by the contractor-mover, (d) provide that the contractor-mover will indemnify and hold OTEC harmless for, from, and against any and all damages, claims, or causes of action caused directly or indirectly from the Temporary Adjustment, and (e) if required by OTEC, will be accompanied by cash deposit or a good and sufficient bond to pay any and all such costs as estimated by OTEC.

3. CONSTRUCTION, INSTALLATION, AND OPERATION

3.1 Electrical Facilities. Construction of Electrical Facilities ~~will~~ may not interfere with ~~City's~~ water mains, sewer mains, gas mains, and/or any other municipal uses of any Public Right-of-Way. Electrical Facilities will be ~~erected~~ planned, constructed, operated, and located so not to unreasonably interfere with water mains, sewer mains, gas mains, and/or City and/or the public's use of the Public Right-of-Way. OTEC will maintain, at OTEC's expense, all Electrical Facilities in good and safe order and condition.

3.2 Construction Work. Except in the case of an Emergency, prior to OTEC commencing (or causing any person to commence) any Construction Work (as defined below) within City, OTEC will (a) file with City such materials, documentation, plans, and any other information or documentation reasonably requested by City concerning the proposed Construction Work (including, without limitation, the location of any Electrical Facilities), (b) obtain all necessary construction permits concerning the proposed Construction Work, and (c) obtain City's prior consent. All Construction Work will be subject to the supervision of City's engineer or other representative

appointed by City. If OTEC is required to perform any Construction Work due to the occurrence of an Emergency, OTEC will be required to comply with Section 3.2(a), (b), and (c) as soon as practicable (but in no event later than five days after the occurrence of the Emergency). OTEC will conduct its operations and will perform all Construction Work, including, without limitation, any excavation and/or restoration work, in accordance with the following: (w) all Construction Work will be completed in a safe manner, taking into account all applicable traffic control rules and procedures; (x) all Construction Work will be completed so as to minimize disruption and interference of the Public Right-of-Way; (y) all Construction Work will be completed in accordance with this Ordinance and all applicable Legal Regulations; and (z) all Construction Work will be completed in a good workmanlike manner. OTEC is responsible for determining the existence and exact location of all utility services and facilities (including, without limitation, those located underground) to protect the integrity thereof and will pay all costs and expenses related thereto. Before commencing any excavation work (or any other Construction Work), OTEC will carefully study and confirm the accuracy of all lines, levels, and measurements, and their relation to benchmarks, property lines, and reference lines. For purposes of this Ordinance, the term "Construction Work" means any construction activity in, on, over, and/or under any Public Right-of-Way, including, without limitation, any excavation, maintenance, improvement, repair, extension, and/or relocation work; the term "Emergency" means a human created or natural event or circumstance that causes or threatens widespread loss of life, injury to person or property, human suffering, or significant financial loss.

3.3 Restoration of Property. If OTEC disturbs and/or causes another to disturb any Public Right-of-Way, OTEC will, at OTEC's cost and expense, replace or restore the Public Right-of-Way to the same condition to which the Public Right-of-Way existed prior to the disruption as soon as practicable and without unreasonable delay. If OTEC fails to timely replace or restore any Public Right-of-Way to the same condition to which the Public Right-of-Way existed prior to the disruption, City may cause the replacement or restoration to be made at the expense of OTEC. OTEC will pay City any and all costs and expenses incurred by City to replace or restore the Public Right-of-Way immediately on City's demand.

3.4 Provision of Service. OTEC will maintain and operate a system for the distribution of electricity in City so as to provide 24-hour a day service. OTEC will use due diligence to maintain continuous and uninterrupted service, which will at all times be up to the standards common in the business. OTEC does not guarantee continuous and uninterrupted service, and under no circumstances is OTEC liable to City for any interruption or failure of service caused in whole or in part by any cause beyond OTEC's reasonable control (and through no fault of OTEC), including, without limitation, acts of God, public enemy, fires, floods, earthquakes, or other catastrophes, severe weather, strikes, or failure or breakdown of generating, transmission, or distribution Electrical Facilities. OTEC will maintain emergency repair service 24-hours per day. If OTEC's distribution of electricity and/or Electrical Facilities, or any part thereof, is partially or wholly destroyed or incapacitated, OTEC will use due diligence to restore the distribution of electricity and/or Electrical Facilities as the case may be, within the shortest practicable time.

3.5 Hazardous Substances. OTEC will not cause and/or permit any Hazardous Substances (as defined below) to be spilled, leaked, disposed of, and/or otherwise released in, upon, across, and/or under the Right-of-Way and/or any surrounding areas. OTEC will comply with all Environmental Laws (as defined below) and will exercise the highest degree of care in the use and handling of any Hazardous Substances and will take all practicable measures to minimize the quantity and toxicity of Hazardous Substances used and/or handled in, on, and/or over the Right-of-Way. For purposes of this Ordinance, the term "Hazardous Substance(s)" means any hazardous, toxic, infectious, or radioactive substance, waste, or material as defined or listed by any Environmental Law and will include petroleum oil and its fractions; the term "Environmental Law(s)" means all federal, state, and/or local statutes, regulations, and/or ordinances, and/or any judicial or other governmental orders pertaining to the protection of health, safety, and/or the environment.

3.6 Oversight of Franchise. City has the right to oversee and periodically inspect the construction, operation, repair, and/or maintenance of the Electrical Facilities. Nothing contained herein places any obligation and/or requirement that City inspect. If City makes any inspections, such inspections are made solely for City's benefit and will not be deemed an acceptance or guaranty of any kind or nature related to the Electrical Facilities,

Construction Work, and/or any portion or aspect thereof.

4. FRANCHISE FEES

4.1 Payment of Franchise Fees. In consideration of the rights, privileges, and franchise granted by City to OTEC under this Ordinance, OTEC will pay City _____percent (_%) of the Gross Revenues (as defined below) (the “Franchise Fee”). OTEC will pay the Franchise Fee in quarterly installments, which quarterly installments will be due on or before the last day of the month immediately following the end of each calendar year quarter. The first quarterly payment of the Franchise Fee is due on or before January 31, 2021. Contemporaneously with each quarterly payment, OTEC will file with City a sworn statement describing the total Gross Revenues OTEC has received during the immediately preceding quarter (the “Accounting Statement”). City’s acceptance of any payments under this Section 4.1 will not constitute a waiver by City of any OTEC breach under this Ordinance. For purposes of this Section 4.1, the term “Gross Revenues” means any and all gross revenues received directly or indirectly from OTEC’s operations in City’s corporate limits, less net uncollectibles, including, without limitation, gross revenues resulting from the use, rental, and/or lease of Electrical Facilities; provided, however, the term “Gross Revenues” does not include proceeds from the sale of bonds, mortgages, securities, or stocks, sales at wholesale to another utility when the utility purchasing the service is not the ultimate consumer, revenue from joint pole use, revenue paid by the United States of America (or any of its agencies), or revenue paid by City. ~~if any “direct access” to new electricity service suppliers is provided by OTEC, City and OTEC will, if City elects, immediately modify the basis of the Franchise Fee to provide for volumetric charges (i.e., kilowatt hours delivered within City) under this Ordinance.~~

4.2 Inspection of Books and Records. During the term of this Ordinance, and for a period of three years thereafter (or such longer period as may be required under any applicable Legal Regulations), OTEC will maintain adequate books, records, maps, and files concerning the Electrical Facilities and ~~the~~ Franchise. On ten (10) days’ advance written notice to OTEC, City may review such OTEC books, records, documentation, and/or information City reasonably determines necessary or appropriate to audit an Accounting Statement and/or ascertain OTEC’s compliance with this Ordinance. OTEC will cooperate with City in conducting any inspection and/or audit and will correct any discrepancies affecting City’s interest in a prompt and efficient manner. City will bear the cost of any audit provided no irregularities are found (if City discovers any material irregularities, OTEC will bear the cost of City’s audit). OTEC will keep all its books, records, documentation, and/or information pertaining to the sale of electricity in City at its Baker City, Oregon office. OTEC covenants that all books, accounts, records, and financial statements will (a) fairly present the financial condition of OTEC as of the dates and periods specified, (b) be prepared in accordance with sound accounting practices (e.g., generally accepted accounting practices), (c) reflect the consistent application of sound accounting practices throughout the periods involved, (d) represent actual, bona fide transactions, and (e) be maintained in accordance with sound business practices, including, without limitation, the maintenance of an adequate system of internal accounting control.

5. INSURANCE AND INDEMNIFICATION

5.1 Insurance. OTEC, at its cost and expense, will obtain and keep in full force and effect during the term of this Ordinance the following insurance coverage and their respective minimum limits: (a) workers’ compensation insurance within statutory limits; (b) employer’s liability insurance with limits of not less than \$1,000,000 per occurrence, \$2,000,000 in the aggregate; (c) comprehensive general liability insurance with limits of not less than \$3,000,000 for bodily injury or death to each person, \$3,000,000 for property damage resulting from any one accident, and \$3,000,000 for all other types of liability; and (d) automobile liability insurance for all owned, non-owned, and hired vehicles that are or may be used by OTEC and its employees with limits of \$1,000,000 for each person and \$3,000,000 for each accident. Each liability insurance policy OTEC is required to obtain and maintain under this Section 5.1 will name City and City’s officers, employees, and volunteers as additional insureds and will provide that no cancellation, expiration, modification, or reduction in amount or scope of insurance coverage is permitted without providing City thirty (30) days’ prior written notice. All insurance OTEC is required to obtain and maintain under this Section 5.1 will be issued only by insurance companies licensed in Oregon. Prior to City’s execution and acceptance of this Ordinance, and at any other time thereafter within ten

(10) days after City's written request, OTEC will provide City with certificates of insurance (and endorsements) evidencing OTEC's compliance with this Section 5.1. Notwithstanding anything contained in this Ordinance to the contrary, City may increase the minimum levels of insurance OTEC is required to carry under this Ordinance [as City determines necessary to ensure OTEC's coverage limits meet the applicable Oregon Tort Claims Act liability limits for state or local agencies](#) by providing OTEC ninety (90) days' prior written notice.

5.2 Indemnification. OTEC will defend, indemnify, and hold City, and each employee, officer, agent, and representative of City, harmless for, from, and against any and all claims, actions, proceedings, damages, liabilities, losses, and expenses of every kind, including, without limitation, reasonable attorney fees, resulting from or arising out of, whether directly or indirectly, the following: (a) the acts or omissions of OTEC and/or its affiliates, board members, officers, employees, agents, contractors, and/or subcontractors, whether such acts or omissions are authorized, allowed, or prohibited by this Ordinance; (b) damage, injury, or death to person or property caused directly or indirectly by OTEC and/or its affiliates, board members, officers, employees, agents, contractors, and/or subcontractors (except to the extent such damage, injury, or death is caused by City's negligent acts); and/or (c) OTEC's breach or failure to perform any OTEC representation, warranty, covenant, and/or obligation under this Ordinance. OTEC's indemnification obligation provided in this Section 5.2 will survive the termination of this Ordinance.

6. TERM OF FRANCHISE

6.1 Term of Franchise. This Ordinance (and the Franchise granted hereunder) will be in full force and effect for a period of ten (10) years, commencing on November 11, 2020 and ending on November 10, 2030, unless sooner terminated as provided under this Ordinance. This Ordinance may be terminated at any time by the mutual written agreement of City and OTEC. Notwithstanding anything contained in this Ordinance to the contrary, termination of this Ordinance, regardless of how it occurs, will not relieve a party of any obligations that have accrued before termination.

6.2 Termination for Cause. Notwithstanding anything contained in this Ordinance to the contrary, City may terminate this Ordinance by notice to OTEC on the occurrence of any of the following events (each an "Event of Default"): (a) OTEC fails to comply with any applicable Legal Regulation; and/or (b) OTEC breaches or otherwise fails to perform any OTEC representation, warranty, covenant, and/or obligation contained in this Ordinance. Prior to City's termination of this Ordinance under this Section 6.2, City will provide OTEC thirty (30) days' prior written notice (the "OTEC Default Notice") specifying with reasonable particularity the Event of Default(s) City believes exist. Commencing from OTEC's receipt of the OTEC Default Notice, OTEC will have thirty (30) days to cure or remedy the Event of Default(s) (the "OTEC Cure Period"). If OTEC fails to cure or remedy the Event of Default(s) within the OTEC Cure Period, City may terminate this Ordinance based on such Event of Default(s). Termination of this Ordinance by City will not constitute a waiver or termination of any rights, claims, and/or causes of action City may have against OTEC.

6.3 City Default. No City act or omission will be considered a default under this Ordinance unless and until City has received thirty (30) days' prior written notice from OTEC specifying with reasonable particularity the nature of the default OTEC believes exist (the "City Default Notice"). Commencing from City's receipt of the City Default Notice, City will have thirty (30) days to cure or remedy the alleged default (the "City Cure Period") before City will be deemed in default of this Ordinance.

6.4 Remedies. If a party breaches or otherwise fails to perform any of its terms, covenants, conditions, and/or obligations under this Agreement, the non-defaulting party may, in addition to any other remedy provided to the non-defaulting party under this Ordinance, pursue any and all remedies available to the non-defaulting party at law or in equity. All available remedies are cumulative and may be exercised singularly or concurrently.

7. MISCELLANEOUS

7.1 Assignment or Transfer of Franchise. OTEC will not assign or transfer in any manner whatsoever any interest in or to the franchise created by this Ordinance and/or in any Electrical Facilities located within City

(except for an assignment or transfer of any Electrical Facility in the ordinary course of business) unless and until the following conditions are met: (a) the grantee, assignee, or transferee agrees in writing (in form and substance reasonably satisfactory to City) to assume and abide by the terms and conditions contained in this Ordinance; and (b) OTEC provides City ninety (90) days' prior written notice of the proposed assignment or transfer and City provides prior written consent of the proposed assignment or transfer. Subject to this Section 7.1, this Ordinance will be binding on the parties and their respective heirs, executors, administrators, successors, and assigns and will inure to their benefit. The restriction on assignment and transfer contained in this Section 7.1 will not operate to prohibit OTEC from executing mortgages or trust indentures on OTEC's properties if given to secure bonds or other bona fide indebtedness of OTEC.

7.2 Severability. Each provision contained in this Ordinance will be treated as a separate and independent provision. The unenforceability of any one provision will in no way impair the enforceability of any other provision contained herein. Any reading of a provision causing unenforceability will yield to a construction permitting enforcement to the maximum extent permitted by applicable law.

7.3 Attorney Fees. With respect to any dispute relating to this Ordinance, or if a suit, action, arbitration, or other proceeding of any nature whatsoever is instituted to interpret or enforce the provisions of this Ordinance, including, without limitation, any proceeding under the U.S. Bankruptcy Code and involving issues peculiar to federal bankruptcy law or any action, suit, arbitration, or proceeding seeking a declaration of rights or rescission, the prevailing party will be entitled to recover from the losing party its reasonable attorney fees, paralegal fees, expert fees, and all other fees, costs, and expenses incurred in connection therewith, as determined by the judge or arbitrator at trial, arbitration, or other proceeding, or on any appeal or review, in addition to all other amounts provided by law.

7.4 Governing Law; Venue. This Ordinance is subject to any and all applicable federal, state, and local laws, rules, regulations, codes, and ordinances, including, without limitation, the Environmental Laws and all City ordinances and regulations, all as heretofore or hereafter adopted or established (collectively, the "Legal Regulation(s)"). Any action or proceeding arising out of or concerning this Ordinance will be litigated in courts located in Grant County, Oregon.

7.5 Action by the Parties; Compliance with Laws. In any action mandated or permitted by City or OTEC under this Ordinance, such party will act in a reasonable, expeditious, and timely manner. Whenever the approval or consent of either City or OTEC is required under this Ordinance, such consent will not be unreasonably withheld, conditioned, or delayed. OTEC will comply with any and all applicable Legal Regulations. The rights and privileges granted by City to OTEC under this Ordinance extend only to the extent of City's right or authority to grant a franchise to occupy and use the Public Right-of-Ways for Electrical Facilities.

7.6 Notices. Except as otherwise provided in this Ordinance, all notices or other communications required or permitted by this Ordinance must be in writing, must be delivered to the parties at the addresses set forth below, or any other address that a party may designate by notice to the other party, and are considered delivered upon actual receipt if delivered personally, by fax, or by a nationally recognized overnight delivery service, or at the end of the third business day after the date of deposit if deposited in the United States mail, postage pre-paid, certified, return receipt requested.

To City:
City of John Day
Attn: City Manager
450 East Main Street
John Day, Oregon 97845
Facsimile No.: 541-575-3668

To OTEC:
Oregon Trail Electric Consumers Cooperative, Inc.
Attn: Les Penning, ~~General Manager~~[CEO](#)
PO Box 226
Baker City, Oregon 97814
Facsimile No.: 541-524-2864

with a copy to:
Jeremy M. Green

with a copy to:
~~Henry Lorenzen~~[Ron Williams](#)

Bryant, Lovlien & Jarvis, PC
591 SW Mill View Way
Bend, Oregon 97709
Facsimile No.: 541-389-3386

~~Corey Byler Rew et al.~~ [Williams Bradbury, PC](#)
PO Box ~~218388~~
~~Pendleton~~ [Boise, Oregon 97801](#) [Idaho 83701](#)
Facsimile No.: ~~541-276-3148~~

7.7 Person and Interpretation. For purposes of this Ordinance, the term “person” means any natural person, corporation, limited liability company, partnership, joint venture, firm, association, trust, unincorporated organization, government or governmental agency or political subdivision, or any other entity. All pronouns contained herein and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The words “include,” “includes,” and “including” are not limiting. The word “or” is not exclusive. Reference to “days” means calendar days, with any deadline falling on a day other than a business day being extended to the next business day.

7.8 Expenses; Entire Agreement; Late Fees. OTEC will bear all fees, costs, and expenses incurred or arising out of OTEC’s performance of its obligations under this Ordinance. This Ordinance contains the entire agreement and understanding between the parties with respect to the subject matter of this Ordinance and contains all of the terms and conditions of the parties’ agreement and supersedes any other oral or written negotiations, discussions, representations, or agreements. OTEC has not relied on any promises, statements, representations, or warranties except as set forth expressly in this Ordinance. This Ordinance may be corrected by order of the council to cure editorial and clerical errors. If any Franchise Fees and/or other payment due from OTEC is not received by City within ten (10) days after it is due, OTEC will pay a late fee equal to ten percent (10%) of the payment or Two Hundred Dollars (\$200.00), whichever is greater (a “Late Fee”). In addition, a charge of one and one-half percent (1.5%) per month on the amount past due (a “Late Charge”) will be charged from the due date for such payment until the past due amount is paid in full. City may levy and collect a Late Fee and/or a Late Charge in addition to all other remedies available for OTEC’s failure to timely pay any Franchise Fees and/or other payment due from OTEC.

7.9 Dispute Resolution. If any claim, dispute, or controversy arising out of or related to this Ordinance occurs (a “Dispute”), City and OTEC will exert their best efforts to seek a fair and prompt negotiated resolution of the Dispute and will meet at least once to discuss and seek a resolution of the Dispute. If the Dispute is not resolved by negotiated resolution, ~~the Dispute will be settled by arbitration before a single arbitrator in John Day, Oregon. If the parties agree on an arbitrator, the arbitration will be held before the arbitrator selected by the parties. If the parties do not agree on an arbitrator, each party will designate an arbitrator and the arbitration will be held before a third arbitrator selected by the designated arbitrators. Each arbitrator will be an attorney knowledgeable in the area of business law. The arbitration will be conducted in accordance with the then-current rules of the Arbitration Service of Portland, Inc. The resolution of any controversy or claim as determined by the arbitrator will be binding on the parties and judgment upon the award rendered may be entered in any court having jurisdiction. A party may seek from a court an order to compel arbitration, or any other interim relief or provisional remedies, pending an arbitrator’s resolution of any controversy or claim. The prevailing party in the arbitration will be entitled to recover from the other party all expenses incurred in connection with the arbitration, including reasonable attorney fees~~ either party may pursue appropriate legal action against the other party.

7.10 Acceptance by OTEC; Original Franchise. Within thirty (30) days after City’s passage of this Ordinance, OTEC will file with City the written acceptance attached hereto as Exhibit A (the “Acceptance”). If OTEC fails to timely file the Acceptance with City, this Ordinance (and the rights granted to OTEC herein) will be null and void and will be repealed by City in all respects. Termination or expiration of the Original Franchise will not relieve a party of any obligations that have accrued before the termination or expiration. OTEC represents and warrants that OTEC has paid City all franchise fees accruing under the Original Franchise on or before the effective date of this Ordinance.

This Ordinance was PASSED by the City Council by a vote of ___ for and ___ against and APPROVED by the Mayor on this ___ day of _____, 2020.

Ron Lundbom, Mayor

ATTEST:

Nicholas Green, City Manager

Exhibit A
ACCEPTANCE
BY
OREGON TRAIL ELECTRIC CONSUMERS COOPERATIVE, INC.

The forgoing Ordinance No. 20-186-07 adopted by City of John Day on ~~September~~October____, 2020, consisting of eight pages (including this Exhibit A), is approved and accepted by Oregon Trail Electric Consumers Cooperative, Inc., an Oregon cooperative d/b/a Oregon Trail Electric Cooperative, in all respects.

Oregon Trail Electric Consumers Cooperative, Inc.,
an Oregon cooperative d/b/a Oregon Trail Electric
Cooperative

By: Les Penning, ~~General Manager~~CEO

Dated: ~~September~~October____, 2020