

**CITY OF LA GRANDE  
ORDINANCE NUMBER 3245  
SERIES 2019**

**AN ORDINANCE OF THE CITY COUNCIL OF CITY OF LA GRANDE, UNION COUNTY, OREGON,  
ESTABLISHING A UTILITY LICENSE FOR UTILITY PROVIDERS WHICH HAVE UTILITY FACILITIES  
LOCATED WITHIN THE CITY RIGHT-OF-WAY; REQUIRING UTILITIES TO APPLY FOR AND OBTAIN  
A LICENSE FROM THE CITY; ESTABLISHING RATES FOR LICENSEES; AND DECLARING AN  
EFFECTIVE DATE.**

WHEREAS, City of La Grande ("City") has all the powers that the constitutions, statutes, and common law of the United States and Oregon expressly or impliedly grant or allow City; and

WHEREAS, City has jurisdiction and exercises regulatory management over all right-of-way within City under authority of the City of La Grande Charter and state law; and

WHEREAS, City desires to establish a utility license and certain license terms applicable to all utility providers located in City.

**NOW, THEREFORE, CITY OF LA GRANDE ORDAINS AS FOLLOWS:**

**Section 1.0 Findings.**

The above-stated findings are hereby adopted.

**Section 2.0 Title.** This Ordinance Number 3245, Series 2019 (this "Ordinance") may be referred to as the "Utility Licensing Ordinance."

**Section 3.0 Purpose; Intent.** The purposes and intent of this Ordinance include, without limitation, the following:

- 3.1 Permitting and managing reasonable access to the Right-of-Way of City for utility purposes and conserving the limited physical capacity of the Right-of-Way held in trust by City consistent with the Laws.
- 3.2 Assuring that City is fully compensated for its current and ongoing costs of granting and regulating access to and the use of the Right-of-Way.
- 3.3 Securing fair and reasonable compensation to City and its residents for permitting use of the Right-of-Way.
- 3.4 Assuring that all utility companies, persons, and other entities owning and/or operating Facilities and/or providing Utility Services within City register in accordance with this Ordinance and comply with all applicable City ordinances, rules, and regulations.
- 3.5 Assuring that City can continue to fairly and responsibly protect the public health, safety, and welfare of its citizens.
- 3.6 Encouraging the provision of advanced and competitive Utility Services on the widest possible basis to businesses and residents of City on a nondiscriminatory basis.
- 3.7 Complying with the Laws.

**Section 4.0 Jurisdiction and Management of the Public Right-of-Way.**

- 4.1 City has jurisdiction and exercises regulatory management over all Right-of-Way within City under authority of the City Charter, City's Municipal Code, and state law. City has jurisdiction

and exercises regulatory management over each Right-of-Way notwithstanding (a) whether City has a fee, easement, or other legal interest in the Right-of-Way, and (b) whether the legal interest in the Right-of-Way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure, and/or other means. The exercise of jurisdiction and regulatory management of a Right-of-Way by City does not obligate City to maintain and/or repair any part of the Right-of-Way.

- 4.2 The provisions of this Ordinance are subject to and will be applied consistent with the Laws and, to the extent possible, will be interpreted to be consistent with such Laws.

**Section 5.0 Regulatory Fees and Compensation Not a Tax.**

- 5.1 The fees, costs, and any compensation charged and paid for use of the Right-Way provided for in this Ordinance, are separate from, and in addition to, all federal, state, local, and City charges as may be levied, imposed, or due from a Utility, its customers or subscribers, or on account of the lease, sale, delivery, or transmission of Utility Services. Subject to the provisions contained in this Ordinance, Council may set such fees as are necessary to implement the provisions of this Ordinance in order to compensate City for the use of the Right-of-Way.
- 5.2 Notwithstanding anything contained in this Ordinance to the contrary, the fees provided in this Ordinance are (a) not a charge against property, (b) premised on the direct and indirect benefit derived from use of the Right-of-Way, and (c) not a property tax or subject to the property tax limitations of Article XI, Sections 11 and 11b of the Oregon Constitution.

**Section 6.0 Definitions.**

Unless defined elsewhere in this Ordinance, capitalized terms contained in this Ordinance have the meanings assigned to them below. When not inconsistent with the context, words used in the present tense include the future.

**"Aboveground Facilities"** means utility poles and/or other Facilities above the surface of the ground, including, without limitation, the underground supports and foundations for such Facilities.

**"Accounting Statement"** has the meaning assigned to such term under Section 23.4.

**"ADA"** means the Americans with Disabilities Act of 1990, as amended.

**"Cable Service"** means the one-way transmission to subscribers of video programming, or other programming service, and subscriber interaction if any, which is required for the selection or use of such video programming or other programming service.

**"City"** means the City of La Grande, an Oregon municipal corporation, whose address is 1000 Adams Avenue, La Grande, Oregon 97850.

**"City Property"** means all real property owned or controlled by City, other than Right-of-Way, and all property held in a proprietary capacity by City, including, without limitation, City parks, open spaces, trails, paths, access ways, parking lots, and public buildings and access easements, driveways, and/or access ways located upon such property. For purposes of this Ordinance, "City Property" includes City-owned street lights and street light poles.

**"Construction Work"** means any construction activity in, on, over, and/or under any Right-of-Way, including, without limitation, any excavation, maintenance, improvement, repair, extension, and/or relocation work.

**"Council"** means City's then appointed city council.

**"Duct(s)"** means a single enclosed raceway for conductors or cable.

**"Emergency"** means a human created or natural event or circumstance that causes or threatens loss of life, injury to person or property, human suffering, or significant financial loss.

**"Existing Franchise Agreement(s)"** means a Franchise between City and a Utility entered into and in effect prior to the effective date of this Ordinance (including any renewal term or extension term provided in such Franchise notwithstanding the effective date of the renewal term or extension term). For purposes of this Ordinance, the Franchise between City and Oregon Trail Electric Consumers Cooperative, Inc. granted under City Ordinance Number ~~3246~~ Series 2019, adopted April 3, 2019 is an "Existing Franchise Agreement."

**"Facility(ies)"** means the plant, equipment, facilities, and/or property, located under, on, and/or above the surface of the ground within the Right-of-Way of City and used or to be used for the purpose of providing Utility Services in or through City, including, without limitation, any pole, pipe, pipeline, plant, main, lateral, apparatus, conductor, amplifier, appliance, conduit, Duct, guys, anchor, cable, wire, wireless communication device, Gas Facility, manhole, handhole, bolt, anchor, vault, pedestal, support, fixture, and/or other plant and related equipment.

**"Franchise(s)"** means an ordinance or agreement between City and a franchisee which grants a privilege to use Right-of-Way within City for a dedicated purpose and for specific compensation.

**"Gas Facility(ies)"** means, collectively, all gas transmission, and distribution systems and appurtenances, including, without limitation, gas plants, gas pipes, pipelines, mains, laterals, conduits, regulators, valves, meters, meter-reading devices, communication and control systems and other equipment, appliances, fixtures, attachments, appurtenances, and other items necessary, convenient, and/or in any way appertaining to any of the foregoing for the purposes of transmission, distribution, storage, and/or sale of gas (including natural, manufactured, renewable, and/or mixed gases).

**"General Communications"** means any communications services, including, without limitation, Telecommunications Services, wireless communication services, and/or Internet Access Service; provided, however, "General Communications" does not include Cable Service.

**"Gross Revenue(s)"** means all revenues a Utility receives directly or indirectly from the Utility's operations within City, less net uncollectibles and revenues paid directly by the United States of America, including, without limitation, revenues from the use, rental, and/or lease of any Facilities; provided, however, "Gross Revenue(s)" does not include revenues received directly by a Utility for the Utility's provision of Internet Access Services when prohibited under applicable law. For purposes of this Ordinance, revenue from joint pole use includes any revenue collected by a Utility from other Utilities, franchises, permittees, and/or licensees of the Utility for the right to attach wires, cables, and/or other

Facilities or equipment to the utility's poles or place them in, on, and/or attached to the Utility's Facilities.

**"Internet Access Service(s)"** means a service that enables users to access content, information, electronic mail, and/or other services offered over the internet and may include, without limitation, access to proprietary content, information, and/or other services as part of a package of services offered to consumers.

**"Law(s)"** means all applicable federal, state, county, and/or local laws, rules, regulations, codes, and ordinances, including, without limitation, the ADA, and all regulations of any administrative agency thereof, all as heretofore or hereafter adopted, promulgated, and/or established from time to time.

**"License"** means the permission granted, on a non-exclusive basis, by City under this Ordinance to a Licensee to use Right-of-Way within City for a specified and dedicated purpose.

**"Licensee"** means any person that operates a Utility and locates any Facilities in the Right-of-Way pursuant to a License issued by City in accordance with this Ordinance.

**"License Fee(s)"** means the license fees payable by a Licensee as described under Section 23 of this Ordinance.

**"Manager"** means City's then appointed city manager (or his or her designee).

**"New Franchise Agreement(s)"** means a Franchise between City and a Utility entered into after the effective date of this Ordinance.

**"Private Telecommunications Network"** means a system, including the construction, maintenance, and/or operation of the system, for the provision of a service or any portion of a service, by a person for the exclusive use of that person and not for resale, directly or indirectly. For purposes of this Ordinance, **"Private Telecommunications Network"** includes services provided by the State of Oregon pursuant to ORS 190.240 and ORS 283.140.

**"Public Beautification"** means an event, circumstance, and/or situation the occurrence of which City determines does not require the removal, relocation, change, and/or alteration of the position and/or location of Facilities located within the Right-of-Way (i.e., the removal, relocation, change, and/or alteration is not required due to Public Necessity or Public Convenience) but such removal, relocation, change, and/or alteration will enhance the aesthetic quality or characteristics of the subject Right-of-Way. Without otherwise limiting the generality of the immediately preceding sentence, Public Beautification based removals, relocations, changes, and/or alterations include, without limitation, relocations to accommodate right-of-way or parkway landscaping, decorative lighting structures, planter box installations, and/or decorative transformer enclosures substantially for aesthetic purposes.

**"Public Convenience"** means an event, circumstance, and/or situation the occurrence of which City determines requires the removal, relocation, change, and/or alteration of the position and/or location of Facilities located within the Right-of-Way to improve the Right-of-Way for the substantial benefit of the general public (and is not for the substantial or primary benefit of a private project or entity). Without otherwise limiting the generality of the immediately preceding sentence, Public Convenience removals, relocations, changes, and/or alterations include events, circumstances, and/or situations that are not for Public

Beautification or Public Necessity purposes and include, without limitation, road improvement projects (e.g., road widening or re-routing) that are not a Public Necessity, establishing and maintaining municipal parks, parking spaces, parkways, and/or pedestrian malls, and any other exercise of City's governmental functions involving a general public benefit.

*"Public Necessity"* means an event, circumstance, and/or situation the occurrence of which City determines requires the removal, relocation, change, and/or alteration of the position and/or location of Facilities located within the Right-of-Way. Without otherwise limiting the generality of the immediately preceding sentence, Public Necessity removals, relocations, changes, and/or alterations include events, circumstances, and/or situations that are not for Public Convenience or Public Beautification purposes and include, without limitation, road improvement projects (e.g., road widening or re-routing), establishing, operating, and/or maintaining lighting systems, water systems, sanitary sewers, storm drains, and all related facilities and equipment, and/or providing fire protection, police protection, and all other public safety functions.

*"Public Utility Easement(s)"* means an easement conveyed, granted, or dedicated to City or the public and acquired, established, dedicated, and/or devoted to utility purposes, whether designated as a public easement, utility easement, general utility easement, public utility easement, or similar term; provided, however, easements acquired for use by City's public stormwater, wastewater, or water systems will not be considered Public Utility Easements or Right-of-Way. This definition applies only to the extent of City's right, title, interest, and authority to grant a License to occupy and use such areas for Facilities.

*"Right-of-Way(s)"* means the public right-of-way in City, including, without limitation, Public Utility Easements, the public streets, alleys, avenues, thoroughfares, and highways located within City, which are owned and/or controlled by City; provided, however, *"Right-of-Way(s)"* does not include City Property.

*"Right-of-Way Ordinance"* means City Ordinance Number 3217, Series 2014, as amended.

*"Telecommunications"* means the transmission between and among points specified by the user, of information of the user's choosing, without change in the content of the information as sent and received.

*"Telecommunications Carrier(s)"* means any provider of Telecommunications Services, including, without limitation, every person that directly or indirectly owns, controls, operates, uses, and/or manages Telecommunications Facilities within City including a Telecommunications Utility.

*"Telecommunications Facility(ies)"* means the plant and equipment, other than customer premises equipment, used by a Telecommunications Carrier to provide Telecommunications Services, including, without limitation, conduits, Ducts, Aboveground Facilities, Underground Facilities, and other Facilities to the extent such items are used for providing Telecommunication Service.

*"Telecommunications Service(s)"* means two-way switched access and transport of voice, video, and/or data communications, including, without limitation, local exchange service, long distance telephone service, and Internet Access Services. For purposes of this Ordinance, *"Telecommunications Service"* does not include the following: (a) services provided by radio common carrier; (b) one-way transmission of television signals; (c)

surveying; (d) Private Telecommunications Networks; and/or (e) communications of the customer which take place on the customer side of on-premises equipment.

*"Telecommunications Utility(ies)"* has the meaning assigned to such term under ORS 759.005(9)(a).

*"Temporary Adjustment"* means a temporary rearrangement, removal, lowering, and/or raising of any Utility's aerial cables, wires, and/or other apparatus to permit the passage of any building, machinery, and/or other object moved over any Right-of-Way.

*"Underground Facilities"* means Facilities located under the surface of the ground, excluding the underground foundations or supports for Aboveground Facilities.

*"Utility(ies)"* means any person, or its lessees or trustees of record, that owns, operates, manages, and/or controls any part of any Facility in City for the production, transmission, delivery, conveyance, and/or function of gas (including natural, manufactured, renewable, and/or mixed gases), heat, steam, light, wastewater, stormwater, water, power, electricity, Cable Service, communication, data transmission, and/or Telecommunication Service or network.

*"Utility Service"* means the provision, by means of Facilities permanently located within, under, and/or above the Right-of-Way, whether or not such facilities are owned by the service provider, of electricity, gas (including natural, manufactured, renewable, and/or mixed gases), telecommunications services, Cable Service, water, sewer, and/or transportation utility to or from customers within the corporate boundaries of City, and/or the transmission of any of these services through City whether or not customers within City are served by those transmissions.

#### Section 7.0 Utility License Required.

- 7.1 No person operating a Utility within City may construct, place, erect, lay, maintain, and/or operate any Facility in, on, under, and/or over the Right-of-Way without first applying for and obtaining a License and paying the prescribed fee in accordance with this Ordinance. Operating a Utility includes, without limitation, the following: (a) placing Facilities in the Right-of-Way; (b) using Facilities owned or operated by other utilities; and/or (c) attaching and/or locating Facilities on, upon, and/or within the Facilities of another Utility. Without otherwise limiting the generality of the preceding, no person may operate a Private Telecommunications Network, or any portion thereof, in the Right-of-Way without first applying for and obtaining a License and paying the prescribed fee.
- 7.2 No person with actual, present supervisory control of any Utility for which a License is required under this Ordinance may permit, direct, and/or allow the operation or continuation of such Utility in the Right-of-Way at any time when there is not then in full force and effect a License issued pursuant to and in accordance with the provisions of this Ordinance.

#### Section 8.0 Application Requirements.

Any person desiring to operate a Utility in the Right-of-Way in City must apply for a License on such forms and in such manner as the Manager may prescribe. The application must be accompanied by the then applicable application fee as prescribed by Council resolution from time to time. The application must be filed with the Manager and, in addition to any other information reasonably requested by the Manager, must contain the following information:

- 8.1 The name(s) and address(es) of the applicant, the address(es) where the applicant will have its office(s) within City, and the address of the principal office of the applicant. An applicant may request that City exempt the applicant from the requirement to maintain an office in City.
- 8.2 A general description of the Utility and the type(s) of Facilities that the applicant desires locate in the Right-of-Way.
- 8.3 The area(s) of City the applicant desires to place Facilities in the Right-of-Way which may include the entire City. If the applicant has not previously served City, the application will contain a preliminary construction schedule for build-out of the Facilities it desires to locate in the Right-of-Way.
- 8.4 Information and/or documentation to establish that the applicant has obtained all governmental approvals, authorizations, and/or permits required to operate in City (and identification of such approvals, authorizations, and/or permits). A sworn statement certifying that the applicant has obtained all other required governmental approvals, authorizations, and/or permits to operate in City (and the identification of such approvals, authorizations, and/or permits) may be deemed sufficient information for the purposes of this Section 8.4.
- 8.5 Whether any local, state, and/or federal licenses, certificates, registrations, and/or permits are required for the Utility (and identification of such licenses, certificates, registrations, and/or permits).
- 8.6 If the applicant is a foreign person or a non-resident of the State of Oregon and no permanent office location is proposed to be created in City, the applicant must appoint a local person, acceptable to the Manager, as an agent for accepting service of process, notice, and/or demand. The applicant must submit with the application the agent's consent to acceptance of service of process, notice, and/or demand.
- 8.7 The date of the application and the amount of money tendered with the application.
- 8.8 Any other information that the Manager deems necessary or appropriate to enable City to review the application and determine whether the applicant qualifies for the issuance of a License.

**Section 9.0 Application Review, City Determination.**

- 9.1 An application for a License will be reviewed by the Manager. The Manager may conduct whatever investigation the Manager deems necessary or appropriate to determine whether the application is complete, the statements made therein are true and accurate, and the Utility complies with this Ordinance.
- 9.2 After completion of the Manager's review of the application (and the Manager's receipt of reports from all persons and/or departments designated by the Manager to review the application), the Manager will determine whether the applicant qualifies for the issuance of a License. If the applicant qualifies for a License, the Manager will issue the License to the applicant.
- 9.3 If the Manager determines that the applicant does not qualify for a License, the Manager will notify the applicant in writing that the application has been denied and identify any

deficiencies in the application. The Manager may deny a License for any of the following nonexclusive reasons:

- A. The Utility does not or will not comply with the Laws;
  - B. The Utility and/or Facility(ies) endangers and/or damages (or will endanger and/or damage) the health, safety, and/or general welfare of persons or property;
  - C. The applicant failed to supply any required information and/or submitted misleading and/or false information;
  - D. The insufficient capacity of the Right-of-Way to accommodate the applicant's proposed Facilities; and/or
  - E. Prior to making the application, the Utility operated within City without a valid License while this Ordinance was in effect.
- 9.4 In lieu of denying a License, the Manager may refer the application to the Council for review by filing the application with the city recorder together with a statement of the findings of any investigation authorized or required by the provisions of this Ordinance. The Council will hold a duly noticed public hearing to determine whether to approve or deny the License.
- 9.5 The Manager may, in the Manager's sole discretion, develop and implement administrative rules, regulations, and/or procedures necessary to implement the provisions of this Ordinance and/or City's Right-of-Way Ordinance; provided, however, the administrative rules, regulations, and/or procedures may not conflict with the terms of this Ordinance.

#### Section 10.0 Franchise Agreements.

- 10.1 Existing Franchise Agreements. If a conflict between the provisions of this Ordinance and an Existing Franchise Agreement occurs, the provisions of the Existing Franchise Agreement will control and supersede the conflicting Ordinance provision(s); provided, however, (a) the conflicting Ordinance and Existing Franchise Agreement provisions will be construed and interpreted in a manner which gives effect to each conflicting provision to the fullest extent possible and which avoids or minimizes the conflict between the conflicting provisions, and (b) all remaining Ordinance provisions will remain valid and enforceable to the fullest extent permitted by law. For purposes of this Ordinance, the exercise of a renewal term or extension term provided in an Existing Franchise Agreement will be considered a continuation of the Existing Franchise Agreement subject to this Section 10.1.
- 10.2 New Franchise Agreements. If a conflict between the provisions of this Ordinance and a New Franchise Agreement occurs, the provisions of this Ordinance will control and supersede the conflicting New Franchise Agreement provision(s); provided, however, City and a franchisee may modify certain provisions contained in this Ordinance through express language contained in the New Franchise Agreement, which express language must specifically identify the Ordinance section(s) modified and Ordinance modifications.
- 10.3 Payment Obligation. Notwithstanding anything contained in this Ordinance to the contrary, nothing contained in this Ordinance will relieve a Utility of its payment obligations under Section 23 of this Ordinance.



Section 11.0 Rights Granted.

- 11.1 A License granted hereunder will be deemed permission to occupy the Right-of-Way for the limited purposes, terms, and conditions contained in the License, subject to the provisions of this Ordinance, and the Laws. A License may authorize a Licensee to place one or more types of Facilities on, over, and/or under the Right-of-Way.
- 11.2 Nothing contained in a License (and/or the issuance of a License) will be deemed to grant, convey, create, and/or vest in Licensee a real property interest in land, including any fee interest, leasehold interest, and/or easement. Without otherwise limiting the generality of the immediately preceding sentence, a License does not convey any legal or equitable right, title, and/or interest in the Right-of-Way and may not be assigned or transferred. A License is not a contract and the person granted the License will have no property interest or other right in the License except as provided by this Ordinance.
- 11.3 Neither the issuance of a License nor any provisions contained therein constitute a waiver or bar to the exercise of any governmental right or power, police power, or regulatory power of City as may exist at the time the License is issued or thereafter obtained.

Section 12.0 General License Terms.

- 12.1 Term and Location of License. Unless expressly provided otherwise in a License, (a) the term of a License will commence upon issuance and will expire on the June 30 following the tenth anniversary of issuance, and (b) a License area will be the entire City and the Right-of-Way necessary to serve the entire City.
- 12.2 License Non-Exclusive. No License granted pursuant to this Ordinance will confer any exclusive right, privilege, license, permission, or franchise to occupy or use the Right-of-Way for delivery of Utility Services or any other purpose. City expressly reserves (a) the right to grant licenses, Franchises, and/or other rights to other persons, and (b) City's right to use the Right-of-Way for similar or different purposes. Any License granted under this Ordinance is subject to all recorded deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record that may affect the Right-of-Way.
- 12.3 Reservation of City Rights. Nothing contained in this Ordinance and/or a License will be construed to prevent City from (a) sewerage, grading, planking, rocking, paving, repairing, altering, and/or improving any Right-of-Way in and/or upon which Facilities are or will be placed, (b) constructing, laying down, repairing, relocating, and/or removing City water, transportation, and/or sewer facilities, or (c) establishing any other public work, utility, or improvement of any kind, including, without limitation, repairs, replacement, and/or removal of any City Facilities.
- 12.4 Multiple Services; Other Utilities. A Licensee that provides more than one type of Utility Service will pay a License Fee on each type of Utility Service as provided in this Ordinance. Issuance of a License to occupy any Right-of-Way for the new type of Utility Service will be subject to the provisions of this Ordinance. If a Utility is not specifically listed herein, the Manager will designate the most appropriate category of Utility Service and the Utility will pay applicable fee under Section 23.
- 12.5 Transfer; Assignment. A No transfer or assignment of any License issued under this Ordinance is permitted and any attempted transfer or assignment will render the License null and void. Upon the sale or other transfer of a Licensee, the new owner(s) must apply for and obtain a new License and pay the prescribed License Fee.

12.6 Amendment, Renewal. Subject to the provisions of this Ordinance, an application will be required of any Licensee that desires to amend and/or renew its existing License. At least ninety (90) days but no more than one-hundred eighty (180) days prior to the expiration of a License, a Licensee that desires to renew its License must submit an application to City containing all information required in Section 8.0 and the renewal and/or amended application fee prescribed by Council resolution. City will review an amended and/or renewal application in accordance with Section 9.0 and grant or deny the License, in whole or in part, within ninety (90) days of submission of the completed application. If City determines that the Licensee is in violation of the terms of this Ordinance at the time it submits its application, City may require that the Licensee cure the violation or submit a detailed plan to cure the violation within a reasonable period of time, as determined by City, before City considers the application and/or grants the License. If City requires the Licensee to cure or submit a plan to cure a violation, City will grant or deny the License application within ninety (90) days after the earlier of (a) confirming that the violation has been cured, or (b) approving the Licensee's plan to cure the violation.

12.7 License Revocation or Suspension.

A. Grounds for Revocation. Council may revoke a License for any of the following reasons:

1. Violation of any of the provisions of this Ordinance, including, without limitation, construction and/or operation at an unauthorized location in City;
2. Violation of any provision of a License;
3. Misrepresentation by or on behalf of a Licensee in any application to City;
4. Abandoned Facilities and/or placement of unauthorized Facilities in the Right-of-Way, except as approved subject to and in accordance with Section 18.4(B);
5. Failure to pay taxes, compensation, fees, and/or costs due to City;
6. Failure to restore the Right-of-Way in accordance with this Ordinance and/or the Laws after performing any Construction Work;
7. Failure to comply with technical, safety, and/or engineering standards related to Construction Work in the Right-of-Way;
8. Failure to obtain or maintain all licenses, permits, certifications, and/or other authorizations required by the Laws for the placement, maintenance, and/or operation of Facilities; and/or
9. Violation of any Law, including, without limitation, any City ordinance.

B. Notice and Cure. If the Manager believes that grounds exist for suspension and/or revocation of a License, the Manager will deliver written notice to the Licensee identifying the apparent violations. The notice will contain: (1) a short and concise statement of the nature and general facts of the violation or noncompliance; and (2) unless the Manager determines that circumstances warrant a shorter time period, a reasonable time (no less than twenty (20) and no more than forty (40) days) for the Licensee to demonstrate that (a) the Licensee has remained in compliance with this Ordinance, (b) the Licensee has cured or is in the process of curing any violation or

noncompliance, or (c) it would be in the public interest to impose a penalty or sanction less than revocation or suspension. If the Licensee is in the process of curing a violation or noncompliance, the Licensee must demonstrate that it acted promptly and continues to diligently pursue compliance. If the Licensee fails to respond to the notice, fails to cure the violation or noncompliance as required by the notice, and/or if the Manager determines that the Licensee's response is inadequate, the Manager will refer the matter to Council, which will provide a duly noticed public hearing to determine whether to suspend or revoke the License.

C. Standards for Revocation or Suspension. In determining whether suspension, revocation, and/or some other sanction is appropriate, Council will consider factors, including, without limitation, the following:

1. The egregiousness of the misconduct;
2. The harm that resulted;
3. Whether the violation was intentional;
4. The Licensee's history of compliance with this Ordinance; and/or
5. The Licensee's cooperation in discovering, admitting, and/or curing the violation.

12.8 Permits; Right-Of-Way Ordinance. No person will perform any Construction Work within the Right-of-Way without first obtaining all applicable permits, authorizations, and/or approvals, including, without limitation, a permit required by the Right-of-Way Ordinance. Construction Work will be performed according to the terms and conditions of any applicable permit and all City codes, ordinances, rules, and regulations applicable to City streets and/or construction, operation, and/or maintenance of Facilities in City. The permit fees required by the Right-of-Way Ordinance may be waived for a Licensee that pays a License Fee as required under this Ordinance; provided, however, City reserves the right to collect the actual costs of review and inspection required on complex construction projects. To the extent that this Ordinance is not in conflict with and can be implemented consistent with the Right-of-Way Ordinance, the provisions of this Ordinance will apply to all Construction Work by Licensees in City. As applied to Licensees, to the extent that provisions of this Ordinance conflict with provisions contained in the Right-of-Way Ordinance, the provisions of this Ordinance govern.

#### Section 13.0 Construction; Restoration; Maintenance.

13.1 Construction. Facilities will be constructed, installed, operated, and maintained in accordance with (a) the Laws, including, without limitation, the National Electrical Code and the National Electrical Safety Code, (b) Section 12.8 of this Ordinance, and (c) the encroachment provisions set forth in the Right-of-Way Ordinance. Without otherwise limiting the generality of the foregoing, all Facilities will be constructed, installed, operated, and maintained in a manner that prevents injury to the Right-of-Way, Public Utility Easements, City Property, and/or property belonging to another person. Each Utility will, at its own cost and expense, repair and maintain Facilities from time to time as may be necessary to accomplish this purpose.

13.2 Emergency Repairs. Each Licensee will immediately notify City if the Licensee obtains knowledge that any Facility repairs are necessary as a result of (a) an Emergency that

impacts public health, safety, or welfare, or (b) an unplanned interruption in the Licensee's Utility Service. If the repairs are necessary as a result of an Emergency and/or an unplanned interruption in the Licensee's Utility Service, the Licensee will not delay completion of the necessary repairs pending notice to or permission from City when responding to such Emergency and/or interruption but will notify City as soon as practicable of the repairs (provided, however, the Licensee will remain obligated to timely comply with all other obligations under this Ordinance and/or applicable Laws).

**13.3 Bond Requirement.** Except as expressly provided otherwise in a Franchise and/or as set forth in Section 13.3(C), each Licensee will provide City a performance bond or other form of surety acceptable to City equal to at least one hundred percent (100%) of the estimated cost of Construction Work within the Right-of-Way prior to the commencement of any Construction Work.

A. The performance bond or other form of surety acceptable to City will remain in force until sixty (60) days after substantial completion of the Construction Work, as determined by City in writing, including restoration of Right-of-Way and other property affected by the Construction Work. In the event City determines that measures are required to repair the Right-of-Way as a result of Construction Work performed by a contractor on behalf of a Licensee, the Licensee will take necessary corrective measures on behalf of the contractor and satisfactory to City, within sixty (60) days following notice from City. Notwithstanding the immediately preceding sentence, in situations where corrective measures are necessary to protect public health or safety, corrective measures will be performed in accordance with Section 13.2.

B. The performance bond or other form of surety acceptable to City will guarantee, to City's satisfaction, the following:

1. Timely completion of the Construction Work;
2. That the Construction Work is performed in compliance with applicable plans, permits, technical codes and standards;
3. Proper location of the Facilities as specified by City;
4. Restoration of the Right-of-Way and other property affected by the Construction Work in accordance with this Ordinance; and
5. Timely payment and satisfaction of all claims, demands or liens for labor, material, or services provided in connection with the Construction Work.

C. Upon written request by a Licensee, the Manager may, in the Manager's sole discretion, waive the bonding requirement for Construction Work performed in the Right-of-Way by (a) Utilities regulated by the Oregon Public Utility Commission, or (b) contractors on such Licensee's behalf and under the Licensee's control, when, in the Manager's opinion, the Licensee has adequately performed its obligations under prior Franchise(s) and/or License(s) with City during the immediately preceding three (3) years prior to the request.

D. Any waiver granted under Section 13.3(C) will be effective until the earlier of (a) the expiration or termination of the License or (b) until such time as the Licensee (and/or its contractors) ceases to adequately perform the Licensee's obligations under its License, as determined by City. In the event of inadequate performance, City will notify the

Licensee in writing describing the inadequate performance and specifying a date not less than thirty (30) days from the date of the notice by which (x) the inadequate performance must be remedied to City's satisfaction, and/or (z) a bond or other form of surety described in Section 13.3 must be provided to City.

**13.4 Maintenance; Restoration.**

- A. A Licensee will preserve and protect from injury other Facilities in the Right-of-Way, the public using the Right-of-Way, and any adjoining property. Subject to the provisions of this Ordinance and any consent, permit, and/or authorization required by City, each Licensee will take such measures necessary to protect life and property, including, without limitation, buildings, walls, fences, trees, or Facilities that may be subject to damage from any permitted Construction Work. A Licensee will be responsible for all damage to public or private property resulting from its failure to properly protect people and/or property and/or carry out the Construction Work.
- B. City will deliver a written notice to a Licensee responsible for any Facility that requires maintenance and/or repair. Except in the case of an Emergency or otherwise approved by City, the maintenance and repair must be completed within sixty (60) days following City's notice. If the Licensee fails to provide necessary maintenance or repair as requested by City and by the date set by City, City may perform such maintenance or repair at the Licensee's sole expense. The Licensee will reimburse City within thirty (30) days after City delivers an invoice of all costs incurred by City to perform such maintenance work.
- C. When any Construction Work (including underground excavation and/or installation of Facilities) has been completed by a Licensee (or its agents or contractors), the Licensee will remove all debris from the project site and restore the portion of the Right-of-Way, property, or place to the same condition (or as near as practicable) to which the Right-of-Way, property, or place existed prior to the Construction Work as soon as practicable and in accordance with restoration standards established by City's public works director. If the Licensee fails to do so within a reasonable time, City may restore the site and the Licensee will reimburse City within thirty (30) days after City delivers an invoice for City's cost and expenses incurred to perform such restoration work.

**Section 14.0 Inspection.**

City reserves the right to periodically inspect and test any Facilities to determine compliance with the provisions of this Ordinance and the Laws, including any City codes, ordinances, rules, and regulations. Upon request by City, a Licensee will cooperate with City in conducting any inspection of Facilities.

**Section 15.0 Coordination of Construction Activities.**

- 15.1 City and each Licensee will make a good faith effort to cooperate and coordinate construction schedules with each other and/or other users of the Right-of-Way.
- 15.2 Prior to January 1 of each year, each Licensee will provide City with a schedule of proposed large capital construction projects and/or facility maintenance that may affect the Right-of-Way to be performed during the upcoming year.
- 15.3 Each Licensee will meet with City annually, or as determined by City, to schedule and coordinate Construction Work in the Right-of-Way to minimize public inconvenience and/or disruption. All construction locations, activities, and schedules within the Right-of-Way will

be subject to the provisions of this Ordinance and as ordered by the Manager to minimize public inconvenience, disruption, and/or damages.

**Section 16.0 Location of Facilities.**

For any new construction and/or installation of Facilities where existing Facilities are located underground within the particular Right-of-Way, a Licensee with permission from City to occupy such Right-of-Way will locate its Facilities underground at the Licensee's cost and expense. A Licensee will, at no cost to City, relocate its aerial Facilities underground when requested to do so in writing by City, consistent with the Laws and any applicable Franchise. Whenever Facilities are located or relocated underground within a particular Right-of-Way, each Licensee will relocate its Facilities underground concurrently with the other affected Licensees to minimize disruption of the Right-of-Way. If a Licensee fails to remove, relocate, alter, and/or underground any Facility as requested by City and by the date established by City, City may cause such Facility to be removed, relocated, altered, and/or undergrounded at the Licensee's sole expense. The Licensee will reimburse City within thirty (30) days after City delivers an invoice of all costs incurred by City to perform such work.

**Section 17.0 Interference with the Right-of-Way.**

No person will locate and/or maintain Facilities so as to unreasonably interfere with the use of the Right-of-Way by (a) City, (b) the general public, and/or (c) other persons authorized to use or be present in or upon the Right-of-Way. All Right-of-Way use will be consistent with the Laws, including, without limitation, this Ordinance, and all City codes, ordinances, public works standards and/or regulations. In the event that a Licensee's Facilities interfere with the construction, repair, replacement, alteration, and/or removal of any Right-of-Way, public work, City improvement, City Facility, and/or City Utility (except those providing Utility Services in competition with a Licensee), the Licensee's Facilities will be removed and/or relocated as provided in Section 18.0 of this Ordinance and subject to industry standard engineering and safety codes.

**Section 18.0 Removal; Relocation.**

**18.1 Utility Removal.** Except in the case of an Emergency under Section 18.2, subject to the terms and conditions contained in this Ordinance, within sixty (60) days after City's request (unless a different period of time is warranted due to the particular facts and circumstances and with prior written approval from the Manager), a Licensee will, at the Licensee's cost and expense, remove, relocate, change, and/or alter the position or location of any Facilities within the Right-of-Way whenever City determines, in City's sole discretion, 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 or upon the Right-of-Way requires the removal, relocation, change, and/or alteration of the Facilities;
- D. Compliance or conformance with applicable Laws and/or pursuant to a Public Beautification, streetscape, and/or other City improvement project; and/or
- E. Public Convenience and/or Public Necessity.

Notwithstanding anything contained in this Section 18.1 to the contrary, if any Facility removal, relocation, change, and/or alteration work is done for or at the request of a private individual, entity, developer, and/or development, the cost and expense of the removal, relocation, change, and/or alteration work will be borne by the requesting private individual, entity, developer, and/or development, as the case may be.

- 18.2 Emergency. Notwithstanding the Emergency provisions contained in Section 13.2, if an Emergency occurs, each Utility will, at the Utility's cost and expense, remove, relocate, change, and/or alter the position or location of any facilities within the Right-of-Way within seventy-two (72) hours after notice from City.
- 18.3 Temporary Adjustment. Notwithstanding anything contained in this Ordinance to the contrary, whenever it becomes necessary to perform a Temporary Adjustment, a Licensee will perform such Temporary Adjustment within seven days after the Licensee's receipt of written notice from the owner or contractor-mover desiring to move such building, machinery, and/or other object. Such move notice will:
- A. Bear the approval of City;
  - B. Detail the route of movement of the building, machinery, and/or object, including a description and depiction of the route;
  - C. Provide that the costs incurred by the Licensee in making the Temporary Adjustment will be borne by the contractor-mover;
  - D. Provide that the contractor-mover will indemnify and hold the Utility harmless for, from, and against all damages, claims, or causes of action whatsoever caused directly or indirectly from the Temporary Adjustment; and
  - E. If required by the Licensee, will be accompanied by cash deposit or a good and sufficient bond to pay all such costs as estimated by the Licensee.
- 18.4 Removal of Unauthorized Facilities. A Licensee will not place on, over, and/or under the Right-of-Way any type of Facilities not authorized by the License. Except in the case of an Emergency, or as otherwise agreed to by City in writing, within thirty (30) days following written notice from City, any person that owns, controls, and/or maintains any unauthorized Facility, system, and/or related appurtenances within the Right-of-Way will remove such Facilities and/or appurtenances from the Right-of-Way. A Utility or person may request that City permit such Facilities to be abandoned in place subject to such terms and conditions City may prescribe. A Facility, service, and/or appurtenance is unauthorized and subject to removal under the following circumstances:
- A. Upon the one-year anniversary after the expiration or termination of a License, Franchise, permit, or other City authorization to occupy the Right-of-Way. The one-year period may be stayed if an application for an initial or renewal License has been submitted to City.
  - B. Upon abandonment of a Facility within the Right-of-Way. A Facility will be considered abandoned when it is deactivated, out of service, and/or not used for its intended and/or authorized purpose for a period of ninety (90) days or longer, unless a longer period is approved by City in writing. A Facility will not be considered abandoned if it is temporarily out of service during repairs or if the

Facility is being replaced. Excess capacity intended for future use will not be considered evidence of abandonment.

- C. If the Facility was constructed and/or installed without the appropriate prior authority at the time of installation and such authority has not subsequently been granted.
- D. If the Facility was constructed and/or installed at a location not permitted by License, Franchise, or other legally sufficient permit and has not subsequently been authorized.
- E. If the Facility is not removed and/or relocated as required under Section 18.1.

18.5 Failure to Remove or Relocate. If Facilities are not removed and/or relocated pursuant to Section 18.1, 18.2, and/or 18.4, the Manager may declare the Facility a nuisance. In addition to any other remedies provided herein, violation of any section of this Ordinance may be enforced in any manner authorized by law.

Section 19.0 As Built Drawings. Each Utility will provide City with two updated complete sets of as built plans annually or as requested by City.

Section 20.0 Leased Capacity. Subject to the provisions of this Ordinance, a Licensee may lease capacity on or in its systems, provided the Licensee provides City with the name and business address of any lessee. Any lessee will conduct its operations subject to and in accordance with the provisions of this Ordinance.

Section 21.0 City's Use of Facilities.

- 21.1 City will have the right, at City's sole expense and with prior written approval of a Licensee, to suspend and maintain alarms, wires, control boxes, and such other equipment as City may require for fire, police, emergency, municipal utility, and/or other municipal purposes (on poles placed by the Utility within the Right-of-Way). All City-installed overhead and/or underground equipment will be installed by qualified personnel and in compliance with Oregon State Electrical Codes and the National Electric Safety Code.
- 21.2 City will use commercially reasonable efforts to install such equipment so as not to interfere with the electric power and light service of a Licensee or pose a danger to the Licensee's Facilities, employees, customers, and/or customers' property. City will not sell or lease space on a Licensee's poles, conduits, or other equipment, to other entities, without the prior written consent of the Licensee.

Section 22.0 Vacation. If City vacates any Right-of-Way, or portion thereof, that a Licensee occupies, the Licensee will, at its own cost and expense, remove its Facilities from the Right-of-Way unless, (a) City reserves a Public Utility Easement, which City will make a reasonable effort to do provided there is no cost or expense to City, or (b) the Licensee has or obtains an easement for its Facilities prior to the vacation. If the Licensee fails to remove its Facilities within sixty (60) days after a Right-of-Way is vacated, or as otherwise directed or agreed to in writing by City, City may remove the Facilities at the Licensee's sole expense. The Licensee will reimburse City within thirty (30) days after City delivers an invoice of all costs incurred by City to perform such work.

Section 23.0 License Fee; Privilege Tax.

- 23.1 License Fee; Transmission Line Fee. In consideration of the rights, privileges, and License granted by City under this Ordinance, each Licensee will pay a License Fee in accordance



with this Ordinance; provided, however, the License Fee may not exceed seven percent (7%) of Gross Revenues. Notwithstanding anything contained in this Ordinance to the contrary, City may modify the License Fee subject to the Laws. Subject to the provisions of this Ordinance, the License Fee will be effective (and each Licensee's obligation to pay the Licensee Fee will commence) on the earlier of the following: (a) the date of a Utility's next customer billing cycle immediately following May 2, 2019; or (b) June 2, 2019.

**23.2 License Fee Amount.**

- A. The License Fee for Utilities, including, without limitation, gas (including natural, manufactured, renewable, and/or mixed gases), electric, municipal, public utility district(s), special district(s), and Telecommunication Utilities and Telecommunications Carriers, will be the following percentages of the Gross Revenue collected by the Licensee concerning Utility Services within City, or such other method as determined by Council:
- Electric 7%
  - Gas 7%
  - General Communications 7%
  - Cable 5%
  - Water 7%
  - Sanitary Sewer 7%
  - Garbage 7%
  - All others 7%
- B. Unless City adopts a volumetric rate, Gross Revenues for an electric Utility will include electricity provided by the electric Utility or an electricity service provider if bills are consolidated as provided under ORS Chapter 757 related to direct access regulation. City may elect to establish a volumetric rate as provided by state law for electric distribution Utilities.
- C. Gross Revenues of a Telecommunication Carrier that provides Telecommunication Services using Facilities owned or operated by other Utilities may be reduced by the amount paid for the use of such Facilities if the Utility that owns or operates the Facilities report, in a manner acceptable to City, the amount paid for such use as Gross Revenue as required by this Section 23.
- D. Notwithstanding anything contained in Section 23.1 to the contrary, if a Licensee only owns or operates within City one or more transmission lines that use the Right-of-Way and such line or lines' primary purpose is to serve customers outside City, the Licensee will not pay a License Fee as required under this Ordinance but will instead pay a transmission line fee in an amount (and/or by method) prescribed by resolution of the Council from time to time.
- E. Notwithstanding anything contained in Section 23.1 to the contrary, a Licensee whose only Facilities in the Right-of-Way are Facilities mounted on structures within the Right-of-Way (which structures are owned by another person), and with no Facilities strung between such structures or otherwise within, under, and/or above the Right-of-Way, will pay an attachment fee in an amount set by Council resolution from time to time or as prescribed in the License granted by City. The fee may be a flat fee per structure or such other fee determined by Council, from time to time, after consideration of the Utility's use or proposed use of the Right-of-Way.

- 23.3 Privilege Tax. Any Utility that operates without a License for a period of thirty (30) days or more within City and uses the Right-of-Way in City for any purpose other than travel will pay a privilege tax, which privilege tax may not exceed seven percent (7%) of Gross Revenues. For purposes of this Section 23.3, Utility includes, without limitation, an electricity service supplier using the Facilities of an electric Utility that does not consolidate bills with the electric Utility pursuant to Section 23.2(B). To the extent that separate fees are charged in connection with the use of the Right-of-Way, including, without limitation, fees for applications, street opening, construction, inspection, and/or maintenance of fixtures or Facilities, pursuant to ORS 221.515(3), as amended, such fees will be paid by Telecommunication Utilities but may be deducted from the privilege tax. In lieu of requiring payment of such fees by Telecommunication Utilities, City may waive or establish a system of internal transfers of revenues for such fees. The privilege tax will be effective and payable commencing on May 2, 2019. A Utility subject to this Section 23.3 will pay the following percentages of Gross Revenue collected by the Utility concerning the following Utility Services within City as a privilege tax:

- Electric 7%
- Gas 7%
- General Communications 7%
- Cable 5%
- Water 7%
- Sanitary Sewer 7%
- Garbage 7%
- All others 7%

Notwithstanding anything contained in this Ordinance to the contrary, a Utility's payment of the privilege tax does not operate to waive and/or release the Utility from the obligation to perform and comply with the provisions of this Ordinance. Each Utility is subject to the provisions of this Ordinance and is obligated to perform and comply with all provisions contained in this Ordinance to the extent required of a Licensee, including, without limitation, those Licensee obligations provided under Section 25.

- 23.4 Payment of Fees; Late Payment. All fees (and taxes) payable under this Section 23 will be due and payable 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. Contemporaneously with each quarterly payment, each Utility will file with City a sworn statement describing the total Gross Revenues that the Utility received during the immediately preceding quarter (the "Accounting Statement"). City's acceptance of any payments under this Section 23.4 will not constitute a waiver by City of any violation of this Ordinance. A Utility operating without a License that commences operations during a quarter will make its first payment on or before the payment due date for the quarter immediately following the quarter during which operations commenced. If a termination of Utility operations occurs, the final payment will be made on or before the forty-fifth (45<sup>th</sup>) day following the date of such termination. If the License Fee or privilege tax is not paid to City on or before the date due, a late payment charge established by Council resolution will be due and payable from the due date to the date on which City receives payment, compounded monthly. The late payment charge will be due at the same time that the Utility makes the delinquent payment to City. Payment of fees required under this Section 23.4 will be in addition to any application fee and any other fees required under this Ordinance. If any person operates without a License and/or operates during a period of suspension after the person has exhausted all due process rights, if applicable, and/or underpays the License Fee or privilege tax by five percent (5%) or more, such person will be liable for an additional penalty, computed at two percent (2%) of the Gross Revenues received during

the applicable period, which will be paid in addition to the applicable License Fee, attachment fee, transmission line fee, and/or privilege tax, as the case may be.

- 23.5 Deductions. Subject to the provisions of this Ordinance, City will apply any amounts paid or payable by a Utility under a Franchise against the amounts paid or payable under this Ordinance, including, without limitation, any amounts paid or payable under Sections 23.2 and 23.3; provided, however, in no event will an offset result in an amount paid or payable under this Ordinance less than zero dollars (\$0.00). A Licensee may not deduct amounts paid to City for interest charges or penalties. This Section 23.5 will not relieve any Utility from paying in accordance with the provisions of a Franchise, temporary revocable permit, and/or ordinance when the amount to be paid thereunder exceeds the amount of License Fee required under this Ordinance.
- 23.6 Inspection of Books and Records. On a minimum of ten (10) days' advance written notice to a Licensee, City may review such Licensee's books, records, documentation, and/or information, including, without limitation, all maps, diagrams, plans, and other documents, maintained by the Utility that describe and/or locate Facilities within the Right-of-Way, City reasonably determines necessary or appropriate to audit an Accounting Statement and/or ascertain a Licensee's compliance with this Ordinance. Each Licensee 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 the audit; provided, however, if the audit discloses an underpayment of the License Fee, privilege tax, or other fee payable under this Ordinance of five percent (5%) or more, the Licensee will bear the cost of City's audit. If a Licensee provides any books, records, and/or information to City that the Licensee reasonably believes to be confidential or proprietary, and the Licensee clearly and specifically identifies such books, records, and/or information as confidential or proprietary upon initial submission to City, City will take reasonable steps to protect the confidentiality of such books, records, and/or information subject to City's obligations under Oregon's Public Records Law, ORS 192.311-192.431. City will not be required to incur any costs to protect any confidential or proprietary books, records, and/or information, other than City's routine internal procedures for complying with Oregon's Public Records Law.

Section 24.0 Maps. Promptly upon City's request, and in a generally recognized format acceptable to City, each Licensee will provide City with accurate map(s) indicating the location, size, and type of material of all the Licensee's Underground Facilities within the Right-of-Way (or any portion thereof). The map(s) need not include details of the nature of the facilities. The map(s) will show the horizontal and vertical location of the Facilities to the extent such information is available. A Licensee will not be required to "pot hole" or conduct "vertical locates" to satisfy a mapping request unless reasonably required for the design of a city public improvement project. Each Licensee will prepare such maps with diligence and in good faith.

Section 25.0 Insurance and Indemnification.

- 25.1 Insurance. Each Licensee, at its cost and expense, will obtain and keep in full force and effect during the term of a License, 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 the Licensee and its employees with a limit of \$1,000,000 for each person and \$3,000,000 for each accident.

Each liability insurance policy a Licensee is required to obtain and maintain under this Section 25.1 will name City and its officers, employees, agents, and representatives as additional insureds. A Licensee will not cancel, modify, and/or reduce in amount or scope the insurance coverage required to be maintained under this Ordinance without first providing City thirty (30) days' prior written notice. All insurance required to be obtained and maintained under this Section will be issued only by insurance companies licensed in Oregon (unless approved otherwise by the Manager in the Manager's sole discretion). Prior to City's issuance of a license, and at any other time thereafter within thirty (30) days after City's written request, a Licensee will provide City with certificates of insurance evidencing the Utility's compliance with this Section. Notwithstanding anything contained in this Ordinance to the contrary, City may, by resolution, increase the minimum insurance limits required under this Section from time to time as City determines necessary or appropriate. Subject to prior written approval of City, a Licensee may maintain self-insurance that meets the requirements of this Ordinance provided such self-insurance is declared to City.

- 25.2 Indemnification. Each Licensee will defend, indemnify, and hold City, and each employee, officer, agent, contractor, and representative of City, harmless for, from, and against all claims, actions, proceedings, damages, liabilities, losses, and expenses of every kind, including, without limitation, reasonable attorney fees and costs, resulting from or arising out of, whether directly or indirectly the following: (a) the acts or omissions of the Licensee and/or its affiliates, officers, directors, shareholders, members, managers, employees, agents, representatives, contractors, and/or subcontractors in the construction, operation, maintenance, repair, and/or removal of the Facilities in the Right-of-Way and/or in providing or offering services over, under, and/or through the Facilities, whether such acts or omissions are authorized, allowed, or prohibited by this Ordinance; (b) damage, injury, and/or death to person or property caused directly or indirectly by the Licensee and/or its affiliates, officers, directors, shareholders, members, managers, employees, agents, representatives, contractors, and/or subcontractors; (c) the Licensee's breach and/or failure to perform any Licensee representation, warranty, covenant, and/or obligation under this Ordinance; and/or (d) the Licensee's violation of this Ordinance. Notwithstanding the foregoing, a Licensee will not be obligated to indemnify City for claims, damages, and penalties caused directly by the gross negligence, or willful misconduct of City, and/or its officers or employees.

Section 26.0 Financial Assurance. Unless expressly provided otherwise in a Franchise, a Licensee will provide a performance bond or other financial security, in form and content acceptable to City, as security for the full and complete performance of the License and compliance with the terms of this Ordinance, including, without limitation, any costs, expenses, damages, and/or loss City pays or incurs because of any failure attributable to the Licensee to comply with the codes, ordinances, rules, regulations, and/or permits of City. This obligation is in addition to the performance surety required by Section 13.4 of this Ordinance for construction of Facilities. City may, in City's sole discretion, waive the requirements of this Section 26 for a Licensee that has adequately performed to City's satisfaction the Licensee's obligations under prior Franchises and/or licenses with City for the immediately preceding three (3) years prior to application for a License.

**Section 27.0 Compliance with Laws.** Utilities that are prohibited by any Law may not apply for a license. Each Utility must be operated in compliance with the Laws. The issuance of a License does not authorize a Utility to operate in violation of any Laws. Issuance of a License is not evidence that the applicant and/or Licensee is in compliance with, or exempt from, any applicable federal, state, and/or local laws, rules, regulations, and/or ordinances.

**Section 28.0 Enforcement; Remedies.** Any person violating any provision of this Ordinance will be subject to a civil penalty not to exceed the sum of One Thousand Dollars (\$1,000.00) for each violation. Each violation of a provision of this Ordinance, and every day that such Ordinance violation exists, will be considered a separate violation. In addition to the foregoing civil penalties, City may seek, in a court of competent jurisdiction, such other and additional relief (including all legal and equitable relief and remedies) available under applicable law as well as recovery of its costs and attorney fees. City will be entitled to collect from any person violating or otherwise failing to comply with this Ordinance City's reasonable attorney fees and other fees, costs, and expenses incurred by city to enforce this Ordinance. The remedies provided in this Section 28 are not exclusive and will not prevent City from exercising any other rights and/or remedies available under law. Compliance with this Ordinance will in no way be a substitute for or eliminate the necessity of compliance with the Laws including any relating to the public health as now in force or hereafter amended.

**Section 29.0 Miscellaneous**

- 29.1 **Severability; Preemption.** If any section, subsection, clause, phrase, term, provision, condition, covenant and/or portion of this Ordinance is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, or superseded by state or federal legislation, rules, regulations or decision, the remainder of the Ordinance will not be affected thereby but will be deemed as a separate, distinct, and independent provision, and such holding will not affect the validity of the remaining portions hereof, and each remaining section, subsection, sentence, clause, phrase, provision, condition, covenant and portion of this ordinance will be valid and enforceable to the fullest extent permitted by law. If any federal or state law or regulation preempts a provision or limits the enforceability of a provision of this Ordinance, then the provision will be read to be preempted only to the extent required by such law or regulation. If such federal or state law or regulation is subsequently repealed, rescinded, amended, or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision will thereupon return to full force and effect, and will thereafter be binding, without the requirement of further action on the part of City. No license or permit will be deemed granted under this Ordinance unless the license or permit is in writing.
- 29.2 **Governing Law; Venue.** This Ordinance and any License issued pursuant to this Ordinance is subject to all applicable Laws, including, without limitation, the ADA and any regulations of any administrative agency thereof, all as heretofore or hereafter adopted, promulgated, and/or established from time to time. Any action or proceeding arising out of or concerning this Ordinance will be litigated in courts located in Union County, Oregon. By accepting a License, each Licensee consents and submits to the jurisdiction of any local, state, or federal court located in Union County, Oregon.
- 29.3 **Person; 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, and/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 "will" and "must" are mandatory and "may" is permissive. 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. This Ordinance may be corrected by order of the Council to cure editorial and/or clerical errors.

29.4 **Effective Date.**

This Ordinance will become effective the later of thirty (30) days after its adoption by the City Council of the City of La Grande, Union County, Oregon and its approval by the Mayor, specifically, May 2, 2019.

APPROVED AND ADOPTED on this Third (3<sup>rd</sup>) day of April, 2019, by  
Seven (7) of seven (7) Councilors present and voting in the affirmative.

Stephen E. Clements  
Stephen E. Clements  
Mayor

ATTEST

Kayla M. Nichols  
Kayla M. Nichols  
City Recorder