

First Reading: February 19, 2019

Second Reading: March 5, 2019

**ORDINANCE NO. 994**

**AN ORDINANCE OF THE CITY OF BENTON CITY, WASHINGTON, GRANTING TO BENTON RURAL ELECTRIC ASSOCIATION, A CONTINUING NONEXCLUSIVE FRANCHISE FOR THE TRANSMISSION OF ELECTRICAL ENERGY AND BROADBAND SERVICE WITHIN THE CITY OF BENTON CITY, WASHINGTON; AND EXTENDING ORDINANCE NO. 578, AND RATIFYING ITS TERMS FROM THE DATE OF ITS EXPIRATION, TO THE EFFECTIVE DATE OF THIS ORDINANCE**

**WHEREAS**, the City of Benton City is authorized pursuant to RCW 35A.11.020 to regulate the use of its streets, public right-of-ways, and specifically pursuant to RCW 35A.47.040, grant, permit, and regulate nonexclusive franchises for the use of public right-of-ways; and

**WHEREAS**, Benton Rural Electric Association (hereinafter referred to as "BREA"), is a provider of electrical energy and broadband serving the citizens of the City of Benton City, Washington (hereinafter referred to as "City"), and has faithfully performed under the terms of a nonexclusive franchise granted by Ordinance No. 578: and

**WHEREAS**, such franchise having expired on March 3, 2018, however, the Parties have continued to operate under the terms and conditions of the grant of franchise; and

**WHEREAS**, the Parties wish to ratify the rights and responsibilities created under such franchise up to the effective date of a newly granted Franchise provided herein; and

**WHEREAS**, the City and the BREA have negotiated a new Franchise agreement as provided herein; and

**WHEREAS**, the City has conducted a public hearing and reviewed the application, and having determined that the Franchise's terms and conditions contained herein are in the best interest of the citizens of the City of Benton City.

NOW, THEREFORE,

**THE CITY COUNCIL OF THE CITY OF BENTON CITY, WASHINGTON, DOES ORDAIN AS FOLLOWS:**

1. **Definitions.** Where used in this Franchise Ordinance the following terms shall mean:
  - A. **"BREA"** means Benton Rural Electric Association, a Washington non-profit corporation,

and its respective successors and assigns.

- B. **"City"** means the City of Benton City, a municipal corporation of the State of Washington, and its respective successors and assigns.
- C. **"Effective Date"** means the date designated herein, after passage, approval and legal publication of this Ordinance and acceptance by BREA, upon which the rights, duties and obligations shall come into effect and the date from which the time requirement for any notice, extension and/or renewal will be measured.
- D. **"Facilities"** mean, collectively, any and all of BREA's electric transmission and distribution systems, and broadband equipment, including but not limited to, poles; wires, lines, conduits, ducts, cables, braces, guys, anchors, vaults, transformers, switches, meters, meter-reading devices, fixtures, communication systems; and any and all other equipment appliances, attachments, appurtenances and other items necessary, convenient, or in any way appertaining to any and all of the foregoing, whether the same be located over or under ground within the Franchise Area.
- E. **"Franchise"** means the grant of rights, privileges and authority embodied in this Ordinance.
- F. **"Franchise Area"** means all right-of-ways for public roads, streets, avenues, alleys, and highways of the City as now laid out, platted, dedicated, acquired or improved, and; all right-of-ways for public roads, streets, avenues, alleys, and highways that may hereafter be laid out, platted, dedicated, acquired or improved within the present limits of the City and as such limits may be hereafter extended and; all City owned utility easements dedicated for the placement and location of various utilities.
- G. **"Lateral Facilities"** means those facilities that extend from, or tap a Main Feeder and serve the end use consumer.
- H. **"Main Feeder"** means those Facilities the primary use of which is to transmit or deliver power to, or through, an area for ultimate distribution to end use consumers and which connect two (2) or more substations. Main Feeders located within the Franchise Area as of the Effective Date are identified on Attachment A, and will be updated from time to time by BREA to reflect Main Feeders constructed during the term of the Franchise.
- I. **"Party" or "Parties"** means collectively the City and BREA, and individually either the City or BREA.
- J. **"Public Works"** mean City owned facilities, or any part thereof, located on or in the Franchise Area for: parks, streets, sidewalks, curbs, pathways, pedestrian and/or vehicle traffic, sewer facilities, storm water facilities, water facilities, and City owned fiber optic cable, conduit or network facilities.
- K. **"Public Works Project"** means any capital improvement or construction, relocation, expansion, repair, maintenance, or removal of City owned facilities, or any part thereof, located on or in the Franchise Area for: parks, streets, sidewalks, curbs, pathways, pedestrian and/or vehicle traffic, sewer facilities, storm water facilities, water facilities, and City owned fiber optic cable, conduit or network facilities.

2. **Ratification of Expired Franchise.** The City does hereby ratify the terms and conditions of the grant to BREA of a nonexclusive Franchise for the distribution of electrical energy and broadband services within the City of Benton City, Washington, in accordance with the terms and conditions contained in Ordinance No. 578, and ratify that such terms and conditions shall be binding upon the Parties from the date of its expiration on March 3, 2018, until the effective date of this Ordinance as provided below.
3. **Grant of Current Franchise.** The City does hereby grant to BREA, a right and Franchise to construct, maintain, and operate, in, over, upon, and under the present and future streets, alleys, bridges, highways, and right-of-way within the present or future limits of the City, electrical power distribution and broadband, and all necessary appurtenances thereto, for the purpose of transmitting electrical power and broadband services.
4. **Nonexclusive Right.** The right and Franchise hereby granted shall be nonexclusive and the City expressly reserves the right, at any time during the term of the Franchise hereby granted, to grant rights or franchises to other persons, corporations, agencies, or entities, as well as the right in its own name as a municipality to use the City's streets for the transmission and location of other utility services and other uses not incompatible therewith.
5. **Franchise Term.** This Franchise term shall commence upon the Effective Date of this Ordinance and subsequent acceptance of such Ordinance and Franchise by BREA. This Franchise is granted upon the expressed condition that the BREA, within thirty (30) days after the adoption of this Ordinance, shall file with the City Clerk, a written acceptance of the same. If BREA fails to do so within the timeframe above, this Ordinance and Franchise shall be null and void. This Franchise shall be for a period of ten (10) years and will automatically renew for successive periods of five (5) years each unless cancelled at the end of a term by either Party by written notice to the other Party no less than 180 calendar days prior to the expiration of the initial ten (10) year term, or the then current successive term.
6. **Construction, Maintenance and Operation of Utility.** The locations and methods of installation, operation and maintenance of all Facilities shall be subject to the following conditions:
  - A. All Facilities shall be constructed and maintained so as to avoid the creation of a safety hazard or unreasonably interfere with the use of streets and adjacent properties.
  - B. All Facilities, and their construction, operation, and maintenance shall comply with all applicable statutes, codes and ordinances regulating construction and use of public ways.
  - C. BREA shall, before commencing any construction in any public ways, comply with all regulations of Title 19.122 RCW (the One Call Locator Service), and shall as the facility operator (as defined by RCW 19.122.020) fulfill all the facility operator duties of excavation as required by RCW 19.122.030.
  - D. Within ten (10) days of written request from the City, BREA shall furnish the City with information sufficient to demonstrate that:
    1. BREA has complied with all requirements of applicable Codes, Ordinances and Regulations and this Franchise;

2. All utility taxes to the City in connection with this Franchise have been properly collected and paid; and
  3. All books, records, maps and other documents, maintained by BREA with respect to its Facilities within the public ways and upon City property, shall be made available for inspection by the City at reasonable times and intervals.
- E. BREA shall provide, upon request by the City, an accurate map showing (1) the approximate location of all Facilities within the City limits and (2) those Facilities and Benton PUD facilities which are located in the same City right of way.
- F. To the extent provided by law, all Facilities shall be constructed, installed and located in accordance with the following terms and conditions, unless otherwise specified in writing, by the City:
1. It is especially found and determined by the City that the general public necessity, convenience, health, safety and welfare require that electrical facilities be constructed underground in an orderly manner in accordance with the requirements specified in this section.
  2. Subject to the exceptions set forth in subsection 6(F)(3), this section shall apply to all electrical facilities. Except as otherwise provided in subsection 6(F)(6), the costs of undergrounding Facilities as required by this subsection 6(F) will be the responsibility of BREA.
  3. The following Facilities are excluded from the underground requirements of this subsection 6(F):
    - i) Electric utility substations, voltage regulators, pad-mounted transformers, secondary electrical pedestals, and switching facilities;
    - ii) Subject to subsection 6(I), Electrical "Main Feeders" (including poles and wires);
    - iii) Street lighting standards or associated circuitry; and
    - iv) Temporary services for construction.
  4. **Locating New Facilities.** Except as provided in subsection 6(F)(3), all new Facilities installed by BREA within the City shall be installed underground at no expense or cost to the City.
  5. **Rebuilding or Relocating Lines.** All rebuilt or relocated electrical service lines to service connections of structures shall be installed underground at no expense or cost to the City unless such rebuilding or relocation involves only the change in the overhead service line without a change in the corresponding service entrance facilities.
  6. **City Request for Relocation of Existing Facilities.** Except as provided in subsection 6(F)(3), when the City requires that an existing Facility located within the City right-of-way be relocated and placed underground within such right-of-way, the City shall provide BREA written notice as soon as practicable of the need of relocation and undergrounding. The allocation of costs of such relocation and undergrounding shall be in accordance with RCW 35.99.060.
  7. **Undergrounding with Third-Party Facilities.** Whenever a third party electric utility is installing electric lines underground in a portion of the City right-of-way also occupied by BREA overhead lines, and placing BREA lines in the same

underground trench is compatible with such third party utility's facilities being placed underground, BREA shall locate or relocate underground in such trench all overhead lines using the same right-of-way at no expense or cost to the City

8. A variance from the underground installation requirements of this Section F may be granted to BREA by the City's Mayor upon demonstration by BREA to the satisfaction of the City's Mayor that the variance is in the interest of the general health, welfare and safety of the residents of the community and the traveling public and one of the following conditions exist:
  - i) There is a technological difficulty associated with such facilities or with real property involved to require under grounding of a particular facility or in a particular location; or
  - ii) The cost of the underground construction outweighs the general welfare consideration in requiring underground construction; or
  - iii) The growth pattern in the geographical area has not been sufficiently established to determine the ultimate service requirements or major service routes.

When granting a variance, the City's Mayor may attach conditions to the granting of said variance including placing a time limit on the duration of such variance. If the City's Mayor denies such a variance request, BREA shall have the right to appeal such ruling to the City Council.

- G. Neither BREA or any person acting on BREA's behalf, shall commence any nonemergency work in or about the public ways of the City, other ways, or upon City property without providing ten (10) business days advance written notice to the City.
- H. BREA, to the extent possible, shall cooperate with the City, and with other franchisees, to schedule and coordinate construction in the public ways to minimize public inconvenience, disruption or damages.
- I. BREA shall consult with the City to coordinate planning prior to commencing construction of a new Main Feeder.
- J. BREA shall construct, operate and maintain its Facilities in good and safe condition and in a manner that complies with all applicable federal, state and local requirements and in accordance with good electrical practices.
- K. Upon written notice from the City, BREA shall within thirty (30) business days provide a plan and schedule to the City to temporarily or permanently remove, relocate, change, or alter the position of any of BREA's Facilities within the public ways or upon public property at the BREA's expense whenever such action is determined by the City to be reasonably necessary for:
  1. The construction, repair, maintenance, or installation of any City or other public improvement in or upon the public ways or City property; or
  2. The operations of the City or other governmental entity in or upon the public ways or City property.
- L. Any notice required to be given pursuant to this Section 6 may be provided using electronic mail addressed to the appropriate individual with receipt confirmation.

7. **Temporary Removal.** Whenever any person shall have obtained permission from the City to use any street or public way for the purpose of moving any oversized building, structure or vehicle, BREAA shall, upon fourteen (14) calendar days advance notice from the City, raise or temporarily remove, at the expense of person moving such oversized building, structure or vehicle, any of BREAA's Facilities which may obstruct is movement; provided that the person moving the oversized building, structure or vehicle shall comply with all reasonable requirements of the City for such movement.
8. **Removal of Unauthorized Facilities.** Within thirty (30) days following written notice from the City, BREAA shall, at its own expense, remove unauthorized Facilities from the public way of the City or on City property. An unauthorized facility subject to removal shall occur:
  - A. Upon abandonment of a Facility.
  - B. If the Facility was constructed or installed without the prior grant of franchise or required permits from the City or at the authorized location.

The City retains the right and privilege to move or remove a Facility located within the public ways of the City or upon City property, as the City may determine to be necessary, appropriate or useful response to any public health or safety emergency.

If BREAA is required to relocate, change or alter any Facility constructed, operated or maintained hereunder and fails to do so, the City may cause such work to occur and charge BREAA for the reasonable costs incurred.
9. **Restoration of Public Ways and City Property.**
  - A. When BREAA, or any person acting on its behalf, does any work in or affecting a public way, other ways or City property, it shall, at its own expense, promptly remove any obstructions therefrom and restore such ways or property to as good a condition as existed before the work was undertaken, unless otherwise directed by the City.
  - B. If weather or other conditions cannot permit the complete restoration required by this Section, BREAA shall temporarily restore the affected ways or property. Such temporary restoration shall be at BREAA's sole expense and BREAA shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.
  - C. BREAA shall take all reasonable safety precautions, and comply with all safety regulations necessary to provide for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such ways or property.
10. **City Use of Facilities.** With respect to poles that are owned by BREAA (in whole or in part), the City may, subject to BREAA's prior written consent, which shall not be unreasonably withheld, install and maintain City-owned communication, traffic control, monitors and emergency services devices on BREAA poles as space may be available to do so. The City's use of BREAA's poles for such purposes shall be without payment by the City to BREAA of any annual pole rental fee. Prior to making any such attachments for such purposes, the City shall execute a General Agreement for the Use of Wood Poles, and except the annual rental fee, such agreement shall govern all aspects of such attachments, including without limitation installation, maintenance, indemnity and insurance. Any use of BREAA's poles by the City for purposes other than attachment of City-owned communication, traffic control, monitors and emergency services devices shall be subject to all terms (including annual rental fees) of BREAA's standard pole-attachment agreement.

**11. Coordination and Shared Excavations.**

- A. BREA and the City shall exercise all best reasonable efforts to coordinate any construction work that either may undertake within the City so as to promote the orderly and expeditious performance and completion of such work as a whole. Such efforts shall include, at a minimum, reasonable and diligent efforts to keep the other Party and other utilities which may be affected by the work, informed of its intent to undertake such construction work. BREA and the City shall further exercise best reasonable efforts to minimize any delay or hindrance to any construction work undertaken by themselves, other utilities, or third parties.
- B. If either BREA or the City shall cause excavations to be made within the City, the Party causing such excavation shall afford written notice of such excavation to the other, and upon receipt of a written request to do so, an opportunity to use such excavation, provided that:
  - 1. Such joint use shall not unreasonably delay the work of the Party causing the excavation to be made; and
  - 2. Such joint use shall be arranged and accomplished on the terms and conditions satisfactory to both Parties.

**12. Vacation of Public Ways.** The City reserves the right to vacate any public way which may be subject to this Franchise. If BREA has Facilities in such public way, the City shall reserve an easement for BREA.

**13. Records.**

- A. The City will have access to, and the right of inspection, any documents and records of BREA and its affiliates that are reasonably necessary for the enforcement of this Franchise, or to verify BREA's compliance with the terms and conditions of this Franchise. BREA will not deny the City access to any of the BREA's records on the basis that the BREA's documents or records are under the control of any affiliate or third party. BREA will take all reasonably necessary steps to assist the City in complying with the Public Records Act (RCW Chapter 42.56), including providing the City with a written statement identifying how long it will take to produce records not immediately available, and for any records that are not disclosed in whole or in part, a written statement from BREA's legal counsel stating the authority upon which the documents are withheld.
- B. All such documents and records maintained by BREA shall be made available for inspection by the City at reasonable times and intervals; provided, however, that nothing in this Section shall be construed to require BREA to violate State or Federal law regarding subscriber privacy, nor shall this Section be construed to require BREA to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature.
- C. One copy of documents and records requested by the City will be furnished to the City at the cost of the BREA. If the requested documents and records are too voluminous or for security reasons cannot be copied or removed, then BREA may request, in writing, within ten (10) days of the City's request, that the City inspect them at BREA's office. If any documents or records of BREA are not kept in the local office, and/or are not made available in copies to the City, and if the City determines that an examination of such documents or records is necessary or appropriate for the enforcement of this Franchise, or to verify BREA's compliance

with the terms and conditions of this Franchise, then all reasonable travel and related per diem costs incurred in making such examination shall be paid by BREA.

**14. Indemnification.**

- A. BREA shall indemnify, defend and hold the City, its agents, officers or employees harmless from and against any and all claims, demands, liability, loss, cost, damage or expense of any nature whatsoever including all costs and attorneys' fees, made against the City, its agents, officers or employees on account of injury, harm, death or damage to persons or property which is caused by, in whole or in part, and then only to the extent of, the willfully tortuous or negligent acts or omissions of BREA or its agents, servants, employees, contractors, or subcontractors in the exercise of the rights granted to BREA by this Franchise; provided, however, such indemnification shall not extend to that portion of any claims, demands, liability, loss, cost, damage or expense of any nature whatsoever including all costs and attorneys' fees caused by the negligence of the City, its agents, employees, contractors or subcontractors.
- B. BREA's indemnification obligations pursuant to this Section shall include assuming potential liability for actions brought by its own employees and the employees of its agents, representatives, contractors, and subcontractors even though BREA might be immune under Title 51 RCW from direct suit brought by such employees. It is expressly agreed and understood that this assumption of potential liability for actions brought by the aforementioned employees is limited solely to claims against BREA arising by virtue of its exercise of the rights or obligations set forth in this Franchise. The obligations of each Party under this Section have been mutually negotiated by the Parties hereto, and each Party acknowledges to the other that neither Party would enter into this franchise without this waiver thereof. To the extent required to provide this indemnification and this indemnification only, BREA waives its immunity under Title 51 RCW as provided in RCW 4.24.115.
- C. In the event any matter (for which the City intends to assert its rights under this Section) is presented to or filed, the City receiving such suit or action shall promptly notify BREA in writing thereof and BREA receiving such notification shall have the right, at its election and at its sole costs and expense, to settle and compromise such matter as it pertains to BREA's responsibility to indemnify, defend and hold harmless the City, its agents, officers or employees.

**15. Insurance.**

- A. BREA shall procure and maintain for the duration of the Franchise, insurance, or provide self-insurance, against all claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges and authority granted hereunder to BREA, its agents, representatives, or employees. BREA shall provide evidence of self-insurance and/or an insurance certificate, together with an endorsement naming the City, its officers, elected officials, agents, employees, representative, engineers, consultants and volunteers as additional insureds for injuries to persons or damages to property resulting from the negligence of BREA only, to the City for its inspection prior to the commencement of any work or installation of Facilities pursuant to this Franchise, and such self-insurance and/or insurance certificate shall evidence the following minimum coverages:
  - 1. Comprehensive general liability insurance including coverage for premises -



operations, explosions and collapse hazard, underground hazard and products completed hazard, written on an occurrence basis, with limits not less than:

- i. \$2,000,000 for bodily injury or death to each person;
  - ii. \$2,000,000 for property damage resulting from any one accident; and
  - iii. \$2,000,000 for general liability.
2. Automobile liability for owned, non-owned and hired vehicles with a limit of \$2,000,000 for each person and \$2,000,000 for each accident.
  3. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than \$2,000,000.
- B. Any deductibles or self-insured retentions must be declared to the City. Payment of deductible and self-insured retentions shall be the sole responsibility of BREA. The insurance certificate required by this Section shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- C. BREA's insurance shall be primary insurance with respect to the City, its officers, officials, employees, agents, consultants, and volunteers for claims for which BREA is held legally liable. Any insurance maintained by the City, its officers, officials, employees, consultants, agents and volunteers shall be in excess of BREA's insurance and shall not contribute with it. Upon BREA's request, the City shall provide evidence of insurance.
- D. In addition to the coverage requirements set forth in this Section, the certificate of insurance shall provide that:

"The above described policies will not be cancelled before the expiration date thereof, without the issuing company giving sixty (60) days written notice to the certificate holder."

In the event of said cancellation or intent not to renew, BREA shall obtain and furnish to the City evidence of replacement insurance policies meeting the requirements of this Section by the cancellation date.

- 16. Assignment or Transfer of Franchise.** To the extent permitted by Federal or State law, BREA's right, title or interest in the Franchise granted hereunder may not be sold, transferred, assigned, or encumbered, other than to an entity controlling, controlled by, or under common control with BREA, without the prior consent of the City; provided, however, that consent by the City will not be unreasonably denied, conditioned, or withheld. No consent is required for a transfer in trust, by mortgage, by other security interest, or by assignment of any rights, title, or interest in BREA, its Facilities in order to secure indebtedness.
- 17. Default.** If BREA shall fail to perform or comply with any of the obligations and requirements imposed by this Franchise, after receipt of written notice from the City specifying the nature of the default and demanding that such default be remedied within a reasonable time as determined by the City and fixed in such notice, the right and Franchise granted herein may be terminated and annulled by the City Council, after reasonable opportunity for BREA to be heard and appropriate determination is made with respect to such alleged default.

- 18. Dispute Resolution.** In the event of a dispute regarding the enforcement, breach, default, or interpretation of this Franchise, the Chief Executive Officer of the City, represented by the City's Mayor, and the Chief Executive Officer of BREa, shall first meet in a good faith effort to resolve such dispute. If the dispute cannot be resolved by agreement of the officers of the City and BREa, then said dispute shall be submitted to mediation using a mediator reasonably agreed to by the Parties. In the event the dispute cannot be resolved by agreement of the City and BREa facilitated by a mediator, then said dispute may, upon the agreement of the City and BREa, be resolved by arbitration pursuant to RCW 7.04A, as amended, with both the City and BREa waiving the right of a jury trial de novo, with venue being placed in Benton County, Washington. In any such agreed upon arbitration, each Party shall be entitled to full rights of discovery as provided in the Washington Rules of Civil Procedure for Superior Court, and the substantially prevailing Party shall be entitled to its reasonable attorney fees and costs as additional award and judgment against the other. In the absence of an agreement to arbitrate any dispute, either the City or BREa may seek judicial resolution of the dispute. During the pendency of any such dispute, the City and BREa will, as may be reasonably practicable, continue to perform their respective obligations under this Franchise.
- 19. Force Majeure.** In the event that either Party is prevented or delayed in the performance of any of its obligations under this Franchise by an event that is beyond its reasonable control (a "Force Majeure Event"), then that Party's performance shall be excused for the duration of the Force Majeure Event. Force Majeure Events shall include, without limitation, war; civil disturbances; terroristic acts; flood, earthquake or other Acts of God; storm, earthquake or other condition which necessitates the mobilization of the personnel of a Party or its contractors to restore utility services to customers; laws, regulations, rules or orders of any government agency; sabotage; strikes or similar labor disputes involving personnel of a Party, its contractors or a Third Party; or any failure or delay in the performance by the other Party, or a third Party who is not an employee, agent or contractor of the Party claiming a Force Majeure Event, in connection with this Franchise, but shall not include the failure to make payment to a Party when due. Upon removal or termination of the Force Majeure Event, the Party claiming a Force Majeure Event shall promptly perform the affected obligations in an orderly and expedited manner under this Franchise or procure a substitute for such obligation. The Parties shall use all reasonable efforts to eliminate or minimize any delay caused by a Force Majeure Event.
- 20. Amendments to Franchise.** This Franchise may be amended only by mutual agreement thereto, set forth in writing in the form of a City Ordinance, signed by both Parties, which specifically states that it is an amendment to this Franchise and is approved and executed in accordance with the laws of the State of Washington. Without limiting the generality of the foregoing, this Franchise (including, without limitation to the Sections addressing indemnification and insurance) shall govern and supersede and shall not be changed, modified, deleted, added to, supplemented or otherwise amended by any permit, approval, license, agreement or other document required by or obtained from the City in conjunction with the exercise (or failure to exercise) by BREa of any and all of its rights, benefits, privileges, obligations or duties in and under this Franchise, unless such permit, approval, license, agreement or other document specifically:
- A. References this Franchise; and
  - B. States that it contains terms and conditions which change, modify, delete, add to, supplement or otherwise amend the terms and conditions of this Franchise.

**21. Notifications.** Whenever this Franchise calls for notice to or notification by any Party, the same (unless otherwise specifically provided) shall be in writing and directed to the recipient using United States Postal Service priority mail service at the address set forth in this Section, unless written notice of change of address is provided to the other Party. If the date for making any payment or performing any act is a legal holiday, payment may be made or the act performed on the next succeeding business day which is not a legal holiday. Notices shall be directed to the Parties as follows:

To the City:

City of Benton City  
1009 Dale Ave., Suite A  
Benton City, WA. 99320  
Attn: City Clerk

To BRE:

Benton Rural Electric Association  
PO Box 1150  
Prosser, WA. 99350  
Attn: General Manager/Executive Vice President

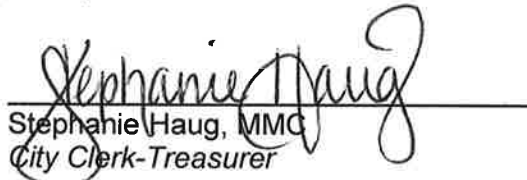
**22. Effective Date.** This Ordinance shall be effective on the 11 day of March, 2019.

**PASSED** by the City Council of the City of Benton City, Washington, and approved as provided by law this 5 day of March, 2019.



\_\_\_\_\_  
Linda Lehman  
Mayor

Attest:



\_\_\_\_\_  
Stephanie Haug, MMC  
City Clerk-Treasurer

Approved as to Form:



\_\_\_\_\_  
Kerr Ferguson Law, PLLC  
City Attorney

Accepted this 8<sup>th</sup> day of March, 2019, subject to applicable Federal, State and local law.

Benton Rural Electric Association

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Signature: Michael J. Bradshaw  
Print Name: Michael J. Bradshaw  
Title: General Manager/Executive  
Vice President