

EXHIBIT A

To

City of North Bend Ordinance No. 1757

FRANCHISE AGREEMENT

BETWEEN

THE CITY OF NORTH BEND AND TANNER ELECTRIC COOPERATIVE

This Franchise Agreement (“Franchise”) is entered into between the City of North Bend, a Washington municipal corporation (“City”), and Tanner Electric Cooperative, a Washington corporation (“TEC”). This Franchise takes effect on the effective date referenced in the Ordinance (“Effective Date”).

Section 1. Definitions.

1.1 Where used in this Franchise the following terms shall mean:

1.1.1 “TEC” means Tanner Electric Cooperative, Inc., a Washington corporation, and its successors and assigns.

1.1.2 “City” means the City of North Bend, a municipal corporation of the State of Washington, and its respective successors and assigns.

1.1.3 “Franchise Area” means any, every and all of the public roads, streets, avenues, alleys, and highways of the City, and such other public properties as the City may approve, as such Franchise Area now exists or may be expanded by annexation or other legal means.

1.1.4 “Facilities” means poles (with or without crossarms), wires, lines, conduits, cable, communication and signal lines, braces, guys, anchors, vaults and all necessary or convenient facilities and appurtenances thereto owned by TEC, excluding substations, whether the same be located over or under ground.

1.1.5 “Ordinance” means Ordinance No. 1757, which sets forth the terms and conditions of this Franchise.

1.1.6 “Public Improvement Project” means any “public work” as defined in RCW 39.04.010, or any other capital improvement or repair constructed, installed, or performed wholly or partially within the Franchise Area that is undertaken by or on behalf of the City and is funded by City funds and/or other public funds.

Section 2. Facilities Within Franchise Area.

2.1 Pursuant to RCW 35A.47.040 and as otherwise set forth in this Franchise, the City hereby grants to TEC the right, privilege, authority, and franchise to set, erect, lay, construct, extend, support, attach, connect, maintain, repair, replace, enlarge, operate, and use the Facilities in, upon, over, under, along, across and through the Franchise Area to provide for the transmission, distribution, and sale of electric energy for power, heat, light, and such other purposes for which electric energy may be used.

2.2 This Franchise is not, and shall not be deemed to be, an exclusive Franchise. This Franchise shall not in any manner prohibit the City from granting other and further franchises over, upon, and along the Franchise Area that do not interfere with TEC's rights under this Franchise. This Franchise shall not prohibit or prevent the City from using the Franchise Area or affect the jurisdiction of the City over the same or any part thereof.

Section 3. Noninterference of Facilities.

3.1 TEC's Facilities shall be maintained within the Franchise Area so as not to unreasonably interfere with the free passage of traffic or to unreasonably obstruct the Franchise Area, and in accordance with the laws of the State of Washington and the City of North Bend.

3.2 Whenever it is necessary for TEC to engage in any work within the Franchise Area, TEC shall first apply for and receive all necessary City permits to do such work, and shall, except to the extent inconsistent with the terms and conditions of this Franchise or where expressly provided otherwise herein, comply with all requirements and conditions of such permits, including but not limited to location restrictions, traffic control, and restoration, repair, or other work to restore the surface of the Franchise Area, as nearly as practicable, to its condition immediately prior to the work and consistent with applicable City standards. In the event that TEC contracts out any work in the Franchise Area, TEC shall remain fully responsible for all such permit requirements.

3.3 If, at any time during the term of this Franchise, a TEC Facility or trench within the Franchise Area causes a street to crack, settle, or otherwise fail, the City will notify TEC of the deficiency and TEC will correct the deficiency and repair the damage to the City's reasonable satisfaction within sixty (60) days after its receipt of written notice from the City.

Section 4. Relocation of Facilities.

4.1 Whenever the City undertakes any Public Improvement Project and such Public Improvement Project requires the relocation of TEC's then existing Facilities within the Franchise Area, the City shall:

4.1.1 provide TEC, within a reasonable time prior to the commencement of such Public Improvement Project written notice requesting such relocation; and

4.1.2 provide TEC with plans and specifications for such Public Improvement Project.

After receipt of such notice and such plans and specifications, TEC shall relocate such Facilities within the Franchise Area at its sole cost and at no charge to the City and on a schedule as reasonably required by the City in order to timely complete the Public Improvement Project. If the City requires subsequent relocation of any TEC Facilities within five (5) years from the date of relocation of such Facilities pursuant to this Section 4.1, and the Public Improvement Project necessitating such subsequent relocations of TEC Facilities was not included in the City's approved Capital Improvement Plan or Transportation Improvement Plan at the time of the relocations of such Facilities pursuant to this Section 4.1, then the City shall bear the entire cost of such subsequent relocation.

4.2 Whenever any person or entity, other than the City, requires the relocation of TEC's Facilities to accommodate the work of such person or entity within the Franchise Area, or whenever the City requires the relocation of TEC's Facilities within the Franchise Area for the benefit of any person or entity other than the City, then TEC shall have the right as a condition of such relocation to require such person or entity to:

4.2.1 make payment to TEC, at a time and upon terms acceptable to TEC, for any and all costs and expenses incurred by TEC in the relocation of TEC's Facilities; and

4.2.2 indemnify and save TEC harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another arising out of or in conjunction with the relocation of TEC's Facilities, to the extent such injury or damage is caused by the negligence of the person or entity requesting the relocation of TEC's Facilities or the negligence of the agents, servants, or employees of the person or entity requesting the relocation of TEC's Facilities.

4.3 Nothing in this Section 4 "Relocation of Facilities" shall require TEC to bear any cost or expense in connection with the location or relocation of any Facilities outside of the Franchise Area then existing under benefit of easement or such other prior rights.

Section 5. Underground Installation of Facilities.

5.1 In connection with any Public Improvement Project, the City may by written notice to TEC require TEC to underground its existing Facilities within the portion of the Franchise Area subject to the Public Improvement Project. TEC is not regulated by the Washington Utilities and Transportation Commission. In order to ensure consistent treatment of electric utilities within the City, however, any such conversion of TEC's existing Facilities from overhead to underground shall be accomplished pursuant to the schedules and tariffs on file with the Washington Utilities and Transportation Commission applicable to such undergrounding by Puget Sound Energy.

Section 6. Vegetation Management.

6.1 TEC may, on an annual basis, provide the City a list of locations within the Franchise Area at which TEC anticipates performing vegetation management activities; provided that such list shall not limit TEC's right under this Franchise to cut, trim, or otherwise remove vegetation at any time within the Franchise Area which, due to proximity to TEC's Facilities, pose an imminent threat to public safety or the reliable operation of TEC's facilities.

6.2 TEC may, in coordination with the City, identify vegetation species appropriate for location in proximity to TEC Facilities and shall cooperatively act with the City to promote use of such identified species within and adjacent to the Franchise Area.

Section 7. Indemnification.

7.1 TEC shall defend, indemnify, and save the City harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another, to the extent such injury or damage is caused by the negligence of TEC or its agents, servants, or employees in exercising the rights granted TEC in this Franchise. TEC's obligations hereunder shall include reimbursement to the City of all attorney and expert witness fees reasonably incurred by the City in defense of any such claims and demands. In the event any such claim or demand be presented to or filed with the City, the City shall promptly notify TEC thereof, and TEC shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim and demand, provided further, that in the event any suit or action is begun against the City based upon any such claim or demand, the City shall likewise promptly notify TEC thereof, and TEC shall have the right, at its election and its sole cost and expense, to settle and compromise such suit or action, or defend the same at its sole cost and expense, by attorneys of its own election.

Section 8. Moving Buildings within the Franchise Area.

8.1 If any person or entity obtains permission from the City to use the Franchise Area for the moving or removal of any building or other object, the City shall, prior to granting such permission, require such person or entity to make any necessary arrangements with TEC for the temporary adjustment of TEC's wires to accommodate the moving or removal of such building or other object. Such necessary arrangement with TEC shall be made, to TEC's satisfaction, not less than thirty (30) days prior to the moving or removal of said building or other object. In such event, TEC shall, at the expense of the person or entity desiring to move or remove such building or other object, adjust any of its wires which may obstruct the moving or removal of such building or other object, provided that:

8.1.1 the moving or removal of such building or other object which necessitates the adjustment of wires shall be done at a reasonable time and in a reasonable manner so as not to unreasonably interfere with TEC's business;

8.1.2 where more than one route is available for the moving or removal of such building or other object, such building or other object shall be moved or removed along the route which causes the least interference with TEC's business; and

8.1.3 the person or entity obtaining such permission from the City to move or remove such building or other object shall be required to indemnify and save TEC harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another arising out of or in conjunction with the moving or removal of such building or other object, to the extent such injury or damage is caused by the negligence of the person or entity moving or removing such building or other object or the negligence of the agents, servants, or employees of the person or entity moving or removing such building or other object.

Section 9. Records.

9.1 TEC and the City shall reasonably make available, each to the other, records reflecting the type and location of their respective Facilities within the Franchise Area, in whatever form such records may reasonably be maintained. Neither party warrants to the other the completeness or accuracy of such records, and any and all locations of Facilities reflected in such records shall be considered approximate. Nothing in this Subsection 9.1 shall release (or be construed to release) any party from their respective obligations, as the same may arise, under Chapter 19.122 RCW (or any other law applicable to determining the location of utility facilities).

9.2 Pursuant to the North Bend Municipal Code (“NBMC”) Title 20 (Administration of Development Regulations), all GIS mapping documentation shall be submitted in accordance with the GIS requirements set forth in NBMC Chapter 20.02 (Development Permit Submittals and Public Notice), and specifically in NBMC 20.02.006 (GIS Requirements).

Section 10. Default.

10.1 If TEC shall fail to comply with the provisions of this Franchise, the City may serve upon TEC a written order to so comply within sixty (60) days from the date such order is received by TEC. If TEC is not in compliance with this Franchise after expiration of said sixty (60) day period, the City may declare an immediate forfeiture of this Franchise, provided, however, if any failure to comply with this Franchise by TEC cannot be corrected with due diligence within said sixty (60) day period (TEC’s obligation to comply and to proceed with due diligence being subject to unavoidable delays and events beyond its control), then the time within which TEC may so comply shall be extended for such time as may be reasonably necessary and so long as TEC commences promptly and diligently to effect such compliance.

Section 11. Non-exclusive Franchise.

11.1 This Franchise is not and shall not be deemed to be an exclusive Franchise. This Franchise shall not in any manner prohibit the City from granting other and further franchises over, upon, and along the Franchise Area which do not interfere with TEC’s rights under this Franchise. This Franchise shall not prohibit or prevent the City from using the Franchise Area or affect the jurisdiction of the City over the same or any part thereof.

Section 12. Franchise Term.

12.1 This Franchise is and shall remain in full force and effect for a period of twenty (20) years from and after the effective date of the Ordinance, provided, however, TEC shall have no rights under this Franchise nor shall TEC be bound by the terms and conditions of this Franchise unless TEC shall, within sixty (60) days after the effective date of the Ordinance, file with the City its written acceptance of the Ordinance.

Section 13. Modification and Amendment.

13.1 This Franchise may be amended only by written instrument, 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 Washington State.

13.2 If, during the term of this Franchise, there becomes effective any change in federal or state law which:

13.2.1 affords either party the opportunity to negotiate in good faith a term or condition of this Franchise which term or condition would not have, prior to such change, been consistent with federal or state law; or

13.2.2 pre-empts or otherwise renders null and void any term or condition of this Franchise which has there-to-fore been negotiated in good faith;

then, in such event, either party may, within one hundred eighty (180) days of the effective date of such change, notify the other party in writing that such party desires to commence negotiations to amend this Franchise. Such negotiations shall encompass only the specific term or condition affected by such change in federal or state law and neither party shall be obligated to re-open negotiations on any other term or condition of this franchise. Within thirty (30) days from and after the other party's receipt of such written notice, the parties shall, at a mutually agreeable time and place, commence such negotiations. Pending completion of such negotiations resulting in mutually agreeable amendment of this Franchise, adoption of such amendment by Ordinance by the City Council and acceptance of such Ordinance by TEC, and except as to any portion thereof which has been pre-empted or otherwise rendered null and void by such change in federal or state law, the Franchise shall remain in full force and effect.

Section 14. Assignment.

14.1 TEC shall have the right to assign its rights, benefits, and privileges in and under this Franchise only by written amendment executed pursuant to Section 13 of this Franchise.

Section 15. Miscellaneous.

15.1 If any term, provision, condition, or portion of this Franchise shall be held to be invalid, such invalidity shall not affect the validity of the remaining portions of this Franchise which shall continue in full force and effect. The headings of sections and paragraphs of this Franchise are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.

15.2 Without limiting the generality of Section 13.1, this Franchise (including, without limitation, Section 7.1 above) 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 TEC of any and all rights, benefits, privileges, obligations, or duties in and under this Franchise, unless such permit, approval, license, agreement, or other document specifically:

15.2.1 references this Franchise; and

15.2.2 states that it supersedes this Franchise to the extent it contains terms and conditions which change, modify, delete, add to, supplement, or otherwise amend the terms and conditions of this Franchise.

In the event of any conflict or inconsistency between the provisions of this Franchise and the provisions of any such permit, approval, license, agreement, or other document, the provisions of this Franchise shall control.

15.3 This Franchise is subject to the provisions of any applicable tariff now or hereafter in effect. In the event of any conflict or inconsistency between the provisions of this Franchise and such tariff, the provisions of such tariff shall control.

15.4 Nothing herein shall preclude the City from recovering administrative costs incurred by the City for permits for or inspection of any plans or construction initiated by TEC as prescribed in accordance with applicable provisions of the City's code.

15.5 TEC shall reimburse actual reasonable expenses incurred by the City for Staff time and legal costs directly related to negotiating and City Council approval of this Franchise. TEC shall bear the cost of the publication of this Franchise Ordinance.

Section 16. Effective Date.

16.1 Pursuant to RCW 35A.47.040, this Ordinance shall take effect on October 6, 2021, having been: (i) introduced to the City Council not less than five days before its passage (ii) first submitted to the City Attorney on September 1, 2021; (iii) published at least five days prior to the above-referenced effective date and as otherwise required by law; and (iv) passed at a regular meeting of the legislative body of the City of North Bend by a majority of the whole of such legislative body September 21, 2021.

Signed and approved by the Mayor on the _____ day of _____, 2021.

_____, Mayor

ATTEST:

_____, City Clerk

HONORABLE MAYOR AND CITY COUNCIL
CITY OF NORTH BEND, WASHINGTON

In the matter of the application :
of Tanner Electric Cooperative, Inc., a : Franchise Ordinance No. 1757
Washington corporation, for a :
franchise to construct, operate :
and maintain facilities in, upon, :
over, under, along, across and :
through the franchise area of the : ACCEPTANCE
City of North Bend, Washington :

WHEREAS, the City Council of the City of North Bend, Washington, has granted a franchise to Tanner Electric Cooperative, Inc., a Washington corporation, its successors, and assigns, by enacting Ordinance No. 1757, bearing the date of September 21, 2021; and

WHEREAS a copy of the Franchise Agreement and said Ordinance granting said franchise agreement was received by the Tanner Electric Cooperative, Inc. on _____, 2021, from said City of North Bend King County, Washington.

NOW, THEREFORE, Tanner Electric Cooperative, Inc., a Washington corporation, for itself, its successors, and assigns, hereby accepts said Ordinance and said Franchise Agreement with all the terms and conditions thereof, and files this, its written acceptance, with the City of North Bend, King County, Washington.

IN TESTIMONY WHEREOF said Tanner Electric Cooperative, Inc. has caused this written Acceptance to be executed in its name by its undersigned Director, planning thereunto duly authorized on this ____ day of _____, 2021.

ATTEST: TANNER ELECTRIC COOPERATIVE, INC.

_____ By: _____

Copy received for City of North Bend
on _____, 2021

By: _____
_____ City Clerk