

**CITY OF WEST RICHLAND
ORDINANCE NO. 27-21**

AN ORDINANCE OF THE CITY OF WEST RICHLAND, WASHINGTON, AMENDING SECTION 2.1, 4.2, 21 and 25.2 OF ORDINANCE 09-15, BENTON RURAL ELECTRIC ASSOCIATION'S FRANCHISE TO SET, ERECT, CONSTRUCT, SUPPORT, ATTACH, CONNECT OPERATE, MAINTAIN, REMOVE, REPLACE, REPAIR AND USE FACILITIES, INCLUDING COMMUNICATION SYSTEMS, IN, UPON, UNDER, ALONG, AND ACROSS THE FRANCHISE AREA FOR PURPOSES OF TRANSMISSION, DISTRIBUTION AND SALE OF ELECTRICAL ENERGY FOR POWER, HEAT, LIGHT AND ANY OTHER PURPOSE FOR WHICH SUCH ENERGY CAN BE USED.

WHEREAS, the West Richland City Council adopted Ordinance 09-15 on March 17, 2015, granting Benton Rural Electric Association a non-exclusive Franchise for the purposes of transmission, distribution and sale of electrical energy for power, heat, light and any other purposes for which such energy can be used; and

WHEREAS, the West Richland City Council adopted Ordinance 09-18 on April 17, 2018 amending Section 4.2 of Ordinance 09-15 to include provisions for the City of West Richland to provide prior written notification to Benton Rural Electric Association of any action by the City of West Richland to initiate, acquire, construct, own, operate and or maintain a municipal electric utility to serve all or any portion of the City of West Richland; and

WHEREAS, Benton Rural Electric Association has made and continues to make significant investments in infrastructure and facilities within the boundaries of the City of West Richland and other long term commitments such as power supply; and

WHEREAS, Benton Rural Electric Association has entered into a real estate purchase and sale agreement with the City of West Richland for the acquisition of real property for the construction and operation of a headquarters complex and other related facilities which Benton Rural Electric Association intends to fund in whole or in part with debt with a term of thirty (30) years or more; and

WHEREAS, the construction and operation of Benton Rural Electric Association headquarters and other related facilities within the City of West Richland will provide substantial economic benefits to the City of West Richland in the form of employment opportunities and tax revenues, among others.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WEST RICHLAND, WASHINGTON DOES ORDAIN AS FOLLOWS:

Section I. Amendment #2 - Section 2.1, Section 4.2, Section 21 and Section 25.2 of Ordinance 09-15 is hereby amended as follows:

- 2.1 Pursuant to the laws of the State of Washington including, but not limited to, RCW 35A.47.040 and RCW 80.32.010, the City hereby grants to BREA, subject to the terms and conditions as set forth herein, a Franchise for a period of thirty (30) years commencing upon the Effective Date of this Ordinance. This Franchise is granted upon the express condition the BREA, within sixty (60) days after the adoption of this Ordinance, shall file with the clerk of the City a written acceptance of the same. If BREA fails to do so within the time frame above, this Ordinance and Franchise shall be null and void.
- 4.2 The City reserves the right to acquire, construct, own, operate and maintain a municipal electrical utility to serve all or any portion of the City in accordance with applicable law, recognizing that duplication of electrical facilities is discouraged by Washington law. Recognizing that BREA has made and continues to make significant investments in

Facilities, including the construction of its headquarters facilities within the boundaries of the City, and other long term commitments such as power supply, the City must provide BREa with written notice not less than ten (10) years prior to any action by the City Council to initiate, acquire, construct, own, operate and/or maintain a municipal electrical utility to serve all or any portion of the City, with such written notice being provided no earlier than 1st day of January, 2047.

Section 21. Amendments to Franchise

- 21.1 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 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.
- 21.2 During the period of the Franchise granted herein, changed circumstances from time to time may warrant amending one or more provisions of such Franchise. Such amendments due to changed circumstances could include, for example, amending Section 2.1 of the Franchise by extending the term due to BREa funding and constructing substantial new facilities within the City, or amending Section 23 of the Franchise to increase the amount and alter the types of the required insurance coverages. Either the City or BREa may request that the City and BREa engage in good faith negotiations to agree on an amendment(s) to the Franchise to address changed circumstances. Any amendment(s) agreed to by the parties will be memorialized and executed in accordance with Section 21.1 above.
- 25.2 The Effective Date of this Franchise shall be the 1st day of January, 2022, after passage, approval and legal publication of this Ordinance as provided by law, and provided it has been duly accepted by Grantee as herein above provided


PASSED BY THE CITY COUNCIL OF THE CITY OF WEST RICHLAND, WASHINGTON, this 19th day of October, 2021.



Brent Gerry, Mayor

ATTEST:


Stephanie Haug, City Clerk

APPROVED AS TO FORM:


Bronson Brown, City Attorney

Date of Publication: 10/26/2021

**BENTON RURAL ELECTRIC ASSOCIATION FRANCHISE AGREEMENT AMENDMENT #2
ACCEPTANCE:**

The provisions of Amendment #2 to the Franchise Agreement, Ordinance 09-15, are agreed to and hereby accepted. By accepting Amendment #2 to the Franchise Agreement, Franchisee covenants and agrees to perform and be bound by each and all of the terms and conditions imposed by Amendment #2 to the Franchise Agreement.

Date: October 21, 2021

BY: Michael J. Bradshaw

Printed Name: Michael J. Bradshaw

Title: General Manager/Exec. V.P.