

Appendix J

Form Parent Guaranty

2023 All-Source RFP



GUARANTY

This GUARANTY ("**Guaranty**") is made as of the [Date], by [Name of Guarantor], a [State of Organization] [Type of Entity] having a principal office at [Address] ("**Guarantor**"), to and for the benefit of **Portland General Electric Company**, an Oregon corporation having a principal office at 121 SW Salmon Street, Portland, OR 97204 ("**Owner**"), with reference to the following.

WHEREAS, _____ ("**Seller**"),¹ is wholly owned, directly or indirectly, by Guarantor; and

WHEREAS, Seller and Owner have entered into the [Title of Contract] dated as of [Date] (the "**Contract**"); and

WHEREAS, to induce Owner to enter into the Contract, Guarantor is willing to furnish to Owner this Guaranty;

NOW, THEREFORE, for and in consideration of the foregoing premises, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Guarantor covenants and agrees as follows:

1. Definitions. Unless otherwise defined herein, all capitalized terms used herein which are defined in the Contract shall have their respective meanings as therein defined. All references to the Contract contained herein shall be construed to mean the Contract as it may be amended from time to time. Unless otherwise required by the context in which any term appears in this Guaranty: (a) the singular shall include the plural and vice versa; (b) the words "herein," "hereof" and "hereunder" shall refer to this Guaranty as a whole and not to any particular sections or subsections hereof; (c) the words "including" or "includes" shall be construed to mean without limitation" or "but not limited to" and (d) the word "or" is not necessarily exclusive.

2. Guaranty. Guarantor hereby absolutely, irrevocably and unconditionally guarantees to Owner, its successors and permitted assigns the full and prompt payment and performance when due of all of Seller's warranties, covenants, indebtedness, duties and agreements contained in the Contract including, but not limited to, payment obligations under the Contract. All obligations, representations, warranties, covenants, indebtedness, duties and agreements described above are individually referred to herein as an "Obligation" and collectively as the "Obligations." This Guaranty is in no way conditioned upon any requirement that Owner first attempt to enforce any of the Obligations against Seller. If at any time Seller fails, neglects or refuses to timely or fully perform any of the Obligations as provided in the Contract, Guarantor shall promptly perform or cause to be performed such Obligation upon receipt of written notice of such default and demand for performance from Owner.

¹ Counterparty name to be modified as appropriate for the Contract.

Notwithstanding anything set forth to the contrary herein, with respect to any claim, action or proceeding against Guarantor in connection with this Guaranty, Guarantor shall be entitled to assert any rights, remedies and defenses that Seller would be able to assert if such claim, action or proceeding were to be asserted or instituted against Seller based upon the Contract, including, but not limited to, any limitations of liability and cure periods set forth in the Contract, but provided that: (i) no defense previously raised by Seller arising out of or in connection with an Obligation claimed hereunder that has been settled in Owner's favor may be raised by Guarantor; (ii) no cure period previously used by Seller may be used by Guarantor; and (iii) in no event shall Guarantor be entitled to assert any defenses that arise by operation of law on account of an Event of Bankruptcy (as defined below) or the bankruptcy or insolvency of Seller. Guarantor agrees that this Guaranty is a guaranty of performance including, but not limited to, payment, and not merely a guaranty of collection and shall apply regardless of whether recovery of any or all of the Obligations may be or become discharged or uncollectible in an Event of Bankruptcy (as defined below) in which Seller is the debtor. All payments hereunder shall be made without reduction, whether by set-off or otherwise.

3. Unconditional Guaranty. The obligations of Guarantor hereunder are independent, absolute and unconditional, irrespective of any genuineness, validity, regularity or enforceability of the Obligations and irrespective of any genuineness, validity, regularity or enforceability of the Contract, or any substitution, release or exchange of any other guarantee of or security for any of the Obligations, and, to the fullest extent permitted by applicable law, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor. Without limiting the generality of the foregoing, the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

- (a) at any time or from time to time, without notice to Guarantor, the time for any performance of or compliance with any of the Obligations shall be extended, or such performance or compliance shall be waived;
- (b) any acts or omissions by Seller with respect to the Obligations;
- (c) any of the Obligations shall be modified, supplemented or amended in any respect, or any right with respect to the Obligations shall be waived or any other guaranty of any of the Obligations or any security therefore shall be released or exchanged in whole or in part or otherwise modified or dealt with;
- (d) any lien or security interest granted to, or in favor of, Owner as security for any of the Obligations shall fail to be valid or perfected;
- (e) the voluntary or involuntary liquidation, dissolution, sale or other disposition of the assets and liabilities, or the voluntary or involuntary receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization or other similar proceeding affecting Seller, or rejection of the Contract in any such proceeding, or any action taken by any trustee or receiver in connection therewith (an "Event of Bankruptcy");

- (f) any lack of authorization, in whole or in part, of the Obligations or any term or provision hereof or of the Contract for any reason, or the rejection or purported rejection thereof in any Event of Bankruptcy;
- (g) Owner shall have taken or failed to have taken any steps to collect or enforce any obligation or liability from Seller or shall have taken any actions to mitigate its damages;
- (h) Owner shall have taken or failed to have taken any steps to collect or enforce any guaranty of or to proceed against any security for any Obligation;
- (i) any applicable law that might in any manner cause or permit to be invoked any alteration in the time, amount or manner of payment or performance of any of the Obligations or the obligations of Guarantor hereunder;
- (j) any merger or consolidation of Seller or Guarantor into or with any other person or any sale, lease or transfer of all or any of the assets of Seller or Guarantor to any other person;
- (k) any change in the ownership of any of the voting securities of Seller or Guarantor;
- (l) to the extent as may be waived by applicable law, the benefit of all principles or provisions of laws, rules and regulations which may be in conflict with the terms hereof; or
- (m) any failure on the part of Seller or Guarantor to comply with any applicable law.

4. Subordination of Subrogation Rights. Guarantor hereby subordinates to all claims, rights and remedies that Owner or any of Owner's permitted assigns may have against Seller and any claim, right or remedy that Guarantor may now have or hereafter acquire against Seller that arises hereunder or in connection herewith, including any claim, remedy or right of subrogation, reimbursement, indemnity, exoneration, contribution or participation in any claim, remedy or right against Seller that arises in connection herewith, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise until the Obligations have been paid and performed in full. If any amount shall erroneously be paid to Guarantor on account of such subrogation, reimbursement, indemnity, exoneration, contribution, and similar rights, such amount shall be held in trust for the benefit of Owner and shall forthwith be paid to Owner to be credited against the payment of the Obligations, whether matured or unmatured.

5. Remedies. Guarantor agrees that the Obligations shall be due and payable for purposes of this Guaranty notwithstanding any stay, injunction or other prohibition preventing a declaration of payment as against Seller.

6. Certain Waivers. Guarantor hereby unconditionally and irrevocably waives, to the extent permitted by applicable law, (i) notice of any of the matters referred to in Section 3 hereof; (ii) all notices that may be required by applicable law or otherwise, now or hereafter

in effect, to preserve any rights against Guarantor hereunder, including, any demand, proof or notice of non-payment of the Obligations except as otherwise required by Section 2 hereof; (iii) acceptance of this Guaranty, demand, protest, promptness, diligence, presentment, notice of default or dishonor and any requirement of diligence, notice of intent to accelerate, notice of acceleration and notice of the incurring of the Obligations; (iv) any right to assert against Owner any defense (legal or equitable), counter-claim, set-off, cross-claim or other claim that Guarantor may now or at any time hereafter have (a) against Seller or (b) acquired from any other party to which Owner may be liable; (v) any defense arising by reason of any claim or defense based upon an election of remedies by Owner which in any manner impairs, affects, reduces, releases, destroys or extinguishes Guarantor's subrogation rights, rights to proceed against Seller for reimbursement, or any other rights of the Guarantor to proceed against Seller or against any other person, property or security and (vi) any right to require Owner to marshal, or have recourse to other collateral or surety, before exercising its rights hereunder.

7. Separate Enforcement. The obligations of Guarantor under this Guaranty are independent of and may be enforced separately from the Obligations, in a separate action or actions that may be brought and prosecuted against Guarantor whether or not action is brought against Seller. Guarantor agrees that payment or performance of any of the Obligations or other acts which toll any statute of limitations applicable to the Obligations or the Contract shall also toll the statute of limitations applicable to Guarantor's liability under this Guaranty.

8. Representations and Warranties. Guarantor additionally represents and warrants to Owner as follows:

- (a) Guarantor is a corporation duly organized, validly existing, authorized to do business and in good standing under the laws of the State of its formation.
- (b) Guarantor has the requisite corporate power and authority to own its property and assets, transact the business in which it is engaged and to enter into this Guaranty and carry out its obligations hereunder. The execution, delivery, and performance of this Guaranty have been duly and validly authorized and no other corporate proceedings on the part of Guarantor or its affiliates are necessary to authorize this Guaranty or the transactions contemplated hereby.
- (c) No authorization or approval or other action by, and no notice to or filing with, any governmental authority or other regulatory body or third party is required for the due execution, delivery and performance by Guarantor of this Guaranty.
- (d) This Guaranty, when executed, shall constitute a valid and binding agreement of Guarantor and is enforceable against Guarantor in accordance with the terms of this Guaranty, except as may be limited by bankruptcy or insolvency or by other laws affecting the rights of creditors generally and except as may be limited by the availability of equitable remedies, and except to the extent that the execution of this Guaranty was induced by fraud, misrepresentation, or fraudulent concealment by or on behalf of the Owner.

- (e) As of the date hereof, the execution, delivery, and performance of this Guaranty does not and will not (i) result in a default, breach or violation of the certificate or articles of incorporation or bylaws of Guarantor, or (ii) constitute an event which would permit any person or entity to terminate rights or accelerate the performance or maturity of any indebtedness or obligation of Guarantor, the effect of which would materially affect Guarantor's ability to meet its obligations under this Guaranty, (iii) constitute an event which would require any consent of a third party or under any agreement to which Guarantor is bound, the absence of which consent would materially and adversely affect Guarantor's ability to meet its obligations under this Guaranty, or (iv) result in any default, breach or violation of any license, permit, franchise, judgment, writ, injunction, decree, order, charter, law, ordinance, rule or regulation applicable to Guarantor and which default, breach or violation would materially and adversely affect Guarantor's ability to meet its obligations under this Guaranty.

9. Amendments. No amendment of any provision of this Guaranty shall be effective unless it is in writing and signed by Guarantor, Owner and any permitted assignee of Owner's rights hereunder, and no waiver of any provision of this Guaranty, and no consent to any departure by Guarantor therefrom, shall be effective unless it is in writing and signed by Owner or any permitted assignee of Owner's rights hereunder. No delay on the part of Owner in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver or any partial exercise of any such right, power or privilege preclude any further exercise thereof or the exercise of any other such right, power or privilege. No waiver of any breach, term or condition of this Guaranty by Owner shall constitute a subsequent waiver of the same or any other breach, term or condition. No notice to or demand on Guarantor shall entitle Guarantor to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of Owner to any other or further action in any circumstances without notice or demand. The rights and remedies herein expressly provided are cumulative and not exclusive of any rights or remedies which Owner would otherwise have.

10. Continuing Guaranty; Successor and Assigns. This Guaranty is a continuing guaranty and (i) shall apply to all Obligations whenever arising, (ii) shall remain in full force and effect until satisfaction in full of all of the Obligations, (iii) shall be binding upon Guarantor and its successors and permitted assigns and (iii) shall inure to the benefit of and be enforceable by Owner and its successors, and assigns permitted under the Contract. Notwithstanding the foregoing, however, Guarantor may not assign all or any portion of its rights or delegate all or any portion of its duties under this Guaranty without the prior written consent of Owner. Any assignment by Guarantor without the foregoing consent shall be void.

11. Payments. Owner shall have the right from time to time to make demand for Obligations. With respect to payments to be made by Guarantor under this Guaranty, all such payments shall be made in United States dollars promptly following written demand by Owner, by wire transfer into a bank account designated in writing from time to time by Owner. All payments required to be made by Guarantor hereunder shall be made without set-off or counterclaim and shall be made without deduction for any withholding or other taxes or charges. If in compliance with the laws of any jurisdiction, any deduction or withholding on account of any taxes is required to be made from any amount paid or payable by Guarantor to Owner (other than any amount Seller would have been required to deduct or withhold

pursuant to the Contract), Guarantor shall pay to Owner any such additional amount as shall be necessary to ensure that Owner receives on the due date for payment hereunder, after the payment by Guarantor of such taxes, an amount equal to what it would have received and retained had no such deduction or withholding been required.

12. Expenses. Guarantor agrees to pay on demand all reasonable out-of-pocket expenses (including the reasonable fees and expenses of Owner's counsel) in any way relating to the enforcement or protection of the rights of Owner hereunder; provided that the Guarantor shall not be liable for any expenses of Owner if no payment under this Guarantee is due.

13. Reinstatement. In the event that Owner for any reason (including but not limited to bankruptcy preferences or alleged fraudulent transfers), is required to repay or disgorge any amounts received by it in respect of the Obligations, then the liability of Guarantor under this Guaranty, with respect to such amounts, shall be reinstated.

14. Governing Law. This Guaranty shall be governed by and construed in accordance with the laws of the state of Oregon, excluding rules governing conflicts of laws.

15. Dispute Resolution.

- a. Informal Consultation. In the event of any controversy, claim or dispute between the Parties arising out of or related to this Guaranty ("Dispute"), the parties' representatives will first attempt to resolve the Dispute informally through negotiation and consultation. If they are unable to do so, then within three (3) business days following the date of delivery of a written request by either Party, (i) each party shall appoint as its representative a senior officer, and (ii) such senior officers shall meet, negotiate and attempt in good faith to resolve the Dispute quickly, informally and inexpensively.
- b. Mediation. Any Dispute that is not resolved pursuant to Section 15(a) may be submitted for mediation before a single mediator in accordance with the provisions contained herein and in accordance with the Commercial Mediation Procedures of the American Arbitration Association in effect at the time of the mediation ("AAA Procedures"); provided, however, that in the event of any conflict between the procedures herein and the AAA Procedures the procedures herein shall control. The mediator will be named by mutual agreement of the Parties or by obtaining a list of five (5) qualified Persons from the Parties and alternately striking names. All mediation shall be administered by the AAA. All mediation shall take place in the City of Portland, Oregon, unless otherwise agreed to by the Parties. Each Party shall be required to exchange documents to be used in the mediation not less than five (5) Business Days prior to the mediation. The Parties shall use all commercially reasonable efforts to conclude the mediation as soon as practicable. All aspects of the mediation shall be treated as confidential. Neither the Parties nor any mediator may disclose the content or results of the mediation, except as

necessary to comply with legal, audit or regulatory requirements. Before making any such disclosure, a Party shall give written notice to the other Party and shall afford such Party a reasonable opportunity to protect its interests. Each Party shall be responsible for its own expenses and one-half of any mediation expenses incurred to resolve the dispute. The mediator will provide the Parties with a fee and expense schedule in advance of mediation. Mediation will terminate by: (a) written agreement signed by both Parties, (b) determination by the mediator that the Parties are at an unresolvable impasse, or (c) two unexcused absences by either Party from the mediation sessions. The mediator will never participate in any claim or controversy covered by this Section 15 as a witness, collateral contract, or attorney and may not be called as a witness to testify in any proceeding involving the subject matter of mediation. O.R.S. §§ 36.100 to 36.238 will apply to the entire process of mediation.

- c. Legal Action. If the Parties are still unable to resolve their differences after good faith consideration of a resolution through mediation pursuant to Section 15(b), then each of the Parties hereby irrevocably consents and agrees that any legal action or proceedings with respect to this Guaranty may be brought in the United States District Court for the District of Oregon or, if such court lacks subject matter jurisdiction, the courts of the State of Oregon located in the City of Portland, and any appellate court from any thereof. By execution and delivery of this Guaranty and such other documents executed in connection herewith, each Party hereby irrevocably and unconditionally (a) consents to the personal and exclusive jurisdiction of the aforesaid courts, and agrees that it will not commence or consent to participate in any action, litigation or proceeding of any kind whatsoever against any the other Party in any way related to such documents in any forum other than such courts, (b) agrees to be bound by any final judgment (after any and all appeals) of any such court with respect to such documents, (c) waives, to the fullest extent permitted by law, any objection it may now or hereafter have to the laying of venue of any action or proceeding with respect to such documents brought in any such court, and further waives, to the fullest extent permitted by law, any claim that any such action or proceeding brought in any such court has been brought in any inconvenient forum, (d) agrees that services of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such Party at its address set forth in Section 16, or at such other address of which the Parties have been notified, and (e) acknowledges that there is no agreement between the Parties to arbitrate any dispute that may arise between them related to the subject matter of this Guaranty.
- d. Waiver of Jury Trial. EACH PARTY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT

OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY.

- e. Survival. The provisions set forth in this Section 15 shall survive the termination or expiration of this Guaranty.

16. Notices. Any notices or other communication to be given hereunder shall be given in writing, sent by (a) personal delivery, (b) internationally recognized expedited delivery service, (c) registered or certified United States mail, postage prepaid, or (d) electronic mail (followed by registered or certified United States mail, postage prepaid) as follows:

To Guarantor: [Name]
 [Address]
 [Attention:]
 [Email:]

To Owner: Portland General Electric Company
 121 SW Salmon Street
 Portland, OR 97204
 Attention: Credit and Contract Administration
 Email: _____

With a copy to: Portland General Electric Legal Department
 121 SW Salmon Street, 1WTC13
 Portland, OR 97204
 Attention: [_____]

or to such other address or to the attention of such other individual as hereafter shall be designated in writing by the applicable party sent in accordance herewith. Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of delivery service or mail, as of the date of receipt at the address and in the manner provided herein, or in the case of electronic mail, upon receipt.

17. Severability. In the event that any of the provisions, or portions or applications thereof, of this Guaranty are held to be unenforceable or invalid by any court of competent jurisdiction, Owner and Guarantor shall negotiate an equitable adjustment in such provisions of this Guaranty with a view toward effecting the purpose of this Guaranty, and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby.

18. Duty to Keep Informed. Guarantor assumes the responsibility for being and keeping itself informed of the financial condition and performance under the Contract of Seller until the termination of all of the Obligations, and of all other circumstances bearing upon the risk of nonpayment or default under the Obligations which diligent inquiry would reveal, and agrees that Owner shall have no duty to advise Guarantor of information known to it regarding such condition or any such circumstances.

19. Entire Agreement. This Guaranty contains the entire agreement and understanding of Guarantor and Owner with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether written or oral, of Guarantor and Owner relating to the subject matter hereof. No oral or written representation, warranty, course of dealing or trade usage not contained or referenced herein shall be binding on either Guarantor or Owner.

20. No Third Party Beneficiaries. The provisions of this Guaranty shall only be for the benefit of, and enforceable by, Owner and its permitted assigns and shall not inure to the benefit of or be enforceable by any other person or entity.

21. Further Assurances. Guarantor and Owner shall each, at the request of the other, execute and deliver or cause to be executed and delivered such documents and instruments not otherwise specified herein, and take or cause to be taken all such other reasonable actions, as may be necessary or desirable to more fully and effectively carry out the intent and purposes of this Guaranty.

22. Counterparts. This Guaranty may be executed in two or more separate counterparts (including by electronic mail), each of which shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

23. Captions. The captions contained in this Guaranty are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Guaranty or the intent of any provision contained herein.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has executed this Guaranty as of the date first written above.

Accepted:

[GUARANTOR]

PORTLAND GENERAL ELECTRIC
COMPANY

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____



PGE Corporate Headquarters

121 S.W. Salmon Street | Portland, Oregon 97204

portlandgeneral.com