

Stephen T. Janik, OSB #741538  
Jack L. Orchard, OSB #721888  
[sjanik@balljanik.com](mailto:sjanik@balljanik.com)  
[jorchard@balljanik.com](mailto:jorchard@balljanik.com)  
Ball Janik LLP  
101 SW Main St., Ste. 1800  
Portland, OR 97204-3219  
(503) 228-2525  
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

PORTLAND GENERAL ELECTRIC  
COMPANY, an Oregon corporation,

Plaintiff,

v.

STATE OF OREGON, by and through  
THE OREGON DEPARTMENT OF STATE  
LANDS, and +/- FIVE ACRES OF  
UNIMPROVED LAND ALONG THE  
WILLAMETTE RIVER NEAR WEST  
LINN, OREGON,

Defendant.

Case No.: 3:22-cv-00533-SB

**DECLARATION OF NICHOLAS LOOS  
IN SUPPORT OF PORTLAND  
GENERAL ELECTRIC COMPANY'S  
RESPONSE TO GRAND RONDE  
MOTION FOR INTERVENTION**

I, Nicholas Loos, declare as follows:

1. I am Director, Dam Safety and Renewable Energy at Portland General Electric Company ("PGE"). I make this declaration based on personal knowledge, and am competent to testify hereto if called upon to do so as a witness.

2. My duties include oversight of operations of the Willamette Falls Hydropower Project Willamette Falls, Oregon (“Project”) which has been operated by PGE in various forms since 1895.

3. I am familiar with the terms of Oregon Department of State Lands (“DSL”) Waterway Registration 59537-RG (“Registration”), issued August 31, 2018 which purports to authorize the Confederated Tribes of Grand Ronde (“Grand Ronde”) to use and install a fishing platform at one of three footing locations on rocks at the base of Willamette Falls (“Platform Area”).

4. My experience in supervising activities on the Platform area and the balance of the “Property,” as defined in PGE’s Complaint, demonstrates that there have been and will be Project operational problems and public safety risks.

5. The following summarizes Project operational risks and public safety risk created by the presence of people on portions of the Property.

a. The Project utilizes automated spill/flow control of the river level to manage the flow of water through the plant and over the dam at optimal levels. The presence of people in the Platform Area requires PGE staff to manually monitor and control spill that would otherwise be automated due to the substantially increased safety risk of having people at the base of the falls.

b. The Project operates with limited personnel in reliance on automated spill / flow controls which regulate the flow of water over the dam and through the hydropower plant. This poses an increased safety risk to people on the Property by initiating automatic spill over the dam which might cause water impacts or cause people to be washed into the river.

c. Uncontrolled flows of water over the dam can also occur which pose risks of water impact (and related risks of washing into the river) for persons on the Property.

2- DECLARATION OF NICHOLAS LOOS IN SUPPORT OF PORTLAND GENERAL  
ELECTRIC COMPANY’S RESPONSE TO GRAND RONDE MOTION FOR INTERVENTION

Such uncontrolled releases can be caused by dam equipment failure (causing a plant trip described below), debris knocking down flashboards, flow releases upstream, and other causes.

d. Plant trips which can occur due to variety of conditions including voltage changes, equipment failure, mechanical issues, debris loading on plant intake structures, and other issues which quickly shut off water flowing through the plant turbines and divert that water over three diversion areas of the falls which are above the Property.

e. Flashboards are wooden structures installed along the top of the dam to raise the river level during lower flow periods, and which are designed to break away if impacted by debris or at natural end of use. As noted, a flashboard break away can cause a debris fall or sudden release of water.

f. Risks of slip and fall on the rocks on the Property due to moist conditions for employees of PGE which must walk across dangerous areas of the Project dam to check for the presence of people on the Property.

g. Risk of electric shock to people in certain areas of the Property due to ground fault electrical considerations can occur periodically and are potentially increased by the presence of implanted metals or poles (for example used for fishing) on the Property.

h. Risk of swift water injuries to a person on the Property, first responders, PGE employees which might be called to assist others, and members of the public who may attempt to access portions of the Property.

i. Debris fall over the dam into the area of the Property, including logs (sometimes full tree sized), dislodged dock structures, wooden flashboards from the dam, or other floating debris.

### 3- DECLARATION OF NICHOLAS LOOS IN SUPPORT OF PORTLAND GENERAL ELECTRIC COMPANY'S RESPONSE TO GRAND RONDE MOTION FOR INTERVENTION

6. As an example of the risks is the fact that Grand Ronde's access under the Registration has not been conducted "safely and without incident" as asserted by Grand Ronde. On October 4, 2018, PGE was contacted by Grand Ronde Tribe representatives to express urgent safety concerns about spill over the top of the dam into the area where Grand Ronde fishers were present without PGE's knowledge.

7. Public access to areas of the Property poses the risk of potential loss of, or damage to natural, historical, cultural or archaeological resources including, but not limited to, the following examples:

a. Damage from Grand Ronde's installation of anchors into rocks in the area of an archeological petroglyph which had previously been documented and recorded by the State Historic Preservation Office.

b. Damage from Grand Ronde drilling and installing footings into rocks adjacent to an archaeological petroglyph.

c. Damage from Grand Ronde spilling concrete slurry onto rocks adjacent to an archaeological petroglyph and adjacent to the Willamette River posing additional risk of damage to natural resources.

d. Grand Ronde leaving a diesel-filled generator on rocks in a location under the spillway where such generator might wash into the Willamette River and cause pollution to natural resources.

e. Grand Ronde drilling holes into a historic concrete fishway structure for a storage rack, and then leaving the cut-off bolts behind when required to remove the rack by DSL.

f. Grand Ronde staging equipment above the Platform Area in a location where it could wash into the Willamette River and cause pollution to natural resources.

g. Failure of DSL to require measures to protect natural, historical, cultural or archaeological resources including an intensive pedestrian survey, a land use survey, an archeological survey, prohibition of ground-disturbing activities, and other measures deemed appropriate by SHPO prior to approving the Registration.

8. On April 16, 2021, PGE filed an application with FERC requesting approval to allow access to certain areas within PGE's FERC hydroelectric project boundary for Native American tribes for traditional cultural practice purposes; specifically, for the ceremonial harvest of salmon, steelhead, and lamprey. The proposed easement submitted to FERC, captioned Perpetual Cultural Practices Easement, is attached hereto as Attachment A (the "PCPE"). The purpose of this PCPE is to allow limited cultural practices to be available to all five affected Native American Tribes, rather than just Grand Ronde, under controlled conditions and operational and safety requirements that are necessary for the operations of the Project and public safety. The PCPE can only be implemented if PGE owns the areas subject to the PCPE. This application includes provisions to allow temporary fishing platforms subject to various terms and conditions.

*I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.*

DATED: June 10, 2022

/s/ Nicholas Loos  
Nicholas Loos

## **ATTACHMENT A**

---

### **Draft Perpetual Cultural Practices Easement**

**PERPETUAL CULTURAL PRACTICES EASEMENT  
TABLE OF CONTENTS**

	<u>Page</u>
<b>Recitals</b>	<b>3</b>
<b>1. Identification of Grantees.</b>	<b>4</b>
<b>CONFEDERATED TRIBES OF THE GRAND RONDE COMMUNITY OF OREGON</b>	
<b>CONFEDERATED TRIBES OF SILETZ INDIANS</b>	
<b>CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION</b>	
<b>CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON</b>	
<b>CONFEDERATED TRIBES AND BANDS OF THE YAKAMA NATION</b>	
1.1 Conditions Precedent.	4
1.2 Conditions Subsequent.	4
<b>2. Purpose and Effect of Easement.</b>	<b>4</b>
2.1 Reserved Tribal & State's Rights.	4
2.2 Litigation.	4
2.3 Status of FERC License.	4
<b>3. Grant of Easement; Grantee's Rights.</b>	<b>4</b>
3.1 Exercise of Grantee's Rights.	4
3.2 Modification of Grantee's Rights.	5
3.3 Members.	
3.3.1 Release and Waiver.	5
3.3.2 Indemnity of Grantor.	5
<b>4. Easement Fee &amp; Expenses.</b>	<b>5</b>
<b>5. Access.</b>	<b>5</b>
<b>6. Grantor's Use.</b>	<b>5</b>
6.1 Support.	5
<b>7. Grantee's Acceptance of Easement Area.</b>	<b>5</b>
<b>8. Use of Easement Area.</b>	<b>6</b>
<b>9. Public Announcements.</b>	<b>6</b>
<b>10. Security Measures.</b>	<b>6</b>
<b>11. Grantor's Continuing Rights.</b>	<b>6</b>
11.1 Additional Requirements.	6
<b>12. Insurance.</b>	<b>6</b>

<b>13. Assumption of Risk/Indemnification.</b>	<b>7</b>
<b>13.1 Prudent Utility Practices.</b>	<b>7</b>
<b>14. Additional Measures; Safety, Security, and Operational Concerns.</b>	<b>8</b>
<b>15. Indemnification.</b>	<b>8</b>
<b>16. Retained Property Interests.</b>	<b>9</b>
<b>17. Default.</b>	<b>9</b>
<b>18. Remedies.</b>	<b>9</b>
<b>19. Waiver of Jury Trial.</b>	<b>9</b>
<b>20. Dispute Resolution.</b>	<b>10</b>
<b>21. Limited Waiver of Sovereign Immunity.</b>	<b>10</b>
<b>22. Governing Law, Jurisdiction and Venue.</b>	<b>10</b>
<b>23. Failure to Preform Due to Force Majeure.</b>	<b>11</b>
<b>24. Notice.</b>	<b>11</b>
<b>25. Necessary Documents.</b>	<b>12</b>
<b>26. Waiver.</b>	<b>12</b>
<b>27. No Offer.</b>	<b>12</b>
<b>28. No Third-Party Beneficiaries.</b>	<b>12</b>
<b>29. Compliance with Laws, Regulations, and other Legal Requirements.</b>	<b>12</b>
<b>30. Miscellaneous Provisions.</b>	<b>12</b>
 <b>EXHIBITS</b>	
Exhibit "A"      Legal Description of PGE Property	20
Exhibit "A-1"    Graphic Depiction of PGE Property	21
Exhibit "B"      Grantee Ratification & Assumption Agreement	22
Exhibit "C"      Cultural Practices	25
Exhibit "D"      Legal Description of Easement Area	26
Exhibit "D-1"    Graphic Depiction of Easement Area	27
Exhibit "E"      Electrical Hazards	28
Exhibit "F"      Additional Use Related Conditions	29
Exhibit "G"      Insurance Requirements	31

After Recording Please Return To:

Portland General Electric Company  
Attn: Mark Lindley  
121 SW Salmon Street, 1WTC1302  
Portland, Oregon 97204-9951

Forward All Tax Statements To:

No Change

---

(Space above this line for Recorder's use.)

### PERPETUAL CULTURAL PRACTICES EASEMENT

**PORTLAND GENERAL ELECTRIC COMPANY**, an Oregon corporation, 121 SW Salmon Street, Portland, Oregon 97204 ("Grantor" or "PGE") hereby grants and conveys to each of the Grantees identified below (collectively "Grantees", and collectively with Grantor, the "Parties"), a nonexclusive easement upon and across the property described herein, subject to and conditioned upon the terms and conditions contained herein.

#### RECITALS

A. Grantor owns that certain property commonly known as Moore's Island in West Linn, Oregon (the "Moore's Island Property"), Assessor Parcel Nos. 22E31 00702 and 22E31 00700 situated in Clackamas County, Oregon, as further in described in that certain Deed recorded September 23, 1930, in Volume 209, Page 1, in the Official Records of Clackamas County. Grantor also owns that certain property commonly known as Abernethy Island in Oregon City, Oregon (the "Abernethy Island Property"), Assessor Parcel No. 22E31 00600 and situated in Clackamas County, Oregon, as further described in that certain Deed recorded June 27, 2000, as Document Number 2000-041748 in the Official Records of Clackamas County. The Moore's Island Property and the Abernethy Island Property are further described on the attached *Exhibit "A"* and graphically depicted on the attached *Exhibit "A-1"* (cumulatively the "PGE Property").

B. Grantor owns and operates the Willamette Falls Hydroelectric Project which includes the Sullivan Generating Facility, substation and related structures for the generation, transmission, distribution and sale of electricity (the "PGE Facilities") primarily on the Moore's Island Property. The PGE Facilities include a dam spanning and encompassing portions of Willamette Falls (the "Dam") and which extends across portions of the PGE Property (both the Moore's Island Property and the Abernethy Island Property) as well as property owned by the State of Oregon.

C. Grantor's operations and the PGE Facilities are subject to that certain license granted to Grantor by the Federal Energy Regulatory Commission ("FERC") with respect to the Willamette Falls Hydroelectric Project ("Project No. 2233") dated November 30, 2005, as amended, extended, reissued, or replaced (the "FERC License"), which license includes the geographic area depicted on the attached *Exhibit "A-1"*. Specified portions of the property interests of Grantor subject to this Easement are subject to the FERC License.

D. Grantor recognizes and respects the deep cultural connection Pacific Northwest Native American Tribes ("Tribes") have to the land, waters, flora, and fauna at Willamette Falls since time immemorial.

E. Grantees desire to use a portion of the PGE Property to engage in traditional tribal cultural practices and Grantor desires to accommodate such needs by allowing Grantees to use such specified portion or portions of the PGE Property, subject to the terms and conditions set forth herein.

**NOW, THEREFORE**, for valuable consideration, the current receipt, reasonable equivalence, and

sufficiency of which are hereby acknowledged by each of the Parties, the Parties each agree as follows:

### TERMS, CONDITIONS, AND COVENANTS

1. **Identification of Grantees.** Grantor intends that the following identified Tribes will each have the opportunity to become a Grantee under this Easement: **CONFEDERATED TRIBES OF THE GRAND RONDE COMMUNITY OF OREGON** ("Grande Ronde"); **CONFEDERATED TRIBES OF SILETZ INDIANS** ("Siletz Tribe"); **CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION** ("CTUIR"); **CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON** ("Warm Springs Tribes"); **CONFEDERATED TRIBES AND BANDS OF THE YAKAMA NATION** ("Yakama Nation"); and (each a "Grantee").

1.1 **Conditions Precedent.** Any individual Grantee's rights and Grantor's obligations to any individual Grantee pursuant to this Easement are subject to and conditioned upon Grantor's receipt of a properly executed counterpart copy of this Easement suitable for recording in Clackamas County with respect to each such Grantee (which counterpart copy shall include a properly executed counterpart copy of the Ratification & Assumption Agreement attached as *Exhibit "B"* hereto). Notwithstanding anything to the contrary contained herein, no person or entity, including without limitation the Grantees identified above, shall acquire any rights under this Easement or with respect to the PGE Property in general, or have standing to exercise any right granted hereunder or pursuant hereto unless and until such counterpart copy is recorded with Clackamas County by Grantor. The date of each such recording by Grantor shall constitute the "Grantee Effective Date" with regard to each respective Grantee's Easement. Grantor shall not have any obligation to accept or record any counterpart copy of this Easement or to grant any right to access or use of the PGE Property after the \_\_\_\_ day of \_\_\_\_\_, 202\_\_.

Grantee Initials: \_\_\_\_\_

2. **Purpose and Effect of Easement.** This Easement is intended solely to provide each Grantees with access to a specific portion of the PGE Property (identified in Section 3 below) to enable the Grantees to exercise the traditional tribal cultural practices specified herein.

2.1 **Reserved Tribal & State's Rights.** Nothing in this Easement is intended to nor shall it create, abrogate, diminish, waive, or otherwise alter any right of any Grantee, including but not limited to, any rights reserved or established by or in any treaty, executive order, statute, rule, caselaw, common law or otherwise. Further, nothing in this Easement is intended to nor shall it create, expand, abrogate, diminish, waive, or otherwise alter the responsibilities of the United States toward any Grantee under any federal treaty, executive order, statute, or otherwise. Nothing in this Easement is intended to nor shall it create expand, abrogate, diminish, waive, or otherwise alter the State of Oregon's jurisdiction as it may exist under law over the flora, fauna, lands, or beds and banks of the Willamette River.

2.2 **Status of FERC License.** Nothing contained in this Easement shall serve to waive, modify or interfere with any right or obligation under the FERC License. Notwithstanding any other provision contained herein, Grantor, its successors, and assigns, shall have the right to perform any and all acts required by the conditions of the FERC License, Commission orders, Commission delegated staff orders or directives, or the Commission's regulations in effect from time to time, at any time, without the prior approval of any Grantee or Member.

3. **Grant of Easement; Grantee's Rights.** Subject to the satisfaction of the conditions set forth in Section 1 above, each Grantee shall have the perpetual nonexclusive right to enter upon the Easement Area defined below for the limited purpose of exercising the cultural practices specified in *Exhibit "C"* hereto and for no other use or purpose. No Grantee is acquiring any interest in or right to use any other property interest of Grantor. The portion of the PGE Property subject to this Easement is legally described on the attached *Exhibit "D"* and graphically depicted on the attached *Exhibit "D-1"* (the "Easement Area").

3.1 **Exercise of Grantee's Rights.** Each Grantee, and each of its Members, shall make reasonable and good faith efforts to coordinate with each other Grantee with respect to access to the Easement Area. Notwithstanding that Grantees may be subject to different Grantee Effective Dates, the rights of all Grantees are of equal priority as if the rights granted hereunder were granted to all Grantees simultaneously.

Notwithstanding the terms of this Easement, the use of the Easement Area shall not endanger health, create a nuisance, or otherwise be incompatible with the safety, security, integrity or efficient operation of the PGE Facilities or with overall Project No. 2233 recreational use, and construction, operation, and maintenance of structures or facilities on Easement Area will occur in a manner that will protect the scenic, recreational, and environmental values of Project No. 2233.

Grantee Initials: \_\_\_\_\_

**3.2 Modification of Grantee's Rights.** No amendment of a material term or condition of this Easement shall be effective unless set forth in a writing executed by Grantor and all Grantees and recorded with Clackamas County.

**3.3 Members.** The rights granted each Grantee hereunder shall extend only to the members of such Grantee ("Members") and no others. Grantee shall be solely responsible for determining who constitutes its Members at its sole discretion, but each Grantee remains solely responsible and liable for the acts or omissions of its Members related to this Easement. Each Grantee and its Members shall, in each instance, promptly take such actions as are necessary and appropriate to promptly and strictly abide by the terms and conditions of this Easement.

**3.4 Subordination.** Any rights granted by Grantor under this Easement are subject and subordinate to all instruments and interests, if any, affecting the PGE Property and/or Easement Area (recorded or unrecorded), the rights of and requirements of third parties, applicable Oregon Public Utility Commission ("OPUC") regulations, and applicable FERC regulations and Grantor's continuing right to construct, operate, maintain, replace, and secure the PGE Facilities. Notwithstanding any rights granted under this Easement, Grantor expressly retains all rights regarding compliance with all agency rules and regulations and to manage and operate the PGE Facilities, PGE Property and Easement Area in accordance with the FERC License and in accordance with the orders, rules and regulations of the OPUC and FERC.

**4. Easement Costs & Expenses.** Each respective Grantee shall bear the entire cost and expense incurred with respect to the activities of such Grantee and those of its Members on or associated with this Easement and the Easement Area. Grantor shall have no obligation to reimburse or otherwise pay any Grantee or other person for any assistance, participation, cooperation or any other activities pursuant to or associated with this Easement.

**5. Access.** For each Grantee and its Members, access under this Easement is expressly and strictly limited to the Easement Area and such access does not include ingress or egress across, over, under or through any other real property of Grantor or any affiliate of Grantor.

**6. Grantor's Use.** Nothing contained herein shall limit or encumber any right or property interest of Grantor with respect to those portions of the PGE Property which do not include the Easement Area. Grantor shall have and retain the right to access and use the Easement Area for all purposes including the right of Grantor to grant to third parties any such rights to use the subject property and Grantor's right to convey or further encumber all or any portion of such property provided that such use shall not materially and continuously interfere with the exercise by a Grantee of such Grantee's rights under this Easement. No right of Grantor shall lapse or be waived in the event Grantor fails to use the Easement Area, or any portion thereof, on a continuous basis. No Grantee or any of its Members shall interfere with or impair any right or property interest of Grantor. In the event of any conflict between the rights or property interests of Grantor and the rights of any Grantee, the rights of such Grantee shall be subordinate to those of Grantor.

**7. Grantee's Acceptance of Easement Area.** Each Grantee, on behalf of itself and its Members, accepts the PGE Property, the PGE Facilities, and the Easement Area "AS IS" in the condition existing as such of Grantee's execution hereof with no improvement, alteration, remediation, or other work required to be performed by Grantor. Grantor has not made any promise to alter or remodel, repair, remediate, or improve the PGE Property or the Easement Area, or any portion thereof, in any fashion and Grantor is not obligated to provide any utility service to any Grantee, any Member, or the Easement Area for the benefit of anyone other than Grantor. No representation, express or implied, respecting any matter or thing relating to this Easement, including, without limitation, the condition of the PGE Property, or the Easement

Area, or the safety, security, or suitability regarding the actual or intended use thereof by any Grantee or any Member, has been made to any Grantee, Member, person or entity by or on behalf of Grantor other than as may be expressly contained herein. THIS EASEMENT IS GRANTED BY GRANTOR AND ACCEPTED BY EACH GRANTEE ON BEHALF OF ITSELF AND ITS MEMBERS WITHOUT WARRANTY OR COVENANT OF TITLE OR QUIET ENJOYMENT.

ALL WARRANTIES, EXPRESS OR IMPLIED, ARE HEREBY DISCLAIMED BY GRANTOR, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, HABITABILITY, OR THAT THE SUBJECT PROPERTY OR ANY PORTION THEREOF IS SAFE OR SUITABLE FOR THE ACTUAL OR INTENDED PURPOSES OF ANY GRANTEE OR ANY MEMBER. GRANTOR MAKES NO, AND SPECIFICALLY NEGATES AND DISCLAIMS ANY, WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER WHATSOEVER, EXPRESS OR IMPLIED, ORAL OR WRITTEN, AS TO, CONCERNING OR WITH RESPECT TO THE CONDITION OF THE SUBJECT PROPERTY OR ANY PORTION THEREOF.

Grantee Initials: \_\_\_\_\_

8. **Use of Easement Area.** Each Grantee covenants and agrees that, in the conduct of any and all of its activities and operations and those of its Members hereunder, such Grantee and its Members will strictly comply with the additional conditions set forth in *Exhibit "F"* hereto, as well as all applicable laws.

9. **Safety.** Grantee acknowledges that safety is of paramount importance and, as identified in Section 12.2, below, there are a range of Hazardous Conditions associated with or potentially impacting the Easement Area that pose risks of injury or even death. The exercise of the rights granted under this Easement to each Grantee (and by extension to each such Grantee's Members) shall be conducted in a manner which does not pose any additional safety risk to PGE personnel or invitees and, shall be subject to the Assumption of Risk as provided in Section 12 and Additional Measures in Section 14.

10. **Security Measures.** Grantor may, but shall have no obligation, to provide or adopt security measures regarding any portion of the PGE Property and/or the Easement Area or to prevent third parties from accessing the Easement Area. For purposes of this Easement, "security" shall mean actions or measures to prevent unauthorized access or use by persons to PGE Property or PGE Facilities. Each Grantee and its Members shall promptly and strictly comply with all security measures or actions Grantor deems reasonably necessary and/or those of any federal, state, or local government.

11. **Insurance.** In conjunction with the delivery of their respective Ratification & Assumption Agreement to Grantor, and annually thereafter, each Grantee shall provide to Grantor proof of, and continuously maintain, comprehensive broad-form commercial general liability insurance against claims and liability for personal injury, death, or property damage arising from the use, occupancy, disuse or condition of the Easement Area, improvements or adjoining areas or ways, or from any other cause, as required on the attached *Exhibit "G"* hereto with a combined single limit not less than set forth in such *Exhibit "G"* and in any event in an amount sufficient to cover any claim or liability which may result from any obligation of such Grantee pursuant to or in any way associated with this Easement written in a form and coverage amounts acceptable to Grantor, with Grantor and Grantor's affiliates, directors, officers, employees and agents, named as additional insureds. Such insurance shall provide that Grantor shall be given at least thirty (30) days' notice prior to any cancellation, non-renewal, or modification.

12. **Assumption of Risk.**

12.1 **Assumption of Risk.** Each Grantee understands and agrees that, notwithstanding any safety practices, protocols, or procedures maintained or exercised by Grantor and/or each Grantee, including without limitation those requirements set forth in *Exhibit "F"* hereto or subsequently issued by Grantor, any activity of any Grantee or its Members could, under certain circumstances (which can change or occur instantaneously and without warning), constitute ultra-hazardous activities. Each Grantee, on behalf of itself and its Members assumes the sole risk of loss, damage, or injury, including death, which may result from the use of or presence upon the Easement Area by such Grantee and/or its Members. Any damage to the PGE Property, the Easement Area, any PGE Facilities, operations, or property, caused by, or resulting from the use of or presence upon the Easement Area by any Grantee and/or its Members shall be the sole responsibility of such Grantee and, at its sole option and discretion, Grantor may repair any such damage to

the PGE Property, the Easement Area, or to the PGE Facilities, or any portion thereof, and the responsible Grantee shall reimburse Grantor for the costs of such repair, actually and reasonably incurred, within thirty (30) days of receipt of any invoice for same. Grantor will not be liable for any damage to the property, facilities or any equipment of any Grantee and/or any Member or any injury to persons as a result of the presence, security, or operation of any PGE Facilities, or that might occur during operation, maintenance, reconstruction, or future construction of PGE Facilities, unless solely resulting from Grantor's gross negligence or willful misconduct.

**12.2 Hazardous Conditions.** Each Grantee acknowledges that portions of Project No. 2233, PGE Property and the Easement Area are located within the channel of the Willamette River and/or the Willamette Falls basin which creates potential exposure to hazardous conditions including, but not limited to: high or fast water events or conditions; PGE Facilities or Easement maintenance; PGE plant trips/emergency shutdowns; ground faults; repair or improvement of the PGE Facilities; adjustment of water levels; flashboard failure; activities of third parties, as well as other unpredictable events such as weather, snow melt, unusual runoff, debris, and the like. Each Grantee shall actively monitor conditions potentially affecting the safety, security and use of the Easement Area and shall, in good faith, promptly take such action as is necessary to adequately warn (without the assumption of any additional duty or liability associated with the content or method of delivery of such warning) Grantor, Grantee's Members, and other Grantees, and to restrict or suspend access to the Easement Area by Grantee and Grantee's Members as necessary or appropriate to reduce the risk of harm to any Grantee or any Member, the PGE Facilities or operations, and/or Grantor's personnel, and to protect public health and safety. Grantor has no obligation hereunder to monitor conditions potentially affecting use of the Easement Area pursuant to this Easement or provide warning of dangerous conditions. Grantor reserves the right, without assuming any duty or liability to any person or entity, to temporarily restrict or suspend access to the Easement Area at its sole and absolute discretion to reduce the risk of harm to any Grantee and/or any Members, to protect life, property, or to address its operational, safety, security, and efficiency concerns related to the PGE Property, the Easement Area, and/or the integrity and operation of the PGE Facilities, and /or Grantor's personnel, or to protect public health and safety until such time as the condition(s) that caused the temporary restriction or suspended access has abated.

**12.3 Electrical Hazards.** *EACH GRANTEE, ON BEHALF OF ITSELF AND ITS MEMBERS ACKNOWLEDGES THAT DUE TO THE PROXIMITY OF THE EASEMENT AREA TO THE PGE FACILITIES DEATH OR SERIOUS INJURY MAY OCCUR.* Each Grantee and Member shall strictly comply with the minimum requirements set forth in *Exhibit "E"* hereto. Each Grantee acknowledges and agrees that such measures may not be sufficient to protect persons and property in any specific circumstance. Each Grantee and each Member assumes the sole risk of loss, damage, or injury, including death, which may result from the use of or presence upon the Easement Area by such Grantee, its Members or any other person. Each Grantee further acknowledges that metallic structures or equipment which come into contact with any forms of electrically conducting environments (i.e., environments containing enough ions to conduct electricity such as soil/rock and water) will corrode and deteriorate at an accelerated pace. Each Grantee shall be solely responsible for determining, implementing, monitoring, and maintaining all means of safety, grounding and cathodic protection with respect to any activities its Members, structures, equipment, or property located on or near the Easement Area by or on behalf of such Grantee or its Members and shall indemnify, defend, and hold the Grantor Indemnitees harmless therefrom and all claims arising from or in any way related to electrical hazards or cathodic protection.

**Grantee Initials:** \_\_\_\_\_

**13. Grantor's Continuing Rights.** Each Grantee's rights and those of its Members pursuant hereto shall at all times be subject and subordinate to Grantor's rights to access, secure, maintain, and operate the PGE Facilities and access and use the PGE Property and Easement Area for any and all company purposes of Grantor, as well as the reasonable operational needs/efficiency, safety, and security efficiency concerns of Grantor as Grantor may impose from time to time pursuant to Section 14. Each Grantee hereby irrevocably and unconditionally waives any right to initiate, prosecute or maintain any action or proceeding seeking any remedy at law or in equity with respect to this Easement, including without limitation, equitable or injunctive relief, that would limit or impair any right granted or reserved to PGE hereunder in any fashion.

**13.1 Prudent Utility Practices.** Each Grantee, acknowledges and agrees that neither Grantor, nor any of the Grantor Indemnitees, shall have any liability to any Grantee or their respective Members, and no Grantee or its Members shall have any recourse against Grantor, or any of the Grantor Indemnitees, resulting from or in any way associated with any action or failure to act where Grantor's discretion is exercised in accordance with Prudent Utility Practices. For the purposes of this Easement, Prudent Utility Practices shall mean those practices, methods, equipment, specifications, security, standards of safety, and performance in the electric energy generation and utility industry in the Western United States (the "Industry"), as the same may change from time to time, as are commonly used in the construction, interconnection, operation, and maintenance of electric power facilities, inclusive of delivery, transmission, and generation facilities and ancillaries, which in the exercise of good judgment and in light of the facts actually known to the utility at the time of the decision being made and activity being performed are considered: (i) good, safe, and prudent practices generally accepted; (ii) are in accordance with generally accepted standards of safety, security, performance, dependability, efficiency, and economy of the Industry; (iii) are in accordance with generally accepted standards of professional care, skill, diligence, and competence in the Industry; and, (iv) are in compliance with applicable regulatory requirements and/or reliability standards. Prudent Utility Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of others, but rather are intended to include a spectrum of possible practices, methods or acts which could have been expected to accomplish the desired result at reasonable cost consistent with reliability, safety, security and expediency. The foregoing shall not establish any duty or standard of care on the part of Grantor.

**14. Additional Measures: Safety, Security, and Operational Concerns.** In addition to measures addressed in this Easement regarding safety, security, maintenance, and operational efficiency of PGE Facilities, Grantor reserves the right to impose additional temporary measures as Grantor deems reasonably necessary to protect life, property, or to address its maintenance, operational, safety, and security concerns related to the PGE Property, and/or the integrity and efficient operation of the PGE Facilities or Project No. 2233. Grantor will impose such additional requirements and limitations in good faith for such duration as is reasonably necessary until the safety, security or operational condition or concern has abated or resolved. Grantor shall give each Grantee reasonable advance written notice of any temporary restriction or suspension of access to the Easement Area, except that in the event of an emergency, Grantor may temporarily restrict or suspend access to the Easement Area without notice to any Grantee provided that Grantor uses commercially reasonable efforts to provide notice appropriate under the circumstances, which shall include without limitation e-mail or website posting, and in any event subsequently notifies Grantee as soon as reasonably practicable thereafter. Grantor shall use commercially reasonable efforts to minimize the duration of any temporary restriction or suspension of access resulting from Grantor's operations.

**15. Indemnification.** Each Grantee, on behalf of itself and its Members (including, without limitation, minor children), hereby releases the Grantor Indemnitees, and each of them, and shall assume all risk of loss, damage, or injuries of any kind, including death, which may result from the presence on and/or use of the PGE Property or the Easement Area by such Grantee and/or its Members (including, without limitation, damage or liability resulting from the operation of the PGE Facilities such as plant trips/emergency shutdowns, ground faults, fluctuations in water flow, debris being released or flashboard failure, and the like) and shall, to the fullest extent of the law, indemnify, defend (with counsel selected by Grantor at such indemnifying party's expense), save, and hold harmless Grantor and Grantor's affiliates and their respective directors, officers, agents, servants, contractors, and employees (collectively the "Grantor Indemnitees") from all claims, debts, lawsuits, injuries, damages, penalties, judgments, awards, losses, liabilities, interests, attorney's fees (including attorney's fees on appeal or review), costs, and expenses of whatever kind and nature arising out of or in any way related to any breach of this Easement by any Grantee or its Members and any other persons on the PGE Property and/or the Easement Area with the permission of such Grantee or its Members (whether in violation of this Easement or not), and/or the use, presence upon, and/or occupancy of the PGE Property or the Easement Area by such Grantee and/or its Members or non-Member invitees, and for which any of the indemnitors or the Grantor Indemnitees may or shall be liable, including but not limited to personal injury, wrongful death, or property damage (except for personal injury, wrongful death, or property damage caused solely by the gross negligence or willful misconduct of Grantor, its agents or employees; and such indemnity shall apply regardless of such Grantee's knowledge, or lack thereof, of the acts or omissions of any of its Members or invitees, whether in violation of this Easement or not. Each indemnitor

shall, upon the request of Grantor and at such indemnitor's sole expense defend (with counsel selected by Grantor at such indemnitor's expense) any action, suit, or proceeding of any kind arising under this Easement. In addition, each indemnitor shall reimburse and pay Grantor for any loss, damages, or expenses of any kind, including attorney's fees and costs incurred by Grantor under this Section.

Grantee Initials: \_\_\_\_\_

**16. Retained Property Interests.** No Grantee, Member, or any other person shall, by this Easement, prior conduct, the passage of time, or any other basis, obtain any right, title or interest in any of the real property interests of Grantor, save and except those rights specifically granted by this Easement. As part consideration for this Easement, each Grantee, on behalf of itself and its Members, unconditionally and irrevocably waives, disclaims, and relinquishes any right or cause of action against Grantor, or Grantor's predecessor's, successors and assigns, based upon or in any way associated with the concept (whether statutory, common law, or otherwise) of adverse possession, prescriptive rights, or the like, with respect to Grantor's Property, or any portion thereof, and further agrees that no such right(s) will accrue in the future.

Grantee Initials: \_\_\_\_\_

**17. Default.** Time is of the essence with respect to every term, condition, obligation, and provision contained in this Easement. Each Grantee and its Members shall strictly perform and comply with all terms, conditions, and provisions set forth in this Easement in a timely manner, and promptly notify Grantor in writing upon learning of the occurrence of any event which constitutes a breach of any obligation under this Easement. Grantor shall only be deemed to be in default under the terms of this Easement in the event Grantor shall fail to observe, keep or perform any covenant or agreement that is not observed, kept or performed by Grantor within thirty (30) calendar days after the receipt by Grantor of written notice from a Grantee of such failure, which notice shall specifically set out the failure and any alleged damages accruing therefrom. Grantor shall not be considered in default so long as Grantor commences to cure the failure in a diligent manner and Grantor shall thereafter be allowed such additional time as reasonably necessary to correct the failure. Default by Grantor as to any Grantee shall not constitute a default as to any other Grantee unless and until such other Grantee complies with this Section 17.

**18. Remedies.** Subject to each Grantee's limited waiver of sovereign immunity in Section 21 below, and notwithstanding anything to the contrary contained herein, Grantor shall have the right to enforce this Easement by any legal or equitable proceedings available under applicable law. UNDER NO CIRCUMSTANCES SHALL GRANTOR'S OBLIGATIONS OR CUMULATIVE LIABILITY UNDER OR WITH RESPECT TO THIS EASEMENT AS TO ANY GRANTEE EXCEED THE AMOUNT OF PROCEEDS PAID BY INSURANCE CARRIER(S) UNDER INSURANCE POLICIES LISTED IN EXHIBIT H WHERE GRANTOR IS AN "ADDITIONAL INSURED" AND SUCH INSURANCE PROCEEDS SHALL BE THE SOLE SOURCE OF SATISFACTION OF ANY PGE OBLIGATION OR LIABILITY WITH RESPECT TO THIS EASEMENT. GRANTOR SHALL NOT BE LIABLE TO ANY GRANTEE, ANY MEMBER, OR TO ANY THIRD PARTY IN CONNECTION WITH THIS EASEMENT OR ANY ACTIVITY ON OR ABOUT THE PROPERTY OR THE EASEMENT AREA FOR ANY DIRECT DAMAGES IN EXCESS OF THE FOREGOING LIMITATION, OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, ARISING OUT OF, IN CONNECTION WITH OR AS A RESULT OF THIS EASEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, WARRANTY OR ANY OTHER THEORY IN LAW OR IN EQUITY. The rights given to Grantor under this Easement are cumulative and shall be in addition and supplemental to all other rights or remedies that Grantor may have under this Agreement, under laws then in force, or in equity. Any action against Grantor (whether for breach of contract or strict liability or tort claim) by or on behalf of any Grantee must be commenced within one year after the cause of action has accrued. Subject to each Grantee's limited waiver of sovereign immunity in Section 21 below and the other provisions in this Section 18, and notwithstanding anything to the contrary contained herein, each Grantee shall have the right to enforce this Easement by any legal or equitable proceedings available under applicable law. To the extent any dispute arises among the Grantees with regard to the exercise of rights under this Easement, no Grantee shall include Grantor as a party to any action or proceeding based on its status as landowner or the Grantor under this Easement. Grantor shall not be party to any such action or proceeding unless Grantor decides in its sole discretion to join the action or proceeding.

Grantee Initials: \_\_\_\_\_

**19. Waiver of Jury Trial.** Grantor and each Grantee hereby knowingly, voluntarily, intentionally, and irrevocably waive any right each may have to a trial by jury in respect of any action, proceeding or counterclaim based on this Easement, or arising out of; under or in connection with this Easement, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of any Party hereto.

Grantee Initials: \_\_\_\_\_

**20. Dispute Resolution.** Except to the extent that FERC or another agency with jurisdiction of a particular issue has a procedure that precludes implementation of this Section 20, the resolution of any dispute initiated by any Grantee relating to or arising from this Easement or activities arising from or relating to this Easement, including activities prohibited by this Easement shall, at the request of any Party, be subject to dispute resolution pursuant to this Section 20. The Parties agree to devote such time, resources, and attention to dispute resolution as are needed and as can be reasonably provided to attempt to resolve the dispute at the earliest time possible, and each Party shall cooperate in good faith to promptly schedule, attend, and participate in the dispute resolution. Each Party shall implement promptly all final agreements reached, consistent with its applicable statutory and regulatory responsibilities. Notwithstanding the foregoing, this Section shall not apply to actions or proceedings by and among Grantees or their respective Members which do not involve Grantor or Grantor's rights pursuant to this Easement.

**20.1 General Procedures.** A Party claiming a dispute shall give notice of the dispute within thirty (30) days of the Party's actual knowledge of the act, event, or omission that gives rise to the dispute. At a minimum and in any dispute subject to these procedures, the Parties shall hold at least one informal meeting within thirty (30) days after notice to attempt to resolve the disputed issue(s). The Parties may by unanimous agreement of the parties to the dispute attempt to resolve the dispute using a neutral mediator unanimously selected by the disputing Parties within fifteen (15) days after notice by a Party that the informal meetings did not resolve the dispute. The mediator shall mediate the dispute during the next sixty (60) days after its selection. Any of these time periods may be reasonably extended or shortened by agreement of the Parties to the dispute, or as necessary to conform to the procedure of an agency or court with jurisdiction over the dispute. Unless otherwise agreed among the Parties to the dispute, each Party shall bear its costs for its own participation in the dispute resolution. If the Parties are unable to resolve a dispute as provided in this Section, the matter in dispute may be referred to the Circuit Court for the State of Oregon sitting in Clackamas County, Oregon, and no other, and in no instance shall any tribal court take jurisdiction of any such suit, action or proceeding.

Grantee Initials: \_\_\_\_\_

**21. Limited Waiver of Sovereign Immunity.** Each Grantee acknowledges that Grantor would not enter into this Easement but for such Grantee's limited waiver of its sovereign immunity. As part consideration for this Easement, each Grantee expressly, unequivocally and irrevocably waives its sovereign immunity (including that of such Grantee's tribal officials acting within the scope of their official capacities) solely in any action or proceeding involving Grantor to carry out or enforce this Easement; to suspend, prevent or limit access to the PGE Property and/or the Easement Area; or to seek damages hereunder which is brought by Grantor or any Grantee in the courts of the State of Oregon or the federal courts of the United States. This waiver is a limited waiver of sovereign immunity as to such action and as to tribal, state, or federal court jurisdiction and does not extend to matters or jurisdiction beyond this Easement or unrelated to this Easement. Each Grantee further waives any jurisdiction of any tribal courts or any other tribal regulatory or enforcement body or bodies in any action brought by Grantor, any Grantee, or any Member with respect to the PGE Property, the Easement Area, this Easement, or to carry out, enforce or seek equitable remedies and/or damages arising out this Easement. Notwithstanding the foregoing, this limited waiver of sovereign immunity shall not extend to actions or proceedings by and among Grantees or their respective Members which do not involve Grantor or Grantor's rights pursuant to this Easement.

Grantee Initials: \_\_\_\_\_

**22. Governing Law, Jurisdiction and Venue.** This Easement shall be governed, construed, applied, and enforced in accordance with the laws of the State of Oregon without giving effect to any choice or conflict of law provision or rule or treaty right. Any suit, action or proceeding initiated by Grantor or any

Grantee relating to or arising from the rights of Grantor or the Grantees, individually and collectively, under this Easement, including activities prohibited by this Easement, shall take place in the Circuit Court for the State of Oregon sitting in Clackamas County, Oregon, and no other, and in no instance shall any state or tribal court take jurisdiction of any such suit, action or proceeding. Notwithstanding the foregoing, the jurisdiction of the Circuit Court for the State of Oregon sitting in Clackamas County, Oregon, shall not extend to actions or proceedings by and among Grantees or their respective Members which do not involve Grantor or Grantor's rights pursuant to this Easement.

**Grantee Initials:** \_\_\_\_\_

**23. Failure to Perform Due to Force Majeure.** Grantor shall not be liable to any Grantee for breach of this Easement as a result of or failure to perform or for delay in performance of any provision of this Easement if such performance is delayed or prevented by force majeure. The term "force majeure" means any cause reasonably beyond Grantor's commercially reasonable control, whether of the kind specifically enumerated or otherwise, whether unforeseen, foreseen, foreseeable, or unforeseeable, and regardless of the fault or negligence of Grantor. Force majeure may include, but is not limited to, natural events; labor or civil disruption; governmental or quasi-governmental orders, restraints, expropriation or delays; breakdown or failure of any portion of the PGE Facilities; orders of any court, authority, or agency having jurisdiction over Grantor's actions (including without limitation FERC, OPUC, and the like); incidence of disease or other illness that reaches outbreak, epidemic, or pandemic proportions (expressly including the novel coronavirus SARS-CoV-2 RNA ("COVID-19") and any of the foregoing events caused as a result of COVID-19); delay in issuance of any required approval, permit or license; or commercially unreasonable cost or risk to Grantor. Grantor shall notify the Grantees in writing within ten (10) business days, or otherwise as soon as reasonably practicable, after Grantor determines that an event constitutes force majeure. Such notice shall identify the event causing the delay or anticipated delay, estimate the anticipated length of delay, state the measures taken or to be taken to minimize the delay, and estimate the timetable for implementation of the measures. Grantor shall employ commercially reasonable efforts to promptly resume performance of Grantor's obligations pursuant to this Easement and, when able, to resume performance of its obligations. Each Grantee acknowledges and agrees that, as of such Grantee's Effective Date, COVID-19 is an ongoing event, and any delays in the performance of Grantor's obligations caused by COVID-19 will qualify as an event of force majeure hereunder.

**24. Notice.** Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Easement to be served on or received by any Party to the other shall be in writing (including via email).

**24.1 Notice to Grantor.** Notice to Grantor shall be made to the following individuals via email (and copied by US Mail) or to such other address as a Party shall hereafter designate in writing to another Party in accordance with the foregoing procedures:

PGE Director of Dam Safety & Renewable Energy  
121 SW Salmon Street 1WTC1302, Portland, OR 97204-9951  
Phone: (503) 464-8879  
Email: [nick.loos@pgn.com](mailto:nick.loos@pgn.com)

With copies concurrently delivered to:

Principal, PGE Real Estate Strategy, Acquisitions & Dispositions  
121 SW Salmon Street 1WTC1302, Portland, OR 97204-9951  
Phone: 503-464-8102  
Email: [mark.lindley@pgn.com](mailto:mark.lindley@pgn.com)

PGE Willamette Falls Biological and Licensing Manager  
33831 SE Faraday Road, Estacada, OR 97023  
Phone: 503-630-8234  
Email: [tim.shibahara@pgn.com](mailto:tim.shibahara@pgn.com)

PGE Archaeologist

121 SW Salmon Street 3WTC0403, Portland, OR 97204  
Phone: 503-464-8657  
Email: [mini.sharma-ogle@pgn.com](mailto:mini.sharma-ogle@pgn.com)

PGE General Counsel  
121 SW Salmon Street 1WTC1715, Portland, OR 97204  
Phone: 503-464-8860  
Email: [richard.george@pgn.com](mailto:richard.george@pgn.com)

**24.2 Notice to Grantee.** Notices to any Grantee shall be delivered to such Grantee by email (and copied by US Mail) at the contact address(es) set forth in such Grantee's Ratification & Assumption Agreement.

**25. Necessary Documents.** Each Grantee shall at the request of Grantor promptly provide any documentation or information reasonably requested by Grantor and execute, acknowledge and deliver any and all documents and instruments reasonably necessary to complete, support, or document this Easement and to give full effect to this Easement, including without limitation documents necessary for compliance with the laws and Regulations of FERC and OPUC.

**26. Waiver.** In no event shall Grantor or Grantees be deemed to have waived any rights under this Easement unless and until such waiver is given in writing and signed by Grantor or Grantee.

**27. No Offer.** Presentation of an unexecuted copy of this Easement shall not be deemed an offer or an acceptance to contract and this Easement will have no effect with respect to any Grantee unless and until it has been fully executed and mutually delivered by the Parties and recorded by Grantor; each as provided in Section 1 of this Easement.

**28. No Third-Party Beneficiaries.** Nothing in this Easement gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise, to third parties unless such third persons are expressly described as intended to be beneficiaries of its terms. This Easement shall not create any right or interest in any individual Member, the public, or any member of the public, as a third-party beneficiary of this Easement and shall not authorize any non-Party to maintain a suit at law or equity pursuant to this Easement.

**29. Compliance with Laws, Regulations, and other Legal Requirements.** In exercising the rights and privileges granted by this Easement, each Grantee shall promptly comply with all laws, regulations, and other requirements that apply to the Easement Area, to the extent they do not conflict with federal law, regulation, or policy. Each Grantee and its Members shall strictly observe and promptly comply with all governmental or quasi-governmental orders with respect to public activities, gatherings and events, and social/physical distancing. No Grantee or Member shall engage in any activity prohibited by Executive Order or inconsistent with guidance provided by the Oregon Health Authority.

**30. Miscellaneous Provisions.** The parties hereto each agree that the Recitals are true and correct and incorporated herein by this reference. All provisions of this Easement have been negotiated at arm's length and each Party has had the opportunity to have legal counsel review and approve the form and content of this Easement. This Easement shall not be construed for or against any party by reason of its authorship or alleged authorship. This Easement shall not be deemed or construed to create or establish any relationship of partnership or joint venture or similar relationship or arrangement between Grantor and any Grantee or Member. Effective on each Grantee's Effective Date, any prior lease, sublease, permit, license, acquiescence or the like, if any, held by such Grantee and/or its Members with respect to all or any portion of the PGE Property and/or the Easement Area, is terminated and superseded in its entirety by this Easement; provided, however, this Easement shall not operate to waive, release, or relieve any Grantee or Member from any obligation to Grantor or to any third party to the extent such obligation accrued prior to such Grantee's Effective Date. No Grantee or Member shall, either voluntarily or by operation of law, transfer or assign all or any part of its rights hereunder in any fashion, license or sublet the Easement Area or any portion thereof, or encumber or pledge all or any portion of this Easement or any rights hereunder, without Grantor's express prior written consent in each instance, which consent may be withheld or issued subject to conditions, in Grantor's sole and absolute discretion. Any obligation or undertaking by a Grantee not to do any act or thing is taken to include an obligation or undertaking not to permit or suffer the doing of the act or thing. This Easement may be

executed in counterparts, and such counterparts together shall constitute but one original of the Easement. Each counterpart shall be equally admissible in evidence, and each original shall fully bind each Party who has executed it. The provisions of this Easement are severable, and if one or more provisions are determined to be unenforceable, in full or in part, by a court of competent jurisdiction, the validity of the remaining provisions, including any partially unenforceable provisions, to the extent enforceable, shall not be affected in any respect whatsoever. The Grantees who have satisfied the conditions of Section 1 hereof and Grantor are the only parties to this Easement and are the only parties entitled to enforce its terms. The risk of loss, release and indemnity obligations of each Grantee, the right of Grantor to enforce its remedies hereunder, as well as all provisions of this Easement which contemplate performance after the expiration, termination, or revocation of the this Easement shall survive and remain enforceable, and shall apply equally to all parents, subsidiaries, affiliates, successors and assigns of Grantor. Grantor, exclusively, shall record this Easement. Subject to Section 2.1 hereof, each Grantee and Grantor hereby agree that all prior written and oral agreements, understandings and/or practices between Grantor and such Grantee relative to the Easement and the use of the subject property are superseded by this instrument. This instrument, along with any exhibits and attachments or other documents affixed hereto or referred to herein, constitute the entire and exclusive agreement between each Grantee and Grantor relative to the Easement. This Easement is made on the understanding that each term is in consideration and support of every other term, and each term is a necessary part of the entire agreement.

The terms of this Easement shall constitute covenants running with the land and shall bind the property described herein and be binding upon and inure to the benefit of parties hereto and their respective successors and assigns. The Easement is an in-gross easement and is not appurtenant to any particular property of any Grantee.

*[SIGNATURE PAGES & NOTARY ACKNOWLEDGMENTS TO FOLLOW]*

IN WITNESS WHEREOF, Grantor has caused this Easement to be executed effective as of the  
\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

**GRANTOR:**

**PORTLAND GENERAL ELECTRIC COMPANY,**  
an Oregon corporation

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**STATE OF OREGON** \_\_\_\_\_ )  
\_\_\_\_\_) ss.  
County of \_\_\_\_\_ )

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_, by  
\_\_\_\_\_ as the \_\_\_\_\_ and authorized representative of *PORTLAND*  
*GENERAL ELECTRIC COMPANY*, an Oregon corporation ("Grantor") who personally appeared before me  
and acknowledged the foregoing instrument to be their voluntary act and deed.

\_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires: \_\_\_\_\_



IN WITNESS WHEREOF, the undersigned Grantee has caused this Easement to be executed this \_\_\_\_ day of \_\_\_\_\_, 202\_\_.

**GRANTEE:**

**CONFEDERATED TRIBES OF THE SILETZ INDIANS**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF OREGON \_\_\_\_\_ )  
 ) ss.  
County of \_\_\_\_\_ )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 202\_\_, by \_\_\_\_\_ as the \_\_\_\_\_ and authorized representative of **CONFEDERATED TRIBES OF THE SILETZ INDIANS** ("Grantee") who personally appeared before me and acknowledged the foregoing instrument to be his or her voluntary act and deed.

\_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires: \_\_\_\_\_

IN WITNESS WHEREOF, the undersigned Grantee has caused this Easement to be executed this \_\_\_\_ day of \_\_\_\_\_, 202\_\_.

**GRANTEE:**

**CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF OREGON \_\_\_\_\_ )  
 ) ss.  
County of \_\_\_\_\_ )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 202\_\_, by \_\_\_\_\_ as the \_\_\_\_\_ and authorized representative of **CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION** ("Grantee") who personally appeared before me and acknowledged the foregoing instrument to be his or her voluntary act and deed.

\_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires: \_\_\_\_\_

IN WITNESS WHEREOF, the undersigned Grantee has caused this Easement to be executed this \_\_\_\_ day of \_\_\_\_\_, 202\_\_.

**GRANTEE:**

**CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF OREGON \_\_\_\_\_ )  
 ) ss.  
County of \_\_\_\_\_ )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 202\_\_, by \_\_\_\_\_ as the \_\_\_\_\_ and authorized representative of **CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON** ("Grantee") who personally appeared before me and acknowledged the foregoing instrument to be his or her voluntary act and deed.

\_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires: \_\_\_\_\_

IN WITNESS WHEREOF, the undersigned Grantee has caused this Easement to be executed this \_\_\_\_ day of \_\_\_\_\_, 202\_\_.

GRANTEE:

CONFEDERATED TRIBES AND BANDS OF THE YAKAMA NATION

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF OREGON \_\_\_\_\_ )  
 ) ss.  
County of \_\_\_\_\_ )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 202\_\_, by \_\_\_\_\_ as the \_\_\_\_\_ and authorized representative of **CONFEDERATED TRIBES AND BANDS OF THE YAKAMA NATION** ("Grantee") who personally appeared before me and acknowledged the foregoing instrument to be his or her voluntary act and deed.

\_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires: \_\_\_\_\_

**EXHIBIT "A"**  
**LEGAL DESCRIPTION OF PGE PROPERTY**

The Moore's Island Property, Assessor Parcel Nos. 22E31 00702 and 22E31 00700, situated in Clackamas County, Oregon, as further in described in that certain Deed recorded September 23, 1930, in Volume 209, Page 1, in the Official Records of Clackamas County.

The Abernethy Island Property, Assessor Parcel No. 22E31 00600, situated in Clackamas County, Oregon, as further described in that certain Deed recorded June 27, 2000, as Document Number 2000-041748 in the Official Records of Clackamas County.

***[TO BE FURTHER EXPANDED AND THEN REFINED BY SURVEY PRIOR TO GRANT]***

**EXHIBIT A-1  
GRAPHIC DEPICTION OF PGE PROPERTY**

***[TO BE COMPLETED FOLLOWING DETERMINATION OF LEGAL DESCRIPTION PRIOR TO GRANT]***

DRAFT

**EXHIBIT "B"**  
**GRANTEE RATIFICATION & ASSUMPTION AGREEMENT**

**RATIFICATION & ASSUMPTION AGREEMENT**

**FOR VALUABLE CONSIDERATION**, the current receipt, reasonable equivalence, and sufficiency of which are hereby acknowledged by the undersigned Grantee, such Grantee hereby ratifies, reaffirms, confirms and acknowledges all of its covenants, representations, warranties, agreements, and obligations under, and all of the terms and conditions of, that certain Perpetual Cultural Practices Easement granted by Portland General Electric Company, an Oregon corporation, dated the \_\_\_\_ day of \_\_\_\_\_, 202\_\_ with respect to the Easement Area described therein (the "Easement"), and agrees to be bound thereby and perform thereunder in strict compliance with the terms and conditions set forth therein.

1. Grantee hereby expressly acknowledges Grantee's understanding of and agreement with the entire Easement, including without limitation each of those specific Sections of the Easement which call for Grantee's Initials (e.g., Section 1, *Identification of Grantees*; Section 3, *Grant of Easement*; Section 7, *Grantee's Acceptance of Easement Area*; Section 12, *Assumption of Risk*; Section 13, *Grantor's Continuing Rights*; Section 15, *Indemnification*; Section 16, *Retained Property Interests*; Section 18, *Remedies*; Section 19, *Waiver of Jury Trial*; Section 20, *Dispute Resolution*; Section 21, *Limited Waiver of Sovereign Immunity*; Section 22, *Governing Law, Jurisdiction and Venue*; and the like).

2. **Notice.** Notices to Grantee for the purposes of Section 24 of the Easement shall be delivered to Grantee by e-mail (and copied by US Mail) at the following contact address(es) or to such other address as a Party shall hereafter designate in writing to another Party in accordance with the foregoing procedures:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_  
  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

3. **Authority.** Each signatory to this Agreement certifies that he or she is authorized to execute this Agreement and has the authority and capacity to legally bind the Party he or she represents, and that such Party shall be fully bound by the terms hereof upon such signature without any further act, approval, or authorization by such Party.

4. **Governing Law; Venue.** This Ratification & Assumption Agreement shall be governed, construed, applied, and enforced in accordance with Section 21 and Section 22 of the Easement.

5. **Interpretation.** Capitalized terms not defined herein shall have the same meaning as set forth in the Easement. References herein to the Easement shall include this Agreement and all prior amendments to such agreements, if any, except where the context otherwise requires.

6. **Controlling Agreement.** In the event of any conflict between any other part of the Easement and this Agreement, the terms and conditions of the Easement shall control.

7. **Entire Agreement.** The recitals are true and correct and incorporated herein by this reference. This instrument, along with any exhibits and attachments or other documents affixed hereto or referred to herein, constitute the entire and exclusive agreement between Grantee and Grantor relative to the content hereof. All prior written and oral agreements, understandings and/or practices relative to the content hereof are

superseded by this instrument and shall remain subject to the operation and effect of any and all instruments and matters of record or in fact. Except as may be otherwise provided in this Agreement, the Easement shall each remain unmodified and in full force and effect.

The parties hereto have executed this Agreement as of the \_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns. Grantee will not, at any time in the future, repudiate this Ratification and Assumption Agreement. Grantee shall not record this Agreement.

*[SIGNATURE PAGES & NOTARY ACKNOWLEDGMENTS TO FOLLOW]*

**GRANTEE:**

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**STATE OF OREGON** \_\_\_\_\_ )  
 ) ss.

County of \_\_\_\_\_ )

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_, by \_\_\_\_\_ as the \_\_\_\_\_ and authorized representative of \_\_\_\_\_ ("Grantee") who personally appeared before me and acknowledged the foregoing instrument to be his or her voluntary act and deed.

\_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires: \_\_\_\_\_

**GRANTOR:**

**PORTLAND GENERAL ELECTRIC COMPANY,**  
an Oregon corporation

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**STATE OF OREGON** \_\_\_\_\_ )  
 ) ss.

County of \_\_\_\_\_ )

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_, by \_\_\_\_\_ as the \_\_\_\_\_ and authorized representative of **PORTLAND GENERAL ELECTRIC COMPANY**, an Oregon corporation ("Grantor") who personally appeared before me and acknowledged the foregoing instrument to be their voluntary act and deed.

\_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires: \_\_\_\_\_

**EXHIBIT "C"**  
**CULTURAL PRACTICES**

Pursuant to the terms and conditions of the Easement, the "cultural practices" include the non-exclusive access to and use of the Easement Area for the following uses and purposes and for no other: (1) to harvest Pacific Lamprey and those cultural practices reasonably connected therewith; (2) to harvest Salmon and Steelhead and those cultural practices reasonably connected therewith; (3) to conduct engineering and geotechnical exploration and other related activities for the purpose of evaluating the proposed construction of a platform for harvesting Salmon and Steelhead; and (4) to construct, operate, and temporarily maintain and use a single removable fishing platform (scaffold) within the Easement Area. Footings may be permanent, but the platform apparatus must be readily removable, constructed out of nonconductive insulating materials and/or covered with non-conductive coating, and mounted to the rock/soil using nonconductive insulating mounts and/or inserting nonconductive insulators between the fishing platform and the mounts. No other rights, uses, or construction, other than as outlined above in this Exhibit "C" are authorized within the Easement Area.

**EXHIBIT "D"**  
**LEGAL DESCRIPTION OF EASEMENT AREA**

*[TO BE DETERMINED BY SURVEY PRIOR TO GRANT]*

DRAFT

**EXHIBIT "D-1"**  
**GRAPHIC DEPICTION OF EASEMENT AREA**

*[TO BE DETERMINED BY SURVEY PRIOR TO GRANT]*

DRAFT

## **EXHIBIT "E"**

### **ELECTRICAL HAZARDS**

Grantor experienced a ground fault in 2001 that electrocuted several fish in the Willamette River at the PGE Facilities. Since that time Grantor has been investigating the situation and conducting testing and analysis regarding electrical touch potential at and around Willamette Falls. Preliminary results of that investigation indicate that there is a potential for an electrical shock hazard to humans in the Easement Area when there is a fault to the transmission and distribution system.

Each Grantee and its Members shall strictly comply with the following minimum requirements with the acknowledgment, understanding, and agreement that compliance does not guarantee safe operation and may not be sufficient to protect persons and property in any specific circumstance:

#### **Ground Fault Safety Mitigation ~**

Grantee shall establish and maintain a Ground Fault Protection and Safety Mitigation Plan sufficient to protect Grantee and its Members from electrical hazards with respect to all activities of such persons on or at the Easement Area. Such Plan shall comply with the standards and requirements set forth by The Institute of Electrical and Electronics Engineers, Inc. IEEE80, *IEEE Guide for Safety in AC Substation Grounding*, the National Electric Safety Code, and the Occupational Safety & Health Administration, each as applicable.

At a minimum, each Grantee and its Members shall employ the following protective actions:

- Constructing removable fishing platforms out of nonconductive insulating materials and/or covering the fishing platforms with non-conductive coating;
- Mounting fishing platforms to the rock/soil using nonconductive insulating mounts and/or inserting nonconductive insulators between the fishing platform and the mounts;
- Using fishing equipment such as dip nets made out of nonconductive insulating materials;
- Wearing nonconductive gloves and shoes with soles made out of nonconductive insulating materials; and
- No activities shall be conducted within fifty (50) feet of any PGE Facilities (regardless of location), including without limitation, power lines. For avoidance of doubt, Grantees shall comply with the protective actions specified herein and may not use poles for dipping nets or other related activities that exceed thirty-one (31) feet in length.

#### **No Warranty of Accuracy or Completeness ~**

Grantor is under no duty to, but may from time to time, provide Grantees with notice or information regarding potential hazards and/or dangerous conditions. Although Grantor believes that the information is reliable and relevant for the purpose of evaluation by Grantees, Grantor is not assuming any duty with respect to and makes no representation or warranty as to the accuracy or completeness of the information to any Grantee. Each Grantee, acknowledges and agrees that neither Grantor, nor any of the Grantor Indemnitees, shall have any liability to any Grantee or their respective Members, and no Grantee or its Members shall have any recourse against Grantor, or any of the Grantor Indemnitees, or other representatives, resulting from or in any way associated with reliance on or use of the information.

**EXHIBIT "F"**  
**ADDITIONAL USE RELATED CONDITIONS**

**Safety.** In no event shall any Grantee allow or engage in any unconstrained access in waters immediately below Dam spillways/structures except when conducting lamprey harvests during the months of June and July each year and then provided water levels are low and Grantor is not conducting any activity on or upriver from the dam which may endanger those conducting lamprey harvests. For the purposes of this Easement the term "unconstrained" means: (i) that there is no physical barrier between individuals and Dam structures to prevent entrainment in flows over or through the Dam structures, or (ii) in the direct path of any controlled or uncontrolled release of waters to areas below the Dam. Examples of unconstrained access include access to areas affected by failure of the Obermeyer weirs resulting in unplanned/uncontrolled spill from the lagoon or flashboard failure with sudden release of water to otherwise dewatered areas around base of the falls.

**Property.** Each Grantee and its Members shall protect all survey monuments found within or adjacent to the Easement Area. If any such survey monuments are damaged or disturbed, such Grantee shall promptly notify Grantor. No Grantee nor any Member may do or permit anything to be done in or about the PGE Property or the Easement Area or bring or keep anything therein that will in any way increase the existing rate of or affect any fire, hazard, or other insurance upon the PGE Facilities, the PGE Property, the Easement Area, or any of its contents or cause cancellation of any insurance policy covering the PGE Facilities, the PGE Property, the Easement Area, or any part thereof or any of its contents.

**Grantee Duties.** Each Grantee shall, at such Grantee's expense and risk, install and maintain on the Easement Area: (i) such safety, security, and evacuation route and instruction signage as FERC or Grantor may require; (ii) lockable access to all of such Grantee's improvements accessible only by such Grantee, Grantor, and first responders; (iii); a twenty-four (24) hour surveillance monitoring system accessible by such Grantee, Grantor, and law enforcement; (iv) such audible/visible warning devices as FERC or Grantor may require to warn of excessive flows caused by natural occurrence, from a Dam safety system, plant trip/emergency shutdown, or structure failure allowing uncontrolled release of water into areas not otherwise in the flow path; and (v) provide at least two individuals trained in swift-water rescue on site at the Easement Area during any use or access thereof. In addition to the foregoing, each Grantee shall, at such Grantee's expense and risk, promptly remove all improvements and property during periods of non-use.

**Unmanned Vehicles.** No Grantee nor any of its Members shall operate any unmanned vehicles or aircraft of any type (e.g., drones, or the like) over any PGE Property except for the Easement Area, or within Fifty (50 Feet) of any PGE Facilities (regardless of location), including without limitation, power lines.

**Contractors.** Each Grantee hereby represents, covenants and warrants that all construction by Non-Members within the Easement Area, if any is permitted under this Easement, shall be promptly performed in a workmanlike manner; in accordance with all applicable statutes, laws, and regulations; and that all contractors of every tier shall at all times carry workers' compensation insurance in compliance with the laws of the State of Oregon. All Contractors shall obtain specific access permits from Grantor under terms and conditions Grantor deems reasonably necessary to address safety, security and operational efficiency of the PGE Facilities.

**No Liens.** PGE shall not have any liability or responsibility with respect to any obligations for labor, services, materials, supplies, utilities, furnishings, machinery, or equipment which is provided to Grantee and/or related to Grantee's personal property with respect to the Easement Area. No Grantee shall suffer or permit any liens to attach to all or any part of the Easement Area, PGE Property, or any interest of Grantee in the Easement Area by reason of any tax and/or of any work, labor, services, or materials done for, or supplied to, or claimed to have been done for or supplied to, such Grantee, any of such Grantee's contractors or anyone occupying or holding an interest of such Grantee in all or any part of the Easement Area through or under such Grantee.

**Cultural Resources.** Grantee, at Grantee's sole risk and expense, shall have an archaeological monitor present during any ground disturbance in the Easement Area and will strictly comply with protocol established by the State Historic Preservation Office and/or Grantor in any instance when an inadvertent discovery of a cultural or historical resource is made. Grantee shall prepare and deliver to Grantor an inadvertent discovery

procedure for Grantor's review and approval, no less than three (3) business days prior to any work in the Easement Area. Grantee shall promptly provide Grantor with any monitoring reports prepared by the archaeological monitor required to be present during ground disturbing activities. Grantee shall also notify Grantor (503-464-BONE) within two (2) hours of any inadvertent discovery of a cultural resource or unintended ground disturbance within the Easement Area. Protective and mitigation measures specified by Grantor shall be the responsibility of the Grantee. Grantee will give due consideration to the effect of the actions of Grantee and its Members on previously documented cultural sites, if any, within the Easement area. As such, all impacts should be avoided on previously documented sites, which include without limitation archaeological sites, petroglyphs, historical scatters, and a traditional cultural property.

**Regulatory Requirements.** This Easement and Grantee's proposed use of the Easement Area is conditioned upon the approval of FERC as a "non-project use of project lands", upon terms and conditions acceptable to Grantor. Grantee will fully support Grantor's application and shall not interfere with the process and shall allow Grantor to control all communication with FERC. Unless Grantor specifically grants prior written consent to do so in each instance, Grantee shall not commence any work unless and until such time as Grantor receives FERC approval on terms and conditions acceptable to Grantor.

**EXHIBIT "G"**  
**INSURANCE REQUIREMENTS**

1. Acceptable Insurers. All insurance required herein must be obtained from insurers duly authorized to do business in Oregon and which maintain a minimum financial strength rating of "A-VIII" by the A. M. Best Key Rating Guide.
2. Required Insurance and Minimum Limits. During the term of this Agreement, Grantee must maintain, at its sole expense, the following insurance coverage:

**A. Workers' Compensation and Employer's Liability Insurance**

i. Scope. Workers' Compensation and Employer's Liability to cover claims under applicable State or Federal workers' compensation laws. Coverage must include Employer's Liability to cover claims for injury, disease or death of employees which, for any reason, may not fall within the provisions of the applicable workers' compensation law.

ii. Minimum Required Limit.

Workers' Compensation:	Statutory
Employer's Liability:	\$2,000,000 each accident, bodily injury by accident
	\$2,000,000 each employee, bodily injury by disease
	\$2,000,000 policy limit, bodily injury by disease

iii. Navigable Waters. If any Activities under this Agreement involves work in, over or alongside any navigable waters, then Grantee's workers' compensation coverage must cover liability under U.S. Longshoremen and Harbor Workers' Compensation Act, The Jones Act, Maritime Employers Liability and any other coverage required under Federal or State laws pertaining to workers in, over or alongside navigable waters.

iv. Waiver of Subrogation. To the fullest extent permitted by law, Grantee shall cause its insurer to waive all rights to recover any payments made from Grantor, its affiliates, and their respective officers, directors, agents and employees.

**B. Commercial General Liability Insurance**

i. Scope. Commercial General Liability Insurance written on an occurrence form and must cover liability arising from premises, operations, independent Grantees, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). If any Activities under this Agreement involves Grantee exercising care, custody or control of PGE property, then Grantee must endorse its Commercial General Liability coverage to remove any exclusionary language relative to property damage in Grantee's care, custody or control, or maintain Property, Inland Marine or other bailee insurance to cover damage to Grantor's property in the care, custody or control of Grantee.

ii. Minimum Required Limit. \$2,000,000 Each Occurrence

iii. Waiver of Subrogation. To the fullest extent permitted by law, Grantee shall cause its insurer to waive all rights to recover any payments made from Grantor, its affiliates, and their respective officers, directors, agents and employees.

iv. Additional Insured. To the fullest extent permitted by law, the insurance must include Grantor, its affiliates, and their respective officers, directors, agents and employees as additional insureds. This insurance must apply as primary insurance without any contribution from any other insurance afforded to or self-insurance maintained by such additional insured. There must not be

any endorsement or modification of this insurance to make it excess over any other insurance available to such additional insured.

C. Automobile Liability Insurance

i. Scope. Automobile Liability insurance to cover liability arising out of any auto (including owned, hired, and non-owned autos) used in connection with any Activity under this Agreement.

ii. Minimum Required Limit. \$2,000,000 Each Accident

iii. Pollution. If Grantee is transporting chemicals, hazardous materials, or similar pollutants, then the Automobile Liability Insurance must include pollution liability coverage at least as broad as the coverage provided under the ISO endorsement CA 99 48 "Pollution Liability—Broadened Coverage For Covered Autos".

iv. Waiver of Subrogation. To the fullest extent permitted by law, Grantee shall cause its insurer to waive all rights to recover any payments made from Grantor, its affiliates, and their respective officers, directors, agents and employees.

v. Additional Insured. To the fullest extent permitted by law, the insurance must include Grantor, its affiliates, and their respective officers, directors, agents and employees as additional insureds. This insurance must apply as primary insurance without any contribution from any other insurance afforded to or self-insurance maintained by such additional insured. There must not be any endorsement or modification of the insurance to make it excess over any other insurance available to such additional insured.

D. Pollution Legal Liability

i. Scope. If any of the Activities under this Agreement involves cleanup, removal, storage, or otherwise handling of hazardous or toxic chemicals, materials, substances, or any other pollutants, Grantee shall provide at its expense Pollution Legal Liability Insurance appropriate to cover such activities against the risk of bodily injury and property damage. Such policy must be endorsed to specifically provide coverage for Activities performed under this Agreement and must extend to all Subcontractors engaged in cleanup, removal, storage, or otherwise handling of hazardous or toxic chemicals, materials, substances, or any other pollutants.

ii. Minimum Required Limit. \$2,000,000 Per Claim

iii. Additional Insured. To the fullest extent permitted by law, the insurance must include Grantor, its affiliates, and their respective officers, directors, agents and employees as additional insureds. This insurance must apply as primary insurance without any contribution from any other insurance afforded to or self-insurance maintained by such additional insured. There must not be any endorsement or modification of the insurance to make it excess over any other insurance available to such additional insured.

iv. Waiver of Subrogation. To the fullest extent permitted by law, Grantee shall cause its insurer to waive all rights to recover any payments made from Grantor, its affiliates, and their respective officers, directors, agents and employees.

E. Unmanned Aircraft Systems Liability

i. Scope: PRIOR TO USING AN UNMANNED AIRCRAFT SYSTEM OF ANY KIND IN PERFORMING THE ACTIVITIES UNDER THIS AGREEMENT, GRANTEE SHALL NOTIFY Grantor AND OBTAIN ITS PRIOR WRITTEN CONSENT. If an Unmanned Aircraft System is to be used in performing the Activities under this Agreement,

Unmanned Aircraft Systems Liability insurance coverage appropriate to cover such activities against the risk of bodily injury, trespass, invasion of privacy and property damage.

- ii. Minimum Required Limit: \$5,000,000 Each Occurrence
- iii. Additional Insured. To the fullest extent permitted by law, the insurance must include Grantor, its affiliates, and their respective officers, directors, agents and employees as additional insureds. This insurance must apply as primary insurance without any contribution from any other insurance afforded to or self-insurance maintained by such additional insured. There must not be any endorsement or modification of the insurance to make it excess over any other insurance available to such additional insured.

**F. Aircraft Liability**

i. Scope: **PRIOR TO USING AN AIRCRAFT OF ANY KIND IN PERFORMING THE ACTIVITIES UNDER THIS AGREEMENT, GRANTEE SHALL NOTIFY Grantor AND OBTAIN ITS PRIOR WRITTEN CONSENT.** If an aircraft is to be used in performing the Activities under this Agreement, Aircraft Liability insurance covering fixed wing and rotorcraft aircraft whether owned, hired or non-owned.

- ii. Minimum Required Limit: \$10,000,000 Each Occurrence

- iii. Additional Insured. To the fullest extent permitted by law, the insurance must include Grantor, its affiliates, and their respective officers, directors, agents and employees as additional insureds. This insurance must apply as primary insurance without any contribution from any other insurance afforded to or self-insurance maintained by such additional insured. There must not be any endorsement or modification of the insurance to make it excess over any other insurance available to such additional insured.

- 3. Excess or Umbrella Insurance. The required minimum limits may be met through any combination of primary and excess insurance policies.
- 4. Certificates of Insurance. Prior to commencement of any Activities under this Agreement, and annually thereafter, Grantee must furnish Grantor with a Certificate of Insurance evidencing compliance with these requirements. Without penalty or default, Grantor has the right, but not the obligation, to prohibit commencement of any Activities until such Certificate of Insurance or other evidence satisfactory to Grantor is received and approved by Grantor. The Certificate of Insurance must list as the certificate holder:

Portland General Electric Company  
Insurance and Claims Risk Management  
121 SW Salmon Street, 1WTC1304  
Portland, OR 97204-9951

- 5. No Waiver. Grantor's failure to demand the Certificate of Insurance or to identify a deficiency from the Certificate of Insurance or other evidence provided will not be deemed a waiver of Grantor's rights or Grantee's obligations. Furthermore, these insurance requirements must not be construed in any manner as waiving, restricting or limiting Grantor's rights or Grantee's obligations under this Agreement.
- 6. Notice of Cancellation. No insurance policy may be canceled, not renewed, or materially modified unless Grantee or insurer(s) provide at least thirty (30) days prior written notice to Grantor.

7. Failure to Maintain Required Insurance. If at any time during the term of this Agreement Grantees fails to maintain any required insurance, Grantor may, at its sole discretion, suspend the Activities and/or exercise any of Grantor's rights under the Easement until such time as Grantee has reinstated the required insurance and delivered proof thereof to Grantor.
8. Grantee Responsible for Deductibles or Retentions. With respect to any insurance required herein, Grantee must bear all costs of all deductibles or Self-Insured Retentions.
9. No Representation of Coverage Adequacy. Grantor does not represent that coverage and limits required herein will be adequate to protect Grantee. Grantee remains responsible for any liability not paid by insurance.
10. Grantee's Property. Grantee is responsible for any loss or damage to its property, however caused, and any insurance covering such property will be at Grantees expense and Grantee shall cause its insurer to waive all rights to recover any payments made from Grantor, its affiliates, and their respective officers, directors, agents and employees.
11. No Violation of Insurance Policies. Grantee must not knowingly violate or knowingly permit any violation of any warranties, representations, declarations or conditions contained in the policies of insurance.
12. No Claims. As of the execution date of this Agreement, Grantee is not aware of any claims or potential claims which have been made, filed or threatened against any of the insurance required herein.
13. Other Insurance. If there is any material change to the nature or scope of the Activities under this Agreement, Grantor may require Grantee to obtain and maintain additional insurance.
14. Primary Insurance. The insurance required of Grantee under this Exhibit shall be primary and may not seek contribution from any insurance or self-insurance maintained by Grantor.