



COPY

SCAN/EMAIL TO P.W.
MJA
JOE G.

Scott Bolton
Vice President, External Affairs
825 NE Multnomah, Suite 2000
Portland, Oregon 97232

RECEIVED
OCT 26 2015
BY: JF

October 13, 2015

To the Honorable Mayor and
City Council
Sweet Home, Oregon

Gentlemen / Ladies:


This is to advise the City of Sweet Home, Oregon that PACIFIC POWER hereby accepts the terms and provisions of Franchise Ordinance No. 1249 passed by your Honorable Body on the 22nd of September 2015, granting a franchise agreement to PACIFIC POWER for a period of ten (10) years entitled:

"AN ORDINANCE GRANTING AN ELECTRIC UTILITY FRANCHISE AND GENERAL UTILITY EASEMENT TO PACIFICORP"

And files this, its written acceptance in accordance with all requirements of said ordinance.

Very truly yours,
Pacific Power

By



Scott Bolton
Vice President, External Affairs

WITNESS:

Penny Hanson

ORDINANCE BILL NO. 12 FOR 2015

ORDINANCE NO. 1249

AN ORDINANCE GRANTING AN ELECTRIC UTILITY FRANCHISE
AND GENERAL UTILITY EASEMENT
TO
PACIFICORP

WHEREAS, PacifiCorp d/b/a Pacific Power (“PacifiCorp” or “Company”), is a regulated public utility that provides electric power and energy to the citizens of the City of Sweet Home (the “City”) and other surrounding areas;

WHEREAS, providing electrical power and energy requires the installation, operation and maintenance of power poles and other related facilities to be located within the public ways of the City;

WHEREAS, the City and PacifiCorp wish to agree to the terms and conditions by which PacifiCorp will use the public ways of the City;

The City of Sweet Home does ordain as follows;

SECTION 1. Grant of Franchise and General Utility Easement. The City hereby grants to PacifiCorp the right, privilege and authority to construct, maintain, operate, upgrade, and relocate its electrical distribution and transmission lines and related appurtenances, including underground conduits and structures, poles, towers, wires, guy anchors, vaults, transformers, transmission lines, and communication lines (collectively referred to herein as “Electric Facilities”) in, under, along, over and across the present and future streets, alleys, public ways and public places (collectively referred to herein as “Public Ways”) within the City, for the purpose of supplying and transmitting electric power and energy to the inhabitants of the City and persons and corporations beyond the limits of the City.

SECTION 2. Term. The term of this Franchise and General Utility Easement is for ten (10) years commencing on the date of acceptance by the Company as set forth in Section 3 below.

SECTION 3. Acceptance by PacifiCorp. Within sixty (60) days after the passage of this ordinance by the City, PacifiCorp shall file an unqualified written acceptance thereof, with the City Recorder, otherwise the ordinance and the rights granted herein shall be null and void.

SECTION 4. Non-Exclusive Franchise. The right to use and occupy the Public Ways of the City are nonexclusive and the City reserves the right to use the Public Ways for itself or any other entity that provides service to City residences; provided, however, that such use will not unreasonably interfere with PacifiCorp’s Electric Facilities or PacifiCorp’s rights granted herein.

SECTION 5. City Regulatory Authority. In addition to this Franchise, the City reserves the right to adopt such additional ordinances and regulations as may be deemed necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties or exercise any other rights, powers, or duties required or authorized, under the Constitution of the State of Oregon, the laws of Oregon or City Ordinances.

SECTION 6. Indemnification. The City will in no way be liable or responsible for any loss or damage to property or any injury to, or death, of any person that may occur in the construction, operation or maintenance by PacifiCorp of its Electric Facilities. PacifiCorp will indemnify, defend and hold the City harmless from and against claims, demands, liens and all liability or damage of whatsoever kind arising out of or in connection with PacifiCorp's use of the Public Ways within the City, and will pay the costs of defense plus reasonable attorneys' fees for any such claim, demand or lien. The City will: (a) give prompt written notice to PacifiCorp of any claim, demand or lien with respect to which the City seeks indemnification hereunder; and (b) unless in the City's judgment a conflict of interest exists between the City and PacifiCorp with respect to such claim, demand or lien, allow PacifiCorp to assume the defense of such claim, demand, or lien. If such defense is not assumed by PacifiCorp, PacifiCorp will not be subject to liability for any settlement made without its consent. Notwithstanding any provision to the contrary, PacifiCorp will not indemnify, defend or hold the City harmless to the extent any claim, demand or lien arises out of or in connection with any negligent or willful act or failure to act of the City or any of its officers or employees.

SECTION 7. Annexation.

7.1 Extension of City Limits. Upon the annexation of any territory to the City, the rights granted under this Franchise will extend to the annexed territory to the extent the City has such authority. All Electrical Facilities owned, maintained, or operated by PacifiCorp located within any public ways of the annexed territory will then be subject to this Franchise.

7.2 Annexation. When any territory is approved for annexation to the City, the City will, not later than ten (10) working days after passage of an ordinance approving the proposed annexation, provide by certified mail to PacifiCorp: (a) each site address to be annexed as recorded on county assessment and tax rolls; (b) a legal description of the proposed boundary change; and (c) a copy of the City's ordinance approving the proposed annexation. The notice will be mailed to:

PacifiCorp Customer Contact Center
P.O. Box 400
Portland, Oregon 97202-0400

With a copy to:
PacifiCorp
Attn: Office of the General Counsel
825 N.E. Multnomah, Suite 2000
Portland, Oregon 97232

Additional or increased fees or taxes, other than ad valorem taxes, imposed on PacifiCorp as a result of an annexation of territory to the City will become effective on the effective date of the annexation provided notice is given to PacifiCorp in accordance with ORS 222.005, as amended from time to time.

SECTION 8. Planning, Design, Construction and Installation of Company Facilities.

8.1 All Electric Facilities installed or used under authority of this Franchise will be used, constructed and maintained in accordance with applicable federal, state and city laws, codes and regulations.

8.2 Except in the case of an emergency, PacifiCorp will, before commencing new construction or major reconstruction work in the Public Ways, apply for a permit from the City, which permit will not be unreasonably withheld, conditioned, or delayed. PacifiCorp will comply with all applicable ordinances and all reasonable rules, regulations and requirements of the City, and the City may inspect the manner of such work and require remedies as may be necessary to assure compliance. Notwithstanding the foregoing, PacifiCorp will not be obligated to obtain a permit to perform emergency repairs.

8.3 All Electric Facilities will be located so as to cause minimum interference with the Public Ways of the City and be constructed, installed, maintained, cleared of vegetation, renovated or replaced in accordance with applicable rules, ordinances and regulations of the City.

8.4 If, during the course of work on its Electrical Facilities, PacifiCorp causes damage to or alters the Public Ways or public property, PacifiCorp will (at its own cost and expense and in a manner approved by the City) replace and restore it to a condition comparable to that which existed before the work commenced.

8.5 In addition to the installation of underground electric distribution lines as provided by applicable state law and regulations, PacifiCorp will, upon payment of all charges provided in its tariffs or their equivalent, place newly constructed electric distribution lines underground as may be required by City ordinance.

8.6 The City may without cost use all poles and suitable overhead structures owned by PacifiCorp within Public Ways for City wires used in connection with its fire alarms, police signal systems, or other communication lines used for governmental purposes; provided, however, any such uses must be for activities owned, operated or used by the City for a public purpose and must not include the provision of CATV, internet, or similar services to the public. PacifiCorp assumes no liability nor will it incur, directly or indirectly, any additional expense in connection therewith, and the use of said poles and structures by the City will be in such a manner as to prevent safety hazards or interferences with PacifiCorp's use of same. Nothing within this Franchise will be construed to require PacifiCorp to increase pole size, or alter the manner in which PacifiCorp attaches its equipment to poles, or alter the manner in which it operates and maintains its Electric Facilities. City attachments must be installed and maintained

in accordance with the reasonable requirements of PacifiCorp and the current edition of the National Electrical Safety Code pertaining to such construction. Further, City attachments may only be attached or installed after written approval by PacifiCorp.

8.7 PacifiCorp may excavate the Public Ways subject to reasonable conditions and requirements of the City. Before installing new underground conduits or replacing existing underground conduits, PacifiCorp will first notify the City of such work and will allow the City, at its own expense, to share the trench of PacifiCorp to lay its own conduit therein, provided that such action by the City will not unreasonably interfere with PacifiCorp's Electric Facilities or delay project completion.

8.8 Before commencing any street improvements or other work within a Public Way that may affect PacifiCorp's Electric Facilities, the City must give written notice to PacifiCorp.

8.9 No structures, buildings or signs will be erected below PacifiCorp's Electric Facilities or in a location that prevents PacifiCorp from accessing or maintaining its Electric Facilities.

8.10 PacifiCorp will provide an annual report to the City all new services created within City boundaries during the term of this Franchise. The City will provide written confirmation of the accuracy of the report and/or any corrections thereto to PacifiCorp within a reasonable time following receipt of the report.

SECTION 9. Relocation of Electric Facilities.

9.1 The City reserves the right to require PacifiCorp to relocate overhead Electric Facilities within the Public Ways in the interest of public convenience, necessity, health, safety or welfare at no cost to the City. Within a reasonable period of time after written notice, PacifiCorp will promptly commence the overhead relocation of its Electric Facilities. Before requiring a relocation of Electric Facilities, the City will, with the assistance and consent of PacifiCorp, identify a reasonable alignment for the relocated Electric Facilities within the Public Ways of the City. The City will assign or otherwise transfer to Company all rights it may have to recover the cost for the relocation work and will support the efforts of PacifiCorp to obtain reimbursement. In cases of capital improvement projects undertaken by the City, PacifiCorp will convert existing overhead distribution facilities to underground, so long as PacifiCorp may collect the costs associated with conversion from overhead to underground distribution facilities consistent with OAR 860-022-0046, the Oregon Public Utility Commission rule on forced conversions.

9.2 PacifiCorp will not be obligated to pay the cost of any relocation that is required or made a condition of a private development. If the removal or relocation of Electric Facilities is caused directly or otherwise by an identifiable development of property in the area, or is made for the convenience of a customer, PacifiCorp may charge the expense of removal or relocation to the developer or customer. For example, PacifiCorp will not be required to pay relocation costs in connection with a road widening or realignment where the road project is made a

condition or caused by a private development. In such event, the City will require the developer to pay PacifiCorp for such relocation costs as part of its approval procedures.

SECTION 10. Subdivision Plat Notification. Before the City approves any new subdivision and before recordation of the plat, the City will mail notification of such approval and a copy of the plat to PacifiCorp:

Pacific Power
Attn: Right-of-Way Department
PO Box 248
Albany, OR 97321

SECTION 11. Vegetation Management. PacifiCorp or its contractor may prune all trees and vegetation which overhang the Public Ways, whether such trees or vegetation originate within or outside the Public Ways, to prevent the branches or limbs or other part of such trees or vegetation from interfering with PacifiCorp's Electrical Facilities. Such pruning shall comply with the *American National Standard for Tree Care Operation (ANSI A300)* and be conducted under the direction of an arborist certified with the International Society of Arboriculture. A growth inhibitor treatment may be used for trees and vegetation species that are fast-growing and problematic. Nothing contained in this Section will prevent PacifiCorp, when necessary and with the approval of the owner of the property on which they may be located, from cutting down and removing any trees which overhang streets.

SECTION 12. Compensation.

12.1 In consideration of the rights, privileges, and franchise hereby granted, PacifiCorp will pay to the City from and after the effective date of the acceptance of this franchise, five percent (5%) of its gross revenues derived from within the corporate limits of City. "Gross revenue" means any revenue of PacifiCorp derived from the retail sale and use of electric power and energy within the municipal boundaries of the City after adjustment for the net write-off of uncollectible accounts and corrections of rendered bills. All amounts paid under this Section 12 will be subject to review by the City; provided that only payments that occurred during a period of thirty-six (36) months before the date the City notifies PacifiCorp of its intent to conduct a review may be subject to such review. Notwithstanding any provision to the contrary, at any time during the term of this Franchise, the City may opt to increase the franchise fee amount as may then be allowed by state law. The City will provide PacifiCorp with prior written notice of such increase following adoption of the change in percentage by the City. The increase may be effective no earlier than sixty (60) days after City has provided such written notice to PacifiCorp.

12.2 The franchise fee is not in addition to any other license, occupation, franchise or excise taxes or charges that might otherwise be levied or collected by the City from PacifiCorp with respect to PacifiCorp's electric business or the exercise of this Franchise within the corporate limits of the City and the amount due to the City under any such other license, occupation, franchise or excise taxes or other charges for corresponding periods will be reduced by deducting there from the amount of said franchise fee paid hereunder.

SECTION 13. Renewal. At least 120 days before the expiration of this Franchise, PacifiCorp and the City will agree to either extend the term of this Franchise for a mutually acceptable period of time or use best faith efforts to renegotiate a replacement Franchise. PacifiCorp may continue to use the Public Ways of the City under the same terms and conditions in the event an extension or replacement Franchise is not entered into upon expiration of this Franchise.

SECTION 14. No Waiver. Neither the City nor PacifiCorp will be excused from complying with any of the terms and conditions of this Franchise by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions.

SECTION 15. Transfer of Franchise. PacifiCorp will not transfer or assign any rights under this Franchise to another entity, except transfers and assignments by operation of law, unless the City first gives its approval in writing, which approval will not be unreasonably withheld; provided, however, inclusion of this Franchise as property subject to the lien of PacifiCorp's mortgage(s) does not constitute a transfer or assignment.

SECTION 16. Amendment. At any time during the term of this Franchise, the City, through its City Council, or PacifiCorp may propose amendments to this Franchise by giving thirty (30) days written notice to the other of the proposed amendment(s), and both parties, through their designated representatives, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s). No amendment(s) to this Franchise will be effective until mutually agreed upon by the City and PacifiCorp and formally adopted as an ordinance amendment.

SECTION 17. Non-Contestability--Breach of Contract.

17.1 Neither the City nor PacifiCorp will take any action for the purpose of securing modification of this Franchise before either the Oregon Public Utility Commission or any court of competent jurisdiction; provided, however, that neither will be precluded from taking any action it deems necessary to resolve difference in interpretation of the Franchise nor will PacifiCorp be precluded from seeking relief from the courts in the event Oregon Public Utility Commission orders, rules or regulations conflict with or make performance under the Franchise illegal.

17.2 In the event PacifiCorp or the City fails to fulfill any of their respective obligations under this Franchise, the City or PacifiCorp will have a breach of contract claim and remedy against the other in addition to any other remedy provided by law, provided that no remedy that would have the effect of amending the specific provisions of this Franchise will become effective without such action that would be necessary to formally amend the Franchise.

SECTION 18. Notices. Unless otherwise specified herein, all notices from PacifiCorp to the City under or concerning this Franchise will be delivered to the City Recorder's Office. Unless otherwise specified herein, all notices from the City to PacifiCorp under or concerning this Franchise will be delivered to the Customer and Community Affairs Vice President, Pacific

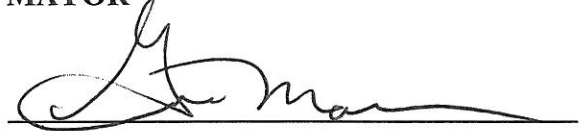
Power, 825 NE Multnomah, Lloyd Center Tower Suite 2000, Portland, Oregon 97232, and such other office as PacifiCorp may advise the City of by written notice.

SECTION 19. Severability. If any section, sentence, paragraph, term or provision of this Franchise is for any reason determined to be illegal, invalid, or superseded by other lawful authority including any state or federal regulatory authority having jurisdiction or unconstitutional, illegal or invalid by any court of common jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such determination will have no effect on the validity of any other section, sentence, paragraph, term or provision, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

SECTION 20. Waiver of Jury Trial. To the fullest extent permitted by law, each of the parties hereto waives any right it may have to a trial by jury in respect of litigation directly or indirectly arising out of, under or in connection with this agreement. Each party further waives any right to consolidate any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.

PASSED by the City Council of the City of Sweet Home, Oregon this 22nd day of September, 2015.

MAYOR

A handwritten signature in black ink, appearing to read "L. Man", written over a horizontal line.

ATTEST:

A handwritten signature in black ink, appearing to read "D. [unclear]", written over a horizontal line.

City Manager – Ex Officio City Recorder