

ORDINANCE BILL NO. 4 FOR 2000

ORDINANCE NO. 1130

AN ORDINANCE GRANTING A NONEXCLUSIVE ELECTRIC UTILITY FRANCHISE TO PACIFICORP, AN OREGON CORPORATION, DOING BUSINESS AS PACIFIC POWER & LIGHT COMPANY AND FIXING TERMS, CONDITIONS, AND COMPENSATION OF SUCH FRANCHISE.

THE CITY OF SWEET HOME DOES ORDAIN AS FOLLOWS:

ARTICLE I - INTRODUCTION

100. Statement of Intent and Purpose. The City intends, by the adoption of this franchise, to authorize the continued development and operation of an electric utility system. Such development can contribute significantly to meeting the electrical needs and desires of many individuals, associations, and institutions in the City of Sweet Home.
101. Short Title. This Ordinance shall be known as the PacifiCorp Franchise Ordinance. Within this document, it shall also be referred to as "this franchise" or "the franchise."
102. Definitions. For the purpose of the ordinance, the following terms shall have the meaning given herein.
- "Bridge" includes a structure erected within the City to facilitate the crossing of a river, stream, ditch, ravine, or other place.
- "Conduit" is an electrical raceway for the enclosure of electrical conductors and may consist of rigid conduit of electrical metallic tubing or plastic tubing.
- "City" means the City of Sweet Home, Oregon, and the area within its boundaries including its boundaries as extended in the future and all property owned by the City, outside City limits. It means all officers, employees, and representatives of the City of Sweet Home.
- "City Manager" or "Manager" means the City Manager of the City of Sweet Home, or such person as may be designated by the Manager for the administration of this franchise.
- "PacifiCorp" means PacifiCorp, an Oregon corporation, doing business as Pacific Power & Light Company, its successors, transferees, legal representatives, employees, contractors, subcontractors, agents, or assigns.

"Council" means the legislative body of the City

"Customer Base" means the total number of individual customers in any given year within the City.

"Distribution Lines" means all electric wires with capacities of 35,000 volts, or less, or as defined in the Sweet Home Land Development Code, but not including customer service drops.

"Easement" means public right of way, private utility easement on private or public property, or public utility easement on public or private property but not including a private utility easement for a customer's service drop.

"Franchise territory" means the area within the legal boundaries of the City, all property owned by the City outside its boundaries and including any areas annexed during the term of franchise.

"May" is permissive.

"Person" includes an individual, corporation, association, firm, partnership, and Joint Stock Company.

"Public Place" includes any City-owned park, place, facility or grounds within the City that is open to the public, but does not include a street or bridge.

"Public Rights of Way" includes, but is not limited to, streets, roads, highways, bridges, alleys, sidewalks, trails, paths, park strips, public easements on private property and all other public ways or areas, including subsurface and air space over these areas.

"Shall" is mandatory.

"Street" includes the surface, the air space about the surface, and the area below the surface of any public street, alley, avenue, road, boulevard, thoroughfare, or public highway, and other public rights-of-way, including public utility easements, but does not include a bridge or public place.

"Technical Facilities" or "Facilities" means all real property, equipment, and fixtures used by PacifiCorp in the distribution of its services through its system, whether located in the City or out.

"Transmission Lines" means all electric wires with capacity in excess of 35,000 volts (35 kV), or as defined in the Sweet Home Land Development Code.

ARTICLE II - GRANT OF AUTHORITY AND GENERAL PROVISIONS

200. Grant of Authority. Subject to the conditions and reservations contained in this ordinance, the City hereby grants to PacifiCorp, the right, privilege and franchise to:
- 200.1 Own, construct, expand, upgrade, maintain, and operate an electric power and light utility system within the City.
- 200.2 Install, maintain, and operate on, over, or under the streets, bridges, and public places approved by the City, facilities for the transmission of electricity to be distributed to the City and to its inhabitants and to other customers and territory beyond the limits of the City. This franchise does not limit PacifiCorp's ability to provide other utility services such as telecommunications and cable television, but does not allow PacifiCorp to provide these services under this franchise. PacifiCorp shall be required to enter into separate franchise agreements for these services.
201. Duration, Renewal, and Renegotiations. This franchise ordinance and the rights and privileges granted herein shall take effect thirty (30) days after the date this ordinance is passed by the City and remain in effect until August 1, 2005 unless reopened sooner under provisions of Section 600, or terminated sooner under provisions of Section 706, provided however, the terms of the franchise must be unconditionally accepted by PacifiCorp in writing, signed by an officer of the corporation within thirty (30) days after the date this ordinance is passed by the City; and if PacifiCorp fails to do so, this ordinance shall be void.
202. Franchise Nonexclusive. This franchise is not exclusive and shall not be construed as a limitation on the City in:
- 202.1 Granting rights, privileges, and authority to other persons similar to, or different from, those granted by this ordinance.
- 202.2 Constructing, installing, maintaining or operating any City-owned public utility, including, but not limited to, an electric power and light utility system.

ARTICLE III - SERVICE STANDARDS

300. Continuous Service. PacifiCorp shall maintain and operate an electric power utility system in the City that conforms to the standards of the National Electrical Safety Code. PacifiCorp shall use due diligence to maintain continuous and uninterrupted service which shall conform at least to the standards adopted by the State and Federal authorities, and to standards of the City which are not in

conflict with those adopted by the State and Federal authorities. Under no circumstances is PacifiCorp liable to the City for an interruption or failure of service caused by acts of God, unavoidable accident, or other circumstances beyond the control of PacifiCorp through no fault of its own.

301. Emergency Repair Service. PacifiCorp shall maintain emergency repair service available to City Customers on a twenty-four (24) hours-per-day, seven (7) days-per-week basis. Such emergency service shall be easily reached by phone during normal business hours and through an answering service at all other times. PacifiCorp shall at all times during the course of this franchise agreement meet or exceed the customer commitment standards as established by PacifiCorp and by this reference are incorporated herein. PacifiCorp shall designate these facilities as a priority and provide all necessary information and assistance to resolve the emergency as soon as possible.

302. Provision of Service Standards. PacifiCorp will at all times maintain the following service standards:

302.1 Underground Extension of System.

302.1.1 In cases of new construction or where utilities are to be placed underground, or service to newly created lots, which shall be underground per standards of the Sweet Home Municipal Code, the developer or property owner shall give PacifiCorp reasonable notice of such construction or development, including a copy of any final plat, and of the particular date on which open trenching will be available for PacifiCorp's installation of conduit, pedestals and/ or vaults, and laterals to be provided at PacifiCorp's expense, in accordance with PUC OR No. 34, Rule 13. PacifiCorp shall also provide specifications as needed for trenching.

302.1.2 Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner as provided in Tariff Rule 13 of the Oregon Public Utility Commission. Written notice must be given to PacifiCorp five (5) working days before trenches are available.

302.1.3 It shall be the policy of the City to encourage all utilities, including PacifiCorp, to place overhead distribution facilities underground. PacifiCorp has a right to collect costs of undergrounding in a manner consistent with its tariffs, Oregon statutes, and Commission regulations. It is also the policy of the City to encourage co-location of utilities in common underground facilities.

302.1.4 In cases of capital improvement projects undertaken by the City, PacifiCorp shall convert existing overhead distribution facilities to underground, provided PacifiCorp collects the incremental costs associated with the conversion from overhead to underground facilities consistent with OAR 860-22-0046 Commission rule on forced conversions.

302.1.5 Removal of Facilities upon Request. PacifiCorp shall remove idle facilities within a reasonable time.

302.1.6 In the event a utility vacates or abandons a pole, the utility shall provide notification at least ten (10) business days prior to vacation or abandonment of pole to the City, and all other utilities sharing the pole through a joint use agreement. Affected utilities shall be provided a grace period of ten (10) business days following the date of pole vacation or abandonment in which to remove their facilities. If facilities have not been removed within the 10-day grace period, the City may have the facilities removed at the expense of the owner of the facilities.

302.2 PacifiCorp shall operate its electric utility system authorized by this ordinance twenty-four (24) hours per day, seven (7) days per week.

302.3 PacifiCorp shall repair and maintain all existing and future streetlights within the City at no cost to the City in accordance with the established service standards and policies of PacifiCorp. Additionally, PacifiCorp shall provide the necessary materials and service to add additional street-lighting as deemed necessary by the City. The City shall pay power costs for all streetlights.

302.4 PacifiCorp shall provide at no cost to the City the repair and maintenance of streetlights within the franchise jurisdiction and in accordance with the most current Streetlight Master Plan jointly developed by PacifiCorp and the City. Repair and maintenance shall include, but not be limited to, all labor and materials necessary to repair and maintain all streetlights in good working order.

302.5 PacifiCorp shall perform periodic inspection and maintenance to streetlights to ensure proper and consistent operation of streetlights. In addition, the City may request PacifiCorp to inspect and repair any streetlights not in good working order. PacifiCorp shall respond to City's request for repair within 72 hours, (three working days), of receipt and make repairs necessary to streetlights within 21 days upon request. In the event PacifiCorp fails to meet either request and/or repair time, the City shall deduct monthly a portion of cost of streetlights from PacifiCorp's invoice based on quantity of streetlights reported and not repaired.

In the event of a conflict between said franchise and PacifiCorp's street lighting tariffs with the Oregon Public Utility Commission, the tariff will control.

303. Safety Standards and Work Specifications.

303.1 PacifiCorp shall at all times keep and maintain all of its poles, fixtures, conduits, wires, and its entire system in a good state of repair and shall at all times conduct its operations under this franchise, including installation, construction or maintenance of its facilities, in a safe and well-maintained manner so as not to present a danger to the public or the City.

303.2 The location, construction, extension, installation, maintenance, removal, and relocation of the facilities of PacifiCorp shall conform to:

303.2.1 The requirements of the State and Federal statutes and regulations in force at the time of such work, and

303.2.2 Such reasonable specifications in force at the time of such work, as the City may from time to time adopt.

303.3 All installations, rearrangements, removals, lowering, or raising of aerial electric utilities or wiring or other apparatus shall be done in conformance with the requirements of the National Electric Safety Code, the laws of the State of Oregon Public Utility Commission rules and the ordinances and municipal codes of the City.

303.4 For the purpose of carrying out Section 303, the City may provide such specification relating thereto as may be necessary or convenient for public safety or the orderly development of the City. The City may amend and add to such specifications from time to time.

303.5 PacifiCorp shall within a reasonable time remove graffiti on electrical facilities upon notification from the City.

304. Maintenance Personnel. Maintenance personnel shall at a minimum be on duty eight (8) hours a day, Monday through Friday, and shall be on-call to respond to system outages in a prompt and expedient manner.

ARTICLE IV - USE OF PUBLIC WAYS

400. Excavation and Restoration.

- 400.1 PacifiCorp shall comply with all applicable ordinances, municipal codes, rules, or regulations that may pertain to its activities within easements, public places and public rights-of-way of the City.
- 400.2 All transmission and distribution structures, lines, and equipment erected by PacifiCorp within the City shall be so located as to cause minimum interference with the proper use of streets, alleys, and other public rights-of-ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the streets, alleys, or other public rights-of-ways or places.
- 400.3 No newly overlaid street or newly constructed street shall be excavated by PacifiCorp for a period of five (5) years from the time of completion of the street overlay or the street construction unless specifically authorized by the City, or in cases of an emergency.
- 400.4 All installations by PacifiCorp in new residential subdivisions shall be, wherever and whenever practical, placed in conjunction with all other utility installations in compliance with existing regulations.
- 400.5 Except as provided in Section 400, when any excavation is made by PacifiCorp, PacifiCorp shall, within seven (7) calendar days, restore the affected portion of the street, bridge, easement area, private property or public place to as reasonably good a condition as was prior to the excavation. The restoration shall be done in compliance with City specifications, requirements, and regulations in effect at the time of such restoration. If PacifiCorp fails to restore, within seven (7) calendar days, the affected portion of the street, bridge, easement area, private property, or public place to as reasonably good a condition in which it was prior to the excavation, the City may make the restoration, and the reasonable costs of making the restoration, including the cost of inspection, supervision, and the administration shall be paid by PacifiCorp. The City may grant an extension to the seven (7) calendar day requirement of this section.
- 400.6 The City may require that any excavation made by PacifiCorp in any street, bridge, or public place be filled and the surface replaced by the City, and that the reasonable cost thereof, including the cost of inspection, supervision, and the administration shall be paid by PacifiCorp.

400.7 The reasonable costs of excavation and restoration incurred by the City pursuant to Section 400.6 and 400.7 of this franchise, including the cost of inspection, supervision, and administration shall be paid by PacifiCorp to the City in accordance with the standard billing policy of the City in effect at the time the excavation or restoration occurred.

401. Relocation of Facilities.

401.1 PacifiCorp shall, at its expense, protect, support, temporarily disconnect, or relocate any of its equipment that are required to promote the public interest by the City by reason of traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sanitary or storm sewer lines, water pipes, power lines, signal lines, or tracks, or any other type of structures or public improvements by the City, or its agents. Relocation of facilities, required by the City, shall be completed within a mutually agreed time between the City and PacifiCorp.

401.2 A written request for facility relocation may be initiated directly by the City or by a private developer or contractor installing or modifying public infrastructure under the approval of the City; provided PacifiCorp may charge the expense of removal or relocation to the developer or contractor that makes a request, directly or indirectly, if the removal or relocation is caused by an identifiable development of property in the area, or is made for the convenience of a developer or contractor.

401.3 All facilities placed in the public rights of way shall be placed in coordination with the City and other utilities.

401.4 If PacifiCorp fails to comply with any requirement of the City made pursuant to this section, the City may remove or relocate the facilities at PacifiCorp's expense, unless said removal or relocation would be in violation of any portions of ORS 757.800.

401.5 If the removal or relocation of 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.

402. Tree Pruning.

402.1 Subject to the provisions of this ordinance, PacifiCorp may prune trees, when necessary in easements, for the operation of the utility lines, wires or other appurtenances, provided such pruning shall be performed by or supervised by a certified arborist, and it shall be done without cost or expense to the City

402.2 PacifiCorp shall provide a written notice to the City Public Works Department and property owner and resident at least ten (10) business days prior to any pruning to be done on the property. The City recognizes that a ten (10) day notice may not be possible in emergency situations; however, the City does encourage PacifiCorp to provide as much advance notice to property owners and residents as is reasonably possible under such emergency circumstances.

403. Use of Facilities by City.

403.1 As additional consideration for the franchise and privileges granted to PacifiCorp by this ordinance, the City shall have the free right and privilege to install, or affix and maintain street lights, wires, seasonal decorations and equipment for municipal purposes upon the structures and installations, excluding underground facilities owned and/or maintained by PacifiCorp. For the purpose of this section, the term "municipal purposes" means all municipal purposes except the distribution or sale of electric power to the public and includes, but is not limited to, the use of structures and installations for:

403.1.1 Municipal fire, police, and water, wastewater, and storm water utility service wires and equipment;

403.1.2 Municipal interdepartmental computers and communications;

403.1.3 Municipal fire alarm and police and traffic signals, signs, and equipment;

403.1.4 Seasonal decorations and special event banners and attachments authorized by the City.

403.2 The City shall install, affix, maintain and operate its wires and equipment at its own expense in accordance with the requirements of state and federal law, and regulations adopted pursuant thereto, and in accordance with good engineering practice and safety standards. The wires and equipment of the City shall be subject to interference by PacifiCorp only when necessary for the maintenance, operation or repair of the facilities of PacifiCorp.

403.3 The City shall install, affix, maintain and operate its wires and equipment in such a manner as not to impose any undue additional expense upon PacifiCorp, or unduly interfere with the safe and convenient use and maintenance by PacifiCorp of its structures and installations.

403.3.1 If there is not sufficient space available thereon for said purposes, PacifiCorp shall change, alter or rearrange its structures at the City's expense so as to provide proper clearance for such wires or appurtenant facilities.

403.3.2 Such facilities shall be subject to interference by PacifiCorp only when and to the extent necessary for the proper construction, maintenance, operation or repair of PacifiCorp's facilities.

403.4 The City shall indemnify, protect, and save PacifiCorp, its officers, employees and agents, harmless against and from any and all damages, claims, loss, liability, cost or expense resulting from damage to property or injury or death to any third person to the extent caused by or arising out of the installation, maintenance, existence, or use of the installations from municipal purposes as described in this Section 403.

404. Use of Bridges and Public Places by PacifiCorp.

404.1 Before PacifiCorp may use or occupy any bridge or public place, PacifiCorp shall first obtain permission from the City to do so and comply with any special conditions the City desires to impose on such use or occupation.

404.2 The compensation paid by PacifiCorp for this franchise includes compensation for the use of bridges and public places located within the City, as authorized. However, this subsection shall not be construed to prevent the City from requiring PacifiCorp to pay charges as provided in Section 603 of this ordinance.

405. Emergency Removal and Alternate Routing of Facilities. If, at any time, in case of fire or disaster in the franchise territory, it shall become necessary in the reasonable judgment of the City to cut or move any of the wires, equipment or other appurtenances to the system of PacifiCorp, such cutting or moving may be done and any repairs rendered necessary thereby shall be made by PacifiCorp, at its sole expense, provided that such repairs are not necessitated by a negligent act of the City, in which case costs for repairs shall be borne by the City.

The City shall indemnify, protect and hold PacifiCorp, its officers, employees and agents harmless against and from all damages, claims, loss, liability, cost or expense resulting from damage to property or injury to death to any third person caused by such cutting or moving any of the wires, equipment or other appurtenances.

In the event, continued use of a street or easement is denied to PacifiCorp by the City for any reason, PacifiCorp shall provide service to affected customers over such alternate routes as shall be determined by PacifiCorp within a reasonable period of time. The City shall provide or attempt to provide an alternate route if continued use of a street or easement is denied to PacifiCorp.

ARTICLE V - CONSTRUCTION

500. Public Works and Improvements Not Affected by Franchise.

The City reserves the right to:

500.1 Construct, install, maintain, and operate any public improvement, work, or facility.

500.2 Do any work that the City may find desirable on, or over, or under any street, bridge or public right-of-way.

500.3 Vacate, alter, or close any street, bridge or public right-of way.

500.4 Whenever the City shall excavate or perform any work in any of the present and future streets, alleys, and public rights-of-ways of the City of Sweet Home, or shall contract or issue permits for such excavation or work where such excavation or work may disturb PacifiCorp's underground electric utility, pipes, conduits and appurtenances, the City may, in writing, notify PacifiCorp sufficiently in advance of such contemplated excavation or work to enable PacifiCorp to take such measures as may be deemed necessary to protect such underground electric utility, pipes, conduits, and appurtenances from damage and possible inconvenience to the public. In any such case, PacifiCorp, upon receiving such notice, shall furnish maps or drawings to the City or contractor, as the case may be, showing the approximate location of all its structures in the area involved in such proposed excavation or other work.

500.5 Whenever the City shall vacate any street or public place for the convenience or benefit of any person or governmental agency or instrumentality other than the City, PacifiCorp's rights shall be preserved as to any of its facilities then existing in such street or public place.

501. Control of Construction. PacifiCorp shall file with the City, maps that meet City specifications, showing the location of any construction, extension, or relocation of any of its electric lines, conduits, or facilities and shall obtain the City's approval of the location and plans prior to the commencement of the work. PacifiCorp shall be required to obtain a permit before commencing the construction, extension, or relocation of any of its electric utility transmission or distribution facilities within an easement.

502. Maps. PacifiCorp shall file with the City a system "as built" map annually, drawn to accurate scale and shall amend the map annually or as often as necessary to keep the City informed as to the location of all facilities installed in the franchise territory. The map shall clearly indicate location of distribution and transmission lines within easements. Location of customer service drops in a specified underground area shall be provided promptly by PacifiCorp upon the City's request.

503. Rearrangement of Facilities to Permit Moving of Buildings and Other Objects.

503.1 Upon reasonable advance notice in writing from any person desiring to move a building or other object, PacifiCorp shall temporarily raise, lower, or remove its facilities upon any street, bridge, or public place within the City, when necessary to permit the person to move the building or other object across or along such street, bridge, or public place. The raising, lowering, or removal of the facilities of PacifiCorp shall be in accordance with all applicable ordinances and regulations of the City.

503.2 The notice required by Section 503.1 of this section shall bear the approval of the City Manager, shall detail the route of movement of the building or other objects, and shall provide the actual expense incurred by PacifiCorp in making the temporary rearrangement of its facilities, including the cost to PacifiCorp of any interruption of service to its customers caused thereby, will be borne by the person giving the notice. It shall further provide that the person giving said notice will indemnify and save PacifiCorp harmless from any and all damages or claims whatsoever caused directly or indirectly from such temporary rearrangement of PacifiCorp's facilities.

503.3 PacifiCorp, before making the temporary rearrangement of its facilities, may require the person desiring the temporary rearrangement to deposit cash or other adequate security reasonably acceptable to PacifiCorp, to secure payment of the costs of rearrangement as estimated by PacifiCorp.

ARTICLE VI - FINANCIAL

600. Compensation.

600.1 In consideration of the rights, privileges, and franchise hereby granted, PacifiCorp shall pay to the City from and after the effective date of the acceptance of this franchise, five (5) percent of its Gross Revenues derived from the sale of electricity within the corporate limits of the City.

600.2 The Gross Revenue of PacifiCorp shall mean revenues derived from the sale of electricity within the City allowed by law to be included within the term of Gross Revenue; other than such revenues and after deducting therefrom any amounts paid by PacifiCorp to the United States or to the State of Oregon as excise, occupation, or business taxes upon the sale or distribution of electric service in the City. Net uncollectibles shall be deducted from the Gross Revenue in determining the total Gross Revenue.

600.3 The compensation required by this section shall be due on or before the 25th day of each and every month for the month preceding. Within thirty (30) days after the termination of this franchise, compensation shall be paid for the period elapsing since the end of the last month for which compensation has been paid.

600.4 PacifiCorp shall furnish to the City with each payment of compensation required by this section a statement, showing the amount of Gross Revenue of PacifiCorp within the City for the period covered by the payment computed on the basis set out in Section 600.1 of this section. If PacifiCorp fails to pay the entire amount of compensation due to the City through error or otherwise within the times allotted for payment in Section 600.4 above, the amount of the fee due for that month and not timely paid shall be subject to a late penalty of an additional ten (10) percent plus interest of two (2) percent per month on the amount of fee due and unpaid from the date due until it is paid together with the late penalty.

600.5 Nothing contained in this franchise shall give PacifiCorp any credit against any *ad valorem* property tax now or hereafter levied against real or personal property within the City, or against any local improvement assessment or any business tax imposed on PacifiCorp, or against any charges imposed upon PacifiCorp as provided in Section 603 of this franchise, or reimbursement or indemnity paid to the City.

600.6 In the event PacifiCorp is prohibited by state or federal law from paying a fee based on Gross Revenues or the City is prohibited by state or federal law from collecting such a fee, either the City or PacifiCorp have the right to re-open the franchise agreement to renegotiate the compensation section.

601. Insurance

601.1 PacifiCorp shall protect and save the City, its officers, employees and agents harmless against and from any and all damage claims, and any and all loss, liability, cost or expense, occasioned by any negligent act or omission of PacifiCorp in the construction, maintenance, operation, or repair of PacifiCorp's property or any use thereof, and PacifiCorp shall at

all times comply with any lawful present or future charter provisions, ordinances, rules or regulations of the City relating to the manner of occupation or use, or to the repair or improvement of said streets.

601.2 PacifiCorp shall, for the purposes of carrying out the provisions of this section, prior to commencing construction of any kind, have in full force and effect, and file evidence thereto with the Risk Manager, good and sufficient insurance policies covering Employers' Liability insurance with a minimum limit of \$500,000; Commercial General Liability insurance, to include contractual liability, with a minimum single limit of \$1,000,000 to protect against and from all loss by reason of injury to persons or damage to property based upon and arising out of the work performed under this Contract; Business Automobile Liability insurance with a minimum single limit of \$1,000,000 for bodily injury and property damage with respect to vehicles whether owned, hired or non-owned, assigned to or used by Contractor in the performance of the work.

601.2.1 PacifiCorp may self-insure for any or all of the above coverage and shall furnish the City with documentation certifying evidence of such self-insurance.

601.3 The City of Sweet Home, its officers, agents, and employees, shall be named additional insureds in any policy covering losses caused in whole or in part by reason of the exercise of the rights and privileges herein granted, but only such losses for which PacifiCorp has agreed to indemnify the City per the terms of this agreement. PacifiCorp shall pay all expenses incurred by the City in defending itself with regard to all damages and penalties mentioned in Section 601.1 above. These expenses shall include all out-of-pocket expenses, including consultants' or attorneys' fees.

602. Damages. Damages and penalties shall include, but shall not be limited to, damages arising out of personal injury, property damage, copyright infringement, defamation, antitrust, errors and omissions, theft, fire, and all other damages arising out of PacifiCorp's exercise of this franchise, whether or not any act or omission complained of is authorized, allowed, or prohibited by this franchise.

603. Permit and Inspection Fees. Nothing in this ordinance shall be construed to limit the right of the City to require PacifiCorp to pay the standard fees charged by the City for any of the activities covered by Sweet Home Municipal Code.

604. Reflecting Expenditures on Billing Statements. If the franchise fee is itemized on the customer billing statement, it shall only be the amount over three and one half (3½) percent in accordance with the applicable Oregon Administrative Rules.

ARTICLE VII - CITY ADMINISTRATION OF FRANCHISE

700. Ongoing Communication. PacifiCorp shall keep the City informed of all new developments, issues or concerns affecting the utility system. PacifiCorp shall notify the City Manager in advance of any public announcement that is to be made on the subject. The City shall endeavor to notify PacifiCorp of any developments or issues concerning the franchise in advance of any public announcement on the subject.
701. PacifiCorp's Rules. PacifiCorp shall have authority to promulgate such reasonable rules and regulations governing the conduct of its business as shall be reasonably necessary to enable PacifiCorp to exercise its rights and performance obligations under this franchise, and to assure uninterrupted service to its customers. PacifiCorp's rules and regulations shall be subject to the provisions of this ordinance and any other governmental regulations.
702. Right to Inspect Records. PacifiCorp shall keep current, accurate records of account at an office within a reasonable days commute of the City for the purpose of determining the amounts due the City under Section 600.4 of this ordinance. The City may inspect and audit the records of account, upon written request. The Council may request periodic reports from PacifiCorp relating to its revenue within the City.
703. Reports and Records.
- 703.1 Customer Base Report. Within thirty (30) days following the end of each calendar year, PacifiCorp shall furnish to the City a report that will accurately identify the total number of PacifiCorp's customers within the City limits.
- 703.2 Costs of Reports. The cost of preparing and furnishing to the City the records and reports required by this section shall be borne by PacifiCorp.
704. Assignment or Sale of Franchise or Facilities. PacifiCorp shall not transfer or assign any rights under this Franchise to another entity, except transfers and assignments by operation of law, unless the City shall first give its approval in writing, which approval shall not be unreasonably withheld; provided, however, inclusion of this Franchise as property subject to the lien of the Company's mortgage(s) shall not constitute a transfer or assignment.
705. Remedies Not Exclusive: When Requirement Waived. All remedies and penalties under this ordinance, including termination of the franchise, are cumulative, and the recovery or enforcement of one is not a bar to the recovery or enforcement of any other such remedy or penalty. The remedies and penalties contained in this ordinance, including termination of the franchise, are not exclusive, and the City reserves the right to enforce the penal provisions of

any ordinance or resolution and to avail itself of any and all remedies available at law or in equity. Failure to enforce shall not be construed as a waiver of a breach of any term, condition, or obligation imposed upon PacifiCorp by, or pursuant to, this ordinance. A specific waiver of a particular breach of any term, condition, or obligation imposed upon PacifiCorp by, or pursuant to, this ordinance or acceptance of any payment due shall not be a waiver of any other or subsequent or future breach of the same or of any other term, condition, or obligation itself.

706. City's Right to Revoke. In addition to all other rights which the City has pursuant to law or equity, the City reserves the right to revoke, terminate, or cancel this franchise, and all rights and privileges pertaining thereto, in the event that:

706.1 PacifiCorp repeatedly violates any material provision of this franchise.

706.1.1 The following provisions are deemed to be material to the performance of the franchise:

Continuous Service (Article 3, 300);
Emergency Repair Service (Article 3, 301);
Excavation and Restoration (Article 4, 400);
Relocation of Facilities (Article 4, 401);
Compensation (Article 6, 600);
Insurance (Article 6, 601);
Damages (Article 6, 602); and
Assignment or Sale of Franchise (Article 7, 704).

706.2 PacifiCorp practices any fraud upon the City or customer.

706.3 PacifiCorp becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt.

706.4 PacifiCorp misrepresents a material fact in the application for or negotiation of, or renegotiations of, or renewal of, the franchise.

706.5 PacifiCorp deliberately fails to operate the system without prior approval of the City or without just cause.

707. Revocation Procedures.

707.1 The City shall provide PacifiCorp with a written notice of the cause of termination and its intention to terminate or revoke the franchise and shall allow PacifiCorp a minimum of ninety (90) days after service of the notice in which to correct the violation. If, at the end of the ninety (90) day period, PacifiCorp has not corrected the matter which provides grounds for termination, the franchise may, at the option of the City, become null and void and PacifiCorp shall thereafter be entitled to none of the privileges or

rights herein extended to them and said PacifiCorp shall thereupon cease and desist from any activity within the City limits of City; provided, however, that the City may at its option pursue any other and different or additional remedy provided to it by law or in equity.

707.2 PacifiCorp shall be afforded due process and provided with an opportunity to be heard at a public hearing before the City prior to the termination of the franchise. The City shall hear any persons interested therein, and shall determine, in its discretion, whether or not any failure, refusal, or neglect by PacifiCorp has occurred.

707.3 Any revocation of this franchise shall be by formal action of the City Council, by ordinance.

708. Penalties. Subject to requirement of prior notice as set forth in Section 709 below, for violations of this ordinance occurring without just cause, the City may, at its discretion and in addition to any other remedies provided herein, assess penalties against PacifiCorp as follows:

708.1 For failure to adhere to material provisions of this franchise, as defined in Section 706.1.1, Two Hundred Forty Dollars (\$240.00) per day for each provision not fulfilled.

708.2 For failure to comply with Oregon Occupational Safety and Health Administration safety requirements, National Electrical Safety Code, or general requirements of permits issued for work within easements, the penalty shall be Two Hundred Forty Dollars (\$240.00) per day, per each occurrence.

708.3 For failure to comply with any provision of this franchise, for which a penalty is not otherwise specifically provided, the penalty shall be One Hundred Twenty Dollars (\$120.00) per day, per each occurrence.

708.4 For failure to comply with reasonable requests of the City related to service, Sixty Dollars (\$60.00) per day for each request.

709. Procedure for Imposition of Penalties.

709.1 Whenever the City finds that PacifiCorp has violated one (1) or more terms, conditions or provisions of this franchise, a written notice, or a verbal notice followed by a written notice, shall be given to PacifiCorp informing it of such violation or liability. If the violation concerns requirements mandated by the Oregon Occupational Health Administration, National Electrical Safety Code, or City permits, a verbal notice followed by a written notice will be given. For these safety or permit violations, PacifiCorp shall have 24 hours from receipt of notice to correct the

violation. In other cases of emergency, as determined by the City, the City may correct the violation and charge PacifiCorp for the costs incurred. For all other violations and liabilities the written notice shall describe in reasonable detail the specific violation so as to afford PacifiCorp an opportunity to remedy the violation. PacifiCorp shall have twenty (20) working days subsequent to receipt of the notice in which to correct the violation. PacifiCorp may, within ten (10) days of receipt of notice, notify the City that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by PacifiCorp to the City shall specify with particularity the matters disputed by PacifiCorp.

709.1.1 The Council shall hear PacifiCorp's dispute at its next regularly or specially scheduled meeting. The Council shall supplement the decision with written findings of fact.

709.1.2 If after hearing the dispute the claim is upheld by the Council, PacifiCorp shall have twenty (20) working days from such a determination to remedy the violation or failure.

709.1.3 PacifiCorp shall be liable for full payment of all penalties imposed under this section.

ARTICLE VIII - POST FRANCHISE

800. City Right in Franchise.

800.1 City use of PacifiCorp's facilities shall at all times comply with the rules and regulations of PacifiCorp and shall not compete or interfere with PacifiCorp's use. The City shall hold PacifiCorp harmless from any claims arising out of City's use of said facilities hereunder.

800.2 The City shall have the right to observe and inspect all construction or installation of PacifiCorp's facilities subject to the provisions of this ordinance and to make such inspections as it shall find necessary to ensure compliance with governing laws, rules, and regulations. No construction shall be commenced prior to approval by the City. PacifiCorp is responsible for all work performed, by or for PacifiCorp or its agents.

800.3 Upon any termination of this franchise, whether before the expiration of the franchise or upon expiration, or by any abandonment of the franchise by PacifiCorp (except for an unapproved assignment provided in Section 704), all equipment installed or used by PacifiCorp shall be removed by PacifiCorp at PacifiCorp's expense and the property upon which said equipment was used restored by PacifiCorp to the original or better than original condition it was in before installation or use by PacifiCorp.

801. Foreclosure, Receivership and Abandonment.

801.1 Foreclosure. Upon the foreclosure or other judicial sale of the system, PacifiCorp shall notify the City of such fact and such notification shall be treated as a notification that a change in control of PacifiCorp has taken place, and the provisions of this franchise governing the consent to transfer or change in ownership shall apply without regard to how such transfer or change in ownership occurred.

801.2 Receivership. The City shall have the right to cancel this franchise subject to any applicable provisions of Oregon or federal law, including the Bankruptcy Act, one hundred and twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of PacifiCorp, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred and twenty (120) days, or unless:

801.2.1 Within one hundred and twenty (120) days after his/her election or appointment, such receiver or trustee shall have fully complied with all the provisions of this franchise and remedied all defaults thereunder; and

801.2.2 Such receiver or trustee, within said one hundred and twenty (120) days, shall have executed an agreement, duly approved by the Court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this franchise.

802. Continuity of Service Mandatory. Upon expiration or the termination of this franchise, the City may require PacifiCorp to continue to operate the system for an extended period of time, not to exceed twelve (12) months. PacifiCorp shall, as trustee for its successor in interest, continue to operate the system under the terms and conditions of this franchise. In the event PacifiCorp does not so operate the system, the City may take such steps as it in its sole discretion, deems necessary to assure continued service to subscribers.

ARTICLE IX - MISCELLANEOUS

900. Compliance with Laws, Rules, and Regulations. At all times during the term of this franchise, PacifiCorp shall comply with all applicable laws, ordinances, municipal codes, rules, and regulations of the United States of America, the State of Oregon, and the City of Sweet Home including all agencies and subdivisions thereof. PacifiCorp shall be subject to the lawful exercise of the police power of the City of Sweet Home and to such reasonable regulations as the City may from time to time hereafter by resolution or ordinance provide. No provision of this

franchise shall be construed as a waiver of local, State or Federal law, or as a limit of liability.

901. Discriminatory Practices Prohibited. PacifiCorp shall make its services available without discrimination and shall not give any person any preference or advantage not available to all persons similarly situated. Notwithstanding the above, the Council may, by resolution, approve any program or service offered by PacifiCorp that the Council believes to be in the best interest of the City. PacifiCorp shall comply at all times with all other applicable, federal, state and local laws, and all executive and administrative orders relating to non-discrimination.
902. Rules of Construction. This ordinance shall be construed liberally in order to effectuate its purposes. Unless otherwise specifically prescribed in this ordinance, the following provisions shall govern its interpretation and construction:
- 902.1 When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number.
- 902.2 Time is of the essence of this ordinance. PacifiCorp shall not be relieved of its obligation to comply promptly with any provision of this ordinance by any failure of the City to enforce prompt compliance with any of its provisions.
- 902.3 Unless otherwise specified in this ordinance, any action authorized or required to be taken by the City may be taken by the Council or by an official or agent designated by the Council.
- 902.4 Every duty and every act to be performed by either party imposes an obligation of good faith on the party to perform such.
903. Severability and Constitutionality. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held illegal, invalid, or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining positions hereof. The Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, and phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared illegal, invalid, or unconstitutional. The invalidity of any portion of this ordinance shall not abate, reduce, or otherwise affect any other consideration or obligation required of PacifiCorp by any franchise granted hereafter. If, for any reason, the franchise fee or compensation is invalidated or amended by the act of any court or governmental agency, then the highest reasonable franchise fee or compensation allowed by such court or other governmental agency shall be the franchise fee or compensation charged by this ordinance.

904. Written Notice. All notices, reports, or demands required to be given in writing under this franchise shall be deemed to be given when a registered or certified mail receipt is returned indicating delivery, or on the next addressed business day if sent by express mail or overnight air courier to the party to which notice is being given, as follows:

If to the City: City of Sweet Home
 1140 12th Avenue
 Sweet Home, Oregon 97386
 Attn: City Manager

If to PacifiCorp: PacifiCorp, Pacific Power
 75 South Fifth St
 Cottage Grove, OR 97424
 Attn: Customer Business Manager

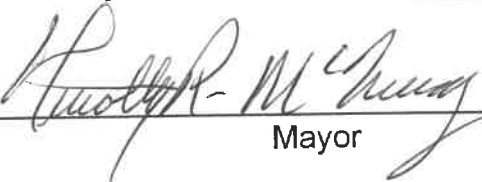
Such addresses may be changed by either party upon written notice to the other party given as provided in this section.

905. Non-enforcement by the City. PacifiCorp shall not be relieved of its obligation to comply with any of the provisions of this franchise by reason of any failure of the City to enforce prompt compliance.

906. Captions. The paragraph captions and headings in this franchise are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of this franchise.


907. Calculation of Time. Where the performance or doing of any act, duty, matter, payment, or thing is required hereunder and the period of time or duration for the performance or during thereof is prescribed and fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period or duration of time unless stipulated otherwise in this agreement. When the last day of the period falls on Saturday, Sunday, or a legal holiday, that day shall be omitted from the computation.

PASSED by the Council and approved by the Mayor this 27th day of June, 2000.



Mayor

ATTEST:



City Manager - Ex officio City Recorder