



ACCEPTANCE OF ORDINANCE NO. 1052-A
BY PACIFICORP, an Oregon corporation
doing business as
PACIFIC POWER & LIGHT COMPANY

PACIFICORP, an Oregon corporation, doing business as **Pacific Power & Light Company**, hereby unconditionally accepts Ordinance No. 1052-A of the City of Warrenton, Clatsop County, Oregon, and all the terms, provisions and conditions thereof, said ordinance being entitled:

AN ORDINANCE GRANTING TO PACIFICORP, AN OREGON CORPORATION, DOING BUSINESS AS PACIFIC POWER & LIGHT COMPANY, AND TO ITS SUCCESSORS AND ASSIGNS, A NONEXCLUSIVE RIGHT AND FRANCHISE FOR A PERIOD OF TWENTY (20) YEARS TO CONSTRUCT, MAINTAIN AND OPERATE, IN, ON, AND UNDER THE PRESENT AND FUTURE STREETS, ALLEYS, BRIDGES AND PUBLIC PLACES IN THE CITY OF WARRENTON, CLATSOP COUNTY, OREGON, ELECTRIC LIGHT AND POWER LINES AND APPURTENANCES AND COMMUNICATION FACILITIES FOR THE PURPOSE OF SUPPLYING ELECTRICITY AND ELECTRIC SERVICE TO THE CITY OF WARRENTON, THE INHABITANTS THEREOF AND OTHERS. SUBJECT TO THE TERMS AND CONDITIONS AND TO THE MAKING OF PAYMENTS SPECIFIED IN THE ORDINANCE, AND PROVIDING FOR THE REPEAL OF ORDINANCE NO. 668-A OF THE CITY OF WARRENTON, PASSED AND APPROVED FEBRUARY 7, 1979.

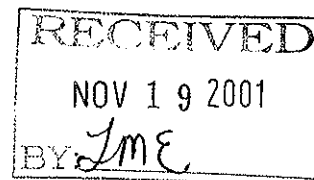
which said ordinance was duly submitted at a regular meeting of the Council of the City of Warrenton and read in full the first time on the 19th day of September, 2001, was read in full the second time on the 3rd day of October, 2001, and on the 3rd day of October, 2001 was duly signed by the Mayor and attested by the Recorder.

DATED this 13th day of November, 2001.

PACIFICORP, an Oregon corporation,
doing business as
PACIFIC POWER & LIGHT COMPANY

By: Bill Landels
Bill Landels
Vice President

Witness: Melanie



ORDINANCE NO. 1052-A

AN ORDINANCE GRANTING TO PACIFICORP, AN OREGON CORPORATION, DOING BUSINESS AS PACIFIC POWER & LIGHT COMPANY, AND TO ITS SUCCESSORS AND ASSIGNS, A NONEXCLUSIVE RIGHT AND FRANCHISE FOR A PERIOD OF TEN (10) YEARS TO CONSTRUCT, MAINTAIN AND OPERATE, IN, ON, AND UNDER THE PRESENT AND FUTURE STREETS, ALLEYS, BRIDGES AND PUBLIC PLACES IN THE CITY OF WARRENTON, CLATSOP COUNTY, OREGON, ELECTRIC LIGHT AND POWER LINES AND APPURTENANCES AND COMMUNICATIONS FACILITIES (FOR GRANTEE'S OWN NON-COMMERCIAL USE) FOR THE PURPOSE OF SUPPLYING ELECTRICITY AND ELECTRIC SERVICE TO THE CITY OF WARRENTON, THE INHABITANTS THEREOF AND OTHERS. SUBJECT TO THE TERMS AND CONDITIONS AND TO THE MAKING OF PAYMENTS SPECIFIED IN THE ORDINANCE, AND PROVIDING FOR THE REPEAL OF ORDINANCE NO. 668-A OF THE CITY OF WARRENTON, PASSED AND APPROVED FEBRUARY 7, 1979.

THE CITY OF WARRENTON ORDAINS AS FOLLOWS:

Section 1-Grant of Franchise: The City of Warrenton, Clatsop County, Oregon, hereinafter called the City, hereby grants to PacifiCorp, an Oregon corporation doing business as Pacific Power & Light Company, and to its successors and assigns, hereinafter called Grantee, a right and franchise for the period of ten (10) years from and after the effective date of this ordinance, to construct, maintain, and operate in, on, and under the present and future streets, alleys, bridges and public places excluding public parks of the City, hereinafter referred to as "streets", electric light and power lines, with all the necessary or desirable appurtenances and communications facilities (for Grantee's own non-commercial use), for the purpose of supplying electricity and electric service to the City and to the inhabitants thereof, subject to the terms and conditions and to the making of payments hereinafter specified. However, within 180 days before a period of five (5) years from the effective date of this ordinance, either party may notify the other of its intention to renegotiate or amend this ordinance prior to the fifth anniversary of the effective date of this ordinance. Notice shall be given of a party's intent to negotiate the terms of this ordinance by sending such written notice by certified mail to the other party, or its successor to this franchise, at such address, which shall be indicated from time to time by the parties.

Section 2-Franchise Not Exclusive: The right and franchise hereby granted shall be nonexclusive. The City may at any time during the term of this franchise grant rights or franchises for uses consistent with this franchise and appropriate statutes, rules and regulations.

Section 3-Grantee's Facilities Subject to City Regulation: The location and methods of installation and maintenance of all poles, wires, fixtures, underground lines, and appurtenances thereto (hereinafter referred to as "facilities") shall be subject at all times to reasonable regulation by the Commission of the City, and all such facilities shall be so constructed and maintained as to interfere as little as practicable with street or other traffic. All facilities shall be installed and at all times maintained by Grantee in accordance with good electrical practice. 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, Grantee may charge the expense of removal or relocation to the developer or customer.

Section 4-Continuous Service: Grantee's service shall be continuous and shall be adequate for the requirements of the City and its inhabitants, subject to accidents, interferences, or interruptions beyond the reasonable control of Grantee, and shall be furnished under such reasonable rules and regulations as Grantee may make from time to time for the proper conduct of its business. Such service

and all rules and regulations pertaining thereto or to the making of necessary and proper extension of service shall be subject at all times to any rules, regulations and orders lawfully prescribed by the Oregon Public Utility Commission; or by any other governmental authority having jurisdiction.

Section 5-Installation and Excavations:

A. Under the direction of the City and its officers, and after obtaining any permits required by the City, the Grantee may make all necessary excavations in a street, alley, road or other public way or place for the purpose of erecting, constructing, repairing, maintaining, removing, relocating and operating its facilities. The Grantee shall exercise its best effort in providing advance notice so as not to disrupt services of the City or other person or utility using a public right-of-way, property or place in the City and allow the City to place any inspector it deems necessary at the project site. The Grantee shall erect all its poles at the outside edge of the sidewalk unless otherwise directed by the proper City authorities. All of Grantee's facilities which are located within the public right-of-way and public easements shall be located at places approved by the City.

B. When installations and excavation work are performed in a public right-of-way, property or place, the Grantee shall take all reasonable precautions to minimize interruption to traffic flow, damage to property or creation of a hazardous condition.

Section 6-Restoration after Excavation: When an excavation is completed, the Grantee shall remove all surplus material in compliance with City specifications, requirements and regulations at the time of the restoration and restore the portion of the street, alley, road or public right-of-way or place to the 'same condition' as it was prior to the excavation within a reasonable time period. 'Same condition' shall allow for a good street patch and does not require Grantee to repave the street, alley, road or public right-of-way or place. If the Grantee fails to do so, the City may restore the site at the Grantee's expense.

Section 7-Location and Relocation of Facilities:

A. All facilities of the Grantee shall be placed so as to minimize interference with the use by the City and the public of any public right-of-way, property and place and in accordance with specifications adopted by the City governing the location of facilities. The City reserves the right to construct, install, maintain and operate any public improvement, work or facility; do any work that the City may find desirable on, over or under a public right-of-way, property or place. All such work shall be done, if possible, in such a manner as not to obstruct, damage or prevent free use and operation of the Grantee's facilities.

B. When it is in the public interest, the City may require the Grantee to remove and relocate transmission and distribution facilities maintained by the Grantee in any public right-of-way, property or place of the City by giving notice to the Grantee. Prior to such relocation the City agrees to provide a location suitable to Grantee which includes a minimum or maximum square footage set by the Grantee and the required easements from private property owners for such relocated facilities sufficient to maintain service in accordance with good electrical practice. The cost of removal or relocation of its facilities in the public interest shall be paid by the Grantee.

Section 8-Overhead to Underground Conversion:

A. Where the City proposes to improve a street, waterline, storm sewer or sanitary sewer within the public right-of-way under its jurisdiction or control, and requests to convert the Grantee's overhead distribution facilities to an underground system the following conditions will apply:

(1) Cost responsibility will be allocated according to all applicable Oregon Administrative Rules and upon notification by the City, the City and the Grantee will agree upon a reasonable schedule;

(2) The conversion from overhead to underground shall be conditioned upon the City requiring the undergrounding in the area in which both the existing and new facilities are and will be located;

(3) All existing overhead communication and electric distribution facilities in such area shall be removed;

(4) Each customer served from such existing electric overhead distribution facilities shall, in accordance with the Grantee's standards and at customer's expense and in accordance with the Oregon Public Utility Commission rules for undergrounding, make all electrical facility changes on customer's premises necessary to receive service from the Grantee's underground facilities as soon as it is available; and

(5) The Grantee is authorized to discontinue its overhead service on completion of the underground facilities.

B. Nothing in this ordinance shall be construed to prevent the City from sewerage, grading, paving, planking, repairing, widening, altering or doing any work that may be desirable on the streets, alleys, roads or public ways or places. The City shall do all such work, if possible, in a manner that will not obstruct, injure, or prevent the free use and operation of the Grantee's electric light and power system.

Section 9-Moving of Buildings: When necessary, to permit any duly authorized person to move any building or structure across or along any City streets, Grantee shall temporarily raise or remove its facilities, as necessary upon reasonable notice in advance from the Recorder of the City, and at such time and in such manner as may be reasonably required to accommodate such moving, consistent with the maintenance of proper service to Grantee's customers; provided, that the owner or mover of the building or structure shall first pay or satisfactorily secure Grantee's costs arising therefrom or related thereto, including any interruption of Grantee's service to its customers caused thereby.

Section 10-City May Use Grantee's Facilities: The City may, upon reasonable notice to Grantee and without payment or charge therefore, to attach its fire alarm, police signal wires, traffic control systems or flags/banners for the city's own use to the poles or other facilities of Grantee, but at its own risk and only in accordance with good electrical practice. If there is not sufficient space available thereon for said purposes, Grantee's structures may be changed, altered, or rearranged at City's expense so as to provide proper clearance for such wires or appurtenant facilities. Such facilities shall be subject to interference by Grantee only when and to the extent necessary for the proper construction, maintenance, operation or repair of Grantee's facilities.

Section 11-Trees and Vegetation: Grantee may trim all trees and vegetation which overhang said City streets, whether such trees or vegetation originate within the streets or outside said streets, in such a manner and to such an extent as will prevent the branches or limbs or other parts of such trees or vegetation from touching or interfering with its facilities, so long as no trees and vegetation are trimmed or cut back further than may be reasonably necessary to prevent such interference and to allow the proper operation and maintenance of said facilities. Nothing contained in this section shall prevent Grantee, 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 and vegetation which overhang said streets.

Section 12-Franchise Fees and Conditions:

(a) Grantee shall pay to the City a franchise fee in an amount equal to five percent (5.0%) of the Grantee's gross revenue collected by Grantee. "Gross revenue" is defined by Oregon Administrative Rules 860-022-0040(2).

(b) When direct access is implemented by Grantee in accordance with state law, Grantee and City shall mutually agree to renegotiate the provisions regarding the calculation of franchise fees, Section 12 of this agreement, consistent with Oregon Administrative Rules and state law upon written notice to Grantee by the City.

(c) Except as provide in (a) and (b) of this Section, the city shall not impose other business license fees or taxes on the Grantee during the term of this ordinance. This provision does not exempt the property of the Grantee from lawful ad valorem taxes, local improvement district assessments, or conditions exactions, fees and charges that are generally applicable during the Grantee's real property development or use as required by City ordinance.

(d) The franchise fee shall be paid monthly on or before the 20th of each month during the term hereof, and shall be computed upon the Gross Revenue as defined in Section 12(a) accruing during the previous calendar month or portion thereof.

(e) The Grantee shall furnish to the City with each payment of compensation required by this section a written statement showing the amount of the Grantee's Gross Revenue within the City for the period covered by the payment. The compensation for the period covered by the statement shall be computed on the basis of Gross Revenue. If the Grantee fails to pay the entire amount of compensation due the City through error or otherwise, the difference due the City shall be paid by the Grantee within 60 days from discovery of the error and determination of the correct amount. Any overpayment to the City through error or otherwise shall be paid to the Grantee within 60 days from discovery of the error and determination of the correct amount.

(f) Acceptance by the City of any payment due under this section shall not be a waiver by the City of any breach of this franchise occurring prior to the acceptance, nor shall the acceptance by the City preclude the City from later establishing that a larger amount was actually due, or from collecting the balance due to the City. Upon receiving such payment the City Recorder shall issue a receipt to the Grantee. If controversy arises as to the calculation of the amount of payment, an independent auditor will be chosen who is mutually acceptable to both the City and the Grantee to determine the correct amount. The expense of the auditor will be shared equally by the City and the Grantee.

(g) The City retains the right to enact a fee or a tax on public utilities as permitted by Oregon law so long as the combined fee under this agreement and the tax on public utilities assessed against the Grantee does not exceed City fees and taxes assessed against any distributor or supplier of electric power within the City. The City also retains the right upon six months' written notice of its decision to do so, to implement or increase a privilege tax to any amount not prohibited by law which is paid by customers and is above the franchise fee. The privilege tax will be separately stated on the regular billings to Grantee's customers within the City pursuant to regulations of the Oregon Public Utility Commission and Oregon Administrative Rules.

Section 13-Termination for Cause: If the Grantee fails, neglects, or refuses to perform any of its obligations or requirements under this ordinance for ninety (90) days after the City has demanded performance in writing or within a reasonable time period agreed upon by the City and the Grantee, the

City may terminate the Grantee's rights and privileges granted by this ordinance. This remedy shall not be exclusive and the City may pursue any other available remedy.

Section 14-Books of Account and Reports: The Grantee shall make available for inspection accurate books of account at an office in Oregon for the purpose of determining the amounts due to the City under this ordinance. The City may inspect the books of account, including computer retrieval information, upon written notice to the Grantee, during business hours and may audit the books from time to time. The City Commission may require annual reports from the Grantee relating to its operation and revenues within the City upon written notice to the Grantee.

Section 15-Supplying Maps upon Request: The Grantee shall make available for inspection maps and operational data pertaining to its operations in the City at an office Oregon. With 24 hours prior notice, the City may inspect the maps at any time during business hours. Upon written request of the City and without charge, the Grantee shall furnish current maps to the City within 30 days of such written request, either as "hard copy," printed form or, if the City maintains compatible data base capability, then by electronic data in read-only format, showing only the location of any electrical system facilities, but not other proprietary information, used in operating the Grantee's transmission and distribution facilities within the City's Urban Growth Boundary area served by the Grantee. The City will not reproduce, sell, or transmit Grantee maps or data to other entities unless by express written permission of the Grantee. The City will accord a reciprocal privilege to the Grantee to access specified City maps and data.

Section 16-Rate: The rates to be charged by the Grantee for electric energy shall be those set or approved by the PUC of Oregon or other governmental official, commission, or body having jurisdiction to set such rates.

Section 17-Limitation on Privileges: All rights, authority and grants contained in this franchise are conditioned upon the understanding and agreement that these privileges in the streets, alleys, roads, and other public rights-of-way of the City are not to operate in any way to be an enhancement of the Grantee's properties or values or to be an asset or item of ownership in an appraisal.

Section 18-Assignment of Franchise: During the term of this franchise, the Grantee shall not sell, assign, transfer, or convey this franchise without the City Commission giving its consent in a duly passed ordinance; provided such consent shall not be unreasonably withheld. Upon obtaining such consent, this franchise shall inure to and bind the successors, legal representatives and assigns of the Grantee, and whenever the Grantee is mentioned in this ordinance, it shall be understood to include the Grantee's successors in interest or assigns.

Section 19-Indemnification: Grantee agrees to indemnify and hold harmless the City, its Officers, Employees and Agents against and from any and all claims, actions, suites including costs and attorney's fees, for or on account of injury, bodily or otherwise, to, or death of persons, damage to or destruction of property belonging to City, Grantee or others, resulting from or arising out of Grantee's negligence. Grantee agrees to defend all such claims on behalf of the City.

Section 20-Remedies and Penalties Not Exclusive: All remedies and penalties under this ordinance, including termination of the franchise, are cumulative and not exclusive, and the recovery or enforcement by one available remedy or imposition of any penalty is not a bar to recovery or enforcement by any other such remedy or imposition of any other penalty. 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 the Grantee under this ordinance. A specific waiver of a particular breach of

any term condition or obligation imposed upon the Grantee under this ordinance shall not be a waiver of any other or subsequent or future breach of the same or any other term, condition or obligation, or a waiver of the term, condition or obligation itself.

Section 21-Repeal of Prior Ordinance: Upon the effective date hereof, but not otherwise, Ordinance No. 668-A of the City of Warrenton passed and approved February 7, 1979 is repealed.

Section 22-Effective Date: This ordinance shall take effect thirty (30) days after its enactment by the Commission and approval by the Mayor, but shall become null and void unless within sixty (60) days after such enactment Grantee shall file with the City Recorder Grantee's written unconditional acceptance of this franchise.

Section 23-Severability Clause: If any section, subsection, sentence, clause, phrase or portion of this ordinance is, for any reason, held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separated, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this ordinance.

Section 24-Oregon Public Utilities Commission: Should any tariff provisions of this agreement conflict with tariffs filed and approved by the Oregon Public Utilities Commission, the tariffs filed and approved by the Oregon Public Utilities Commission shall, if made mandatory, prevail over the tariffs in this agreement.

Section 25-Legal Fees: In the event suit or action is instituted to enforce any of the terms of this agreement, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorney's fees at trial or on appeal of such suit or action, in addition to all other sums provided by law.

PASSED by the City Commission of the City of Warrenton this 3 day of October 2001.



Jeff Hazen, Mayor

ATTEST:



Scott Derickson, City Manager

First Reading: September 19, 2001

Second Reading: October 3, 2001