

AN ORDINANCE GRANTING TO PACIFIC POWER & LIGHT COMPANY, A CORPORATION, AND TO ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE 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 OF THE CITY OF LEBANON, LINN COUNTY, OREGON, WATER UTILITY PROPERTY AND FACILITIES FOR THE PURPOSE OF SUPPLYING WATER AND WATER SERVICE TO THE CITY, THE INHABITANTS THEREOF AND OTHERS, SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED IN THE ORDINANCE; AND REPEALING ORDINANCE NO. 940, AND DECLARING AN EMERGENCY.

THE PEOPLE OF THE CITY OF LEBANON DO ORDAIN AS FOLLOWS:

Section 1. The city of Lebanon, Linn County, Oregon, hereinafter called the City, does hereby grant to Pacific Power & Light Company, a corporation, and to its successors and assigns, hereinafter called the Grantee, a right and franchise for the period of twenty (20) 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 of the City, hereinafter referred to as "Streets", water utility property and facilities for the purpose of supplying water and water service to the City and the inhabitants thereof, and to persons and corporations beyond the limits of the City, subject to the terms and conditions and to the making of the payments hereinafter specified.

Section 2. The right and franchise hereby granted shall not be exclusive; and the City expressly reserves the right at any time during the term of the right and franchise hereby granted, to grant rights or franchises for such purposes to other persons or corporations, as well as the right in its own name as a municipality to use said Streets for such purposes, in the event that the City shall hereafter decide to engage in the business of supplying water and water service for municipal or other uses. If, during the term hereof, the City shall decide to engage in such business and shall elect to acquire by condemnation or otherwise the property used by the Grantee in furnishing service hereunder, no value or damages of any kind shall be claimed by or allowed to the Grantee on account of the unexpired term of the right and franchise hereby granted.

Section 3. The locations and methods of installation and maintenance of all pipes, pipelines, mains, laterals, conduits, feeders, valves, meters, fixtures, connections, attachments and appurtenances thereto (hereinafter referred to as "facilities") shall be subject at all times to reasonable regulation by the Council of the City, or by such committee of the Council or such official of the City as may be designated by the Council; and all such facilities shall be so constructed and maintained as to interfere as little as practicable with street or other traffic. All such facilities shall be installed and at all times maintained by the Grantee in safe order and condition and in accordance with good water service.

Section 4. The service to be furnished hereunder by the Grantee 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 the Grantee, and shall be furnished under such reasonable rules and regulations as the Grantee may make from time to time for the proper conduct of its business. Such service and all rates and charges therefor, and all rules and regulations pertaining thereto or to the making of necessary and proper extensions of service, shall be subject at all times to any rules, regulations and orders lawfully prescribed by the Public Utility Commissioner of Oregon, or by any other authority having jurisdiction in the premises.

Section 5. It shall be lawful for Grantee to make all needful or convenient excavations in any of the streets, alleys, avenues, boulevards and thoroughfares of the City for the purpose of constructing, laying, maintaining and operating canals, pipes, hydrants and other fixtures in, on or underground for the purpose aforesaid or to repair and improve such water system and to extend the same as the growth of said City or the needs of the inhabitants thereof may require; provided, that when Grantee shall disturb any of said streets, alleys, avenues, boulevards, or thoroughfares for the purposes aforesaid, Grantee shall comply with the ordinances of the City applicable thereto, and shall restore the same to good order and condition as soon as practicable and without unnecessary delay; and if Grantee fails to do so after five (5) days' written notice from the street superintendent or street committee

of the Council of said City, said street superintendent or street committee may place said street, alley, avenue, boulevard or thoroughfare in such condition at the expense of the City, and the City may recover from Grantee the amount of the cost thereof.

Section 6. The Grantee 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 the Grantee in the construction, maintenance, operation or repair of the Grantee's facilities or any use thereof.

Section 7. The Grantee shall pay to the City a franchise fee or charge equivalent to three and one-half percent (3½%) of the Grantee's gross operating revenue as the same is defined herein; provided that if the City, within sixty (60) days prior to the end of each five (5) year period of the right and franchise hereby granted, shall request a review of said franchise fee, then, the City and Grantee shall, in good faith, renegotiate said fee, and the fee as then mutually reestablished shall thereafter, be paid during the remaining years of said franchise term.

(a) "Gross operating revenue," as used herein, shall be defined as the gross revenue from the sale of water and water service within the corporate limits of the City, other than such revenues which are derived from the sale of water at wholesale in interstate commerce, or from business done with the Government of the United States of any agency thereof, and after deducting therefrom any amounts paid by the Grantee to the United States or the State of Oregon as excise, occupation, or business taxes upon the sale or distribution of water service in the City. At the election of the Grantee, Grantee may also deduct uncollectible revenues from customers within the City in computing gross operating revenue.

(b) The amounts so payable by the Grantee hereunder shall be in lieu of any other license, occupation, franchise or excise taxes or charges which

might otherwise be levied or collected by the City from the Grantee with respect to Grantee's water business or of the exercise of this franchise within the corporate limits of the City.

(c) The franchise fee due hereunder shall be paid monthly on or before the 20th day of each month during the term hereof, and shall be computed upon the gross operating revenues accruing during such previous month or portion thereof.

Section 8. This ordinance shall be in full force and effect from and after the expiration of thirty (30) days following the date of its final passage by the Council and its approval by the Mayor of the City but shall become null and void unless within sixty (60) days after such effective date the Grantee shall file with the Recorder the Grantee's written acceptance of the terms, conditions, and obligations to be complied with or performed by it hereunder.

Section 9. The franchise hereby granted may be revoked and forfeited by the City, by duly enacted ordinance, in the event the Grantee shall fail, after reasonable notice or demand, to comply with any of the terms, conditions, or obligations imposed upon the Grantee hereunder.

Section 10. Ordinance No. 940 is hereby repealed.

Section 11. This ordinance shall take effect June 15, 1976.

Section 12. That inasmuch as the provisions of this Ordinance are necessary for the immediate preservation of the peace, health, and safety of the people of the City of Lebanon, an emergency is hereby declared to exist, and this Ordinance shall be in full force and effect immediately upon its passage by the Council and approval by the Mayor.

Passed by the Council and approved by the Mayor this 11 day of May, 1976.

Am. Scroggin Gonzalez
Mayor

ATTEST:

[Signature]
Recorder

Section 2. That the Recorder of the City of Lebanon is hereby authorized to publish notice of said election in the manner provided by law; and further he shall place said proposal on the official ballot to be voted on by the legal electors of said election.