

WHEREAS, PacifiCorp doing business as Pacific Power, is a regulated public utility that provides electric power and energy to the citizens of the City of Lebanon (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 desires to set forth the terms and conditions by which PacifiCorp shall use the public ways of the City;

THE CITY OF LEBANON ORDAINS 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 thereof.

SECTION 2: Term

The term of this Franchise Agreements is for ten (10) years commencing on the date of acceptance by the Company as set forth in Section 4 below.

SECTION 3: Renewal

At least 120 days prior to the expiration of this Franchise, PacifiCorp and the City either shall agree to extend the term of this Franchise for a mutually acceptable period of time or the parties shall use best faith efforts to renegotiate a replacement Franchise. PacifiCorp shall have the continued right to use the Public Ways of the City as set forth herein in the event an extension or replacement Franchise is not entered into upon expiration of this Franchise.

SECTION 4: **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 5: **Non-Exclusive Franchise**

The rights, privileges and franchise herein granted shall not be deemed exclusive and the right is hereby reserved to the City to grant any other persons, companies, corporations or associates similar rights.

SECTION 6: **City Regulatory Authority**

In addition to the provision herein contained, 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 7: **Indemnification**

PacifiCorp agrees to indemnify, save and hold harmless, and defend the City, its officers, boards and employees, from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of PacifiCorp's construction, operation, or maintenance of its Electric Facilities, provided that the City shall give PacifiCorp written notice of its obligation to indemnify the City within ten (10) days of receipt of a claim or action pursuant to this section. Notwithstanding the foregoing, PacifiCorp shall not indemnify the City for any damages, liability, or claims resulting from the willful misconduct or negligence of the City.

SECTION 8: **Annexation**

8.1 **Extension of City Limits.** Upon the annexation of any territory to the City, the rights granted herein shall 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 shall thereafter be subject to all of the terms hereof.

8.2 **Annexation.** When any territory is approved for annexation to the City, the City shall, 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 shall be mailed to:

PacifiCorp Customer Contact Center
Attn: Annexations
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 shall become effective on the effective date of the annexation if notice is given to PacifiCorp by certified mail not later than ten (10) working days after the effective date of the annexation. However, if notification of the effective date of the annexation is provided to PacifiCorp later than the tenth (10th) working day after the effective date of the annexation, the additional or increased fees or taxes will become effective on the date of the notification. This provision shall be subject to any amendment of ORS 222.005.

SECTION 9: **Planning, Design, Construction and Installation of Company Facilities**

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

9.2 Except in the case of an emergency, PacifiCorp shall, prior to commencing new construction or major reconstruction work in the public way or street or other public places, apply for a permit from the City which permit shall not be unreasonably withheld, conditioned, or delayed. PacifiCorp will abide by all applicable ordinances and all rules, regulations and requirements of the City, and the City may inspect the manner of such work and require remedies as may be reasonably necessary to assure compliance. Notwithstanding the foregoing, PacifiCorp shall not be obligated to obtain a permit to perform emergency repairs.

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

9.4 If, during the course of work on its Electrical Facilities, PacifiCorp causes damage to or alters the Public Way or public property, PacifiCorp shall (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.

9.5 All new Electric Facilities installed by PacifiCorp shall be installed underground, unless the new facilities are within an area currently served above ground, in which case this provision shall not apply. Upon request, the City Engineer or designee may allow above ground construction for good cause, to be determined by the City Engineer or designee.

9.6 The City may, upon reasonable notice to Grantee and without payment or charge therefore, attach its fire alarm, police signal wires, data/cable wiring or traffic control systems for municipal purposes only to the poles of Grantee, provided however that the City and Grantee shall enter into a separate written agreement regarding WI-FI-type attachments. The City's attachments hereunder shall be at the City's own risk and only in accordance with the National Electric Safety Code and Grantee's most current distribution construction standards. 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. For purposes of this Section 9.6, "municipal purposes" shall be defined as purposes for the substantial benefit of the City, but specifically excluding: (i) the sole commercial use by a third party or (ii) use for the distribution of electricity. City shall indemnify, protect, and hold harmless PacifiCorp and its directors, officers, employees and agents (hereinafter collectively "PacifiCorp Indemnified Parties") against and from any and all claims, demands, suits, losses, costs and damages of every kind and description, including attorneys' fees and/or litigation expenses, brought or made against or incurred by the PacifiCorp Indemnified Parties resulting from, arising out of, or connected with the City's exercise of the right granted in this Section for commercial purposes. For purposes of this paragraph, commercial purpose shall include, without limitation, the provision of telecommunication and cable service.

9.7 PacifiCorp shall have the right to excavate the Public Rights of Ways subject to reasonable conditions and requirements of the City. Before installing new underground conduits or replacing existing underground conduits, PacifiCorp shall first notify the City of such work by written notice.

SECTION 10: Relocation of Electric Facilities

10.1 The City reserves the right to require PacifiCorp to relocate its Electric Facilities within the Public Right of Way in the interest of public convenience, necessity, health, safety or welfare at no cost to the City. When required by the City, PacifiCorp shall relocate its Electric Facilities within one hundred twenty (120) days of receiving written notice, if reasonably practicable by letter or by submission of public infrastructure construction plans, from the City. Within fourteen (14) days of receiving notice from the City, a coordination meeting between representatives from the City and representatives from PacifiCorp shall be held to identify potential utility conflicts and discuss potential design features that could reduce costs for either or both parties. The

City shall appoint and notify PacifiCorp of one main contact person on public infrastructure project to act on behalf of the City. Notwithstanding anything to the contrary contained herein, conversions from overhead to underground shall be in accordance with applicable state regulations.

Upon request, the City Engineer or designee, for good cause, may extend the deadline of the coordination meeting or the time to complete utility relocations, determined solely by the City Engineer or designee. If the City incurs damages due to PacifiCorp's failure to promptly relocate its facilities, PacifiCorp will be responsible for all damages, including attorney fees, if any. All facilities shall be installed and at all times maintained by PacifiCorp in accordance with good electrical practice.

10.2 PacifiCorp shall 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 facilities is caused directly 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.

SECTION 11: Subdivision Plat Notification

Before final approval any new subdivision and before the plat is recorded, the City shall mail notification and a copy of the plat to PacifiCorp:

PacifiCorp
Attn: Property Management / Right-of-Way Department
825 N.E. Multnomah, Suite 1700
Portland, Oregon 97232

SECTION 12: 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. Subject to the City tree removal ordinance, nothing contained in this Section shall 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 trees which overhang streets.

SECTION 13: Compensation

13.1 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 and 94/100's percent (5.94%) of its gross revenues derived from within the corporate limits of City. The term "gross revenue" as used herein shall be construed to mean 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 bills theretofore rendered. All amounts paid under this Section 12 shall be subject to review by the City; provided that only payments which occurred during a period of thirty-six (36) months prior to the date the City notifies PacifiCorp of its intent to conduct a review shall be subject to such review. Notwithstanding any provision to the contrary, at any time during the term of this Franchise, the City may elect to increase the franchise fee amount as may then be allowed by state law. The City shall provide PacifiCorp with prior written notice of such increase following adoption of the change in percentage by the City. The increase shall be effective sixty (60) days after City has provided such written notice to PacifiCorp.

13.2 The franchise fee shall not be in addition to any other license, occupation, franchise or excise taxes or charges which 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 shall be reduced by deducting there from the amount of said franchise fee paid hereunder.

13.3 The Franchise fee 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 revenue accruing during the previous calendar month or portion thereof.

SECTION 14: No Waiver

Neither the City nor PacifiCorp shall 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 shall not transfer or assign any rights under this Franchise to another entity, except transfers and assignments by operation of law, or to affiliates, parents or subsidiaries of PacifiCorp which assume all of PacifiCorp's obligations hereunder, unless the City shall first give its approval in writing, which approval shall not be unreasonably withheld, conditioned or delayed; provided, however PacifiCorp may assign, mortgage, pledge, hypothecate or otherwise transfer without consent its interest

in this Franchise to any financing entity, or agent on behalf of any financing entity to whom PacifiCorp (1) has obligations for borrowed money or in respect of guaranties thereof, (ii) has obligations evidenced by bonds, debentures, notes or similar instruments, or (iii) has obligations under or with respect to letters of credit, bankers acceptances and similar facilities or in respect of guaranties thereof.

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 party of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s). No amendment or amendments to this Franchise shall be effective until mutually agreed upon by the City and PacifiCorp and formally adopted as an ordinance amendment, which is accepted in writing by PacifiCorp.

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 shall be precluded from taking any action it deems necessary to resolve difference in interpretation of the Franchise nor shall 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, whichever the case may be, 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 which would have the effect of amending the specific provisions of this Franchise shall become effective without such action which would be necessary to formally amend the Franchise.

SECTION 18: Notices


Unless otherwise specified herein, all notices from PacifiCorp to the City pursuant to or concerning this Franchise shall be delivered to the Senior Engineer in Facility Planning, City of Lebanon Engineering Department, 853 Main Street, Lebanon, OR 97355. Unless otherwise specified herein, all notices from the City to PacifiCorp pursuant to or concerning this Franchise shall 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 hereof is for any reason determined to be illegal, invalid, or superseded by other lawful authority including any state or federal regulatory authority having jurisdiction thereof 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 shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

Passed by the Lebanon City Council by a vote of 6 in favor and 0 against and approved by the Mayor on this 9th day of December, 2009.

CITY COUNCIL OF LEBANON, OREGON



Kenneth I. Toomb, Mayor
Bob Elliott, Council President

ATTEST:



Linda Kaser, City Clerk/Recorder