

COPY

LICENSE FOR USE

THIS LICENSE FOR USE ("License") is entered into this 5th day of November, 1999, by and between Portland General Electric Company, an Oregon corporation ("PGE") and the City of Newberg, an Oregon municipal corporation, ("Licensee") (collectively, "Parties"), with reference to the following facts and circumstances:

RECITALS

- A. PGE is the owner of certain real property in Yamhill County, Oregon, as more particularly described in Exhibit "A," attached hereto and incorporated herein (the "Property").
- B. On or about May 5, 1997, the City of Newberg issued its Findings for the design review approval for construction of PGE's new electrical substation located on the Property, under Application Number DR-88-97, which findings include certain Final Conditions of Approval, one of which is that PGE will allow the Licensee to erect a welcome/entrance sign on the property and that the proposed sign be processed as a tenant improvement under Type I design review guidelines.
- C. In order to erect and maintain said sign, Licensee desires access to a portion of the Property identified on the attached Exhibit "A" (the "License Area").
- D. Such right of access shall be for the following purposes: to erect, maintain, repair and inspect a City of Newberg welcome/entrance sign, including the installation of necessary electrical and irrigation lines to serve the sign. ("Permitted Uses").

NOW THEREFORE, in consideration of the mutual promises contained herein and the performance thereof, the Parties agree to the following:

AGREEMENT

1. GRANT OF LICENSE OF ACCESS

Subject to the terms and conditions set forth below, PGE hereby grants to Licensee a nonexclusive license for access to the License Area for the Permitted Uses.

2. USE OF LICENSE AREA

- 2.1 The License Area may be used only as specifically authorized by this License.
- 2.2 Except to the extent this License otherwise specifically grants such rights, Licensee shall not construct any buildings or other structure in the License Area.
- 2.3 No use may be made of, on or from the License Area relating to the handling, storage, disposal, transportation, or discharge of hazardous substances, toxic materials or any

substance or material regulated by federal, state or local environmental protection laws, rules and regulations. Under no circumstances shall any use be made of, or shall conduct occur on, the License Area which would cause the License Area, or any part thereof, to be deemed a hazardous waste treatment, storage or disposal facility requiring a permit, interim status, or any other special authorization under any environmental protection law.

3. TERM AND PAYMENT FOR USE OF LICENSE AREA

This License shall be effective as of July 1, 1999 and shall remain in full force and effect until July 1, 2000. The license fee for such term is \$-0- per year. This License may be renewed year-to-year upon the consent of both Parties, which consent shall be assumed to be given by PGE if the City of Newberg delivers to PGE evidence of continuing insurance coverage no later than June 30, of each year.

4. MAINTENANCE OF LICENSE AREA

Licensee shall, at its sole expense, regularly maintain the License Area generally free from noxious weeds, in a condition acceptable to PGE, and which does not present a public nuisance or hazard. PGE agrees to provide the necessary water to irrigate the landscaped area of the sign, as long as PGE is required to irrigate the substation property on which the sign is constructed.

5. DAMAGE TO PGE FACILITIES

Licensee hereby agrees that any damage to PGE property or facilities in connection with the acts or omissions of Licensees, its employees, agents, representatives or contractors of any tier or with the Permitted Uses the License Area may, at PGE's discretion, be repaired by PGE, and the actual costs of such repair shall be paid by Licensee within fifteen (15) days of presentation of invoices for same.

6. INDEMNIFICATION

Licensee shall assume all risk of loss, damage, or injuries of any kind which may result from the use of the License Area and shall indemnify, defend, save, and hold harmless PGE, its officers, agents, servants, and employees from all claims, debts, lawsuits, injuries, damages, penalties, judgements, awards, losses, liabilities, interests, attorney's fees (including attorney's fees on appeal or review), costs, and expenses of whatever kind and nature arising out of the use or occupancy of said property for said purpose and for which either of the parties, their officers, agents, or employees may or shall be liable, including but not limited to personal injury, wrongful death, or License Area damage (except for personal injury, wrongful death, or property damage caused by the gross negligence or criminal misconduct of PGE, its agents, or employees). Licensee shall, upon the request of PGE and at the Licensee's sole expense defend any action, suit, or proceeding of any kind arising hereunder. In addition, Licensee shall reimburse and pay PGE for any loss, damages, or expenses of any kind, including attorney's fees incurred by PGE hereunder.

7. INSURANCE

Unless waived, prior to commencement of use of the License Area, Licensee shall provide to PGE proof of, and continuously maintain comprehensive broad-form general liability insurance against claims and liability for personal injury, death, or property damage arising from the use, occupancy, disuse or condition of the License Area, improvements or adjoining areas or ways, or from any other cause with a combined single limit of not less than \$2,000,000 per occurrence written in companies acceptable to PGE, with PGE, its directors, officers, employees and agents, named as additional insureds; if Licensee shall fail for any reason to procure any such insurance and to deliver the policies to the PGE at least fifteen days prior to the expiration of any policy of insurance now or hereafter placed on the License Area, the PGE may procure the same at Licensee's expense. PGE, in its sole discretion, may waive the requirement for insurance under this Section. Such waiver shall be in writing.

8. PGE USE OF LICENSE AREA

- 8.1 PGE shall retain the right to use the License Area for all purposes not inconsistent with the uses and purposes of this License.
- 8.2 PGE shall not be liable or responsible for any damage to Licensee's property or the License Area resulting from PGE's use of or access across the License Area for purposes of inspection, maintenance and repair of the Property or its equipment located on the Property.

9. IMPAIRMENT TO TITLE

Licensee shall not suffer or permit the License Area or the improvements or any portion to be used by the public in any way whatsoever without prior written consent of PGE.

10. ADDITIONAL APPROVALS

10.1 It is expressly understood that, if applicable, any rights granted to the Licensee by PGE for use of the Property pursuant to this agreement are subject to existing rights, if any, of other parties, and this consent is given only to the extent that PGE has authority to give the same and shall not be construed as consent of any other interest holder, which consent Licensee shall obtain. Further Licensee agrees, at its sole cost, that it will process the proposed sign as a tenant improvement under Type I design review guidelines as specified in the Final Conditions of Approval under DR-88-97, as issued by the City of Newberg.

10.2 Licensee agrees that it will pay all costs and expenses associated with the lighting for the welcome/entrance sign, and will hold PGE harmless therefrom.

11. INTEREST IN LICENSE AREA

Licensee expressly agrees that it does not and shall not claim at any time any interest or estate of any kind or extent whatsoever in the License Area by virtue of the rights granted under this License or its occupancy or use under this License.

12. LIMITATION ON DAMAGES

IN NO EVENT SHALL PGE BE LIABLE TO THE LICENSEE FOR ANY LOST OR PROSPECTIVE PROFITS OR ANY OTHER SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, INCIDENTAL OR INDIRECT LOSSES OR DAMAGES (IN TORT, CONTRACT OR OTHERWISE) UNDER OR IN RESPECT OF THIS AGREEMENT OR FOR ANY FAILURE OF PERFORMANCE RELATED HERETO HOWSOEVER CAUSED, WHETHER OR NOT ARISING FROM PGE'S SOLE, JOINT OR CONCURRENT GROSS NEGLIGENCE.

13. TERMINATION OF LICENSE

- 13.1 Licensee may terminate this License at any time, without cause, by giving written notice to PGE, specifying the date and time of termination, such notice to be given not less than thirty (30) days prior to the time specified in such notice for the date and time of termination. PGE may terminate this License without cause only upon notice from Licensee that it intends to discontinue use of the welcome/entrance sign.
- 13.2 PGE may terminate this License at any time, with cause, by giving written notice to the Licensee, specifying the date and time of termination, such notice to be given not less than ten (10) days prior to the time specified in such notice for the date and time of termination.
- 13.3 On any termination or expiration of this License, Licensee shall quit the License Area, and shall remove or cause to be removed from the License Area all equipment, materials, supplies and other personal property, and all property installed in, on or attached to the License Area; and the License Area shall be returned to the condition of the License Area prior to Licensee's use of the License Area.

14. GOVERNING LAW

This License shall be construed and interpreted in accordance with the laws of the State of Oregon, from time to time existing. Further, the parties stipulate that this License is deemed to have been made and entered into by them in the State of Oregon. With respect to any suit, action or proceedings relating to this License (the "Proceedings") the parties agree that venue shall be in a state or federal court located within the jurisdiction of the courts of the State of Oregon and waive any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waive any claim that such Proceedings have been brought in an inconvenient forum and further waive the right to object, with respect to such Proceedings, that such court does not have jurisdiction over such party. Nothing in this License precludes either party from enforcing in any jurisdiction any judgment, order or award obtained in any such court.

15. ENTIRE AGREEMENT

THIS LICENSE CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT. LICENSEE, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT LICENSEE HAS READ THIS AGREEMENT, UNDERSTANDS IT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

16. MODIFICATION

Any modification of this License or additional obligation assumed by either Party in connection with this License shall be binding only if in writing, signed by each party or an authorized representative of each party.

17. ATTORNEY FEES

In the event that any action is filed in relation to this License, the unsuccessful party in the action shall pay to the successful party, in addition to all sums that either party may be called on to pay, a reasonable sum for the successful party's attorney fees (including on appeal and review) and related costs and expenses.

18. ASSIGNMENT OF RIGHTS

Licensee's rights under this License are personal to Licensee and may not be assigned or transferred to any other person, firm, corporation or other entity without the prior, express and written consent of PGE. Any attempted assignment shall be void.

19. NOTICE

Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this License to be served on or received by either party to the other shall be in writing and shall be deemed duly served and received when delivered in person, or, if mailed, 48 hours after being deposited in the United States mail, certified or registered mail, postage prepaid, addressed to such party as follows:

If to PGE:

Portland General Electric Company
Property Services Department
121 SW Salmon Street
Portland, Oregon 97204

If to Licensee:

City of Newberg
414 East First Street
Newberg, Oregon 97132
Attn: City Manager

20. SEVERABILITY

The provisions of this License are severable, and if one or more provisions are determined to be unenforceable, in full or in part, by a court of competent jurisdiction, the validity of the remaining provisions, including any partially unenforceable provisions, to the extent enforceable, shall not be affected in any respect whatsoever.

21. RESCISSION OF PRIOR PERMIT

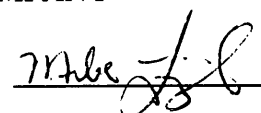
Upon the effective date of this License the prior permit, if any, granted by PGE to Licensee with respect to all or any portion of the License Area, is rescinded and is of no further validity, force and effect.

22. CONSTRUCTION AND INTERPRETATION

The use in this License of the words "including," "such as," and words of similar import following any general statement, term, or matter shall not be construed to limit such statement, term, or matter in any manner, whether or not the language of non-limitation (such as "without limitation" or "but not limited to") is used in connection therewith, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the scope of the general statement, term, or matter. All provisions of this License have been negotiated at arm's length and each party has had legal counsel review and approve the form of this License. This License shall not be construed for or against any party by reason of the authorship or alleged authorship of any provision hereof.

IN WITNESS WHEREOF, the Parties have caused it to be executed on the date first indicated above.

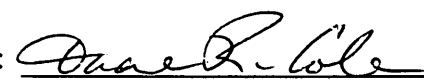
PORTLAND GENERAL ELECTRIC
COMPANY

By: Mike Livingston  

Name: Mike Livingston

Title: Manager Property

CITY OF NEWBERG

By: Duane R. Cole 

Name: Duane R. Cole

Title: City Manager

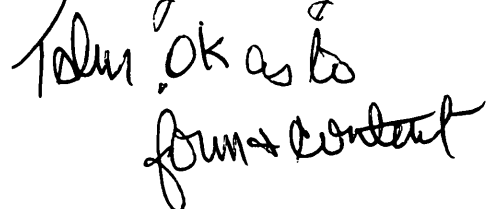


EXHIBIT A



NOT TO
SCALE

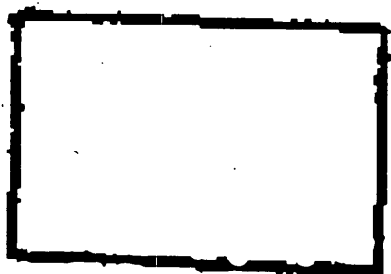
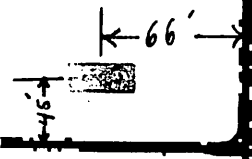
YAM HILL COUNTY

TOWNSHIP 35
RANGE 2W
SECTION 21
TAX LOT 2101

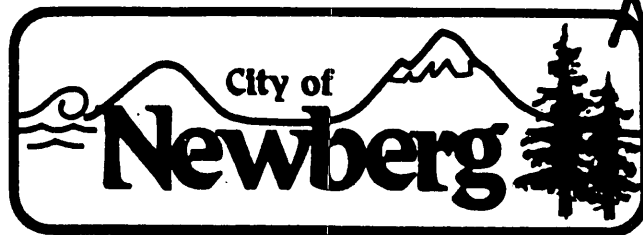
PGE

219
HIGHWAY

SPRINGBROOK ROAD



City of Newberg
115 S. Howard Street
P.O. Box 970
Newberg, OR 97132



Attachment A
City Manager
(503) 538-9421
(503) 538-5013 FAX

Community Development Office

P.O. Box 970 • 719 E. First Street • Newberg, Oregon 97132 • 503-537-1213 • Fax (503) 537-1272

August 30, 1999

Kerry Lynch
Portland General Electric
One World Trade Center
121 SW Salmon Street
Portland, OR 97204

Dear Kerry,

Thank you for the opportunity to comment on your draft license agreement for the welcome sign at your new electrical substation. The following are suggested changes to your fax dated July 12, 1999. Italicized words are suggested additions to your original text.

1. Page 1, Section D under **Recitals** should read " Such right of access shall be for the following purposes: to erect, maintain, repair and inspect a City of Newberg welcome/entrance sign ("Permitted Uses") *and the necessary electrical and irrigation lines to service the site.*"
2. Page 2, Point 4 - **Maintenance of License Area** - You and I have spoken about the possibility of PGE providing water needed for irrigation of the site from your existing landscaping irrigation system. If this is true, then we should state this in the agreement. The City of Newberg will pay operational electricity for lighting and irrigation timers.
3. Page 4, Point 13 - **Termination of License**. PGE has already invested significant resources in this project through its construction of the welcome sign's base. PGE has also generously provided the City with \$1,500 towards the creation of the wooden portion of the sign. The City anticipates investing about \$10,000 to complete construction of the sign site. With this much investment involved, we would like to request more of a guarantee to the life span of the sign. Perhaps a five year minimum guarantee would make all parties feel their investment was well spent and secure.
4. Page 7, **Exhibit A (Map)** - The orientation of the sign is incorrect. The current base of the sign faces in a southerly direction.

Once again, thank you for your continued support of this community enhancement project. If you would like to discuss any of the above items, please call me at (503) 537-1213.

Sincerely,

A handwritten signature in cursive script, reading "David A. Beam".

David Beam
Economic Development Coordinator/Planner

pc: Barton Brierley, City Planner
Mike Soderquist, CDD Director
Larry Anderson, City Engineer
Duane Cole, City Manager
Terrence Mahr, City Attorney

EXHIBIT A



NOT TO
SCALE

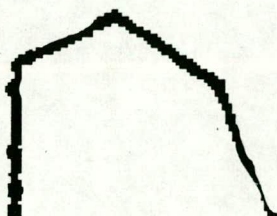
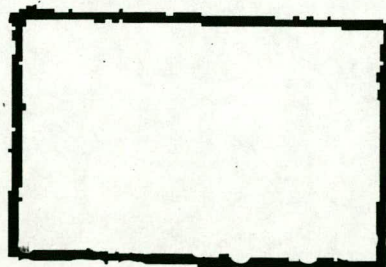
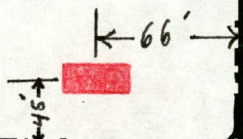
YAM HILL COUNTY

TOWNSHIP 35
RANGE 2W
SECTION 21
TAX LOT 2101

612
LANE HIGHWAY

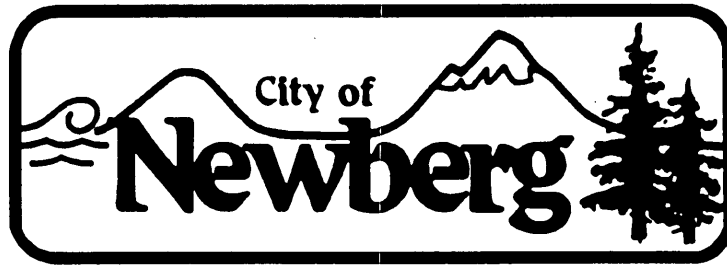
PGE

SPRINGBROOK ROAD



City Manager
(503) 538-9421

City Attorney
(503) 537-1206



115 South Howard Street
PO Box 970
Newberg, Oregon 97132

November 5, 1999

Arthur L. Krueger
Portland General Electric Company
121 SW Salmon Street 1WTC 0401
Portland, OR 97204
(503) 464-8405

Dear Mr. Krueger:

Enclosed you will find the signed "License For Use" Agreement which recognizes the closure of the Agreement. The City of Newberg would like to take this opportunity to thank you for letting us place a sign on Portland General Electric's property at the intersection of Springbrook Road and Highway 219 in Newberg.

Again, the City appreciates your kindness. If there are any questions please call me at (503) 537-1261.

Sincerely,

A handwritten signature in cursive script, reading "Duane R. Cole".

Duane R. Cole
City Manager

DRC:nia

Enclosure

pc: David Beam, Planner - City of Newberg

F:\ADMIN\WP5FILES\BJM\PG E Sign.wpd

CITY MANAGER'S OFFICE: e-mail: nctymgr@ci.newberg.or.us Fax: 537-5013

Building: 537-1240 • Community Development: 537-1240 • Finance: 537-1201 • Fire: 537-1230

Library: 538-7323 • Municipal Court: 537-1203 • Police: 538-8321 • Public Works: 537-1233 • Utilities: 537-1205

Municipal Court Fax: 537-1277 • Community Development Fax: 537-1272 • Library Fax: 538-9720

"Working Together For A Better Community - Serious About Service"

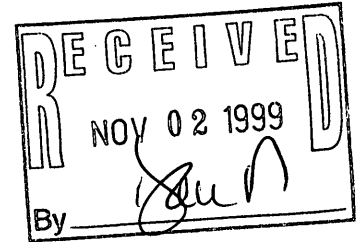
interoffice

MEMORANDUM

11-29-99
→ Terry
Pls review & if OK,
have Duane sign &
return to me. Thanks.

—M

to: Mike Soderquist
cc: Barton Brierley
from: David Beam DB
re: PGE Agreement - Welcome Sign
date: October 28, 1999



Attached is a revised version of the above mentioned agreement. It appears that PGE has agreed to our suggested changes (see Attachment A). Terry already has agreed that the **Termination of License** language was best left as PGE originally wrote it.

Please present this contract to Terry for his final review and have the appropriate folks sign it (Duane?) Thanks.

DRC-

Review & Sign

receiving close agreement
Thank you.
Letter of Transmittal. back to
Copy Duane.
Copy David Beam.
sig. - PGE

from the desk of...

David Beam

Planner

Community Development

P.O. Box 970

719 E. First Street

Newberg, OR 97132

Phone: 503-537-1213

Fax: 503-537-1272

email: nplan2@ci.newberg.or.us

11/5/99
Copy to All on
memo. Retain in
Ag. File - Letter of
transmittal to Ag.
Duane



Portland General Electric Company
121 SW Salmon Street • Portland, Oregon 97204

October 27, 1999

Mr. David Beam
City of Newberg
PO Box 970
Newberg, Oregon 97132

Dear Mr. Beam;

Enclosed is the "License For Use" to allow the city of Newberg to place and maintain a sign on Portland General Electric Company (PGE) property at the intersection of Springbrook Road and Highway 219 in Newberg.

I believe all of the concerns your city attorney raised have been covered. Please have the appropriate person sign this form and return the original to me as soon as possible. Keep the attached map as I have another.

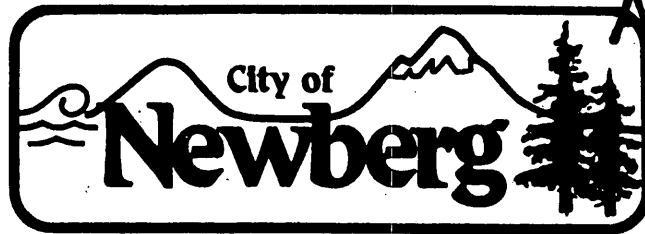
If you have any questions please call me at (503) 464-8405.

Sincerely,

Arthur L. Krueger
Portland General Electric Company
121 SW Salmon Street 1WTC 0401
Portland, Oregon 97204

CC: Kerry Lynch

City of Newberg
115 S. Howard Street
P.O. Box 970
Newberg, OR 97132



Attachment A
City Manager
(503) 538-9421
(503) 538-5013 FAX

Community Development Office

P.O. Box 970 • 719 E. First Street • Newberg, Oregon 97132 • 503-537-1213 • Fax (503) 537-1272

August 30, 1999

Kerry Lynch
Portland General Electric
One World Trade Center
121 SW Salmon Street
Portland, OR 97204

Dear Kerry,

Thank you for the opportunity to comment on your draft license agreement for the welcome sign at your new electrical substation. The following are suggested changes to your fax dated July 12, 1999. Italicized words are suggested additions to your original text.

1. Page 1, Section D under **Recitals** should read " Such right of access shall be for the following purposes: to erect, maintain, repair and inspect a City of Newberg welcome/entrance sign ("Permitted Uses") *and the necessary electrical and irrigation lines to service the site.*"
2. Page 2, Point 4 - **Maintenance of License Area** - You and I have spoken about the possibility of PGE providing water needed for irrigation of the site from your existing landscaping irrigation system. If this is true, then we should state this in the agreement. The City of Newberg will pay operational electricity for lighting and irrigation timers.
3. Page 4, Point 13 - **Termination of License**. PGE has already invested significant resources in this project through its construction of the welcome sign's base. PGE has also generously provided the City with \$1,500 towards the creation of the wooden portion of the sign. The City anticipates investing about \$10,000 to complete construction of the sign site. With this much investment involved, we would like to request more of a guarantee to the life span of the sign. Perhaps a five year minimum guarantee would make all parties feel their investment was well spent and secure.
4. Page 7, **Exhibit A (Map)** - The orientation of the sign is incorrect. The current base of the sign faces in a southerly direction.

Once again, thank you for your continued support of this community enhancement project. If you would like to discuss any of the above items, please call me at (503) 537-1213.

Sincerely,



David Beam
Economic Development Coordinator/Planner

pc: Barton Brierley, City Planner
Mike Soderquist, CDD Director
Larry Anderson, City Engineer
Duane Cole, City Manager
Terrence Mahr, City Attorney