

## ORDINANCE NO. 1980

(Electric Utility Franchise—PacifiCorp)

WHEREAS, PacifiCorp d.b.a. Pacific Power, is a regulated public utility that provides electric power and energy to the citizens of the City of Hood River (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, PacifiCorp has permission to use the public rights of way in accordance with Hood River Municipal Code (HRMC) Chapter 13.36 and compensates the City for use of the public rights of way in accordance with HRMC Chapter 3.32;

WHEREAS, the City Council may enter into a written franchise agreement to clarify, expand, waive or vary the provisions of HRMC Chapter 13.36 if the Council determines the public interest warrants;

WHEREAS, the City and PacifiCorp desire to set forth the terms and conditions by which the City may use PacifiCorp power poles;

WHEREAS, the City and PacifiCorp desire to set forth the City’s obligations to notify PacifiCorp when property is annexed into the City or property in the City is subdivided;

WHEREAS, the City and PacifiCorp desire to clarify their rights and obligations with respect to relocation of PacifiCorp’s facilities; and

WHEREAS, the public interest warrants that the City and PacifiCorp enter into this franchise agreement.

NOW, THEREFORE, THE CITY OF HOOD RIVER ORDAINS AS FOLLOWS:

**SECTION 1. Grant of Franchise.** 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 public rights of way, as defined in Hood River Municipal Code (HRMC) Section 13.36.020, 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 is for twenty (20) years commencing on the date of acceptance by the Company as set forth in Section 3 below.

**SECTION 3. 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 4. Non-Exclusive Franchise.** The right to use and occupy the public rights of way of the City is nonexclusive and subject to the applicable regulations and ordinances of the City.

**SECTION 5. City Regulatory Authority.** 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. This franchise shall be construed to the greatest extent possible consistent with HRMC Chapters 3.32 and 13.36.

**SECTION 6. Indemnification.** The City shall in no way be liable or responsible for any loss or damage to property or any injury to, or death, of any person that may occur in the construction, operation or maintenance by PacifiCorp of its Electric Facilities. PacifiCorp shall indemnify, defend and hold the City, its officers, agents and employees harmless from and against claims, demands, liens and all liability or damage of whatsoever kind on account of PacifiCorp’s use of the Public Ways within the City, and shall pay the costs of defense plus reasonable attorneys' fees for any claim, demand or lien brought thereunder. The City shall: (a) give prompt written notice to PacifiCorp of any claim, demand or lien with respect to which the City seeks indemnification hereunder. PacifiCorp shall assume the defense of such claim, demand, or lien with counsel satisfactory to City. Notwithstanding any provision hereof to the contrary, PacifiCorp shall not be obligated to indemnify, defend or hold the City harmless (a) to the extent any claim, demand or lien arises out of or in connection with any negligent or willful misconduct of the City or any of its officers, agents or employees; or (b) if the City notifies PacifiCorp that a conflict of interest exists between PacifiCorp and the City with respect to the claim, demand or lien.

**SECTION 7. Annexation.**

7.1 **Extension of City Limits.** Upon the annexation of any territory to the City, the rights granted herein and under HRMC Chapters 3.32 and 13.36 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.

7.2 **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  
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 provided notice is given to PacifiCorp in accordance with ORS 222.005, as amended from time to time, or if notice is given later than 10 days after the effective date of the annexation, on the date of notification.

## **SECTION 8. Planning, Design, Construction and Installation of Company Facilities.**

8.1 All Electric 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.

8.2 Subject to HRMC 13.36.030, PacifiCorp shall, prior to commencing work in the public right of way, apply for a permit from the City which permit may be withheld, conditioned, or delayed pursuant to Chapter 13.36. PacifiCorp will abide by all applicable ordinances and all reasonable rules, regulations and requirements of the City, and the City may inspect the manner of such work and require remedies as may be necessary to assure compliance.

8.3 All Electric Facilities shall be located so as to cause no unreasonable

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.

8.4 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 equal or better to that which existed before the work commenced.

8.5 In addition to the installation of underground electric distribution lines as provided by applicable state law and regulations, PacifiCorp shall, upon payment of all charges provided in its tariffs or applicable regulations, place newly constructed electric distribution lines underground as may be required by City ordinance.

8.6 The City shall have the right without cost to use all poles and suitable overhead structures owned by PacifiCorp within Public Ways for City wires used in connection with its fire alarms, police signal systems, or other communication lines used for governmental purposes; provided, however, any such uses shall be for activities owned, operated or used by the City for a public purpose and shall not include the provision of CATV, internet, or similar services to the public. Provided further, that PacifiCorp shall assume no liability nor shall it incur, directly or indirectly, any additional expense in connection therewith, and the use of said poles and structures by the City shall be in such a manner as to prevent safety hazards or interferences with PacifiCorp's use of same. Nothing herein shall be construed to require PacifiCorp to increase pole size, or alter the manner in which PacifiCorp attaches its equipment to poles, or alter the manner in which it operates and maintains its Electric Facilities. City attachments shall be installed and maintained in accordance with the reasonable requirements of PacifiCorp and the current edition of the National Electrical Safety Code pertaining to such construction. Further, City attachments shall be attached or installed only after written approval by PacifiCorp.

8.7 PacifiCorp shall have the right to excavate the public rights of way subject to HRMC Chapter 13.36. Before installing new underground conduits or replacing existing underground conduits, PacifiCorp shall first notify the City of such work and shall allow the City, at its own expense, to share the trench of PacifiCorp to lay its own conduit therein, provided that such action by the City will not unreasonably interfere with PacifiCorp's Electric Facilities or delay project completion.

8.8 Before the City commences any street improvements or other work within a public right of way that may affect PacifiCorp's Electric Facilities, the City shall give written notice to PacifiCorp.

8.9 The City shall not erect any structures, buildings or signs below PacifiCorp's facilities or in a location that prevents PacifiCorp from accessing or maintaining its facilities.

**SECTION 9. Relocation of Electric Facilities.**

9.1 The City reserves the right to require PacifiCorp to relocate overhead Electric Facilities within the Public Ways in the interest of public convenience, necessity, health, safety or welfare at no cost to the City and in accordance with HRMC Chapter 13.36. Within a reasonable period of time after written notice, PacifiCorp shall promptly commence the overhead relocation of its Electrical Facilities. Before requiring a relocation of Electric Facilities, the City shall, with the assistance of PacifiCorp, make a reasonable effort to identify a reasonable alignment for the relocated Electric Facilities within the Public Ways of the City. The City shall assign or otherwise transfer to Company all right it may have to recover the cost for the relocation work and shall support the efforts of PacifiCorp to obtain reimbursement. In cases of capital improvement projects undertaken by the City, PacifiCorp shall convert existing overhead distribution facilities to underground, so long as PacifiCorp is allowed to collect the costs associated with conversion from overhead to underground distribution facilities consistent with OAR 860-022-0046, the Oregon Public Utility Commission rule on forced conversions.

9.2 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 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. For example, PacifiCorp shall not be required to pay relocation costs in connection with a road widening or realignment where the road project is made a condition or caused by a private development. The City agrees that it shall reasonably cooperate with PacifiCorp's efforts to collect funds from such customers as described in this Section.

**SECTION 10. Subdivision Plat Notification.** Before the City approves any new subdivision and before recordation of the plat, the City shall mail notification of such approval 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 11. Vegetation Management.** Subject to applicable regulations and ordinances of the City, 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 City's Street Tree Plan or, in the absence of a Street Tree Plan, the National Arborist Association Pruning Standards for Shade Trees. PacifiCorp may apply to the City for a permit under HRMC Chapter 13.12 to apply growth inhibitor treatment for trees and vegetation species

that are fast-growing and problematic. 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 any trees located on private property which overhang streets.

**SECTION 12. Compensation.**

12.1 In accordance with HRMC Chapter 3.32, PacifiCorp shall pay a privilege tax to the City in an amount equal to 5% of PacifiCorp's gross revenue derived from its utility operations within the City. "Utility operations" as used in HRMC Chapter 3.32.020 with respect to PacifiCorp means the retail sale and use of electric power and energy within the municipal boundaries of the City.

**SECTION 13. Renewal.** At least 120 days prior to the expiration of this Franchise, PacifiCorp and the City may agree to either 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, in accordance with HRMC Chapters 3.32 and 13.36.

**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, 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 PacifiCorp's mortgage(s) shall not constitute a transfer or assignment.

**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 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. This provision does not affect the City's right to adopt or amend any ordinances other than the one pursuant to which this Franchise Agreement is adopted.

**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.

17.3 This provision does not affect the parties' rights and remedies under any provision of the Hood River Municipal Code.

**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 City Recorder's Office. Unless otherwise specified herein, all notices from the City to PacifiCorp pursuant to or concerning this Franchise shall be delivered to the Customer Services Vice President, PacifiCorp, 201 South Main, Suite 2400, Salt Lake City, Utah 84111, 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.

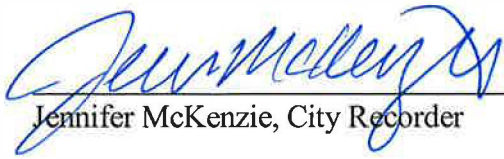
Read for the first time: November 9<sup>th</sup>, 2009.

Read for the second time and passed: November 9<sup>th</sup>, 2009, to become effective thirty (30) days hence.

Signed November 10<sup>th</sup>, 2009.

  
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Arthur Babitz, Mayor

ATTEST:

  
Jennifer McKenzie, City Recorder

Approved as to form:

  
Alexandra Sosnkowski  
City Attorney