

Ordinance No. 180762

Grant a franchise to PacifiCorp for a period of 20 years (Ordinance)

The City of Portland ordains:

Section 1. NATURE AND TERM OF GRANT.

1.1 Grant of Franchise.

(A) The City of Portland, Oregon does hereby grant to PacifiCorp, an Oregon corporation qualified to do business in Oregon, and to its successors and assigns, as approved by the City under Section 18, a Franchise to construct, operate, repair and maintain an Electric Energy System, with all necessary Facilities for the transmission and distribution of electricity, located within the Streets.

(B) Throughout this Franchise, the City of Portland, Oregon, shall be referred to as the "City" and PacifiCorp shall be referred to as the "Grantee."

(C) Grantee may construct, operate, repair and maintain Grantee's Electric Energy System within the Streets in the manner and under the conditions set forth in this Franchise.

1.2 Duration of Franchise. The term of this Franchise, and all the rights and obligations pertaining thereto, shall be twenty (20) years from the effective date of this Franchise, unless terminated sooner as provided herein.

1.3 Effective Date. The effective date of this Franchise shall be sixty (60) days after passage of the Franchise by the City Council, unless Grantee fails to file an unconditional written acceptance of this Franchise in accordance with Section 22.11, in which event this Franchise shall be null and void. The passage date of this Franchise is set forth on the last page of the original hereof, as stamped by the Council Clerk.

1.4 Franchise Not Exclusive. This Franchise is not exclusive. The City expressly reserves the right to grant franchises, licenses, permits or other similar rights to other Persons, as well as the right in its own name as a municipality, to use the Streets for similar or different purposes allowed Grantee hereunder.

1.5 Charter and General Ordinances to Apply. This Franchise is subject to the Charter of the City of Portland and general ordinance provisions passed pursuant thereto, affecting matters of general City concern and not merely existing contractual rights of Grantee, now in effect or hereafter made effective. Section 10-201 through 10-218, inclusive, of the Charter of the City of Portland, (1942 compilation, as revised in part by subsequent amendments), as the same now exist or hereafter are amended by the people of the City, are hereby incorporated by reference and made a part of this Franchise. Nothing in this Franchise shall be deemed to waive the requirements of the various codes

and ordinances of the City regarding permits, fees to be paid or the manner of construction.

Section 2. DEFINITIONS.

For the purpose of this Franchise, the following terms, phrases, and their derivations shall have the meanings given below unless the context indicates otherwise. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular include the plural number. The word “shall” is always mandatory and not merely directory.

2.1 “Attachment” means any wire optical fiber or other cable, or any related device, apparatus or auxiliary equipment, for the purpose of voice, video, or data transmission.

2.2 “City” means the City of Portland, Oregon, a municipal corporation, and all of the territory within its corporate boundaries, as such may change from time to time.

2.3 “City Council” or “Council” means the Council of the City of Portland.

2.4 “Conduit” means any structure, or section thereof, containing two or more Ducts in use or planned for use in connection with Grantee’s Electric Energy System.

2.5 “Duct” means a single enclosed raceway for power or communication lines, conductors, optical fiber, wire or other Facilities for use in connection with Grantee’s Electric Energy System.

2.6 “Electric Energy System” means all wires, cables, Ducts, Conduits, vaults, poles, anchors, cabinets, fixtures, transformers, and other necessary Facilities owned or used by the Grantee for the purpose of providing electric power and light and located in, above or below the Streets excluding Ducts, Conduits and vaults leased from any other Person franchised, permitted, licensed or otherwise granted authority by the City.

2.7 “Facility” means any tangible component of Grantee's Electric Energy System.

2.8 “Franchise” means this Franchise agreement, as approved by the City Council and accepted by the Grantee pursuant to Section 22.11.

2.9 “Gross Revenues” means any and all revenues derived by Grantee within the City from Grantee’s Electric Energy System, and includes, but is not limited to, the sale of and use of electricity and electric service, and the use, rental, or lease of its operating Facilities, after adjustment for the net write-off of uncollectible accounts. Gross Revenues do not include proceeds from the sale of bonds, mortgages or other evidence of indebtedness, securities or stocks, or sales at wholesale by Grantee to another utility when the utility purchasing such electricity and electric services is not the ultimate

consumer. Gross Revenues also do not include revenue from joint pole use. For purposes of this Section 2.9, revenue from joint pole use includes any revenue collected by Grantee from any other Person franchised, permitted, licensed or otherwise granted authority by the City to attach wires, cable or other facilities or equipment to, or place them in, Grantee's Facilities. Gross Revenues also do not include revenue from charges for late payments or finance charges collected by Grantee from ratepayers within the City.

2.10 "Hazardous Substances" has the meaning given by ORS 465.200(16) (2005).

2.11 "Licensee" means any Person franchised, licensed or otherwise permitted by the City to use the Streets including, if appropriate, the City itself. For the purposes of Section 12.2, the Grantee shall not be construed to be a "Licensee" as defined herein.

2.12 "Penalties" means any and all monetary penalties provided for in this Franchise.

2.13 "Person" means any natural person, and any individual, sole proprietorship, partnership, association, corporation, cooperative, municipal corporation or other form of organization authorized to do business in the State of Oregon.

2.14 "Qualified Worker" means one who is knowledgeable about the construction and operation of the electric power generation, transmission, and distribution equipment as it relates to his or her work, along with the associated hazards, as demonstrated by satisfying the qualifying requirements for a "qualified person" or "qualified employee" with regard to the work in question as described in 29 CFR 1910.269 effective January 31, 1994, as it may be amended from time to time. The Parties acknowledge that for purposes of this Franchise a Qualified Worker need not be an employee of the City or of Grantee.

2.15 "Streets" means the surface of and the space above and below any public street, road, alley or highway within the City, used or intended to be used by the general public, to the extent the City has the right to allow the Grantee to use them.

2.16 "Surplus Ducts or Conduits" are Ducts or Conduit other than those: (i) occupied by the Grantee or any prior Licensee, (ii) unoccupied Ducts or Conduit held by Grantee as an emergency use spare, and (iii) unoccupied Ducts or Conduit that the Grantee reasonably expects to use within the next eighteen (18) months.

2.17 "Year," "Annual," or "Annually" means the period consisting of a full calendar year, beginning January 1 and ending December 31, unless otherwise provided in this Franchise.

Section 3. COMPENSATION.

3.1 Amount of Compensation. As compensation for the benefits and privileges under this Franchise, and in consideration of permission to use the Streets, the Grantee shall pay

to the City, through the duration of this Franchise, an amount equal to five percent (5%) of the Grantee's Gross Revenues. Except as may otherwise be permitted by law or regulation, no portion of this franchise fee shall be noted separately on any bill to any customer or user of services or commodities furnished by Grantee.

3.2 Payment of Compensation.

(A) Payments to the City under Section 3.1 shall be computed based on Grantee's Gross Revenues from each calendar year quarter period (January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31) and paid on or before the forty-fifth (45th) day following each calendar quarter period during the term of this Franchise.

(B) Payment not received by the City by the due date shall be assessed interest equal to the rate of one percent (1%) over the existing prime rate as set by the Wells Fargo Bank, National Association, or its successors and assigns as designated by the City, compounded daily. Interest shall be due on the entire late payment from the date on which the payment was due until the date on which the City receives the payment.

3.3 Reports. Accompanying each payment to the City under Section 3.1, Grantee shall file with the City a written report containing an accurate statement in summarized form, as well as in detail, of its calculation of the amount of the payment, verified by an officer or other authorized representative of Grantee, setting forth its Gross Revenues according to their accounting subdivisions, and any deductions claimed for the period upon which the payment is computed. Such reports shall be in form satisfactory to the City.

3.4 Payment Made on a Volumetric Basis. The City may, consistent with state law, direct that in lieu of all payments calculated as described in Section 3.1 Grantee shall make those payments to the City for the rights and privileges granted under this Franchise based on volumetric methodologies as set forth in state law. Notice by the City to Grantee to implement the volumetric methodology for purposes of calculating the payments to the City shall only be effective if provided by the City to the Grantee in writing not later than September 1 of any year for implementation beginning January 1 of the following year. Upon such notice, Grantee shall make all payments on a volumetric basis for the entire Year (based on January 1 to December 31 electricity consumption by Grantee customers within the City). The City shall provide the same manner of notice to Grantee if the City thereafter elects to return to the Gross Revenues methodology set forth under Section 3.1. No notice to Grantee is necessary if the City otherwise relies on the Gross Revenues methodology of Section 3.1 on and after the effective date of this Franchise.

3.5 Cost of Pre-franchising and Publication. Grantee shall pay the City for its actually incurred pre-franchising costs, including publication of this Franchise, as such publication is required by the City Charter.

3.6 Acceptance of Payment and Recomputation. No acceptance of any payment pursuant to this Section 3 shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable. All amounts paid under this Section 3 shall be subject to audit by the City, provided that only payments which occurred during a period of thirty-six (36) months prior to the date the City notifies Grantee of its intent to perform an audit shall be subject to such audit. The Grantee agrees to pay the City for:

(A) Interest on any underpayment of an amount due under this Section 3 that is disclosed as the result of an audit, such interest to be calculated at one percent (1%) over the existing prime rate as set by the Wells Fargo Bank, National Association, or its successor and assigns as designated by the City, compounded quarterly from the date on which the payment was due. If such payment is not received within thirty (30) days of notice from the City, then interest shall be compounded daily from the date on which the payment was due until the date the City receives the payment.

(B) A Penalty of five percent (5%) of the underpayment shall be assessed and due within thirty (30) days of written notice from the City, if the City's audit discloses that the Grantee has paid ninety-five percent (95%) or less of the principal amount owing for the period under audit. If such payment is not received within thirty (30) days of written notice from the City, then interest shall be compounded daily from the date on which the payment was due until the date on which the City receives the payment, such interest to be calculated at one percent (1%) over the existing prime rate as set by the Wells Fargo Bank, National Association, or its successors and assigns as designated by the City.

3.7 Escrow. If the Grantee disputes the City's determination of underpayment under this Section 3, the Grantee shall place the disputed amount in an escrow account at a financial institution with instructions agreed to by the City until final resolution.

3.8 Right to Audit. The City and its agents and representatives shall have authority to arrange for and conduct audits under Section 3.6, within the Portland metropolitan region, upon no less than thirty (30) days prior written notice, and during normal business hours. Within the limitations established by Section 3.6, the City may determine the scope of audit in each instance.

3.9 No Credit Against Other City Charges. Payment of the compensation owed pursuant to this Section 3 shall not exempt Grantee from the payment of any license fee, tax or charge on the business, occupation, property or income of Grantee that may be lawfully imposed by the City or other taxing authority, except as may otherwise be provided in the ordinance or ordinances imposing such other license fee, tax or charge.

Section 4. GENERAL FINANCIAL AND INSURANCE PROVISIONS.

4.1 Insurance.

(A) The Grantee shall maintain public liability and property damage insurance that protects the Grantee and the City, as well as the City's officers, agents, and employees from the claims referred to in Section 5. The insurance shall provide coverage at all times of not less than \$1,000,000 combined single limit for bodily injury liability and property damage liability per occurrence with an annual aggregate limit of not less than \$3,000,000. The limits of the insurance shall be subject to any changes as to maximum statutory limits of liability imposed on municipalities of the State of Oregon during the term of the Franchise. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the City and its officers, agents, and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy. The insurance shall provide that the insurance shall not be canceled or materially altered without thirty (30) days prior written notice first being given to the City Auditor. If the insurance is canceled or materially altered within the term of this Franchise, Grantee shall provide a replacement policy with the same terms. Grantee agrees to maintain continuous uninterrupted coverage, in the terms and amounts required, for the duration of the Franchise.

(B) The Grantee shall maintain on file with the City Auditor a certificate of insurance certifying the coverage required above. The adequacy of the insurance shall be subject to the approval of the City Attorney. Failure to maintain liability insurance shall be cause for immediate termination of this Franchise by the City.

(C) In the alternative to providing a certificate of insurance to the City certifying liability insurance coverage as required in Section 4.1(A), Grantee may provide the City with an Annual statement regarding its self-insurance. Grantee's self-insurance shall provide at least the same amount and scope of coverage for the Grantee and the City, its officers, agents and employees, as otherwise required under Section 4.1(A). The adequacy of such self-insurance shall be subject to the City Attorney's review and approval. Upon Grantee's election to provide self-insurance coverage under this Section 4.1(C), any failure by the Grantee to maintain adequate self-insurance shall be cause for the City to declare a forfeiture of this Franchise under and subject to Section 19.

4.2 Faithful Performance Bond.

(A) Upon the effective date of this Franchise, the Grantee shall furnish proof of the posting of a faithful performance bond running to the City, with good and sufficient surety approved by the City, in the penal sum of not less than \$100,000, conditioned that the Grantee shall well and truly observe, fulfill, and perform each term and condition of the Franchise. Grantee shall pay all premiums charged for the bond, and shall keep the bond in full force and effect at all times throughout the term of the Franchise, including, if necessary, the time required for removal of all of Grantee's Electric Energy System

installed in the Streets. The bond shall contain a provision that it shall not be terminated or otherwise allowed to expire without thirty (30) days prior written notice first being given to the City Auditor. The bond shall be reviewed and approved as to form by the City Attorney.

(B) During the term of the Franchise, Grantee shall file with the City Auditor a duplicate copy of the bond along with written evidence of payment of the required premiums. However, in no event shall the City exercise its rights against the performance bond under this Section 4.2 if a bona fide, good faith dispute exists between the City and the Grantee.

4.3 Construction Bond. During all times when Grantee is performing any construction work in or under the Streets requiring a Street opening permit, Grantee shall post a faithful performance bond running to the City, as is required for Street opening permits, with good and sufficient surety approved by the City, in the sum of \$100,000. The bond shall be conditioned that the Grantee shall well and truly observe, fulfill and perform each term and condition under Section 6. Grantee shall pay all premiums or other costs associated with maintaining the bond, and shall keep the same in full force and effect at all times during the construction work. The bond shall provide that it may be terminated upon final approval of Grantee's construction work in or under the Streets by the City Engineer. Upon such approval, the City agrees to sign all documents necessary to release the bond in accordance with the terms of this Section 4.3. During the duration of the construction work, Grantee shall file with the City Auditor a copy of the bond, along with written evidence of the required premiums. The bond shall be subject to the approval of the City Attorney as to its adequacy under the requirements of this Section 4.3.

Section 5. COVENANT TO INDEMNIFY AND HOLD CITY HARMLESS.

5.1. Indemnification – General. Grantee hereby agrees and covenants to indemnify, defend and hold the City, its officers, agents and employees, harmless from any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorney fees or expenses, arising from any casualty or accident to Person or property by reason of any construction, excavation or any other act done under this Franchise, by or for Grantee, its agents or employees, or by reason of any neglect or omission of Grantee to keep its Electric Energy System with all necessary Facilities in a safe condition, but not if arising out of or by reason of any negligence or willful misconduct by the City, its officers, agents or employees. The City shall provide Grantee with prompt notice of any such claim which Grantee shall defend with counsel of its own choosing and no settlement or compromise of any such claim will be done without the prior written approval of Grantee. Grantee and its agents, contractors and others shall consult and cooperate with the City while conducting its defense of the City. Such indemnification shall not extend to claims by the City for outages, power quality or other claims by the City related to electricity services provided by Grantee to the City.

5.2. Indemnification – Relocation. Grantee also hereby agrees to indemnify the City, its officers, agents and employees, for any damages, claims, additional costs or expenses assessed against or payable by the City arising out of or resulting, directly or indirectly, from Grantee's failure to remove, adjust or relocate any of its Electric Energy System with all related Facilities in the Streets in a timely manner in accordance with a reasonable relocation schedule furnished to Grantee by the City Engineer in writing as provided in Section 6.3, unless Grantee's failure arises directly from the City's negligence or willful misconduct.

5.3. Indemnification – Hazardous Substances. Grantee agrees to forever indemnify the City, its officers, agents and employees, from and against any claims, costs and expenses of any kind, whether direct or indirect, or pursuant to any state or federal law statute, regulation or order, for the removal or remediation of any leaks, spills, contamination or residues of Hazardous Substances, associated with, arising from or due to Grantee's structures or other Facilities in the Streets.

Section 6. CONSTRUCTION AND RELOCATION.

6.1 Permits.

(A) Subject to applicable regulations of the City, Grantee may perform all necessary construction to construct, operate and maintain its Electric Energy System. All construction and maintenance of any and all Electric Energy System Facilities within the Streets shall, regardless of who performs installation and/or construction, be and remain the responsibility of Grantee. Grantee shall apply for and obtain all permits necessary for installation and/or construction of any such Facilities, and for excavation and laying of any Electric Energy System Facilities within the Streets. Grantee shall pay all applicable fees due for City construction permits.

(B) Maps.

(1) Prior to beginning any new construction in the Streets, Grantee shall provide the City Engineer through the permitting process with an initial construction schedule for work in the Streets and the estimated total cost of such work together with its permit application. When Grantee's construction in the Streets is completed, Grantee shall provide the City with maps showing the location of its installed Electric Energy System Facilities in the Streets, as built. Such "as-built" maps shall be in a form acceptable to the City Engineer. Within one (1) year of the effective date of this Franchise, Grantee shall begin providing "as-built" maps in electronic form.

(2) One (1) year after the effective date of this Franchise, and annually thereafter in the event of any alterations, Grantee shall provide a map to the City Engineer and the City's Office of Cable Communications and Franchise Management, or its successor, showing the location of Grantee's Facilities in the Streets on a scale of three thousand five hundred feet (3,500') per inch or whatever scale the City and Grantee agree

upon. Grantee shall also provide such maps in an electronic format acceptable to the City and the Grantee. The level of detail in maps provided by Grantee shall be limited to that which is needed for the City's administration of the Streets in order to protect Grantee's confidential business information and the security of Grantee's Electric Energy System.

(C) Grantee may make excavations in the Streets for any Facility needed for the maintenance, repair or extension of Grantee's Electric Energy System, subject to obtaining permits from the City. Prior to doing such work, Grantee must apply for, and obtain, appropriate permits from the City. As provided in Section 6.2, Grantee shall give appropriate notice to other Persons franchised, permitted, licensed or otherwise granted authority by the City, or bureaus of the City or other units of government owning or maintaining facilities located in the public right of way which may be affected by the proposed excavation.

(D) In the event that emergency repairs are necessary for its Facilities in the Streets, Grantee shall immediately notify the City of the need for such repairs. Grantee may immediately initiate such emergency repairs, and shall apply for appropriate permits as soon as possible, not to exceed two (2) business days following discovery of the emergency. Grantee must comply with all Charter and ordinance provisions relating to such excavations or construction, including the payment of permits or license fees.

6.2 Locates. Grantee shall comply with the requirements of ORS 757.542-757.562 and ORS 757.993 (2005), and the rules and regulations promulgated thereunder in OAR Chapter 952.

6.3 Relocation. The City shall have the right to require Grantee to change the location of its Electric Energy System within the Streets when the public convenience requires such change, and the expense thereof shall be paid by Grantee (however payment by Grantee shall in no way limit Grantee's right, if any, to seek reimbursement for such costs from any third-party). If in ordering relocation, the City imposes additional specifications regarding materials or design for Grantee's Facilities, the additional marginal increase shall not be considered relocation costs that are the Grantee's responsibility. The City Engineer shall have unlimited discretion in determining the reasonable relocation schedule, based upon the City Engineer's consideration of the total circumstances of the project schedule. If after receiving the City Engineer's relocation schedule, Grantee identifies in writing that the work associated with relocating Grantee's Facilities will be of such size or scope that Grantee believes that it is probable that Grantee will not be able to complete the work within the schedule, Grantee may request a meeting with the City Engineer to discuss whether modification of the relocation schedule, alternate construction methods or alternate locations are reasonably possible given other project constraints. The City Engineer, working with City bureaus, will consider Grantee's safety, reliability and cost concerns while considering potential effects on project schedules, project budget and any other relevant matters. However, the City Engineer will retain full authority and discretion to make any final decisions regarding any modifications to the relocation schedule, based upon the

City Engineer's consideration of the total circumstances of the project schedule. The City shall provide the Grantee with the standard notice given under the circumstances to other Persons franchised, permitted, licensed or otherwise granted authority by the City. Should Grantee fail to remove or relocate any such Facilities by the date established by the City Engineer's schedule, the City may cause and/or effect such removal or relocation by Qualified Workers and the expense thereof shall be paid by Grantee, including all direct, indirect and/or consequential costs and expenses incurred by the City due to Grantee's delay (however payment by Grantee shall in no way limit Grantee's right, if any, to seek reimbursement for such costs from any third-party). If the City requires Grantee to relocate its Facilities located within the Streets, the City will make a reasonable effort to provide Grantee with an alternate location for its Facilities within the Streets, or if an alternate location is unavailable, will make the City's project management personnel available to meet with affected property owners and explain City project needs in support of Grantee's efforts to secure an alternate location on private property.

6.4 Maintenance of System. Grantee's Electric Energy System shall be constructed, maintained and repaired in such manner as not to interfere with sewers, water pipes, or any other property of the City, or with other facilities that may have been laid in the Streets by or under the City's authority. The Electric Energy System constructed, owned or controlled by Grantee shall be of good quality and workmanship and shall be maintained in good repair and efficiency.

6.5 Additional Facilities Subject to Franchise. Within thirty (30) days of Grantee's acquisition of any Electric Energy System Facilities in the Streets, or upon any addition or annexation to the City of any area in which Grantee retains any such Facilities in the Streets, the Grantee shall submit to the City a written statement describing all Facilities involved, whether authorized by franchise, license, permit or any other similar form of right granted by the City, and specifying the location of all such Facilities. At the City's sole option, as expressed by ordinance adopted by the City Council, such acquired Facilities shall be subject to the terms of this Franchise, with a reasonable period of time provided to Grantee to bring such acquired Facilities into compliance with this Franchise, including payment of appropriate franchise fees as determined by the City in accordance with Section 3.

6.6 Underground Conversion. As permitted by state statute, administrative rule, or regulation, the City may require Grantee to remove any overhead Facilities and replace those Facilities with underground Facilities at the same or different locations subject to Grantee's engineering and safety standards. The expense of such a conversion shall be paid by Grantee, but Grantee may recover its costs from its customers in accordance with state statute, administrative rule or regulation. Nothing in this paragraph shall prevent the City and Grantee from agreeing on a case-by-case basis to a different form of cost recovery or another mechanism for funding an underground project that is consistent with state statutes, administrative rules or regulations.

Section 7. RESTORATION OF STREETS.

7.1 Street Repairs. Whenever Grantee disturbs the surface of any Street for any purpose, Grantee shall promptly restore the Street to at least its prior condition, to the satisfaction of the City Engineer. When any opening is made by Grantee in a hard surface pavement in any Street, Grantee shall promptly refill the opening and restore the surface to a condition satisfactory to the City Engineer.

7.2 Excavation Repairs. If Grantee excavates the surface of any Street, Grantee shall be responsible for restoration of the Street and its surface within the area affected by the excavation. The City may, after providing notice to Grantee, refill and/or repave any opening made by Grantee in the Street, and the expense thereof shall be paid by Grantee. The City reserves the right, after providing notice to Grantee, to remove and/or repair any work done by Grantee which, in the determination of the City Engineer, is inadequate. The cost thereof, including the cost of inspection and supervision, shall be paid by the Grantee. All excavations made by Grantee in the Streets shall be properly safeguarded for the prevention of accidents. All of Grantee's work under this Section 7.2 shall be done in strict compliance with all applicable rules, regulations and ordinances of the City. Grantee's responsibility for maintaining repairs to any surface areas disturbed by Grantee's work shall end upon the occurrence of either a reconstruction of the Street in an approved manner by the City (curb to curb) or upon subsequent work at the same location by any other Person franchised, permitted, licensed or otherwise granted authority by the City, whichever occurs first.

Section 8. RESERVATION OF CITY STREET RIGHTS.

Nothing in this Franchise shall be construed to prevent the City from constructing sewers, grading, paving, repairing and/or altering any Street; laying down, repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to injure or prevent the unrestricted use and operation of the Grantee's Electric Energy System under this Franchise. However, if any portion of the Grantee's Electric Energy System interferes with the construction or repair of any Street or public improvement, including construction, repair or removal of a sewer or water main, the City may direct Grantee to relocate as provided in Section 6.3 of this Franchise.

Section 9. USE OF GRANTEE'S FACILITIES BY CITY.

9.1 Government Facilities. Upon receipt of written confirmation, per location, the City may, without charge, install or affix and maintain City-owned Attachments, transportation management facilities, and signs for use by the City or other government entities and for emergency services upon any and all of Grantee's Facilities, including underground Conduits and above-ground poles. The City's use of Grantee's Facilities for attaching wireless facilities shall be governed by Section 9.3. The City's use of Grantee's

Facilities shall not include the distribution of electric power to the public. To the extent possible, Grantee shall provide non-discriminatory access to its poles and related Facilities for attaching such City facilities and equipment when such space is requested; however, this shall not require the replacement of poles or Facilities at the Grantee's expense. Whenever required by federal or state occupational safety and health laws or rules, the City shall use Qualified Workers for all such work. City installations under this Section 9 shall meet all local, state and federal clearance and other safety requirements, and be properly installed (including properly grounded and anchored as may be required by state or federal law). The value of such use of Grantee's Facilities shall not be deducted from franchise and/or license fees payable to the City.

9.2 Streetlights. Upon receipt of written confirmation, per location, from Grantee, Grantee shall allow City-owned streetlights to be attached to Grantee's Facilities, subject to the requirements of the Grantee's tariffs on file with the Oregon Public Utility Commission, when applicable. Whenever required by federal or state occupational safety and health laws or rules, the City shall use Qualified Workers for all such work.

9.3 Wireless Systems. Upon receipt of written confirmation, per location, from Grantee, the City may, without charge, install or affix and maintain government-owned wireless communications systems operated by the City and used for governmental infrastructure management, fire or police communications or internal governmental communications on any and all of Grantee's Facilities, including above-ground poles, subject to a separate written agreement for wireless communication equipment between the City and Grantee. Whenever required by federal or state occupational safety and health laws or rules the City shall use Qualified Workers for all such work. Wireless communications systems not owned by the City or operated by the City on behalf of other governments shall not be installed on Grantee's Facilities without an agreement between that system's owner and Grantee, in accordance with applicable federal, state and City laws and ordinances.

9.4 New Underground Construction. For new Grantee Duct installation, Grantee will provide additional duct(s) as needed and as specified by the City in an Annual duct capacity plan provided to Grantee:

(A) City will pay Grantee the incremental costs for this work, consisting of material and labor;

(B) City will then maintain ownership of and maintenance responsibilities for the additional duct(s).

9.5 Access to Grantee's Vault. To facilitate safe working conditions, Grantee will control access to Grantee's vaults. City or its contractor will notify Grantee, in advance, of access needs and Grantee will provide qualified personnel. Grantee will bill the City or contractor for the cost of labor incurred for this work, and the City agrees to pay or have its contractor pay Grantee in accordance with such bills.

9.6 City Use of Surplus Ducts or Conduits. As needed and as specified by the City in an Annual duct capacity plan provided to Grantee, City will be allowed to access and use Grantee's Surplus Ducts or Conduits without use fees, subject to the same process and other terms applicable to Licensees under Section 12.2 and subject to a separate written agreement between the City and Grantee specifying the terms of such access and usage by the City.

Section 10. STREET VACATION.

Upon receipt of any request for vacation of any Street or portion thereof used by Grantee, the City shall provide the Grantee with the standard notice provided for street vacations. If any Street or portion thereof used by Grantee is vacated by the City during the term of this Franchise, unless the City Council specifically reserves to Grantee the right to continue its installation in the vacated Street area or Grantee secures such right from the third party that will have title to the area in which Grantee has its Facilities, Grantee shall, without expense to the City, remove its Facilities from such Street, restore, repair or reconstruct the Street area where such removal has occurred, and place the Street area in such condition as may be required by the Council, which shall be no worse than the condition of such Street immediately prior to removal. In the event of failure, neglect or refusal of Grantee, after thirty (30) days notice by City Council, to repair, improve or maintain such Street portions, the City may do such work or cause it to be done, and the direct cost thereof, as found and declared by City Council, shall be entered in the Docket of City Liens against any property of Grantee which City may choose, and such lien shall be enforced in like manner and with like effect as other liens entered in such docket. The City shall make reasonable efforts to assist Grantee in identifying potential available alternative locations within the Streets, or, if requested by Grantee, will cooperate with Grantee's efforts to secure an alternate location in the vacated Street area from the third party that shall have ownership after vacation.

Section 11. FACILITY MAINTENANCE.

Grantee shall provide and put in use all Facilities and equipment necessary for the operation of its Electric Energy System in a manner that will not cause injury to the City's property or to any property within the City belonging to any Person.. Notwithstanding the foregoing, it shall not be a breach of this Section 11 if such injury is not reasonably foreseeable by Grantee. Grantee, at no expense to the City, shall repair, renew, change and improve said Facilities and equipment from time to time as may be necessary to meet the requirement in the first sentence of this Section 11. Grantee shall not require any customer (except the City) or any entity franchised or licensed by the City to install electric lines or cables in, under or over the Streets in order for such customer or entity to connect with or receive service from Grantee's Electric Energy System.

Section 12. COMMON USERS.

12.1 Use of Surplus Facilities by Third-parties. Grantee acknowledges that the Streets have a finite capacity for containing conduits, ducts and other facilities. Therefore, Grantee agrees that whenever the City Engineer determines it is impracticable to permit construction of an underground conduit system by any other Person which may at the time have authority from the City to construct or maintain conduits or ducts in the Streets, the City Engineer may require Grantee to afford to such Person the right as a Licensee to use Grantee's Surplus Ducts or Conduits in common with the Grantee, unless safety or engineering concerns cannot reasonably be mitigated or eliminated. This right of use shall be subject to Section 12.2, to the terms and conditions of an agreement for use of Surplus Ducts or Conduits entered into by the Grantee and the Licensee, and to the safety and reliability of Grantee's Electric Energy System and maintenance requirements. Any agreement governing the terms and conditions of use of Surplus Ducts or Conduits may, at Grantee's discretion, require use of Grantee's employees or contractors in any work occurring in Grantee's vaults. If the Grantee and the Licensee are unable to mutually agree upon the terms and conditions of the use of Surplus Ducts or Conduits, Grantee shall seek resolution of the dispute in accordance with OAR 860-028-0220.

12.2 Coordination of Licensee Usage.

(A) A Licensee occupying part of a Duct shall be deemed to occupy the entire Duct.

(B) Grantee shall give Licensee and the City one hundred twenty (120) calendar days written notice of its needs to occupy any licensed Conduit or Duct and within such notice period Licensee shall take one of the following actions as directed by Grantee:

(1) Pay revised conduit or duct rent designed to recover the cost of retrofitting the Conduit or Duct with multiplexing, optical fibers, or other space-saving technology sufficient to meet the Grantee's space needs;

(2) Pay revised conduit or duct rent designed to recover the cost of new Conduit or Duct constructed to meet the Grantee's space needs;

(3) Construct and maintain sufficient new Conduit or Duct to meet the Grantee's space needs; or

(4) Vacate the Conduit or Duct.

(C) When two or more Licensees occupy a section of Conduit or Duct, the last Licensee to occupy the Conduit or Duct shall be the first to vacate or construct new conduit or duct as directed by the Grantee; pursuant to Section 12.2(B)(4), Grantee may require all Licensees to vacate. When conduit or duct rent is revised because of retrofitting or space-saving technology or construction of new conduit or duct, all Licensees shall bear the revised cost.

(D) All Attachments shall meet local, state, and federal clearance and other safety requirements, be properly grounded and anchored, and meet the provisions of contracts executed between the Grantee and the Licensee. The Grantee may, at its option, correct any Attachment deficiencies and charge the Licensee for its costs. Each Licensee shall pay the Grantee for any fines, fees, damages, or other reasonable costs the Licensee's Attachments cause the Grantee to incur.

Section 13. DISCONTINUED USE OF FACILITIES.

13.1. Abandonment. Subject to Section 15, if Grantee intends to discontinue using Facilities of its Electric Energy System within all or part of a particular portion of the Streets and does not intend to use said Facilities again in the future, Grantee shall submit to the City Engineer for the City Engineer's approval a completed application describing the structures or other Facilities and the date on which the Grantee intends to discontinue using such Facilities. Grantee may elect to remove the Facilities or request that the City permit them to remain in place. If Grantee is permitted to abandon its Facilities in place, upon consent of the City, the ownership of Facilities in the Streets shall transfer to the City and Grantee shall have no further obligation therefore. Grantee's sale of a portion of its Electric Energy System shall not, by itself, be considered a "discontinued use" under this Section 13.

13.2. Removal or Modification. Notwithstanding the Grantee's request that any such Facility remain in place, the City Engineer may require the Grantee to remove the Facility from the Street or modify the Facility in order to protect the public health and safety or otherwise serve the public interest. The City Engineer may require the Grantee to perform a combination of modification and removal of the Facility. Grantee shall complete such removal or modification in accordance with a reasonable schedule set by the City Engineer. The City Engineer shall have unlimited discretion in determining the reasonable removal schedule, based upon the Engineer's consideration of the total circumstances of the schedule. Until such time as Grantee removes or modifies the Facility as directed by the City Engineer, or until the rights to and responsibility for the Facility are accepted by another Person having authority to construct and maintain such Facility, Grantee shall be responsible for all necessary repairs and relocations of the Facility, as well as restoration of the Street, in the same manner and degree as if the Facility were in active use, and Grantee shall retain all liability for such Facility.

Section 14. HAZARDOUS SUBSTANCES.

14.1. Compliance with Applicable Law. Grantee shall comply with all applicable state and federal laws, statutes, regulations and orders concerning Hazardous Substances relating to its Electric Energy System and Facilities in the Streets.

14.2. Maintenance, Inspection and Remediation. Grantee shall maintain and inspect its Electric Energy System Facilities located in the Streets. If Grantee discovers any Hazardous Substances in the course of Grantee's work on its Facilities in the Streets, Grantee shall provide a written report of the discovery to the City within two (2) business days. Grantee shall immediately proceed to remove and remediate, in accordance with, and only to the extent required by, all applicable local, state and federal laws, any Hazardous Substances in the Streets directly attributable to or caused by Grantee's Facilities or the acts or omissions of Grantee. Nothing in this Franchise transfers or is intended to transfer any liability to the City for removal or remediation of any such Hazardous Substances in the Streets.

14.3. Construction, Modification or Removal of Facilities. In the course of construction, modification or removal of any of its Facilities in the Streets, to the extent necessary to safely proceed with such work, Grantee shall remove and remediate Hazardous Substances encountered in the course of its activities in accordance with, and only to the extent required by, all applicable state and federal laws, statutes, regulations and orders. Grantee may use reasonable business efforts to recover its costs for such removal and disposal from all legally responsible third parties.

Section 15. REMOVAL OF ASBESTOS.

15.1. Responsibility for Removal and Liability. Grantee has an extensive system of pipes which, until May 1986, were used for the transmission of steam. Those pipes are covered with asbestos insulating material. Asbestos is recognized as a significant health hazard and it is the City's intent that the responsibility for removal of this asbestos containing material and any liabilities arising from the Grantee's use of asbestos containing material be and remain forever the responsibility of the Grantee. Grantee may, in accordance with a schedule approved by the City Engineer, and at Grantee's expense, remove all or a portion of the pipes from the Streets, provided that it does so in accordance with all applicable City ordinances and provided that it returns the Streets to their condition prior to opening. Grantee's system of pipes may remain buried in the Streets in their current configuration for as long as the City Engineer determines that the pipes do not conflict with any other use of the Street area. Whenever any Grantee-owned steam system component which has asbestos on, in, or surrounding it conflicts with any other use of the Street area the Grantee shall be responsible for removal of the asbestos containing material and proper disposal of the asbestos containing material. Upon notice from the City, or any other party holding a valid permit for work in the Street area, that asbestos containing material associated with Grantee's steam pipes is in conflict with their proposed work, the Grantee shall immediately remove the asbestos containing material and properly dispose of it.

15.2. Failure to Remove. If the Grantee fails to remove the asbestos containing material, the party requesting removal may arrange to have the asbestos removed and the cost of removal and any costs of delay incurred shall be charged to the Grantee and the Grantee shall promptly pay such charges.

15.3. City Adoption of Additional Provisions. The City Council, by ordinance, may adopt additional provisions relating to the removal of asbestos from the Streets and the parties may by agreement adopt additional provisions relating to the use of the steam pipes and the removal and disposal of asbestos associated with the pipes. However, unless expressly provided in the ordinance or agreement, no ordinance or agreement shall be construed in any way to relieve the Grantee of any liability for claims arising from the presence of asbestos, nor assign any liability to the City.

Section 16. TREE TRIMMING.

16.1. When Permits Needed. Upon obtaining a written permit from the City Forester, Grantee may prune or cause to be pruned, using proper utility arboricultural practices and in accordance with such permit, any tree in or overhanging the Streets which interferes with Grantee's Facilities. Except in emergencies or by special written permission of the City Forester, Grantee may not prune trees at a point below 30 feet above sidewalk grade until one week (seven [7] calendar days) after written notice has been given to the owner or occupant of the premises abutting the Street in or over which the tree is growing. The owner or occupant shall have one week from receipt of notice to have such trees pruned by a qualified line clearance arborist at his or her own expense in accordance with Grantee's standards for reliable utility service, provided that the owner or occupant agrees to use tree pruning personnel that are qualified to work in close proximity to power lines. If the owner or occupant fails to do so in compliance with the notice, Grantee may prune such tree at its expense.

16.2. Blanket Permits. The City Forester may, at the City Forester's discretion, waive the notification and single tree permit process and issue a blanket tree pruning permit if Grantee adequately demonstrates to the City Forester's satisfaction the ability to consistently apply proper utility arboricultural practices to the pruning of trees. Before any blanket permit may be issued, any contractor of Grantee shall be subject to the approval of the City Forester. The City Forester shall have discretion to cancel the blanket permit, notification and single tree permit process if, at any time, the Grantee or its agents fail to either use proper utility arboricultural practices or to properly notify the public as specified in Section 16.1.

16.3. Emergencies. Notwithstanding the permit and notice requirements of Section 16, in the event of an emergency, Grantee may prune a tree or trees as necessary to abate the emergency. For purposes of this Section 16, emergencies exist when it is necessary to prune a tree or trees in order to restore electrical services, or to protect the public from imminent danger, or to prevent the imminent destruction of property.

Section 17. COOPERATION REGARDING LOCAL ACTION PLAN ON GLOBAL WARMING.

Grantee agrees to work with the City to identify mutually acceptable ways for Grantee to support the City's efforts to meet the goals contained in the April 2001 Local Action Plan on Global Warming, or successor climate-protection action plans adopted by the Council during the Franchise term.

Section 18. CITY'S CONSENT REQUIRED FOR ASSIGNMENT, TRANSFER, MERGER, LEASE OR MORTGAGE.

18.1. Council Consent. With the addition of the requirements contained in Section 18.2, neither this Franchise nor all or substantially all of Grantee's Electric Energy System located in the Streets by authority of this Franchise shall be sold, leased, mortgaged, assigned, merged or otherwise transferred without the prior written consent of the City as expressed by ordinance, which consent shall not be unreasonably withheld, except to entities that control, are controlled by, or are under common control with the Grantee. Grantee shall give written notice to the City of any transfers to entities under such common control within ten (10) days of such transfers. The City's granting of consent in one instance shall not render unnecessary any subsequent consent in any other instance. Nothing contained in this Franchise shall be deemed to prohibit the mortgage, pledge, or assignment of tangible assets of Grantee's Electric Energy System for the purpose of financing the acquisition of equipment for or the construction and operation of Grantee's Electric Energy System, within or outside the City, without the City's consent, but any such mortgage, pledge or assignment with respect to Grantee's Electric Energy System shall be subject to the City's other rights contained in this Franchise. Consent of the City is hereby given to the outstanding mortgage and Deed of Trust of the Grantee to Morgan Guaranty Trust Company of New York (formerly Guaranty Trust Company of New York) and Wesley L. Baker (successor to Oliver R. Brooks), Trustees, dated as of July 1, 1947, an executed counterpart of which is on file with the City Auditor.

18.2. Review.

(A) In determining whether the City will consent to any sale, lease, mortgage, assignment, merger or transfer, the City may inquire into the technical, legal, and financial qualifications of the prospective party. Grantee shall assist the City in any such inquiry. The City may condition any sale, lease, mortgage, assignment, merger or transfer upon such conditions related to the technical, legal, and financial qualifications of the prospective party to perform according to the terms of this Franchise, as it deems appropriate. The City shall not unreasonably delay or withhold its consent to any such sale, lease, mortgage, assignment, transfer or merger.

(B) No sale, lease, mortgage, assignment, transfer or merger for which the City's consent by ordinance is required may occur until the successor, assignee or lessee has complied with the requirements of Section 4, including, but not limited to, providing

certificates of insurance, unless the City Council waives such compliance by ordinance. Within ten (10) days after execution and delivery of any instrument so consented to by the City, Grantee shall file with the City Auditor an executed counterpart or certified copy thereof.

18.3. Leases. Grantee shall not lease any portion of its franchised Electric Energy System without the City's prior consent as expressed by ordinance. However, and notwithstanding Section 18.1, Grantee may lease any portion of its Electric Energy System in the ordinary course of its business without otherwise obtaining the City's consent by ordinance, so long as Grantee remains solely responsible for locating, servicing, repairing, relocating or removing such portion of its Electric Energy System. A lessee of any portion of Grantee's Electric Energy System shall not obtain any rights under this Franchise.

18.4. Sales.

(A) Notwithstanding Section 18.1, Grantee may sell portions of its Electric Energy System in the ordinary course of its business, without otherwise obtaining the City's consent by ordinance, so long as Grantee complies with the following conditions:

(1) The sale is to the holder of a current existing, valid electric energy system franchise, license, permit, or other similar right granted by the City;

(2) Within fourteen (14) days of the sale being executed and becoming final, Grantee shall provide written notice to the City, describing the portions of the Electric Energy System sold by the Grantee, identifying the purchaser of the Facilities, the location of the Facilities (in accordance with the requirements of Section 6.1(B)(2)) and providing an executed counterpart or certified copy of the sales documents;

(3) Grantee remains solely responsible for locating, servicing, repairing, relocating or removing its remaining Electric Energy System; and,

(4) Within fourteen (14) days of the sale being executed and becoming final, the purchaser of such Facilities shall file written notice to the City that it has assumed sole responsibility for locating, servicing, repairing, relocating or removing the purchased Facilities under the purchaser's current, existing valid electric energy system franchise, license, permit or other similar right granted by the City. The purchaser shall not obtain any of the Grantee's rights under this Franchise.

Section 19. FORFEITURE AND REMEDIES.

19.1 Forfeiture. In addition to any other rights set out elsewhere in this Franchise, the City reserves the right to declare a forfeiture of the Franchise, and all of Grantee's rights arising thereunder, in the event that:

(A) The Grantee violates any material provision of the Franchise;

(1) For purposes of this Section 19.1, the following are material provisions of this Franchise, allowing the City, without limitation, to exercise its rights under this Section 19.1 or as set forth elsewhere in this Franchise:

(a) The invalidation, failure to pay or any suspension of Grantee's payments of Franchise fees to the City for use of the Streets under this Franchise;

(b) Any failure by the Grantee to submit timely reports regarding the calculation of its franchise fees to the City;

(c) Any failure by Grantee to maintain the liability insurance required under this Franchise;

(d) Any failure by Grantee to maintain the performance bond required under this Franchise;

(e) Any failure by Grantee to provide copies of requested information as provided under Section 3.8; or,

(f) Any failure by Grantee to otherwise fully comply with the material requirements of this Franchise.

(B) The Grantee is found by a court of competent jurisdiction to have practiced any fraud or deceit upon the City;

(C) There is a final determination that Grantee has failed, refused, neglected or is otherwise unable to obtain and/or maintain any permit required by any federal or state regulatory body regarding Grantee's operation of its Electric Energy System within the City; or,

(D) The Grantee becomes unable or unwilling to pay its debts, or is adjudged a bankrupt.

19.2 Additional Remedies. In addition to any rights set out elsewhere in this Franchise, as well as its rights under the City Code, the City reserves the right at its sole option to apply any of the following, alone or in combination:

(A) Impose a financial Penalty of up to \$1,000 per Franchise violation; or,

(B) Suspend the Grantee's Franchise rights related to the violation, until the Grantee corrects or otherwise remedies the violation.

(C) The City Council may revoke this Franchise in the event that any provision becomes invalid or unenforceable and the City Council expressly finds that such provision constituted a consideration material to the grant of the Franchise.

19.3 Assessment of Remedies. In determining which remedy or remedies are appropriate, the City shall consider the nature of the violation, Grantee's efforts to cure the violation after notice thereof, the Person or Persons burdened by the violation, the nature of the remedy required in order to prevent further such violations, and any other matters the City deems appropriate.

19.4 Notice and Opportunity to Cure. The City shall give Grantee thirty (30) days prior written notice of its intent to exercise its rights under this Section 19, stating the reasons for such action. If Grantee cures the stated reason within the thirty (30) day notice period, or if the Grantee initiates efforts satisfactory to the City to remedy the stated reason and the efforts continue in good faith, the City shall not exercise its remedy rights. If Grantee fails to cure the stated reason within the thirty (30) day notice period, or if the Grantee does not undertake and/or maintain efforts satisfactory to the City to remedy the stated reason, then the City Council may impose any or all of the remedies available under this Section 19. However, in no event shall the City exercise its rights under this Section 19 if a bona fide, good faith dispute exists between the City and the Grantee.

Section 20. RENEGOTIATION.

In the event that any provision of this Franchise becomes invalid or unenforceable and the City Council or the Grantee expressly finds that such provision constituted a consideration material to entering into this Franchise, the City and the Grantee may mutually agree to renegotiate the terms of this Franchise. The party seeking renegotiation shall serve on the other party written notice of an offer to renegotiate. In the event the other party accepts the offer to renegotiate, the parties shall have ninety (90) days to conduct and complete the renegotiation. If both parties agree to renegotiations under this Section 20, the parties shall proceed in good faith and in a manner that is reasonable under the circumstances.

Section 21. EXPIRATION.

21.1 Renewal and Right of First Refusal. Upon the expiration of this Franchise, on application made by the Grantee for franchise renewal or additional authority to exercise the privileges, or any of them, hereby granted, the Grantee shall have the first and preferential right to take and receive such authority upon terms and conditions approved by the City. If the Grantee does not promptly apply for such renewal or additional authority, or if the Grantee rejects the terms and conditions of such authority offered by the City, the City may, after three hundred sixty-five (365) days from the expiration of the Franchise, grant a permit or franchise to any other corporation, association, firm,

individual or individuals. In the event of such a grant, such other corporation, association, firm, individual or individuals taking such new or additional authority, shall in addition to any compensation to be paid to the City for such new or additional authority, pay to the Grantee, at or before the time such new or additional authority takes effect, and before the Grantee shall be deprived of the right to possess, maintain and operate its Electric Energy System located within the Streets, the fair and equitable valuation of Grantee's Electric Energy System located within the Streets. If the third party and Grantee cannot agree on the fair and equitable value of said Electric Energy System, the dispute shall be submitted for a declaratory determination by the courts of the State of Oregon. Until such time as the City exercises its rights as set forth in this Section 21, the Grantee's rights and responsibilities within the City shall continue to be controlled by the terms and conditions of this Franchise.

21.2 The City's Renewal, Extension, and Termination Rights. Upon the expiration of this Franchise and subject to Grantee's rights under Section 21.1 of this Franchise, the City shall have the right, at its election, to:

(A) Renew or extend the Franchise to Grantee, in accordance with the Portland City Charter and applicable law;

(B) Invite additional proposals and award the franchise to another grantee;

(C) Terminate Grantee's rights and responsibilities established by Section 21.3 of this Franchise; or,

(D) Take such further action as the City deems appropriate.

21.3 Grantee's Rights and Responsibilities Until Action by City. Until such time as the City exercises its rights under Section 21.2 the Grantee's rights and responsibilities within the City shall be controlled by the terms of this Franchise.

Section 22. MISCELLANEOUS PROVISIONS.

22.1 Compliance with Laws.

(A) Both Grantee and the City shall comply with all applicable federal and state laws.

(B) Grantee shall comply with all applicable City ordinances, resolutions, rules and regulations adopted or established pursuant to the City's lawful authority.

22.2 Severability. If any section, provision or clause of this Franchise is held by a court of competent jurisdiction to be invalid or unenforceable, or is preempted by federal or state laws or regulations, the remainder of this Franchise shall not be affected, unless the

City Council determines such section, provision, or clause was material to the City's agreement to issue a franchise to the Grantee.

22.3 Regulation and Nonenforcement by the City. The City Council shall be vested with the power and authority to reasonably regulate the exercise of the privileges permitted by this Franchise in the public interest. Grantee shall not be relieved of its obligations to comply with any of the provisions of this Franchise by reason of any failure of the City to enforce prompt compliance, nor does the City waive or limit any of its rights under this Franchise by reason of such failure or neglect. Services furnished by Grantee under this Franchise shall be rendered using the best practicable commercial methods and practices, insuring the least danger to life and property compatible with good engineering practice.

22.4 Force Majeure.

(A) For the purposes of this Section 22.4, the term "Force Majeure" shall mean Acts of God, landslides, earthquakes, lightning, fires, hurricanes, volcanic activity, storms, floods, washouts, droughts, civil disturbances, acts of terrorism or of the public enemy, partial or entire failure of utilities, strikes, explosions, lockouts or other industrial disturbances, insurrections, public riots or other similar events which are not reasonably within the control of the parties hereto.

(B) If the Grantee is wholly or partially unable to carry out its obligations under this Franchise as a result of Force Majeure, the Grantee shall give the City prompt notice of such Force Majeure, describing the same in reasonable detail, and Grantee's obligations under this Franchise, other than for the payment of monies due, shall not be deemed in violation or default for the duration of the Force Majeure. Grantee agrees to use its best efforts to remedy as soon as possible, under the circumstances, Grantee's inability, by reason of Force Majeure, to carry out its responsibility and duties under this Franchise.

22.5 Choice of Forum. Any litigation between the City and the Grantee arising under or regarding this Franchise shall occur, if in the state courts, in the Multnomah County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon, Portland.

22.6 Choice of Law. This contract shall be governed by and construed in accordance with the laws of the State of Oregon, even if Oregon's choice of law rules would otherwise require application of the law of a different state.

22.7 Notice. Any notice provided for under this Franchise shall be sufficient if in writing and (1) delivered personally to the following addressee or deposited in the United States mail, postage prepaid, certified mail, return receipt requested, (2) sent by overnight or commercial air courier (such as Federal Express), or (3) sent by facsimile transmission addressed as follows, or to such other address as the receiving party hereafter shall specify in writing:

(A) If to the City:

Office of Cable Communications and Franchise Management
City of Portland, Oregon
1120 SW 5th Avenue, Room 1305
Portland, Oregon 97204
FAX (503) 823-5370

With a copy to:

City Attorney's Office
City of Portland
1221 SW 4th Avenue, Room 430
Portland, Oregon 97204
FAX (503) 823-3089

(B) If to the Grantee:

Franchise Administrator
PacifiCorp Customer Contact Center
1900 SW 4th Avenue
Portland, Oregon 97201
FAX (503) 813-7458

With a copy to:

Office of General Counsel
PacifiCorp
825 NE Multnomah, Suite 2000
Portland, Oregon 97232
FAX (503) 813-7262

and

Regional Community Manager (for Portland)
825 NE Multnomah, Suite 2000
Portland, Oregon 97232
FAX (503) 813-7274

(C) Any such notice, communication or delivery shall be deemed effective and delivered upon the earliest to occur of actual delivery, three (3) business days after depositing in the United States mail as aforesaid, one (1) business day after shipment by commercial air courier as aforesaid or the same day as facsimile transmission (or the first business day thereafter if faxed on a Saturday, Sunday or legal holiday).

22.8 Confidentiality. Grantee may identify information submitted to the City as confidential. Prior to submitting such information to the City, Grantee shall prominently mark any such information with the mark “Confidential”. The City shall treat any information so marked as confidential and not subject to public disclosure, until the City receives any public records request for disclosure of such information. Within five (5) working days of receiving any such request, the City shall provide the Grantee with written notice of the request, including a copy of the request. Grantee shall have five (5) working days within which to provide a written response to the City, before the City may release any of the requested confidential information. Whether the Grantee submits any written response to the City, the City shall retain final discretion to determine whether to release the requested confidential information, provided that the City shall give the Grantee at least five (5) days written notice after receipt of any response from Grantee, prior to releasing such information.

22.9 Public Records. Grantee and the City acknowledge that documents and records submitted by the Grantee to the City may be subject to or exempt from public inspection, under the Oregon Public Records Law. Grantee acknowledges its responsibility for becoming familiar with the provisions of the Oregon Public Records Law.

(A) Some information submitted by the Grantee to the City may be relevant to the Grantee’s obligation to pay franchise fees. Requiring such information to be submitted to the City in order to determine fees payable or paid to the City may qualify such information as being exempt from public disclosure under ORS 192.501(5) (2005) of the Oregon Public Records Law.

(B) Some information submitted by the Grantee to the City may otherwise be used to conduct its business and known to certain individuals within the organization, with actual or potential commercial value, and giving Grantee a business advantage over its competitors. Such information may constitute trade secrets and be exempt from public disclosure under ORS 192.501(2) (2005) of the Oregon Public Record Law.

(C) Some information submitted by the Grantee to the City may identify areas of structural or operational vulnerability that might, if disclosed, permit unlawful disruption to, or interference with, delivery of utility services. Such information may be exempt from public disclosure under ORS 192.501(22) (2005) of the Oregon Public Records Law.

(D) Identification in this Section 22.9 of certain exemptions under the Oregon Public Records Law which may apply to information submitted by the Grantee to the City is not intended as an exhaustive list of exemptions possibly applicable to such information during the term of this Franchise.

22.10 Franchise Amendment. The City has negotiated this Franchise in good faith, in reliance upon the information provided by the Grantee regarding the scope of its authority to offer services associated with its Electric Energy System. In the event that Grantee offers or receives authority to offer services outside the scope of this Franchise

that utilize Grantee's Facilities in the Streets, Grantee shall immediately notify the City. Within ninety (90) days of receiving such notice, the City may elect, without limitation, to enter into negotiations with Grantee to revise or amend this Franchise, or to extend separate authority to Grantee for such services to reflect such changed circumstances, or may proceed with early termination of this Franchise. The parties will negotiate in good faith to reach mutual agreement on the lawful means to provide the necessary authority for Grantee to provide such services using Streets.

22.11 Written Acceptance. On or before the thirtieth day after this ordinance becomes effective, Grantee shall file in the Office of the Auditor of the City of Portland a written acceptance of this ordinance, executed by the Grantee, meeting the approval of the City Attorney. Any failure on the part of Grantee to file such written acceptance within such time shall be deemed an abandonment and rejection of the rights and privileges conferred hereby and this ordinance shall thereupon be null and void. Such acceptance shall be unqualified and shall be construed to be an acceptance of all the terms, conditions and restrictions contained in this ordinance.

22.12 Other Authority Superseded. Upon effectiveness of this Franchise, any and all authority to operate previously granted to Grantee by the City is superseded by this Franchise.

22.13 Captions. Throughout this Franchise, captions to sections are intended solely to facilitate reading and to reference the sections and provisions of this Franchise. The captions shall not affect the meaning and interpretation of this Franchise.

Passed by Council, February 07, 2007
Commissioner Dan Saltzman
Prepared by David C. Olson
December 1, 2006

GARY BLACKMER
Auditor of the City of Portland
By /S/ Andrew N. Bryans
Deputy

BACKING SHEET INFORMATION

AGENDA NO. 3, 128-2007

ACTION TAKEN:

JANUARY 03, 2007 PASSED TO SECOND READING FEBRUARY 07, 2007
9:30 AM

ORDINANCE/RESOLUTION/COUNCIL DOCUMENT NO. 180762

| COMMISSIONERS VOTED AS FOLLOWS: | | |
|---------------------------------|------|------|
| | YEAS | NAYS |
| ADAMS | === | === |
| LEONARD | X | |
| SALTZMAN | X | |
| STEN | X | |
| POTTER | X | |