

ORDINANCE NO. 2007-1

AN ORDINANCE GRANTING TO PACIFICORP, AN OREGON CORPORATION, AND TO ITS SUCCESSORS AND ASSIGNS, A NONEXCLUSIVE RIGHT AND FRANCHISE FOR A PERIOD OF TEN (10) YEARS TO CONSTRUCT, MAINTAIN AND OPERATE, IN, ON AND UNDER THE PRESENT AND FUTURE STREETS, ALLEYS, BRIDGES AND PUBLIC PLACES OF THE CITY OF MAYWOOD PARK, MULTNOMAH COUNTY, OREGON, COMMUNICATIONS FACILITIES, ELECTRIC LIGHT AND POWER LINES AND APPURTENANCES FOR THE PURPOSE OF DISTRIBUTING, TRANSMITTING OR SUPPLYING ELECTRICITY AND ELECTRIC SERVICE THROUGH OR TO THE CITY OF MAYWOOD PARK, AND TO THE INHABITANTS THEREOF AND OTHERS, SUBJECT TO THE TERMS AND CONDITIONS AND TO THE MAKING OF PAYMENTS SPECIFIED IN THE ORDINANCE; AND PROVIDING FOR THE REPEAL OF ORDINANCE NO. 32 OF THE CITY OF MAYWOOD PARK, PASSED AND APPROVED JULY 07, 1997.

THE CITY OF MAYWOOD PARK ORDAINS AS FOLLOWS:

Section 1. The City of Maywood Park, Multnomah County, Oregon, hereinafter called the "City", does hereby grant to PacifiCorp, an Oregon corporation, and to its successors and assigns, hereinafter called "Grantee", a right and franchise for the period of ten (10) years from and after the effective date of this ordinance, to construct, maintain, and operate Grantee's Electric Energy System in, on and under the present and future streets, alleys, bridges and public places of the City, hereinafter referred to as "Streets." As used in this Ordinance, the term "Electric Energy System" shall mean all wires, cables, ducts, conduits, vaults, poles, anchors, cabinets, fixtures, transformers, communications facilities, and all other necessary or desirable appurtenances owned or used by the Grantee for the purpose of providing electric power and light and located in, above or below the Streets and located within the municipal boundaries of the City; excluding ducts, conduits, vaults or other facilities leased by Grantee from any other person franchised, permitted, licensed or otherwise granted authority by the City.

Section 2. The right and franchise hereby granted shall be nonexclusive. The City may at any time during the term of this franchise grant rights or franchises for uses consistent with appropriate statutes, rules and regulations.

Section 3. The locations and methods of installation and maintenance of all poles, wires, fixtures, underground lines, and appurtenances thereto (hereinafter referred to as "Facilities") shall be subject at all times to reasonable regulation by the Council of the City; and all such Facilities shall be so constructed and maintained as to interfere as little as practicable with street or other traffic. All of such Facilities shall be installed and at all times maintained by Grantee in accordance with good electrical utility practices. If the removal or relocation of Facilities is caused by an identifiable development of property in the area, or is made for the convenience of a customer, this agreement shall not preclude the Grantee from charging the expense of removal or relocation to the developer or customer.

Section 4. The service to be furnished hereunder by Grantee shall be continuous and shall be adequate for the requirements of the City and its inhabitants, subject to accidents, interferences or interruptions beyond the reasonable control of Grantee, and shall be furnished under such reasonable rules and regulations as Grantee may make from time to time for the proper conduct of its business. Such service and all rates and charges therefore and all rules and regulations pertaining thereto or to the making of necessary and proper extension of service shall be subject at all times to any rules, regulations and orders lawfully prescribed by the Oregon Public Utility Commission, or by any other governmental authority having jurisdiction thereof.

Section 5. The City shall provide reasonable notice to Grantee before commencing any improvements or other work in the Streets that may affect Grantee's Facilities.

Section 6. No structures, buildings or signs shall be erected below Grantee's facilities or in a location that prevents Grantee from accessing or maintaining its Facilities.

Section 7. When necessary, in order to permit any duly authorized person to move any building or structure across or along any of said Streets, Grantee shall temporarily raise or remove its Facilities upon such Streets, upon reasonable notice in advance from the Recorder of the City, and at such time and in such manner as may be reasonably required to accommodate such moving, consistent with the maintenance of proper service to Grantee's customers; provided, however, that the cost to Grantee of such temporary raising or removal, and of any interruption of Grantee's service to its customer's caused thereby, shall first be paid or satisfactorily secured to Grantee by the owner or mover of such building or other structure.

Section 8. The City shall have the right, upon reasonable notice to Grantee and receipt of written confirmation (per location) by Grantee, and without payment or charge therefore, to attach its fire alarm, police signal wires, grantee approved security cameras; streetlights or traffic control systems to the poles of Grantee, but at its own risk and only in accordance with the National Electric Safety Code and good electrical utility practices. Any such attachments made the city under this Section 8 shall be 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. If there is not sufficient space available thereon for said purposes, Grantee's structures may be changed, altered, or rearranged at the expense of the City so as to provide proper clearance for all existing and new facilities on the pole. Such City owned facilities shall be subject to interference by Grantee only when and to the extent necessary for the proper construction, maintenance, operation or repair of Grantee's Facilities. For purposes of this section a 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 ordinance and franchise a Qualified Worker need not be an employee of the City or of Grantee.

Section 9. Grantee shall protect and save the City, its officers, employees and agents, harmless against and from any and all damage claims, and any and all loss, liability, cost or expense, occasioned by any negligent act or omission of Grantee in the construction, maintenance, operation or repair of Grantee's Electric Energy System or any use thereof; and Grantee shall at all times comply with any lawful present or future charter provisions, ordinances, rules or regulations of the City relating to the manner of occupation or use, or to the repair or improvement of said Streets. Grantee shall not be obligated to indemnify, defend or hold the City harmless to the extent any claim, demand or lien arises out of or in connection with any negligent or willful act or omission of the City or any of its officers or employees.

Section 10. Grantee shall have the right and privilege of trimming all trees which overhang said Streets, in compliance with the *American National Standard for Tree Care Operation (ANSI A300)* and to such an extent as will prevent the branches or limbs or other parts of such trees from touching or interfering with its Facilities; providing no such trees are trimmed or cut back further than may be reasonably necessary to prevent such interference and to allow compliance with ANSI A300 and the proper operation and maintenance of said Facilities. Grantee may prune or cause to be pruned, using proper utility arboricultural practices and in accordance with City Ordinances, any tree in or overhanging the Streets which interferes with Grantee's Facilities. Except in emergencies, 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. Nothing contained in this Section shall prevent Grantee, when necessary, within the requirements of City Ordinances, and with the approval of the owner of the property on which they may be located, from cutting down and removing any trees which overhang said Streets.

Section 11.

- (a) Grantee shall pay to the City a franchise fee or charge equivalent to five percent (5%) of Grantee's Gross Operating Revenue as the same is defined herein.
- (b) (b) "Gross Operating Revenue", 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 Grantee's facilities, after adjustment for the net write-off of uncollectible accounts. Gross revenues do not include the 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 services is not the ultimate consumer. Gross revenues also do not include revenue from joint use of Grantee's poles, ducts or conduits. For purposes of this Section 11(b), revenue from joint use of poles, ducts or conduits 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. Gross Revenues also do not include revenues derived from business done with the government of the United States or any agency thereof, and after deducting there from any amounts paid by Grantee to the United States or to the State of Oregon as excise, occupation, or business taxes upon the sale or distribution of electric service in the City.

- (c) (c) Said franchise fee shall not be in addition to any other license, occupation, franchise or excise taxes or charges which might otherwise be levied or collected by the City from Grantee with respect to Grantee's electric business or the exercise of this franchise within the corporate limits of the City and the amount due to the City under any such other license, occupation, franchise or excise taxes or other charges for corresponding periods shall be reduced by deducting there from the amount of said franchise fee paid hereunder. Grantee shall not be charged or required to pay any permit, inspection or inspector fees or similar charges for street cuts or openings, pole or line construction, installation or relocation and the like.
- (d) (d) Said franchise fee shall be paid monthly on or before the 20th of each month during the term hereof, and shall be computed upon the Gross Operating Revenue accruing during the previous calendar month or portion thereof.

Section 12. 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 12, the Grantee's rights and responsibilities within the City shall continue to be controlled by the terms and conditions of this Franchise.

Section 13. Unless otherwise agreed to in writing, all notices from Grantee to the City pursuant to or concerning this Franchise shall be delivered to \_\_\_\_\_, and all notices from the City to Grantee pursuant to or concerning this Franchise shall be delivered to the Franchise Administrator, PacifiCorp Customer Contact Center, 1900 SW 4<sup>th</sup> Avenue, Portland, Oregon, 97201, and such other office as Grantee may advise the City of by written notice.

Section 14. Upon the effective date hereof, but not otherwise, Ordinance No. 32 of the City of Maywood Park passed and approved July 07, 1997 is repealed.

Section 15. This ordinance shall take effect thirty (30) days after its enactment by the Council and approval by the Mayor, but shall become null and void unless within sixty (60) days after such enactment Grantee shall file with the Recorder Grantee's written acceptance of the terms, conditions and obligations to be complied with or performed by it hereunder.

Ordinance No. 2007-1, passed by the Council this 5<sup>th</sup> day of June, 2007.

**CITY OF MAYWOOD PARK**

By: /s/ Mark Hardie  
Mark Hardie, Mayor