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ORDINANCE NO. 38

ORDINANCE GRANTING TO PACIFIC GAS AND ELECTRIC COMPANY, ITS SUCCESSORS AND ASSIGNS, THE FRANCHISE TO CONSTRUCT, MAINTAIN AND USE POLES, WIRES, CONDUITS AND APPURTENANCES, INCLUDING COMMUNICATION CIRCUITS, NECESSARY OR PROPER FOR TRANSMITTING AND DISTRIBUTING ELECTRICITY TO THE PUBLIC FOR ANY AND ALL PURPOSES IN, ALONG, ACROSS, UPON, UNDER AND OVER THE PUBLIC STREETS AND PLACES WITHIN THE CITY OF NOVATO.

The City Council of the City of Novato does ordain as follows:

Section 1. Whenever in this ordinance the words or phrases hereinafter in this section defined are used, they shall have the respective meanings assigned to them in the following definitions:

- (a) The word "Grantee" shall mean Pacific Gas and Electric Company, and its lawful successors or assigns;
- (b) The word "City" shall mean the City of Novato, a municipal corporation of the State of California, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form;
- (c) The word "streets" shall mean the public streets, ways, alleys and places as the same now or may hereafter exist within City, including State highways, now or hereafter established within City, and freeways hereafter established within City;
- (d) The phrase "poles, wires, conduits and appurtenances" shall mean poles, towers, supports, wires, conductors, cables, guys, stubs, platforms, crossarms, braces, transformers, insulators, conduits, ducts, vaults, manholes, meters, cut-outs, switches, communication circuits, appliances, attachments, appurtenances, and, without limitation to the foregoing, any other property located or to be located in, upon, along, across, under or over the streets of City, and used, or useful in transmitting and/or distributing electricity;
- (e) The phrase "construct, maintain and use" shall mean to construct, erect, install, lay, operate, maintain, use, repair or replace.

(f) The word "engineer" shall mean the City engineer of City.

Section 2. The franchise, subject to each and all of the terms and conditions contained in this ordinance, to construct, maintain and use poles, wires, conduits and appurtenances necessary or proper for transmitting and distributing electricity to the public for any and all purposes, in, along, across, upon, under and over the streets, within City is hereby granted to Grantee.

Section 3. Grantee of this franchise shall:

- (a) Construct, install and maintain all poles, wires, conduits, and appurtenances in accordance with and in conformity with all of the ordinances and rules adopted by the legislative body of City in the exercise of its police powers and not in conflict with the paramount authority of the State of California, and, as to State highways, subject to the laws relating to the location and maintenance of such facilities therein.
- (b) Pay to City, on demand, the cost of all repairs to public property made necessary by any operations of Grantee under this franchise.
- (c) Indemnify and hold harmless City and its officers from any and all liability for damages proximately resulting from any operations under this franchise.
- (d) Remove or relocate, without expense to City, any poles, wires, conduits and appurtenances installed, maintained or used under this franchise, if and when made necessary by any lawful change of grade, alignment or width of any streets by City, including the construction of any subway or viaduct, provided, however, that the cost of any such relocation made necessary by the construction or any lawful change of grade, alignment or width of any freeway constructed by the State of California shall be divided equally between Grantee and the State of California.
- (e) File with the legislative body of City within thirty (30) days after any sale, transfer, assignment or lease of this franchise, or any part thereof, or of any of the rights or privileges granted thereby, written evidence of the same, certified thereto by Grantee or its duly authorized officers.

Section 4. If any portion of any street shall be damaged by reason of defects in any of the poles, wires, conduits and appurtenances maintained or constructed under this grant, or by reason of any other cause arising from the operation or existence of any poles, wires, conduits and appurtenances constructed or maintained under this grant, Grantee shall, at its own cost and expense, immediately repair any such damage and restore such street, or portion of street, to as good a condition as existed before such defect or other cause of damage occurred, such work to be done under the direction of the engineer, and to his reasonable satisfaction.

Section 5. Said franchise shall be indeterminate, that is to say, said franchise shall endure in full force and effect until the same shall, with the consent of the Public Utilities Commission of the State of California, be voluntarily surrendered or abandoned by Grantee, or until the State or some municipal or public corporation thereunto duly authorized by law shall purchase by voluntary agreement or shall condemn and take under the power of eminent domain, all property actually used and useful in the exercise of said franchise and situate in the territorial limits of the State, municipal or public corporation purchasing or condemning such property, or until said franchise shall be forfeited for non-compliance with its terms by Grantee.

Section 6. Grantee of this franchise shall during the term thereof pay to City two per cent (2%) of the gross annual receipts of Grantee arising from the use, operation or possession of said franchise; provided, however, that such payment shall in no event be less than one per cent (1%) of the gross annual receipts of Grantee derived from the sale of electricity within the limits of City.

Section 7. Grantee shall file with the City Clerk of City, within three (3) months after the expiration of the calendar year, or fractional calendar year, following the date of the granting hereof, and within three (3) months after the expiration of each and every calendar year thereafter, a duly verified statement showing in detail

the total gross receipts of Grantee during the preceding calendar year, or such fractional calendar year, from the sale of electricity within City. Grantee shall pay to City within fifteen (15) days after the time for filing such statement, in lawful money of the United States, the aforesaid percentage of its gross receipts for such calendar year, or such fractional calendar year, covered by such statement. Any neglect, omission or refusal by Grantee to file such verified statement, or to pay said percentage at the time and in the manner specified, shall be grounds for the declaration of a forfeiture of this franchise and of all rights of Grantee hereunder.

Section 8. Said franchise is granted under the Franchise Act of 1937.

Section 9. This grant is made in lieu of all other franchises, rights or privileges owned by Grantee, or by any successor of Grantee to any rights under this franchise, for transmitting and distributing electricity within the limits of City, as said limits now or may hereafter exist, and the acceptance of the franchise hereby granted shall operate as an abandonment of all such franchises, rights and privileges within the limits of City, as such limits now or may hereafter exist, in lieu of which this franchise is granted.

Section 10. The franchise granted hereunder shall not in any way or to any extent impair or affect the right of City to acquire the property of Grantee either by purchase or through the exercise of the right of eminent domain, and nothing herein contained shall be construed to contract away or modify or abridge, whether for a term or in perpetuity, City's right of eminent domain in respect to Grantee or any public utility. Nor shall this franchise ever be given any value before any court or other public authority in any proceeding of any character in excess of the cost to Grantee of the necessary publication and any other sum paid by it to City therefor at the time of the acquisition thereof.

Section 11. Grantee, by acceptance of the franchise hereby granted, agrees that City shall have the right to make contacts for suspending fire and police alarm wires and facilities upon any poles of Grantee installed under the franchise granted hereby, provided

there is space available therefor upon said poles not required by Grantee for the operation of its own facilities and provided further that an agreement shall be entered into between City and Grantee setting forth a method for determination of the poles to be contacted by City from time to time, and the terms and conditions under which City shall be permitted to make said contacts. Said contacts shall be made and maintained at the risk and expense of City and in conformity with the current rules and regulations of the Public Utilities Commission of the State of California.

Section 12. This ordinance shall become effective thirty (30) days after its final passage unless suspended by a referendum petition filed as provided by law.

Section 13. Grantee of this franchise shall pay to City a sum of money sufficient to reimburse it for all publication expenses incurred by it in connection with the granting thereof; such payment to be made within thirty (30) days after City shall have furnished Grantee with a written statement of such expenses.

Section 14. The franchise granted hereby shall not become effective until written acceptance thereof shall have been filed by Grantee with the City Clerk of City. Grantee shall have thirty (30) days after posting of this ordinance within which to file such acceptance.

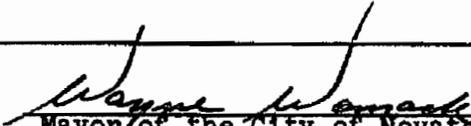
Section 15. The City Clerk of City shall cause this ordinance to be posted in at least three (3) public places in City in accordance with Section 36933 of the Government Code of the State of California.

First read at a regular meeting of the City Council of City held on the 12 day of July, 1960, and finally adopted and ordered posted at a regular meeting of said Council held on the 19 day of July, 1960, by the following vote:

AYES: Councilmen Pozzi, Johnson, Silva, Womack

NAYS: Councilmen none

ABSENT: Councilmen Angeloni



Mayor of the City of Novato

ATTEST:

Clerk of the City of Novato

APPROVED AS TO FORM:

/s/ Clark M. Palmer, Jr.