

ORDINANCE NO. 2019-____

AN ORDINANCE granting to PacifiCorp, an Oregon Corporation, doing business as Pacific Power, a non-exclusive franchise to locate, construct, maintain and operate electric transmission and distribution lines within the City of Yakima, Washington, and prescribing the terms of such grant.

WHEREAS, PacifiCorp, an Oregon corporation d.b.a. Pacific Power (hereafter “PacifiCorp” or “Company”), is a regulated public utility that provides electric power and energy to the citizens of the City of Yakima (hereafter “City”) and other surrounding areas;

WHEREAS, providing electrical power and energy requires the installation, operation and maintenance of power poles and other related facilities to be located within the public ways of the City;

WHEREAS, the City desires to set forth the terms and conditions by which PacifiCorp shall use the public ways of the City; **Now, Therefore**

BE IT ORDAINED BY THE CITY OF YAKIMA:

SECTION 1. Grant of Franchise and General Utility Easement. The City hereby grants to PacifiCorp, its successors and assigns the right, privilege, franchise and authority to construct, maintain, operate, upgrade, and relocate its electrical distribution and transmission lines and related appurtenances, including underground conduits and structures, poles, towers, wires, guy anchors, vaults, transformers, transmission lines, and communication lines (collectively referred to herein as “Electric Facilities”) in, under, along, over and across the present and future streets, alleys, public ways and public places (collectively referred to herein as “Public Ways”) within the City, for the purpose of supplying and transmitting electric power and energy to the inhabitants of the City and persons and corporations beyond the limits thereof. PacifiCorp’s Electric Facilities shall not unreasonably interfere with City of Yakima uses of the Right of Way nor with other entities having a right to use of the Right of Way.

SECTION 2. Term. The term of this Franchise and General Utility Easement is for twenty (20) years commencing on the date of acceptance by the Company as set forth in Section 3 below.

SECTION 3. Acceptance by PacifiCorp. Within sixty (60) days after the passage of this ordinance by the City, PacifiCorp shall file an unqualified written acceptance thereof, with the City Clerk. This Ordinance and the written acceptance hereof by PacifiCorp shall constitute the contract between City and PacifiCorp; the same shall be binding upon and inure to the benefit of the successors and assigns of PacifiCorp under the limitations imposed in this Ordinance.

SECTION 4. Non-Exclusive Franchise. The right to use and occupy the Public Ways of the City shall be nonexclusive and the City reserves the right to use the Public Ways for itself or any other entity that provides service to City residences, with the understanding that such use will not unreasonably interfere with PacifiCorp’s Electric Facilities or PacifiCorp’s rights granted herein.

SECTION 5. City Regulatory Authority. In addition to the provisions herein contained, the City reserves the right, from time to time, to adopt such additional ordinances and regulations as may be deemed necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties or exercise any other rights, powers, or duties required or authorized, under federal, state and local laws, regulations and ordinances.

SECTION 6. Indemnification and Insurance.

6.1 Indemnification. The City shall in no way be liable or responsible for any loss or damage to property or any injury to, or death, of any person that may occur in the construction, operation or maintenance by PacifiCorp of its Electric Facilities. PacifiCorp shall indemnify, defend and hold the City, its elected and appointed officials, employees and volunteers harmless from and against all claims, demands, liens, judgments, costs and all liability or damage of whatsoever kind on account of PacifiCorp's use of the Public Ways within the City, and shall pay the costs of defense plus reasonable attorneys' fees for any claim, demand, judgment, cost, liability or lien brought thereunder. The City shall: (a) give prompt written notice to PacifiCorp of any claim, demand or lien with respect to which the City seeks indemnification hereunder; and (b) unless in the City's judgment a conflict of interest exists between the City and PacifiCorp with respect to such claim, demand, judgment, cost, liability or lien, permit PacifiCorp to assume the defense of such claim, demand, judgment, cost, liability or lien with counsel satisfactory to City. If, by City determination there is such a conflict and such defense is not assumed by PacifiCorp, PacifiCorp shall not be subject to liability for any settlement made without its consent. Notwithstanding any provision hereof to the contrary, PacifiCorp 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 failure to act of the City or any of its officers or employees.

6.2 Insurance. PacifiCorp shall maintain, throughout the term of this Franchise, liability insurance insuring PacifiCorp, its officers, employees and agents, with regard to claims and damages, in the minimum amounts as follows:

1) Commercial Liability Insurance. PacifiCorp shall provide the City with a certificate of insurance as proof of commercial liability insurance with a minimum liability limit of one million dollars (\$1,000,000) combined single limit bodily injury and property damage per occurrence and three million dollars (\$3,000,000) in the aggregate. Said certificate of insurance shall clearly state who the provider is, the amount of coverage, the policy number and when the policy and provisions provided are in effect and that the insurer will endeavor to provide advance written notice of cancellation except in the case of non-payment of premium. Notice of cancellation to the certificate holder may be made by any commercially reasonable means, including mail, electronic mail, or facsimile transmission to the contact name and email provided by the City. It is the responsibility of the City to provide PacifiCorp with up-to-date contact names and email addresses. Said insurance shall be in effect for the duration of this Franchise Ordinance. The certificate shall include an additional insured endorsement naming the City, its elected officials, officers, agents, employees, and volunteers as additional insureds. The insurance shall be with an insurance company authorized to conduct business in the State of Washington. If PacifiCorp uses any contractors and/or subcontractors to perform any of the work referenced in this Franchise, such contractors and/or subcontractors shall maintain the minimum limits of liability and comply with all insurance requirements in effect at the time such work is performed as established by applicable City law, rule or regulation.

2) Business Automobile Liability Insurance. PacifiCorp shall provide the City with a certificate of insurance as proof of business automobile insurance with a minimum liability limit of two million dollars (\$2,000,000) combined single limit bodily injury and property damage. Said certificate of insurance shall clearly state who the provider is, the amount of coverage, the policy number and when the policy and provisions provided are in effect and the insurer will endeavor to provide advance written notice of cancellation except in the case of non-payment of premium. Notice of cancellation to the certificate holder may be made by any commercially reasonable means, including mail, electronic mail, or facsimile transmission to the contact name and email address provided by the City. It is the responsibility of the City to provide PacifiCorp with up-to-date contact names and email addresses. Said insurance shall be in effect for the duration of this Franchise. The certificate shall include an additional insured endorsement naming the City, its elected officials, officers, agents, employees, and volunteers as additional insureds. The insurance shall be with an insurance company or companies authorized to conduct business in the State of Washington. If PacifiCorp uses any contractors and/or subcontractors to perform any of the work referenced in this Franchise, such contractors and/or subcontractors shall maintain the minimum limits of liability and comply with all insurance requirements in effect at the time such work is performed as established by applicable City law, rule or regulation.

3) Umbrella Liability Insurance. PacifiCorp shall maintain umbrella liability insurance coverage, in an occurrence form, over underlying commercial liability and automobile liability. PacifiCorp shall provide the City with a certificate of insurance as proof of umbrella coverage with a minimum liability limit of ten million dollars (\$10,000,000). The certificate shall include an additional insured endorsement naming the City, its elected officials, officers, agents, employees, and volunteers as additional insureds. The insurance shall be with an insurance company or companies authorized to conduct business in the State of Washington.

4) Professional Liability Insurance. PacifiCorp shall provide the City with a certificate of insurance as evidence of Professional Liability Insurance with coverage of at least one million dollars (\$1,000,000) claims made and an annual aggregate limit of at least one million dollars (\$1,000,000). The certificate shall clearly state who the provider is, the amount of coverage, the policy number, and when the policy and provisions provided are in effect. The insurance shall be with an insurance company or companies authorized to conduct business in the State of Washington. If the policy is on a claims made basis, the retroactive date of the insurance policy shall be on or before the inception date of the Franchise. The insurance coverage shall remain in effect during the term of this Franchise and for a minimum of three (3) years following the termination of this Franchise.

Providing coverage in the amounts as set forth above shall not be construed to relieve PacifiCorp from liability in excess of those limits.

Failure to maintain liability insurance shall be cause for immediate termination of this Franchise by the City. However, in the alternative to providing certificate(s) of insurance to the City certifying liability insurance coverage as required in Section 6.2, PacifiCorp may provide the City with an annual statement regarding its self-insurance. PacifiCorp's self-insurance shall provide at least the same amount and scope of coverage for PacifiCorp and the City, its elected officials, officers, agents, employees, and volunteers as otherwise required under Section 6.2. The adequacy of such self-insurance shall be subject to the City's review and approval. Upon PacifiCorp's election to provide self-insurance coverage under this Section 6.2, any failure by

PacifiCorp to maintain adequate self-insurance may be cause for the City to declare a forfeiture or immediately terminate this Franchise.

SECTION 7. Annexation.

7.1 Upon the annexation of any territory to the City, the rights granted herein shall extend to the annexed territory to the extent the City has such authority. All Electrical Facilities owned, maintained, or operated by PacifiCorp located within any public ways of the annexed territory shall thereafter be subject to all of the terms hereof.

7.2 When any territory is approved for annexation to the City, the City shall, not later than fifteen (15) working days after passage of an ordinance approving the proposed annexation, provide by certified mail to PacifiCorp: (a) each site address to be annexed as recorded on county assessment and tax rolls; (b) a legal description of the proposed boundary change; and (c) a copy of the City's ordinance approving the proposed annexation. The notice shall be mailed to:

PacifiCorp Customer Contact Center
Attn: Annexations
P.O. Box 400
Portland, Oregon 97207-0400

With a copy to:

PacifiCorp
Attn: Office of the General Counsel
Suite 2000
825 N E Multnomah
Portland, Oregon 97232

Additional or increased fees or taxes, other than ad valorem taxes, imposed on PacifiCorp as a result of an annexation of territory to the City shall become effective on the effective date of the annexation if notice is given to PacifiCorp by certified mail not later than fifteen (15) working days after the effective date of the annexation. However, if notification of the effective date of the annexation is provided to PacifiCorp later than the fifteenth (15th) working day after the effective date of the annexation, the additional or increased fees or taxes will become effective on the date of notification.

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

8.1 All Electrical Facilities installed or used under authority of this Franchise shall be used, constructed and maintained in accordance with all applicable federal, state and local laws, codes and regulations.

8.2 Except in the case of an emergency, PacifiCorp shall, prior to commencing new construction or major reconstruction work in the public way or street or other public places, apply for all required permits from the City in accordance with City ordinances, as said permitting requirements now exist or may hereafter be amended, which permits shall not be unreasonably withheld, conditioned, or delayed. PacifiCorp shall abide by all applicable ordinances and all rules, regulations and requirements of the City, as they presently exist or may hereafter be amended, except that any such amendments shall apply only to the extent they 1) do not conflict with this Ordinance, or 2) are mandatorily required for all development and/or construction by state or federal law and/or to protect the public health, safety and welfare. The City may inspect the manner of such work and require remedies as may be necessary to assure compliance. Notwithstanding the foregoing, PacifiCorp shall not be obligated to obtain a permit prior to performing emergency repairs, but shall obtain a permit as soon as reasonably practicable after such repairs are made, in accordance with City ordinance.

8.3 All Electric Facilities shall be located so as to cause minimum interference with the Public Ways of the City and shall be constructed, installed, maintained, cleared of vegetation, renovated or replaced in accordance with applicable rules, ordinances and regulations of the City.

8.4 If, during the course of work on its Electrical Facilities, PacifiCorp causes damage to or alters the Public Way or public property, PacifiCorp shall (at its own cost and expense and in a manner approved by the City) replace and restore it to a condition as good or better than that which existed before the work commenced.

8.5 In addition to the installation of underground electric distribution lines as provided by applicable state law and regulations, PacifiCorp shall, upon payment of all charges provided in its tariffs or their equivalent, place newly constructed electric distribution lines underground as may be required by City ordinance. In placing its installations, including facilities located in the vicinity of any city owned pipeline(s) (water, sewer, irrigation, or stormwater), PacifiCorp shall comply with the applicable requirements under the National Electric Safety Code and the Revised Washington Code, and make reasonable effort to maintain a four-foot separation from City utilities, space permitting.

8.6 The City shall have the right, without cost, to use all poles and suitable overhead structures owned by PacifiCorp within Public Ways for City street lighting equipment, fixtures and appurtenances, together with wires and cables used in connection with City fire alarms, police signal systems, trolley line support and other communication and signal lines used for governmental purposes; the City shall have ready access to said City lighting facilities and systems for maintenance, installation, replacement and repair purposes; provided, however, any such uses shall be for activities and equipment owned, operated or used by the City for a public purpose and shall not include the provision of commercial CATV, internet, or similar services to the public. Provided further, that PacifiCorp shall assume no liability nor shall it incur, directly or indirectly, any additional expense in connection therewith, and the use of said poles and structures by the City shall be in such a manner as to prevent safety hazards or interferences with PacifiCorp's use of same. Nothing herein shall be construed to require PacifiCorp to increase pole size, or alter the manner in which PacifiCorp attaches its equipment to poles, or alter the manner in which it operates and maintains its Electric Facilities. City attachments shall be installed and maintained in accordance with the reasonable requirements of PacifiCorp, including PacifiCorp's joint use engineering standards and specifications and the current edition of the National Electrical Safety Code pertaining to such construction. Further, City shall not attach or install any attachments on PacifiCorp's Electric Facilities in any manner that causes the structural

integrity of PacifiCorp's Electric Facilities to degrade or result in any unsafe condition. Neither will City attach or install any attachments on PacifiCorp's Electric Facilities without the advance written approval by PacifiCorp, which approval shall not be unreasonably withheld.

8.7 PacifiCorp shall have the right to excavate the Public Ways subject to obtaining all necessary and appropriate permits and complying with the applicable terms, conditions and requirements of such permits, which permits shall not be unreasonably withheld or delayed. Before installing new underground conduits or replacing existing underground conduits, PacifiCorp shall first notify the City of such work, shall comply with all City permitting and regulatory requirements for such work and shall allow the City, at its own expense, the opportunity to share the trench of PacifiCorp to lay its own conduit therein, provided that such action by the City will not unreasonably interfere with PacifiCorp's Electric Facilities or delay project completion.

All earth, materials, sidewalks, paving, crossings or improvements of any kind disturbed, injured or removed by PacifiCorp shall be fully repaired or replaced with due diligence and as soon as reasonably practicable; if repair work is not timely completed the City may issue a notice setting a time within which repairs shall be completed. If repairs have not been completed within the time allowed by the City's notice the City may complete the repairs at PacifiCorp's expense, including the actual cost to complete the repairs as well as the reasonable, actual administrative costs of the City to arrange for such repairs. All repair, replacement and construction by PacifiCorp shall be subject to inspection and approval by the City, which approval shall not be unreasonably withheld or delayed.

8.8 Before commencing any street improvements or other work within a Public Way that may reasonably be expected to affect PacifiCorp's Electric Facilities, the City will give written notice to PacifiCorp.

8.9 No structures, buildings or signs shall be erected within ten (10) feet of any of PacifiCorp's energized lines or in a location that prevents PacifiCorp from accessing or maintaining its facilities.

8.10 PacifiCorp shall provide the City with an accurate report of all new services created within City boundaries on an annual basis during the term of this Franchise.

SECTION 9. Relocation of Electric Facilities.

9.1 Subject to the provisions herein regarding underground conversions and the terms of Section 9.2, the City reserves the right to require PacifiCorp to relocate overhead Electric Facilities within the Public Ways in the interest of public convenience, necessity, health, safety or welfare, at no cost to the City. Within a reasonable period of time after written notice from the City, response to said notice never to exceed more than sixty (60) days after PacifiCorp's receipt thereof, PacifiCorp shall commence work to complete the overhead relocation of its Electrical Facilities, including engineering design work. Any such overhead relocation shall be completed no later than one hundred eighty (180) days from the date the City sent written notice of the requirement for overhead relocation of PacifiCorp's Electrical Facilities. Before requiring a relocation of Electric Facilities, the City shall, with the assistance and consent of PacifiCorp, identify a reasonable alignment for the relocated Electric Facilities within the Public Ways of the City. The City shall assign or otherwise transfer to Company all right it may have to recover the cost for the relocation work and shall not interfere with the efforts of PacifiCorp to obtain reimbursement for direct costs of the relocation when cost reimbursement is appropriate.

In cases of capital improvement projects undertaken by the City and underground conversion requests based on aesthetic grounds, PacifiCorp shall convert existing overhead distribution facilities to underground, so long as PacifiCorp is allowed to collect its costs associated with conversion from overhead to underground distribution facilities consistent with Washington Utility and Transportation Commission rules on forced conversions.

9.2 PacifiCorp shall not be obligated to pay the cost of any relocation that is caused by, required for or made a condition of a private development under any developer permit. If the removal or relocation of facilities is caused directly by an identifiable development of property in the area, or is made for the convenience of a private customer, PacifiCorp may charge the expense of removal or relocation to the developer or private customer. For example, PacifiCorp shall not be required to pay relocation costs in connection with a road widening or realignment where the road project/relocation is made a condition of or caused by a private development. In such event, the City shall require the developer to pay PacifiCorp's costs associated with the road project/relocation and acquisition of any private rights of way, if needed, for the relocated facilities.

SECTION 10. Subdivision Plat Notification. Before the City approves any new subdivision and before recordation of the plat, the City shall provide a copy of the proposed plat to PacifiCorp by mail or electronic means:

Pacific Power
Attn: Estimating Department
500 North Keys Road
Yakima, WA 98901

SECTION 11. Vegetation Management. PacifiCorp or its professionally licensed contractor shall prune all trees and vegetation which overhang the Public Ways, whether such trees or vegetation originate within or outside the Public Ways, to prevent the branches or limbs or other parts of such trees or vegetation from interfering with PacifiCorp's Electrical Facilities. Such pruning shall comply with the *American National Standard for Tree Care Operation (ANSI A300)* and be conducted under the direction and approval of the City's arborist, certified with the International Society of Arboriculture. The cost of the City arborist's time shall be at no cost to PacifiCorp. The City shall not be required to provide any compensation to PacifiCorp for any pruning or removal services required under this Franchise. After providing written notice to the City or the private property owner responsible for a problematic tree or vegetative source and receiving written permission thereof, following full disclosure of the material to be used and identification of all adverse impacts associated with said material use, PacifiCorp or its contractor may utilize a growth inhibitor treatment for said trees and vegetation species that are fast-growing and problematic. The application of such growth inhibiting materials shall be by persons trained in the use of the material, in compliance with all product safety rules and regulations associated with said material and, if required by law, shall be licensed to apply it. Nothing contained in this Section shall prevent PacifiCorp, when necessary and with the approval of the owner of the property on which they may be located, from cutting down and removing any trees which overhang streets. If City owned trees are removed under this provision PacifiCorp shall replace such removed trees, at no cost to the City, with new trees of a variety approved by the City and PacifiCorp, with reasonable consideration given to tree varieties described in PacifiCorp's "Small Trees for Small Places" booklet.

SECTION 12. Renewal. At least 365 days prior to the expiration of this Franchise, PacifiCorp and the City shall either agree to extend the term of this Franchise for a mutually acceptable period of time or the parties shall use best faith efforts to renegotiate a replacement Franchise prior to this Franchise's expiration. PacifiCorp shall have a limited right, terminable at any time subject to the sole discretion of the City, to continue to use the Public Ways of the City under the terms and conditions set forth herein in the event an extension or replacement Franchise is not entered into upon expiration of this Franchise, so long as PacifiCorp is pursuing all efforts to accomplish a Franchise renewal.

SECTION 13. No Waiver. Neither the City nor PacifiCorp shall be excused from complying with any of the terms and conditions of this Franchise by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions.

SECTION 14. Transfer of Franchise. PacifiCorp shall not transfer or assign any rights under this Franchise to another entity, except transfers and assignments by operation of law, unless the City shall first give its approval in writing, which approval shall not be unreasonably withheld; provided, however, with the City's prior review, inclusion of this Franchise as property subject to the lien of PacifiCorp's mortgage(s) shall not constitute a transfer or assignment.

SECTION 15. Amendment. At any time during the term of this Franchise, the City, through its City Council, or PacifiCorp may propose amendments to this Franchise by giving thirty (30) days written notice to the other of the proposed amendment(s) desired; thereafter, both parties, through their designated representatives, will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s). No amendment or amendments to this Franchise shall be effective until mutually agreed upon in writing by the City and PacifiCorp and formally adopted as an ordinance amendment.

SECTION 16. Non-Contestability--Breach of Contract.

16.1 Neither the City nor PacifiCorp will take any action for the purpose of securing modification of this Franchise before either the Washington Utility and Transportation Commission or any Court of competent jurisdiction; provided, however, that neither party shall be precluded from taking any action it deems necessary to resolve differences in interpretation of the Franchise; nor shall PacifiCorp be precluded from seeking relief from the Courts in the event Washington Utility and Transportation Commission orders, rules or regulations conflict with or make performance under the Franchise illegal.

16.2 In the event PacifiCorp or the City fails to fulfill any of their respective obligations under this Franchise, the City, or PacifiCorp, whichever the case may be, will have a breach of contract claim and remedy against the other in addition to any other remedy provided by law, provided that no remedy which would have the effect of amending the specific provisions of this Franchise shall become effective without such action which would be necessary to formally amend the Franchise.

SECTION 17. Notices. Unless otherwise specified herein, all notices from PacifiCorp to the City pursuant to or concerning this Franchise shall be delivered to the City Clerk's Office. Unless otherwise specified herein, all notices from the City to PacifiCorp pursuant to or concerning this Franchise shall be delivered to the Customer and Community Affairs Vice President, Pacific

Power, 825 NE Multnomah, Lloyd Center Tower Suite 2000, Portland, Oregon 97232, and such other office as PacifiCorp may advise the City of by written notice.

SECTION 18. Severability. If any section, sentence, paragraph, term or provision hereof is for any reason determined to be illegal, invalid, or superseded by other lawful authority including any state or federal regulatory authority having jurisdiction thereof or unconstitutional, illegal or invalid by any court of common jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

PASSED BY THE CITY COUNCIL, signed and approved this 3rd day of September, 2019.

ATTEST:

Kathy Coffey, Mayor

Sonya Claar Tee, City Clerk

Publication Date:_____

Effective Date:_____