ORDINANCE NO.\_\_\_\_\_\_

AN ORDINANCE GRANTING AN ELECTRIC UTILITY FRANCHISE TO PACIFICORP

WHEREAS, PacifiCorp d.b.a. Pacific Power, is a regulated public utility that provides electric power and energy to the citizens of the County of Siskiyou (the “County”) and other surrounding areas; and

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 County; and

WHEREAS, in accordance with California’s Franchise Act of 1937, the County desires to set forth the terms and conditions by which PacifiCorp shall use the public ways of the County.

NOW, THEREFORE, THE BOARD OF SUPERVISORS OF THE COUNTY OF SISKIYOU ORDAINS AS FOLLOWS:

**SECTION 1. Grant of Franchise**. The County of Siskiyou, hereinafter referred to as “County”, hereby grants to PacifiCorp, subject to the terms below, the right and privilege 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 County, for the purpose of supplying and transmitting electric power and energy to the inhabitants of the County and persons and corporations beyond the limits thereof.

**SECTION 2. Term.** The term of this Franchise, commencing on the date the franchise granted to PacifiCorp under Ordinance 05-17 expires, is for fifteen (15) years, unless earlier terminated where (i) PacifiCorp or its successors, and assigns (a) surrenders or abandons this franchise, or (b) forfeits this franchise for noncompliance with its terms in accordance with Section 19 hereof, or (ii) the State of California, the County, or other public corporation thereunto duly authorized, purchases by voluntary agreement or condemns and takes under the power of eminent domain in accordance with then existing law all property actually used and useful in the exercise of this franchise situated within the unincorporated area of the County.

**SECTION 3. Acceptance by PacifiCorp.** Within sixty (60) days after the passage of this ordinance by the County, PacifiCorp shall file an unqualified written acceptance thereof, with the County Recorder, otherwise the ordinance and the rights granted herein shall be null and void.

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

This franchise does not in any way impair or affect the County’s right to acquire the property of the PacifiCorp by purchase or condemnation, and nothing contained in this franchise shall be construed to contract away, modify or abridge either for a term or in perpetuity the County’s right of eminent domain. (*California Public Utilities Code Section 6262*).

**SECTION 5. County Regulatory Authority.** In addition to the provision herein contained, the County reserves the right to adopt such additional ordinances and regulations as may be deemed necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties or exercise any other rights, powers, or duties required or authorized, under the Constitution of the State of California, the laws of California or County Ordinances.

**SECTION 6. Indemnification.** The County 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 County harmless from and against claims, demands, liens and all liability or damage of whatsoever kind proximately resulting from PacifiCorp’s operations under the franchise, including use of the Public Ways within the County, and shall pay the costs of defense plus reasonable attorneys' fees for any claim, demand or lien brought thereunder. The County shall: (a) give prompt written notice to PacifiCorp of any claim, demand or lien with respect to which the County seeks indemnification hereunder; and (b) unless in the County's judgment a conflict of interest exists between the County and PacifiCorp with respect to such claim, demand or lien, permit PacifiCorp to assume the defense of such claim, demand, or lien with counsel satisfactory to County. If 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 County harmless for damages caused by the sole negligence of the County or its officers or relate to the gross negligence or willful misconduct of the County or its officers.

**SECTION 7. Expansion of Unincorporated Areas of County.**

 **7.1** Upon the addition of any territory to the unincorporated area of the County over which the County has jurisdiction, the rights granted herein shall extend to the added territory to the extent the County has such authority. All Electrical Facilities owned, maintained, or operated by PacifiCorp located within any public ways of the added territory shall thereafter be subject to all of the terms hereof.

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

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

 **8.2** PacifiCorp shall, prior to commencing new construction or major reconstruction work in the public way or street or other public places, apply for a permit from the County and pay all associated fees, if any, including, but not limited to, inspection fees. A permit shall not be unreasonably withheld, conditioned, or delayed. PacifiCorp will abide by all applicable ordinances and all reasonable rules, regulations and requirements of the County, and the County may inspect the manner of such work and require remedies as may be necessary to assure compliance. Notwithstanding the foregoing, where protection of the public health or safety requires emergency work to be performed, PacifiCorp shall not be obligated to obtain a permit to repair a break or restore service, but shall inform the County as soon as practical after the emergency repair work is commenced. At the County’s request, PacifiCorp shall submit documentation and/or a permit application to the County in such form as is reasonably satisfactory to the County describing the emergency work so performed.

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

 **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 County) replace and restore it to a condition comparable to that which existed before the work commenced.

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

 **8.6** The County shall have the right without cost to use all poles and suitable overhead structures owned by PacifiCorp within Public Ways for County wires used in connection with its fire alarms, police signal systems, or other communication lines used for governmental purposes; provided, however, any such uses shall be for activities owned, operated or used by the County for a public purpose and shall not include the provision of CATV, internet, or similar services to the public. Provided further, that PacifiCorp shall assume no liability nor shall it incur, directly or indirectly, any additional expense in connection therewith, and the use of said poles and structures by the County 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. County attachments shall be installed and maintained in accordance with the reasonable requirements of PacifiCorp and the current edition of the National Electrical Safety Code pertaining to such construction. Further, County attachments shall be attached or installed only after written approval by PacifiCorp.

 **8.7** Subject to obtaining an encroachment permit, PacifiCorp shall have the right to excavate the Public Ways subject to reasonable conditions and requirements of the County. Before installing new underground conduits or replacing existing underground conduits, PacifiCorp shall first notify the County of such work and shall allow the County, at no cost, to share the trench of PacifiCorp and, at its own expense, to lay its own conduit therein, provided that such action by the County will not unreasonably interfere with PacifiCorp's Electric Facilities, delay project completion or result in any additional incremental costs to PacifiCorp.

 **8.8** Before commencing any street improvements or other work within a Public Way that may affect PacifiCorp’s Electric Facilities, the County shall give written notice to PacifiCorp.

 **8.9** No structures, buildings or signs shall be erected by the County below PacifiCorp’s facilities or in a location that prevents PacifiCorp from accessing or maintaining its facilities without consent of PacifiCorp.

 **8.10** PacifiCorp shall provide the County with a report of all new services created within County boundaries on an annual basis during the term of this Franchise. The County shall provide written confirmation of the accuracy of the report and/or any corrections thereto to PacifiCorp within a reasonable time following receipt of the report.

 **8.11** PacifiCorp shall, immediately upon erecting, constructing, installing, replacing or repairing the said Electrical Facilities, or any part thereof, at its own cost and expense place said highways, streets, roads and places or so much thereof as may have been damaged thereby, in the order and condition required by any encroachment permit that may have issued for such work or in as good order and condition as that in which they were before being disturbed or excavated for the purpose of erecting, constructing, installing, replacing or repairing said Electric Facilities or any part thereof. PacifiCorp shall guaranty the quality of the repair work for a period of twenty-four (24) months from the date of repair. Should maintenance of such repair work become necessary during such guaranty period, PacifiCorp shall, at its own cost and expense, perform such maintenance. The PacifiCorp shall pay to County on demand the cost of all repairs to public property to the extent made necessary by any of the operations of PacifiCorp under this franchise and not otherwise repaired by PacifiCorp pursuant to this section as provided under *California Public Utilities Code Section 6295*; provided that County agrees that before performing any such repairs to public property County shall first provide written notice to PacifiCorp, and permit, upon PacifiCorp’s election, PacifiCorp to self-perform such repairs at its sole cost and expense.

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

 **9.1** The County reserves the right to require PacifiCorp to relocate overhead Electric Facilities situated within the Public Ways by virtue of this franchise in the interest of public convenience, necessity, health, safety or welfare at no cost to the County. Within a sixty (60) days after receipt of written notice, PacifiCorp shall commence activities related to the overhead relocation of its Electrical Facilities. Before requiring a relocation of Electric Facilities, the County shall, with the assistance and consent of PacifiCorp, identify a reasonable alignment for the relocated Electric Facilities within the Public Ways of the County. In cases of capital improvement projects undertaken by the County, PacifiCorp shall convert existing overhead distribution facilities to underground, so long as PacifiCorp is allowed to collect the costs associated with conversion from overhead to underground distribution facilities consistent with California Public Utility Commission rules on forced conversions.

 **9.2** If the removal or relocation of facilities is caused directly by development of private property and the removal or relocation of facilities is requested in connection with area to be developed, or is made for the convenience of a customer, PacifiCorp may charge the expense of removal or relocation to the developer or customer. PacifiCorp shall be solely responsible for enforcing collection from the developer or customer, but PacifiCorp shall not be required to remove or relocate facilities for the benefit of developer or customer until it receives payment for the removal or relocation and has been provided with replacement rights to locate its Electric Facilities in the new location, if applicable. For the purpose of this paragraph, the removal or relocation of facilities shall be considered “caused directly” by a private development or customer if, for example, the removal or relocation is necessary to enable the developer or customer to make any improvements or otherwise satisfy any conditions required under any permit, rule, regulation or other requirement applicable to the project.

**SECTION 10. Subdivision Plat Notification.** In connection with the approval of any new subdivision, PacifiCorp may make a Public Records Act request to the Planning Department for such approval and a copy of the plat.

**SECTION 11. Vegetation Management**. PacifiCorpor its contractor may prune all trees and vegetation which overhang the Public Ways, whether such trees or vegetation originate within or outside the Public Ways, to prevent the branches or limbs or other part of such trees or vegetation from interfering with PacifiCorp’s Electrical Facilities. Such pruning shall comply with the *American National Standard for Tree Care Operation (ANSI A300)* and be conducted under the direction of an arborist certified with the International Society of Arboriculture. A growth inhibitor treatment may be used for trees and vegetation species that are fast-growing and problematic. Nothing contained in this Section shall prevent PacifiCorp, when necessary and with the approval of the owner of the property on which they may be located, from cutting down and removing any trees which overhang streets. PacifiCorp shall obtain an encroachment permit before this work is done in the county road right-of-way and pay all associated fees, if any, including, but not limited to, inspection fees.

**SECTION 12. Compensation**.

 **12.1** In consideration of the rights, privileges, and franchise hereby granted, PacifiCorp shall pay to the County during the term of this franchise, the maximum sum provided by state law, which is presently, two per cent (2%) of its gross annual receipts arising from the use, operation or possession of the franchise, except that this payment shall be not less than one percent (1%) of PacifiCorp’s gross annual receipts derived from the sale of electricity within the unincorporated limits of the County. For the purpose of this Section 12.1, “gross annual receipts” mean any revenue of PacifiCorp derived from the retail sale and use of electric power and energy after adjustment for the net write-off of uncollectible accounts and corrections of bills theretofore rendered. Notwithstanding the foregoing, should PacifiCorp ultimately collect revenue on a previously identified uncollectible account, its gross revenue calculation shall be adjusted and PacifiCorp shall remit the appropriate franchise fees to the County.

PacifiCorp shall pay the County such fees within fifteen (15) days after the time for filing its statement of gross receipts pursuant to Section 18. Any neglect, omission, or refusal by PacifiCorp to file the verified statement, or to pay the percentage at the times or in the manner provided constitutes grounds for the declaration of a forfeiture of the franchise and of all rights thereunder subject to the terms of Section 19. (*California Public Utilities Code Sections* 6231 and 6300)

**12.2** Notwithstanding any provision to the contrary, at any time during the term of this Franchise, the County may elect to increase the franchise fee amount as may then be allowed by state law. The County shall provide PacifiCorp with prior written notice of such increase following adoption of the change in percentage by the County. The increase shall be effective sixty (60) days after County has provided such written notice to PacifiCorp.

**SECTION 13. Renewal.** At least 120 days prior to the expiration of this franchise, PacifiCorp and the County either shall 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.

**SECTION 14. No Waiver.** Neither the County nor PacifiCorp shall be excused from complying with any of the terms and conditions of this Franchise by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions.

**SECTION 15. Transfer of Franchise.** PacifiCorp shall not transfer or assign any rights under this Franchise to another entity, except transfers and assignments by operation of law, unless the County shall first give its approval in writing, which approval shall not be unreasonably withheld; provided, however, inclusion of this Franchise as property subject to the lien of PacifiCorp's mortgage(s) shall not constitute a transfer or assignment.

PacifiCorp shall give County no less than sixty (60) days’ written notice of its intention to sell, transfer, assign or lease this franchise, or any part thereof, which notice shall include the terms and conditions of the proposed transaction.

PacifiCorp shall file with the County within thirty (30) days after any sale, transfer, assignment, or lease of the franchise or any part thereof, or any of the rights or privileges granted thereby, written evidence of the transaction certified to by the PacifiCorp or its duly authorized officers. (*California Public Utilities Code Section* 6298)

**SECTION 16. Notices.** Unless otherwise specified herein, all notices from PacifiCorp to the County pursuant to or concerning this Franchise shall be delivered to the County Administrator’s Office with copy to the County Counsel’s Office. Unless otherwise specified herein, all notices from the County 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 County of by written notice.

**SECTION 17. Franchise Value**. This franchise shall not be given any value before any court or other public authority in any proceeding of any character in excess of the cost to PacifiCorp of the necessary publication and any other sum paid by it to County therefor at the time of acquisition. (California Public Utilities Code Section 6263)

**SECTION 18.** **Verified Statements**. PacifiCorp shall file with the County Clerk within three (3) months after the expiration of the calendar year, or fractional calendar year, following the date of the granting of this franchise and within three (3) months after the expiration of each calendar year thereafter, a verified statement showing in detail the total gross receipts of the PacifiCorp during the preceding calendar year or fractional calendar year from the sale of the utility service for which the franchise was granted. (*California Public Utilities Code Section 6299)*

**SECTION 19. Forfeiture by Noncompliance**. If the PacifiCorp fails, neglects or refuses to comply with any of the provisions or conditions prescribed in this franchise, and does not within ten (10) days after written demand for compliance begin the work of compliance, or after such beginning does not prosecute the work with due diligence to completion, the County may declare the franchise forfeited. (*California Public Utilities Code Section 6291)*

**SECTION 20**. **Reimbursement for Publication Expenses**. PacifiCorp shall pay to County a sum of money sufficient to reimburse it for all publication expenses incurred by it in connection with the granting of this franchise. Such payment shall be made within thirty (30) days after the County furnishes the PacifiCorp with a written statement of the expenses. (*California Public Utilities Code Section 6293)*

**SECTION 21.**  **Liability for Failure to Perform**. PacifiCorp shall be liable to the County for all damages proximately resulting from the failure of the PacifiCorp to well and faithfully observe and perform any provision of this franchise. (*California Public Utilities Code Section 6302*)

**SECTION 22. Authorizing Act**. This franchise is granted pursuant to and in accordance with the provisions of the Franchise Act of 1937.

**SECTION 23. 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.

**SECTION 24. Waiver of Jury Trial.** To the fullest extent permitted by law, each of the parties hereto waives any right it may have to a trial by jury in respect of litigation directly or indirectly arising out of, under or in connection with this agreement. Each party further waives any right to consoli­date any action in which a jury trial has been waived with any oth­er action in which a jury trial cannot be or has not been waived.

**SECTION 25**. **Effectiveness**. Subject to the terms of Section 3, this ordinance shall become effective 30 days after its passage and shall be, within 15 days of adoption, published once in a newspaper of general circulation, printed and published in the County of Siskiyou.

**SECTION 26. Franchisee Records and Reports.** PacifiCorp shall keep accurate books of financial accounts throughout the term of this franchise and for six years after the expiration or termination of this Franchise. The County shall have the right during the term of this Franchise or within one-hundred eighty (180) days after expiration or termination of this Franchise to audit PacifiCorp’s records with regard to franchise fees paid under this Franchise for a period of no more than three years prior to the date of the audit request, subject to extension of an additional three years if applicable as provided below; provided that such audits may not occur more than once annually. PacifiCorp shall produce all books and records directly concerning its gross revenues and other financial information necessary for calculation of the franchise fee for inspection by the County at PacifiCorp’s offices during normal business hours upon ten (10) days’ written notice. The audits shall be undertaken by a qualified person or entity selected by the County. If the undisputed results of the audit reveal an underpayment of more than six percent (6%) of the franchise fee for the period audited, the County may expand the audit to cover a period of up to six (6) years from the date of the audit request. The cost of the audit shall be borne by County, unless the undisputed results of the audit reveal an underpayment of more than six percent (6%) of the franchise fee for the period audited, in which case the reasonable documented cost of the audit shall be paid by PacifiCorp. PacifiCorp shall promptly pay the portion of the underpayment as determined by the audit not subject of a good faith dispute to the County together with nine percent (9%) annual interest from the date the payment should have been made to the date the payment is actually made. The County shall treat any public record relating to PacifiCorp’s operations or revenues as confidential, subject to the provisions of state law and the California Public Records Act. This obligation shall not prevent the County from introducing audit results in any forum where enforcement of the provisions of this franchise is at issue. PacifiCorp’s obligations under this Section shall be subject to the requirements of applicable laws. County may require periodic reports from PacifiCorp relating to its operations within the County.

PASSED AND ADOPTED by the Siskiyou County Board of Supervisors at a regular meeting of said Board, held on this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

 COUNTY OF SISKIYOU:

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Ray A. Haupt, Chair

 Siskiyou County Board of Supervisors

ATTEST:

LAURA BYNUM,

COUNTY CLERK

By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Deputy