

## Revocable Right of Access Agreement

This RIGHT OF ACCESS AGREEMENT (“Agreement”), dated 2/21, 2017, is by and between Rocky Mountain Power, an unincorporated division of PacifiCorp (“Licensor”) and Park City Municipal Corporation (Licensee”).

### RECITALS

A. Licensor owns, operates, and maintains transmission and distribution assets in Licensee’s public places pursuant to an electric distribution system franchise granted by Licensee to Licensor through January 1, 2023; and

B. Licensee desires and Licensor is willing to allow Licensee to implement a community art pilot program to allow local artists to decorate certain pad mounted equipment owned by Licensor and located in Park City Corporation; and

C. Licensor has agreed to grant a temporary, non-exclusive and revocable license to Licensee solely for the purpose of permitting Licensee and its designated artists (the “Licensee Parties”) to -decorate designated pad mounted equipment located in Park City Corporation (the “Project”).

### AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Right of Entry. Licensor hereby grants to Licensee Parties the right to paint or decorate pad mounted equipment designated by Licensor, subject to the following conditions:
  - a. Licensee Parties shall strictly comply with any instructions, directions or restrictions promulgated by Licensor;
  - b. any artwork on Licensor’s pad mounted equipment is limited to the area between the ground line and 8 feet above the ground line;
  - c. any tag, label, lock, or warning sign affixed to Licensor’s pad mounted equipment shall remain intact, unaltered, and not decorated or otherwise covered;
  - d. any ladder or stool used to apply the artwork will be free standing and not allowed to contact Licensor’s pad mounted equipment;
  - e. Licensee Parties shall not modify, move, or remove any part of Licensor’s pad mounted equipment, or any equipment attached thereto;

f. Licensor may change, modify and/or replace any pad mounted equipment as required or in its sole discretion;

g. Licensor will designate the number and location of pad mounted equipment to be used by Licensee Parties for the Project in its sole discretion, after discussing the Project with Licensee.

h. Licensee will be responsible for removing, or will reimburse Licensor for the costs of removing, any unauthorized graffiti, painting or other modification to Licensor's pad mounted equipment.

i. Licensor may revoke this Agreement with written notice to the Licensee no less than five (5) business days, at its sole discretion.

j. Licensor will be given the opportunity to approve the decorations prior to implementation as part of the Project.

k. Licensee shall give Licensor ten (10) business days' advance written notice of the Licensee Parties' intent to begin the Project. Such notice shall set forth the exact date and approximate time when the activities are proposed to occur. In the event the proposed date and time are unacceptable to Licensor, Licensee agrees to cooperate with Licensor in scheduling a substitute date and time.

2. Compliance with Law. Licensee shall secure, at its expense, any and all necessary permits and shall comply with all applicable federal, state and local laws, regulation and enactments applicable to this Agreement. Licensee Parties shall perform and stage the Project so as to ensure the safety of: (a) Licensee Parties; (b) any and all Licensor operations conducted in the area; (c) surrounding property owners; and (d) the public in general.

3. Indemnification. Licensee, for itself, its successors, agents, contractors and employees, hereby jointly and severally releases, relinquishes and discharges Licensor and agrees to and does hereby agree to jointly and severally indemnify, defend and hold harmless, Licensor and its officers, directors, employees, representatives, agents, attorneys and consultants ("Indemnitees"), from and against any and all actions, claims, losses, costs, damages, expenses, penalties, assessments, injury, liability and judgments, orders, governmental directives, penalties, administration and judicial proceedings and other liabilities of any kind to the extent caused by, arising out of or occurring in connection with the Project and/or this Agreement (including, without limitation reasonable attorney's fees and expert witness fees) caused by any Licensee Parties' performance of activities in connection with this Agreement or the Project, including, without limitation, claims for personal injuries, including disease and death, property loss or damage or injuries to others relating to the activities under this Agreement. The foregoing release and indemnity shall survive the termination of this Agreement.

4. Insurance. Licensee shall maintain in full force during the entire term of the Agreement commercial general liability insurance in an amount of not less than \$2 million per occurrence insuring against claims for bodily injury, death or property damage occurring as a

result of the Project. Licensee may elect to assume such liabilities and risk of loss through deductibles and/or a qualified self-insurance program.

5. Notices. Any notice, communication, report or demand required or desired to be given under this Agreement shall be in writing delivered at the addresses shown below or at such other address as the respective parties may from time to time designate by like notice. Each such notice shall be effective upon being delivered.

To Licensor: Chad Ambrose  
Regional Business Manager  
P.O Box 39  
Midvale, Utah 84047

With a copy to: Rocky Mountain Power  
Office of General Counsel  
1407 West North Temple, Suite 320  
Salt Lake City, UT 84116

To Licensee Parties: Jenny Diersen  
Park City Public Art Advisory Board Liaison  
Park City Municipal Corporation  
P.O. Box 1478  
Park City, Utah 84060

6. Termination of Agreement. If any of the Licensee Parties fail to observe the conditions of this Agreement after notice from Licensor and fail to cure within five (5) business days, this Agreement may be terminated by Licensor without further notice; provided, however, that in the event of a material violation of this Agreement by any of the Licensee Parties, this Agreement may be terminated immediately without providing the Licensee Parties an opportunity to cure the default. This Agreement shall otherwise expire by its terms on January 1, 2023.

7. Miscellaneous.

a. Captions. The captions of the sections of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation and construction.

b. Governing Law. This Agreement shall be construed, interpreted and applied in accordance with the internal laws of the State of Utah, without regard to principles of conflicts of law. Jurisdiction and venue for litigation arising from this Agreement shall be in Salt Lake County.

c. Integration; Amendment. This Agreement may not be altered, modified, or amended unless by an instrument in writing duly executed by each of the parties then bound

by this Agreement. This Agreement constitutes all of the agreements and understanding of the parties concerning the subject matter contained herein and supersedes all prior oral or written agreements or understandings.

d. Severability. If any one or more of the provisions of this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, that invalidity, illegality or unenforceability shall not affect any other provision herein and this Agreement shall be construed as if the invalid, illegal or unenforceable provision had never been included, provided, however, in no event shall either party be deprived of a material consideration by operation of this provision.

e. Attorneys' Fees and Expert Witness Fees. In the event any party hereto brings an action or proceeding for a declaration of the rights of the parties under this Agreement, an interpretation of this Agreement, for injunctive relief, or for an alleged breach or default of, or any other action arising out of, this Agreement or the transactions contemplated hereby, the prevailing party in any such action shall be entitled to an award of reasonable attorneys' fees and costs and expert witness fees incurred in such action or proceeding, without regard to any rule of court or schedule of such fees maintained by the court, in addition to any other damages or relief awarded, regardless of whether such action proceeds to final judgment.

f. Binding Effect. The Licensee Parties shall not have the right to assign this Agreement without the prior written consent of Licensor, which may be withheld in Licensor's sole and absolute discretion. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, tenants, lenders, and successors and assigns.

g. Warranty of Authorized Signatories. Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the party for whom he or she purports to sign.

h. Reservation of Rights. Each of the rights of the parties set forth in the individual sections of this Agreement are in addition to, and not exclusive of, the rights of such party, at law, in equity or otherwise. No damages or remedies available to a party at law, in equity or otherwise, shall be deemed or construed to be limited by or under the terms of this Agreement, other than as provided in Section 8.

i. Non-Waiver. The failure of Licensor to insist on strict performance of the terms hereunder will not be deemed as a waiver of any rights or remedies that Licensor may have for any subsequent breach, default, or non-performance and Licensor's right to insist on strict performance of this Agreement. No waiver is valid unless set forth in writing signed by the waiving party.

8. Jury Waiver. To the fullest extent permitted by law, Licensor and Licensee Parties waive any right they may have to a trial by jury in respect of litigation directly or indirectly arising out of, under or in connection with this easement. 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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date and year first above written.

**Licensor:**

PacifiCorp, an Oregon corporation, d/b/a Rocky Mountain Power

By: Paul Palatka

Its: VP, operations

Dated: 2-21-2017

**Licensee:**

Park City Corporation

By: Diane Foster

Its: City Manager

Dated: 1/25/2017