

Ordinance No. 2023-02

**AN ORDINANCE GRANTING AN ELECTRIC UTILITY FRANCHISE TO
ROCKY MOUNTAIN POWER**

WHEREAS, PacifiCorp, doing business as Rocky Mountain Power, is a regulated public utility that provides electric power and energy to the citizens of Park City and other surrounding areas; and

WHEREAS, the City has the authority to regulate power line facilities within public ways and to grant to Rocky Mountain Power a franchise for the use of the public ways of the City; and

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

WHEREAS, the City believes it is in the best interests of the public to provide Rocky Mountain Power a non-exclusive franchise to operate within the City; and

WHEREAS, the City desires to set forth the terms and conditions by which Rocky Mountain Power shall use the public ways of the City.

NOW, THEREFORE, BE IT ORDAINED by the City Council of Park City, Utah as follows:

SECTION 1. Purpose. The purpose of this ordinance is to grant to the PacifiCorp, doing business as Rocky Mountain Power, and its successors and assigns (collectively, "Rocky Mountain Power"), a non-exclusive right to use the present and future streets, alleys, and rights-of-way (collectively, the "public ways"), not including City parks, open space properties, conservation easements, buildings, or other spaces not associated with City-owned rights-of-way within and under control of the City for its business purposes, under the constraints and for the compensation enumerated in the Electric Utility Franchise Agreement (the "Franchise Agreement"), attached as Exhibit A.

SECTION 2. Grant of Franchise. There is hereby granted to the Company, and its successors and assigns, in accordance with the terms and conditions of the Franchise Agreement, the right, privilege, and authority (collectively, the "Franchise") to construct, maintain, and operate in, under, along, over, and across the public ways of the City, all as more particularly described in the Franchise Agreement.

SECTION 3. Term. The initial term of the Franchise is for a period of five years from the execution date of the Franchise Agreement as authorized by this ordinance. As more fully described in the Franchise Agreement, the term will be automatically extended for an additional six years unless either party notifies the other of its desire to terminate the agreement more than 120 days before the termination date of initial term or one of the subsequent two-year extensions.

SECTION 4. Acceptance by Rocky Mountain Power. Within 60 days after the effective date of this Ordinance, Rocky Mountain Power shall execute the Franchise Agreement and deliver a copy of the executed Agreement to the City Recorder, which will constitute acceptance of the Franchise. Otherwise, this Ordinance and the rights granted hereunder shall be null and void.

SECTION 5. This Ordinance shall take effect immediately upon publication.

PASSED AND ADOPTED this 12th day of January, 2023.

PARK CITY MUNICIPAL CORPORATION

DocuSigned by:
Nann Worel
57775BCB46414E6...

Nann Worel, Mayor

ATTEST:



DocuSigned by:
Michelle Kellogg
E5F905BB533F431...

Michelle Kellogg, City Recorder

APPROVED AS TO FORM:

DocuSigned by:
Margaret Plane
11B5B6E4ACE3AC7

Margaret Plane, City Attorney



70 North 2nd East
American Fork, Utah 84003

March 9, 2023

To the Honorable Mayor and
City Council
Park City, Utah

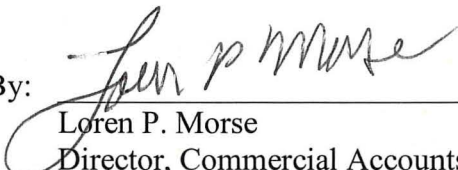
Gentlemen/Ladies:

This is to advise Park City, Utah, that on April 1, 2023, ROCKY MOUNTAIN POWER hereby accepts the terms and provisions of Franchise Ordinance passed by your Honorable Body on February 21, 2023, granting a Franchise Ordinance to ROCKY MOUNTAIN POWER for a period of five (5) years entitled:

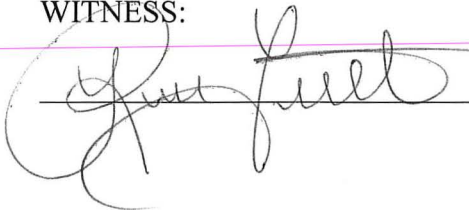
**"AN ORDINANCE GRANTING AN ELECTRIC UTILITY FRANCHISE AND
GENERAL UTILITY EASEMENT TO ROCKY MOUNTAIN POWER"**

And files this, its written acceptance in accordance with all requirements of said ordinance.

Very truly yours,
Rocky Mountain Power

By: 
Loren P. Morse
Director, Commercial Accounts
& Community Relations

WITNESS:



ELECTRIC UTILITY FRANCHISE AGREEMENT

This Electric Utility Franchise Agreement is between Park City Municipal Corporation, a Utah municipal corporation (the “City”) and Rocky Mountain Power, an unincorporated division of PacifiCorp, an Oregon corporation (“Rocky Mountain Power”).

Rocky Mountain Power is a regulated public utility that provides electric power and energy to the citizens of the City and other surrounding areas.

Providing electrical power and energy requires the installation, operation, and maintenance of power poles and other related facilities that are located within the public ways of the City.

The City, pursuant to the provisions of Utah Code Ann. § 10-8-21 has the authority to regulate power line facilities within public ways and to grant to Rocky Mountain Power a franchise for the use of those public ways.

The City desires to set forth the terms and conditions by which Rocky Mountain Power may use the public ways of the City.

The parties therefore agree as follows:

1. Grant of Franchise.

1.1. Grant of Franchise. The City hereby grants to Rocky Mountain Power the right, privilege, 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, “Electric Facilities”) in, under, along, over and across the present and future streets, alleys, and rights-of-way, not including City parks, buildings or other spaces not associated with City-owned rights-of-way (collectively, the “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.

1.2. Fees. Compensation for Rocky Mountain Power’s use of the Public Ways will be through the collection of the Municipal Energy Sales and Use Tax, provided for in Park City Municipal Code § 4B-5, passed pursuant to Utah Code § 10-1-305, or any successor City ordinance establishing a municipal energy tax in compliance with state law.

2. Term. The initial term of this Agreement is for five (5) years commencing on the date of acceptance by Rocky Mountain Power as set forth in Section 3 below.

3. Acceptance by Rocky Mountain Power. Within sixty (60) days after the passage by the City of the Ordinance Granting an Electric Utility Franchise to Rocky Mountain Power (the “Franchise Ordinance”), Rocky Mountain Power shall execute this Agreement and deliver a copy to the City Recorder, which will constitute the unqualified acceptance of the Franchise

Ordinance and franchise by Rocky Mountain Power. The Franchise Ordinance is incorporated herein by reference and made an integral part of this Agreement.

4. **Non-Exclusive Franchise.** The right to use and occupy the Public Ways is nonexclusive and the City reserves the right to use the Public Ways for itself or any other entity; provided, however, that such use shall not unreasonably interfere with Rocky Mountain Power's Electric Facilities or Rocky Mountain Power's rights granted by this Agreement.

5. **City Regulatory Authority.** In addition to the provision herein contained, the City 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 Utah, the laws of Utah, or City ordinances.

6. **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 of Rocky Mountain Power's Electric Facilities or for activities conducted pursuant to this Agreement or in the Public Ways by Rocky Mountain Power, including its officers, employees, agents, and contractors. Rocky Mountain Power shall indemnify, defend, and hold the City harmless from and against claims, demands, liens, and all liability or damage of whatsoever kind on account of Rocky Mountain Power's (including its officers, employees, agents, and contractors) use of the Public Ways and this Franchise, and shall pay the costs of defense plus reasonable attorneys' fees for any claim, demand, or lien brought thereunder. The City shall: (a) give reasonable written notice to Rocky Mountain Power of any claim, demand, or lien with respect to which the City seeks indemnification hereunder; and (b) permit Rocky Mountain Power to assume the defense of such claim, demand, or lien. If such defense is not assumed by Rocky Mountain Power, Rocky Mountain Power shall not be subject to liability for any settlement made without its consent. If the City's tender of defense, based upon this indemnity provision, is rejected by Rocky Mountain Power, and Rocky Mountain Power is later found by a court of competent jurisdiction to have been required to indemnify the City, then in addition to any other remedies the City may have, Rocky Mountain Power shall pay the City's reasonable costs, expenses, and attorneys' fees incurred in proving such indemnification, defending itself, or enforcing this provision. Notwithstanding any provision hereof to the contrary, Rocky Mountain Power shall not be obligated to indemnify, defend, or hold the City harmless to the extent any claim, demand or lien which is caused by any negligent or willful act or failure to act of the City or any of its officers or employees.

7. **Annexation.**

7.1 **Extension of City Limits.** 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 Rocky Mountain Power located within any public ways of the annexed territory shall thereafter be subject to all of the terms hereof.

7.2 Notice of Annexation. When any territory is approved for annexation to the City, the City shall, not later than ten (10) working days after passage of an ordinance approving the proposed annexation, provide by certified mail to Rocky Mountain Power: (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:

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

With a copy to:

Rocky Mountain Power
Attn: Office of the General Counsel
1407 West North Temple, Room 320
Salt Lake City, UT 84116

8. Plan, Design, Construction, and Installation of Rocky Mountain Power Facilities.

8.1 All Electrical Facilities installed or used under authority of the Franchise Ordinance and this Agreement shall be used, constructed, and maintained in accordance with applicable federal, state, and city laws, codes, and regulations. Rocky Mountain Power specifically agrees to comply with Title 11, Chapter 15 (the Contaminated Soils Ordinance) and Title 13, Chapter 3 (the Stormwater Code) of the Park City Municipal Code when conducting any land-disturbing activity pursuant to this Agreement.

8.2 Except in the case of an emergency, Rocky Mountain Power shall, prior to commencing new construction or major reconstruction work in the Public Ways, apply for any permit from the City as may be required by the City's ordinances, which permit issuance shall not be unreasonably withheld, conditioned, or delayed. Rocky Mountain Power will abide by all applicable ordinances and all reasonable rules, regulations and requirements of the City, and the City may inspect the manner of such work and require remedies as may be reasonably necessary to assure compliance. Notwithstanding the foregoing, Rocky Mountain Power shall not be obligated to obtain a permit to perform emergency repairs, but shall obtain any otherwise required permits as soon as practical after the repairs.

8.3 All Electric Facilities shall be located so as to cause minimum interference with the Public Ways 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, Rocky Mountain Power causes damage to or alters the Public Ways or public property, Rocky Mountain Power shall (at its own cost and expense and in a manner reasonably approved by the City) replace and restore it in as good a condition as 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, Rocky Mountain Power 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.

8.6 The City shall have the right without cost to use all poles and suitable overhead structures owned by Rocky Mountain Power within Public Ways for City wires used in connection with its fire alarms, police signal systems, or other public safety communication lines used for governmental purposes; provided, however, any such uses shall be for activities owned, operated, or used by the City for a public purpose and shall not include the provision of CATV, internet, or similar services to the public. Provided further, that Rocky Mountain Power 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 Rocky Mountain Power's use of same. Nothing herein shall be construed to require Rocky Mountain Power to increase pole size, alter the manner in which Rocky Mountain Power 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 Rocky Mountain Power and the current edition of the National Electrical Safety Code pertaining to such construction. Further, City attachments shall be attached or installed only after written approval by Rocky Mountain Power in conjunction with Rocky Mountain Power's standard pole attachment application process. Rocky Mountain Power shall have the right to inspect, at the City's expense, such attachments to ensure compliance with this Section 8.6 and to require the City to remedy any defective attachments.

8.7 Rocky Mountain Power shall have the right to excavate the Public Ways subject to reasonable conditions and requirements of the City. Before installing new underground conduits or replacing existing underground conduits, Rocky Mountain Power shall first notify the City of such work by written notice and shall allow the City, at its own expense, (to include a pro rata share of the trenching costs), to share the trench of Rocky Mountain Power to lay its own conduit therein, provided that such action by the City will not unreasonably interfere with Rocky Mountain Power's Electrical Facilities or delay project completion.

8.8 Before commencing any street improvements or other work within a Public Way that may affect Rocky Mountain Power's Electric Facilities, the City shall give written notice to Rocky Mountain Power.

8.9 Unless otherwise notified by the City, Rocky Mountain Power shall be obligated to remove its Electric Facilities from the Public Ways when Rocky Mountain Power ceases to operate such Electric Facility for a continuous period of 12 months, except when the cessation of service is a direct result of a natural or manmade disaster or other emergency. Upon receipt of written notice from the City setting forth one or more of the occurrences of the cessation of operations of Electric Facilities, Rocky Mountain Power shall have 90 days or as soon after 90 days as reasonably possible due to weather and other environmental conditions from the date the notice is received to begin operating the Electric Facilities or remove the Electric Facilities, as

appropriate. Where there are third-party attachments on Rocky Mountain Power's Electric Facilities, Rocky Mountain Power shall use commercially reasonable efforts to have those third-party attachments removed by the owner of the third-party attachments; provided however, Rocky Mountain Power shall not be financially responsible for removal of the third-party attachments. Rocky Mountain Power may sign over certain Electric Facilities to third parties for the continued operation of third party services utilizing the Electric Facilities.

9. Relocations of Electric Facilities.

9.1 The City reserves the right to require Rocky Mountain Power to relocate its 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, Rocky Mountain Power shall promptly commence the relocation of its Electrical Facilities. Before requiring a relocation of Electric Facilities, the City shall, with the assistance and consent of Rocky Mountain Power, identify a reasonable alignment for the relocated Electric Facilities within the Public Ways. The City shall assign or otherwise transfer to Rocky Mountain Power all right it may have to recover the cost for the relocation work and shall support the efforts of Rocky Mountain Power to obtain reimbursement. In accordance with Utah Code Title 54, Chapter 14, Rocky Mountain Power at the request of the City, will provide an estimate of the "excess cost" associated with undergrounding or modifying the Electric Facility.

9.2 Rocky Mountain Power shall not be obligated to pay the cost of any relocation that is required or made a condition of a private development. If the removal or relocation of facilities is caused directly or otherwise by an identifiable development of property in the area, or is made for the convenience of a customer, Rocky Mountain Power may charge the expense of removal or relocation to the developer or customer. For example, Rocky Mountain Power shall not be required to pay relocation costs in connection with a road widening or realignment where the road project is made a condition of or caused by a private development.

10. Subdivision Plat Notification. Before the City approves any new subdivision and before recordation of the plat, the City shall obtain Rocky Mountain Power's approval of Electrical Facilities, including underground facilities to be installed by the developer, and associated rights of way depicted on the plat. A copy of the plat shall be mailed for approval to Rocky Mountain Power:

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

With a copy to:

Rocky Mountain Power
Attn: Office of the General Counsel
1407 West North Temple, Room 320
Salt Lake City, UT 84116

11. **Insurance.** Rocky Mountain Power shall responsibly self-insure or maintain sufficient insurance to cover its obligations and liabilities as set forth in Section 6, in lieu of any insurance as may be required in City ordinances and will provide a letter of coverage upon request.

12. **Vegetation Management.** Rocky Mountain Power or 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 the 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 Rocky Mountain Power, 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.

13. **Renewal.** At least 120 days prior to the expiration of this Agreement, either party may notify the other party of its desire to terminate the Agreement at the expiration of the term. After notification, Rocky Mountain Power and the City may agree to extend the term of this Agreement for a mutually acceptable period of time or renegotiate a replacement franchise agreement. Rocky Mountain Power shall have the continued right to use the Public Ways as set forth herein in the event an extension or replacement Franchise is not entered into upon expiration of this Franchise; provided that the City retains all rights it may have to terminate Rocky Mountain Power's right to provide services within the City or to occupy the Public Ways on a prospective basis, using any and all available legal means. If the City and the Rocky Mountain Power are unable to agree on a replacement franchise agreement, nothing herein shall limit the parties' respective legal rights.

If neither party notifies the other of a desire to terminate, the initial term or any subsequent term will automatically be extended for two (2) years up to a maximum Agreement length of eleven (11) years (a maximum of three automatic two-year extensions are possible).

14. **No Waiver.** Neither the City nor Rocky Mountain Power shall be excused from complying with any of the terms and conditions of this Agreement 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.

15. **Transfer of Franchise.** Rocky Mountain Power shall not transfer or assign any rights under this Agreement to another entity, unless the City gives its approval in writing, which must not be unreasonably withheld, conditioned, or delayed. Notwithstanding the forgoing, transfers and assignments by operation of law, or to affiliates, parents, or subsidiaries of Rocky Mountain Power, which assume all of Rocky Mountain Power's obligations hereunder (and provided Rocky Mountain Power provide the City notice of such transfer and assignment), shall not require prior approval. After providing written notice to the City, Rocky Mountain Power may assign, mortgage, Pledge, hypothecate, or otherwise transfer without consent its interest in this Franchise to any financing entity, or agent on behalf of any financing entity to whom Rocky Mountain Power (i) has obligations for borrowed money or in respect of guaranties thereof, (ii)

has obligations evidenced by bonds, debentures, notes or similar instruments, or (iii) has obligations under or with respect to letters of credit, bankers acceptances and similar facilities or in respect of guaranties thereof.

16. **Amendment.** At any time during the term of this Agreement, the City, through its City Council, or Rocky Mountain Power may propose amendments to this Agreement by giving thirty (30) days written notice to the other party of the proposed amendment(s) desired, and both parties thereafter, 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 Agreement will be effective until mutually agreed upon by the City and Rocky Mountain Power and formally adopted as an ordinance amendment, which is accepted in writing by Rocky Mountain Power.

17. **Notices.** Unless otherwise specified herein, all notices from Rocky Mountain Power to the City pursuant to or concerning this Agreement or the franchise shall be delivered to the City Recorder's Office. Unless otherwise specified herein, all notices from the City to Rocky Mountain Power pursuant to or concerning this Agreement of the franchise shall be delivered to:

Rocky Mountain Power
Regional Business Management Director
70 North 200 East, Room 122
American Fork, Utah, 84003

Either party may advise the other of different or additional addresses by providing written notice.

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 this Agreement or any renewal or renewals thereof.

PARK CITY MUNICIPAL CORPORATION

Date: 2/21/23

[Signature]
Matt Dias
City Manager

ATTEST:

[Signature]
Michelle Kellogg
Park City Recorder



APPROVED AS TO FORM:

[Signature]
City Attorney's Office

ROCKY MOUNTAIN POWER

Date: 3/9/2023

[Signature]
NAME
TITLE