

WEST BOUNTIFUL CITY

ORDINANCE NO. 413-19

AN ORDINANCE GRANTING AN ELECTRICAL UTILITY FRANCHISE AND GENERAL UTILITY EASEMENT TO ROCKY MOUNTAIN POWER

WHEREAS, PacifiCorp dba Rocky Mountain Power (“*Rocky Mountain Power*”) is a regulated public utility that provides electric power and energy to the citizens of West Bountiful City and surrounding areas;

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

WHEREAS, pursuant to *Utah Code Ann.* § 10-8-21, the City has the authority to regulate power line facilities within public ways and to grant Rocky Mountain Power a general utility easement for the use thereof;

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 West Bountiful, Utah:

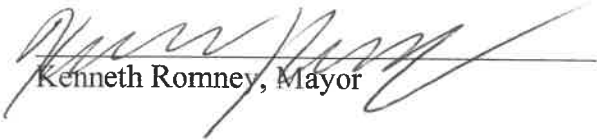
SECTION 1. Grant of Franchise and General Utility Easement. The City hereby grants Rocky Mountain Power a franchise to construct, maintain, operate, upgrade, and relocate its electrical distribution and transmission lines and related appurtenances in, under, along, over and across the present and future streets, alleys, public ways and public places within the City, for the purpose of supplying and transmitting electrical power and energy to the inhabitants of the City and persons and entities beyond the limits thereof, according and subject to the terms of a Franchise Agreement in substantially the form of the attached **Exhibit A**. The Mayor is hereby authorized to execute the Franchise Agreement on behalf of the City.

SECTION 2. Municipal Energy Sales and Use Tax. In exercising its franchise, Rocky Mountain Power will be subject to the Municipal Energy Sales and Use Tax as provided in state law and City ordinance.

SECTION 3. Severability. If a court with jurisdiction determines any provision of this ordinance to be illegal, invalid, or superseded by other lawful authority, the invalid portion will be severable and such determination will have no effect on the validity of any other provision of this ordinance, which will remain in full force and effect.

SECTION 4. Effective Date. This ordinance will be effective upon signing and posting.

ADOPTED by the City Council of West Bountiful, Utah, February 19, 2019.


Kenneth Romney, Mayor

Voting by the City Council:	<u>Aye</u>	<u>Nay</u>
Councilmember Ahlstrom	<u>✓</u>	_____
Councilmember Bruhn	<u>✓</u>	_____
Councilmember Enquist	<u>✓</u>	_____
Councilmember Preece	<u>✓</u>	_____
Councilmember Williams	<u>✓</u>	_____



ATTEST:


Cathy Brightwell, City Recorder

Exhibit A
Franchise Agreement

WEST BOUNTIFUL CITY FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT ("*Agreement*") is entered into as of Feb. 19, 2019, 2019 (the "*Effective Date*") between WEST BOUNTIFUL CITY, a municipal corporation and political subdivision of the State of Utah (the "*City*"); and PACIFICORP, an Oregon corporation dba ROCKY MOUNTAIN POWER (the "*Company*").

Recitals

A. The Company is a regulated public utility that provides electrical power and energy to the residents of the City and other surrounding areas.

B. Providing electrical power and energy requires the installation, operation and maintenance of power poles, underground power lines, and other related facilities located within the City's public ways.

C. Under *Utah Code Ann.* § 10-8-21, the City has the authority to regulate power line facilities within public ways and to grant the Company a general utility easement for the use of such public ways.

D. The City has adopted Ordinance No. 413-19 (the "*Franchise Ordinance*") granting the Company a franchise to use the City's public ways subject to the terms of this Agreement.

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

SECTION 1. Grant of Franchise and General Utility Easement. The City hereby grants to the Company 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, "*Electrical Facilities*") in, under, along, over and across the present and future streets, alleys, and rights-of-way, not including City parks, buildings, recreational facilities, or other spaces not associated with City-owned rights-of-way (collectively, "*Public Ways*") within the City, for the purpose of supplying and transmitting electrical power and energy to the inhabitants of the City and persons and entities beyond the limits thereof (collectively, the "*Franchise*").

SECTION 2. Term. The term of this Agreement and the Franchise is ten (10) years, commencing on the effective date of the Franchise Ordinance. This Agreement will automatically renew for one or more successive five (5) year terms unless, between 120 days and 30 days prior to the expiration date of the term, either party provides written notice to the other party of its election not to renew this Agreement. In such event, the parties will use good faith efforts to negotiate a replacement Franchise. The terms of this Agreement will govern during the period of such negotiation, not to exceed six (6) months after the expiration of the term of this Agreement. At the end of such period, only the obligations of the parties that survive the expiration of this

Agreement, such as Section 9 (Company Indemnification) (to the extent any such claims arose prior to expiration or termination of this Agreement) and Section 16 (System to Remain in Place), will continue in effect.

SECTION 3. Company Acceptance. The Company shall file with the City Recorder an unqualified written acceptance of the Franchise Ordinance within sixty (60) days after the effective date of its adoption; otherwise, the Franchise Ordinance and the rights granted under this Agreement shall be null and void.

SECTION 4. Non-Exclusive Franchise. The right to use and occupy the Public Ways of the City shall be nonexclusive. Notwithstanding any provision of this Agreement to the contrary, the Company's use of the Public Ways shall not unreasonably interfere with the City's use of the Public Ways for itself or any other entity that provides service to City residents; provided, however, that to the extent reasonably practicable, the City will not knowingly allow the placement of utilities in the Public Ways to unreasonably interfere with the Company's Electrical Facilities.

SECTION 5. Plan, Design, Construction, Installation and Maintenance of Electrical Facilities.

5.1 Annual Information Coordination. Upon request of either party, generally on an annual basis, the parties shall meet for the purpose of exchanging information and documents regarding construction and other similar work within the City, with a view toward coordinating their respective activities in those areas where such coordination may prove mutually beneficial. Upon request, any information regarding future capital improvements that may involve land acquisition shall be treated with confidentiality.

5.2 Repair of Private Property. If at any time the Company or any of its agents, contractors or subcontractors (in the course of the Company's operations under this Agreement) disturbs the yard, residence, or other real or personal property of another, the Company shall restore or repair, at the Company's expense, to the extent required by applicable law and any applicable easement(s) or other property rights or interests of the Company, any fence, grass, soil, shrubbery, bushes, flowers, other low level vegetation, sprinkler system, irrigation system, gravel, flat concrete, or asphalt so damaged or displaced.

5.3 New Construction. In addition to the installation of underground electric distribution lines, as provided by applicable state law and regulations, the Company, upon payment of all charges provided in its tariffs or their equivalent, shall place newly constructed electric distribution lines underground.

5.4 City Use of Company Trenches. Whenever the Company proposes to install new underground conduits or replace existing underground conduits within or under the City's Public Ways, it shall notify the Director of Public Works as soon as practicable and shall allow the City, at its own expense and without charge by the Company, to share the trench of the Company to lay its own conduit therein; provided that such action by the City will not unreasonably interfere with the Company's facilities or delay the accomplishment of the project.

5.5 Permitting. The Company shall have the right to excavate the Public Ways subject to reasonable conditions and requirements of the City, including the City's ordinances on excavation restrictions on newly constructed or reconstructed streets and on streets that have been overlaid. Except in the case of an emergency, the Company shall, prior to commencing maintenance, new construction or major reconstruction work in the Public Way or street or other public places, apply for any applicable permit from the City as required by City ordinance, which permit shall not be unreasonably withheld, conditioned, or delayed. The Company 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 necessary to assure compliance. Notwithstanding the foregoing, the Company shall not be obligated to obtain a permit to perform emergency repairs.

5.6 Extension of Service to City Facilities; Waiver of Advance Payment. The Company, upon receipt of the City's authorization for payment and construction, shall extend within the City its facilities to provide electric service to the City for municipal uses and, to the extent permitted by the Public Service Commission, shall not require the City to make advance payments.

5.7 Use of Company Corridors. The City may identify portions of the transmission corridors the Company now or in the future owns in fee within the City as being desirable locations for public parks, playgrounds, or recreation areas. In such event and upon notice by the City, the parties will negotiate in good faith to reach an agreement providing for such uses by the City. However, no such use will be allowed where the Company determines such use would interfere with the Company's use of the transmission corridor or materially prejudice its interests in safety. The Company shall assume no liability, nor shall it incur, directly or indirectly, any additional expense in connection therewith.

5.8 Compliance with Applicable Laws. All Electrical Facilities, equipment, property, and other structures or assets installed or used under color of the Franchise shall be used, constructed, and maintained in accordance with applicable federal, state, and City laws and regulations, and shall be kept current with new codes as required by law.

5.9 Location to Minimize Interference. As determined by the City in any permits granted to the Company, Company Electrical Facilities, equipment, property, structures, and assets shall be located so as to cause minimum interference with the use of the City's Public Ways by others, and shall cause minimum interference with the rights of owners of property that adjoins the Public Ways.

5.10 Repair Damage. If, during the course of work on its facilities, the Company causes damage to or alters any Public Way or public property, the Company shall (at its own cost and expense and in a manner approved by the City's Director of Public Works) replace and restore it in as good a condition as existed before the work commenced. Except in case of an emergency, the Company, prior to commencing work in the Public Ways, shall make application for a permit to perform such work from the office of the City Engineer or other agency designated by the City. Such permit shall not be unreasonably withheld. The Company will abide by all reasonable regulations and requirements of the City Engineer and ordinances pertaining to such work.

5.11 Guarantee of Repairs. For a period of one (1) year following the completion of any repair work performed under this Agreement, the Company shall repair and keep in good condition those portions of the Public Ways restored, repaired, or replaced, to the reasonable satisfaction of the City Engineer.

5.12 Safety Standards. The Company's work, while in progress, shall be properly protected at all times with suitable barricades, flags, lights, flares, or other devices as are reasonably required by applicable safety regulations or standards imposed by law and City standards established by the City Engineer.

5.13 Substation Landscaping. The Company shall maintain the general appearance of its substations (if any) and other facilities in the City in a manner consistent with the requirements that are duly imposed by the City in any permits applicable to such substations, which may include but not be limited to, the landscaping of front yards and parkways in residential zones; the installation of curb, gutter, sidewalk, and parkway landscaping in those areas where similar improvements have been, or are being, installed on contiguous properties; and the screening of substations directly abutting a public street or abutting a residential property with appropriate landscaping or screening material as required by the City's Planning Commission. Notwithstanding the foregoing, this section does not apply to any substations existing as of the Effective Date.

SECTION 6. City Use Rights.

6.1 City Use of Poles and Overhead Structures. The City shall have the right without cost to use all poles and suitable overhead structures owned by the Company within Public Ways for City wires used in connection with its fire alarms, police signal systems, or other communication lines used for governmental purposes or seasonal decorations; 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 the Company shall assume no liability, nor shall it incur, directly or indirectly, any additional expense in connection therewith, and the City's use of such poles and structures shall be in such a manner as to prevent safety hazards or interference with the Company's use of the same.

6.2 Limitation on Use Rights. Nothing in this Section 6 shall be construed to require the Company to increase pole capacity, alter the manner in which the Company attaches equipment to the poles, or alter the manner in which it operates and maintains its equipment. Such City attachments shall be installed and maintained in accordance with the reasonable requirements of the Company and the then current National Electrical Safety Code pertaining to such construction. Furthermore, City attachments shall be attached or installed only after written approval by the Company in conjunction with the Company's standard pole attachment application process. The Company shall have the right to inspect such attachments to ensure compliance with this Section 6 and to require the City to remedy any defective attachments. Any inspections of seasonal decorations shall be done at no expense to the City; inspections of other City facilities shall be at the City's expense.

6.3 Use of Company Property by Other Franchisees. In accordance with the Company's applicable rules and regulations, the Company will allow others holding a franchise

from the City, except providers of electric utility service, to utilize such poles and suitable overhead structures, upon reasonable terms and conditions to be agreed upon by the Company and such other holders of a franchise from the City. The Company shall assume no liability, nor shall it incur, directly or indirectly, any additional expense in connection therewith. The use of said poles and structures by others holding a franchise from the City shall be in such a manner as not to constitute a safety hazard or to unreasonably interfere with the Company's use of the same.

SECTION 7. City Regulatory Authority. In addition to the provisions of this Agreement, the City reserves, and the Company recognizes, the City's 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 applicable law, including the Constitution of the State of Utah, the laws of Utah, or City ordinance.

SECTION 8. City Representative and Company Duty to Cooperate.

8.1 City Representative. Except as provided in Sections 8.3 and 8.4, the City Administrator or his/her designee, or such other person as the Mayor may designate (the "**City Representative**"), is hereby designated by the City as the official of the City having full power and authority to take appropriate action for and on behalf of the City and its inhabitants to enforce the provisions of the Franchise and this Agreement, and to investigate any alleged violations or failures of the Company to comply with such provisions or to adequately and fully discharge its responsibilities and obligations hereunder. The failure or omission of the City Representative so to act shall not constitute any waiver or estoppel.

8.2 Company Duty to Cooperate. In order to facilitate the City Representative's duties, the Company agrees to allow the City Representative and his/her agents reasonable access to the Company's facilities, works, and systems within the City.

8.3 City Financial Review. With regard to financially related matters, the City designates the City Administrator as the official of the City having full power and authority to take appropriate action for and on behalf of the City and its inhabitants to enforce the provisions of this Franchise and investigate any alleged violation or failures of the Company to comply with the provisions hereof, or to fully and adequately discharge the responsibilities and obligations hereunder. The failure or omission of the City Administrator to act shall not constitute any waiver or estoppel.

8.4 Company Duty to Cooperate in Financial Review. For the sole and limited purpose of facilitating the duties defined in Section 8.3 above, the Company agrees that, upon the City's written request (but no more than once every three (3) years), and at no expense to the City, the Company will provide the City reasonable access to, or copies of, the books and records of the Company necessary to verify compliance with the terms of this Agreement.

SECTION 9. Company Indemnification.

9.1 No City Liability. Except as otherwise specifically provided herein, 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 the Company of its lines and appurtenances hereunder.

9.2 Company Indemnification of City. The Company 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 or arising from the grant of the Franchise, the exercise by the Company of the related rights or privileges, or from the Company's use of the Public Ways within the City, and shall pay the costs of defense plus reasonable attorney fees. Such indemnification shall include but not be limited to the Company's negligent acts or omissions pursuant to its use of the rights and privileges of the Franchise, including construction, operation, and maintenance of electrical lines and appurtenances whether or not any such use, act, or omission complained of is authorized, allowed, or prohibited by the Franchise.

9.3 Notice of Indemnification. The City shall (a) give prompt written notice to the Company 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 may exist between the City and the Company with respect to such claim, demand, or lien, permit the Company to assume the defense of such claim, demand, or lien with counsel mutually satisfactory to the City and the Company. If the Company does not assume such defense, the Company shall not be subject to any liability for any settlement made without its consent. Notwithstanding any provision hereof to the contrary, the Company 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 act or failure to act of the City or any of its officers or employees.

SECTION 10. Annexation.

10.1 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 the Company located within any public ways of the annexed territory shall thereafter be subject to all of the terms hereof.

10.2 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 the Company: (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

10.3 Annexation of Company Property. Except as otherwise provided in this Section, when any real property owned by the Company becomes eligible for voluntary annexation into the City in connection with an annexation petition brought by the owners of properties that are adjacent to the Company's subject property, the Company will not oppose or prevent such annexation; provided, however, that no condition of such annexation shall impair the Company's ownership or use of its property, and that Company property which is used solely as transmission corridors which are not both parallel and adjacent to the City boundaries need not be annexed into the City. Subject to the foregoing, the Company agrees to comply with all terms and conditions imposed upon the annexation by the City that are no more stringent than those generally imposed upon property owners seeking annexation of their land into the City.

SECTION 11. Electrical Service.

[Intentionally deleted.]

SECTION 12. Small Power Production And Co-Generation. The City expressly reserves the right to engage in the production of electrical energy, both from conventional power plants and from co-generations and small power production facilities, to the extent consistent and in accordance with applicable Utah law and the rules and regulations of the Federal Energy Regulatory Commission (FERC).

SECTION 13. Relocation or Alteration of Electrical Facilities.

13.1 Duty to Relocate. Whenever the City shall, in the interest of the public convenience, necessity, health, safety, and general welfare, require the relocation or reinstallation of any property of the Company or its successors in any of the Public Ways, it shall be the obligation of the Company, upon notice of such requirement, to promptly commence work to remove, relocate, or reinstall such property as may be reasonably necessary to meet the requirements of the City. Upon notice from the City and receipt of reasonably sufficient information and documentation regarding the scope of the project, the Company shall provide an estimated date for completion to the City within 30 days, and the City and the Company shall mutually agree to a target date for completion not to exceed 120 days from the initial notice unless the Company can show that such a term is unreasonable. If the Company reasonably believes it may not complete relocation of its facilities by the target date, it shall provide notice to the City, and the parties agree to meet in good faith to determine a new target date. Unless the parties agree to extend such target date, the City or its contractors shall not be liable for any damage to the Company's facilities caused by construction once the agreed upon target date for completion has passed, provided that (a) no less than thirty (30) days prior to commencing any construction work that may be reasonably anticipated to damage the Company's facilities, the City shall give written notice to the Company of the construction start date; and (b) in the event the Company's determination that it may not complete relocation of its facilities by the target date is due to the presence of third-party attachments on the Company's facilities, the City agrees not to commence any work that may damage the Company's facilities until such attachments are removed. In the event one or both of the parties anticipates that third-party attachments to the Company's facilities

may delay timely completion of the Company's relocation work, the parties agree to work together in good faith to facilitate removal by the third party of its facilities.

Relocation, removal, or reinstallation by the Company pursuant to this Section 13.1 shall be at no cost to the City. Any money and all rights of reimbursement from the State of Utah or the federal government to which the Company may be entitled for work done by the Company pursuant to this section shall be the property of the Company. The City shall assign or otherwise transfer to the Company all rights it may have to recover costs for such work performed by the Company and shall reasonably cooperate with the Company's efforts to obtain reimbursement.

13.2 Private Development. The Company shall not be obligated to pay the cost of any relocation that is required for 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, the Company may charge the expense of removal or relocation to the developer or customer. For example, the Company 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.

SECTION 14. Subdivision Plat Notification. Before the City approves any new subdivision, the City shall require the developer to obtain the Company's approval of Electrical Facilities, including underground facilities to be installed by the developer, and associated rights of way depicted on the proposed plat. A copy of the proposed plat shall be mailed for approval to the Company:

Rocky Mountain Power
Attn: Estimating Department
635 N 1200 W
Layton, Utah 84041

SECTION 14. Vegetation Management.

14.1 Generally. The Company 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 Company's Electrical Facilities. Such pruning shall comply with the *American National Standard for Tree Care Operation (ANSI A300)*, as amended, 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 the Company, 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.

14.2 Notice to Property Owners. The Company shall use reasonable good-faith efforts, including by written notice, to notify owners of property with trees to be pruned, or adjacent to such trees in the Public Ways, at least 72 hours prior to doing the work. Pruning shall mean the regularly scheduled tree-trimming cycles routinely performed by the Company, and does not include clean-up activities that are required or necessary as a result of an outage event or

emergency caused by fallen trees or other vegetation. In the event that, during such an emergency restoration event, the Company cuts down and removes a tree, the Company shall provide notice to the property owner as soon as reasonably practicable (which may be after the restoration is completed).

SECTION 15. Transfer of Franchise. The Company shall not transfer or assign any rights under this Franchise to another entity, except transfers and assignments by operation of law, or to affiliates, parents or subsidiaries of the Company which assume all of the Company's obligations hereunder, unless the City shall first give its approval in writing, which approval shall not be unreasonably withheld, conditioned or delayed; provided, however, the Company 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 which the Company (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.

SECTION 16. System to Remain in Place.

16.1 Continuation of Service. In the event this Agreement is not renewed at the expiration of its term, or the Company's service to the City is terminated for any reason whatsoever, and the City has not provided for alternative electrical energy supplies, the Company shall have no right to remove the electrical energy distribution systems or any of them except in the normal course of business, pending resolution of the disposition of the system. The Company further agrees that, to the extent permitted under applicable laws, rules and regulations, it will provide temporary electrical service to the City, and in such event shall be entitled to compensation consistent with the Company's tariffs and any applicable special contracts as approved by the Public Service Commission.

16.2 Removal of System. Only upon receipt of written notice from the City stating that the City has adequate alternative electrical energy sources to provide for the people of the City, shall the Company be entitled to remove any or all of said systems in use under the terms of this Agreement.

SECTION 17. Remedies.

17.1 Duty to Perform. The parties agree to take all reasonable and necessary actions to assure that the terms of this Agreement are performed.

17.2 Remedies at Law. In the event either party fails to fulfill any of its obligations under this Agreement, the non-defaulting party will have a breach of contract claim and remedy against the other party in addition to any other remedy at law or in equity; provided, that no remedy that would have the effect of amending the specific provisions of this Agreement shall become effective without such action as would be necessary to formally amend the Agreement.

17.3 Non-Contestability. Neither party will take any action for the purpose of securing modification of this Agreement before either the Public Service Commission or any court

of competent jurisdiction; provided, however, that neither party shall be precluded from taking any action it deems necessary to enforce or resolve difference in interpretation of this Agreement, nor shall the Company be precluded from seeking relief from the courts in the event Public Service Commission orders, rules, or regulations conflict with or make performance under this Agreement illegal.

17.4 Force Majeure. Neither party shall be liable to the other party for any failure or delay in the performance of its obligations hereunder arising out of or caused directly or indirectly by forces beyond such party's reasonable control.

SECTION 18. No Waiver. Neither the City nor the Company shall be excused from complying with any of the terms and conditions of this Franchise by any failure of the other party, 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 19. Amendment. At any time during the term of this Franchise, the City through its City Council, or the Company may propose amendments to this Franchise 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 Franchise shall be effective until mutually agreed upon by the City and the Company and formally adopted as an ordinance amendment, which is accepted in writing by the Company.

SECTION 20. Changing Conditions. The parties recognize that many aspects of the electric utility business are currently the subject of discussion, examination, and inquiry by different segments of the industry and affected regulatory authorities, and that these activities may ultimately result in fundamental changes in the way the Company conducts its business and meets its service obligations. In recognition of the present state of uncertainty respecting these matters, each party agrees, on request of the other party during the term of this Agreement, to meet with the other party and discuss in good faith whether it would be appropriate in view of developments of the kind referred to above during the term of this Agreement, to amend this Agreement or enter into separate, mutually satisfactory arrangements to effect a proper accommodation of any such development.

SECTION 21. Notices. Unless otherwise specified herein, all notices from the Company to the City pursuant to or concerning this Franchise shall be delivered to the City Recorder's Office. Unless otherwise specified herein, all notices from the City to the Company pursuant to or concerning this Franchise shall be delivered to the Customer Service Vice President of Rocky Mountain Power at 1407 W. North Temple, Suite 310, Salt Lake City, Utah 84109 and such other office as the Company may advise the City of by written notice.

SECTION 22. 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 23. 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 such 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 24. Miscellaneous.

24.1 No Third-Party Beneficiaries. This Agreement is made for the exclusive benefit of the parties. Notwithstanding any provision of this Agreement to the contrary, no other person or entity shall have any interest under this Agreement or be classified as a third-party beneficiary to this Agreement.

24.2 Entire Agreement. This Agreement and the Franchise Ordinance constitute the entire agreement and understanding of the parties with respect to their subject matter, and supersede all previous or contemporaneous representations or agreements of the parties in that regard.

24.3 Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF UTAH, IRRESPECTIVE OF ANY CONFLICT OF LAWS PROVISIONS, EXCEPT AS SUCH LAWS MAY BE PREEMPTED OR SUPERSEDED BY THE LAWS OF THE UNITED STATES. THE PARTIES HEREBY CONSENT TO THE JURISDICTION OF THE COURTS OF THE STATE OF UTAH, OR THE COURTS OF THE UNITED STATES OF AMERICA LOCATED IN THE STATE OF UTAH, AS THE CASE MAY BE, WITH VENUE IN DAVIS COUNTY, AS THE SOLE FORUM FOR ANY LITIGATION ARISING OUT OF THIS AGREEMENT.

[Signatures on following page.]

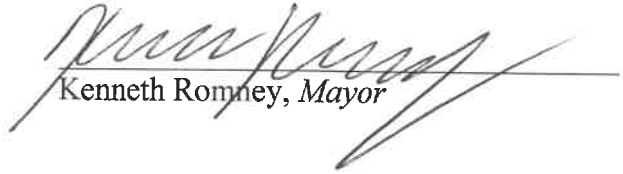
IN WITNESS WHEREOF, the parties execute this Agreement as of the Effective Date.

ROCKY MOUNTAIN POWER

By _____

Its _____

WEST BOUNTIFUL CITY


Kenneth Romney, Mayor

ATTEST:


Cathy Brightwell, City Recorder





70 North 2nd East
American Fork, Utah 84003

March 7, 2019

To the Honorable Mayor and
City Council
West Bountiful, Utah

Gentlemen/Ladies:

This is to advise West Bountiful, Utah, that as of February 19, 2019, ROCKY MOUNTAIN POWER hereby accepts the terms and provisions of the Franchise Ordinance passed by your Honorable Body on the 19th day of February 2019, granting a franchise agreement to ROCKY MOUNTAIN POWER for a term of ten (10) 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


George Humbert
Director
Regional Business Management

WITNESS:

