

TITLE 18.
FRANCHISE AGREEMENTS.

**CHAPTER 18-100. ELECTRIC UTILITY
FRANCHISE AND GENERAL UTILITY
EASEMENT TO ROCKY MOUNTAIN
POWER.**

Part 18-110. Recitals

WHEREAS, Rocky Mountain Power, is a regulated public utility that provides electric power and energy to the citizens of Tremonton City (the "City") and other surrounding areas;

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

WHEREAS, the City, 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 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:

Part 18-120. Agreement.

18-121. Grant of Franchise and General Utility Easement. 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 referred to herein as "Electric Facilities") in, under, along, over and across the present and future streets, alleys, public ways and public places (collectively referred to herein as "Public Ways") within the City, for the purpose of supplying and transmitting electric power and energy to the inhabitants of the City and persons and corporations beyond the limits thereof.

18-122. Term. The term of this Franchise and General Utility Easement is for ten (10) years

commencing on the date of acceptance by the Company as set forth in Section 18-123 below.

18-123. Acceptance by Company. Within sixty (60) days after the passage of this ordinance by the City, Rocky Mountain Power shall file an unqualified written acceptance thereof, with the City Recorder, otherwise the ordinance and the rights granted herein shall be null and void. (Tremonton City did receive written acceptance from Rocky Mountain Power dated November 2, 2011. This written acceptance is attached to Ordinance No. 11-10. A copy of Ordinance No. 11-10 and the written acceptance can be obtained from the City Recorder.)

18-124. Non-Exclusive Franchise. The right to use and occupy the Public Ways of the City shall be nonexclusive and the City reserves the right to use the Public Ways for itself or any other entity that provides water or sewerage service or other utilities to City residences.

18-125. 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 Ordinance.

18-126. Indemnification. The City shall in no way be liable or responsible for any loss or damage to property or any injury to, or death, of any person that may occur in the construction, operation or maintenance by Rocky Mountain Power of its Electric Facilities. 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 use of the Public Ways within the City, and shall pay the costs of defense plus reasonable attorneys' fees for any claim, demand or lien brought thereunder. The City shall: (a) give prompt written notice to Rocky Mountain Power of any claim, demand or lien with respect to which the City seeks indemnification hereunder; and (b) unless in the City's judgment a conflict of interest exists between the City and Rocky Mountain Power with respect to such claim, demand or lien, permit Rocky Mountain Power to assume the defense of such claim, demand, or lien with counsel satisfactory to City. 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. 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 arises out of or in connection with any negligent or willful act or failure to act of the City or any of its officers or employees.

18-127. Annexation.

(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.

(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 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 97202-0400

With a copy to:

Rocky Mountain Power
Attn: Office of the General Counsel
201 South Main Street, Suite 2200
Salt Lake City, UT 84111

18-128. Plan, Design, Construction and Installation of Company Facilities.

(1) All Electric Facilities installed or used under authority of this Franchise shall be used, constructed and maintained in accordance with applicable federal, state and city laws, codes and regulations.

(2) Except in the case of an emergency, Rocky Mountain Power 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 City which permit shall not be unreasonably withheld, unreasonably conditioned, or delayed provided however Rocky Mountain Power will abide by all applicable state statutes, 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, Rocky Mountain Power shall not be obligated to obtain a permit to perform emergency repairs.

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

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

(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.

(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 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, or 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 addition 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.

(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 and shall allow the City, at its own expense, 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 Electric Facilities or delay project completion.

(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.

18-129. Relocations of Electric Facilities.

(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 of the City. 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.

(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 or caused by a private development.

18-130. Subdivision Plat Notification. Before the City approves any new subdivision and before recordation of the plat, the City shall mail notification of such approval and a copy of the plat to Rocky Mountain Power:

Rocky Mountain Power
Attn: Property Management / Right-of-Way
Department
825 NE Multnomah, Suite 1700
Portland, Oregon 97232

18-131. 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 Rocky Mountain Power'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 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.

18-132. Renewal. At least one hundred twenty (120) days prior to the expiration of this Franchise, Rocky Mountain Power and the City shall agree to either 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. Rocky Mountain Power shall have the continued right to use the Public Ways of the City as set forth herein in the event an extension or replacement Franchise is not entered into upon expiration of this Franchise.

18-133. No Waiver. Neither the City nor Rocky Mountain Power 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.

18-134. Transfer of Franchise. Rocky Mountain Power shall not transfer or assign any rights under this Franchise to another entity, except transfers and assignments by operation of law, unless the City shall first give its approval in writing, which approval shall not be unreasonably withheld; provided, however, inclusion of this Franchise as property subject to the lien of Rocky Mountain Power's mortgage(s) shall not constitute a transfer or assignment.

18-135. Amendment. At any time during the term of this Franchise, the City through its City Council, or Rocky Mountain Power may propose amendments to this Franchise by giving thirty (30) days written notice to the other 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 Rocky Mountain Power and formally adopted as an ordinance amendment.

18-136. Notices. Unless otherwise specified herein, all notices from Rocky Mountain Power 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 Rocky Mountain Power pursuant to or concerning this Franchise shall be delivered to the Customer Services Vice President, Rocky Mountain Power, 201 South Main, Suite 2400, Salt Lake City, Utah 84111, and such other office as Rocky Mountain Power may advise the City of by written notice.

18-137. 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. (Ord. No. 11-10 October 18, 2011)