

**AN ORDINANCE APPROVING AN ELECTRIC UTILITY FRANCHISE  
AGREEMENT BETWEEN SUMMIT COUNTY AND  
ROCKY MOUNTAIN POWER**

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

**PREAMBLE**

**WHEREAS**, Rocky Mountain Power, is a regulated public utility that provides electric power and energy to the citizens of Summit County (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**, the County Council (the “Council”), acting as the highway authority and pursuant to the provisions of Utah Code Ann. § 17-50-306, has the authority to regulate power line facilities within public ways and to grant to Rocky Mountain Power a franchise for the use thereof; and,

**WHEREAS**, the County desires to set forth the terms and conditions whereby Rocky Mountain Power shall be entitled to use the public ways of the County, as more fully set forth in an Electrical Utility Franchise Agreement (the “Franchise Agreement”);

**NOW, THEREFORE**, the County Legislative Body of the County of Summit, the State of Utah, ordains as follows:

Section 1.     **Franchise Agreement.** The Electrical Utility Franchise Agreement between Summit County and Rocky Mountain Power (the “Franchise”), consisting of 15 pages, as set forth in Exhibit A hereto, which has been filed for use and examination in the office of the Clerk of Summit County, Utah, is hereby adopted by the Council, sitting in its role as the highway authority, and the Chair is authorized to sign and execute the Franchise Agreement on behalf of the County.

Section 2.     **Effective Date.** This Ordinance shall take effect 15 days after approval and upon publication in accordance with law.

Enacted this \_\_\_\_ day of \_\_\_\_\_, 2019.

Attest:

SUMMIT COUNTY COUNCIL

\_\_\_\_\_  
Kent Jones  
Summit County Clerk

\_\_\_\_\_  
Roger Armstrong  
Chair

Approved as to Form

\_\_\_\_\_  
David L. Thomas  
Chief Civil Deputy

VOTING OF COUNTY COUNCIL:

Councilmember Armstrong	_____
Councilmember Robinson	_____
Councilmember Wright	_____
Councilmember Carson	_____
Councilmember Clyde	_____

# **EXHIBIT A**

**FRANCHISE AGREEMENT  
BETWEEN SUMMIT COUNTY, UTAH  
AND  
ROCKY MOUNTAIN POWER**

This **FRANCHISE AGREEMENT** is made and entered into effective as of the \_\_\_ day of \_\_\_\_\_, 2019 (“**Effective Date**”), by and between SUMMIT COUNTY, a body corporate and politic of the State of Utah, whose address is 60 N. Main Street, P.O. Box 128, Coalville, Utah 84017 (“**County**”), and PACIFICORP, an Oregon corporation doing business in Utah as ROCKY MOUNTAIN POWER, a regulated public utility, whose address is 1407 West North Temple, Salt Lake City, Utah 84116 (“**Grantee**”). The County and the Grantee are referred to individually as a “**Party**” and collectively as the “**Parties**”.

The County hereby acknowledges that the Grantee has the financial, legal, and technical ability to provide services, facilities, and equipment necessary to supply and transmit electrical power and energy to the inhabitants of the County and persons and corporations beyond the limits thereof (the “**Electrical Utility Services**”) and in connection therewith to maintain and establish a network in, under, along, over and across the County Rights-of-Way (defined below), consisting of electrical wires and cables, together with all necessary and desirable appurtenances. Having afforded the public adequate notice and opportunity for comment, the Parties desire to enter into this non-exclusive Franchise (as defined below) to allow for Grantee’s use of the County Rights-of-Way for the provision of Electrical Utility Services on the terms set forth herein.

The County has authority pursuant to U.C.A. §17-50-306 to “grant franchises along and over the public roads and highways for all lawful purposes, upon such terms, conditions and restrictions as in the judgment of the county legislative body are necessary and proper, to be exercised in such manner as to present the least possible obstruction and inconvenience to the traveling public.” Summit County Code (“**Code**”), Title 7, Chapter 1 governs franchise agreements.

**SECTION 1**

**Definitions**

**1.1** For the purpose of this Franchise, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number:

**1.1.1** “**County**” means Summit County, Utah, or the lawful successor, transferee, or assignee thereof.

**1.1.2** “**County Right(s)-of-Way**” means:

**1.1.2.1** as of the Effective Date, the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, boulevard, drive, or other similar public way within the County where Grantee has physically located existing Electrical Facilities (defined below), and

1.1.2.2 after the Effective Date, the surface, the air space above the surface, and the area below the surface of any Class B County Road where Grantee desires the future placement or expansion of Electrical Facilities, which, consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining private utilities, public utilities, and telecommunication services.

1.1.3 “Franchise” means this non-exclusive initial authorization, or renewal thereof, issued by the County which authorizes the construction, maintenance and operation of a public utility along the County Right-of-Way. This Franchise shall not be construed to include any general license required for the privilege of transacting and carrying on a business within the County as may be required by other ordinances and laws of the County, or for attaching devices to poles or structures, whether owned by the County or a private entity, or for excavating or performing other work in or along the County Rights-of-Way, except as otherwise provided in this Franchise Agreement.

1.1.4 “Franchise Agreement” means this contract, which is entered into pursuant to Code §7-1-4 between the County and Grantee that sets forth the terms and conditions under which this Franchise will be granted and exercised.

1.1.5 “Grantee” means PacifiCorp, an Oregon corporation doing business in Utah as Rocky Mountain Power, or the lawful successor, transferee, or assignee thereof.

1.1.6 “Person” means an individual, partnership, association, joint stock company, organization, corporation, joint venture, limited liability company, or any lawful successor thereto or transferee thereof, but such term does not include the County.

1.1.7 “Service Area” means the present boundaries of the County and shall include any additions thereto by annexation or other legal means.

1.1.8 “Subscriber” means a customer who lawfully receives Electrical Utility Service from the Grantee, as the term “customer” is defined in Grantee’s approved and effective electric service regulations.

## **SECTION 2**

### **Grant of Franchise**

2.1 **Grant.** The County hereby grants to the Grantee a non-exclusive Franchise which authorizes the Grantee the right, privilege and authority to construct, maintain, operate, upgrade, and relocate, at Grantee’s sole cost and expense, 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 “**Electrical Facilities**”) in, along, among, upon, across, above, over, or under County Rights-of-Way within the Service Area, for the provision of Electrical Utility Services to inhabitants of Summit County, Utah, and persons and corporations beyond the Service Area. The County agrees to not knowingly grant other franchises that may unreasonably interfere with

Grantee's then existing Electrical Facilities which are situated within the County Right-of-Way or Grantee's rights as granted herein.

**2.2 Competitive Equity.** The Grantee acknowledges and agrees that the County reserves the right to grant one (1) or more additional franchises or other similar lawful authorization to provide Electrical Utility Services within the County, to the extent such other provider is authorized to provide such Electrical Utility Services pursuant to applicable laws, statutes, rules and regulations.

**2.3 Term.** The Franchise granted hereunder shall be for a term of ten (10) years commencing on the Effective Date, unless otherwise lawfully terminated in accordance with the terms of this Franchise or extended pursuant to the provisions of Section 4.2 (the "**Term**").

### **SECTION 3**

#### **Standards of Service**

**3.1 Conditions of Occupancy.** The Electrical Facilities installed by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with (a) the proper use of County Rights-of-Way, (b) the rights and reasonable convenience of property owners who own property that adjoins any of such County Rights-of-Way, and (c) the rights and reasonable convenience of other holders of franchises or other similar lawful authorizations to use such County Rights-of-Way. This Franchise is granted subject to all prior rights of third-parties. All Electrical Facilities shall be constructed, installed, maintained, cleared of vegetation, renovated or replaced in accordance with applicable rules, ordinances and regulations of the County.

#### **3.2 Other Ordinances.**

**3.2.1** The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinances and regulations. Neither Party may unilaterally alter the material rights and obligations set forth in this Franchise. In the event of a conflict between any ordinance and this Franchise, the Franchise shall control, provided however, that the Grantee agrees that it is subject to the lawful exercise of the police power of the County.

**3.2.2** Except in the case of an emergency, Grantee shall, prior to commencing new construction or major reconstruction work in the County Rights-of-Way, apply for any permit from the County as may be required by the County's ordinances. Grantee will abide by all applicable ordinances, rules, and regulations of the County, and the County may inspect the manner of such work and require remedies as may be reasonably necessary to assure compliance. Notwithstanding the foregoing, Grantee shall not be obligated to obtain a permit to perform emergency repairs.

**3.3 Restoration of County Rights-of-Way.** If, during the course of the Grantee's construction, operation, maintenance, or replacement of the Electrical Facilities, Grantee causes damage to or alters the County Rights-of-Way or other County property, Grantee shall replace and restore the same at Grantee's expense to the condition existing immediately prior to such damage or alteration and in a manner reasonably approved by the County Engineer.

### **3.4 Relocation for the County.**

3.4.1 The County reserves the right to require Grantee to relocate its Electrical Facilities in the County Rights-of-Way in the interest of public convenience, necessity, health, safety or welfare at no cost to the County. Within a reasonable period of time after written notice, Grantee shall promptly commence the relocation. Before requiring such relocation, the County shall in good faith attempt to identify a reasonable alignment for any displaced Electrical Facilities within the County Rights-of-Way to the extent of existing County Rights-of-Way; provided, however, in the event that sufficient space in the existing County Rights-of-Way for such alignment does not exist, the Grantee shall be responsible, at its expense, for acquiring additional right-of-way for such alignment. In the event that the County receives funding for all or part of the relocation costs from a third party ("**Third Party Reimbursement**"), the County shall assign or otherwise transfer to Grantee all right it may have in said Third Party Reimbursement.

3.4.2 In the event that the Grantee's Electrical Facilities are located within the County Rights-of-Way pursuant to a separate, distinct, independently acquired, written and, recorded in the County Recorder's Office, easement or right-of-way specifically identifying the Grantee or its predecessor(s)-in-interest as the grantee (the "**Independently Acquired Easement**"), the County may only require the relocation of such Electrical Facilities if the County provides, at no cost to Grantee, a replacement easement or right-of-way, which adequately serves Grantee's purposes and for which Grantee gives written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, in the event that the Independently Acquired Easement pre-dates the existence of the County Rights-of-Way, then the County shall also pay for all costs associated with the relocation.

**3.5 Relocation for a Third Party.** The Grantee shall, on the request of any Person holding a lawful permit issued by the County, and in accordance with Grantee's regulations relocate in the County Rights-of-Way as necessary any property of the Grantee, provided: (A) the expense of such is paid by said Person benefiting from the relocation (except for the County), including, if required by the Grantee, making such payment in advance; and (B) the Grantee is given reasonable advance written notice to prepare for such changes.

**3.6 Subdivision Plat Notification.** Before the County approves any new subdivision and before recordation of the plat, the County shall require the developer to obtain Grantee's approval, which approval shall not be unreasonably withheld, conditioned, or delayed, 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 emailed for approval to Grantee at the following address:

Rocky Mountain Power  
Attn: Estimating Department  
6280 North Silver Creek Drive  
Park City, Utah 84098-6202  
[Cindy.christoffersen@pacificorp.com](mailto:Cindy.christoffersen@pacificorp.com)  
[Joseph.Ryan@pacificorp.com](mailto:Joseph.Ryan@pacificorp.com)

**3.7 Trimming of Trees and Shrubbery.** The Grantee shall have the authority to trim trees or other natural growth overhanging any of its Electrical Facilities within the County Rights-of-Way

in the Service Area so as to prevent branches from coming in contact with the Grantee's wires, cables, or other equipment; provided, however, the Grantee shall be responsible for cleanup and properly disposing of any such trimmings or other debris. 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. The Grantee shall reasonably compensate the County for any damage caused by such trimming, or shall, in its sole discretion and at its own cost and expense, with the prior written consent of the County, reasonably replace all trees or shrubs damaged as a result of any construction, operation, maintenance, or replacement of the Electrical Facilities undertaken by the Grantee. Such replacement shall satisfy any and all obligations the Grantee may have to the County pursuant to the terms of this subsection. Nothing herein shall be construed to be a grant by the County to the Grantee of the right to trim trees not within the County Rights-of-Way without the permission of the landowner.

**3.8 Safety Requirements.** Construction, operation, maintenance, and replacement of the Electrical Facilities shall be performed in an orderly and workmanlike manner. All such work shall be performed in accordance with generally applicable federal, state, and local laws and regulations and the National Electric Safety Code. The Electrical Facilities shall not endanger or unreasonably interfere with the safety of Persons or property in the Service Area.

**3.9 Aerial and Underground Construction.**

**3.9.1** In addition to the installation of underground electric distribution lines as provided by applicable state law and regulations, Grantee shall, upon payment of all charges provided in its tariffs or their equivalent, place newly constructed Electrical Facilities within the County Rights-of-Way underground in those areas of the Service Area where all of the transmission or distribution facilities of the respective public utilities are underground.

**3.9.2** In those areas of the Service Area where the transmission or distribution facilities of the respective public utilities are both aerial and underground, the Grantee shall consult with the County Engineer to determine whether the construction will be aerial or underground, and wherever feasible depending on the location, and the nature of the facilities, construct, operate, and maintain its Electrical Facilities within the County Rights-of-Way, or any part thereof, underground, in accordance with the County's ordinances, Grantee's standard practices, and Grantee's approved tariffs, rules and regulations. If the reason for not putting the Electrical Facilities underground is seasonal, the County and the Grantee shall work together to establish a reasonable timeline to place the facilities underground when weather permits.

**3.9.3** In those areas of the Service Area where existing aerial Electrical Facilities of Grantee are within the County Rights-of-Way and must be relocated, and the County requests that the Electrical Facilities be relocated underground, Grantee shall relocate such Electrical Facilities underground and shall charge the County the difference in installation costs between aerial and underground relocation.



**3.9.4** For the purposes of this Franchise, facilities to be placed “underground” shall be installed at least twenty-four (24) inches below the surface grade.

**3.9.5** In the event that Grantee desires to locate new or substantially expand existing Electrical Facilities on any County-owned property that does not fall within the definition of County Rights-of-Way, as provided herein (including but not limited to Class D County Roads), and such property is not planned to be developed into a Class B County Road within the reasonably foreseeable future (whether as part of the development that is driving Grantee’s need to locate new facilities or expand existing facilities or otherwise), and Grantee is not otherwise required to obtain a conditional use permit for the project, then Grantee shall petition the County for an encroachment permit (the “**Encroachment Permit**”). The petition for an Encroachment Permit shall be filed with the County Engineer, who shall make a recommendation to the County Council. After holding a noticed public hearing, the County Council shall approve, deny, or approve with conditions the Encroachment Permit. Such Encroachment Permit, according to its terms, may thereafter be incorporated into this Franchise Agreement. Provided, however, the provisions of this paragraph shall not apply when the need to locate or expand facilities is predicated upon a request by the County for Grantee to provide electrical service to the County as Grantee’s customer.

**3.10 Extensions of Electrical Facilities.** The Grantee shall have the right, but not the obligation, to extend Electrical Facilities into any portion of the Service Area where another operator is providing electrical utility services, into any annexed area which is not contiguous to the present Service Area of the Grantee, or into any area which is financially or technically infeasible due to extraordinary circumstances.

**3.11 Trenching; Notice.** Before installing new underground conduits or replacing existing underground conduits (except in the event of an emergency), Grantee shall first notify the County of such work by written notice and shall allow the County, at its own expense, to share the trench of Grantee to lay its own conduit therein, provided that such action by the County will not unreasonably interfere with Grantee’s Electrical Facilities or delay project completion.

**3.12 Technical Standards.** The Grantee is responsible for ensuring that the Electrical Facilities are designed, installed, operated, maintained, and replaced in a manner that fully complies with federal, state and local laws and regulations as revised or amended from time to time. As provided in these rules, the County shall have, upon request, the right to obtain a copy of tests and records required in accordance with appropriate rules.

**3.13 County Use of Electrical Facilities.** The County shall have the right without cost to use all poles and suitable overhead structures owned by Grantee within the County Right-of-Way for County 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 County for a public purpose and shall not include the provision of CATV, internet or similar services to the public. Provided further, that Grantee 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 Grantee’s use of same. Nothing herein shall be construed to require Grantee to increase pole size, alter the manner in which Grantee attaches its

equipment to poles, or alter the manner in which it operates and maintains its Electrical Facilities. County attachments shall be installed and maintained in accordance with the reasonable requirements of Grantee 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 Grantee in conjunction with Grantee's standard pole attachment application process. Grantee shall have the right to inspect, at the County's expense, such attachments to ensure compliance with this subsection and to require the County to remedy any defective attachments.

**3.14 Emergency Use.** In the case of any emergency or disaster, the Grantee shall, upon the request of the County, make available its communications facilities within the Service Area for the County to provide emergency information and instructions during emergency or disaster periods. The County shall permit only authorized persons to operate the equipment and take reasonable precautions to prevent any use of the Grantee's communications facilities in any manner that results in inappropriate use, or any loss or damage to the communications facilities. Except to the extent expressly prohibited by law, the County agrees to hold the Grantee, its employees, officers and assigns harmless from any claims arising out of the emergency use of its facilities by the County, including, but not limited to, reasonable attorneys' fees and costs.

**3.15 Subscriber Service Standards.**

The County reserves its right, subject to the limitations of state law and the statutes, rules, tariffs and regulations governing Grantee's operations, to establish lawful standards in addition to those established by the Utah Public Service Commission including:

- \* Customer service requirements.
- \* Construction schedules and other construction related requirements.
- \* Consumer protection laws.

**SECTION 4**

**Regulation by the County**

**4.1 Franchise Fee.** The Grantee shall pay to the County an annual franchise fee of \$7,500.00, which franchise fee shall be due on April 1<sup>st</sup> of each calendar year, which amount shall be subject to increase or decrease to reflect the change, if any (measured from April of the previous calendar year to April of the then-present calendar year), in the Consumer Price Index for All Urban Consumers (CPI-U) Mountain-Plains region; all items, not seasonally adjusted; 1982-1984=100. A service charge of one and a half percent (1.5%) per month of the total amount due shall be imposed on payments made more than thirty (30) days past due.

**4.2 Renewal of Franchise.**

**4.2.1** This Franchise Agreement may be renewed by the Parties for one or more successive ten (10) year periods if, between one hundred twenty (120) days and thirty (30) days prior to the expiration the Term (the "**Renewal Election Period**"), the Grantee

provides written notice to the Summit County Manager at Summit County Courthouse, 60 N. Main St., P.O. Box 128, Coalville, Utah 84017, of the Grantee's election to renew the same on the same terms and conditions as set forth in this Franchise Agreement. If within thirty (30) days following receipt of said notice, the County does not provide to the Grantee written notice of objection to the renewal of this Franchise Agreement, this Franchise Agreement shall, without any further action on the part of the County or the Grantee, renew for an additional ten (10) year Term (a "**Renewal**"). If the County does timely object to renewal, or if either Party provides written notice to the other Party during the Renewal Election Period that it desires to enter into a new franchise agreement with different terms and conditions than contained herein, the County and the Grantee shall negotiate in good faith for the adoption of a new franchise agreement. Grantee shall have the right to continue using the County Rights-of-Way as set forth herein, under the same terms and conditions provided in this Franchise Agreement, so long as the Parties are negotiating in good faith towards an extension or replacement franchise agreement; provided that the County retains all rights it may have to terminate Grantee's right to occupy the County Rights-of-Way on a prospective basis, using any and all available legal means. If the County and Grantee are unable to agree on a replacement franchise agreement, nothing herein shall limit the Parties' respective legal rights.

**4.2.2** The Grantee and the County agree that at any time during the Term, while affording the public appropriate notice and opportunity to comment, the County and the Grantee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the County may grant a renewal thereof.

**4.3** **Transfer of Franchise.** The Grantee's right, title, or interest in the Franchise shall not be sold, transferred or assigned to another entity, except transfers and assignments by operation of law, or to affiliates, parents or subsidiaries of Grantee which assume all of Grantee's obligations hereunder, without the prior written consent of the County, such consent not to be unreasonably withheld. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Electrical Facilities in order to secure indebtedness. Within thirty (30) days of receiving a request for transfer, the County shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If the County has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request, consent by the County shall be deemed given.

## **SECTION 5**

### **Review of Books and Records**

In the event the County elects to adopt standards as contemplated in Section 3.15, the County, upon thirty (30) days written notice to the Grantee, but no more often than once every three (3) years, may review such of the Grantee's books and records at the Grantee's business office, during normal business hours and on a nondisruptive basis, as is reasonably necessary to ensure compliance with such standards. Such records shall include, but shall not be limited to, any public records required to be kept by the Grantee pursuant to the rules and regulations of the Utah Public Service Commission or FCC. Such notice shall specifically reference the section of the Franchise

which is under review, so that the Grantee may organize the necessary books and records for easy access by the County. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years from the date of the book or record. Notwithstanding anything to the contrary set forth herein, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature, nor disclose books and records of any affiliate which is not providing Electrical Utility Service in the Service Area. The County agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. The Grantee shall not be required to provide Subscriber information.

## SECTION 6

### Indemnification

6.1 [Intentionally omitted]

6.2 **Indemnification.** The Grantee agrees to indemnify, save and hold harmless, and defend the County, and its officers, boards and employees that are acting within the scope of their employment, from and against any and all claims, demands, liens, and all liability for damages of whatsoever kind, including but not limited to any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of the Grantee's use or occupancy of the County Rights-of-Way, or any of Grantee's acts or omissions, pursuant to or related to this Franchise, and to pay any and all costs, including reasonable attorneys' fees incurred by the County in defense of such claims, demands or liens brought thereunder. The County shall: (a) give prompt written notice to Grantee of any claim, demand or lien with respect to which the County seeks indemnification hereunder; and (b) permit Grantee to assume the defense of such claim, demand, or lien. Notwithstanding the foregoing, the Grantee shall not indemnify the County for any damages, liability or claims resulting from the willful misconduct or negligence of the County. All settlements of claims, demands, liens and liability against the County that are triggered by this indemnification provision shall require the consent of the County, which consent shall not be unreasonably withheld.

## SECTION 7

### Enforcement

7.1 **Breach of Franchise; Dispute Resolution.** In the event either Party, by act or omission, materially violates a material duty herein set forth in any particular within such Party's control, and with respect to which redress is not otherwise herein provided, then:

7.1.1 With respect to a default by Grantee, the County, acting by or through its County Manager, may determine, after hearing, that such failure is of a material nature, and thereupon, after written notice giving the Grantee notice of such determination, the Grantee, within sixty (60) calendar days of such notice, shall commence efforts to remedy the conditions identified in the notice and shall have ninety (90) calendar days from the date it receives notice to remedy the conditions, provided that in the event such failure is

of such nature that it cannot be reasonably corrected within the 90-day time period provided above, the County Manager shall provide additional time for the reasonable correction of such alleged failure if the reason for the noncompliance was not the intentional or negligent act or omission of the Grantee.

**7.1.2** If a default is not remedied to the other Party's reasonable satisfaction within a reasonable time period, a representative of Grantee who is a senior executive of such Party and the County Manager shall meet in good faith to determine a mutually agreeable remedy.

**7.1.3** If the representative of Grantee and the County Manager are unable to reach a mutually agreeable solution through the process set forth in Section 7.1.2 above, then the dispute shall be presented to the Summit County Council, acting in its capacity as the Highway Authority to resolve the matter.

**7.2** **Remedies at Law.** In the event the Grantee or the County fails to fulfill any of their respective obligations under this Franchise and the Parties are unable to come to a mutually agreeable resolution in accordance with the provisions of Section 7.1, the County or the Grantee, whichever the case may be, shall be entitled to such remedies in law or equity, including specific performance, and shall have a breach of contract claim and remedy against the other, in addition to any other remedy provided herein or by law; provided, however, that no remedy that would have the effect of amending the specific provisions of this Franchise shall become effective without such action that would be necessary to formally amend the Franchise.

**7.3** **Third Party Beneficiaries.** The benefits and protection provided by this Franchise shall inure solely to the benefit of the County and the Grantee. This Franchise shall not be deemed to create any right in any Person who is not a Party and shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party (other than the permitted successors and assigns of the Parties hereto).

**7.4** **Uncontrollable Events.** The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by strikes, acts of God, power outages, or other events reasonably beyond its ability to control including any delays caused by the County.

**7.5** **Bonds and Surety.**

**7.5.1** Except as expressly provided herein, the Grantee shall not be required to obtain or maintain bonds or other surety as a condition of being awarded the Franchise or continuing its existence. The Grantee and the County recognize that the costs associated with bonds and other surety may be ultimately borne by the Subscribers in the form of increased rates for Electrical Utility Services. Initially, no bond or other surety will be required. In the event that one is required in the future, the County agrees to give the Grantee at least sixty (60) days prior written notice thereof stating the exact reason for the requirement.

7.5.2 Notwithstanding the above provisions, the Grantee shall be responsible for standard performance bonds and insurance required for encroachment permits for work done within the County Rights-of-Way.

## **SECTION 8**

### **Annexation**

**8.1 Extension of County Limits.** Upon the annexation of any territory to the County, the rights granted herein shall extend to the annexed territory to the extent the County has such authority. All Electrical Facilities owned, maintained, or operated by Grantee located within any County Rights-of-Way of the annexed territory shall thereafter be subject to all of the terms hereof.

**8.2 Notice of Annexation.** When any territory is approved for annexation to the County, the County shall, not later than ten (10) business days after passage of an ordinance approving the proposed annexation, provide by certified mail to Grantee: (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 County'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

## **SECTION 9**

### **Miscellaneous Provisions**

**9.1 Actions of Parties.** In any action by the County or the Grantee that is mandated or permitted under the terms hereof, such Party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

**9.2 Entire Agreement.** This Franchise (a) supersedes all previous franchise agreements between the Parties, including but not limited to that certain Franchise Agreement dated December 3, 1969, and (b) constitutes the entire agreement between the Grantee and the County on the subject of Electrical Utility Service. Amendments to this Franchise Agreement for any purpose, including but not limited to any changes in state or federal law, shall be mutually agreed to in writing by the Parties.

**9.3 Notice.** Unless expressly otherwise agreed between the Parties, every notice or response required by this Franchise Agreement to be served upon the County or the Grantee shall be in writing and shall be deemed to have been duly given to the required Party when placed in a properly sealed and correctly addressed envelope: (a) upon receipt when hand delivered with receipt/acknowledgment, or (b) upon receipt when sent certified or registered mail.

The notices or responses to the County shall be addressed as follows:

Summit County Manager  
60 North Main Street  
PO Box 128  
Coalville UT 84017

With Copy to:

Summit County Attorney  
60 North Main Street  
P.O. Box 128  
Coalville, UT 84017

The notices or responses to the Grantee shall be addressed as follows:

Rocky Mountain Power  
Attn: Regional Business Management Director  
1407 W. North Temple, Suite 310  
Salt Lake City, UT 84116

With Copy to:

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

The County and the Grantee may designate such other address or addresses from time to time by giving notice to the other in the manner provided for in this Section.

**9.4 Descriptive Headings.** The captions to sections and subsections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

**9.5 Severability.** If any section, subsection, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.

**9.6 Applicable Law.** The terms and conditions contained herein shall be interpreted according to the laws of the State of Utah, except where expressly preempted by federal law.

**9.7 No Waiver.** Neither the County nor Grantee shall be excused from complying with any of the terms and conditions of this Franchise 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.

**9.8 Jury Waiver.** 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 Franchise 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.

**9.9 Survival.** Notwithstanding any provisions in this Franchise Agreement or of law to the contrary, the Parties agree that Section 6.2 (Indemnification) shall survive termination of this Franchise Agreement.

**9.10 Counterparts.** This Franchise Agreement may be executed in several counterparts and all so executed shall constitute one agreement binding on all the Parties, notwithstanding that each of the Parties are not signatory to the original or the same counterpart. Further, executed copies of this Franchise Agreement delivered by facsimile shall be deemed an original signed copy of this Franchise Agreement.



**IN WITNESS WHEREOF, the Parties hereto sign and cause this Franchise Agreement to be executed.**

SUMMIT COUNTY

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Roger Armstrong, Chair  
Summit County Council

ATTEST:

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Kent Jones  
Summit County Clerk

APPROVED AS TO FORM:

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David L. Thomas  
Chief Civil Deputy

**IN WITNESS WHEREOF, the Parties hereto sign and cause this Franchise to be executed.**

PACIFICORP, an Oregon Corporation doing  
business in Utah as ROCKY MOUNTAIN POWER

By: 

George Humbert

Director, Customer and Community Management