



Date: February 3, 2022

To: Weber County Board of County Commissioners

From: Sean Wilkinson, AICP *SW*  
Director, Community Development Department

Subject: **Request for approval of a franchise agreement with Rocky Mountain Power for the purpose of installing, operating, and maintaining electrical distribution and transmission lines and other related facilities within the public rights of way of Weber County**

Agenda Date: February 8, 2022

Documents: Exhibit A: Franchise Agreement

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**Summary:**

Rocky Mountain Power (RMP) is requesting approval of a new franchise agreement granting a non-exclusive franchise for the purpose of installing, operating, and maintaining electrical distribution and transmission lines and other related facilities within the public rights of way of Weber County. Following is a brief summary of the agreement:

- The initial term is for 10 years, with the option to reach 50 years on a year to year basis.
- If the County enacts an ordinance governing franchises, or existing laws change, the County may propose an updated agreement.
- The franchise is non-exclusive and does not prevent other franchisees from locating infrastructure in the County's rights of way, with the provision that the County will not allow other franchisees to unreasonably interfere with RMP's facilities.
- RMP must obtain the required excavation and construction permits prior to any work in the County's rights of way, except in emergency situations.
- RMP will provide as-built plans of its facilities to Weber County.
- RMP will relocate its facilities at its own expense if the County conducts work within its rights of way requiring such relocation, unless the relocation is caused by a private development.
- RMP will indemnify the County for any damage, injury, etc. that may occur under this franchise.

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

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WHEREAS, Rocky Mountain Power is a regulated public utility that provides electric power and energy to the citizens of Weber County (the “County”) 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 County;

WHEREAS, the County, 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 general utility easement for the use thereof;

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

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

**SECTION 1. Grant of Franchise and General Utility Easement.** The County hereby grants to Rocky Mountain Power the following franchise: 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, and rights-of-way, not including County parks, buildings or other spaces not associated with County-owned rights-of-way (collectively referred to herein as “Public Ways”) within the County, for the purpose of supplying and transmitting electric power and energy to persons and entities both inside and outside of Weber County. However, nothing contained herein shall be construed to grant or convey any right, title, or interest in the Public Ways of the County beyond what is stated in the first sentence of this Section to Rocky Mountain Power, nor shall anything contained herein constitute a warranty of title.

**SECTION 2. Term of Franchise and County’s Authority to Amend or Terminate.**

**2.1** Subject to the conditions of this Section 2, the first term of this Franchise and General Utility Easement shall be for a period of ten (10) years from the effective date of this agreement. This initial term will be automatically extended thereafter on a year to year basis unless either party provides written notice to the other party, at least 120 days before the end of the term, of its intent to terminate this agreement and the franchise. After such notice, the parties may negotiate for a renewal agreement, if desired.

**2.2** In no case will the initial term last longer than 50 years. Before the expiration of 50 years from the effective date of this agreement, the parties must execute a renewal agreement or the franchise will terminate.

**2.3** If, during the term of this agreement, including any extension, the County enacts an ordinance governing franchises, or if any other applicable law changes, then the County may notify Rocky Mountain Power of the terms of the new law and may propose an amended franchise agreement that conforms to the new law. If, by 120 days after receipt of the proposed amended agreement, Rocky Mountain Power has not executed a mutually agreeable amended franchise agreement that conforms to the new law, then the County may, at its sole option, terminate this agreement, thereby terminating the franchise.

### **SECTION 3. [Reserved]**

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

**SECTION 5. County Regulatory Authority.** In addition to the provisions herein contained, the County 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 to exercise any other rights, powers, or duties required or authorized, under the Constitution of the State of Utah, the laws of Utah or County Ordinance.

**SECTION 6. Indemnification.** The County 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 and hold the County 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 County, and shall pay the costs of defense plus reasonable attorneys' fees for any claim, demand or lien brought thereunder. The County shall give prompt written notice to Rocky Mountain Power of any claim, demand or lien with respect to which the County seeks indemnification hereunder. Notwithstanding any provision hereof to the contrary, Rocky Mountain Power shall not be obligated to indemnify, defend or hold the County 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 County or any of its officers or employees.

### **SECTION 7. Annexation.**

**7.1 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 Rocky Mountain

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

**7.2 Notice of Annexation.** When any territory is approved for annexation to the County, the County shall, not later than ten (10) working days after the annexation takes effect, provide by certified mail to Rocky Mountain Power: (a) each site address to be annexed as recorded on county assessment and tax rolls; (b) a legal description of the proposed boundary change; and (c) a copy of the Governor's proclamation affirming the 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 County, UT 84116

## **SECTION 8. Plan, Design, Construction and Installation of Electrical Facilities.**

**8.1** All Electrical Facilities installed or used under authority of this Franchise shall be used, constructed and maintained in accordance with applicable federal, state and county laws, codes and regulations.

**8.2** Except in the case of an emergency, Rocky Mountain Power shall, prior to commencing new construction or major reconstruction work in the Public Ways, apply for any permit from the County as may be required by the County's ordinances, which permit shall not be unreasonably withheld, conditioned, or delayed. Rocky Mountain Power will abide by all applicable ordinances and all reasonable rules, regulations and requirements of the 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, Rocky Mountain Power shall not be obligated to obtain a permit to perform emergency repairs. After construction is complete, Rocky Mountain Power shall provide the County with accurate copies of as-built plans and maps showing the Electrical Facilities.

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

**8.4** 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 reasonably approved by the County) replace and restore it in as good a condition as existed before the work commenced.

**8.5** In addition to the installation of underground electric distribution lines as provided by applicable state law and regulations, Rocky Mountain Power shall, upon payment of all charges provided in its tariffs or their equivalent, place newly constructed electric distribution lines underground as may be required by County ordinance.

**8.6** The County shall have the right without cost to use all poles and suitable overhead structures owned by Rocky Mountain Power within Public Ways 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 this right 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 County 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. County attachments shall be installed and maintained in accordance with the reasonable requirements of Rocky Mountain Power and the current edition of the National Electrical Safety Code pertaining to such construction. Further, County attachments shall be attached or installed only after written approval by Rocky Mountain Power in conjunction with Rocky Mountain Power's standard pole attachment application process. Rocky Mountain Power shall have the right to inspect, at the County's expense, such attachments to ensure compliance with this Section 8.6 and to require the County to remedy any defective attachments.

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

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

**SECTION 9. Relocations of Electric Facilities.**

**9.1** The County 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 County. 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 County 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 County.

If the relocation is made necessary by the actions of a third party in a situation not covered by Section 9.2, then the County shall assign or otherwise transfer to Rocky Mountain Power all right it may have to recover the cost for the relocation work and shall cooperate with the efforts of Rocky Mountain Power to obtain reimbursement.

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

**SECTION 10. Subdivision Plat Notification.** Rocky Mountain Power may request access to the County's online project tracking system, which will give Rocky Mountain Power the ability to see subdivision applications. Through that system, Rocky Mountain Power may make review comments to the County and the applicant.

**SECTION 11. 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.

**SECTION 12. Termination for Cause.**

**12.1** This franchise may be terminated for failure by Rocky Mountain Power to comply with the material provisions hereof and other provisions of the County ordinances.

**12.2** If the County has reason to believe that Rocky Mountain Power is in violation of this franchise or other provisions of the County ordinances, the following procedures shall be followed by the County:

- (a) The County shall provide Rocky Mountain Power with a detailed, written notice by certified mail detailing the violation, the steps necessary to cure such violation, and the time period within which the violation must be cured. Within thirty (30) days thereafter, Rocky Mountain Power shall respond demonstrating that no violation occurred, that any problem has been corrected, or with a proposal to correct the problem within a specified period of time.
- (b) Rocky Mountain Power may request an extension of time to cure an alleged violation if construction is suspended or delayed by the County or where unusual weather, natural consequences, extraordinary acts of third parties, or other circumstances which are reasonably beyond the control of Rocky Mountain Power delay progress, provided that Rocky Mountain Power has not, through its own actions or inactions, contributed to the delay.
- (c) If Rocky Mountain Power's response is not satisfactory to the County, the County may declare a default by sending written notice by certified mail to Rocky Mountain Power. Within ten (10) business days after notice to Rocky Mountain Power, Rocky Mountain Power may deliver to the County a request for a hearing before the County Commission. If no such request is received, the County may declare the franchise terminated for cause.
- (d) If Rocky Mountain Power files a timely written request for hearing, such hearing shall be held within thirty (30) days after the County's receipt of the request therefor. The hearing shall be open to the public, and Rocky Mountain Power and other interested parties may offer written and/or oral evidence explaining or mitigating the alleged noncompliance. Within ten (10) days after the hearing, the County Commission on the basis of the record will make the determination as to whether there is cause for termination and whether the franchise will be terminated. The County Commission may, in its sole discretion, fix an additional time period to cure violations. If the deficiency has not been cured at the expiration of any additional time period, or if the County Commission does not grant any additional period, the County Commission may, by resolution, declare the franchise to be terminated.
- (e) If Rocky Mountain Power appeals revocation and termination, the revocation may be held in abeyance pending judicial review by a court of competent jurisdiction, provided Rocky Mountain Power is otherwise in compliance with this franchise.

**12.3** Rocky Mountain Power shall not be deemed to be in default, failure, violation or noncompliance with any provision of this franchise where performance was rendered impossible due to an act of God, fire, flood, storm, or other element, or casualty, theft, war, disaster, strike, lockout, boycott, prevailing war, or war preparation, or bona fide legal proceedings, beyond the control of Rocky Mountain Power.

**SECTION 13. No Waiver.** Neither the County 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.

**SECTION 14. 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, or to affiliates, parents or subsidiaries of Rocky Mountain Power which assume all of Rocky Mountain Power's obligations hereunder, unless the County shall first give its approval in writing, which approval shall not be unreasonably withheld, conditioned or delayed; provided, however, Rocky Mountain Power may assign, mortgage, pledge, hypothecate or otherwise transfer without consent its interest in this Franchise to any financing entity, or agent on behalf of any financing entity to whom Rocky Mountain Power (1) 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 15. Amendment.** At any time during the term of this Franchise, either party 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). However, except as provided in Section 2.3, neither party is obligated to agree to proposed amendments. No amendment or amendments to this Franchise shall be effective until mutually agreed upon by the County and Rocky Mountain Power and formally adopted through an executed amended agreement.

**SECTION 16. Notices.** Unless otherwise specified herein, all notices from Rocky Mountain Power to the County pursuant to or concerning this Franchise shall be delivered to the County Engineer's Office, with a copy to the County Attorney's Office, at 2380 Washington Blvd., Suites 240 and 230, respectively, Ogden, Utah, 84401. Unless otherwise specified herein, all notices from the County to Rocky Mountain Power pursuant to or concerning this Franchise shall be delivered to the Regional Business Management Director, Rocky Mountain Power, 1438 West 2550 South, Ogden, Utah, 84401, and such other office as Rocky Mountain Power may advise the County of by written notice.

**SECTION 17. 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 is found 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. However, if the invalid provision is material to the agreement, then the parties shall promptly negotiate in good faith to amend the agreement to replace the invalid provision with a valid provision that matches, as closely as possible, the original intent of the parties.



**SECTION 18. 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 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 19. Effective Date.** This franchise agreement takes effect on the date it is signed by the last party to sign.

(Signatures on following page)

BOARD OF COUNTY COMMISSIONERS OF  
WEBER COUNTY

By \_\_\_\_\_  
Scott K. Jenkins, Chair

Date \_\_\_\_\_

Commissioner Froerer voted \_\_\_\_\_  
Commissioner Harvey voted \_\_\_\_\_  
Commissioner Jenkins voted \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Ricky Hatch, CPA  
Weber County Clerk/Auditor

ROCKY MOUNTAIN POWER

Signature \_\_\_\_\_

Printed Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_