

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

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WHEREAS, Rocky Mountain Power (or "Company"), is a regulated public utility (also known as an "energy supplier") that provides electric power and energy to the citizens of the Town of Castle Valley (the "Town") 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 Town;

WHEREAS, the Town, 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 its use;

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

NOW, THEREFORE, be it ordained by the Town that it enters into the following agreement with the Company:

**SECTION 1. Grant of Franchise and General Utility Easement.** The Town 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 as "Electric Facilities") in, under, along, over and across the present and future streets, alleys, and rights-of-way, not including Town parks, buildings or other spaces not associated with Town-owned rights-of way (collectively referred to as "Public Ways") within the Town, for the purpose of supplying and transmitting electric power and energy to the inhabitants of the Town and persons and corporations beyond the town limits.

**SECTION 2. Term.** The term of this agreement granting a franchise and general utility easement is for **(20) years** commencing on the date of acceptance by the Company as set forth in Section 3 below.

**SECTION 3. Acceptance by Company.** Prior to the Town presenting this Ordinance to the Town Council, Rocky Mountain Power shall sign this agreement. The Town, upon passage of the Ordinance, shall file the Ordinance with the Town Recorder otherwise the Ordinance and the rights granted in it shall be null and void.

**SECTION 4. Non-Exclusive Franchise.** The right to use and occupy the Public Ways of the Town shall be nonexclusive and the Town reserves the right to use the Public Ways for itself or any other entity that provides service to Town residences; 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. Town Regulatory Authority.** In addition to the provision contained in this Ordinance, the Town 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 Town Ordinance.

**SECTION 6. Indemnification.** The Town 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 Town 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 Town, and shall pay the costs of defense plus reasonable attorneys' fees for any claim, demand or lien brought against the Town. The Town shall: (a) give prompt written notice to Rocky Mountain Power of any claim, demand or lien with respect to which the Town seeks indemnification; and (b) permit Rocky Mountain Power to assume the defense of such claim, demand, or lien. If such defense is not assumed by Rocky Mountain Power, Rocky Mountain Power shall not be subject to liability for any settlement made without its consent. Notwithstanding any provision in this agreement to the contrary, Rocky Mountain Power shall not be obligated to indemnify, defend or hold the Town 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 Town or any of its officers or employees.

## **SECTION 7. Annexation.**

**7.1 Extension of Town Limits.** Upon the annexation of any territory to the Town, the rights granted in this agreement shall extend to the annexed territory to the extent the Town has such authority. All Electrical Facilities owned, maintained, or operated by Rocky Mountain Power located within any public ways of the annexed territory shall be subject to all of the terms of this agreement.

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

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

**8.1** All Electrical Facilities installed or used under authority of this agreement shall be used, constructed, and maintained in accordance with applicable federal, state and town 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 Town as may be required by the Town'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 Town, and the Town 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.

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

**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 Town) 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 Town ordinance.

**8.6** The Town shall have the right without cost to use all poles and suitable overhead structures owned by Rocky Mountain Power within Public Ways for Town 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 Town 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 Town shall be in such a manner as to prevent safety hazards or interferences with Rocky Mountain Power's use of same. Nothing in this agreement 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. Town 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, Town 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 Town's expense, such attachments to ensure compliance with this Section 8.6 and to require the Town 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 Town. Before installing new underground conduits or replacing existing underground conduits, Rocky Mountain Power shall first notify the Town of such work by written notice and shall allow the Town, 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 Town 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 Town shall give written notice to Rocky Mountain Power.

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

**9.1** The Town 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 Town. 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 Town 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 Town. The Town 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.

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

Rocky Mountain Power  
Attn: Estimating Department  
400 N 100 W  
Moab UT 84532

**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. No vegetation inhibitor will be used within Town limits without notifying the Town prior to use. 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. Renewal.** At least 120 days prior to the expiration of this agreement, Rocky Mountain Power and the Town either shall agree to extend the term of this agreement for a mutually acceptable period of time or the parties shall use best faith efforts to renegotiate a replacement agreement. Rocky Mountain Power shall have the continued right to use the Public Ways of the Town as set forth herein in the event an extension or replacement agreement is not entered into upon expiration of this agreement.

**SECTION 13. No Waiver.** Neither the Town nor Rocky Mountain Power shall be excused from complying with any of the terms and conditions of this agreement by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions.

**SECTION 14. Transfer of Franchise.** Rocky Mountain Power shall not transfer or assign any rights under this agreement 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, unless the Town 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 agreement 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, (ii) has obligations evidenced by bonds, debentures, notes or similar instruments, or

(iii) has obligations under or with respect to letters of credit, banker's acceptances and similar facilities or in respect of guaranties.

**SECTION 15. Amendment.** At any time during the term of this agreement, the Town through its Town Council, or Rocky Mountain Power may propose amendments to this agreement by giving thirty (30) days written notice to the other party of the proposed amendment(s) desired, and both parties, through their designated representatives, will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s). No amendment or amendments to this agreement shall be effective until mutually agreed upon by the Town and Rocky Mountain Power and formally adopted as an ordinance amendment, which is accepted in writing by Rocky Mountain Power.

**SECTION 16. Notices.** Unless otherwise specified in this agreement, all notices from Rocky Mountain Power to the Town pursuant to or concerning this agreement shall be delivered to the Town Recorder's Office. Unless otherwise specified in this agreement, all notices from the Town to Rocky Mountain Power pursuant to or concerning this agreement 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 Town of by written notice.

**SECTION 17. Severability.** If any section, sentence, paragraph, term or provision of this agreement is for any reason determined to be illegal, invalid, or superseded by other lawful authority including any state or federal regulatory authority having jurisdiction 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, all of which will remain in full force and effect for the term of this agreement or any renewal or renewals.

**SECTION 18. Governing Law.**

This agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of Utah. Legal actions concerning any dispute, claim or matter arising out of or in relation to this proposal shall be instituted in the Superior Court of the County of Grand, State of Utah, or any other appropriate court in such county, and the parties covenant and agree to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the District of Utah, Tenth Circuit. Additionally, any documents provided to the Town are governed by the Utah Government Records Access and Management Act.

**SECTION 19. No Waiver of Governmental Immunity.**

The Town advises that it is a governmental entity in the State of Utah and is bound by the provisions of the Utah Governmental Immunity Act (Title 63G, Chapter 7, Utah Code Annotated, 1953, as amended) and does not waive any procedural or substantive defense or benefit provided or to be provided by the Governmental Immunity Act or comparable legislative

enactment, including without limitation, the provisions of Section 63G-7-604 regarding limitation of judgments. Any indemnity and insurance obligations incurred by the Town under this proposal are expressly limited to the amounts identified in the Act. Further, nothing in this cooperative agreement shall be deemed to abrogate or waive any immunity possessed by the Town, including immunity under the Utah Governmental Immunity Act, U.C.A. § 63G-6-101, et seq., or other applicable law.

Signed by Rocky Mountain Power

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

Title: \_\_\_\_\_  
Rocky Mountain Power

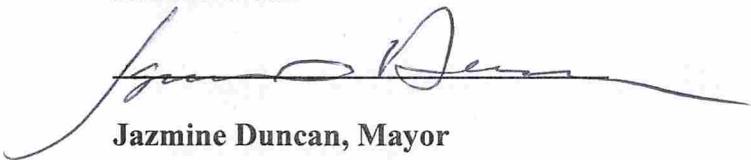
Date: \_\_\_\_\_

**PASSED, ADOPTED AND APPROVED** by the Town Council of the Town of Castle Valley Utah this 21<sup>st</sup> day of December, 2022.

**Aye:** Mayor Duncan, Council Members Gibson, Hill, Holland and O'Brien

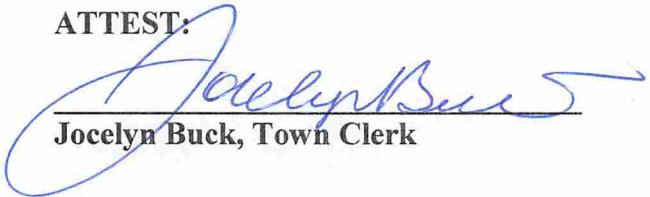
**Nay:** None

**Absent:** None



Jazmine Duncan, Mayor

ATTEST:



Jocelyn Buck, Town Clerk



70 North 2nd East  
American Fork, Utah 84003

January 4, 2023

To the Honorable Mayor and  
Town Council  
Castle Valley, Utah

Gentlemen/Ladies:

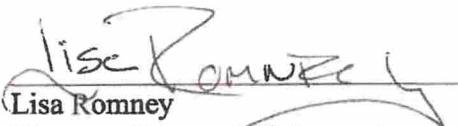
This is to advise Town of Castle Valley, Utah, that on February 1, 2023, ROCKY MOUNTAIN POWER hereby accepts the terms and provisions of Franchise Ordinance passed by your Honorable Body on December 22, 2022, granting a Franchise Ordinance to ROCKY MOUNTAIN POWER for a period of twenty (20) years entitled:

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

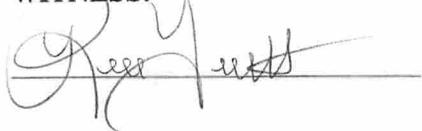
And files this, its written acceptance in accordance with all requirements of said ordinance.

Very truly yours,  
Rocky Mountain Power

By:

  
Lisa Romney  
Director, Commercial Accounts  
& Community Relations

WITNESS:



Ex. 3-2042

