

COTTONWOOD HEIGHTS

RESOLUTION No. 2021-54

A RESOLUTION APPROVING AN AGREEMENT WITH PACIFICORP FOR STORM WATER UTILITY BILLING SERVICES

WHEREAS, the city council (the “*Council*”) of the city of Cottonwood Heights (the “*City*”) met in regular session on 2 November 2021 to consider, among other things, approving a “Billing Services Agreement” (the “*Agreement*”) with Pacificorp (“*Provider*”) whereunder Provider will provide billing services for the City’s storm water utility to the common customers of Provider and the City as specified in the Agreement; and

WHEREAS, the Council has reviewed the form of the Agreement, a photocopy of which is annexed hereto; and

WHEREAS, after careful consideration, the Council has determined that it is in the best interests of the health, safety and welfare of the citizens of the City to approve the City’s entry into the Agreement as proposed;

NOW, THEREFORE, BE IT RESOLVED by the Cottonwood Heights city council that the attached Agreement is hereby approved, and that the City’s mayor and recorder are authorized and directed to execute and deliver the Agreement on behalf of the City.

This Resolution, assigned no. 2021-54, shall take effect immediately upon passage.

PASSED AND APPROVED effective 2 November 2021.

ATTEST:

By:

Paula Melgar, Recorder



COTTONWOOD HEIGHTS CITY COUNCIL

By:

Michael J. Peterson, Mayor

VOTING:

Michael J. Peterson

Yea ☒ Nay ☐

Douglas Petersen

Yea ☒ Nay ☐

J. Scott Bracken

Yea ☒ Nay ☐

Tali C. Bruce

Yea ☐ Nay ☐

Christine Watson Mikell

Yea ☒ Nay ☐

excused

DEPOSITED in the office of the City Recorder this 2nd day of November 2021.

RECORDED this 2nd day of November 2021.

BILLING SERVICES AGREEMENT

THIS BILLING SERVICES AGREEMENT ("Agreement") is entered into by and between PACIFICORP, an Oregon corporation, ("Company") and COTTONWOOD HEIGHTS, UT ("Contractor"), each a "Party" and together the "Parties."

WHEREAS, PacifiCorp, doing business as Rocky Mountain Power in Utah, and Contractor each provide services to certain customers that they have in common with each other, both natural persons and entities (each individually a "Customer" and collectively "Customers"); and

WHEREAS, Contractor desires PacifiCorp to bill the Parties' common customers for and to collect certain fees that are or will be owed to the Contractor, more specifically described as follows: Cottonwood Heights Storm Water Fees (collectively, the "Assigned Fees"); and

WHEREAS, PacifiCorp desires to provide such billing and collection services to Contractor.

NOW, THEREFORE, in mutual consideration of the promises contained herein, Company and Contractor agree as follows:

1. Assignment. Contractor hereby assigns to Company the right to bill and collect the Assigned Fees, subject to the provisions of this Agreement.

2. Information to Be Provided by Contractor. Contractor shall provide Company, in electronic format (acceptable to Contractor and Company), name, service address and billing address of each Customer, and the Assigned Fees for each Customer ("Customer Information"). As soon as possible, but no less than thirty (30) days prior to the date upon which Company's next regular billing statement will be sent to Customers, Contractor shall submit to Company written notice of any changes in the Customer Information. Contractor shall pay Company the fees as set forth in Section 4.b.

a. Contractor is responsible for communicating the adoption and collection of Assigned Fees by the Company to its residents. The Contractor shall provide customers contact information, including a toll-free telephone number, for inquiries related to Assigned Fees on their Rocky Mountain Power bill (see 3.e.)

3. Services. Company shall bill and collect from the Customers, on behalf of the Contractor, the Assigned Fees and to provide related services as follows:

a. Company shall include the Assigned Fees as a separate charge (line item) on its regular billing statements to Customers. Company shall only include Assigned Fees if Contractor supplies the Customer Information at least thirty (30) days prior to the date of the Customers' next regularly scheduled billing. Billing statements are typically sent to Company customers monthly, provided, however, that Company reserves the right to provide billing statements other than monthly. Company may prorate the Assigned Fees for the billing period in accordance with Company's regular billing practices.

b. Company shall establish service to Customers' accounts at existing points of service in conjunction with establishing new electric power Customer accounts. Where service other than electric is established at a new location, Contractor shall provide all information required by Company in order to establish the new service billing.

c. Company may provide separate billing statements for Assigned Fees to those Customers who use the services or goods giving rise to the Assigned Fees, or which are otherwise responsible for payment for the Assigned Fees but which are either not billed by Company for electric service or have elected not to allow third-party billing on their bills for electric service.

d. Company reserves the right to change its billing practices from time to time, without prior notice or consent from Contractor.

e. Company shall respond to the following types of general inquiries by Customers regarding the Assigned Fees: billing calculations, status of collections, and payments. However, it shall be the sole responsibility of Contractor to handle all inquiries and disputes concerning the amount of the Assigned Fees and any other inquiries concerning the Assigned Fees. Contractor is solely responsible for the accuracy of Assigned Fees billed by Company to Contractor's Customers to the extent that Company issues those bills in accordance with the Customer Information and Assigned Fees Contractor provides to Company. Contractor acknowledges that all billing and collection of the Assigned Fees by Company are strictly on a pass-through basis. Company is not liable to Contractor or Contractor's Customers for refunds of Assigned Fees, disputed bill amounts, or any amounts collected incorrectly to the extent that such charges are billed in accordance with the information provided by Contractor. Company shall refer all inquiries concerning the Assigned Fees to the following representative of Contractor:

Name: Matt Shipp

Title: Public Works Director

Toll-Free Telephone: 801.944.7000

Email: mshipp@ch.utah.gov

Fax: _____

Address: 2277 East Bengal Blvd., Cottonwood Heights, UT 84121

f. To the extent a Customer is both a Contractor and Company customer, unless otherwise specified by the Customer, Company shall first apply all payments received to Company's own tariffed services, and any remaining credit shall be allocated proportionally to other charges. Company shall notify Customers that become delinquent in the payment of the Assigned Fees of such delinquency and, subject to Company's standard internal procedures, shall make reasonable efforts to collect the Assigned Fees from such Customers. However, Company shall not issue electric service disconnect notices based solely upon past-due Assigned Fees. Company shall not issue notices of disconnection to Customers on behalf of Contractor for any reason. Company is not required to undertake collection efforts to collect the Assigned Fees other than those normally undertaken to collect on its own accounts. Company is not responsible for initiating legal proceedings to collect the Assigned Fees. Company reserves the right to

credit a Customer's account for any disputed Assigned Fees and refer the matter back to Contractor for collection, or to suspend the Customer's obligation of payment of disputed Assigned Fees until it is determined whether the charge was either knowingly used or authorized. If Contractor is unable to demonstrate that an Assigned Fee disputed by a Customer is authorized, then Company shall remove the charge from Customer bills within two billing cycles. If a disputed Assigned Fee is removed from a Customer bill pursuant to the prior sentence, then Contractor shall not attempt to collect that charge through bills issued by Company.

g. Company shall provide an annual report of Customers to the Contractor by a mutually-agreed to month, beginning [REDACTED] and will include billed and not collected Assigned Fees deemed "Delinquencies." Delinquencies are defined as Assigned Fees ninety (90) or more days past due as of the mutually-agreed to date of the annual report. Delinquencies on Customer accounts shall be set to a zero balance due, and the total amount of Delinquencies as of the annual report date will be deducted from the Contractor's next monthly remittance. The Contractor shall be responsible to collect all Delinquencies. Contractor acknowledges that none of the information in the annual report of Customers will include information derived from Company's provision of service to those Customers as an electric utility.

h. Within forty-five (45) days after the end of each calendar month, Company shall remit to Contractor the Assigned Fees billed by Company during the previous month.

4. Fees.

a) Contractor shall pay Company within fifteen (15) days of receipt of the invoice for monthly charges in the amount of:

i.	1 – 1,000 customer billings = \$ 500.00 per month
ii.	1,001 – 2,000 customer billings = \$1,000.00 per month
iii.	2,001 – 3,000 customer billings = \$1,500.00 per month
iv.	3,001 – 5,000 customer billings = \$2,500.00 per month
v.	5,001 – 10,000 customer billings = \$4,000.00 per month
vi.	10,001 – 15,000 customer billings = \$5,000.00 per month
vii.	15,001 – 20,000 customer billings = \$6,000.00 per month
viii.	20,001 – 25,000 customer billings = \$7,000.00 per month
ix.	25,001 – 30,000 customer billings = \$8,000.00 per month
x.	30,001 – 35,000 customer billings = \$9,000.00 per month

b) In addition to the fees payable pursuant to subparagraph (a), Contractor shall pay Company within fifteen (15) days of receipt of the invoice for monthly charges in the amount of seventy-seven dollars (\$77.00) per hour or current billable rates for time spent in excess of one-half hour for administrative work performed by Company with regard to the Customers and/or the Assigned Fees, including a one-time initial set up charge to establish the third party billing, customer changes, customer or billing research requests, non-routine or one-time reports, and/or other types of program support requested by the Contractor.

c) The fees referred to in subparagraphs (a) and (b) above may be reviewed annually by Company and may be increased by providing no less than thirty (30) days' written notice to Contractor.

5. Monthly Reports. Company is not obligated to produce any of the reports listed in this Section 5, until the Utah Public Service Commission approves a tariff enabling the Company to provide information related to Customers that arise from their relationship with Company as a regulated utility, or otherwise permits Company to provide such information in the absence of a tariff. After the condition in the preceding sentence has been met, and at the time collected Assigned Fees are remitted to Contractor, Company shall submit the following monthly reports to Contractor by Secure File Transfer (SFTP), encryption and/or password protected process:

- i. Monthly report setting forth the names of all Customers and the amount billed. Report may include arrears balance, write-offs, and recoveries.
- ii. Monthly exception reports with additions, and deletions.
- iii. Monthly report of electric services with no Contractor service; as applicable.
- iv. Monthly report with Contractor service and no electric service.

Contractor shall notify Company within thirty (30) days of receipt of the Monthly Reports of any billing discrepancies. Company shall make the modifications requested by Contractor upon such notification in the next practicable billing cycle. Contractor is solely responsible for addressing any billing discrepancies it finds after thirty (30) days of receiving the Monthly Reports.

6. Term; Termination. The term of this Agreement is effective on the later date below and remains effective for a period of ten (10) years, unless sooner terminated as provided herein. Either Party may terminate this Agreement for its convenience by providing no less than ninety (90) days' advance written notice to the other Party. The Parties shall enter into a termination agreement at least 60 days prior to the termination date to address issues including, but not limited to, timing, uncollected fees, and post-termination collections.

7. Limitation on Liability. Contractor indemnifies, and will defend and hold harmless Company and its affiliates, directors, board members, officers, employees, agents and contractors ("Company Indemnified Parties") against and from any and all claims, demands, suits, losses, costs and damages, including attorneys' fees and/or litigation expenses, brought or made against or incurred by Company Indemnified Parties resulting from, arising out of, or in any way connected with any act, omission, fault, negligence or willful misconduct related to the services under this Agreement. Notwithstanding the foregoing, in the event of any errors or omissions in the billing or collection of any Assigned Fees, Company's total liability and obligation to the Contractor is either; (a) the amount of unbilled Assigned Fees, or (b) Company's adjustment of incorrectly billed Assigned Fees on Company's next regular billing statement to the relevant Customer(s). Neither party is liable to the other party for special, punitive, indirect, exemplary or consequential damages, whether such damages are allowed or provided by contract, tort (including negligence), strict liability, statute or otherwise.

8. Notices. All required notices and communications, and all regular communications relating to the ongoing obligations under this Agreement (except as set forth in Section 3 above), shall be provided to the below-named authorized representatives. Either Party may change its designated representative by providing written notice to the other Party. All required notices shall be provided by personal delivery, facsimile, email (with verification of receipt), certified mail with return receipt requested, or overnight courier, and sent as follows:

If to Company:

Name: Rocky Mountain Power
Title: Customer Service, Utah Fees
Telephone: 1-888-221-7070
Email: UtahFees@pacificorp.com
Fax: 888-800-2851 Attn: Utah Fees
Address: PO Box 400, Portland, OR 97207-9923

If to Contractor:

Name: Matt Shipp
Title: Public Works Director
Telephone: 801.944.7000
Email: mshipp@ch.utah.gov
Fax: _____
Address: 2277 East Bengal Blvd., Cottonwood Heights, UT 84121

9. Entire Agreement; Amendments. This Agreement contains the entire agreement and understanding between the Parties and supersedes all prior understandings and agreements, whether oral or written, between the Parties with respect to the subject matter hereof. This Agreement may be amended or modified only by an agreement in writing signed by each of the Parties hereto.

10. Assignment; Successors and Assigns. This Agreement may not be assigned by Contractor without the express prior written consent of Company. This Agreement is binding on and inures to the benefit of the Parties' respective successors and assigns.

11. No Partnership. Nothing in this Agreement is to be construed to create a partnership or joint venture between Company and Contractor.

12. Waiver. The waiver by either Party of any provision or requirement of this Agreement does not constitute a continuing or a future waiver of the same or any other provision hereof.

13. Governing Law. This Agreement is governed by and construed in accordance with the laws of the State of Utah applicable to contracts made and to be performed wholly within the State of Utah.

14. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

15. Jury Trial 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 Agreement. Each Party further waives any right to consolidate, or to request the consolidation of, 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.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the latest date set forth below.

PACIFICORP, an Oregon corporation.

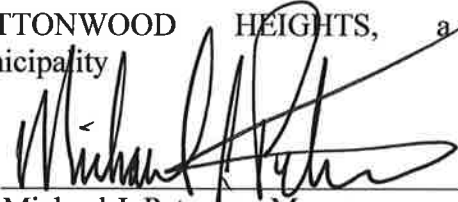
By: _____
Name: _____
Title: _____
Date Signed: _____

CONTRACTOR:

ATTEST:

By: 
Paula Melgar, Recorder



COTTONWOOD HEIGHTS, a Utah
municipality
By: 
Michael J. Peterson, Mayor
Date Signed: 2 November 2021