

17.02.110.1 ATTACHMENT "A" - FRANCHISE AGREEMENT

EXHIBIT "A" FRANCHISE AGREEMENT

This FRANCHISE AGREEMENT entered into the date and year hereinafter provided, by and between LAYTON CITY, a municipal corporation of the state of Utah (hereinafter "City"), and PACIFICORP, an Oregon corporation, d/b/a ROCKY MOUNTAIN POWER, (hereinafter "the Company").

RECITALS:

WHEREAS, a franchise for electric light and power was originally awarded to Utah Power & Light Company on October 19, 1995, and has been renewed every five (5) years thereafter; and

WHEREAS, Rocky Mountain Power, a subsidiary of PacifiCorp, an Oregon corporation, which company assumed the benefits and obligations of the 1995 Franchise Agreement with Layton City; and

WHEREAS, the City, in the exercise of its police power, ownership, and use rights over and in the public rights-of-way, and pursuant to its other regulatory authority, has determined that it is in the best interest of the public to renew for the Company, its successors and assigns, a non-exclusive franchise to operate its business within the City; and

WHEREAS, the City and the Company have reached an agreement that has been formalized in this Franchise Agreement.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration and further, in contemplation of subsequent approval by legislative action of the Layton City Council as hereinafter provided, the parties mutually agree as follows:

ARTICLE I FRANCHISE ORDINANCE; TERM OF FRANCHISE; RENEWAL

1.1 Grant of Franchise. Concurrent herewith, the City intends to adopt an ordinance entitled PacifiCorp Franchise Ordinance. Such PacifiCorp Franchise Ordinance is incorporated herein by reference and made an integral part of this Franchise Agreement. The term of this Franchise is for a period of five (5) years from the effective date of the PacifiCorp Franchise Ordinance.

1.2 Renewal. At least one hundred twenty (120) days prior to the expiration of this Franchise Agreement, the Company and the City shall agree to either extend the term of this Franchise for a mutually acceptable period of time, or the parties shall use best faith efforts to renegotiate a replacement franchise. During negotiation, the Company shall have the continued right to use the Public Ways of the City as set forth herein, in the event an extension or replacement franchise is not entered into upon expiration of this Franchise Agreement.

ARTICLE II COMPANY EXCAVATIONS AND RELOCATIONS

2.1 Franchise Rights to Use Public Property. The Company shall have the right to excavate in, occupy, and use any and all such streets, alleys, viaducts, bridges, roads, lanes, public ways, and other public places ("Public Ways") subject to the conditions of the City's ordinances, rules and regulations; provided, however, that the Company shall not, pursuant to this Franchise Agreement, place any new poles, mains, cables, structures, pipes, conduits, or wires on, over, under, or within any City park or other

recreational areas identified as such in City ordinance. Nothing contained herein shall preclude the City from granting a revocable permit therefor.

2.2 Company Duty to Relocate. Whenever the City shall, in the interest of the public convenience, necessity, health, safety, and general welfare, require the relocation or reinstallation of any property of the Company or its successors, in any of the streets, alleys, rights-of-way, or public property of the City, it shall be the obligation of the Company, upon notice of such requirement, to promptly commence work to remove, relocate, or reinstall such property as may be reasonably necessary to meet the requirements of the City. Such relocation, removal, or reinstallation by the Company shall be at no cost to the City. Before requiring a relocation of electric facilities, the City shall, with the assistance and consent of the Company, identify a reasonable alignment for the relocated electric facilities within the Public Ways of the City. Any money and all rights of reimbursement from the State of Utah or the federal government, to which the Company may be entitled for work done by the Company pursuant to this paragraph, shall be the property of the Company. City shall assign or otherwise transfer to the Company all rights it may have to recover costs for such work performed by the Company and shall reasonably cooperate with the Company's efforts to obtain reimbursement.

2.3 Relocation for Private Development. The Company 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, the Company may charge the expense of removal or relocation to the developer or customer. For example, the Company shall not be required to pay relocation costs in connection with a road widening or realignment where the road project is made a condition or caused by a private development.

2.4 City Duty to Obtain Approval to Move Company Property; Emergency. Except as otherwise provided herein, the City shall not, without the prior written approval of the Company, intentionally alter, remove, relocate, or otherwise interfere with any Company facilities. However, if it becomes necessary (in the judgment of the City Manager, City Engineer, Chief of the Fire Department, or Chief of the Police Department) to cut or move any of the wire cables, appliances, or other fixtures of the Company because of a fire, emergency, disaster, or imminent threat thereof, these acts may be done without prior written approval of the Company, and the repairs thereby rendered necessary, shall be made by the Company without charge to the City, but the Company shall not be precluded from making a claim against any third party who may have caused said damage for the cost of such repairs. Any written approval required by this Section, shall be promptly reviewed and processed by the Company and approval shall not unreasonably be withheld.

2.5 Subdivision Plat Notification. Before the City grants final approval to any new subdivision, the City shall submit the plat for review to the Company. Upon final approval of the plat, the City shall mail notification of such approval and a copy of the final plat to the Company:

Rocky Mountain Power
635 North 1200 West
Layton, UT 84041

ARTICLE III PLAN, DESIGN, CONSTRUCTION, AND INSTALLATION OF THE COMPANY FACILITIES; MAINTENANCE

3.1 Annual Information Coordination. Upon request, by either the City or the Company, not more often than annually, the Company and the City shall meet for the purpose of exchanging information and documents regarding construction and other similar work within the City, with a view toward coordinating their respective activities in those areas where such coordination may prove mutually beneficial. Any information regarding future capital improvements that may involve land acquisition shall, upon request, be treated with confidentiality.

3.2 Repair of Private Property. At any time the Company (in furtherance of its supplying electric service), disturbs the yard, residence, or other real or personal property of a customer, to the extent such repair or replacement was made necessary as a direct result of the operations of the Company, the Company shall restore or repair, at the expense of the Company, any fence, grass, soil, shrubbery, bushes, flowers, other low level vegetation, sprinkler system, irrigation system, gravel, flat concrete, or asphalt damaged or displaced, provided, however, the Company shall not be obligated under this Section to incur costs in excess of those customarily incurred by the Company. The requirements imposed upon the Company extend to any subcontractor or independent contractor that the Company might employ to perform the tasks outlined in this Section.

3.3 New Construction. In addition to the installation of underground electric distribution lines, as provided by applicable state law and regulations, the Company shall, upon payment of all charges provided in its tariffs or their equivalent, place newly constructed electric distribution lines underground as may be required by City ordinance.

3.4 City Use of Company Trenches. Whenever the Company proposes to install new underground conduits or replace existing underground conduits within or under the Public Ways of the City, it shall notify the Director of Public Works as soon as practical and shall allow the City, at its own expense and without charge by the Company, to share the trench of the Company to lay its own conduit therein; provided that such action by the City will not unreasonably interfere with the Company's facilities or delay the accomplishment of the project.

3.5 Permitting. The Company shall have the right to excavate the Public Ways subject to reasonable conditions and requirements of the City. Except in the case of an emergency, the Company shall, prior to commencing new construction or major reconstruction work in the Public Way or street or other public places, apply for a permit from the City, which permit shall not be unreasonably withheld, conditioned, or delayed. The Company will abide by all applicable ordinances and all reasonable rules, regulations, and requirements of the City, and the City may inspect the manner of such work and require remedies as may be necessary to assure compliance. Notwithstanding the foregoing, the Company shall not be obligated to obtain a permit to perform emergency repairs.

3.6 Compliance with Pollution Laws. The Company shall continue to use its best efforts to take measures that will result in its facilities within the City, meeting the standards required by applicable Federal and State air and water pollution laws. Upon the City's request, the Company will provide the City with a status report of such measures.

3.7 Incorporation of Technology. The Company shall use its best efforts to incorporate technological advances into its equipment and service when such advances have been shown to be technically and economically feasible, safe, and beneficial. For this purpose, Company shall, in the regular course of its business, review technological advances that have occurred in the electric utility industry.

3.8 Extension of Service to City Facilities; Waiver of Advance Payment. The Company, upon receipt of City's authorization for payment and construction, shall extend within the City, its facilities to provide electric service to the City for municipal uses, and to the extent permitted by the Public Service Commission, shall not require the City to make advance payments.

3.9 Use of Company Corridors. The City may identify portions of the transmission corridors, which the Company now or in the future owns in fee within the City, as being desirable locations for public parks, playgrounds, or recreation areas. In such event and upon notice by the City, the Company and the City will negotiate in good faith, to reach an agreement providing for such uses by the City. However, no such use will be allowed where the Company, in good faith, believes such use would interfere with the Company's use of the transmission corridor or materially prejudice its interests in safety. The Company shall assume no liability nor shall it incur, directly or indirectly, any additional expense in connection therewith.

3.10 Compliance With Applicable Laws. All electric lines, poles, towers, pipes, conduits, equipment, property, and other structures or assets installed or used under color of this Franchise, shall be used, constructed, and maintained in accordance with applicable federal, state, and City laws and regulations, and shall be kept current with new codes as required by law.

3.11 Location to Minimize Interference. Such lines, poles, towers, pipes, conduits, equipment, property, structures, and assets shall be located so as to cause minimum interference with the use of the City's Public Ways by others, and shall cause minimum interference with the rights of property owners who adjoin the Public Ways.

3.12 Repair Damage. If, during the course of work on its facilities, the Company causes damage to or alters any Public Way or public property, the Company shall (at its own cost and expense and in a manner approved by the City's Director of Public Works) replace and restore it in as good a condition as existed before the work commenced. Except in case of an emergency, the Company shall, prior to commencing work in the Public Ways, make application for a permit to perform such work from the office of the City Engineer or other agency designated by the City. Such permit shall not be unreasonably withheld. The Company will abide by all reasonable regulations and requirements of the City Engineer and ordinances pertaining to such work(s).

3.13 Guarantee of Repairs. For a period of one (1) year following the completion of the repair work performed pursuant to paragraphs 3.2 and 3.12, the Company shall maintain, repair, and keep in good condition, those portions of said Public Ways or private property restored, repaired, or replaced, to the satisfaction of the City Engineer; provided however, that acceptance will not be unreasonably withheld.

3.14 Safety Standards. The Company's work, while in progress, shall be properly protected at all times with suitable barricades, flags, lights, flares, or other devices as are reasonably required by applicable safety regulations or standards imposed by law and City standards established by the City Engineer.

3.15 Substation Landscaping. The Company shall maintain the general appearance of its substations and other facilities in the City, in a manner consistent with the surrounding properties, to include but not be limited to, the landscaping of front yards and parkways in residential zones; the installation of curb, gutter, sidewalk, and parkway landscaping in those areas where similar improvements have been, or are being, installed on contiguous properties; and the screening of substations directly abutting a public street or abutting a residential property with appropriate landscaping or screening material as required by the City's Planning Commission.

3.16 Authority to Trim and Remove Vegetation.

- (a) The Company 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 the Company'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 the Company, 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.
- (b) The Company shall make a reasonable best effort, including written notice, to notify owners of property adjacent to the trees to be trimmed at least seventy-two (72) hours prior to doing the work.
- (c) The Company shall hold harmless the City and its officers, agents, and employees from and against any and all damages arising out of or resulting from the removal, trimming, mutilation, of

or any injury to any tree or trees proximately caused by the Company or its officers, agents, employees, contractors, or subcontractors.

ARTICLE IV **CITY USE RIGHTS**

4.1 City Use of Poles and Overhead Structures. The City shall have the right without cost to use all poles and suitable overhead structures owned by the Company within Public Ways for City wires used in connection with its fire alarms, police signal systems, or other communication lines used for governmental purposes; provided however, any such uses shall be for activities owned, operated, or used by the City for a public purpose, and shall not include the provision of CATV, internet, or similar services to the public. Provided further, that the Company shall assume no liability nor shall it incur directly or indirectly, any additional expense in connection therewith, and the use of said poles and structures by the City shall be in such a manner as to prevent safety hazards or interference with the Company's use of same. Nothing herein shall be construed to require the Company to increase pole size or alter the manner in which the Company attaches its equipment to poles, or alter the manner in which it operates and maintains its electric facilities. City attachments shall be installed and maintained in accordance with the reasonable requirements of the Company and the current addition of the National Electrical Safety Code pertaining to such construction. Further, City attachments shall be attached or installed only after written approval by the Company.

4.2 Limitation on Use Rights. Nothing in this Article shall be construed to require the Company to increase pole capacity, alter the manner in which the Company attaches equipment to the poles, or alter the manner in which it operates and maintains its equipment. Such City attachments shall be installed and maintained in accordance with the reasonable requirements of the Company and the then current National Electrical Safety Code pertaining to such construction. Further, said City attachments shall be attached or installed only after written approval by the Company, which approval will be timely processed and will not be unreasonably withheld.

4.3 Maintenance of City Facilities. The City's use rights also shall be subject to the parties reaching an agreement regarding maintenance of such City attachments, to be done either for a reasonable fee by the Company or by a qualified party who shall fully indemnify and hold the Company harmless from any liability and whose service would not materially prejudice the Company's interests in safety and insulation from liability.

4.4 Use of Company Property by Other Franchisees. The Company will allow others holding a franchise from the City, except providers of electric utility service, to utilize such poles and suitable overhead structures, upon reasonable terms and conditions to be agreed upon by the Company and such other holders of a franchise from the City. The Company shall assume no liability nor shall it incur, directly or indirectly, any additional expense in connection therewith. The use of said poles and structures by the City or others holding a franchise from the City, shall be in such a manner as not to constitute a safety hazard or to unreasonably interfere with the Company's use of the same.

4.5 Notification. Before commencing any street improvements or other work within a Public Way that may affect the Company's electric facilities, the City shall notify the Company.

ARTICLE V **POLICE POWER**

The City expressly reserves, and the Company expressly recognizes the City's right and duty to adopt, from time to time, in addition to the provisions herein contained, such ordinances, rules, and regulations, as may, by the City, 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.

ARTICLE VI
DIRECTOR OF PUBLIC WORKS; DIRECTOR OF FINANCE

6.1 City Representative. Except as provided in subparagraph 6.3 and 6.4, hereof, the Director of Public Works ("Director") or his/her designee, or such other person as the City Manager may designate, is hereby designated the official of the City having full power and authority to take appropriate action for and on behalf of the City and its inhabitants to enforce the provisions of this Franchise and to investigate any alleged violations or failures of the Company to comply with said provisions or to adequately and fully discharge its responsibilities and obligations hereunder. The failure or omission of the City Representative to so act shall not constitute any waiver or estoppel.

6.2 Company Duty to Cooperate. In order to facilitate such duties of the Director, the Company agrees:

- (a) To allow the City Representative reasonable access to any part of the facilities, works, and systems within the City. The Director may make and supervise reasonable tests to determine the quality of the electric service supplied to the customers of the Company within the City, with particular reference to the standards of service provided herein and in the Rules and Regulations prescribed by, and the tariffs of the Company filed with the Public Service Commission from time to time.
- (b) The City Representative may convey to the Company and to the Public Service Commission, any complaint of any customer of the Company within the City with respect to the quality and price of electric service and the appropriate standards thereof.
- (c) Irrespective of whether the City intervenes in a proceeding before the Public Service Commission, the Company, upon reasonable request, will provide the City access to all documents provided other parties in connection with such proceeding.

6.3 City Financial Review. With regard to financially related matters, the City designates the Director of Finance as the official of the City having full power and authority to take appropriate action for and on behalf of the City and its inhabitants to enforce the provisions of this Franchise and investigate any alleged violation or failures of the Company to comply with the provisions hereof, or to fully and adequately discharge the responsibilities and obligations hereunder. The failure or omission of the Director of Finance to act shall not constitute any waiver or estoppel.

6.4 Company Duty to Cooperate on Financial Review. For the sole and limited purpose of facilitating the duties defined in paragraph 6.3 above, the Company agrees to grant the Director of Finance reasonable access to the books and records of the Company insofar as they relate to any matters covered by this Franchise; to provide the Director of Finance with such reasonable and necessary reports containing or based on information readily obtainable from the Company's books and records as may be from time to time requested, with respect to the electric service supplied under this Franchise; and to provide the Director of Finance, upon request not more than every two (2) years, a list of utility related real property owned or leased by the Company within the City.

6.5 No Waiver or Estoppel. Neither the City nor the Company 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.

ARTICLE VII
ELECTRICAL SERVICE

7.1 Duty to Supply Electricity. Subject to the terms of this Franchise Agreement, state law, and the terms and conditions imposed by the Public Utilities Commission, the Company shall furnish electricity within the corporate limits of the City, or any additions thereto, to the City and to the inhabitants thereof, and to

any person or persons or corporation doing business in the City or any additions thereto. The Company shall at all times, take all reasonable and necessary steps to assure an adequate supply of electricity to its customers at the lowest reasonable cost consistent with long term reliable supplies. If the supply of electricity to its customers should be interrupted, the Company shall take all necessary and reasonable actions to restore such supply at the soonest practicable time.

7.2 Company Duty to Reimburse for Upgraded Distribution. The Company shall reimburse the City for the costs of upgrading the electrical distribution system or facility of any City building or facility where such upgrading is caused or occasioned solely by the Company's decision to increase voltage of delivered electrical energy.

7.3 Upgrading System. The Company will, from time to time during the term of this Franchise, make such enlargements and extensions of its electric system as are necessary to adequately provide for the requirements of the City and the inhabitants thereof. Such enlargements and extensions shall be made in accordance with the Company's currently effective tariffs, the rules of the Public Service Commission, and state law.

7.4 Promulgation of Rules for Company Operations. The Company, from time to time, may, in accordance with the requirements of the Public Service Commission, promulgate such rules, regulations, terms and conditions governing the conduct of its business, including the utilization of electricity; and the interference with, or alteration of, any of the Company's property upon the premises of its customers, as shall be necessary to insure a continuous and uninterrupted service to each and all its customers and the proper measurement thereof. The Company shall keep all such matters on file in its office in the City, available for public inspection and copying, and shall provide the City Recorder and any other official of the City, as requested in writing by the City as requiring same in the discharge of his duties, copies of the Company's currently effective tariffs, on file with and approved by the Public Service Commission.

7.5 Supremacy of Lawful Public Service Commission Tariff Orders. The City and the Company recognize that the lawful provisions of the Company's tariffs on file and in effect with the Public Service Commission that are consistent with the restrictions and limitations of the Utah Constitution regarding the rights of municipalities to franchise, are controlling over any inconsistent provision in this Franchise dealing with the same subject matter. In the opinion of both the Company and the City, no provision of this Franchise is inconsistent with any of the currently effective provisions of the Company's tariffs. In the event that either the Public Service Commission or the Federal Energy Regulatory Commission makes any proposal that would directly affect the Company, and that in the Company's opinion would be inconsistent with any provision of this Franchise, the Company, upon becoming aware of such proposal, will exercise its best efforts to consult with representatives of the City in a timely manner regarding such proposal; provided, however, that the position ultimately taken by the Company of any such proposal, shall be determined solely by the Company.

7.6 City's Right to Lowest Charge. No charges to the City by the Company for any service or supply shall exceed the lowest charge for similar or identical service or supplies provided by the Company to any other similarly situated customer or consumer of the Company.

ARTICLE VIII

ANNEXATION OF THE COMPANY PROPERTY

Except as provided below, when any property owned by the Company becomes eligible for voluntary annexation to the City, the Company will petition and undertake whatever action is necessary to annex that property upon request by the City; provided, however, that no condition of such annexation shall impair the Company's ownership or use of its property, and that Company property which is used solely as transmission corridors and which are not both parallel and adjacent to the City boundaries need not be annexed into the City. Except as herein provided, the Company agrees to comply with all terms and

conditions imposed upon the annexation by the City that are no more stringent than those generally imposed upon property owners seeking annexation of their land to the City.

ARTICLE IX SMALL POWER PRODUCTION AND CO-GENERATION

The City expressly reserves the right to engage in the production of electric energy, both from conventional power plants and from co-generations and small power production facilities.

ARTICLE X SYSTEM TO REMAIN IN PLACE

10.1 Continuation of Service. In the event this Franchise is not renewed at the expiration of its term, or the Company terminates any service provided herein for any reason whatsoever, and the City has not provided for alternative electrical energy supplies, the Company shall have no right to remove the electrical energy distribution systems or any of them except in the normal course of business, pending resolution of the disposition of the system. The Company further agrees it will provide any temporary services necessary to protect the public, and in such event shall be entitled only to monetary compensation in no greater amount than provided for under the Company's tariff.

10.2 Removal of System. Only upon receipt of written notice from the City stating that the City has adequate alternative electrical energy sources to provide for the people of the City, shall the Company be entitled to remove any or all of said systems in use under the terms of this Franchise.

ARTICLE XI TRANSFER OF FRANCHISE

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

ARTICLE XII ACCEPTANCE BY THE COMPANY OF FRANCHISE

Company's Duty to Approve Franchise Agreement. Within sixty (60) days after the effective date of the Company Franchise Ordinance adoption by the City Council, the Company shall execute the Franchise Agreement and file an unqualified acceptance of the Ordinance in writing with the City Recorder of Layton City in the form approved by the City Attorney; otherwise, this Franchise Agreement and any ordinance adopted relating thereto and all rights granted hereunder shall be null and void.

ARTICLE XIII EXTENSION OF CITY LIMITS

13.1 Upon the annexation of any territory to the City, all right and franchise hereby granted shall extend to the territory so annexed to the extent the City has authority. All facilities owned, maintained, or operated by the Company located within, under, or over streets of the territory so annexed shall thereafter be subject to all terms hereof.

13.2 Notice of Annexation. When any territory is approved for annexation to the City, the City shall, not later than ten (10) working days after passage of an ordinance approving the proposed annexation, provide by certified mail to the 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 City's ordinance approving the proposed annexation. The notice shall be mailed to:

PacifiCorp Customer Contact Center
P.O. Box 400
Portland, Oregon 97202-0400

With a copy to:

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

ARTICLE XIV

EARLY TERMINATION OR REVOCATION OF FRANCHISE

14.1 Grounds for Termination. The City may terminate or revoke this Franchise Agreement and all rights and privileges herein provided for any of the following reasons:

- (a) The Company, by act or omission, materially violates a duty or obligation herein set forth in any particular within the Company's control, and with respect to which redress is not otherwise herein provided. In such event, the City, acting by or through its Council, may after hearing, determine that such failure is of a material nature; and thereupon, after written notice given Company of such determination, Company shall, within thirty (30) days of such notice, commence efforts to remedy the conditions identified in the notice, and will have six (6) months from the date it receives notice to remedy the conditions. After the expiration of such six (6) months period and failure to correct such conditions, the City may declare this Franchise forfeited, and thereupon the Company shall have no further rights or authority hereunder; provided, however, that any such declaration of forfeiture shall be subject to judicial review as provided by law, and provided further that in the event such failure is of such nature that it cannot be reasonably corrected within the six (6) months time provided above, the City shall provide additional time for the reasonable correction of such alleged failure.
- (b) The Company becomes insolvent, unable, or willing to pay its debts, its adjudged bankrupt, or all or part of its facilities should be sold under an instrument to secure a debt and is not redeemed by the Company within thirty (30) days; or
- (c) In furtherance of the Company policy or through acts or omissions done within the scope and course of employment, a director or officer of the Company knowingly engages in conduct or makes a material misrepresentation with or to the City, or the Company's customers, that is fraudulent or in violation of a felony criminal statute of the State of Utah.

14.2 Reserved Rights. Nothing contained herein shall be deemed to preclude the Company from pursuing any legal or equitable rights or remedies it may have to challenge the action of the City.

ARTICLE XV

COMPANY INDEMNIFICATION

15.1 No City Liability. Except as otherwise specifically provided herein, the City shall in no way be liable or responsible for any loss or damage to property or any injury to, or death of any, person that may occur in the construction, operation, or maintenance by the Company of its lines and appurtenances hereunder.

15.2 Company Indemnification of City. The Company shall indemnify, defend, and hold the City harmless from and against claims, demands, liens, and all liability or damage of whatsoever kind on account of or arising from the grant of this Franchise, the exercise by the Company of the related rights, or from the operations of the Company within the City, and shall pay the costs of defense plus

reasonable attorney's fees. Said indemnification shall include but not be limited to the Company's negligent acts or omissions pursuant to its use of the rights and privileges of this Franchise, including construction, operation, and maintenance of electrical lines and appurtenances whether or not any such use, act, or omission complained of is authorized, allowed, or prohibited by the Franchise.

15.3 Notice of Indemnification. The City shall (a) give prompt written notice to the Company of any claim, demand, or lien with respect to which the City seeks indemnification hereunder and (b) unless in the City's judgment a conflict of interest may exist between the City and the Company with respect to such claim, demand, or lien, permit the Company to assume the defense or such claim, demand, or lien with counsel satisfactory to City. If such defense is not assumed by the Company, the Company shall not be subject to any liability for any settlement made without its consent. Notwithstanding any provisions hereof to the contrary, the Company shall not be obligated to indemnify, defend, or hold the City harmless to the extent any claim, demand, or lien arises out of or in connection with any negligent act or failure to act of the City or any of its officers or employees.

ARTICLE XVI REMEDIES

16.1 Duty to Perform. The Company and the City agree to take all reasonable and necessary actions to assure that the terms of this Franchise are performed, and neither will take any action for the purpose of securing modification of this Franchise before either the Public Service Commission or any court of competent jurisdiction; provided, however, that neither shall be precluded from taking any action it deems necessary to resolve differences in interpretation of this Franchise Agreement.

16.2 Remedies at Law. In the event the Company or the City fails to fulfill any of their respective obligations under this Franchise, the City, or the Company, whichever the case may be, will have a breach of contract claim and remedy against the other in addition to any other remedy provided by law, provided that no remedy that would have the effect of amending the specific provisions of the Franchise, shall become effective without such action that would be necessary to formally amend the Franchise.

16.3 Non-Contestability. Neither the City nor the Company will take any action for the purpose of securing modification of this Franchise before either the Public Service Commission or any court of competent jurisdiction; provided, however, that neither shall be precluded from taking any action it deems necessary to resolve difference in interpretation of the Franchise nor shall the Company be precluded from seeking relief from the courts in the event Public Service Commission orders, rules, or regulations conflict with or make performance under the Franchise illegal.

16.4 Breach of Contract. In the event the Company or the City fails to fulfill any of their respective obligations under this Franchise, the City, or the Company, whichever the case may be, will have a breach of contract claim and remedy against the other in addition to any other remedy provided by law, provided that no remedy which would have the effect of amending the specific provisions of this Franchise shall become effective without such action which would be necessary to formally amend the Franchise.

ARTICLE XVII NOTICES

Unless otherwise specified herein, all notices from the Company to the City pursuant to or concerning this Franchise Agreement shall be delivered to the City Recorder's office. Unless otherwise specified herein, all notices from the City to the Company pursuant to or concerning this Franchise shall be delivered to the Executive Vice President of Rocky Mountain Power at 201 South Main, 23rd Floor, Salt Lake City, Utah 84111 and such other office as the Company may advise the City of by written notice.

ARTICLE XVIII CHANGING CONDITIONS

The Company and the City recognize that many aspects of the electric utility business are currently the subject of discussion, examination, and inquiry by different segments of the industry and affected regulatory authorities, and that these activities may ultimately result in fundamental changes in the way the Company conducts its business and meets its service obligations. In recognition of the present state of uncertainty respecting these matters, the Company and the City each agree, on request of the other during the term of this Franchise, to meet with the other and discuss in good faith whether it would be appropriate in view of developments of the kind referred to above during the term of this Franchise, to amend this Franchise or enter into separate, mutually satisfactory arrangements to effect a proper accommodation of any such development.

**ARTICLE XIX
AMENDMENT**

19.1 At any time during the term of this Franchise Agreement, the City, through its City Council, or the Company may propose amendments to this Franchise Agreement by giving thirty (30) days written notice to the other of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s).

19.2 No amendment or amendments to this Franchise Agreement shall be effective until mutually agreed upon by the City and the Company and formally adopted as an ordinance amendment.

**ARTICLE XX
SEVERABILITY**

20.1 Conditions. If any section, sentence, paragraph, term, or provision of this Franchise Agreement or the Franchise Ordinance is for any reason determined to be or rendered illegal, invalid, or superseded by other lawful authority, including any state or federal, legislative, regulatory or administrative authority having jurisdiction thereof or determined to be unconstitutional, illegal, or invalid by any court of competent 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 Agreement or any renewal or renewals thereof.

20.2 No Benefit to Third-Party Beneficiaries. No provision of this Franchise Agreement shall be interpreted to confer upon any person or entity, a third party benefit. It is the intent of this Franchise Agreement that all benefits be strictly limited to the parties hereto.

THIS FRANCHISE AGREEMENT is executed in duplicate originals on this ____ day of _____, 2015.

LAYTON CITY

**ATTEST:
STEVENSON, Mayor**

ROBERT J

THIEDA WELLMAN, City Recorder

**APPROVED AS TO FORM:
d/b/a**

PACIFICORP,

MOUNTAIN POWER

ROCKY

By:

GARY R. CRANE, City Attorney

Title:

Ord. No. 05-37, Enacted, 9/1/2005
Ord. No. 10-06, Amended, 5/20/2010
Ord. No. 15-24, Amended, 6/18/2015