

## TITLE 12. FRANCHISES

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### Chapter 1. Gas

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**12-1-1 Grant of Franchise for System.** There is hereby granted to Mountain Fuel Supply Company, a Utah corporation, its successors or assigns, hereinafter called grantee, the right, privilege, and franchise to construct, maintain and operate in the present and future streets, alleys and parkways, and other public places in Clinton City, a system of gas mains, supply pipes, and laterals with all necessary or desirable appurtenances, for the purpose of supplying gas for light, heat, power and other purposes to Clinton City, the inhabitants thereof, and persons and corporations beyond the corporate limits thereof, for the term and under the conditions hereinafter set forth.

*History: 5/62, 9/84*

**12-1-2 Placement.** All mains, pipes, and laterals shall be so laid as to interfere as little as possible with traffic over the streets and alleys. The location of all mains, pipe lines, and laterals may be fixed under the supervision of the city council.

*History: 5/62, 9/84*

**12-1-3 Rules and Regulations.** Grantee may make and enforce reasonable rules and regulations in the conduct of its business and may require before furnishing service the execution of a contract therefore. Grantee shall have the right to contract with each consumer with reference to the installation of service pipe lines and the control of service pipes from the connection thereof with the supply lines of

the grantee in the streets, to and including the meter located on the consumer's premises. For the purpose of securing safety and good service to the consumer and in the public interest, grantee shall have the right to prescribe the sizes and kinds of the pipe to be used by the consumer in conveying gas on consumer's premises and shall have the right to refuse service to any consumer who neglects or refuses to comply with the rules and regulations of the grantee prescribing such conditions. Grantee shall have the right to classify the consumers of said gas in the corporate limits of Clinton City, according to the time of use, character of use, quantity of gas required, and such other conditions as may be reasonable; and subject to the regulations herein provided for and the rights herein prescribed and such reasonable classifications, the grantee shall furnish gas without unjust discrimination and at a uniform price to all consumers of the same class, and to all persons along the established lines or mains of the grantee, who have properly observed such rules and regulations and acceded to the rights herein reserved to said grantee.

*History: 5/62, 9/84*

**12-1-4 Grant of Franchise for Gas.** The right is hereby granted unto the said grantee to furnish, distribute, supply, sell and require payment for gas to all persons and corporations in Clinton City, through the said system of gas mains, supply pipes and laterals, and to do all things necessary and incident thereto, in accordance with the terms and conditions herein specified.

*History: 5/62, 9/84*

**12-1-5 Measurement.** The gas furnished by the grantee shall be sold and delivered to the consumers through standard meters and Clinton City reserves the right to test the accuracy of any meter in service by a competent officer or agent appointed for that purpose by the mayor and city council.

*History: 5/62, 9/84*

**12-1-6 Rates and Prices.** The rates and prices which the grantee, its successors or assigns, may charge for gas and gas service furnished and delivered and the conditions of service under the terms of this franchise shall be fixed in accordance with the laws and constitution of the State of Utah and the laws and constitution of the United States.

*History: 5/62*

**12-1-7 Right of Assignment.** Permission is hereby granted unto the said Mountain Fuel Supply Company, its successors or assigns, to assign this

franchise and all rights hereunder, and upon assignment of this franchise in accordance herewith, said successors or assigns, whether individuals or corporations, shall become entitled to all the rights and privileges herein granted and shall assume all the obligations and duties herein provided.

*History: 5/62*

**12-1-8 Term.** This franchise and all the rights herein granted shall terminate at the end of 50 years after the date of passage of this ordinance, unless sooner terminated by virtue of the provisions herein contained.

*History: 5/62, 9/84*

**12-1-9 Condition.** This act and the rights herein conferred shall be null and void unless within 90 days after the passage and posting hereof the said grantee, its successors or assigns, shall file with the clerk of Clinton City a written instrument, declaring its acceptance of the terms and conditions hereof and its intention to be bound by and perform the same, and unless construction of the gas distribution system is begun within six (6) months after passage and posting hereof.

*History: 5/62, 9/84*

**12-1-10 Nature of Franchise.** This franchise is granted in consideration of the acceptance by the grantee of the terms and conditions of this chapter as

hereinbefore provided and the commencement of construction by the grantee within the time above provided of the necessary facilities to accomplish gas service to Clinton City, thereby making the advantages of said service available to said town and its inhabitants.

*History: 5/62, 9/84*

**12-1-11 Excavations, etc.; Indemnification.** When the grantee shall make or cause to be made excavations, or shall place obstructions in any street, alley, or other public place, the public shall be protected by barriers and lights placed, erected and maintained by the grantee; and in the event of injury to any person or damage to any property by reason of negligence of the grantee in the construction, operation or maintenance of the gas distribution system of the grantee, the grantee shall indemnify and keep harmless Clinton City from any and all liability in connection therewith and comply with Title 9 of the Clinton City Code.

*History: 5/62, 9/84*

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**Chapter 2. Rescinded**

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### Chapter 3. Power

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**12-3-1 Purpose.** The purpose of this franchise ordinance is to grant to PacifiCorp, doing business as Utah Power & Light Company, its successors and assigns, a non-exclusive right to use the public streets, alleys, public ways and public places within Clinton City for its business purposes, under the constraints and for the consideration enumerated in this franchise ordinance.

*History: 4/93*

**12-3-2 Franchise Grant.** There is hereby granted to PacifiCorp, doing business as Utah Power & Light Company, its successors and assigns (herein sometimes called the "Company"), the franchise right, privilege, and authority to construct, maintain and operate in, under, along, over and across the present and future streets, alleys, public ways and public places in Clinton, Utah (herein sometimes called the "City"), and its successors, electric light and power lines, together with all the necessary or desirable appurtenances (including underground conduits and structures, poles, towers, wires, transmission lines, and telegraph and telephone lines for its own use), for the purpose of supplying electric power and energy to said City, the inhabitants thereof and persons and corporations beyond the limits thereof, for light, heat, power and other purposes. This franchise does not

grant to the Company the right, privilege or authority to engage in the community antenna (or cable) television business, although nothing herein contained shall preclude the Company one (1) from permitting those lawfully engaged in such business to utilize Company's facilities within the City for such purposes, or two (2) from providing such service if appropriate authority is obtained.

*History: 5/43, 9/84, 4/93*

**12-3-3 Term.** The term of the franchise granted herein is for a period from and after its effective date, until June 1, 2018. The Company shall pay all costs of legal notices required for the public hearing prior to ordinance adoption and the ordinance publication costs thereafter.

*History: 4/93*

**12-3-4 Acceptance by Company.** Within thirty days after the passage of this ordinance, the Company shall file an unqualified written acceptance thereof, with the City Recorder of Clinton, otherwise the ordinance and the rights granted herein shall be null and void.

*History: 4/93*

**12-3-5 Non-Exclusive Franchise.** The right to use and occupy said streets, alleys, viaducts, bridges, roads, lanes, and other public ways for the purposes herein set forth is not, and shall not be deemed to be, an exclusive franchise, and the City reserves the right to itself make or grant a similar use in the said public ways and places to any other person, firm, or corporation.

*History: 4/93*

**12-3-6 City Regulatory Authority.** 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 and 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 or exercise any other rights, powers, or duties required or authorized, under the Constitution of the State of Utah, the law of Utah, or City Ordinance.

*History: 4/93*

**12-3-7 Extension of City Limits.** Upon the annexation of any territory to the City, the right and franchise granted herein 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 any public ways of the territory so annexed shall thereafter be subject to all terms hereof.

*History: 4/93*

**12-3-8 Indemnification.** The City shall in no way be liable or responsible for any loss or damage to property or any construction, operation or maintenance by the Company of its lines and appurtenances hereunder. 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 attorneys' fees. 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 exists between the City and the Company with respect to such claim, demand or lien, permit the Company to assume the defense of 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 liability for any settlement made without its consent. Notwithstanding any provision 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.

*History: 4/93*

**12-3-9 Franchise Fee.**

(1) As further consideration for this franchise, which provides for the use by the Company of the streets and other public places within the City, the Company shall pay to the City a franchise fee in the amount of six percent (6%) of the gross revenue, as defined below in subsection (4). Any sums paid by the Company as gross receipts based utility revenue tax under the provisions of any other City ordinances shall be credited against the fee due hereunder.

(2) Within forty five days after the last day of each calendar year month, the Company shall file with the City's finance officer, a report of such gross revenues for such month, together with a check for the amount due. Such report shall contain a statement of gross revenues and any deductions made because of adjustments or corrections as herein provided.

Within thirty (30) days from the submission of the statement of gross revenues and franchise fee owing, or within such reasonable additional time as he may request, the finance officer shall investigate the statement and determine the accuracy of the amounts reported, and if the finance officer finds any mathematical errors, report them to the company for correction. If the franchise fee as paid shall be found deficient, the Company shall promptly remit the difference, and if the fee as paid be found excessive, the City shall promptly refund the difference. In the event of a disagreement, the Company shall make payment under protest during the resolution of the dispute between the parties or through the courts. Neither payment of the franchise fee nor failure to make such investigation shall be deemed to stop the City or the Company in any way or prevent subsequent investigation by either and collection or return of any amount properly due. The aforesaid thirty (30) day period is not intended and shall not act as a statute of limitations or repose, which shall be governed by State law.

(3) The records of the Company pertaining to the report(s) required in this Section shall be open for inspection by the City and its duly authorized representative's at all reasonable hours for the purpose of verification. The Company will advise the City of the identity of consumers and suppliers of electric power wheeled by the Company to consumers within the City, to the extent the Company is able to provide such information.

(4) "Gross Revenue" refers to any revenue of the Company derived from the sale and use of electric power within the corporate limits of the City, plus revenues derived from wheeling electric power to consumers within the City, but excluding those revenues derived from wheeling electric power to consumers within the City pursuant to wheeling obligations in existence at the effective date of this ordinance.

*History: 4/93; Ord. 15-10, 11/15*

**12-3-10 Annexation.** When any property owned by the Company becomes eligible for voluntary annexation to the City, the Company will petition to annex that property upon request by the City, provided that no condition of such annexation shall impair the Company's ownership of its property. Except as herein provided, the Company agrees to comply with all terms and conditions imposed upon the annexation by the City which are no more stringent than those generally imposed upon property owners seeking annexation of their land to the City. The foregoing obligation shall not apply with respect

to the Company's transmission corridor(s) extending beyond City boundaries, except to the extent that such corridor is or will be contiguous to and parallel with a City boundary.

*History: 4/93*

**12-3-11 Small Power Production and Cogeneration.** The City expressly reserves the right to engage in the production of electric energy, both from conventional power plants and from cogeneration and small power production facilities. The Company agrees to negotiate long term contracts consistent with other Company contracts of a similar nature being entered into at that time, to purchase City-generated power made available for sale, consistent with state and federal law.

*History: 4/93*

**12-3-12 City Authority.** The City's Mayor, or any successor head of the executive branch of government, 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 the provisions hereof or to adequately and fully discharge its responsibilities and obligations hereunder. The failure or omission of the Mayor to so act shall not constitute any waiver or estoppel. The Mayor may delegate certain oversight responsibilities to the department directors responsible for construction within the public rights-of-way or for the finances of the City. When acting as the Mayor's designee, a department director shall have all the power and authority conferred herein upon the Mayor. In order to facilitate such duties of the Mayor, the Company agrees to grant the Mayor reasonable access to the books and records of the Company insofar as they relate to any matters covered by this Franchise; to provide the Mayor with such reasonable and necessary reports containing or based on information readily obtainable from the Company's books and records as he may from time to time request with respect to the electric service supplied under this Franchise; and to provide the Mayor, upon request not more than every two years, a list of utility related real property owned or leased by the Company within the City.

*History: 4/93*

**12-3-13 Plan, Design, Construction and Installation of Company Facilities.**

(1) Upon request by the City or the Company not more often than every year, 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 towards 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 be treated with confidentiality upon request.

(2) In addition to the installation of underground electric distribution lines as provided in the applicable Rules and Regulations of the Public Service Commission, the Company shall, upon payment of all charges provided in its tariffs or their equivalent, place newly constructed electric distribution lines underground in new residential subdivision areas as may be required by subdivision regulations adopted by the City.

(3) The City shall have the right without cost to the City to use all poles and suitable overhead structures owned by the Company within the City for City wires used by the City in connection with its fire alarms and police signal systems; provided, however, that the Company shall assume no liability nor shall it have to 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 not to constitute a safety hazard or to interfere 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 Company attaches its equipment to 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 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) Whenever the Company proposes to install new underground conduits or replace existing underground conduits within or under the present and future streets, alleys or public ways in the City, it shall, prior to the commencement of such work, advise, or cause to be advised, the City of such work and shall allow the City, at its own expense, 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.



(5) All electric distribution facilities constructed by the Company within the City shall be located so as to cause minimum interference with public use of streets, alleys and other public ways and places, and shall be maintained in good repair and condition. Facilities located on, upon, over and under property in which the City has a property interest shall be constructed, installed, maintained, cleared of vegetation, renovated or replaced in accordance with applicable rules and regulations of the City. The Company will acquire permits in accordance with such rules and regulations, and the City may inspect the manner of such work and require remedies as may be necessary to assure compliance. It is understood that this work involves the health, safety, and welfare of the community and from time to time must be done under circumstances which will make the prior acquisition of a permit infeasible.

(6) The Company shall continue to use its best efforts to take measures which 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.

(7) All electric lines, poles, towers, pipes, conduits, equipment, property and other structures or assets installed or used under authority of this Franchise shall be used, constructed and maintained in accordance with applicable federal, state and city laws, codes and regulations, as required by law.

(8) If, during the course of work on its facilities, the Company causes damage to or alters any street, alley, right-of-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 emergency, Company shall, prior to commencing work in the public way or street or other public places, make application for a permit to perform such work from the City Engineer or other agency designated by the City. Such permit shall not be unreasonably withheld. The Company will abide by all applicable ordinances and all reasonable rules, regulations and requirements of the City Engineer for such work(s).

*History: 4/93*

#### **12-3-14 Company Excavations and Relocations.**

(1) 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 subject to the conditions and requirements of the ordinances and rules and regulations of the City; provided, however, that the Company shall not, pursuant to this Franchise, place any poles, mains, cables, structures, pipes, conduits or wires on, over, or within any City park, pleasure ground or other recreational area owned by the City. Nothing contained herein shall preclude the City from granting a revocable permit therefore, or effect already existing rights.

(2) Whenever the City shall, in the interest of the public convenience, necessity, health, safety or 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 and 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. Any money and all rights to reimbursement from the State of Utah, the federal government or other parties to which the Company may be entitled for work done by the Company pursuant to this paragraph, shall be the property of Company. City shall assign or otherwise transfer to Company all right it may have to recover costs for such work performed by the Company and shall support the efforts of the Company to obtain reimbursement; provided that the City shall not be required to incur or expend any costs or legal fees.

*History: 4/93*

**12-3-15 No Waiver.** 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.

*History: 4/93*

**12-3-16 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.

*History: 4/93*



**12-3-17 Changing Conditions.** The Company and the City recognize that many aspects of the electric utility industry 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 developments.

*History: 4/93*

**12-3-18 Amendment.** At any time during the term of this Franchise, the City through its city council, or the Company may propose amendments to this Franchise by giving 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). No amendment or amendments to this Franchise shall be effective until mutually agreed upon by the City and the Company and formally adopted as an ordinance amendment.

*History: 4/93*

**12-3-19 Non-Contestability - Breach of Contract.**

(1) 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 make performance under the Franchise illegal.

(2) 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.

*History: 4/93*

**12-3-20 Notices.** Unless otherwise specified herein, all notices from the Company to the City pursuant to or concerning this Franchise 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 President of Utah Power & Light company 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.

*History: 4/93*

**12-3-21 Early Termination, Revocation or Forfeiture.**

(1) The City may terminate or revoke this Franchise and all rights and privileges herein provided for any of the following reasons:

(a) The Company fails to make timely payments of the Franchise Fee as required under Section 8 of this Franchise and does not correct such failure within thirty (30) calendar days after written notice by the City of such failure;

(b) 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 have six (6) months from the date it receives notice to remedy the conditions identified in the notice. 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 in lieu of the six (6) months time provided above.

(c) The Company becomes insolvent, unable or unwilling to pay its debts, is 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.

(2) No franchise revocation or termination may be affected under this Section 21 until the City Council shall first adopt an ordinance terminating the Franchise and set forth therein the reasons therefore, following not less than thirty (30) days prior written notice to the Company of the public hearing on the ordinance. The Company shall have an opportunity at the public hearing to be heard upon the proposed termination and, if terminated, the Council shall make findings of fact and state its reasons for such action.

(3) Nothing contained herein shall be deemed to preclude Company from pursuing any legal or equitable rights or remedies it may have to challenge the action of the City Council or any successor governing body of the City following said ordinance's adoption.

*History: 4/93*

**12-3-22 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 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.

*History: 4/93, 6/04*

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#### Chapter 4. Electric Utility Franchise and General Utility Easement

- 12-4-1 Grant of Franchise and General Utility Easement
- 12-4-2 Term
- 12-4-3 Acceptance by Company
- 12-4-4 Non-Exclusive Franchise
- 12-4-5 City Regulatory Authority
- 12-4-6 Indemnification
- 12-4-7 Annexation
- 12-4-8 Plan, Design, Construction and Installation of Company Facilities
- 12-4-9 Relocation of Electric Facilities
- 12-4-10 Subdivision Plat Notification
- 12-4-11 Vegetation Management
- 12-4-12 Renewal
- 12-4-13 No Waiver
- 12-4-14 Transfer of Franchise
- 12-4-15 Amendment
- 12-4-16 Notices
- 12-4-17 Severability
- 12-4-18 Waiver of Jury Trial

**12-4-1 Grant of Franchise and General Utility Easement.** The City hereby 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 herein as “Electric Facilities”) in, under, along, over and across the present and future streets, alleys, and rights-of-way, not including City parks, buildings or other spaces not associated with City-owned rights-of-way (collectively referred to herein as “Public Ways”) within the City, for the purpose of supplying and transmitting electric power and energy to the inhabitants of the City and persons and corporations beyond the limits thereof.

**12-4-2 Term.** The term of this Franchise and General Utility Easement is for ten (10) years commencing on the date of acceptance by the Company as set forth in Section 3 below.

**12-4-3 Acceptance by Company.** Within sixty (60) days after the passage of this ordinance by the City, Rocky Mountain Power shall file an unqualified written acceptance thereof, with the City Recorder otherwise the ordinance and the rights granted herein shall be null and void.

**12-4-4 Non-Exclusive Franchise.** The right to use and occupy the Public Ways of the City shall be nonexclusive and the City reserves the right to use the Public Ways for itself or any other entity that provides service to City 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.

**12-4-5 City Regulatory Authority.** In addition to the provision herein contained, the City 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 City Ordinance.

**12-4-6 Indemnification.** 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 Rocky Mountain Power of its Electric Facilities. Rocky Mountain Power 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 Rocky Mountain Power’s use of the Public Ways within the City, and shall pay the costs of defense plus reasonable attorneys’ fees for any claim, demand or lien brought thereunder. The City shall: (a) give prompt written notice to Rocky Mountain Power of any claim, demand or lien with respect to which the City seeks indemnification hereunder; 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 hereof to the contrary, Rocky Mountain Power 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 or willful act or failure to act of the City or any of its officers or employees.

**12-4-7 Annexation.**

(1) Extension of City Limits; Upon the annexation of any territory to the City, the rights granted herein shall extend to the annexed territory to the extent the City 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.

(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 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 City's ordinance approving the proposed annexation. The notice shall be mailed to:

Rocky Mountain Power Customer Contact Center

Attn: Annexations  
P.O. Box 400  
Portland, Oregon 97207-0400

With a copy to:

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

**12-4-8 Plan, Design, Construction and Installation of Company Facilities.**

(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 city laws, codes and regulations.

(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 City as may be required by the City'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 City, and the City 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, however shall provide notification to the City of any underground work concerning the emergency.

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

(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 City) replace and restore it in as good a condition as existed before the work commenced.

(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 City ordinance.

(6) The City shall have the right without cost to use all poles and suitable overhead structures owned by Rocky Mountain Power within Public Ways for City 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 City 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 City 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. City 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, City 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 City's expense, such attachments to ensure compliance with this Section 8.6 and to require the City to remedy any defective attachments; provided that the City will not be charged for minor inspections of such attachments.

(7) Rocky Mountain Power shall have the right to excavate the Public Rights of Ways subject to reasonable conditions and requirements of the City. Before installing new underground conduits or replacing existing underground conduits, Rocky

Mountain Power shall first notify the City of such work by written notice and shall allow the City, 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 City will not unreasonably interfere with Rocky Mountain Power's Electrical Facilities or delay project completion.

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

**12-4-9 Relocations of Electric Facilities.**

(1) The City 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 City. 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 City 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 City.

(2) The City shall assign or otherwise transfer to Company 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

(3) 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.

**12-4-10 Subdivision Plat Notification.** Before the City approves the Final Plat of any new subdivision and before recordation of that Plat, the City 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  
635 N 1200 W  
Layton, Utah 84041

**12-4-11 Vegetation Management.** Rocky Mountain Power or its contractor may prune all trees and vegetation which overhang the Public Ways where Rocky Mountain Power electrical facilities exist, 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. Rocky Mountain Power shall use commercially reasonable good-faith efforts to provide advance notice to private property owner(s) prior to conducting vegetation management work. 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.

**12-4-12 Renewal.** At least 120 days prior to the expiration of this Franchise, Rocky Mountain Power and the City either shall agree to 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. Rocky Mountain Power 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.

**12-4-13 No Waiver.** Neither the City 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.

**12-4-14 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 City 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.

**12-4-15 Amendment.** At any time during the term of this Franchise, the City through its City Council, or Rocky Mountain Power 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). No amendment or amendments to this Franchise shall be effective until mutually agreed upon by the City and Rocky Mountain Power and formally adopted as an ordinance amendment, which is accepted in writing by Rocky Mountain Power.

**12-4-16 Notices.** Unless otherwise specified herein, all notices from Rocky Mountain Power to the City pursuant to or concerning this Franchise shall be delivered to the City Recorder's Office. Unless otherwise specified herein, all notices from the City to Rocky Mountain Power pursuant to or concerning this Franchise shall be delivered to:

Regional Business Management Director,  
Rocky Mountain Power,  
70 North 200 East, Room 122,  
American Fork, Utah, 84003

(or such other office as Rocky Mountain Power may advise the City of by written notice)

**12-4-17 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 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.

**12-4-18 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.

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## Chapter 5. Telecommunications

12-5-1	Definitions
12-2-2	Levy of Tax
12-2-3	Rate
12-2-4	Rate Limitation and Exemption Therefrom
12-2-5	Effective Date of Tax Levy
12-2-6	Changes in Rate or Repeal of the Tax
12-2-7	Interlocal Agreement for Collection of the Tax
12-2-8	Repeal of Inconsistent Taxes and Fees

### 12-5-1 Definitions. As used in this ordinance:

(1) "Commission" means the State Tax Commission.

(2)

(a) Subject to Subsections (2) (b) and (c), "customer" means the person who is obligated under a contract with a telecommunications provider to pay for telecommunications service received under the contract.

(b) For purposes of this ordinance, "Customer" means:

(i) the person who is obligated under a contract with a telecommunications provider to pay for telecommunications service received under the contract; or

(ii) if the end user is not the person described in Subsection (2) (b) (i), the end user of telecommunications service.

(c) "Customer" does not include a reseller:

(i) of telecommunications service; or

(ii) for mobile telecommunications service, of a serving carrier under an agreement to serve the customer outside the telecommunications provider's licensed service area.

(3)

(a) "End User" means the person who uses a telecommunications service.

(b) For purposes of telecommunications service provided to a person who is not an individual, "end user" means the individual who uses the telecommunications service on behalf of the person who is provided the telecommunications service.

(4) "Gross Receipts" attributed to the municipality means those gross receipts from a transaction for telecommunications services that is located within the municipality for the purposes of sales and use taxes under Utah Code Title 59, Chapter 12, Sales and Use Tax Act and determined in accordance with Utah Code section 59-12-207.

(5) "Gross Receipts from Telecommunications Service" means the revenue that a telecommunications provider receives for telecommunications service rendered except for amounts collected or paid as:

(a) a tax, fee, or charge:

(i) imposed by a governmental entity;

(ii) separately identified as a tax, fee, or charge in the transaction with the customer for the telecommunications service; and

(iii) imposed only on a telecommunications provider;

(b) sales and use taxes collected by the telecommunications provider from a customer under Title 59, Chapter 12, Sales and Use Tax Act; or

(c) interest, a fee, or a charge that is charged by a telecommunications provider on a customer for failure to pay for telecommunications service when payment is due.

(6) "Mobile Telecommunications Service" is as defined in the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

(7) "Municipality" means Clinton City Corp.

(8) "Place of Primary Use":

(a) for telecommunications service other than mobile telecommunications service, means the street address representative of where the customer's use of the telecommunications service primarily occurs, which shall be:

(i) the residential street address of the customer, or

(ii) the primary business street address of the customer; or

(b) for mobile telecommunications service, is as defined in the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

(9) Notwithstanding where a call is billed or paid, "Service Address" means:



(a) if the location described in this Subsection (9) (a) is known, the location of the telecommunications equipment:

- (i) to which a call is charged; and
- (ii) from which the call originates or terminates;

(b) if the location described in Subsection (9) (a) is not known but the location described in this Subsection (8) (b) is known, the location of the origination point of the signal of the telecommunications service first identified by:

- (i) the telecommunications system of the telecommunications provider; or
- (ii) if the system used to transport the signal is not a system of the telecommunications provider, information received by the telecommunications provider from its service provider, or
- (c) if the locations described in Subsection (9) (a) or (b) are not known, the location of a customer's place of primary use.

(10)

(a) Subject to Subsections (9) (b) and (9) (c), "Telecommunications Provider" means a person that:

- (i) owns, controls, operates, or manages a telecommunications service; or
- (ii) engages in an activity described in Subsection (9) (a) (i) for the shared use with or resale to any person of the telecommunications service.

(b) A person described in Subsection (9) (a) is a telecommunications provider whether or not the Public Service Commission of Utah regulates:

- (i) that person; or
- (ii) the telecommunications service that the person owns, controls, operates, or manages.

(c) "Telecommunications Provider" does not include an aggregator as defined in Utah Code Section 54-8b-2.

(11) "Telecommunications Service" means:

- (a) telephone service, as defined in Utah Code Section 59-12-102, other than mobile telecommunications service, that originates and terminates within the boundaries of this state; and
- (b) mobile telecommunications service, as defined in Utah Code Section 59-12-102:

(i) that originates and terminates within the boundaries of one state; and

(ii) only to the extent permitted by the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.

**12-5-2 Levy of Tax.** There is hereby levied a municipal telecommunications license tax on the gross receipts from telecommunications service attributed to this municipality.

**12-5-3 Rate.**

(1) The rate of the tax levy shall be 3.5% of the telecommunication provider's gross receipts from telecommunications service that are attributed to the municipality subject to the following:

(2) If the location of a transaction is determined to be other than this municipality then the rate imposed on the gross receipts for telecommunications services shall be the lower of (1) the rate imposed by the taxing jurisdiction in which the transaction is located or (2) the rate for non- mobile telecommunication services shall be the rate imposed by the municipality in which the customer's service address is located; or for mobile telecommunications service, the rate imposed by the municipality of the customer's primary place of use.

**12-5-4 Rate Limitation and Exemption Therefrom.** This rate of this levy shall not exceed four percent (3.5%) of the telecommunication provider's gross receipts from telecommunication service attributed to the municipality unless a higher rate is approved by a majority vote of the voters in this municipality that vote in:

- (1) a municipal general election;
- (2) a regular general election; or
- (3) a local special election.

(1) a municipal general election;

(2) a regular general election; or

(3) a local special election.

**12-5-5 Effective Date of Tax Levy.** This tax shall be levied beginning the earlier of July 1, 2007 or the first day of any calendar quarter after a 75 day period beginning on the date the Commission received notice pursuant to Utah Code Section 10-1-403 that this municipality has enacted this ordinance.

**12-5-6 Changes in Rate or Repeal of the Tax.** This ordinance is subject to the requirements of Utah Code Section 10-1-403. If the tax rate is changed or the tax is repealed, then

the appropriate notice shall be given as provided in Utah Code Section 10-1-403.

**12-5-7 Interlocal Agreement for Collection of the Tax.** On or before the effective date of the ordinance, the municipality shall enter into the uniform interlocal agreement with the Commission as described in Utah Code Section 10-1405 for the collection, enforcement, and administration of this municipal telecommunications license tax.

**12-5-8 Repeal of Inconsistent Taxes and Fees.**

(1) Any tax or fee previously enacted by this municipality under authority of Utah Code Section 10-1 - 203 or Utah Code Title 11, Chapter 26, Local Taxation of Utilities Limitation is hereby repealed.

(2) Nothing in this ordinance shall be interpreted to repeal any municipal ordinance or fee which

provides that the municipality may recover from a telecommunications provider the management costs of the municipality caused by the activities of the telecommunications provider in the rights-of-way of the municipality, if the fee is imposed in accordance with Utah Code Section 72-7-102 and is not related to the municipality's loss of use of a highway as a result of the activities of the telecommunications provider in a right of way, or increased deterioration of a highway as a result of the activities of the telecommunications provider in a right-of -way nor does this ordinance limit the municipality's right to charge fees or taxes on persons that are not subject to the municipal telecommunications license tax under this ordinance and locate telecommunications facilities, as defined in Utah Code Section 72-7-108, in this municipality.

*History 6/04; Ord. 15-10, 11/15*

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## Chapter 6. Cable TV Franchises

- 12-6-1 Definitions
- 12-6-2 Levy of Tax
- 12-6-3 Requirement to Acquire Franchise
- 12-6-4 General Requirement

### Chapter 1. Definitions

- 12-6-1 Definitions

**12-6-1 Definitions.** As used in this ordinance:

“Cable TV Franchise” means the non-exclusive authorization issued by the City which authorizes the construction and operation of the Cable Television System within the City.

“Cable TV Provider” means any individual, partnership, association, joint stock company, trust, corporation, or governmental entity (but not the City) using the public rights-of-way to provide multiple video programming services to subscribers.

“Cable Television Services” means (1) the one-way transmission to subscribers via cable of (a) multiple video programming, or (b) other programming services; and, (2) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming services.

“Cable Television System” consists of a set of closed transmission paths and associated signal

generation, reception, and control equipment that is designed to provide Cable Television Services which includes video programming and which is provided to multiple subscribers within the City.

“City Rights-of-Way” means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public rights-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses.

**12-6-2 Levy of Tax.** There is hereby levied a municipal franchise tax of 5% on the gross receipts from Cable TV services attributed to this municipality.

**12-6-3 Requirement to Acquire Franchise.** Any Cable TV Provider wishing to provide Cable TV Services within the City must receive a City Cable TV Franchise prior to any access to City Rights-of-Way or provision of services to City subscribers.

**12-6-4 General Requirements.** Each Franchise, whether new or renewal, shall be a separate and new document compliant with all City Ordinances, laws and regulations in effect at the time of the Franchise approval.

*History: Ord.15-10, 11/15*