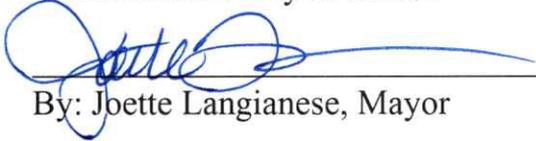


SUMMARY OF
MOAB CITY
ORDINANCE NO. 2025-03

On January 28, 2025, the Moab City Council enacted Ordinance No. 2025-03, Electric Utility Franchise and General Utility Easement Agreement Between Rocky Mountain Power and the City of Moab.


By: Joette Langianese, Mayor

ATTEST


Sommar Johnson, Recorder

Voting:

Council Member Wojciechowski voting AYE
Council Member Topper voting AYE
Council Member Knuteson-Boyd voting AYE
Council Member Myers voting AYE
Council Member Taylor voting AYE

A complete copy of Ordinance No. 2025-03 is available in the Moab City offices located at 217 E. Center Street, Moab, UT 84532.

**ORDINANCE NO. 2025-03
ELECTRIC UTILITY FRANCHISE
AND GENERAL UTILITY EASEMENT AGREEMENT
BETWEEN
ROCKY MOUNTAIN POWER AND THE CITY OF MOAB**

WHEREAS, Rocky Mountain Power, is a regulated public utility that provides electric power and energy to the citizens of Moab City (the “City”) and other surrounding areas;

WHEREAS, providing electrical power and energy requires the installation, operation and maintenance of power poles and other related facilities to be located within the public ways of the City;

WHEREAS, the City, pursuant to the provisions of Utah Code Ann. § 10-8-21 has the authority to regulate power line facilities within public ways and to grant to Rocky Mountain Power a general utility easement for the use thereof;

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

NOW, THEREFORE, be it ordained by the City:

SECTION 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, but not including municipal parks, municipal buildings or other facilities and assets owned or managed by the municipality not specifically listed here (collectively referred to herein as “Public Ways”), 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.

SECTION 2. Term. The term of this Franchise and General Utility Easement (“Franchise”) is for ten (10) years commencing on the date of acceptance by the Company as set forth in Section 3 below. The term of this Franchise may be extended pursuant to Section 13.

SECTION 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.

SECTION 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.

SECTION 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, property, 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.

SECTION 6. Municipal Energy Sales and Use Tax. Rocky Mountain Power acknowledges that the City has levied a Municipal Energy Sales and Use Tax ("MET") on the sale or use of the delivered value of taxable energy within the City, pursuant to the Municipal Energy Sales and Use Tax Act (Utah Code § 10-1-301 *et seq.*) (the "Act"). To the extent consistent with the Act and City Ordinances, Rocky Mountain Power shall collect the MET in the amount levied, as it may be adjusted during the term of this Franchise, and pay said tax directly to the City.

Nothing in this Franchise shall affect the City's right, under the Act, or any other applicable law then in effect, at any time hereafter to prospectively impose upon, charge, collect a municipal energy sales and use tax on the sale or use of taxable energy supplied by or through Rocky Mountain Power within the City, or to impose, charge, or collect any lawful fee, tax, license fee, license tax, franchise fee, or similar charge, or any combination or any of the foregoing provided the City is or becomes legally authorized to do so. If the Act is repealed, invalidated, or the maximum allowable rate of the MET is reduced, and if said act is not superseded by a law imposing a substantially equivalent tax, then Rocky Mountain Power shall pay to the City a franchise fee in an amount equal to the MET rate imposed at the time of the repeal, invalidation, or reduction in the maximum allowable MET rate, effective on or after the day of the repeal, invalidation, or reduction.

SECTION 7. 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.

SECTION 8. Annexation.

8.1 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.

8.2 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

SECTION 9. Plan, Design, Construction, Installation, and Removal of Company Facilities.

9.1 All Electrical Facilities installed or used under authority of this Franchise shall be used, constructed and maintained in accordance with applicable federal, state, city, and local laws, codes, and regulations and the National Electric Safety Code.

9.2 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 municipal code, and that 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. Provided, however, that Rocky Mountain Power shall send notice to the City two (2) business days before commencing any permitted work in the Public Ways that would cause a detour on any Public Way, or impact traffic on Minor and Major Arterial or Minor and Major Collector roads as defined by the Utah Department of Transportation via email to shop@moabcity.gov, which notice shall include the anticipated start day of the work and a brief description of the work. Notwithstanding the foregoing, Rocky Mountain Power shall not be obligated to obtain a permit to perform emergency repairs.

9.3 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.

9.4 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.

9.5 Rocky Mountain Power will comply with Utah Code Title 54, Chapter 14, including but not limited to issues regarding the siting of facilities.

9.6 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 9.6 and to require the City to remedy any defective attachments.

9.7 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.

9.8 Unless Electric Facilities are planned to be used for a future use or except when the cessation of service is a direct result of a natural or manmade disaster or other emergency, Rocky Mountain Power shall remove its Electric Facilities from the Public Ways when Rocky Mountain Power ceases to operate such Electric Facility for a continuous period of 12 months. Upon receipt of written notice from the City documenting the cessation of operations of an Electric Facility, Rocky Mountain Power shall have ninety (90) days or as soon after ninety (90) days as reasonably possible due to weather, environmental, and staffing and resource conditions from the date the

notice is received to begin operating the Electric Facility or remove the Electric Facility. Rocky Mountain Power shall be obligated, at its sole cost and expense, to restore the Public Ways and any public or private property affected by such removal to as near as reasonably practical the same condition as existed immediately prior to such removal. Where there are third-party attachments on Rocky Mountain Power's Electric Facilities, Rocky Mountain Power may sign over certain Electric Facilities to third parties for the continued operation of third-party services utilizing the Electric Facilities and abandon in place Electric Facilities needed for the third-party attacher.

9.9 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.

SECTION 10. Relocation of Electric Facilities.

10.1 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. The City may 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.

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

SECTION 11. Subdivision Plat Approvals. Rocky Mountain Power agrees to comply with Moab Municipal Code 16.16.020(I), or applicable successor ordinance for developments impacting or involving Rocky Mountain Power's Electrical Facilities, including underground facilities to be installed by the developer, and associated rights of way depicted on a developer's proposed plat, before the developer submits its plat for approval by the City.

SECTION 12. Vegetation Management. Rocky Mountain Power or its contractor may prune all trees and vegetation which overhang the Public Ways, whether such trees or vegetation originate within or outside the Public Ways to prevent the branches or limbs or other part of such trees or vegetation from interfering with Rocky Mountain Power's Electrical Facilities. Such pruning shall comply with the *American National Standard for Tree Care Operation (ANSI A300)* and be conducted under the direction of an arborist certified with the International Society of Arboriculture. A growth inhibitor treatment may be used for trees and vegetation species that are fast-growing and problematic, provided that said treatment shall only be administered under the

guidelines of a certified arborist. Nothing contained in this Section shall prevent Rocky Mountain Power, when necessary and with the approval of the owner of the property on which they may be located, from cutting down and removing any trees which overhang streets.

SECTION 13. Termination and Renewal. Either party may notify the other party one hundred twenty (120) days before the expiration of this Franchise that they will not renew the Franchise, in which case the Franchise will terminate at the end of the term. If neither party notifies the other party of a desire to terminate and the parties have not renewed or replaced the Franchise, the Franchise will automatically be extended for an additional two (2) year term (the "Second Term") to allow the parties to negotiate a renewal or replacement Franchise. Provided, however, that either party may terminate the Franchise at any time during the Second Term by providing the other party one hundred twenty (120) days advance written notice. If the parties do not renew or replace the Franchise by the end of the Second Term, the Franchise will terminate at the end of the Second Term. Rocky Mountain Power shall not have the continued right to use the Public Ways of the City unless an extension or replacement Franchise is entered into upon expiration of this Franchise.

SECTION 14. 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.

SECTION 15. 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. The terms and conditions of this Franchise will bind all successors and assigns of the parties hereto.

SECTION 16. 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.

SECTION 17. 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 the Regional Business Management Director, Rocky Mountain Power, 70 North 200 East, Room 122, American Fork, Utah, 84003, and such other office as Rocky Mountain Power may advise the City of by written notice.

SECTION 18. 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.

SECTION 19. Third Party Beneficiaries. The benefits and protection provided by this Franchise shall inure solely to the benefit of City and Rocky Mountain Power. This Franchise shall not be deemed to create any right in any person who is not a party and shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party other than the permitted successors and assigns of the parties.

SECTION 20. Applicable Law. The terms and conditions herein shall be interpreted according to the laws of the State of Utah, except where expressly preempted by federal law. Venue shall be in the Third Judicial District Court in Salt Lake County.

SECTION 21. Headings and Captions. The headings in this Franchise are inserted for convenience and identification only and are in no way intended to describe, interpret, define, or limit the scope, extent, or intent of this Franchise or any provision.

SECTION 22. No Relationship. Nothing in this Franchise will be construed to create any partnership, joint venture or fiduciary relationship among the parties.

SECTION 23. Drafting Party. The parties represent and agree that they had full opportunity to review this Franchise with their respective legal counsel and that they accept the terms hereof. The rule that such an agreement is to be construed against its drafter does not apply to this Franchise.

SECTION 24. No Waiver. Any party's failure to enforce any provision of the Franchise will not constitute a waiver of the right to enforce such provision. The provisions may be waived only in writing by the party intended to be benefited by the provisions and a waiver by a party of a breach hereunder by the other party will not be construed as a waiver of any succeeding breach of the same or other provisions.

SECTION 25. Immunity. The City, as a Utah governmental entity, possesses certain immunities by law, including immunity under the Utah Governmental Immunity Act, Utah Code § 63G-7-101, *et seq.* Nothing in this Franchise waives or abrogates any legal immunities possessed by the City.

SECTION 26. 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.

PASSED by the City Council of the City of Moab, Utah this 11th day of February, 2025.

MAYOR



ATTEST:



CITY RECORDER

(Complete As Applicable)

Summary of ordinance posted to Moab City Website, the Utah Public Notice Website, and in a public location within the City boundaries pursuant to U.C.A 10-3-711 and 63G-30-102 on

FEBRUARY 12, 2025

Effective date of ordinance: FEBRUARY 12, 2025