

TITLE 18. FRANCHISE AGREEMENTS.

CHAPTER 18-100. ELECTRIC UTILITY FRANCHISE AND GENERAL UTILITY EASEMENT TO ROCKY MOUNTAIN POWER.

Part 18-120. Agreement.

18-121. 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, public ways and public places (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.

18-122. 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 18-123 below.

18-123. 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. (Tremonton City did receive written acceptance from Rocky Mountain Power dated November 2, 2011. This written acceptance is attached to Ordinance No. 11-10. A copy of Ordinance No. 11-10 and the written acceptance can be obtained from the City Recorder.)

18-124. 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 water or sewerage service or other utilities to City residences.

18-125. 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.

18-126. 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) unless in the City’s judgment a conflict of interest exists between the City and Rocky Mountain Power with respect to such claim, demand or lien, permit Rocky Mountain Power to assume the defense of such claim, demand, or lien with counsel satisfactory to City. 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.

18-127. 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 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 97202-0400

With a copy to:

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

18-128. Plan, Design, Construction and Installation of Company Facilities.

(1) All Electric 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 way or street or other public places, apply for a permit from the City which permit shall not be unreasonably withheld, unreasonably conditioned, or delayed provided however Rocky Mountain Power will abide by all applicable state statutes, 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, Rocky Mountain Power shall not be obligated to obtain a permit to perform emergency repairs.

(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 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 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 addition 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.

(7) Rocky Mountain Power shall have the right to excavate the Public 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 and shall allow the City, at its own expense, 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 Electric 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.

18-129. 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. The City shall assign or otherwise transfer to Rocky Mountain Power all right it may have to recover the cost for the relocation work and shall support the efforts of Rocky Mountain Power to obtain reimbursement.

(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 or caused by a private development.

18-130. Subdivision Plat Notification. Before the City approves any new subdivision and before recordation of the plat, the City shall mail notification of such approval and a copy of the plat to Rocky Mountain Power:

Rocky Mountain Power
Attn: Property Management / Right-of-Way
Department
825 NE Multnomah, Suite 1700
Portland, Oregon 97232

18-131. 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. 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.

18-132. Renewal. At least one hundred twenty (120) days prior to the expiration of this Franchise, Rocky Mountain Power 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. 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.

18-133. 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.

18-134. 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, 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 Rocky Mountain Power's mortgage(s) shall not constitute a transfer or assignment.

18-135. 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 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.

18-136. 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 Customer Services Vice President, Rocky Mountain Power, 201 South Main, Suite 2400, Salt Lake City, Utah 84111, and such other office as Rocky Mountain Power may advise the City of by written notice.

18-137. 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. (Ord. No. 11-10 October 18, 2011)

CHAPTER 18-200. FRANCHISE TO QUESTAR GAS

Part 18-220. Agreement.

18-221. Grant of Franchise. The City grants to Questar Gas a nonexclusive franchise (hereafter referred to as “Franchise”) to construct, maintain, and operate in the present and future roads, streets, alleys, highways, and other public rights-of-way within City limits, including any property annexed or otherwise acquired by the City after the effective date of this Franchise, (hereafter referred to as collectively, “Streets”) a distribution system for furnishing natural gas to the City and its inhabitants for heating and other purposes. Questar Gas shall have the right to erect, construct, equip, operate and maintain along, over, and under the Streets a system of mains, pipes, laterals, and related equipment (hereafter referred to as “Facilities”) as are reasonably necessary for supplying natural gas service in accordance with this Franchise.

18-222. Consideration. In consideration of this Franchise, Questar Gas shall pay to City the sum of \$50.00 upon acceptance of this Franchise and shall provide gas service in accordance with the terms of this Franchise.

18-223. Term. This Franchise is granted for a fifteen (15) year term from the Effective Date. Upon the date of expiration of this Franchise Agreement, the City and Questar Gas shall negotiate in good faith the terms of renewal. The terms and conditions of this Franchise Agreement will remain in effect until the new Franchise Agreement between the City and Questar Gas become effective.

18-224. Acceptance. Within sixty (60) days after the passage of this ordinance, Questar Gas shall file with the City an unconditional written acceptance of the Franchise declaring its acceptance of the Franchise and its intention to be bound by the terms and conditions of the Franchise.

18-225. Effective Date. This ordinance shall

become effective upon the date of acceptance by Questar Gas as established above, which is May 19, 2017 and is hereafter referred to as the “Effective Date”.

18-226. Construction and Maintenance of Facilities.

(1) All Facilities shall be constructed and installed so as to interfere as little as possible with traffic over and public use of the Streets and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of the Streets. All Facilities shall be constructed in accordance with established gas distribution construction practices and in a manner which protects the Facilities from all traffic loads. Without unreasonable additional cost to Questar Gas, all Facilities that are installed during the term of the Franchise shall be sited to be visually unobtrusive and to preserve the natural beauty and neighborhood aesthetics within the City limits.

(2) Questar Gas shall repair or replace, at its own expense, any and all rights of way, pavements, sidewalks, street improvements, excavations, other facilities, landscaping, or other improvements, public or private (hereafter referred to collectively as “Public or Private Improvements”), that it damages in the Franchise operations.

18-227. Compliance with Ordinances--Conflict.

(1) Questar Gas shall comply with all City ordinances, regulations, and requirements and shall pay all applicable excavation fees and charges that are or may be prescribed by the City with respect to the construction, maintenance and operation of all Facilities. However, these obligations shall apply only as long as such ordinances, regulations, requirements, or fees are not preempted by or otherwise in conflict with any applicable statutory or constitutional law, rule, or regulation, or the tariffs approved by regulatory bodies having jurisdiction over Questar Gas, including this Franchise and any lawful revisions made and accepted by Questar Gas during the term of the Franchise.

(2) The City shall have the right to inspect the construction and maintenance of the Facilities and Questar Gas’s repair to Public or Private Improvements to ensure the proper compliance with applicable City ordinances, regulations, requirements and compliance with this Franchise. In the event Questar Gas should fail to comply with the terms of any City ordinance, regulation, requirement, or this Franchise the City shall give Questar Gas written notice of such non-compliance and the time for correction provided by ordinance or this Franchise or a reasonable time for correction if there is no time

frame provided by the applicable ordinance, regulation, or requirement. Excluding any correction, modification, or change to the Facilities, and after written notice and failure of Questar Gas to make correction, the City may, at its sole risk, make such correction itself and charge the cost to Questar Gas including any minimum cost provided by ordinance. The City shall not make, nor request or allow any party other than Questar Gas to make changes, corrections, or modifications of any kind to Questar Gas's Facilities. Nothing in this Franchise limits Questar Gas's right to oppose any ordinance, whether existing, proposed, or adopted, from and after the effective date of this Franchise.

18-228. Information Exchange. Upon request by either the City or Questar Gas, as reasonably necessary, Questar Gas and the City shall meet for the purpose of exchanging information and documents regarding construction and other similar work within the City limits or its declared annexation areas, with a view towards coordinating their respective activities in those areas where such coordination may prove mutually beneficial. Any information received by the City from Questar Gas that contains or relates to Questar Gas's confidential or proprietary information, including but not limited to information regarding future capital improvements that may involve land acquisition shall be treated with confidentiality upon Questar Gas's written request identifying what specific information is confidential or proprietary and to the extent that the City may lawfully do so.

18-229. Relocation.

(1) Upon written notice to Questar Gas, the City may require the relocation and removal or reinstallation (hereafter referred to collectively as, "Relocation") of any Facilities located in, on, along, over, across, through, or under any of the Streets. After receipt of such written notice, Questar Gas shall diligently begin such Relocation of its Facilities as may be reasonably necessary to meet the City's requirements. The Relocation of Facilities by Questar Gas shall be at no cost to the City if (i) such request is for the protection of the public health, safety and welfare pursuant to lawful authority delegated to the City; (ii) the Facilities have been installed pursuant to this or any other Questar Gas franchise and not pursuant to a property or other similar right, including, but not limited to, a right-of-way, grant, permit, or license from a state, federal, municipal or private entity; and (iii) the City provides a new location for the Facilities. Otherwise, a Relocation required by the City pursuant to such written notice shall be at the City's expense. Following Relocation of any Facilities, Questar Gas may maintain and operate such Facilities in a new

location within City limits without additional payment. If a City project is funded by federal or state monies that include an amount allocated to defray the expenses of Relocation of Facilities, then the City shall compensate Questar Gas up to the extent of such amount for any Relocation costs allowed by the project to the extent that the City actually receives or is otherwise authorized to direct or approve payment of such federal or state funds; however, the City shall ensure that receipt of compensation from federal or state sources shall not restrict or otherwise obligate Questar Gas's ownership of the Facilities in any way.

(2) Notwithstanding the preceding paragraph, Questar Gas shall not be responsible for any costs associated with an authorized City project that are not attributable to Questar Gas's Facilities in the Streets. Further, all such costs shall be allocated among all utilities or other persons whose facilities or property are subject to Relocation due to an authorized City project.

18-230. Terms of Service. Questar Gas shall furnish natural gas service without preference or discrimination among customers of the same service class at reasonable rates, in accordance with all applicable tariffs approved by and on file with regulatory bodies having jurisdiction over Questar Gas, including revisions to such tariffs made during the term of the Franchise, and in conformity with all applicable constitutional and statutory requirements. Questar Gas may make and enforce reasonable rules and regulations in the conduct of its business, may require its customers to execute a gas service agreement as a condition to receiving service, and shall have the right to contract with its customers regarding the installation and operation of its Facilities. To secure safe and reliable service to the customers, and in the public interest, Questar Gas shall have the right to prescribe the sizes and kinds of pipes and related Facilities to be used and shall have the right to refuse service to any customer who refuses to comply with Questar Gas's rules and regulations.

18-231. Indemnification. Questar Gas shall indemnify, defend, and hold the City, its officers and employees, harmless from and against any and all claims, demands, liens, liabilities, damages, actions, and proceedings arising from the exercise by Questar Gas of its rights under this Franchise, including its operations within City limits, and Questar Gas shall pay the reasonable cost of defense plus the City's reasonable attorney fees. Notwithstanding any provision to the contrary, Questar Gas shall not be obligated to indemnify, defend or hold the City harmless to the extent that any underlying claim, demand, lien, liability, damage, action, and

proceeding arises out of or in connection with any act or omission of the City or any of its agents, officers or employees.

18-232. Assignment. Questar Gas may assign or transfer its rights and obligations under the Franchise to any parent, affiliate, or subsidiary of Questar Gas, to any entity having fifty percent (50%) or more direct or indirect common ownership with Questar Gas, or to any successor-in-interest or transferee of Questar Gas having all necessary approvals, including those from the Utah Public Service Commission or its successor, to provide utility service within the City limits. Questar Gas shall provide the City with written notification of its assignment or transfer of its rights and obligations under this Franchise. Otherwise, Questar Gas shall not transfer, assign, or delegate any of its rights or obligations under the Franchise to another entity without the City's prior written approval, which approval shall not be unreasonably withheld, conditioned, or delayed. Inclusion of the Franchise as an asset of Questar Gas subject to the liens and mortgages of Questar Gas shall not constitute a transfer or assignment requiring the City's prior written consent.

18-233. Insurance. Questar Gas shall responsibly self-insure or maintain insurance to cover its obligations and liabilities as set forth in Section 10, in lieu of any insurance as may be required in any City ordinances.

18-234. Bonding. If City ordinance requires Questar Gas to post a surety bond, that section of the ordinance is expressly waived.

18-235. Effect of Invalidity. If any portion of this Franchise is for any reason held illegal, invalid, or unconstitutional, such invalidity shall not affect the validity of any remaining portions of this Franchise.

18-236. Amendment. This ordinance shall not be altered or amended without the prior written consent of Questar Gas. (Ord. No. 17-03)