

E 3124188 B 7125 P 833-839  
RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
10/22/2018 03:02 PM  
FEE \$22.00 Pgs: 6  
DEP RT REC'D FOR ROCKY MOUNTAIN POW  
ER

**WHEN RECORDED, RETURN TO:**

Rocky Mountain Power  
Property Management Dept  
Attn: Lisa Louder/Mailia Lauto'o  
1407 West North Temple, Suite 110  
Salt Lake City, Utah 84116  
Parcel: UTDV-0135, 0142, 0143, 0147  
File No.: 47109, 47659, 51685 ✓  
Tax ID Nos.: 14-003-0003, 14-003-00075, and 14-003-0013 ✓

part  
✓

**STORM DRAINAGE FACILITIES AND PUBLIC RECREATION  
EASEMENT AGREEMENT**

This Storm Drainage Facilities and Public Recreation Easement Agreement (the "Easement") is entered into this 17 day of October, 2018, by and between, Rocky Mountain Power, an unincorporated division of PacifiCorp, an Oregon corporation ("Grantor"), and CLINTON CITY, a municipal corporation, whose principal address is 2267 North 1500 West, Clinton, Utah 84015 ("Grantee").

**RECITALS**

A. Grantor owns certain parcels of land located in Davis County, State of Utah, used for the construction, maintenance and operation of high voltage electric transmission lines and other similar and incidental uses in connection with its electric utility operations. The parcels of land are referred to hereinafter as the "Transmission Line Corridor."

B. Grantee is developing a park and storm water detention basin, public facilities and related improvements (collectively referred to herein as the "Improvements") within the Transmission Line Corridor in connection with the establishment and construction of a public park and detention basin.

C. Grantor has agreed to convey an easement to Grantee subject to and in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in exchange of the mutual promises herein contained and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Grant of Easement.** Subject to the terms and conditions set forth herein, Grantor hereby grants to Grantee a non-exclusive, perpetual easement on and over the Transmission Line Corridor for Grantee's use as a public park, detention basin, and attendant facilities to be improved, operated, and maintained solely by Grantee. The location and boundaries of the Easement conveyed to Grantee are more particularly described in Exhibit "A", attached hereto and by this reference made a part hereof.

2. **Limitation of Liability.**

2.1. Limitation of Landowner's Liability. Grantee shall have the right to use, and shall allow the public to use without charge, the Transmission Line Corridor for recreational purposes and for no other use. To that end, Grantee shall take all reasonable and necessary steps to ensure reasonably safe use within Grantor's Land. It shall be a condition of this grant that the Transmission Line Corridor is made available to the public for recreational purposes without charge in accordance with the provisions of the Limitation of Landowner Liability – Public Recreation laws as set forth in Chapter 14, Title 57, Utah Code Annotated, as may be amended from time to time, and is intended to limit Grantee's liability toward persons entering such land.

2.2. Indemnification. Grantee shall use the Easement Property at its own risk and agrees to indemnify, defend, and hold harmless, Grantor from and against any and all losses, claims, actions, damages, liabilities, penalties, fines, or expenses, of whatsoever nature, including injury to persons, death of any person, or damages to property ("Claims"), including without limitation, reasonable attorneys' fees, arising from Grantee's use of the Easement Property or adjoining areas, or from the discharge of storm water onto the Easement Property, Grantor's Land or other land and from any activities contemplated by this Easement, in each case undertaken by Grantee or any other person claiming by, through, or under Grantee, except to the extent any such Claim results from the gross negligence or willful act of Grantor.

2.3. Grantee has examined the Transmission Line Corridor and accepts it in its present condition, AS-IS and with all faults. Grantor makes no representations or warranties as to the present or future condition of the Transmission Line Corridor and shall not be required to perform, pay for, or be responsible for any work to ready the property or remedy any property conditions or perform, any work, repair, or improvement whatsoever to the property or Grantor's facilities or structures to accommodate Grantee's use conveyed hereunder.

3. **Grantee's Use.**

3.1. Grantee may not:

a. make any use of Grantor's Land that, in the sole opinion of Grantor, interferes with the operation, maintenance, or repair of Grantor's existing electric facilities and improvements or any facilities or improvements that may in the future be constructed, added to, modified, or altered;

b. construct or place any building or structure of any kind or nature (i.e., pavilions, restrooms, etc.) or place or allow to be placed any equipment or material of any kind within Grantor's Land and below Grantor's transmission lines or transmission line structures without express written consent of Grantor, which consent shall not be given for any such buildings, structures, streetlights or signs that exceed ten feet (10') in height;

c. Store any flammable materials or allow any fires to be lit within Grantor's Land; or

d. Alter ground elevations without Grantor's prior consent. Such consent shall be based upon National Electric Safety Code clearance standards or more stringent standards as may be imposed by Grantor, drainage concerns, the protection of Grantor's existing and future facilities and improvements, and any other reason Grantor deems reasonably necessary for the efficient and safe operation of Grantor's transmission lines.

3.2. Prior to making any improvements to the land or placing any structure within Grantor's Land, Grantee shall submit detailed plans and specification to Grantor at least sixty (60) days in advance. Grantor reserves the right to deny or require modifications to such plans to ensure the improvements will not impair Grantor's facilities or uses of its property. All improvements shall be made in a good and workmanlike manner consistent with applicable building codes or other applicable governmental requirements.

3.3. Grantee shall not plant any species of trees or other vegetation under or near Grantor's transmission lines that will grow to a height greater than ten feet (10') and shall otherwise keep and maintain Grantor's Land clear of all brush, trees and timber that exceeds ten feet (10') in height or any other vegetation that may endanger Grantor's facilities or improvements or that may impede Grantor's use and access of Grantor's Land for its utility operations.

3.4. Grantee shall bear any and all costs and expenses for developing Grantor's Land for recreational uses which improvements shall be made in accordance with federal, state, and local laws. To the extent Grantor requires access to its transmission lines from the Easement, Grantee shall ensure that any curb and gutter installed shall be high-back type and will contain a thirty foot (30') curb cut on both sides of the road located at places designated by Grantor, which curb cuts shall be sufficient to allow the passage of Grantor's equipment and vehicles used for the repair, maintenance, and reconstruction of its facilities and installations. Roadway construction will be sufficient to support Grantor's vehicles and equipment in excess of 50 tons. Grantee shall pay all costs associated with the design, construction and installation of climb resistant barriers on transmission structures located within the Transmission Line Corridor.

3.5. Grantee will not use or permit to be used within the Transmission Line Corridor, any cranes or other equipment that violates OSHA and Utah High Voltage Act Safety Clearance Standards. Grantee will not excavate within fifty feet (50') of Grantor's transmission structures. Grantee shall use best faith efforts to monitor against any public activity that may result in bringing any object or thing within the minimum clearance distances provided in this paragraph. At no time shall Grantee place any equipment or materials of any kind that exceed ten feet (10') in height, or that creates a material risk of endangering Grantor's facilities, or that may pose a risk to human safety. Grantee's use of the easement area shall comply with OSHA and Utah High Voltage Act Safety Clearance Standards.

3.6. Grantee shall comply with all applicable federal, state, and local laws and applicable codes and standards in connection with its use of the Easement.

4. **Grantor's Use.**

4.1. Grantor shall have the right to use Grantor's Land, without impairment or interference of any kind, for any use in connection with its electric utility operations. Moreover, Grantor may allow the Transmission Line Corridor to be used by others, without permission or notice to Grantee, for any purpose that does not unreasonably interfere with Grantee's use, including the installation and use for communications equipment, pipeline, and other similar utility-related uses.

4.2. Grantor shall have the right to cross the Transmission Line Corridor, and adjacent park lands where access to the Transmission Line Corridor is reasonably necessary, with equipment, personnel, overhead power lines or underground power lines and access roads, at any location or locations thereon at any time. Grantor will take reasonable care when working around Grantee's improvements. Grantor will not be responsible for any damage it causes to Grantee's improvements.

4.3. Grantor shall use good faith efforts to notify Grantee in advance of any planned, significant construction activities that may interfere with Grantee's use of the Transmission Line Corridor.

5. If the enactment or adoption of any law, ordinance, regulation, order, condition, or other governmental requirement relating to Grantor's operations on the property makes further performance impractical or frustrates the purpose for which this Easement was granted, Grantor shall have the right to terminate this Easement by giving Grantee ninety (90) days prior written notice. Grantee may remove any of its improvements within those ninety (90) days. In such event, Grantor shall have no obligation to compensate Grantee for any of its Improvements not so removed.

6. **Prevailing Party.** If any suit or action arising out of or related to this Easement is brought by any party, the prevailing party or parties shall be entitled to recover the costs and fees (including, without limitation, reasonable attorneys' fees, the fees and costs of experts and consultants, copying, courier and telecommunications costs, and deposition costs, and all other costs of discovery) incurred by such party or parties in such suit or action, including without limitation, any post-trial or appellate proceeding, or in the collection or enforcement of any judgment or award entered or made in such suit or action.

7. **Integration.** This Easement, including exhibits, represents the entire agreement between the parties and supersedes any and all prior understandings, representations, or agreements of the parties, whether written or otherwise, regarding the subject matter of this document.

8. **Authority.** Each individual executing this Easement Agreement does thereby represent and warrant to each other so signing (and each other entity for which another person may be signing) that he or she has been duly authorized to sign this Easement Agreement in the capacity and for the entities set forth where he or she signs.

9. **Subject to Existing Rights.** This Easement is subject to all existing rights-of-way and encumbrances of record or in equity of law.

10. 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.

IN WITNESS WHEREOF, Grantor has caused its corporate name to be hereunto affixed by its duly authorized officer this 17 day of October, 2018.

GRANTOR


Rocky Mountain Power, an unincorporated division of PacifiCorp, an Oregon corporation

By:   
Douglas N. Bennion

Its: Vice President of Engineering Services & Asset Management

GRANTEE

CLINTON CITY, a municipal corporation

By:   
Mitch Adams

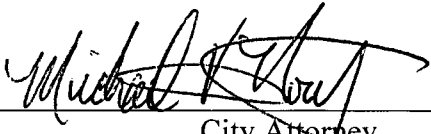
Its: Mayor

ATTEST:

By:   
Its: City Recorder



APPROVED AS TO FORM:

  
\_\_\_\_\_, City Attorney

ACKNOWLEDGEMENTS

STATE OF UTAH )  
 )  
 ) ss.  
COUNTY OF SALT LAKE )

On this 17 day of October, 2018, personally appeared before me Douglas N. Bennion, who being by me duly sworn, did say that he is the signer of the within instrument on behalf of Rocky Mountain Power, an unincorporated division of PacifiCorp, and that the within and foregoing Public Recreation Easement Agreement was signed on behalf of Rocky Mountain Power by actual authority.



*[Handwritten Signature]*  
NOTARY PUBLIC

STATE OF UTAH )  
 )  
 ) ss.  
COUNTY OF DAVIS )

On this 10 day of October, 2018, personally appeared before me Mayor, Mitch Adams, who being by me duly sworn, did say that he is the signer of the within instrument on behalf of Clinton City, and that the within and foregoing Public Recreation Easement Agreement was signed on behalf of Clinton City actual authority.



*[Handwritten Signature]*  
NOTARY PUBLIC