

COTTONWOOD HEIGHTS

RESOLUTION NO. 2015-69

A RESOLUTION APPROVING AND RATIFYING A WORK AGREEMENT WITH ROCKY MOUNTAIN POWER FOR RELOCATION OF POWER FACILITIES

WHEREAS, the city council (the "Council") of the city of Cottonwood Heights (the "City") met on 27 October 2015 to consider, among other things, approving and ratifying a "Customer Requested Work Agreement" (the "Agreement") with Rocky Mountain Power d/b/a Pacificorp ("RMP") whereunder the City will pay \$28,991 to RMP to relocate underground certain of RMP's power facilities near the site of the City's future municipal center on the northwest corner of the intersection of 2300 East street and Bengal Blvd. in the City, on the terms and conditions specified in the Agreement; and

WHEREAS, the Council has reviewed the form of the Agreement, a photocopy of which is annexed hereto as an exhibit; and

WHEREAS, after careful consideration, the Council has determined that it is in the best interests of the health, safety and welfare of the citizens of the City to approve and ratify the City's entry into the Agreement as proposed;

NOW, THEREFORE, BE IT RESOLVED by the city council of Cottonwood Heights that the attached Agreement is hereby approved and ratified, and that the City's mayor and recorder are authorized and directed to execute and deliver the Agreement on behalf of the City.

This Resolution, assigned no. 2015-69, shall take effect immediately upon passage.

PASSED AND APPROVED this 27th day of October 2015.



ATTEST:

By Linda W. Dunlavy
Linda W. Dunlavy, Recorder

COTTONWOOD HEIGHTS CITY COUNCIL

By Kelvyn H. Cullimore, Jr.
Kelvyn H. Cullimore, Jr., Mayor

VOTING:

Kelvyn H. Cullimore, Jr	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael L. Shelton	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
J. Scott Bracken	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael J. Peterson	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Tee W. Tyler	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>

DEPOSITED in the office of the City Recorder this 27th day of October 2015.

RECORDED this 27 day of October 2015.

CUSTOMER REQUESTED WORK AGREEMENT

This Customer Requested Work Agreement (this "Agreement"), dated October 12, 2015 ("Agreement Date"), is between Rocky Mountain Power, an unincorporated division of PacifiCorp ("Company"), and **COTTONWOOD HEIGHTS**, ("Customer"), for work to be performed by Company for Customer at or near **2265 E Bengal Blvd** in **Cottonwood heights** County, State of Utah.

Description:

Overhead to Underground Conversion

The Customer will provide, all necessary trenching and backfilling, and will furnish and install all distribution transformer pads, conduit and duct required by Company. Company may abandon in place any underground cables installed under this Agreement that are no longer useful to Company.

Customer also agrees to:

- a) Establish final grade for routing of circuits, placement of transformer pads, vaults, junction boxes and other underground facilities as required by Company.
- b) Install and maintain property lines and survey stakes; and,
- c) Make no permanent surface improvements, except curb and gutters, before Company completes installation of its facilities.
- d) Provide legal rights-of-way to Company, at no cost to Company, using Company's standard forms.

If any change in grade, or property lines, or any surface improvements require Company to change its facilities, or causes additional cost to Company, Customer agrees to reimburse Company for such change or cost.

Third-Party Relocation Costs: This work does not include any third-party relocation costs. Customer shall be solely responsible for obtaining cost estimates from any third-parties attached to the existing facilities, and Customer shall be solely responsible for making all necessary arrangements to transfer third-party facilities to the replacement facilities, or any alternative arrangements to accommodate all such third-parties.

Payment to Company: In consideration of the work to be performed by Company, Customer agrees to pay the estimated costs of the work in advance, with the understanding that there will be no other charges or refunds for the above specified work. Customer has previously paid for design, permitting or other work in the amount of \$0.00. The total advance for this work is \$28,991.00, with a **balance due of \$28,991.00. Estimated cost is valid for 90 days from the Agreement Date.**

Requested Date of Service: Requested date of service

Any correspondence regarding this work shall be directed to the appropriate party as shown below:

Cottonwood Heights City
John Park
1265 East Ft. Union Blvd #250
Cottonwood Heights, Utah 84047
Phone ()
Fax ()

Rocky Mountain Power
Craig Wetzel, Estimator
12840 Pony Exprss Road
Draper, Utah, 84120
Phone ()
Fax ()

This Agreement, upon execution by both Company and Customer, shall be a binding agreement for work performed by Company to accommodate Customer at the Customer's expense. The provisions of Appendix A General Terms and Conditions are an integral part of this Agreement.

COTTONWOOD HEIGHTS

By _____
Signature

Title _____

Print name of Signing Officer

Date

ROCKY MOUNTAIN POWER

By _____
Signature

Title Manager

Kim Felice
Print name of Signing Manager/Officer

Date

Appendix A
GENERAL TERMS AND CONDITIONS

LIABILITY AND INDEMNIFICATION

The Customer shall indemnify, defend and hold harmless Company to this Agreement and Company's officers, directors, agents, employees, successors and assigns from any and all claims, demands, suits, losses, costs, and damages of any nature whatsoever, including attorney's fees and other costs of litigation brought or made against or incurred by Company and resulting from, arising out of, or in any way connected with any act, omission, fault or negligence of the Customer, its employees or any officer, director, or employee or agent of the same and related to the subject matter of this Agreement. The indemnity obligation shall include, but not be limited to, loss of or damage to property, bodily or personal injury to, or the death of any person. The Customer's obligation under this provision of the Agreement shall not extend to liability caused by the sole negligence of Company.

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.

WORK COMPLETION

Company agrees to use commercially reasonable efforts to begin performance of the work on the date(s) specified above. In those instances where by reason of unanticipated events or emergencies which cause power outages or threaten Company's ability to continuously provide electric service as it is required to do by law or by contract, then Company personnel assigned to perform the work may be withdrawn from the work until such time as the unanticipated event or emergency is concluded. In the event that Company personnel are removed from the work in response to such an event or emergency, then the time for completion of the work shall be extended by a period of time equal to that period from the time the personnel are removed from the work until they are available to complete the work plus 48 hours.

It is expressly agreed that Company and those persons employed by Company in connection with the work described herein are not employed by or employees of the Customer.

Company warrants that its work shall be consistent with prudent utility practices. COMPANY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTY OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, AND SIMILAR WARRANTIES. Company's liability for breach of warranty, defects in the Improvements, or installation of the Improvements shall be limited to repair or replacement of any non-operating or defective portion of the work. Under no circumstances shall Company be liable for economic losses, costs or damages, including but not limited to special, indirect, incidental, punitive, exemplary or consequential damages.

The Customer may, at reasonable times and by written agreement with Company, request additional work within the general scope of the work as described in this Agreement or request the omission of or variation in the work, provided, however, that the Customer and Company agree to increase or decrease the amount the Customer is to pay Company and such changes in scope are reasonably acceptable to Company. Any such change to the scope of the work and the associated adjustment of costs shall be in writing and shall be submitted when obtained as an addendum to this agreement after being signed by both parties.

GENERAL

PAYMENTS: All bills or amounts due hereunder shall be payable to Company as set forth herein or on the 25th day following the postmarked date of the invoice if not otherwise specified. In the event that all or a portion of Customer's bill is disputed by Customer, Customer shall pay the total bill and shall designate that portion disputed. If it is later determined that Customer is entitled to a refund of all or any portion of the disputed amount, Company shall refund that portion of the amount of which Customer is found to be entitled. All billing statements shall show the amount due for the work performed.

COLLECTION: Customer shall pay all costs of collection, including court costs and reasonable attorney's fees upon default of customer, in addition to interest at a rate of 1.5 percent per month on any amounts not paid within thirty (30) day of invoice.

ASSIGNMENT: Customer shall not assign this Agreement to any successor without the written consent of Company, which consent shall not be unreasonably withheld. If properly assigned, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the party making the assignment.

Company may at any time assign its rights and delegate its obligations under this Contract to any: affiliate; successor in interest; corporation; or any other business entity in conjunction with a merger, consolidation or other business reorganization to which Company is a party.