

COTTONWOOD HEIGHTS

RESOLUTION No. 2016-39

A RESOLUTION APPROVING AN ACCESS AGREEMENT WITH ROCKY MOUNTAIN POWER

WHEREAS, the city council (the "Council") of the city of Cottonwood Heights (the "City") met on 10 May 2016 to consider, among other things, approving and ratifying a contract (the "Agreement") with Rocky Mountain Power ("RMP") whereunder RMP would allow the City to implement a community art pilot program whereunder local artists would paint and/or decorate certain electric transmission and/or distribution poles located in the City; and

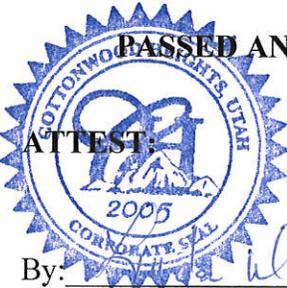
WHEREAS, the Council has reviewed the form of the Agreement, a photocopy of which is annexed hereto as an exhibit; and

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 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 with Provider 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. 2016-39, shall take effect immediately upon passage.

PASSED AND APPROVED this 10th day of May 2016.



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 10th day of May 2016.

RECORDED this 10 day of May 2016.

Revocable Right of Access Agreement

This RIGHT OF ACCESS AGREEMENT (“Agreement”), dated May 10, 2016, is by and between Rocky Mountain Power, an unincorporated division of PacifiCorp (“Licensor”) and city of Cottonwood Heights (Licensee”).

RECITALS

A. Licensor owns, operates, and maintains transmission and distribution assets in Licensee’s public places pursuant to an electric distribution system franchise granted by Licensee on July 31, 2007; and

B. Licensee desires and Licensor is willing to allow Licensee to implement a community art pilot program to allow local artists to paint and/or decorate certain transmission and/or distribution poles owned by Licensor and located in Cottonwood Heights City; and

C. Licensor has agreed to grant a temporary, non-exclusive and revocable license to Licensee solely for the purpose of permitting Licensee and its designated artists (the “Licensee Parties”) to paint and/or decorate designated transmission and distribution poles located in Cottonwood Heights City (the “Project”).

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Right of Entry. Licensor hereby grants to Licensee Parties the right to paint or decorate poles designated by Licensor, subject to the following conditions:
 - a. Licensee Parties shall strictly comply with any instructions, directions or restrictions promulgated by Licensor;
 - b. any artwork on Licensor’s poles is limited to the area between the ground line and 8 feet above the ground line;
 - c. any pole tag, label, lock, or warning sign affixed to Licensor’s poles shall remain intact, unaltered, and not painted or otherwise covered;
 - d. any ladder or stool used to apply the artwork will be free standing and not allowed to contact Licensor’s poles;
 - e. Licensee Parties shall not modify, move, or remove any part of Licensor’s poles, or any equipment attached to Licensor’s poles;
 - f. Licensor may change, modify and/or replace any pole as required or in its sole discretion;

g. Licensor will designate the number and location of poles to be used by Licensee Parties for the Project in its sole discretion, after discussing the Project with Licensee.

h. Licensee will be responsible for removing, or will reimburse Licensor for the costs of removing, any unauthorized graffiti, painting or other modification to Licensor's poles.

i. Licensor may revoke this Agreement at any time and at its sole discretion.

j. Licensee shall give Licensor ten (10) business days' advance written notice of the Licensee Parties' intent to begin the Project. Such notice shall set forth the exact date and approximate time when the activities are proposed to occur. In the event the proposed date and time are unacceptable to Licensor, Licensee agrees to cooperate with Licensor in scheduling a substitute date and time.

2. Compliance with Law. Licensee shall secure, at its expense, any and all necessary permits and shall comply with all applicable federal, state and local laws, regulation and enactments applicable to this Agreement. Licensee Parties shall perform and stage the Project so as to ensure the safety of: (a) Licensee Parties; (b) any and all Licensor operations conducted in the area; (c) surrounding property owners; and (d) the public in general.

3. Indemnification. Licensee, for itself, its successors, agents, contractors and employees, hereby jointly and severally releases, relinquishes and discharges Licensor and agrees to and does hereby agree to jointly and severally indemnify, defend and hold harmless, Licensor and its officers, directors, employees, representatives, agents, attorneys and consultants ("Indemnitees"), from and against any and all actions, claims, losses, costs, damages, expenses, penalties, assessments, injury, liability and judgments, orders, governmental directives, penalties, administration and judicial proceedings and other liabilities of any kind to the extent caused by, arising out of or occurring in connection with the Project and/or this Agreement (including, without limitation reasonable attorney's fees and expert witness fees) caused by any Licensee Parties' performance of activities in connection with this Agreement or the Project, including, without limitation, claims for personal injuries, including disease and death, property loss or damage or injuries to others relating to the activities under this Agreement. The foregoing release and indemnity shall survive the termination of this Agreement.

4. Insurance. Licensee shall maintain in full force during the entire term of the Agreement commercial general liability insurance in an amount of not less than \$2 million per occurrence insuring against claims for bodily injury, death or property damage occurring as a result of the Project. Licensee may elect to assume such liabilities and risk of loss through deductibles and/or a qualified self-insurance program.

5. Notices. Any notice, communication, report or demand required or desired to be given under this Agreement shall be in writing delivered at the addresses shown below or at such other address as the respective parties may from time to time designate by like notice. Each such notice shall be effective upon being delivered.

d. Severability. If any one or more of the provisions of this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, that invalidity, illegality or unenforceability shall not affect any other provision herein and this Agreement shall be construed as if the invalid, illegal or unenforceable provision had never been included, provided, however, in no event shall either party be deprived of a material consideration by operation of this provision.

e. Attorneys' Fees and Expert Witness Fees. In the event any party hereto brings an action or proceeding for a declaration of the rights of the parties under this Agreement, an interpretation of this Agreement, for injunctive relief, or for an alleged breach or default of, or any other action arising out of, this Agreement or the transactions contemplated hereby, the prevailing party in any such action shall be entitled to an award of reasonable attorneys' fees and costs and expert witness fees incurred in such action or proceeding, without regard to any rule of court or schedule of such fees maintained by the court, in addition to any other damages or relief awarded, regardless of whether such action proceeds to final judgment.

f. Binding Effect. The Licensee Parties shall not have the right to assign this Agreement without the prior written consent of Licensor, which may be withheld in Licensor's sole and absolute discretion. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, tenants, lenders, and successors and assigns.

g. Warranty of Authorized Signatories. Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the party for whom he or she purports to sign.

h. Reservation of Rights. Each of the rights of the parties set forth in the individual sections of this Agreement are in addition to, and not exclusive of, the rights of such party, at law, in equity or otherwise. No damages or remedies available to a party at law, in equity or otherwise, shall be deemed or construed to be limited by or under the terms of this Agreement, other than as provided in Section 8.

i. Non-Waiver. The failure of Licensor to insist on strict performance of the terms hereunder will not be deemed as a waiver of any rights or remedies that Licensor may have for any subsequent breach, default, or non-performance and Licensor's right to insist on strict performance of this Agreement. No waiver is valid unless set forth in writing signed by the waiving party.

8. Jury Waiver. To the fullest extent permitted by law, Licensor and Licensee Parties waive any right they may have to a trial by jury in respect of litigation directly or indirectly arising out of, under or in connection with this easement. 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, the parties hereto have executed this Agreement effective as of the date and year first above written.

Licensor:

PacifiCorp, an Oregon corporation, d/b/a Rocky Mountain Power

By: _____

Its: _____

Dated: _____

Licensee:

Cottonwood Heights, a Utah municipality

ATTEST:

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

By: _____
Linda W. Dunlavy, Recorder

Dated: May 10, 2016