

APPENDIX 2

**CONDITIONAL FRANCHISE AGREEMENT BETWEEN WASATCH COUNTY AND
HEBER LIGHT & POWER**

ORDINANCE NO. 10-11
AN ORDINANCE GRANTING TO HEBER LIGHT & POWER,
ITS SUCCESSORS AND ASSIGNS, AN
ELECTRIC LIGHT, HEAT, AND POWER FRANCHISE.

THE COUNTY LEGISLATIVE BODY OF WASATCH COUNTY ORDAINS AS
FOLLOWS:

SECTION 1
FINDINGS AND INTENT

The Findings and Intent of this Ordinance are:

1. For more than 100 years, Heber Light & Power ("HL&P") has provided electrical service to the Heber Valley and its inhabitants. HL&P has the necessary infrastructure and capabilities to provide electrical services within its historical service area.
2. Wasatch County ("County") has granted and Heber Light & Power has accepted a Franchise allowing HL&P to provide electric service in the unincorporated areas of the Heber Valley.
3. The County desires to grant a new Franchise to Heber Light & Power: (a) to allow it to install facilities in public streets and rights-of-way, (b) to provide electric service to the portions of the County identified on Exhibit A (attached hereto), and (c) to comply with Utah Code Annot. § 11-13-204(7).

SECTION 2
FRANCHISE GRANTED

A nonexclusive Franchise for electrical light, heat, and power is granted to Heber Light & Power, a Utah interlocal agency, its successors and assigns ("HL&P"), to construct, install, operate and maintain electrical facilities over, across, and under the present and future streets, alleys, and public ways of the County (collectively "Public Ways"), including facilities to interconnect with the Jordanelle Power Plant, the Snake Power Plant(s), and other like facilities, for the purpose of furnishing, supplying, transmitting, and distributing electricity to the County and its inhabitants within those areas identified on Exhibit A, a metes and bounds description, and Exhibit B, an aerial photograph for illustration purposes only, upon such terms, conditions, restrictions, and regulations as are contained in this Ordinance. This Franchise does not relieve HL&P of the obligation to comply with County code provisions and regulations, including but not limited to the requirements to obtain conditional use permits and building permits. This Ordinance and the Franchise are hereinafter collectively referred to as the "Franchise."

HL&P's electric service to areas of the County that are currently or become

incorporated or annexed into a municipality shall not be governed by this Franchise. In addition, upon approval of the County, the area included within the HL&P Franchise shall be expanded or contracted if HL&P enters an agreement approved under Utah Code Annot. § 11-13-204(7) and upon such approval, HL&P shall provide the County with amended Exhibits A and B.

SECTION 3 TERM & RENEWAL

The Franchise is granted for a term of commencing with the date on which this Ordinance becomes effective and shall end on September 28, 2035, unless extended as provided below.

At least 180 days prior to the expiration of this HL&P and the County either shall agree to 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.

HL&P shall meet not less than annually with representatives of the County to report HL&P's projected capital improvements in the Public Ways for the next year and to discuss any concerns either party may have.

SECTION 4 RECORDS ACCESS

The County shall have reasonable access during normal business hours to inspect, audit or make copies of all books, records and other information related to HL&P's operations and business at the County's own expense; provided, however, that the County must preserve the confidentiality of such information.

SECTION 5 EQUAL TREATMENT

In providing service under this Franchise, HL&P shall comply with the following to ensure equal treatment of customers living outside of HL&P's member municipal boundaries to those within:

- a. the rates and conditions of service for customers outside the municipal boundaries of the municipal members of HL&P shall be at least as favorable as the rates and conditions of service for similarly situated customers within the municipal boundaries of the municipal members;
- b. a general rebate, refund or other payment made to customers located within the municipal boundaries of the municipal members shall also be provided to customers located outside the municipal boundaries of the members;
- c. a schedule of rates and conditions of service, or any change to the rates

and conditions of service, shall be approved by the governing body of HL&P;

- d. prior to implementation of any rate increase, the governing body of HL&P shall first hold a public meeting to take public comment on the proposed increase, after providing at least twenty days and not more than sixty days advance notice published in a newspaper of general circulation within the County, and to its customers on the ordinary billing and on the Utah Public Notice Website, created by Section 63F-1-701,
- e. HL&P shall operate as a single entity providing service both inside and outside of the municipal boundaries of its members; and
- f. HL&P shall file with the Public Service Commission its current schedule of rates and conditions of service.

SECTION 6 OMBUDSMAN

a. The County and HL&P shall appoint an ombudsman to resolve the customer's complaint that concerns any term contained in Section 5 above and that is not resolved HL&P's internal dispute resolution procedure as provided in Section 6. C. below. The ombudsman shall be an individual with knowledge, skill, experience, training, or education in the retail electric industry. In the event the County and the Company cannot agree on the appointment of an ombudsman within 30 days, the Office of Consumer Service of the Utah Department of Commerce will appoint the ombudsman. If the Office of Consumer Service is unwilling to make the appointment, the appointment will be made as provided in Commercial Arbitration Rules and Mediation Procedures of the American Arbitration Association.

b. Subject to Section 6.c., the ombudsman shall have power to review, investigate, mediate and arbitrate the customer complaint. The ombudsman shall then make written recommendations to the governing body of HL&P or its General Manager and to the complaining customer. If the recommendations are rejected by either HL&P or the complaining customer, or if mediation otherwise fails to resolve the dispute, the ombudsman will arbitrate the dispute following the procedures of the Utah Uniform Arbitration Act. Any decision issued by the ombudsman may be confirmed under Utah Code Section 78B-11-123. The ombudsman may not award any attorneys' fees. However, if judicial enforcement becomes necessary, attorneys' fees may be awarded to the prevailing party by the court. HL&P shall pay the ombudsman's fees and expenses. HL&P and the complaining customer shall cooperate with, provide information to, and allow inspections, tests, and audits reasonably requested by the ombudsman in furtherance of his or her duties. The ombudsman shall have the same rights of access to HL&P records as those granted to the County in Section 4, above.

c. Before the ombudsman may review, investigate, mediate or arbitrate a customer complaint, the customer must give HL&P, through any internal dispute resolution procedure adopted by the Board, thirty (30) days to resolve the complaint to the customer's satisfaction.

SECTION 7
INDEMNIFICATION

The County 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 HL&P of its electrical facilities. HL&P shall indemnify, defend and hold the County harmless from and against such claims, demands, liens and all liability or damage on account of HL&P's use of the public ways within the County, and shall pay the costs of defense plus reasonable attorneys' fees for any claim, demand or lien brought thereunder. The County shall: (a) within forty five days give written notice to HL&P of any claim, demand or lien with respect to which the County seeks indemnification hereunder; and (b) permit HL&P to assume the defense of such claim, demand, or lien. If HL&P is prejudiced by the County's failure to give timely notice of a claim and the opportunity to defend, HL&P shall not be required to indemnify the County from the claim. If HL&P fails, after notice and opportunity, to assume such defense, HL&P shall be subject to liability for any settlement made. If any claim is settled by the County, without giving HL&P notice and opportunity to assume such defense, HL&P shall not be liable for any settlement made without its consent.

Notwithstanding any provision hereof to the contrary, HL&P shall not be obligated to indemnify, defend or hold the County 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 County or any of its officers or employees.

SECTION 8
SUCCESSORS AND ASSIGNS

This Franchise shall apply to HL&P and its successors and assigns. HL&P shall be subject to all legal right, power and authority now or later possessed by the County to control and direct by ordinance or resolution the Franchise and the manner in which HL&P shall use and enjoy it:

SECTION 9
FEES

Upon the request of the County, HL&P shall collect on behalf of the County any fee that the County is allowed to impose on HL&P customers for the purchase or use of electricity.

SECTION 10
EFFECT OF INVALIDITY

The Franchise is granted pursuant to the laws of Utah. If any article, section, sentence, clause, or phrase of this Franchise is for any reason held invalid or unconstitutional, the invalidity shall not affect the validity of this Franchise or any of the remaining portions. The invalidity of any portion of this ordinance shall not abate, reduce, or otherwise affect any consideration or other obligation required of HL&P.

SECTION 11
CUSTOMER'S EXISTING RIGHTS

This Franchise is not intended nor should it be interpreted as limiting the rights of HL&P's customers under its policies or applicable law.

SECTION 12
ACCEPTANCE AND EFFECTIVE DATE

This Franchise shall be effective and shall replace HL&P's existing Franchise upon: (a) issuance of a final and non-appealable order approving HL&P's agreement to serve under Utah Code Annot. § 11-13-204(7), and (b) HL&P accepts the Franchise within thirty (30) days of the issuance of such order. If the agreement is not approved under Utah Code Annot. § 11-13-204(7) or the Franchise is not timely accepted, this Franchise is deemed withdrawn and the existing Franchise remains in full force and effect.

By accepting this Franchise, HL&P agrees to provide electric service in the unincorporated areas identified in Exhibit A during the term of the Franchise, in a manner consistent with this Franchise and HL&P's policies, as the policies may be changed from time-to-time.

SECTION 13
REMEDIES

If HL&P fails to perform any term of this Agreement, the County may give HL&P written notice to cure ("Notice to Cure"). The Notice to Cure shall specify the nature of the alleged failure to perform and the manner in which said failure may be cured.

HL&P shall have 30 days following receipt of the Notice to Cure to correct the failure to perform. If the nature of the alleged failure is such that it cannot reasonably be cured within such 30-day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such 30-day period.

If HL&P does not timely cure the failure to perform, it shall be in default. In the event of HL&P's default, the County may terminate the Franchise by giving HL&P written notice of the termination ("Notice of Termination") of the Franchise. The Franchise shall automatically terminate 120 days after HL&P's receipt of the Notice of Termination.

If HL&P cures within the time period provided in this Section 13 or if the County does not give a Notice of Termination within 120 days of the delivery of the Notice to Cure, then no default shall exist and the County may take no further action without submitting a new Notice to Cure and complying with the other requirements of this Section 13.

SECTION 14
REASONABLE ACCOMMODATION OF OTHER ELECTRICAL SERVICE
PROVIDERS

In order to reduce, as much as possible, the duplication of electrical infrastructure within the unincorporated County, HL&P will reasonably accommodate Rocky Mountain Power or any other electrical service providers' use of HL&P's electrical infrastructure where necessary or convenient to the other electrical service provider. This provision is intended to protect the County from the installation of unnecessary and unsightly transmission lines, and it is not intended to create a third-party beneficiary to this Franchise.

In any event, HL&P shall not place infrastructure in any location where similar infrastructure is already located without written approval by the County, which approval shall not be unreasonably withheld. This section shall not be construed to give HPL any authority to provide service outside the service area authorized herein.

SECTION 15 OTHER FRANCHISES

Should other electric companies request franchises to construct, install or maintain electrical facilities in the County's streets, alleys and public grounds, the County agrees that such franchises shall not include terms or conditions applicable to such other electric companies that are more favorable than those contained in this franchise. This Section 15 shall not apply to Sections 4, 5, and 6 of this Franchise.

SECTION 16 COUNTY REGULATORY AUTHORITY

In addition to the provision herein contained, the County 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 County Ordinance.

SECTION 17. PLAN, DESIGN, CONSTRUCTION AND INSTALLATION OF COMPANY FACILITIES

All Electrical Facilities installed or used under authority of this Franchise shall be used, constructed and maintained in accordance with applicable federal, state and County laws, codes and regulations.

Except in the case of an emergency, HL&P shall, prior to commencing new construction or major reconstruction or excavation work in the public way or street or other public places, apply for applicable permit(s) from the County which permit(s) shall not be unreasonably withheld, conditioned, or delayed. HL&P will abide by all applicable ordinances and all lawful rules, regulations and requirements of the County, and the County may inspect the manner of such work and require remedies as may be reasonably necessary to assure compliance. Notwithstanding the foregoing HL&P shall not be obligated to obtain a permit to perform emergency repairs, but shall notify the County of such repairs as soon as practicable.

All Electrical Facilities shall be located so as to cause minimum interference with the Public Ways of the County and use by others and all Electrical Facilities shall be constructed,

installed, maintained, renovated or replaced in accordance with applicable codes, rules, and regulations.

If, during the course of work on its Electrical Facilities, HL&P causes damage to or alters the Public Way or public property, HL&P shall (at its own cost and expense and in a manner reasonably approved by the County) replace and restore it in as good a condition as existed before the work commenced.

The County shall have the right without cost to use all poles and suitable overhead structures owned by HL&P within Public Ways for County wires used in connection with its fire alarms, police signal systems, or other public safety communication lines as well as decorative or informational County banners used for governmental purposes; provided, however, any such uses shall be for activities owned, operated or used by the County for a public purpose and shall not include the provision of CATV, internet, or similar services to the public. Provided further, that HL&P shall assume no liability nor shall it incur, directly or indirectly, any additional expense in connection with the installation or use of said poles, and the use of said poles and structures by the County shall be in such a manner as to prevent safety hazards or interferences with HL&P's use of same. Nothing herein shall be construed to require HL&P to increase pole size, or alter the manner in which HL&P attaches its equipment to poles, or alter the manner in which it operates and maintains its Electrical Facilities. County attachments shall be installed and maintained in accordance with the reasonable requirements of HL&P and the current edition of the National Electrical Safety Code pertaining to such construction. Further, County attachments shall be attached or installed only after written approval by HL&P in conjunction with HL&P's standard pole attachment application process, which process shall be timely and reasonable. HL&P shall have the right to inspect, at its own expense, such attachments to ensure compliance with this Section and to require the County to remedy any defective attachments

HL&P shall have the right to excavate the Public Rights of Ways subject to lawful conditions and requirements of the County. Before installing new underground conduits or replacing existing underground conduits, HL&P shall as early as is practical notify the County of such work by written notice and shall allow the County, at its own expense to share the trench of HL&P to lay its own conduit therein, provided that such action by the County will not unreasonably interfere with HL&P's Electrical Facilities or delay project completion.

Before commencing any street improvements or other work within a Public Way that may affect HL&P's Electrical Facilities, the County shall make reasonable efforts to notify HL&P.

SECTION 18 RELOCATIONS OF ELECTRICAL FACILITIES


The County reserves the right to require HL&P to relocate its Electrical Facilities within the Public Ways in the interest of public convenience, necessity, health, safety or welfare at no cost to the County. Within a reasonable period of time after written notice, HL&P shall promptly commence the relocation of its Electrical Facilities. Before requiring a relocation of Electrical Facilities, the County shall identify, with the assistance and consent of HL&P, a reasonable alignment for the relocated Electrical Facilities within the Public Ways of

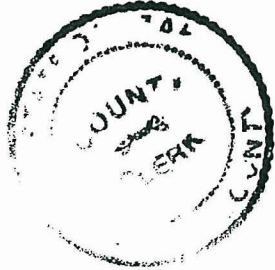
the County. The County shall assign or otherwise transfer to Company all right it may have to recover the cost for the relocation work and shall support the efforts of HL&P to obtain reimbursement.

HL&P 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 Electrical Facilities is caused directly or otherwise by an identifiable development of property in the area, or is made for the convenience of a customer, HL&P may charge the expense of removal or relocation to the developer or customer. For example, HL&P 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.

Passed by the County Council of Wasatch County, Utah this 28th day of Sept, 2010.

Signed:


KIP BANGERTER chair of the
County Legislative Body



Attested:


BRENT TITCOMB, County Clerk

EXHIBIT A

WO 229040
HEBER LIGHT AND POWER SERVICE TERRITORY

T.3S.,R.4E.,S.L.M.

- Sec. 22 SE ¼
- Sec. 23 That portion of Section 23 lying south of Wasatch Mountain State Park boundary
- Sec. 24 SW ¼ of SW ¼ lying southwesterly of Dutch Canyon Road; that portion of the SE ¼ lying east of the Provo River
- Sec. 25 All of Section 25 excepting that portion of the NW ¼ of the NW ¼ lying northerly of the intersection of River Road and Dutch Canyon Road north to the north Section line
- Sec. 26-36 All inclusive

T.4S.,R.4E., S.L.M.

- Sec. 1-25 All inclusive
- Sec. 26 N ½
- Sec. 27 N ½
- Sec. 28 NE ¼

T.3S.,R.5E.,S.L.M.

- Sec. 19 SW ¼
- Sec.26-28 All inclusive
- Sec. 29 That portion of Section 29 lying south and east of the following described boundary line: Beginning at the intersection of the west section line of said Section 29 and Potters Lane; thence along said Potters lane east to US Route 40/189; thence south along said US Route 40/189 to Coyote Lane; thence east along said Coyote Lane to the Northerly boundary of The Cove of Valley Hills Subdivision; thence northeasterly along said northerly boundary line to the westerly right of way line of Timpanogos Canal; thence northerly along the westerly right of way line of said Timpanogos Canal to the north section line of Section 29; thence along the north section line to the northeast corner of said Section 29.

That portion of the SW ¼ of the NE ¼ described as follows:
 Beginning at a point in the westerly right of way line of the
 Wasatch Canal, at a point 25.00 feet perpendicularly distant
 southwesterly from the center line of said Wasatch Canal, opposite
 Engineer Station 185+53.95, which point is 2010.45 feet South and
 2399.08 feet west from the Northeast corner of Section 29, T. 3 S.,
 R. 5 E., S.L.M., thence S.31°38'55"E. 70.48 feet along said
 southwesterly right of way line; thence West 94.02 feet; thence
 North 60.00 feet; thence East 57.04 feet to the point of beginning.

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|--------------------|---|
| Sec. 30 | W ½, SE ¼, that portion of the NE ¼ lying south of Potters Lane |
| Sec. 31-36 | All inclusive |
| T.4S.,R.5E.,S.L.M. | |
| Sec.1-30 | All inclusive |
| Sec. 33-36 | All inclusive |
| T.5S.,R.5E.,S.L.M. | |
| Sec. 1-3 | All inclusive |
| Sec. 4 | NE ¼ |
| Sec. 10 | NE ¼ |
| Sec 11-13 | All inclusive |
| Sec. 14 | E ½ |
| Sec. 23 | E ½ |
| Sec. 24-25 | All inclusive |
| Sec. 26 | E ½ |
| Sec. 35 | E ½ |
| Sec. 36 | All inclusive |
| T.4S.,R.6E.,S.L.M. | |
| Sec. 2 | S ½ of the S ½ |
| Sec. 3 | SW ¼, the S ½ of the SE ¼ |

Sec. 4-11 All inclusive

Sec. 13 SW ¼

Sec. 14-36 All inclusive

T.5S.,R.6E.,S.L.M.

Sec. 1-11 All inclusive

Sec. 14-23 All inclusive

Sec. 26-35 All inclusive

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EXHIBIT B

