

**AGREEMENT FOR UNDERGROUND TRANSMISSION ESTIMATES AND BID
EVENT WORK
BETWEEN
ROCKY MOUNTAIN POWER
AND
MIDWAY CITY**

This AGREEMENT FOR UNDERGROUND TRANSMISSION ESTIMATES AND BID EVENT WORK (“Agreement”), is entered into by and between PacifiCorp, an Oregon corporation doing business in Utah as Rocky Mountain Power (“Rocky Mountain Power”), and Midway City (“Requestor”), a municipal corporation of the State of Utah. Rocky Mountain Power and Requestor are each sometimes referred to herein as a “Party” or collectively as the “Parties.”

WHEREAS, Rocky Mountain Power, in conjunction with Heber Light & Power, filed an application for a conditional use permit to construct overhead transmission facilities within Midway City, commonly called the Jordanelle to Midway Transmission Line project; and

WHEREAS, the Midway City Council, by unanimous vote at its public meeting on December 16, 2019, formally requested that Rocky Mountain Power perform certain work in connection with exploring whether the transmission facilities could be constructed below grade, and the costs therefor; and

WHEREAS, Requestor has requested that Rocky Mountain Power provide facilities bids for the cost to place the transmission facilities below grade;

WHEREAS, Requestor has further requested that Rocky Mountain Power provide general permitting support to Midway City staff in its attempt to obtain approvals for certain facilities to be constructed outside of Midway City’s jurisdiction in association with the underground transmission facilities, specifically the facilities that would need to be constructed within the jurisdiction of Wasatch County;

WHEREAS, Rocky Mountain Power will incur certain costs in supporting these requests, which costs are the responsibility of Requestor pursuant to Utah statutes;

WHEREAS, this Agreement relates only to the provision of this scope and does not bind either Party with respect to performing any work to construct the transmission facilities; and

WHEREAS, the Parties intend that this Agreement more specifically address their responsibilities to one another in this regard.

NOW, THEREFORE, the Parties hereto agree as follows:

SECTION 1: DEFINITIONS

“Completion Date” means the date upon which Rocky Mountain Power has tendered to Requestor copies of the Facilities Bids.

“Facilities Bids” means the bids that Rocky Mountain Power will acquire from one or more third parties, to place the transmission line facilities below grade as requested by the Requestor. In the event the Parties elect to go forward with construction of the transmission line facilities below grade, Requestor will be responsible for the cost of such work to the extent such costs exceed the amount of the standard costs had the facilities been constructed above grade, in accordance with Utah law and pursuant to a separate written agreement.

“Project Costs” means all reasonable costs, charges, and expenses incurred by Rocky Mountain Power in preparing, developing and obtaining the Facilities Bids and providing support for Requestor in seeking approvals from Wasatch County for certain facilities to be constructed outside Midway City’s jurisdiction, including all of Rocky Mountain Power’s reasonable internal and external costs, overheads, expenses, and cost of supplies, and any other amounts owed to Rocky Mountain Power under the terms of this Agreement.

SECTION 2: PURPOSE; COMPLETION; TERM

2.1 Preparatory Activities. This Agreement provides for preparatory activities. Upon execution of this Agreement Rocky Mountain Power shall perform engineering and design work and procurement bidding activities in order to prepare the documents and specifications reasonably necessary to obtain the Facilities Bids. Rocky Mountain Power shall not be obligated to perform construction work, nor acquire any easements from land owners along the construction route under this Agreement. Upon completion of its obligations hereunder, Rocky Mountain Power shall tender to Requestor copies of the Facilities Bids.

2.2 Scope of the Facilities Bids. Rocky Mountain Power will use commercially reasonable efforts to develop supporting documents reasonably necessary to obtain the Facilities Bids in accordance with the Scope of Work attached hereto as Appendix A, and by this reference made a part hereof. Rocky Mountain Power, in its reasonable discretion, may at any time alter the Scope of Work to reflect the engineering requirements of the project. Rocky Mountain Power is preparing the bid documents

based a reasonable analysis of known conditions; the Parties acknowledge and agree that the actual cost of the underground facilities, in the event this work is undertaken, may differ from the Facilities Bids. Furthermore, given potential cost escalation, the Facilities Bids are only valid for ninety (90) days after the bid date, in accordance with industry standards.

Rocky Mountain Power will provide general permitting support to Requestor in its attempts to obtain approval from Wasatch County to construct within Wasatch County's jurisdiction certain facilities related to and necessary for construction of below-grade transmission line facilities within Midway City.

2.3 Estimated Time of Completion. Rocky Mountain Power shall use commercially reasonable efforts to obtain the Facilities Bids and supply copies to Requestor on or before February 28, 2020. Rocky Mountain Power shall not be liable for delays in completing these activities.

2.4 Term of Agreement. This Agreement shall be effective upon the date executed by both Parties, and shall remain in effect through the Completion Date, unless terminated earlier pursuant to Section 3.3. In any case, this Agreement shall continue in effect until each Party has satisfied its obligations to the other, including without limitation any payment obligations.

SECTION 3: COST OF SERVICES

3.1 Estimated Costs. Rocky Mountain Power Estimates that the total costs to obtain the Facilities Bids and support the additional permitting activities within Wasatch County will be approximately \$25,000 (the "Estimated Costs"). In the event that actual costs to complete Rocky Mountain Power's work under this Agreement exceed the Estimated Costs, Rocky Mountain Power shall request written approval from Requestor to proceed with additional work, and Requestor shall be responsible for the cost of all additional work performed. Requestor shall pay Rocky Mountain Power for all costs incurred, pursuant to the terms of this Agreement. Final costs under this Agreement will be trued up to actual costs at completion of the project with a final billing or refund provided to Requestor.

3.2 Prepayment. Requestor shall tender payment in the amount of the Estimated Costs set forth in Section 3.1 upon executing this Agreement, and Rocky Mountain Power's obligation to proceed with developing and obtaining the Facilities Bids shall be contingent upon receipt of such payment. In the event Rocky Mountain Power determines that actual costs under this Agreement may exceed the Estimated Costs, Rocky Mountain Power may require an additional prepayment to cover the estimated cost of additional work. After the Completion Date, Rocky Mountain Power shall refund the amount of any prepayments in excess of actual total costs.

3.3 Right to Stop Work. Requestor reserves the right, upon seven (7) days advance written notice to Rocky Mountain Power, to require Rocky Mountain Power at any time to stop all work by Rocky Mountain Power pursuant to this Agreement. Issuance of such stop-work order shall terminate this Agreement, subject to the provisions of Section 2.4. Upon issuance of such stop-work order Requestor shall pay upon demand, without deduction, offset, or allowance, all costs Rocky Mountain Power (a) has incurred prior to the stoppage of work, and (b) reasonably incurs in winding up work, including, without limitation, the costs incurred in connection with the cancellation of any third-party contracts. In the event Requestor issues a stop-work order pursuant to this Section 3.3, Rocky Mountain Power may proceed to construct the transmission line facilities overhead, and Requestor shall be deemed to have given final approval for such overhead construction.

SECTION 4: LIMITATIONS ON LIABILITY

Under no circumstances shall either Party be liable the other Party for any lost or prospective profits or any other special, punitive, exemplary, consequential, incidental or indirect losses or damages (in tort, contract or otherwise) under or in respect of this Agreement or for any failure of performance related hereto howsoever caused, whether or not arising from sole, joint or concurrent negligence; and without affecting any other limitations of this Agreement, each Party's liability to each other shall in every event be limited to the payment or refund of amounts due hereunder. Requestor shall indemnify, defend, and hold harmless Rocky Mountain Power with respect to any claim that relies in any way on the Facilities Bids.

SECTION 5: FORCE MAJEURE

Neither Party shall be subject to any liability or damages for failure to perform their respective obligations hereunder to the extent that such failure shall be due to causes beyond the control of the Party claiming force majeure protection, including but not limited to the following: (a) the operation and effect of any rules, regulations and orders promulgated by any commission, municipality, or governmental agency of the United States, or subdivision thereof; (b) restraining order, injunction or similar decree of any court; (c) war; (d) flood; (e) earthquake; (f) act of God; (g) sabotage; or (h) strikes or boycotts. The Party claiming Force Majeure under this provision shall make every reasonable attempt to remedy the cause thereof as diligently and expeditiously as possible. Provided, the obligation to pay amounts due shall not be excused by events of Force Majeure.

SECTION 6: NOTICE

Any notice required to be given hereunder shall be deemed to have been given when it is sent, with postage prepaid, by registered or certified mail, return receipt requested, to the Parties hereto at their respective addresses as follows:

To Requestor:

Midway City

To Rocky Mountain Power:

Rocky Mountain Power
Attention: Darin Myers
1407 West North Temple, Suite 220
Salt Lake City, Utah 84116

SECTION 7: INTEGRATION

This Agreement replaces and supersedes in the entirety all prior agreements among the Parties related to the same subject matter.

SECTION 8: JURY WAIVER

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, the Parties hereto have caused this Agreement to be executed by their duly authorized officers as of the date first herein written.

REQUESTOR

ROCKY MOUNTAIN POWER

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

APPENDIX A

DESCRIPTION OF WORK

Rocky Mountain Power will provide full cost bids for engineering, materials, and construction of the proposed double-circuit 138 kV transmission line to be built underground through Midway City and adjacent areas of unincorporated Wasatch County as requested by Midway City Council.

Rocky Mountain Power will provide general permitting support to Midway City staff in their attempt to obtain approvals from Wasatch County for certain facilities to be constructed within unincorporated Wasatch County.