

**ORDINANCE NO. 06-2023**

AN ORDINANCE OF THE TOWN OF RIDGWAY COLORADO, GRANTING A FRANCHISE TO SAN MIGUEL POWER ASSOCIATION, INC., TO OPERATE AN ELECTRIC POWER UTILITY WITHIN THE TOWN OF RIDGWAY, AND FIXING THE TERMS AND CONDITIONS THEREOF

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF RIDGWAY, COLORADO, as follows:

**ARTICLE 1  
TITLE AND DEFINITIONS**

- 1.1 This Ordinance shall be known and may be cited as the “San Miguel Power Association Franchise Ordinance.” It is sometimes herein referred to as this Ordinance or Franchise.
- 1.2 For the purpose of this Franchise, the following words and phrases shall have the meaning given in this article. When not inconsistent with context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined in this article shall be given their common and ordinary meaning.
- 1.3 “Town” refers to and is the municipal corporation designated as the Town of Ridgway, Ouray County, Colorado, a Colorado home rule municipality, and is the grantor of rights under this Franchise.
- 1.4 “Company” refers to and is San Miguel Power Association, Inc. and is the grantee of rights under this Franchise.
- 1.5 “Town Council” refers to and is the legislative body of the Town.
- 1.6 “Facilities” refer to and are all facilities reasonably necessary to provide electric service into, within and through the Town, including but not limited to substations, transmission and distribution structures, lines, wires, electrical equipment, transformers, underground lines, meters, meter reading devices, control equipment, streetlights, wires, cables and poles.
- 1.7 “Public Utilities Commission” or “PUC” or “Commission” refers to and is the Public Utilities Commission of the State of Colorado or other governmental body succeeding to the regulatory powers of the Public Utilities Commission.

- 1.8 “Residents” refer to and include all persons, businesses, industry, governmental agencies, and any other entity whatsoever, presently located or to be located, in whole or in part, within the territorial boundaries of the Town.
- 1.9 “Revenues” refer to and mean those gross revenues which the Company receives from sale of electricity to Residents.
- 1.10 “Streets” refer to and are the rights of way of streets, alleys, viaducts, bridges, roads, lanes, public utility easements, and other public rights-of-way in the Town, excluding any such property which is not legally available for the use thereof by the Company. “Within the Streets” shall mean upon, above, under, across, along and within said Streets.
- 1.11 “Public Utility Easement” is any easement dedicated on a subdivision plat, dedicated to, or owned or controlled by the Town or dedicated to the public, which is legally available for Facilities, by its terms.
- 1.12 “Franchise Fee” is defined in Section 4.1(B) of Article 4.

## **ARTICLE 2 GRANT OF FRANCHISE**

### **2.1 Grant of Franchise.**

- (A) The Town hereby grants to the Company, for the period specified, subject to the conditions, terms, and provisions contained in this Franchise, a non-exclusive right, and the Company hereby assumes the obligation to furnish, sell, and distribute electricity to the Town and to all Residents of the Town. Subject to the conditions, terms, and provisions contained in this Franchise, the Town also hereby grants to the Company a non-exclusive right, and the Company hereby assumes the obligation, to acquire, construct, install, locate, maintain, operate, and extend into, within and through the Town all Facilities reasonably necessary to furnish, sell, and distribute electricity within and through the Town. The Town also hereby grants to the Company a non-exclusive right, and the Company hereby assumes the obligation, to make reasonable use of the Streets as may be necessary to carry out the terms of this Franchise, subject to all applicable laws, ordinances, regulations, design standards, police powers, and prior course of dealing. These rights and obligations shall extend to all areas of the Town as it is now or hereafter constituted.
- (B) The rights granted by this Franchise are not and shall not be deemed to be granted exclusively to the Company, and the Town reserves the right to make or grant a similar franchise to any other person, firm, or corporation as allowed by law.
- (C) The Town retains the right to use, control, and regulate, through the exercise of its police power, the use of the Streets; and the Town retains the right to impose such

other regulations as may be determined by the Town to be necessary in the exercise of the police power to protect the health, safety, and welfare of the Town.

- (D) Neither the Town nor the Company waives any rights under the constitution of the State of Colorado or of the United States except as otherwise specifically set forth herein.
- (E) This Franchise constitutes a valid and binding contract between the Company and the Town. In the event that the Franchise Fee specified herein is declared illegal, unconstitutional, or void for any reason by any court or other proper authority, the Company shall be contractually bound to collect and pay monthly rental fees to the Town in an aggregate amount that would be, as nearly as practical, equivalent to the amount which would have been paid by the Company as the Franchise Fee hereunder as consideration for use of the Town's Streets.
- (F) The rights and obligations provided for in this Franchise encompass street lighting service to the Town, and the provisions of this Franchise apply with full and equal force to the street lighting service provided by the Company.

### **ARTICLE 3 TERM OF FRANCHISE**

- 3.1 Term of Franchise. This Franchise shall take effect upon its adoption and shall supersede the prior Franchise. Unless terminated in accordance with other provisions as contained herein, the term of this Franchise shall be for 15 years, or until October 1, 2038.

### **ARTICLE 4 FRANCHISE FEE**

- 4.1 Franchise Fee.

- (A) In consideration for the Franchise rights granted herein, which provide, among other things, for the Company's use of the Streets, which are valuable public properties acquired and maintained by the Town at great expense to its Residents, and in recognition that the grant to the Company of the use of those Streets, and of the right to provide service to the Town's Residents, are valuable rights, the Company shall collect and pay the Town the sums provided in this Section. Except as specified in this Franchise, payment of the Franchise Fee shall not exempt the Company from any other lawful taxes or fees; however, the Franchise Fee provided for herein shall constitute the exclusive monetary payment by the Company to the Town for the Company's use and occupancy of the Streets except as specifically provided herein.

- (B) The Company shall collect and pay to the Town a sum of two percent (2%) of Revenues.
- (C) A transaction or arrangement between the Company and any third party which has the effect of circumventing payment of the Franchise Fee or evasion of payment of Franchise Fee by non-collection, non-reporting, or any other means which evade the actual collection of Revenues by the Company is prohibited.
- (D) No acceptance of payment by the Town from the Company shall be construed as an agreement that the amount paid is the correct amount, nor shall acceptance be construed as a release of any claim of which the Town may have for additional sums due and payable under this Franchise.

4.2 Remittance Schedule. The Company shall remit the Franchise Fee to the Town quarterly within 60 days of each calendar quarter. All payments shall be made to the Town. In the event that either the Town or the Company discovers that there has been an error in the calculation of the Franchise Fee, the error shall be corrected in the next quarterly payment; except that, in the event an error by the Company results in an overpayment of the Franchise Fee to the Town, and said overpayment is in excess of Five Thousand Dollars (\$5,000), credit for the overpayment shall be spread over the same period the error was undiscovered. If the overpayment is less than Five Thousand Dollars (\$5,000), credit shall be taken against the next payments. In no event shall the Town be required to refund any overpayment made as a result of a Company error which occurred more than three (3) years prior to the discovery of the Company error. Underpayments shall be subject to 1 ½ % interest per month until paid in full.

4.3 Franchise Fee Payment not in Lieu of Permit or Other Fees. Payment of the Franchise Fee by the Company is accepted by the Town in lieu of any utility occupation tax or any rental fee, for the Company's use or occupation of Town Streets, or for the installation, operation and maintenance of Company Facilities. Payment of the Franchise Fee does not exempt the Company from any other lawful tax or fee, including any fee for an excavation permit, street cut permit, or similar requirement, or sales and use taxes and general *ad valorem* property taxes.

## **ARTICLE 5 MODIFICATION OF FRANCHISE FEE**

5.1 Change of Franchise Fee and Other Terms. In recognition of the length of the term of the Franchise, and in further recognition of the possibility of legislative regulatory amendments which may allow for the wheeling of electricity through the Facilities, the parties agree that in the event of such regulatory amendments, or in any unexpected event which would result in a significant decrease in the Franchise Fees the Company and the Town agree to modify the computation of the Franchise Fee in accordance with Section 16.2 of Article 16.

5.2 Change of Franchise Fee . Once during each calendar year of the Franchise term the Town, upon giving ninety (90) day's notice to the Company of its intention to so do, may review and change the Franchise Fee the Town may be entitled to receive as a part of the Franchise. The Company shall report to the Town within 60 days of the execution of a subsequent franchise or of any change of an existing franchise, which increases the franchise fee in any other municipality to which the Company supplies electric service. If the Town decides the fee shall be changed within the Town, it shall provide for such change by ordinance.

## **ARTICLE 6 DISCLOSURE OF RECORDS**

### 6.1 Town Information Rights.

- (A) The Town or its designated representative or agent, shall have access to the books and records of the Company during normal business hours upon reasonable notice for the purpose of ascertaining compliance with the terms of this Franchise. The Town may use such information for the purposes of enforcing its laws, ordinances, and regulations. Nothing herein shall exempt the Company from any other requirements regarding the production of information as provided in the laws, ordinances and regulations of the Town.
- (B) To the extent allowable by law, the Company shall supply the Town with all of the following information annually without cost to the Town:
  - (1) Annual reports, including but not limited to, its annual report to its consumers; and
  - (2) Annual financial summaries of the Revenues during the previous year; and
  - (3) The Company shall prepare and submit to the Town a map showing the location of its system, showing location, size and depth of lines, incident to the distribution system, so far as such Facilities can reasonably be projected. The map shall be updated annually and shall be delivered to the Town Clerk's office within ten (10) days of completion by the Company. If the Company fails to keep such map current and provide the required information, the Town can cause such work to be done and charge all cost thereof to the Company. The Company shall also submit the map on digital media. Such map may not be used for facility engineering or design purposes, and shall not take the place of formal line locates which shall be provided by the Company upon request.
- (C) To the extent allowable by law, within ten (10) days of such request the Company shall supply the Town with all of the following information upon written request:

- (1) Copies of the official minutes of Board of Directors meetings for the previous year; and
  - (2) A summary of conversions and replacements within the Town which have been accomplished or are underway by the Company, if applicable; and
  - (4) Copies of tariffs including but not limited to all tariffs, rules, regulations, and policies relating to service by the Company to the Town and its Residents; and
- (D) To the extent allowable by law, the Company shall automatically supply the Town with all of the following information:
- (1) Copies of supporting documentation for the calculation of the Franchise Fee; and
  - (2) An inventory of the Company's Facilities within the Town; and
  - (3) Annual and long-term reports for capital improvements planned within the Town; and
  - (4) The Company's plans for additional conversions and replacements within the Town, if applicable; and

6.2 Enforcement of Town Ordinances. The Town may use the meter information obtained from audits for the purposes of enforcing its laws, ordinances, and regulations.

## **ARTICLE 7 RATES**

7.1 General Provisions. Rates charged by the Company for service hereunder shall be fair and reasonable. The Company agrees that it shall be subject to all authority now or hereafter possessed by any regulatory body having jurisdiction to fix just, reasonable, and compensatory electric rates. The Company further agrees that the system shall be so designed, constructed, and sources of electricity utilized as to provide the most economic development and favorable rate structure possible, taking into account deliverability of electricity, economics, load profiles, and other pertinent conditions.

7.2 Comparable rates. For each rate category within the Company's service area, rates charged to customers within the Town shall be no higher than the lowest rates charged to the Company's customers in the same rate category, excluding franchise fees and other taxes, if applicable.

- 7.3 Rates applicable to Town Street Lighting and Town -owned facilities. Rates charged to the Town by the Company for street lighting and Town-owned facilities shall be no higher than the lowest rates charged to the Company's customers for the same rate category, excluding franchise fees and other taxes, if applicable.

## **ARTICLE 8 CONSTRUCTION AND DESIGN**

### 8.1 Reliability.

- (A) The Company shall at all times take all reasonable and necessary steps to assure the adequate distribution of electricity to the Town and its Residents at the lowest reasonable cost consistent with the term of this Franchise. In addition, the Company shall operate its Facilities pursuant to the highest practicable level of service quality and reliability in providing electricity to the Town and its Residents. The Company recognizes that maintaining service reliability is a substantial obligation under this Franchise. Upon the Town's request, the Company will provide the Town copies of service reliability reports.
- (B) If the distribution of electricity to the Town or any resident of the Town is interrupted, the Company shall take all necessary and reasonable actions to restore such distribution in the shortest practicable time. If the distribution of electricity is to be interrupted due to a planned outage, except in cases of emergency outage repair, the Company shall take adequate reasonable efforts to notify its customers and the Town in advance. The Company shall keep on file in its local office copies of its Rate Schedules, Standards for Service, Rules and Regulations, and Service Connection and Extension Policies concurrently in effect or filed with the PUC or other competent authority having jurisdiction in the premises, which copies shall be made available to the Town and its Residents.
- (C) The Company shall provide to the Town telephone numbers of the Company's dispatch center that will permit the Town to obtain status reports from the Company on a twenty-four hour basis concerning interruptions of the distribution of electricity in any portion of the Town.

### 8.2 Obligations Regarding Company Facilities.

- (A) All work by the Company shall be done in accordance with standards set by the Rural Utilities Service, United States Department of Agriculture.
- (B) The installation, repair, or maintenance of Company Facilities shall not interfere with water facilities, sanitary or storm sewer facilities, communication facilities, or other uses of the Streets. Interference with landscaping and other natural features shall be minimized.

- (C) The Company shall promptly repair all damage to non-Company property caused by Company activities or Facilities. If such damage poses a threat to the health, safety, or welfare of the public or individuals, the Town may cause repairs to be made, and the Company shall promptly reimburse the Town for the cost of such repairs.
- (D) All non-electrical work is subject to inspection by the Town and a determination by the Town that said work has been performed in accordance with all applicable laws, ordinances, and regulations of the Town. The Company shall promptly perform reasonable remedial action required by the Town pursuant to any such inspection. It shall be a condition of the Town's approval that, for any Facility installed, renovated, or replaced after the effective date of this Franchise, the Company shall provide the Town with as-built drawings of each such Facility in such formats and providing such details as reasonably requested by the Town. Such drawings may not be used for facility engineering or design purposes, and shall not take the place of formal line locates which shall be provided by the Company upon request. Qualified Town personnel may inspect electrical work.
- (E) The installation, renovation, and replacement of any Facilities in the Streets by or on behalf of the Company shall be subject to inspection and approval by the Town as to location. Such inspection and approval may include, but not be limited to, the following matters: location of Facilities in Streets; cutting and trimming of trees and shrubs; disturbance of pavements, sidewalks, and surfaces of Streets.
- (F) The Company and all of its contractors shall comply with all applicable Town laws, ordinances, and regulations. The Company shall require its contractors working in the Streets to hold the necessary licenses and permits required by the Town and other entities having jurisdiction.
- (G) The Company shall provide, when available, as-built drawings in digital formats and providing such details as reasonably requested by the Town, of each Company Facility. Such drawings may not be used for facility engineering or design purposes, and shall not take the place of formal line locates which shall be provided by the Company upon request.

8.3 Excavation and Construction. The Company shall be responsible for obtaining all applicable permits, including any excavation, encroachment, or street cut permits, in the manner required by the laws, ordinances, and regulations of the Town. All public and private property whose use conforms to restrictions in public easements disturbed by Company construction or excavation activities shall be restored by the Company at its expense to substantially its former condition according to then existing Town laws, ordinances, and regulations.

8.4 Location and Relocation of Company Facilities.

- (A) Except as located as of the date of this Franchise, the location of the Company's



Facilities shall be subject to the prior approval of the Town, shall be located to maximize the potential use of the right of way, minimize interference with the Town's use and facilities, and conform to requirements of Town standards and specifications.

- (B) If at any time the Town requests the Company to relocate its Facilities, in order to allow the Town to make any use of Streets, or if at any time it shall become necessary or convenient, because of a change in the grade, by reason of the improving, repairing, constructing, or maintaining of any Streets, by reason of traffic conditions, or public safety, or by reason of installation of any type of Town utility facilities, project or other improvement, to move or change the Company's Facilities within or adjacent to Streets in any manner, either temporarily or permanently, the Town shall endeavor to notify the Company at least 90 days in advance, except when impractical or in the case of emergencies, of the Town's intention to perform or have such work performed. The Company shall thereupon, at its cost, accomplish the necessary relocation, removal or change within a reasonable time from the date of the notification, but in no event later than three working days prior to the date the Town has notified the Company that it intends to commence its work or immediately in the case of emergencies. Upon the Company's failure to accomplish such work, the Town may perform such work at the Company's expense and the Company shall reimburse the Town within 30 days after receipt of a written invoice therefore. Following relocation, all property negatively impacted by the activities of the Company shall be restored to, at a minimum, the condition which existed prior to construction by the Company at the Company's expense, and revised as-built plans submitted to the Town.
- (C) The Town may require the relocation of Facilities which are improperly installed in a location different from that approved by the Town following the procedures set out in (B) above.
- (D) When requested by the Town or the Company, representatives of the Town and the Company shall meet to share information regarding anticipated Town projects that will require relocation of Company Facilities. Such meetings shall be for the purpose of providing both parties the opportunity to, in good faith, evaluate reasonable alternatives and/or cost saving measures in an attempt to minimize the fiscal impact upon the Company from the proposed relocation, and establish timetables with anticipated commencement and completion dates.
- (E) Following relocation, all property negatively impacted by the activities of the Company shall be restored to substantially its former condition by the Company at its expense, in accordance with then existing Town laws, ordinances, and regulations.
- (F) Relocated Facilities shall be underground, unless exempted pursuant to Article 12. The Town will not require relocation solely to cause the undergrounding of Facilities.

(G) The Company shall report to the Town within sixty (60) days of the execution of a subsequent franchise or of any change of an existing franchise which includes terms that are more favorable to the Town than this Section 8.4.

8.5 Service to New Areas. If the boundaries of the Town are expanded during the term of this Franchise, the Company shall extend service to Residents in the expanded area at the earliest practicable time and in accordance with the Company's extension policy. Service to the expanded area shall be in accordance with the terms of this Franchise, including payment of Franchise Fees.

8.6 Town Not Required to Advance Funds. Upon receipt of the Town's authorization for billing and construction, the Company shall extend its Facilities to provide electric service to the Town for municipal uses within the Town limits or for any major municipal facility outside the Town limits, and within the Company certificated service area, without requiring the Town to advance funds prior to construction. Upon completion, the Town shall pay invoice within 30 days of receipt.

8.7 Technological Improvements.

(A) The Company shall generally introduce and install, as soon as practicable, technological advances in its equipment and service within the Town when such advances are technically and economically feasible and are safe and beneficial to the Town and its Residents.

(B) While maintaining flexibility in the provision of services, the Company's system shall, at all times, be no less advanced than any other system operated by the Company within the Company's service area, taking into account deliverability of electricity, economics, load profiles, and other pertinent conditions; provided, however, should an upgrade of the utility services provided to customers within the Town be requested by the Town Council, the Company shall have the right to meet, confer, and negotiate with the Town concerning the economic practicality of such an upgrade, giving due consideration to the remaining term of the Franchise and other reasonable incentives. The Company shall submit to the Town related information upon the Town Council's request, including, but not limited to: a plan for provision of such services, or a justification indicating the reason such services are not feasible for the Company's customers within the Town. Company retains the right to make the final decision as to the technological improvements or upgrades made by the Company.

(C) Scope of Activities Authorized By Franchise. The provisions of this Franchise apply specifically to electric services. Nothing in this Franchise precludes the Company from engaging in any other lawful activities that are not subject to franchise ordinances.

- 8.8 Renewable Power. The Company will continue with its efforts to promote power from renewable sources within the Town and will make power from renewable sources available for purchase to Town and its Residents, to the extent power from renewable sources is available to the Company.

## **ARTICLE 9 COMPLIANCE**

- 9.1 Town Regulation. The Town expressly reserves, and the Company expressly recognizes, the Town's right and duty to adopt, from time to time, in addition to the provisions herein contained, such laws, ordinances, and regulations deemed necessary by the Town in the exercise of its police power for the protection of the health, safety, and welfare. The Company shall comply with all applicable laws, ordinances, and regulations of the Town, including but not limited to all Town building and zoning codes, and requirements regarding curb and pavement cuts, excavating, digging, and other construction activities.
- 9.2 Town Review of Plans. Prior to construction of any significant Facilities such as transmission lines and substations within the Town, or of a building or other structure within the Town, the Company shall furnish to the Town the plans and a description of the proposed location of such Facilities, building, or structure. In addition, upon request by the Town, the Company shall assess and report on the impact of its proposed construction on the Town environment. Such plans and reports may be reviewed by the Town to ensure that all applicable laws, including building and zoning codes and air and water pollution requirements, are met, that aesthetic and good planning principles have been given due consideration, and that adverse impact on the environment has been minimized. The Company shall comply with all regulatory requirements of the Town.
- 9.3 Inspection. The Town shall have the right to inspect, at all reasonable times, any portion of the Company's electric system used to serve the Town and its Residents. The Company agrees to cooperate with the Town in conducting the inspection to correct any safety issues affecting the Town's interest in a prompt and efficient manner. Said inspection by the Town shall be performed only by qualified inspectors.

## **ARTICLE 10 USE OF COMPANY FACILITIES**

- 10.1 Town Use. The Town shall be permitted to make all reasonable use of the Company's underground conduits, distribution poles and street lighting poles for any Town purpose so long as such use complies with appropriate safety codes including the Company's safety regulations. Said use shall be without cost to the Town so long as such use does not unreasonably interfere with the Company's use or future use of its Facilities or create a hazard. The Town shall be responsible for all costs, including maintenance costs,

associated with any modifications to the Company's Facilities to accommodate the Town's use of such Facilities.

- 10.2 Non-Competitor's Use. The Company shall allow telecommunications companies and/or cable companies who hold a franchise or encroachment permit from the Town to utilize the Company's distribution poles and other suitable overhead structures or underground conduits for the placement of their facilities based upon the Company's joint use agreements, so long as such terms and conditions are not inconsistent with the Company's obligations under this Franchise. The Company shall not be required to assume any liability nor to be put to any additional expense in connection with any such use; nor be required to permit any such use for the distribution of electricity. No such use shall be required if it would constitute a safety hazard or would unreasonably interfere with the Company's use of the same.
- 10.3 Competitor's Use. If the Company chooses, or is required by law, to transport electricity supplied by other entities over the Company's Facilities to Town Residents, such transportation shall not be prohibited under this Franchise. The Company shall periodically report to the Town a list of all entities for which the Company is providing such transport services, and to the extent allowable by law the names and addresses of each such entity and each Town resident to whom electricity is transported, and the amount of electricity transported by the Company for each such entity. Nothing in this Franchise shall preclude the Town from collecting from such entities or Residents all applicable taxes and fees required by the Town's laws, ordinances, and regulations.
- 10.4 Emergency Use. In the case of any emergency or disaster, the Company shall, upon reasonable request of the Town, cooperate and upon mutual consent, make available its Facilities for emergency use. For purposes of this section, the terms "emergency" or "disaster" shall be defined as any period of time declared an emergency or disaster by appropriate Federal or State agencies. Such use of Company Facilities shall be of a limited duration and will only be allowed if the use does not interfere with the Company's own use of its Facilities occasioned by such emergency or disaster. Such use of Company Facilities shall comply with all safety rules and regulations of the Company. Notwithstanding the terms of Section 11.1 (B), the Town agrees to indemnify and hold harmless the Company, its officers, employees, and insurers, from and against all liability, claims, and demands on account of injury, loss, or damage, including without limitation claims arising from bodily injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with such use, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of the Town, any subcontractor or the Town, or any officer, employee, representative of the Town, or which arise out of any worker's compensation claim of any employee or the Town or of any employee of any subcontractor of the Town. The Town agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims or demands at the sole expense of the Town, or at the option of the Company, agrees to pay the Company or reimburse the Company for the reasonable defense costs incurred by the Company in connection with any such liability

claims or demands. The Town also agrees to bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not any such liability claims or demands alleged are groundless, false, or fraudulent. The obligation of this section shall not extend to any injury, loss, or damages to the extent it is caused solely by the act, omission, error, professional error, mistake, negligence, or other fault of the Company, its officers, or its employees.

- 10.5 Trenches Available for Town Use. The Town and Company agree that it is in the best interest to the community to share and combine facilities in common trenches, ductways, or conduits. The Company and Town hereby agree to work together to see that facilities are combined to minimize impacts to the community. The use of common trenches, ductways or conduits shall be in accordance with the Town design standards and regulations.
- 10.6 Underground Conduit. If the Company installs new electric underground conduit or opens a trench or replaces such conduit, the Company shall provide adequate advance notice of such activity to permit additional installation of similar conduit and pull wire for the Town and other overhead users at their cost. If the Town desires to have additional similar conduit and pull wire for its use, it will so notify the Company and provide similar conduit and pull wire to the Company at the Town's expense. The Company agrees to install such conduit and pull wire for the Town, and the Town shall pay the prorated amount of the Company's actual cost attributable to installing the Town's conduit and pull wire. "Actual cost" shall not include the Company's cost of opening and closing the trench. The Company shall not be liable for any damage for this conduit and pull wire subsequent to successful installation.

## **ARTICLE 11 INDEMNIFICATION OF THE TOWN**

- 11.1 Town Held Harmless.
- (A) The Company agrees to indemnify and hold harmless the Town, its officers, employees, insurers, and self-insurance pool, from and against all liability, claims, and demands on account of injury, loss, or damage, including without limitation claims arising from bodily injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Franchise, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of the Company, any subcontractor or the Company, or any officer, employee, representative of the Company, or which arise out of any worker's compensation claim of any employee or the Company or of any employee of any subcontractor of the Company. The Company agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims or demands at the sole expense of the Company, or at the option of the Town, agrees to pay the Town or reimburse the Town for the reasonable defense costs incurred by the Town in

connection with any such liability claims or demands. The Company also agrees to bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not any such liability claims or demands alleged are groundless, false, or fraudulent. The obligation of this Paragraph (A) shall not extend to any injury, loss, or damages to the extent it is caused solely by the act, omission, error, professional error, mistake, negligence, or other fault of the Town, its officers, or its employees.

- (B) Company hereby waives any claim for damages to its Facilities against the Town, its officers and employees, except for damages caused by the negligence, recklessness, or the specific intent of the Town, its officers, employees, representatives or contractors.
- (C) The Company agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by the Company pursuant to Paragraph (A). Such insurance shall be in addition to any other insurance requirements imposed by this Franchise or by law. Evidence of qualified self-insurance status may be substituted for the insurance required by this paragraph. The Company shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to Paragraph (A) by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.
- (D) Company shall procure and maintain the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the Town. All coverages shall be continuously maintained to cover liability claims, demands, and other obligations assumed by the Company pursuant to Paragraph (A). In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.
  - (1) Worker's Compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of work under this Franchise, and employers' liability insurance with minimum limits of five hundred thousand dollars (\$500,000) each accident, five hundred thousand dollars (\$500,000) disease-policy limit, and five hundred thousand dollars (\$500,000) disease-each employee. Evidence of qualified self-insured status may be substituted for the worker's compensation requirements of this paragraph.
  - (2) Commercial general liability insurance with minimum combined single limits of one million dollars (\$1,000,000) each occurrence and one million dollars (\$1,000,000) aggregate. the policy shall be applicable to premises and operations. the policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual,

independent contractors, products, and completed operations. The policy shall include coverage for explosion, collapse, and underground hazards. the policy shall contain a severability of interests provision.

- (3) Comprehensive automobile liability insurance with minimum combined single limits for bodily injury and property damage of not less than one million dollars (\$1,000,000) each occurrence and one million dollars (\$1,000,000) aggregate with respect to each of the Company's owned, hired and non-owned vehicles assigned to or used in performance of the services. the policy shall contain a severability of interests provision. if the Company has no owned automobiles, the requirements of this paragraph (3) shall be met by each employee of the Company providing services to the Town under this Franchise.
- (E) The policy required by Paragraphs (D)(2) and (3) above shall be endorsed to include the Town and the Town's officers and employees as additional insureds. Every policy required above shall be primary insurance and any insurance carried by the Town, its officers, or its employees, or carried by or provided through any insurance pool of the Town, shall be excess and not contributory insurance to that provided by the Company. No additional insured endorsement to any policy shall contain any exclusion for bodily injury or property damage arising from completed operations. The Company shall be solely responsible for any deductible losses under any policy required above.
- (F) The certificate of insurance provided to the Town shall be completed by the Company's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by the Town prior to any commencement of the Franchise. No other form of certificate shall be used. The certificate shall identify this Franchise and shall provide that the coverages afforded under the policies shall not be cancelled, terminated or materially changed until at least thirty (30) days prior written notice has been given to the Town. The completed certificate of insurance shall be sent to the Town.
- (G) Failure on the part of the Company to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of this Franchise after the Town has provided Company written notice of the failure, and 60 days thereafter to cure any failure to procure or maintain policies. Thereafter, if Company has failed to cure, the Town may terminate this Franchise, or at its discretion, the Town may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the Town shall be repaid by the Company to the Town upon demand, or the Town may offset the cost of the premiums against any monies due to the Company from the Town. Termination of this Agreement will not affect the collection of applicable surcharges imposed pursuant to the provisions of Section 8.4(G).

- (H) The parties hereto understand and agree that the Town is relying on, and does not waive or intend to waive by any provision of this Franchise, the monetary limitations (presently \$150,000 per person and \$600,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, CRS 24-10-101 et seq., as from time to time amended, or otherwise available to the Town, its officers, or its employees.
- (I) The indemnification hereby extended shall include delay damages as that term is used in C.R.S. § 24-91-103.5 *et seq.*, as amended from time to time, or any successor law thereto, awarded against the Town in favor of contractors for damages incurred by contractors for delays experienced in the performance of public works contracts entered into with the Town; provided, however, that said indemnification shall extend only to those delays in performance of public works contracts for which the Company either agrees it is responsible or which were caused as the result, in whole or in part, of the acts or omissions of the Company in the performance of its obligations under this Franchise. Unless the Company otherwise agrees in writing, in no event shall the Company be required to indemnify the Town for any delay damages awarded against the Town unless and until a final determination has been made by a court of competent jurisdiction that the delay damages suffered by a contractor were the result of the acts or omissions of the Company acting on behalf of or within the Town's control. Nothing herein shall be construed as an acknowledgment by the parties that the Company, in exercising its rights and obligations under this Franchise, is an entity controlled by, subject to the control of or acting on behalf of the Town for the purposes of C.R.S. § 24-91-103.5, *et seq.*
- (J) In the event of litigation for a breach of this Franchise or for an interpretation of this Franchise, the prevailing party shall be reimbursed for all costs related thereto, including reasonable attorney's fees by the non-prevailing party.

11.2 Financial Responsibility. At the time of approval of this Franchise by the Town, and annually thereafter, the Company shall submit to the Town, as a confidential document, proof of its ability to meet its obligations under this Franchise, including its ability to indemnify the Town as required by this article. This proof may take the form of insurance coverage, adequate funding of self-insurance, or the provision of a bond. The Company shall supply the Town with a list of its insurance companies with the types of coverage, but not levels of insurance. Said list shall be kept current by annual revisions as of January 1 during the term of Franchise. The Town may require, from time to time, and the Company agrees to provide, additional reasonable funding of the Company's indemnification obligations as a self-insured, if the Company is acting as a self-insurer. The Town, its officers, and its employees, shall be included as additional insureds as respects this Franchise on each liability or excess liability policy maintained by the Company.

## **ARTICLE 12**



## UNDERGROUNDING OF OVERHEAD FACILITIES

### 12.1 Undergrounding of Facilities.

(A) (1) All new or relocated Facilities, other than minor relocation of one or two poles, involving the use of poles or above ground wires are hereby prohibited within the Town, including within highway rights of way controlled by the Colorado Department of Transportation. All such Facilities shall be installed underground. This provision shall not apply to transmission lines when the Town Council after notice and hearing, as appropriate in its sole discretion, has approved a new or relocated route, with or without conditions.

(2) Existing above ground electric lines, wires and cables may be repaired or replaced overhead on existing poles, but additional wires, lines or cables shall be placed underground.

(3) Existing poles may be repaired or replaced with poles of a similar or smaller size, unless three or more poles in a line are to be replaced or relocated in which case all related Facilities shall be constructed substantially underground.

(4) These provisions shall apply on public or private property. The Company is encouraged, but not required, to install conduit with space available for rental to other parties, or to rent available conduit space from the Town or others rather than construct new excavations.

(B) Existing overhead Facilities may be converted to underground locations in any of the following alternative manners:

(1) Pursuant to the procedures of C.R.S. § 29-8-101 *et seq.*

(2) When ordered by the Town where the Town is willing to pay and assume the cost of conversion.

(3) When ordered by the Town in connection with incidental and episodic conversions associated with public improvements, such as street widening, sidewalk construction and utility construction, at the cost of Company subject to the provisions of ¶8.4.G above.

(C) The Town Council may grant a variance from the undergrounding requirements of subsection (A) above if it finds, following a hearing with published notice thereof, that the following criteria are met:

(1) (a) The relocation of existing poles and overhead wires was ordered by the Town pursuant to Subsection 8.4(B), but the Town has not ordered undergrounding pursuant to subsection (B)(3) above, and the new location is not substantially different than the existing location; or

(b) An existing 44kv or larger electrical transmission line is being relocated to mitigate a significant safety hazard; or

(c) Undergrounding is impractical because of technical issues or unreasonable interference posed by other existing underground utilities and structures in the available ROW;

and

(2) The location of the Facilities is consistent with Subsection 8.4 and will be consistent with the public health, safety and welfare.

- 12.2 Cooperation with Other Utilities. When undertaking a project of undergrounding, the Town and the Company shall coordinate with other utilities or companies which have their facilities above ground to attempt to have all facilities undergrounded as part of the same project. When other utilities or companies are placing their facilities underground, the Company shall cooperate with these utilities and companies and undertake to underground Company Facilities as part of the same project where feasible. All parties shall pay their own costs associated with such projects.
- 12.3 Review and Planning for Undergrounding Projects. The Town and the Company shall mutually plan in advance the scheduling of approved undergrounding projects to be undertaken according to this Article as a part of the review and planning for other Company construction projects. The Town and the Company agree to meet, as required, to review the progress of the current undergrounding projects and to review planned future undergrounding projects. The Company agrees to use due diligence to see that approved undergrounding projects are, to the extent reasonably practicable, completed prior to the expiration of this Franchise.

### **ARTICLE 13 TRANSFER OF FRANCHISE**

- 13.1 Consent of Town Required. The Company shall not sell, re-sell, transfer, assign or convey any rights under this Franchise, or the assets held by the Company for use under this Franchise which are in the public rights-of-way, to any third party, including any merger with such third party, nor undergo any corporate reorganization or other change which would result in any modification of the Company's obligations under this Franchise, without first obtaining written approval of the Town; provided, however, that this condition shall not be construed to restrict or prevent the issuance of bonds, debentures, or other evidence of indebtedness, or the issuance of additional stock, needed or useful for the purpose of financing the system or any portion thereof. Should the Company sell, assign, transfer, convey, or otherwise dispose of its rights or interests under this Franchise, including the Company's system or capacity on its system, or attempt to do so, without the proper approval, the Town may revoke this Franchise. Upon revocation, all rights and interests of the Company under this Franchise shall cease. In addition, any sale, re-sale, transfer, assignment, or conveyance in violation of this Section shall be null and void and unenforceable.

**ARTICLE 14**  
**MUNICIPALIZATION**

14.1 Town's Right To Purchase Or Condemn.

- (A) The right of the Town to construct, purchase, or condemn any public utility works or ways, and the Facilities and rights of the Company in connection therewith, as provided by the Colorado Constitution and statutes, is hereby expressly reserved, and may be exercised by the Town in accordance with such statutes.
- (B) The Company understands and agrees that the right of the Town to construct, purchase, or condemn any public utility works or ways, and the Facilities and rights of the Company in connection therewith, as provided by the Colorado Constitution and the Town's home rule charter, are hereby expressly reserved, and that such right may be exercised at any time by the Town.
- (C) In the event the Town exercises its option to purchase or condemn, the Company agrees that it will continue to maintain its Facilities and to supply any service it supplies under this Franchise, in whole or in part, at the Town's request, and at the Town's cost, for up to a twenty-four month period after the Town has either purchased or condemned the Company's Facilities or alternative arrangements have been made. Both parties will exercise due diligence to wind up the affairs as soon as practical.
- (D) The Company shall cooperate with the Town by making available such records as will enable the Town to evaluate the feasibility of acquisition of Company Facilities. The Company shall not be required to conduct studies or accrue data without reimbursement by the Town, but shall make such studies if reimbursed its costs for the same. The Company shall take no action, which could inhibit the Town's ability to effectively or efficiently use the acquired Facilities.

14.2 Negotiated Purchase Price or Condemnation Award. If the Town desires to purchase Company Facilities and if the Company desires to sell such Facilities, the parties shall negotiate in good faith to determine a mutually acceptable purchase price for up to ninety (90) days; said purchase price shall exclude the value of this Franchise. If agreement is not reached, the Town and the Company reserve all rights to assert their respective positions with respect to the steps the Town would need to take to condemn Company Facilities; however, no award shall be made for the value of the Franchise.

14.3 Town-Produced Electricity. The Company understands and agrees that the Town expressly reserves the right to obtain or produce electricity for its own purposes and wholesale transactions, and the Town may exercise that such right at any time. The Company shall not curtail wholesale purchases of Town-generated electricity. The Town expressly reserves the right to engage in the production of electricity. If the Town does so, the Company agrees to negotiate in good faith for the purchase thereof in accordance with its tariffs and applicable PUC rules and regulations, but only within the limits of its then-

existing contractual limitations. Alternatively, the Company agrees to transmit the Town-generated power between the generation unit and designated end point to the extent that such transmission is feasible within the then-existing system of the Company. The Company may charge for such transmission a just and reasonable rate calculated on the basis of the Facilities actually used by it to provide this service

- 14.4 Purchase of Real Property of Company by Town. If at any time during the term of this Franchise, the Company proposes to sell or dispose of any of its real property located in whole or in part in the Town, it shall grant to the Town the right of first negotiation to purchase the same. Nothing in this provision shall preclude the Company from disposing of its real property in a timely fashion.
- 14.5 Purchase or Condemnation of Street Lighting System. The provisions of this Article apply with full and equal force to the purchase or condemnation by the Town of all or a portion of the street lighting service provided by the Company, including all or a portion of any Company owned street lighting facilities, equipment, system, and plant. The Company understands and agrees that the Town may choose to so purchase or condemn such street lighting service at any time.

## **ARTICLE 15 BREACH**

### 15.1 Breach

- (A) If the Company fails to perform any of the terms and conditions of this Franchise and such failure is within the Company's control, the Town may require the Company to show cause, at a hearing before the Town Council, the reasons its rights and privileges under this Franchise should not be forfeited, or other penalties imposed as provided by this Franchise or by law. No such hearing shall be held unless the Company has first been given notice of its failure and reasonable time, not to exceed ninety days, in which to remedy the failures. If the Company does not remedy the failures, the Town council may determine, at such a hearing, whether such failure to perform and the Company's failure to remedy the same occurred, and if so, whether such failure to perform is substantial. The Town council may impose one or more of the following remedies or penalties for a substantial failure to perform:
- (1) A civil penalty of \$500 for each day or portion thereof that the failure was committed or continued. The Company understands and agrees that such liquidated damages are intended to compensate the Town for the additional efforts of the Town in administering and enforcing the Franchise, for inconvenience to Town operations and to the Residents, and loss of confidence in government and morale of the Town and its Residents when Franchise obligations are not met. Such damages are uncertain in amount and difficult to measure and prove accurately. By this Franchise, the

Company agrees that the liquidated damages specified herein are reasonable in amount and are not disproportionate to actual anticipated damages;

- (2) Forfeiture of all rights under this Franchise; or
  - (3) Any other remedies available to the Town by law.
- (B) The Town may take action to correct the failure, and the Company shall promptly reimburse the Town for the cost of such action.
- (C) In the event of judicial action taken by either party to enforce any of the terms or conditions of this Franchise, each party shall be responsible for its own attorney fees and costs associated with such action.
- 15.2 Judicial Review. Any declaration of forfeiture by the Town Council shall be subject to de novo judicial review.
- 15.3 Other Legal Remedies. Nothing herein shall limit or restrict any legal rights or remedies that the Town may possess arising from any alleged violation of this Franchise.
- 15.4 Continued Obligations. Upon forfeiture, the Company shall continue to provide service to the Town and its Residents until the Town makes alternative arrangements for such service.

## **ARTICLE 16 APPROVAL; AMENDMENTS**

- 16.1 Approval of Franchise. The Company shall promptly file, in writing, its acceptance of this Franchise and the Franchise shall become effective.
- 16.2 Terms Impacted by Legislative and Regulatory Changes. The Town and the Company recognize that the electric utility industry is the subject of numerous restructuring initiatives by legislative and regulatory authorities. Some of the initiatives and changes may have an effect upon the terms that would be adverse to the customers within the Town or the Company. In the event of such regulatory changes, the Town and the Company may need to amend various provisions of this Franchise, and agree to negotiate in good faith in reaching such amendments.

## **ARTICLE 17 MISCELLANEOUS**

- 17.1 No Waiver. Neither the Town nor the Company shall be excused from complying with any of the terms and conditions of this Franchise by any failure of the other, or any of its

officers, employees, or agents, upon any one or more occasions, to insist upon or to seek compliance with any such terms and conditions.

17.2 Successors And Assigns. The rights, privileges, and obligations, in whole or in part, granted and contained in this Franchise shall inure to the benefit of and be binding upon the Company, its successors and assigns, to the extent that such successors or assigns have succeeded to or been assigned the rights of the Company.

17.3 Third Parties. Nothing contained in this Franchise shall be construed to provide rights or remedies to third parties.

17.4 Representatives. The Company and the Town shall designate the persons to whom notices shall be sent regarding any action to be taken under this Franchise. All Notice shall be in writing and forwarded by mail or hand delivery to the persons and addresses as stated below, unless changed by written notice given to the other. Until change is made, notices shall be sent as follows:

To the Town:  
Town Manager  
PO Box 10  
201 N. Railroad St.  
Ridgway, CO 81432

To the Company:  
CEO/General Manager  
PO Box 1150  
720 N. Railroad St.  
Ridgway, CO 81432

17.5 Severability. Should any one or more provisions of this Franchise be determined to be illegal or unenforceable, all other provisions nevertheless shall remain effective; provided, however, the parties shall enter into good faith negotiations and proceed with due diligence to draft a substitute term which will achieve the original intent of the parties.

17.6 Entire Agreement. This Franchise constitutes the entire agreement of the parties with respect to the matters contained herein and supersedes any and all prior written or oral negotiations, correspondence, understandings and communications with respect to this Franchise.

17.7 Construction and Enforcement. Colorado law shall apply to the construction and enforcement of this Franchise. The parties agree that venue for any litigation arising out of this Franchise shall be in the District Court of Ouray County.

17.8 Other Franchises. In the event the Company becomes subject to Franchise or ordinance terms of another municipality or regulations of a county significantly more advantageous to the municipality or county, the Town may enact similar provisions by ordinance.

TOWN OF RIDGWAY, COLORADO

By \_\_\_\_\_  
John I. Clark, Mayor

**CERTIFICATE OF TOWN CLERK**

The foregoing Ordinance was introduced at a meeting of the Ridgway Town Council on September 13, 2023, published by title thereafter, and adopted by a majority vote at a meeting on October 5, 2023.

(SEAL)

\_\_\_\_\_  
Town Clerk