

FRANCHISE AGREEMENT
BETWEEN THE CITY OF MONTROSE AND
DELTA-MONTROSE ELECTRIC ASSOCIATION

AN ORDINANCE GRANTING A FRANCHISE BY THE CITY OF MONTROSE, COLORADO, TO DELTA-MONTROSE ELECTRIC ASSOCIATION, ITS SUCCESSORS AND ASSIGNS, TO LOCATE, BUILD, CONSTRUCT, RECONSTRUCT, REPLACE, MODIFY, UPGRADE, UPRATE, RELOCATE, REMOVE, ACQUIRE, PURCHASE, EXTEND, MAINTAIN, AND OPERATE INTO, WITHIN, AND THROUGH THE CITY OF MONTROSE, MONTROSE COUNTY, COLORADO, ALL FACILITIES NECESSARY FOR, OR RELATED TO, THE PURCHASE, TRANSMISSION, AND DISTRIBUTION OF ELECTRICITY TO THE CITY OF MONTROSE AND THE RESIDENTS, BUSINESSES AND INDUSTRY OF THE CITY OF MONTROSE, BY MEANS OF LINES, WIRE, CABLES, FIBER, POLES, FACILITIES, EQUIPMENT OR OTHERWISE, OVER, UNDER, ALONG, ACROSS, AND THROUGH ANY AND ALL STREETS, ALLEYS, VIADUCTS, BRIDGES, ROADS, LANES, AND OTHER PUBLIC WAYS AND PLACES IN SAID CITY OF MONTROSE, AND FIXING THE TERMS AND CONDITIONS THEREOF.

BE IT ORDAINED BY THE CITY COUNCIL AND THE PEOPLE OF THE CITY OF MONTROSE, COLORADO, as follows:

ARTICLE 1
TITLE AND DEFINITIONS

- 1.1 This Chapter shall be known and may be cited as the “Delta-Montrose Association Franchise Chapter”.
- 1.2 For the purpose of this Franchise agreement, 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 “City” refers to and is the municipal corporation designated as the City of Montrose, Montrose County, Colorado, and is the grantor of rights under this Franchise.
- 1.4 “Company” refers to and is Delta-Montrose Electric Association, a Colorado cooperative electric association, and is the grantee of rights under this Franchise.
- 1.5 “City Council” refers to and is the legislative body of the City.
- 1.6 “Facilities” or “Company Facilities” refer to and are all of the Company's facilities reasonably necessary to provide electric service and communication fiber into, within and through the City, including but not limited to substations, transmission and distribution

structures, lines, wires, electrical equipment, transformers, overhead and underground lines, meters, meter reading devices, control equipment, street lights, wires, cables, fiber optic cables, electric transportation charging facilities and poles.

- 1.7 “Franchise” refers to the terms and conditions of this ordinance.
- 1.8 “Gross Revenues” refers to those amounts of money that the Company receives from the sale and/or delivery of electricity in the City, after adjusting for refunds, net write-offs of accounts, corrections, or Regulatory Adjustments (as defined below). “Gross Revenues” shall exclude any revenue from the sale and/or delivery of electricity to the City as a customer of the Company.
- 1.9 “Party” or “Parties” refers to and includes the Company and the City, either singly or collectively as the context requires.
- 1.10 “Public Project” means (1) any public work or improvement within the City that is wholly or beneficially owned by the City or is the result of a request and/or required by the City as part of a development application pursuant the Montrose Municipal Code; or (2) any public work or improvement within the City where fifty percent (50%) or more of the funding is provided by any combination of the City, the federal government, the State of Colorado, a Colorado county, or other governmental or quasi-governmental entities. For purposes of this agreement, “public work or improvement” means any project for the new construction or reconstruction of a project such as public buildings; public roads; public highways; public streets; publicly owned water mains and sewers; public parks and playgrounds; public convention facilities which are financed at least in part with public money; jails and prisons; and all other similar publicly-owned works and property. Public work or improvement does not include any project done for primarily aesthetic purposes, beautification, or view protection.
- 1.11 “PUC” refers to and is the Public Utilities Commission of the State of Colorado or other state agency succeeding to the regulatory powers of the Public Utilities Commission.
- 1.12 “Regulatory Adjustments” refers to any adjustments to the Company’s revenues pursuant to federal, state or other governmental regulations, including but not limited to, credits, surcharges, refunds, and pro-forma adjustments.
- 1.13 “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 City.
- 1.14 “Rights-of-Way” refer to and are streets, alleys, viaducts, bridges, roads, lanes, public utility easements, and other public rights-of-way and public places in the City, excluding any easement the terms of which do not permit the use thereof by the Company. The phrase “in the Rights-of-Way” shall mean upon, above, under, across, along and within said Rights-of-Way.

- 1.15 “Uncontrollable Forces” means the inability to undertake an obligation of this Franchise due to a cause that could not be reasonably anticipated by a Party or is beyond its reasonable control after exercise of reasonable efforts to perform, including, without limitation, accidents, breakdown of equipment, acts of God, floods, storms, fires, sabotage, terrorist attack, strikes, riots, war, labor disputes, forces of nature, epidemics, pandemics, orders of the government or unavailability or shortages of materials or equipment.
- 1.16 “Utility Service” means the obligation to furnish, sell, and distribute electricity.

ARTICLE 2 GRANT OF FRANCHISE

2.1 Grant of Franchise.

- (A) The City grants to the Company, for the period specified in and subject to the conditions, terms, and provisions contained in this Franchise:
- (1) The non-exclusive right, and the Company assumes the obligation, to provide Utility Service to the City and to all Residents of the City.
 - (2) The non-exclusive right, and the Company assumes the obligation, to acquire, construct, install, locate, maintain, upgrade, operate, and extend into, within and through the City all Facilities reasonably necessary to furnish, sell, and distribute electricity within and through the City.
 - (3) The non-exclusive right, and the Company assumes the obligation, to make reasonable use in the Rights-of-Way as may be necessary to carry out the terms of this Franchise subject to the City's prior right of usage for municipal purposes and subject to applicable laws, ordinances, and regulations. These rights and obligations shall extend to all areas of the City as it is now or hereafter constituted.
 - (4) The non-exclusive right, and the Company hereby assumes the obligation, to provide street lighting service within the City which shall be governed by this Franchise, applicable City codes and regulations, and Company's tariffs.
- (B) The rights granted by this Franchise are not, and shall not, be deemed to be granted exclusively to the Company, and the City reserves the right to make or grant a similar franchise to any other person, firm, or corporation as allowed by law. Notwithstanding the foregoing, the City agrees that the Company is the holder of Certificate of Public Convenience and Necessity granting the Company an exclusive service territory for the distribution of electric service to the City subject to the rules and regulations of the PUC and the City's rights of eminent domain as provided for, and limited by, Article II, Section 15 of Colorado Constitution and C.R.S. § 40-9.5-201, *et seq.*

- (C) Except as otherwise specifically provided in this Franchise, the City retains the right to use, control, and regulate, through the exercise of its police power, the use of the Rights-of-Way, and the space above and beneath said Rights-of-Way; and the City retains the right to impose such other local codes or administrative regulations as may be determined by the City to be necessary in the exercise of the police power to protect the health, safety, and welfare of the public including without limitation the requirement that the Company obtain permits for construction and excavation in the Rights-of-Way.
- (D) Neither the City nor the Company waives any rights under the statutes and constitution of the State of Colorado or of the United States except as otherwise specifically stated in this Franchise.
- (E) This Franchise constitutes a valid and binding contract between the Company and the City. In the event that the Franchise Fee (defined below) 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 City in an aggregate amount that would be, as nearly as practicable, equivalent to the amount which would have been paid by the Company as a Franchise Fee as consideration for use of the City's Rights-of-Way.
- (F) Nothing in this Franchise shall prohibit the Company from using its Facilities as authorized by applicable laws and regulations, including leasing its Facilities to any third-party.

ARTICLE 3 TERM OF FRANCHISE

- 3.1 Term of Franchise. This Franchise shall take effect on January 1, 2021, and shall supersede any prior franchise grants to the Company by the City relating to Utility Service. Unless terminated prior to twenty (20) years in accordance with other provisions of this Franchise, the term of this Franchise shall be for twenty (20) years.

ARTICLE 4 FRANCHISE FEE

- 4.1 Franchise Fee.

- (A) In consideration for the rights granted in this Franchise, which provide, among other things, for the Company's use of the Rights-of-Way, which are valuable public properties acquired and maintained by the City at great expense to its Residents, and in recognition that the grant to the Company of the use of those Rights-of-Way, and of the right to provide service to the City's Residents, which are valuable rights, the

Company shall collect and pay the City 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 shall constitute the exclusive monetary payment by the Company to the City for the Company's use and occupancy of the Rights-of-Way except as specifically provided for in this Franchise.

- (B) The Company shall collect from its customers within the City limits and pay to the City a sum of three percent (3%) of its annual Gross Revenue derived from the sale of electricity to Residents within the corporate limits of the City (the "Franchise Fee"). The Company will not collect said 3% Franchise Fee from the City for Utility Service provided directly or indirectly to the City for its own consumption, including street lighting service.
- (C) A transaction or arrangement between the Company and any third-party which has the effect of circumventing payment of required Franchise Fees or evasion of payment of Franchise Fees by non-collection, non-reporting, or any other means which evade the actual collection of revenues by the Company for services delivered over the system or businesses the Company pursues derived from the operation of the system is prohibited except any such transaction which may be required by law.
- (D) No acceptance of payment by the City 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 City may have for additional sums due and payable under this Franchise.

4.2 Remittance Schedule. The Company shall remit the Franchise Fee to the City in monthly installments not more than thirty (30) days following the close of each month. All payments shall be made to the City. In the event that either the City or the Company discovers that there has been an error in the calculation of the Franchise Fee payment to the City, the error shall be corrected in the next monthly payment; except that, in the event an error by the Company results in an overpayment of the Franchise Fee to the City, and said overpayment is in excess of Ten Thousand Dollars (\$10,000), credit for the overpayment shall be spread over the same period the error was undiscovered. If the overpayment is less than Ten Thousand Dollars (\$10,000), credit shall be taken against the next payment. In no event shall either Party be required to credit or pay any under- or overpayment which occurred more than three (3) years prior to the discovery of the error. Underpayments shall be subject to up to 1 ½% interest per month until paid or credited 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 City in lieu of any utility occupation tax or any rental fee, for the Company's use or occupation of City's Rights-of-Way, 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.

4.4 Audit of Franchise Fee Payments.

- (A) **Company Reports.** At the written request of the City, the Company shall furnish to the City a statement stating the calculation of the total amount of Gross Revenues for the previous two (2) years.
- (B) **City Audit.** At the written request of the City, but no more than every three (3) years commencing at the end of the third year of this Franchise, the City may conduct an audit at its own expense, in accordance with generally accepted auditing standards, and the Company shall cooperate by providing the City's auditor with financial information and customer records necessary to complete such audit consistent with applicable federal, state or local laws. The City is encouraged to conduct any audit pursuant to this section at the same time it conducts any sales and use tax audit of the Company.
- (C) **Underpayments.** If the results of a City audit conclude that the Company has underpaid the City by two percent (2%) or more ("Underpayment Percent"), in addition to the obligation to pay such amounts to the City, the Company shall also pay all reasonable costs of the City's audit, such costs not to exceed Seven Thousand Five Hundred Dollars (\$7,500.00) for each audit period. The Company shall not be responsible for interest or penalties for any errors from information provided by an entity certified by the Colorado Department of Revenue as a "hold harmless entity" or other similar entity recognized by the Department of Revenue, and any such errors shall not be included in the calculation of the Underpayment Percent. If the Underpayment Percent is less than two percent (2%), the City shall pay all reasonable costs of the Company incurred in cooperating with the audit.

4.5 Changes in City Boundaries. The City shall promptly notify the Company in writing of annexations (or de-annexation) of property into (or out of) the domain of the City so that DMEA may appropriately adjust its collection of the Franchise Fee from Residents within the City limits. Any amounts received for Utility Services provided to customers within the new City limits will be included in the Gross Revenues no later than ninety (90) days after such written notice. The Company shall not be required to retroactively collect or pay any Franchise Fees on such Utility Services from Residents in any annexed area of the City if the City fails to provide written notice of the annexation to the Company.

**ARTICLE 5
MODIFICATION OF FRANCHISE FEE**

5.1 Change of Franchise Fee and Other Terms. In recognition of the length of the term of this Franchise, and in further recognition of the possibility of legislative and/or regulatory amendments which may allow for the wheeling of electricity through Facilities owned by the Company and located within the City, the Parties agree that in the event of such legislative or regulatory amendments, or in any unexpected event which would result in a significant decrease in fees collected on behalf of the City, the Company and the City agree to modify the computation of the Franchise Fee. Said modified computation may be based

upon volume of electricity delivered rather than the percentage of revenue, at the City's discretion. The Parties agree, to the extent permitted by law, to cooperate in modifying section 4.1(B) of this Franchise to assure that the Company collects and the City receives the Franchise Fees or some other form that is at least the same amount as the Franchise Fees collected by the Company as of the effective date of this Franchise, and for any increases in usage.

In the event that the computation of the Franchise Fee is modified and based upon volume of electricity delivered in accordance with the provisions of this Franchise, both Parties agree that, to the extent allowable by law, the Company shall be responsible for the collection of such Franchise Fee as measured against the total amount of kilowatt-hour consumption of electricity in each month by each Resident, from all electric providers and/or distributors. Both Parties further agree that such volumetric computation shall be subject to annual adjustment to reflect inflation in accordance with a mutually acceptable price index.

Modification of the Franchise Fee as provided herein is an express term of this Agreement and shall not require submittal to the vote of City electors accordingly.

ARTICLE 6 DISCLOSURE OF RECORDS

6.1 City Information Rights.

- (A) The City or its designated representative or agent, shall have access to the books and records of the Company relevant for the purpose of ascertaining compliance with the terms of this Franchise during normal business hours upon reasonable notice. The City may use such information for the purposes of enforcing its laws, ordinances, and regulations. Nothing in this Franchise shall exempt the Company from any other requirements regarding the production of information as provided in the laws, ordinances and regulations of the City.
- (B) To the extent allowable by law, the Company shall supply the City with all of the following information annually without cost to the City:
 - (1) Annual reports, including but not limited to, its annual report to its consumers; and
 - (2) Annual financial summaries of the revenues collected within the City during the previous year.
- (C) To the extent allowable by law and reasonably available, the Company shall supply the City 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 City which have been accomplished or are underway by the Company, if applicable; and
 - (3) The Company's plans for additional conversions and replacements within the City, 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 City and its Residents; and
 - (5) Copies of supporting documentation for the calculation of the Franchise Fee; and
 - (6) An inventory of the Company's Facilities within the City; and
 - (7) Annual and long-term reports for capital improvements planned within the City.
- 6.2 Enforcement of City Ordinances. The City may use the Company's metered information obtained from audits for the purposes of enforcing its laws, ordinances, and regulations.
- 6.3 Protection of Confidential Information. Except as expressly authorized in this Franchise, all information obtained by the City pursuant to this Section 6 shall to the extent permitted by law be kept confidential and shall be utilized for the sole purpose of verifying that the Franchise Fee has been correctly computed and paid.

ARTICLE 7 RATES

- 7.1 General Provisions. Rates charged by the Company for service provided pursuant to this Franchise 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 while taking into account deliverability of electricity and other pertinent design conditions which maintain high safety and service reliability standards.
- 7.2 Comparable rates. For each rate category within the Company's service area, the maximum rates charged to customers within the City shall be no higher than the lowest rates charged to the Company's customers in the same rate category, excluding franchise fees, rental fees, surcharges and other taxes, if applicable.
- 7.3 Rates applicable to City Street Lighting and City-owned facilities. Rates charged to the City by the Company for street lighting and City-owned facilities shall be no higher than

the lowest rates charged to the Company's customers for the same rate category, excluding franchise fees, rental fees, surcharges and other taxes, if applicable.

ARTICLE 8 SUPPLY, CONSTRUCTION AND DESIGN

8.1 Supply; Reliability.

- (A) The Company shall at all times take all reasonable and necessary steps to assure the adequate supply, transmission, and distribution of electricity to the City and its Residents at the lowest reasonable cost consistent with the terms 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 City and its Residents. The Company recognizes that maintaining service reliability is a substantial obligation under this Franchise. Upon the City's request, the Company will provide the City copies of service reliability reports.
- (B) If the supply, transmission, or distribution of electricity to the City or any Resident is interrupted, the Company shall take all necessary and reasonable actions to restore such supply in the shortest practicable time. If the supply 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 City in advance. The Company shall maintain a local office located in Montrose, Colorado. The Company shall keep on file in its local office and/or on its website, copies of its rate schedules, standards for service, rules, policies, and regulations 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 City and its Residents upon written request.
- (C) The Company shall provide to the City telephone numbers of the Company's dispatch center that will permit the City to obtain status reports from the Company on a twenty-four hour basis concerning interruptions of the supply of electricity in any portion of the City. The City agrees that any non-published Company telephone numbers shall be considered confidential and not disclosed to any third-parties, to the extent permitted by law.

8.2 Obligations Regarding Company Facilities.

- (A) All work by the Company shall be done:
 - (1) in a high-quality manner;
 - (2) in a timely and expeditious manner;
 - (3) in a manner which minimizes inconvenience to the public and individuals;

- (4) in a cost-effective manner, which may include the use of qualified private contractors; and
 - (5) in accordance with Company policies and procedures but all times subject to applicable laws, ordinances, and regulations.
- (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 Rights-of-Way. Interference with private property, landscaping and other natural features shall be minimized.
- (C) The Company shall promptly repair all damage caused by Company activities or Facilities to substantially its former condition. If such damage poses a threat to the health, safety, or welfare of the public or individuals, the City may cause repairs to be made, and the Company shall promptly reimburse the City for the reasonable cost of such repairs.
- (D) All non-electrical work performed by the Company is subject to inspection, by the City and a determination by the City that said work has been performed in accordance with all applicable laws, ordinances, and regulations of the City. The Company shall have the authority under this Franchise to cut, prune, and/or remove vegetation in accordance with its standard vegetation management requirements and procedures. The Company shall promptly perform reasonable remedial action required by the City pursuant to any such inspection. Upon request by the City, DMEA will provide as-built drawings, but only if such drawings exist, for Company Facilities in the Rights-of-Way.
- (E) Except in emergency situations, where the installation, upgrade or replacement of any Facilities in the Rights-of-Way by or on behalf of the Company requires relocation of Company Facilities in the Rights-of-Way, the location shall be subject to inspection and approval by the City. Such inspection and approval may include, but not be limited to, the following matters implicated by relocation of Facilities in the Rights-of-Way: cutting and trimming of trees and shrubs and disturbance of pavements, sidewalks, and surfaces of streets. All newly installed utilities shall be installed underground unless the City Engineer determines that soil or topographic conditions make that impracticable or the City and Company mutually agree such newly installed utilities need not be installed underground. All costs for such undergrounding shall be allocated in accordance with Section 12.1.
- (F) The Company and all of its contractors shall comply with all applicable City laws, ordinances, and regulations. The Company shall require its contractors working in the Rights-of-Way to hold the necessary licenses and permits required by the City 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 City, of each Company Facility which exists within the City.

8.3 Excavation and Construction. The Company shall be responsible for obtaining all applicable permits, including any excavation and/or street cut permits, in the manner required by the laws, ordinances, and regulations of the City. 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 City laws, ordinances, and regulations.

8.4 Relocation of Company Facilities.

- (A) Except as provided in 8.4(B) below, relocation of electric Facilities installed or maintained in the Rights-of-Way or City property pursuant to this Franchise or any previous franchises shall be made by the Company at its expense, if at any time the City requests the Company to relocate the same in order to permit the construction of a Public Project.
- (B) The provisions of 8.4(A) above are intended to be applied to Public Projects only. The provisions shall not apply, and the Company shall not be responsible for, payment of costs associated with relocation of Facilities when the following apply:
 - (1) relocation of the Facilities is primarily for aesthetic purposes, beautification or view protection; or
 - (2) relocation involves Facilities owned by the Company in privately held easements, including without limitation, Facilities located in prescriptive easements benefitting the Company; or
 - (3) relocation involves existing underground utilities properly located within public easements according to City specifications, if such relocation is not necessary to the Public Project.
- (C) The Company shall complete such relocations as soon as practicable from the date when the City makes its request, but in any event within 90 days after such request; except that the Company may be granted an extension of time for completion equivalent to any delay caused by conditions not under its control. Upon written request, the City may extend the period of time for completion of a relocation where the scope of the relocation and/or existing circumstances makes a 90-day completion time unreasonable. In such cases, the City's consent to a longer completion time shall not be unreasonably withheld or conditioned.
- (D) When requested by the City or the Company, representatives of the City and the Company shall meet to share information regarding anticipated City 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 shall be restored to substantially its former condition by the Company at its expense (or at City's expense in accordance with Section 12.1) in accordance with then existing City laws, ordinances, and regulations.
- (F) The City shall use its best efforts to obtain funding for utility relocations in connection with Public Projects receiving federal or state funds. When public funds are utilized for the purposes of utility relocation, the City shall utilize said funds for Company utility relocations in a manner consistent with other utility relocations.
- (G) No expenses pursuant to this article paid or reimbursed shall be surcharged specifically against Residents of the City.
- (H) All relocated utilities shall be installed underground unless the City Engineer determines soil or topographic conditions make that impracticable or if the City and Company mutually agree otherwise. The cost for undergrounding shall be allocated in accordance with Section 12.1.

8.5 Service to New Areas. If the boundaries of the City 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 City Not Required to Advance Funds. Upon receipt of the City's authorization for billing and construction, the Company shall extend its Facilities to provide Utility Service to the City for municipal uses within the City limits or for any major municipal facility outside the City limits, and within the Company's certificated service area, without requiring the City to advance funds prior to construction. Upon completion, the City shall pay all invoices 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 Utility Service within the City when such advances are technically and economically feasible, and are safe and beneficial to the City and its Residents.
- (B) While maintaining flexibility in the provision of Utility 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; provided, however, should an upgrade

of the Utility Services provided to customers within the City be requested by the City Council, the Company shall have the right to meet, confer, and negotiate with the City 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 City related information upon the City Council's request, including, but not limited to: a plan for provision of such services, or a justification indicating the reason(s) such services are not feasible for the Company's customers within the City. Company retains the right to make the final decision as to the technological improvements and/or upgrades made by the Company.

- (C) **Scope of Activities Authorized By Franchise.** The provisions of this Franchise apply specifically to electric services, including telecommunications relating to electric services. Nothing in this agreement precludes the Company from engaging in any other lawful activities that are not subject to franchise agreements.

ARTICLE 9 COMPLIANCE

- 9.1 **City Regulation.** The City expressly reserves, and the Company expressly recognizes, the City'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 City in the exercise of its police power for the protection of the health, safety, and welfare of its citizens. The Company shall comply with all applicable laws, ordinances, and regulations of the City, including but not limited to all City building and zoning codes, and requirements regarding curb and pavement cuts, excavating, digging, and other construction activities.
- 9.2 **City Review of Plans.** Prior to construction of any significant electric Facilities such as transmission lines and substations within the City, or of a building or other structure within the City, the Company shall furnish to the City the plans and a description of the proposed location of such Facilities, building, or structure. In addition, upon request by the City, the Company shall assess and report on the impact of its proposed construction on the City environment. Such plans and reports may be reviewed by the City 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 City and shall incorporate all other reasonable changes requested by the City.
- 9.3 **Inspection.** The City shall have the right to inspect, at all reasonable times, any portion of the Company's Facilities in the City's Rights-of-Way. The Company agrees to cooperate with the City in conducting the inspection and to correct any safety issues affecting the City's interest in a prompt and efficient manner. Said inspection shall be performed only by qualified inspectors working under a professional engineer's license.

ARTICLE 10
USE OF COMPANY FACILITIES

- 10.1 City Use. The City shall be permitted to make all reasonable use of the Company's distribution poles and street lighting poles for any City purpose so long as such use complies with appropriate safety codes, including the Company's safety regulations. To the extent permitted by law, said use shall be without cost to the City so long as such use does not unreasonably interfere with the Company's use of its Facilities for distribution of electricity or telecommunications services or create a hazard. The City shall be responsible for all costs, including maintenance costs, associated with any modifications to the Company's Facilities to accommodate the City's use of such Facilities. To the extent permitted by law, the City shall hold harmless and indemnify the Company for the City and its employees, agents, and representatives acts or failures to act related to the City's use of Company's 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 City to utilize the Company's distribution poles and other suitable overhead structures for the placement of their facilities based upon the Company's joint use pole attachment agreement, 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 existing or documented future 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 City Residents, such transportation shall not be prohibited under this Franchise. The Company shall periodically report to the City 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 City 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 City from collecting from such entities or Residents all applicable taxes and fees required by the City'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 City, make available its Facilities for emergency use during the emergency or the disaster period. 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. To the extent permitted by law, the City shall hold harmless and indemnify the Company for the City and its employees, agents, and representatives acts or failures to act related to such use of Company's Facilities.
- 10.5 Trenches Available for City Use. The City and Company agree that it is in the best interest of the community for the City and Company to share and combine Company Facilities and City facilities in common trenches, ductways, etc. The Company and City agree to work

together to see that such facilities are combined to minimize impacts to the community. The City's installation of its facilities shall not interfere with the Company's Facilities or delay the commencement or completion of the Company's construction projects.

- 10.6 City Use of Company Transmission Rights-of-Way. Upon the City's request as set forth below, the Company shall offer to grant to the City use of transmission rights-of-way which it now, or in the future, owns in fee within the City for trails, parks and open space on terms comparable to those offered to other municipalities; provided, however, that the Company shall not be required to make such an offer in any circumstance where such use would constitute a safety hazard or would interfere with the Company's use of the transmission right-of-way. In order to exercise this right, the City must make specific, advance written request to the Company for any such use and must enter such written agreements as the Company may reasonably require.

ARTICLE 11 INDEMNIFICATION OF THE CITY

11.1 City Held Harmless.

- (A) The Company shall construct, maintain, and operate its Facilities in a manner which provides reasonable protection against injury or damage to persons or property; provided, however, said obligation of the Company shall not increase or decrease its liability on third-party claims.
- (B) The Company shall save the City harmless and indemnify the City from and against all liability or damage and all claims or demands whatsoever in nature, and reimburse the City for all its reasonable expenses, including attorneys' fees, arising out of the operations of the Company within the City and the securing of and the exercise by the Company of the rights granted in this Franchise, including any third-party claims, administrative hearings and litigation. Notwithstanding anything in this Franchise to the contrary, the Company shall not be obligated to indemnify or hold the City harmless to the extent any claim, demand or liability arises out of, or in connection with, any intentional or negligent act or failure to act of the City or any of its officials, agents or employees, or the extent that any claim, demand or liability arises out of, or in connection with, the use of any facilities of the City.
- (C) The indemnification extended pursuant to this Franchise shall include delay damages as that term is contemplated in C.R.S. § 24-91-103.5 *et seq.*, as amended from time to time, or any successor law thereto, awarded against the City in favor of contractors for damages incurred by contractors for delays experienced in the performance of public works contracts entered into with the City; 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 City for any delay damages awarded against the City 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 City's control. Nothing contained in this Franchise 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 City for the purposes of C.R.S. § 24-91-103.5, *et seq.*

- (D) Notwithstanding any provision in this Franchise to the contrary, the Company shall not be obligated to indemnify, defend or hold the City harmless in any manner inconsistent with the doctrine of comparative negligence in Colorado.
- 11.2 Notice to Company. The City will provide prompt written notice to the Company of the pendency of any claim or action against the City arising out of the exercise by the Company of its Franchise rights. The Company will be permitted, at its own expense, to appear and defend or to assist in defense of such claim.
- 11.3 Financial Responsibility. At the City's request, but not more frequently than annually, the Company shall submit to the City, as a confidential document, proof of its ability to meet its obligations under this Franchise, including its ability to indemnify the City 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 City with a list of its insurance companies with the types of coverage, but not levels of insurance. The City 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 City, 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.
- 11.4 Payment of Election and Ordinance Expenses. The Company shall reimburse the City for reasonable and proportionate expenses incurred in publication of ordinances and initial implementation of this Franchise, including the cost of an election necessary to approve the Franchise ordinance, with such costs not to exceed \$10,000. No such expenses paid or reimbursed shall be surcharged specifically against residents of the City. Other ancillary election costs will be the responsibility of the City.

ARTICLE 12 UNDERGROUNDING OF OVERHEAD FACILITIES

- 12.1 Undergrounding of Facilities at Expense of City. Upon request by the City, the Company agrees to underground existing overhead Facilities at the City's expense, except when relocation is otherwise required in accordance with the provisions of § 8.4(A), in which case

the cost to relocate the Facilities underground shall be paid by the City, reduced by the cost of construction had the Facilities been relocated above ground.

- 12.2 Cooperation with Other Utilities. When undertaking a project of undergrounding, the City 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.
- 12.3 Review and Planning for Undergrounding Projects. The City 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 City 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. The Company need not approve an undergrounding project if it would create a significant risk to safety or operational integrity, but it shall provide to the City written notification of any such non-approval and the grounds therefore.
- 12.4 Undergrounding Performance. Upon receipt of a written request from the City, the Company shall underground Company Facilities pursuant to the provisions of this Article, in accordance with the procedures set forth in this Section.
- (A) Estimates. Promptly upon receipt of an undergrounding request from the City and the supporting documentation necessary for the Company to design the undergrounding project (the “Supporting Documentation”), the Company shall prepare a detailed, good faith cost estimate of the anticipated cost of the requested project and design the project plans (each, an “Estimate and Plan”) for the City to review and, if acceptable to the City, the City will issue a project authorization. The Company shall notify the City within twenty (20) business days of receipt of the request if the Supporting Documentation is insufficient to prepare the Estimate and Plan for the project. The City and the Company agree to meet upon the request of either Party during the period when the Company is preparing its Estimate and Plan to discuss all aspects of the project toward the goal of enabling the Company to prepare an accurate cost estimate. At the City’s request, the Company will provide all documentation that forms the basis of the Estimate and Plan to the City except that the Company shall not be required to provide any documentation that is proprietary. The Company shall have one hundred twenty (120) days after receiving the City’s written request to design and prepare the Estimate and Plan and transmit same to the City designee for review in a reasonable time period considering the scope of the project. Upon written request, the City may extend the period of time for completion of the Estimate and Plan where the scope of the Project and/or other circumstances make a 120-day completion time unreasonable. In all such cases, the City’s consent to a longer completion time shall not be unreasonably withheld or

conditioned. If City approval of the Estimate and Plan has not been granted, the Company's Estimate and Plan will be void sixty (60) days after delivery of the plans and Estimate and Plan to the City designee. If the Estimate and Plan are approved by the City, the Company shall complete the project as set forth below. At the Company's sole discretion, if the Estimate and Plan has expired because the City designee has not approved the same within sixty (60) days, the Company may extend the Estimate and Plan or prepare a new Estimate and Plan using current prices, which shall be subject to all requirements of this Section 12.4. The Company will not proceed with any requested project until the City has provided a written acceptance of the Company's Estimate and Plan. The City will reimburse the Company for its reasonable expenses incurred in preparing the Estimate and Plan within thirty (30) days of receipt of invoice from the Company.

- (B) Performance. The Company shall complete each undergrounding project requested by the City within a reasonable time considering the size and scope of each project, along with any relevant circumstances, not to exceed two hundred forty (240) days from the later of the date upon which the City designee makes a written request or the date the City provides to the Company all required Supporting Documentation. Upon written request, the City may extend the period of time for completion where the scope of the project and/or circumstances make the 240-day completion time unreasonable. In such cases, the City's consent to a longer completion time shall not be unreasonably withheld or conditioned. The Company shall be entitled to an extension of time to complete each undergrounding project where the Company's performance was delayed due to an Uncontrollable Force. Upon written request of the Company, the City may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold or condition any such extension.
- (C) City Revision of Supporting Documentation. Any revision by the City of Supporting Documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding an undergrounding project shall be deemed good cause for a reasonable extension of time to complete the undergrounding project under this Franchise.
- (D) Completion/Restoration. Each such undergrounding project undertaken pursuant to this Article shall be complete only when the Company actually undergrounds the designated Company Facilities and restores the undergrounding site in accordance with Article 8 of this Franchise, or as otherwise agreed with the City. When performing underground conversions of overhead lines, the Company shall make reasonable efforts consistent with its contractual obligations to persuade joint users of Company distribution poles to remove their facilities from such poles within the time allowed by this Article.
- (E) Report of Actual Costs. Upon completion of each undergrounding project undertaken pursuant to this Article, the Company shall submit to the City a detailed report of the Company's actual cost to complete the project (the "Actual Costs") and

the Company shall reconcile this total actual cost with the accepted Estimate and Plan. The report shall be provided within one hundred twenty (120) days after completion of the project and written request from the City.

- (F) **Payment of Costs by City.** Within thirty (30) days of the City's written acceptance of an Estimate and Plan, the City shall pay to Company one-half of the total cost of such Estimate and Plan (the "Initial Payment"). Upon completion of such undergrounding project undertaken pursuant to this Article, the Company will invoice the City in the amount of the Actual Costs less the Initial Payment (the "Final Payment") and the City shall pay the Final Payment to the Company within thirty (30) days of receipt of such invoice. Payment of costs by the City may be modified by written agreement between the Parties.

ARTICLE 13 TRANSFER OF FRANCHISE

- 13.1 **Consent of City Required.** The Company shall not sell, re-sell, transfer, assign or convey any rights under this Franchise, to any unaffiliated third-party, including any merger with such unaffiliated 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 City; 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, without the proper approval, the City may revoke this Franchise. Upon revocation, all rights and interests of the Company under this Franchise shall cease. For the purposes of this Section, a change of control of the Company is a transfer.

ARTICLE 14 MUNICIPALIZATION

- 14.1 **City's Right To Purchase Or Condemn.**
 - (A) The right of the City 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 expressly reserved, and may be exercised by the City only in accordance with such statutes and law in effect as of the date of this Franchise, including Article II, Section 15 of Colorado Constitution and C.R.S. § 40-9.5-201, *et seq.* In the event of any such condemnation, no value shall be ascribed or given to the right to use the Rights-of-Way granted under this Franchise in the valuation of the property thus sold.

- (B) The Company understands and agrees that the right of the City to construct, purchase, or condemn any public utility works or ways, and the Facilities and rights of the Company in connection therewith, as provided for, and limited by, Article II, Section 15 of Colorado Constitution and C.R.S. § 31-15-707 *et seq.* and the City's home rule charter, with the amount of compensation as provided by C.R.S. § 40-9.5-201 *et seq.*, are hereby expressly reserved, and that such right may be exercised at any time by the City.
 - (C) In the event the City 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 City's request, for up to a twenty-four month period after the City 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 City by making available such records as will enable the City 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 City, but shall make such studies if reimbursed its costs for the same. The Company shall take no action, which could inhibit the City's ability to effectively or efficiently use the acquired Facilities.
 - (E) Notice of Intent to Purchase or Condemn. Unless the City and Company agree otherwise, the City shall provide the Company no less than one (1) year's prior written notice of its intent to purchase or condemn Company Facilities. Nothing in this Section shall be deemed or construed to constitute a consent by the Company to the City's purchase or condemnation of Company Facilities, nor a waiver of any Company defenses or challenges related thereto.
- 14.2 Negotiated Purchase Price or Condemnation Award. If the City 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 in accordance with C.R.S. § 31-15-707 (to the extent it is not in conflict with C.R.S. §40-9.5-204), and C.R.S. § 40-9.5-204, as such statute was in effect as of the date of this Franchise, for up to ninety (90) days; said purchase price shall exclude the value of this Franchise. If agreement is not reached, the City and the Company reserve all rights to assert their respective positions with respect to the steps the City would need to take to condemn Company Facilities; however, no award shall be made for the value of this Franchise.
- 14.3 City-Produced Electricity. The Company understands and agrees that the City expressly reserves the right to obtain or produce electricity for its own purposes and wholesale transactions, and the City may exercise that right at any time. The Company shall not curtail wholesale purchases of City-generated electricity. The Company further agrees to offer transmission and delivery services to the City that are required by judicial, statutory and/or regulatory directive.

- 14.4 Purchase of Real Property of Company by City. If at any time during the term of this Franchise, the Company proposes to sell or dispose of any of its real property held in fee simple located in whole or in part in the City, it shall grant to the City the right of first refusal 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 City 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 City may choose to so purchase or condemn such street lighting service at any time; provided that any such condemnation is in accordance with the law.
- 14.6 Exercise of Rights Under This Article. The City recognizes that when the Company evaluated the economic feasibility of withdrawing from its previous wholesale electric service contract, the Company reasonably expected that it would continue long-term Utility Service within the City's municipal boundaries until at least March 1, 2033. In light of this expectation and notwithstanding anything to the contrary in this Franchise, the City agrees that if it exercises any of its rights under this Article 14 prior to March 1, 2033, then the City will compensate the Company for decreased Utility Service sales to address the Company's revenue shortfall that would otherwise not exist through that 2033 date. In the case of purchase or condemnation before March 1, 2033, the City and Company agree that such amount shall be added to the purchase price calculation in Section 14.2 and is part of the fair market value for any such purchase or condemnation.

ARTICLE 15 BREACH

15.1 Breach

- (A) Notice/Cure/Remedies. Except as otherwise provided in this Franchise, if a Party (the “Breaching Party”) to this Franchise fails or refuses to perform any of the terms or conditions of this Franchise (a “Breach”), the other Party (the “Non-Breaching Party”) may provide written notice to the Breaching Party of such Breach. Upon receipt of such notice, the Breaching Party shall be given a reasonable time, not to exceed thirty (30) days in which to remedy the Breach or, if such Breach cannot be remedied in thirty (30) days, such additional time as reasonably needed to remedy the Breach, but not exceeding an additional thirty (30) day period, or such other time as the Parties may agree. If the Breaching Party does not remedy the Breach within the time allowed in the notice, the Non-Breaching Party may exercise the following remedies for such Breach:
- (1) specific performance of the applicable term or condition to the extent allowed by law; and

- (2) recovery of actual damages from the date of such Breach incurred by the Non-Breaching Party in connection with the Breach, but excluding any special, punitive or consequential damages.
 - (B) Termination of Franchise by City. In addition to the foregoing remedies, if the Company fails or refuses to perform any material term or condition of this Franchise (a “Material Breach”), the City may provide written notice to the Company of such Material Breach. Upon receipt of such notice, the Company shall be given a reasonable time, not to exceed ninety (90) days in which to remedy the Material Breach or, if such Material Breach cannot be remedied in ninety (90) days, such additional time as reasonably needed to remedy the Material Breach, but not exceeding an additional ninety (90) day period, or such other time as the Parties may agree. If the Company does not remedy the Material Breach within the time allowed in the notice, the City may, in its sole discretion, terminate this Franchise. This remedy shall be in addition to the City’s right to exercise any of the remedies provided for elsewhere in this Franchise. Upon such termination, the Company shall continue to provide Utility Service to the City and its Residents (and shall continue to have associated rights and grants needed to provide such service) until the City makes alternative arrangements for such service and until otherwise ordered by the PUC and the Company shall be entitled to collect from Residents and, upon the City complying with applicable provisions of law, shall be obligated to pay the City, at the same times and in the same manner as provided in this Franchise, an aggregate amount equal to the amount which the Company would have paid as a Franchise Fee as consideration for use of the Rights-of-Way. Unless otherwise provided by law, the Company shall be entitled to collect such amount from Residents.
 - (C) Company Shall Not Terminate Franchise. In no event does the Company have the right to terminate this Franchise.
- 15.2 Other Legal Remedies. Nothing in this Franchise shall limit or restrict any legal rights or remedies that either Party may possess arising from any alleged violation of this Franchise.
- 15.3 Continued Obligations. Upon termination of the Franchise, the Company shall continue to provide service to the City and its Residents until the City 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. Notwithstanding anything to the contrary in this Franchise, the Franchise, upon approval and execution by both Parties, shall be subject to final approval by the voters of the City in accordance with the City Charter, and shall be null and void if such voter approval is not obtained.

- 16.2 Terms Impacted by Legislative and Regulatory Changes. The City 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 City and/or of the Company. In the event of such regulatory changes, the City and the Company may need to amend various provisions of this Franchise and agree to negotiate in good faith in reaching such amendments.
- 16.3 Proposed Amendments. At any time during the term of this Franchise, the City or the Company may propose amendments to this Franchise by giving thirty (30) days written notice to the other of the proposed amendment(s) desired, and both Parties thereafter, through their designated representatives, will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s). However, nothing contained in this Section shall be deemed to require either Party to consent to any amendment proposed by the other Party. Minor modification of the Franchise Agreement shall not require submittal to the vote of City electors accordingly.
- 16.4 Effective Amendments. No alterations, amendments or modifications to this Franchise shall be valid unless executed in writing by the Parties, which alterations, amendments or modifications shall be adopted with the same formality used in adopting this Franchise, to the extent required by law. Neither this Franchise, nor any term herein, may be changed, modified or abandoned, in whole or in part, except by an instrument in writing, and no subsequent oral agreement shall have any validity whatsoever.

ARTICLE 17 MISCELLANEOUS

- 17.1 No Waiver. Neither the City 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. Neither the City or Company waives any rights under statutes or the Constitution of the State of Colorado or of the United States except as otherwise specifically set forth in this Franchise.
- 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 pursuant to Article 13.
- 17.3 Third-Parties. Nothing contained in this Franchise shall be construed to provide rights or remedies to third-parties.
- 17.4 Notice. The Company and the City 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 City:
City Manager
433 South 1st Street
P.O. Box 790
Montrose, CO 81402-0790

To the Company:
Chief Executive Officer
11925 6300 Road
Montrose, Colorado 81401

17.5 Payment of Taxes and Fees.

(A) Impositions. Except as otherwise provided herein, the Company shall pay and discharge as they become due, promptly and before delinquency, all taxes, assessments, rates, charges, license fees, municipal liens, levies, excises, or imposts, whether general or special, or ordinary or extraordinary, of every name, nature, and kind whatsoever, including all governmental charges of whatsoever name, nature, or kind, which may be levied, assessed, charged, or imposed, or which may become a lien or charge against this Franchise (“Impositions”), provided that the Company shall have the right to contest any such Impositions and shall not be in breach of this Section so long as it is actively contesting such Impositions.

(B) City Liability. Except as may be charged for its Utility Service in accordance with the Company’s tariffs/rates, the City shall not be liable for the payment of late charges, interest or penalties of any nature arising from a dispute under this Franchise.

17.6 Conflict of Interest. The Parties agree that no official, officer or employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein and the Company further agrees not to knowingly hire or contract for services with any official, officer or employee of the City to the extent prohibited by law, including ordinances and regulations of the City.

17.7 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.

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


17.9 Construction and Enforcement. Colorado law shall apply to the construction and enforcement of this Franchise. The Parties agree that any litigation arising out of this Franchise shall be in the District Court of Montrose County, Colorado.

- 17.10 Uncontrollable Forces. Neither City nor the Company shall be in breach of this Franchise if a failure to perform any of the duties under this Franchise is due to Uncontrollable Forces.
- 17.11 Earlier Franchises Superseded. This Franchise shall constitute the only franchise between the City and the Company related to the furnishing of Utility Service, and it supersedes and cancels all former electric franchises between the Parties.

Executed this 1st day of September 2020, to be effective January 1, 2021.

Company:

Delta-Montrose Electric Association, a
Colorado cooperative electric association

By: 
Jasen Bronec, CEO

City:

City of Montrose, Montrose County,
Colorado

By: 
Barbara Bynum, Mayor