

ORDINANCE NO. 4

Series 2009

**AN ORDINANCE OF THE TOWN OF LAKE CITY, COLORADO, GRANTING
A FRANCHISE TO GUNNISON COUNTY ELECTRIC ASSOCIATION FOR THE
OPERATION OF AN ELECTRIC POWER UTILITY WITHIN THE TOWN.**

WHEREAS, Gunnison County Electric Association, Inc. has served the residents of the Town of Lake City, Colorado, with electrical service pursuant to a Franchise granted by the Town, and

WHEREAS, such Franchise has expired and Gunnison County Electric Association, Inc. desires to continue to serve the citizens of the Town of Lake City and to obtain a franchise therefore, and

WHEREAS, the operation of an electric utility involves substantial use of, including excavation in, public streets, alleys, easements and rights-of-way, and also involves the installation, maintenance and operation of lines, poles, and other facilities, and

WHEREAS, such operations may cause the Town additional costs from time to time in its efforts to provide for traffic safety and to efficiently maintain and administer public streets and on some occasions may interfere with the operation and maintenance of the Town's own utilities, and

WHEREAS, the Town and Gunnison County Electric Association, Inc. have incurred administrative costs in drafting, negotiating and administrating this Franchise, and

WHEREAS, a franchise is a substantial benefit to Gunnison County Electric Association, Inc., and to the citizens of the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF LAKE CITY, COLORADO, as follows:

Section 1. Title.

This ordinance may be cited as the Gunnison County Electric Association Franchise and is sometimes referred to herein as this franchise or ordinance.

Section 2. Definitions and General Provisions.

For the purpose of this Ordinance, the following definitions and provisions shall apply, unless inconsistent with the context or plain meaning:

- (A) Words used in the present tense include the future; words used in the plural include the singular; and words used in the singular include the plural.
- (B) The word "shall" is mandatory.
- (C) "Town" means the Town of Lake City, Colorado, and includes the Town Board of Trustees, or other authorized officer, agent or employee thereof.
- (D) "Gunnison County Electric Association" or "Company" means the Gunnison County Electric Association, Inc. or its successors or assigns.
- (E) "Public Utilities Commission" means the Public Utilities Commission of the State of Colorado or any political subdivision or agency succeeding to its regulatory powers.
- (F) "Streets" shall mean Town property dedicated to the Town or to the public within the Town, or owned by the Town which is primarily intended, used, dedicated, held, designed, or reserved for vehicular or pedestrian traffic, regardless of how named or denominated, including alleys and bridges.

(G) "Power easement" shall mean an easement owned by the Town, or dedicated to the public or the Town for the purpose of accommodating electric utility facilities, but does not include easements owned or held by the Town limited to water, sewer, or other specified utility purposes.

Section 3. Grant of Authority.

(A) There is hereby granted to Gunnison County Electric Association a franchise to operate an electric power system and the privilege of using and occupying Town streets, power easements and other Town owned property for the installation, operation and maintenance of an electric transmission and distribution system, for the purposes of supplying and selling electricity to the Town, its citizens, and to other customers located inside and outside the Town.

(B) This grant of authority shall be subject to the rights and duties provided for in this Franchise and to the provisions of all applicable Town Ordinances.

(C) This Franchise does not grant any authority to Gunnison County Electric Association to locate any power plant, manufacturing facility, or building upon any street, power easement, or other Town property, but applies only to distribution and transmission facilities which are necessary to serve the Company's customers in and around the Town. All Company facilities shall be located in compliance with Town building, zoning and land use regulations.

(D) This grant of authority shall apply to all streets, power easements, or other property presently owned by or dedicated to the Town, or the public within the Town limits, and any streets, power easements, or other property acquired by or dedicated to the Town in the future as long as such property remains Town property. This grant of authority shall terminate with respect to any street, power easements, or other Town property which is vacated, conveyed, or disposed of by the Town subsequent to the effective date of the Ordinance. The Town shall

reserve a power easement for any existing Company facilities located within any such property which is vacated, conveyed, or disposed of by the Town.

Section 4. Use of Poles by Town.

The Town shall have the right, with the prior approval of the Company (which approval shall not be unreasonably withheld), without charge, to use all poles owned by the Company within the Town limits for the purpose of stringing fire alarms, police signal systems or other Town wires, as long as such use does not unreasonably interfere with the Company's operations or create a safety hazard. When poles are used jointly, neither the Town nor the Company shall be responsible for the negligent acts or omissions of the other party. Such use by either party shall comply with the most recent edition National Electric Safety Code (NESC), and any revisions thereof that may be adopted during the term of the Franchise governed by this ordinance.

Section 5. Conditions and Manner of Use.

(A) No pole, line or other equipment or facility shall be installed or relocated within any street, power easement or other Town property, unless the location and plans for such facility have been approved by the Town, and such facilities shall be located so that they do not obstruct or interfere with any existing or planned Town improvement, use, utility line or facility, including, but not limited to, sidewalks, buildings, water, sewer or storm drainage. All new power lines, line extensions or replacements of existing power lines within the Town shall be made underground, so long as such work can be reasonably conducted according to acceptable electrical engineering practices. All new buried lines shall be placed in conduit made of materials that will reasonably assure safety and durability.

(B) The Company shall avoid, whenever possible, interfering with the use of any street, power easement, or Town property, and shall avoid cutting street pavement. In the event that it

becomes necessary to disturb or cut any pavement, sidewalk, driveway, or other structure or improvement, the Company shall obtain an excavation permit in a timely manner and, at its own cost and expense, cause the replacement, restoration, and repair of any such paving, sidewalk, driveway or other improvement to at least as good of condition as existed prior to the commencement of the work by the Company. All replacement, restoration or repair work shall be done in a workman-like manner in accordance with standard Town construction specifications subject to approval by the Town. The Company shall be responsible to correct any defect in the replacement, restoration or repair for a period of two (2) years.

(C) The Company shall exercise its rights upon any street, power easement, or other Town property, in a reasonable and prudent manner, and repair any damage to such property occasioned by its activities and shall, at a minimum, restore the surface to the existing conditions prior to its activities.

(D) The Town shall have the right to observe and inspect all construction, installation and maintenance work performed within the Town.

(E) The Town shall, at all times, control the distribution of space in, over, under and across all streets, power easements, and other Town property occupied by the Company's facilities. The Town may, at any time, require the Company to remove or relocate any of its facilities, if reasonably necessary, for the efficient operation or maintenance of any street, alley or Town owned facility, or, if required on account of the construction or repair of improvements, change of grade, width, alignment of any street, power easement, or other Town property.

(F) The costs of relocating any facility pursuant to paragraph (E) above shall be borne by the Company with respect to the first relocation during the term of this Franchise. If the Town requests relocation of the same facility of the Company a second time, the Town shall bear the cost of each relocation subsequent to the first, during this Franchise.

(G) The Company shall so maintain its structures, lines, apparatus and equipment, so as to afford all reasonable protection against injury or damage to persons or property.

(H) Tree trimming operations shall comply with the Town's tree care specifications and ordinances, as may be amended from time to time.

Section 6. Reserved Powers.

The Company shall, at all times, be subject to the lawful exercise of the police power by the Town and applicable ordinances and regulations of the Town.

Section 7. Service Rules

The Company shall have the right and it shall be its duty to put into effect reasonable uniform rules and regulations covering service within the Town; provided, however, that such rules, regulations, terms, and conditions shall not be in conflict with the provisions of this Agreement or the laws of the State of Colorado, and if applicable, shall be subject to approval by the Public Utilities Commission of the State of Colorado, USDA Rural Development, or other competent authority having jurisdiction in the premises. The Company must provide reasonably continuous and adequate service to customers within the Town.

Section 8. Rates

Rates charged by Gunnison County Electric Association for service provided to customers within the Town shall be just, reasonable, and nondiscriminatory.

Section 9. Company Rules

Gunnison County Electric Association shall have authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business, including line and service extension policies to insure adequate uninterrupted service to its customers within the Town. Such rules shall not be in conflict with the provisions of this Franchise or the laws of the State of Colorado and the Town.

Section 10. Records, Reports and Line Location

(A) The Town shall have access, at reasonable times, to Gunnison County Electric Association's plans, contracts, and engineering, accounting, financial, statistical, customer and service records relating to the Company's operations within the Town, and to any and all records required to be kept by or filed with the Colorado Public Utilities Commission, USDA Rural Development or the National Rural Utilities Cooperative Finance Corporation. The Company will assist and cooperate with the Town in determining the approximate location and depth of buried lines. Access to individual customer service records may be restricted as required by confidentiality requirements.

(B) A copy of the following shall be sent to the Town upon request:

1. All Company rules, rates and regulations.
2. All tariffs filed with the Public Utilities Commission.
3. A map of the distribution and transmission system within the Town, and adjacent rural areas, showing the "as-built" location, size and nominal depth or height of lines, transformers, and all appurtenances and facilities incident to the distribution and transmission system. The Company shall review, correct and update the system map within the Town. Map revisions shall be provided to the Town as available from time to time.
4. Upon request of the Town, the Company will promptly advise the Town of the location of buried lines pursuant to C.R.S. 9-1.5-103.

Section 11. Term.

The term of this Franchise shall commence on the date of its adoption, and it shall continue for a term of fifteen (15) years thereafter.

Section 12. Assignment.

The Franchise granted by this Ordinance shall not be leased, assigned or transferred, by the Town or Company, unless approved by the other party, which approval shall not be unreasonably withheld. This Franchise shall be binding upon the successors or assigns of the Company and the Town.

Section 13. Acquisition by the Town.

The Town shall retain the right to acquire the system at its fair market value by eminent domain, or by any other means provided by law. The Town Board may authorize the acquisition of such property by ordinance. The Town retains the right to acquire property outside the Town limits by condemnation or otherwise at its fair market value as granted by the Colorado Constitution regardless of whether the system within the Town is acquired pursuant to this Section, by condemnation or otherwise.

Section 14. Indemnification and Insurance.

(A) Gunnison County Electric Association agrees to hold the Town harmless from any loss and to defend and indemnify the Town against and on account of any suit, judgment, or claim made or adjudged against the Town resulting from operations and activities of the Company under this Franchise or otherwise, on account of the negligent or intentional acts or omissions of the Company.

(B) Gunnison County Electric Association shall maintain general liability insurance with commercially reasonable scope and limits.

Section 15. Consideration.

(A) In consideration of the benefits which accrue to Gunnison County Electric Association from this Franchise, and of the costs and detriments which this Franchise causes the Town, Gunnison County Electric Association agrees to pay to the Town a franchise charge equal

to 2.41% of its annual gross revenues from the sale of electricity to all customers within the Town limits.

(B) Payment of this charge shall be in lieu of any Town occupation tax or license fee as long as the franchise charges are not substantially surcharged to or collected from customers solely within the Town; provided, however, Gunnison County Electric Association shall remain subject to any other Town fees or taxes and to all ad valorem or property taxes, and shall be required to obtain a permit or permission prior to excavation or construction within any street, power easement, or Town property as may be required by ordinance, and shall further be responsible for costs of replacement, repair and restoration, as provided in this Franchise. Provided further, Gunnison County Electric Association shall be required to collect Town sales and use taxes and to pay Town Sales and Use Taxes in accordance with the provisions of any Town Sales and Use Tax Ordinance and state statutes, as such may be amended from time to time.

(C) Payment of charges due shall be made annually, within ninety (90) days after the close of each calendar year.

(D) In the event this Franchise terminates without a successor franchise being approved, Gunnison County Electric Association shall continue to pay these franchise charges until a new franchise is approved by the Town, as long as it serves customers within the Town.

(E) In the event Gunnison County Electric Association makes payments or provides consideration to any other municipality pursuant to a franchise, occupation tax, or similar taxes which in the aggregate are more than 2.41% of the gross revenues of all sales to customers within such municipality, the charges due hereunder to the Town shall be increased to an equivalent amount computed on a percentage basis, if any portion of the charges made to the other municipality are directly or indirectly expensed or charged to customers within the Town.

In such an event, Gunnison County Electric Association shall have the affirmative responsibility to promptly advise the Town of such an increase and calculate the amount of the increased payment. Gunnison County Electric Association agrees to pay interest at the rate of 8% per annum on the amount of any franchise fee increase that it does not timely determine and pay to the Town.

(F) The charges provided by this Franchise are consideration to the Town, and to its citizens, for rights granted to Gunnison County Electric Association and costs which the Town incurs by granting this Franchise. If such charges are substantially collected solely from the customers within the Town, whether by surcharge or otherwise, the benefits of this Franchise to the Town and its citizens are substantially vitiated. The Company shall not substantially surcharge or allocate franchise charges paid hereunder solely to the residents of the Town for purposes of making rates. In the event these franchise charges are declared void or substantially charged either by surcharge or otherwise solely to customers within the Town, for any reason, including by order of the Public Utilities Commission, State statutes, or the courts, this Franchise may be terminated immediately, at the option of the Town or the Company.

(G) The Town may elect from time to time to have the Company supply Town street lights and appurtenances and lighting electricity and electricity to the Town ski hills and Town Park rest rooms and lighting without charge. The value of such facilities and service as computed pursuant to the applicable Company rate schedule shall then be set off against the franchise charge obligation set out in paragraph (A). The Town shall be responsible to pay any amount that the value of the said services exceeds the franchise charge obligation.

(H) The Town may also elect to have any amounts due it pursuant to paragraph (A) kept in the Town's "underground and relocation account" to be used by the Town to pay part of the cost to relocate or underground existing facilities which unreasonably interfere with the

reasonable use of private property. When the owner of private property desires to utilize this subsection, the Town and Company shall review the situation to determine if relocation is warranted. If so, the Company shall prepare an itemized estimate of the costs and provide it to the Town for review. The Town and Company shall then negotiate in good faith to determine the scope and estimated costs of the project. The cost of such projects "as built" shall be divided equally among the Company, the said underground and relocation account, and the owner of the affected property, unless otherwise agreed. If the Town and Company cannot agree on the need, scope and costs of the project, the issue shall be resolved by arbitration pursuant to paragraph 19. Any facility shall be eligible for cost sharing relocation pursuant to this subsection only once during the term of this Franchise.

(I) The elections allowed in paragraphs (G) and (H) shall be made in writing and may be altered by the Town from time to time.

Section 16. Termination.

The Town or Company may terminate this Franchise if the other commits a substantial and material breach of any of its provisions and fails to correct such breach within sixty (60) days after written demand to correct is delivered to the other setting out the breach.

Section 17. Costs.

The Company shall pay all costs and expenses incurred by the Town in the publication of notices and this Franchise Ordinance, and shall pay an additional \$500.00 to the Town to pay for other Town expenses.

Section 18. Severability.

If any section, subsection, or other part of this Ordinance is held invalid or unconstitutional by a court of competent jurisdiction, such portion is declared to be severable, and the remaining portions of this Ordinance shall remain in full force and effect, unless

terminated by the Town or the Company, as provided concerning franchise charges in Section 15.

Section 19. Dispute Resolution.

A. Disagreements required by paragraphs 5(G) and 15(H) to be arbitrated or other matters if agreed by the Town and Company, shall be resolved according to the procedures of this section.

B. Each party shall appoint a representative who shall attempt to negotiate an agreed resolution. If such representatives are unable to agree, they shall appoint an arbitrator who shall determine the matter. If the parties cannot agree on the appointment of an arbitrator they shall apply to the District Court to appoint a qualified arbitrator.

C. The arbitrator may utilize such procedures as the arbitrator desires and the arbitration decision shall be final and binding.

D. The parties shall share the costs of the arbitrator.

INTRODUCED, READ, APPROVED, and ORDERED PUBLISHED on first reading at a regular meeting of the Town Council of the Town of Lake City, Colorado held this 5th day of August, 2009.

TOWN OF LAKE CITY, COLORADO

By: Jane Dineen
Mayor

ATTEST:

Cindy Nelson
Town Clerk

THE TERMS AND CONDITIONS contained in this Franchise Ordinance are approved and accepted.

DATED this 19 day of August, 2009.

GUNNISON COUNTY ELECTRIC
ASSOCIATION, INC.

By: Michael V. Wells
Michael V. Wells, Chief Executive Officer