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## **ARTICLE 1. DEFINITIONS**

§ 1.0. Definitions.

For the purposes of this franchise, the following words and phrases shall have the meaning given in this article. When not inconsistent with the 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 ordinary meaning.

1.1. *Town* refers to and is the municipal corporation designated as the Town of Fraser, Grand County, Colorado and includes the territory as currently is or may in the future be included within the boundaries of the Town of Fraser.

1.2. *Company* refers to and is Mountain Parks Electric, Inc., (Mountain Parks) and its approved successors and assigns, but does not include its affiliates, subsidiaries or any other entity in which it has an ownership interest.

1.3. *Board or Town Board* refers to and is the Board of Trustees of the Town.

1.4. *Distribution facilities* refers to and is only that portion of the Company's electric system which delivers electric energy from the substation breakers to the point-of-delivery of the customer, including all devices connected to that system.

1.5. *Facilities* refer to and are all facilities reasonably necessary to provide electricity into, within and through the Town and include plants, works, systems, substations, transmission and distribution structures, lines, equipment, conduit, transformers, underground lines, meters, wires, cables and poles.

1.6. *Public easements* refer to and are public and dedicated easements created and available for use by public utilities for their facilities.

1.7. *Public Utilities Commission or PUC* refers to and is the Public Utilities Commission of the State of Colorado or other authority succeeding to the regulatory powers of the public utilities commission.

1.8. *Rural Development Electric Programs* refers to and is the United States Department of Agriculture, Rural Development, Electric Programs.

1.9. *Residents* refers to and includes all persons, businesses, industry, governmental agencies, and any other entity whatsoever, presently located or to be hereafter located, in whole or in part, within the territorial boundaries of the Town.

1.10. *Revenues* refer to and are those amounts of money which the Company receives from its customers within the Town for the sale of electricity as adjusted for refunds, the net write-off of uncollectible accounts, corrections or other approved adjustments.

1.11. *Streets and other public ways* refer to and are streets, alleys, viaducts, bridges, roads, lanes and other public right-of-way in said Town.

## **ARTICLE 2. GRANT OF FRANCHISE**

### **§ 2.1. Grant of Franchise.**

The Town of Fraser hereby grants to Mountain Parks Electric, for the period specified in and subject to the conditions, terms and provisions contained in this franchise, the non-exclusive right 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 an non-exclusive right 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 and a non-exclusive right to make reasonable use of the streets and other public rights-of-way and public easements as may be necessary to carry out the terms of this franchise, subject to the provisions hereof. These rights shall extend to all areas of the Town as it is now constituted and to additional areas as the

Town may increase in size by annexation or otherwise. The Town reserves the right to itself to make or grant uses in the said public ways provided any such use or grant of such use shall not conflict or interfere with the necessary requirements of the Company to operate, maintain or repair its lines and facilities in accordance with safe practices and procedures prescribed in the industry.

#### § 2.2. Scope of Grant.

Such grant includes the right and obligation to furnish electrical energy either overhead, on poles and wires, or underground, or otherwise, on, over, under, along, across and through any and all streets and other public ways, on, over, under, along, across and through any extension, connection with, or continuation of, the same and/or on, over, under, along, across and through any and all such new streets and other public ways as may be hereafter laid out, opened, located, or constructed within the boundaries of Town. The Company is further granted the right, privilege and authority to excavate in, occupy and use any and all streets and other public ways and public easements, subject to the Town's ordinances and regulations relating to such activities.

#### § 2.3. Street Lighting Service.

The rights granted in this franchise encompass the franchise to provide 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. Wherever reference is made to the sale of electricity or to the provision of electric service in this franchise, these references shall be deemed to include the provision of street lighting service. Wherever reference is made to Company facilities, equipment, system or plant in this franchise, this reference shall be deemed to include Company-owned street lighting facilities, equipment, system and plant.

#### § 2.4. Term of Franchise.

This franchise shall take effect on \_\_\_\_\_ 1, 20\_\_\_\_. The term of this franchise shall be for twenty years, beginning with said effective date of this franchise and expiring on \_\_\_\_\_, 203\_\_.

#### § 2.5. Recreation Areas.

Notwithstanding the grant of rights in Sections 2.1 and 2.2, and excepting the Company's obligation to furnish facilities to the Town's buildings, parks, street lights and other operations serving the community, the Company shall not have the right to locate, build or construct facilities under, across, or through public parks, recreation areas, or open space, except upon prior written approval granted by the Town Board. Notwithstanding the foregoing, any facilities existing as of \_\_\_\_\_, 2019 under, across, or through public parks, recreation areas or open space shall not be considered a violation of this Section 2.5.

#### § 2.6. Trees and Shrubs.

The Company shall have the right to trim or cut down such trees and shrubbery and to control the growth of the same by chemical means, mechanical or otherwise, only as may be reasonably necessary to protect its facilities and so long as such steps are undertaken in a manner to minimize damage or interference to trees, shrubbery and other natural features. The Company will notify property owners adjacent and adjoining the Town's property prior to commencement of work.

§ 2.7. Prior Grants Governed by Franchise. This grant and Franchise is intended to affirm the Company's existing facilities within the Town. If the terms of any existing license, permit, or other grant by the Town conflicts with the terms of this Franchise, the terms of this Franchise shall control.

### **ARTICLE 3. FRANCHISE FEE**

#### **§ 3.1. Franchise Fee.**

In consideration for the grant of this franchise, the Company shall pay the Town a sum equal to two percent of all revenue received monthly from the sale of electric power within the Town. The Company shall have the right to surcharge the residents a franchise fee equivalent to the fee paid by the Company to the Town. Periodic billing statements by the Company to the residents shall clearly show the amount of the franchise fee for each billing period.

#### **§ 3.2. Payment Schedule.**

For the franchise fee owed on revenues received after the effective date of this franchise, payment shall be made in quarterly installments not more than 30 days following the close of the calendar quarter for which payment is to be made. Initial and final payments shall be prorated for the portions of the months at the beginning and end of the term of this ordinance. All payments shall be made to the Town Treasurer. The Town Treasurer or other authorized representatives, shall have access to the accounting records with respect to revenues of the Company for the purpose of auditing or checking to ascertain that the franchise fee has been correctly computed and paid.

#### **§ 3.3. Change of Franchise Fee and Other Franchise Terms.**

Once during each five year period of the term of this franchise, or more often than once in five years if the Town demonstrates a special need due to a disaster or other unexpected and unanticipated event which could not be reasonably foreseen, the Town may give notice to the public and to the Company of its desire to increase the fee set forth in Article 3.1 or as such fee may be amended from time to time. Upon such notification, the Town and the Company shall negotiate in good faith in an effort to agree on the amount of the fee. If the parties agree on a change to the fee, the Town shall provide for such change by ordinance, provided however, any change in the franchise fee shall be surcharged by the Company to the residents.

§ 3.4. Franchise Fee Payment in Lieu of Other Fees.

Payment of the franchise fee by the Company is accepted by the Town in lieu of any occupancy tax, license tax, or similar tax on the privilege of doing business or in connection with the physical operation thereof, but does not exempt the Company from any lawful taxation upon its property or any other tax not related to the franchise or the physical operation thereof, and the Town may impose, and Company shall pay road cut permits, inspection fees and permits, and other similar costs and fees uniformly applied throughout the Town and does not exempt the Company from payment of other fees or taxes assessed generally upon businesses.

§ 3.5. Contract Obligation.

This franchise ordinance constitutes a valid and binding contract between the Company and the Town. In the event that the franchise fee specified in this ordinance is declared illegal, unconstitutional or void for any reason by any court or other proper authority, the Company will be contractually bound to pay an occupation tax to the Town that would be, as near as practicable, equivalent to the amount which would have been paid by the Company as a franchise fee hereunder, provided however, the Company has the right to collect the occupation tax from the Residents.

**ARTICLE 4. SUPPLY, CONSTRUCTION AND DESIGN**

§ 4.1. Supply of Electricity.

The Company shall take all reasonable and necessary steps to provide an adequate supply of electricity to the Residents at the lowest reasonable cost consistent with long-term reliable supplies. If the supply of electricity to the Residents should be interrupted, the Company shall take all necessary and reasonable actions to restore such supply within the shortest practicable time.

§ 4.2. Restoration of Service.

In the event the Company's electric system, or any part thereof, is partially or wholly destroyed or incapacitated, the Company shall use due diligence to restore its system to satisfactory service within the shortest practicable time. The Town reserves the right to determine compliance, provided however, nothing herein shall limit the Company's ability to challenge the Town's determination of compliance before any authority having jurisdiction of the premises. The Company shall promptly perform reasonable remedial action at its expense if the system failure or system damage is caused by the Company's negligent action or inaction, or is due to an electrical equipment failure or Act of God. The Company reserves the right to recover the cost of system failure or damages caused by third parties from those responsible for the failure or damage.

#### § 4.3. Obligations Regarding Company Facilities.

The Company shall install, maintain, repair, renovate and replace its facilities with due diligence in a good and workmanlike manner and the Company's facilities will be of sufficient quality and durability to provide reasonably continuous and adequate electric service to the Town and its residents. The Company shall locate its facilities within the Town so as to cause no interference with any of the Town's then existing facilities or property, or then publicly disclosed planned facilities or property, including without limitation water lines, sewer lines, storm drains, and the use of streets and other public ways. Company facilities shall be installed and maintained in accordance with applicable Town ordinances and regulations relating to utility installations, including without limitation those contained in Chapters 13 and 14 of the Fraser Municipal Code, as such regulations now exist or may be subsequently amended. The Company shall install and maintain its facilities so as to not interfere with the rights or reasonable convenience of property owners whose property adjoins any of the said streets and other public ways, and in such a way so as to minimize interference with trees and other natural features. Upon request by the Town, the Company shall mark above-ground facilities in a manner that will allow the Town to identify and avoid such facilities during maintenance operations, such as snow removal. Failure to mark such facilities shall relieve the Town from any liability for damage to such facilities.

The Town shall include the Company as a review agency in the Town's land use application process and shall provide the Company with notice of, and opportunity to object to, any application for new construction with the Town. The Town shall provide notice to the Company of any proposed amendments to the Town's regulations and ordinances concerning building, planning, and zoning, including subdivision regulations.

#### § 4.4. Excavation and Construction.

All excavation and construction work done by the Company shall be done in a timely and expeditious manner which minimizes the inconvenience to the public and individuals and shall comply with duly adopted Town laws and regulations. All public and private property whose use conforms to restrictions in public easements disturbed by Company excavation or construction activities shall be restored by the Company, at its expense, to substantially its former condition. If, after reasonable notice to the Company and the Company's failure to reasonably restore same, the Town may perform the required work and charge the Company for all reasonable costs thereof, subject to any challenge initiated by the Company.

#### § 4.5. Relocation of Company Facilities.

Within the Town, if at any time the Town, acting in the proper exercise of its police power, requests the Company to relocate any facility in the Town installed or maintained in streets, alleys, public rights-of-way or public easements, to permit the Town, when necessary for the public's health, safety, and welfare, to make a public use of rights-of-way, easements or streets, to construct a public improvement, or to build a public project, or as otherwise provided by the Town's ordinances or regulations, such relocation shall be made by the Company at its expense.



Such relocation shall be completed within a reasonable time, not to exceed one-hundred twenty (120) days, from the date when the Town makes its request, provided, however, the Company shall be granted an extension of time of completion equivalent to any delay caused by conditions not under its control and provided further that the Company proceed with due diligence at all times. Following relocation, all property shall be restored substantially to its former condition by the Company at its expense. Nothing herein contained shall be construed to impose any obligation upon the Town to make any payment for any relocation of Company's facilities located within said designated areas.

Notwithstanding the preceding language of this Section 4.5, relocated underground facilities shall be underground and relocated aboveground facilities shall be aboveground unless the Town or third parties agree to pay the additional cost of moving them underground. Any relocation shall be done in accordance with the Company's tariffs and extension policies, except that payment of the cost of such relocation shall be governed by the terms of this franchise.

#### § 4.6. Service to New Areas.

If the boundaries of the Town are expanded within the Company's certificated service area 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 agreement, including payment of franchise fees.

#### § 4.7. Subdivision Review.

The Town shall timely submit any subdivision plats or planned unit development plans to the Company which shows the developers plan for all utilities. The Company shall analyze any such plats or plans submitted to it by the Town and respond to any request by the Town for information regarding the adequacy of its facilities necessary to serve such proposed plat or plan and answer any other questions posed to the Company by the Town regarding said plat or plan as are within the knowledge of the Company. The Company shall respond to said requests or questions within reasonable time limits set by the Town's Subdivision Regulations.

#### § 4.8. Technological Improvements.

The Company may introduce and install, as soon as practicable, electrical energy 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. The Company shall report, in advance to the Town, any plans to include technological advances relating to communications systems such as fiber optics which may utilize electric facilities already in place for the transmission of communication signals, which facilities may be installed by the Company for its use, the use of the Town, or for use of others as the Company may determine in its sole discretion. The Town may use said facilities for its own use without cost, except such additional expense which may be incurred by the Company as a result of the Town's use. In no event shall

the Town's use impair the Company's ability to use its own facilities for its own use or others.

## **ARTICLE 5. COMPLIANCE**

### **§ 5.1. 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 ordinances and rules and regulations as may by the Town be deemed necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens.

### **§ 5.2. Compliance With Town Requirements.**

The Company will comply with all Town requirements regarding curb and pavement cuts, excavating, digging and related construction activities. If requested by the Town, the Company shall submit copies of reports of annual and long-term planning for capital improvement projects with descriptions of required street cuts, excavation, digging and related construction activities within 30 days after issuance. Except for emergencies, the Town may require that all installations be coordinated with the Town's street improvement programs. The Town Manager, or designee, shall be the Town's agent for inspection and for compliance with Town ordinances and regulations on any such project.

### **§ 5.3. Town Review of Construction and Design.**

The grant of this franchise does not exempt the Company from the Town's Municipal Code, regulations and ordinances concerning building, planning and zoning, to be applied consistent with the rights granted pursuant to this franchise. Prior to construction of any significant facilities for electrical energy, including transmission lines or substations, any generating plant, building, or similar structure within the Town, the Company shall furnish to the Town the plans for such facilities. Except for emergencies, the Town will require that all installations be coordinated with the Town's street improvement programs provided the coordination does not unreasonably delay the construction. The Town Manager, or designee, shall be the Town agent for inspection and for compliance with Town ordinances and regulations on any such projects. As to transmission lines or substations, the Town acknowledges such facilities are necessary to permit the Company to furnish electricity pursuant to Articles 2.2 and 4.1

### **§ 5.4. Compliance With Rural Development Electric Programs and PUC Regulations.**

The electrical energy which the Company distributes shall conform with the standards promulgated by the Rural Development Electric Programs or the Public Utilities Commission, depending upon which body has oversight jurisdiction over the issue in question, and with the tariff provisions of the Company setting standards, as the same may be amended from time to time.

### **§ 5.5. Inspection.**

The Town shall have the right to inspect at all reasonable times any portion of the Company's system used to serve the Town and its residents. The Town shall also have access to records of the Company which will permit determining Company compliance with this franchise. The Company agrees to cooperate with the Town in conducting the inspection and to correct any discrepancies affecting the Town's interest in a prompt and efficient manner.

## **ARTICLE 6. PUBLIC UTILITIES COMMISSION**

### **§ 6.1. Public Utilities Commission Regulation.**

The Town and the Company recognize that the lawful provisions of the Company's tariffs which are consistent with the restriction and limitations of Article XXV of the Colorado Constitution regarding the rights of municipalities to franchise and to exercise police powers are controlling over any inconsistent provision in this franchise dealing with the same subject matter.

The Town and Company recognize that, pursuant to C.R.S. § 40-5-102, a valid Certificate of Public Convenience and Necessity issued by the Colorado Public Utilities Commission is necessary for any utility to furnish, sell and distribute electricity to the Town and to any residents of the Town.

The Town agrees to support the Company's application to the PUC to obtain any necessary approval of this franchise.

## **ARTICLE 7. REPORTS TO TOWN**

### **§ 7.1. Bills.**

On request by the Town, the Company shall, at no cost, provide a list of account numbers and items metered and shall specify the type of account for which charges are made, i.e., street lighting, traffic signal, general office, spotlighting, etc., and the Company shall provide the Town every two years with a complete listing of all the Town's accounts and a list of real property within the Town which is owned by the Company.

### **§ 7.2. Copies of Tariffs.**

The Company shall keep on file, in its Granby office and a local office if it is regularly staffed by a non-field employee of the Company, all tariffs, rules, regulations and policies approved by the board of directors relating to service by the Company to the Town and its residents.

## **ARTICLE 8. TOWN USE OF COMPANY FACILITIES**

### **§ 8.1. Town Use.**

The Town shall have the right to use, for the purpose of stringing wires, all poles and suitable

overhead structures constructed by the Company within the Town, which use shall not include the distribution or transmission of electricity, provided that such use shall be subject to the Company's review of the Town's proposed use and subject to the Company's loading and engineering requirements and tariffs. Such use by the Town will be without cost. The cost of making attachments to the Company's facilities shall be at the expense of the Town and in accordance with NESC (National Electric Safety Code) standards for strengths, clearances, and use of qualified workers. The Town shall be liable to the Company for any damages caused by Town's negligent use or negligent attachments made by the Town. The Company may allow others holding a franchise, except for electric service, from the Town to so utilize such poles and suitable overhead structures upon reasonable terms and conditions to be agreed upon by the Company and such holder of a franchise from the Town, provided, further, that the Company shall assume no liability nor shall it be put to any additional expense in connection therewith and the use of said poles and structures by the Town or others holding a franchise from the Town shall be in such a manner as not to constitute a safety hazard or to interfere unnecessarily with the Company's use of same.

#### § 8.2. 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 to permit additional installation of similar conduit and pull wire for the Town. If the Town wants additional similar conduit and pull wire installed, it will so notify the Company and provide similar conduit and pull wire at its expense to the Company which will install it at the expense of the Town, or such additional persons who are providing a service to the Town, provided that such action by the Town will not unnecessarily interfere with the Company's facilities or delay the accomplishment of the project.

### **ARTICLE 9. INDEMNIFICATION OF THE TOWN**

#### § 9.1. Town Held Harmless.

The Company shall save the Town harmless and indemnify the Town from and against all liability or damage and all claims or demands whatsoever in nature, and reimburse the Town for all its reasonable expenses, including costs and attorney's fees, arising out of the negligent operations of the Company within the Town and the securing of and the negligent exercise by the Company of the franchise rights granted in this ordinance, including any third party claims, administrative hearings and litigation. The Company shall not be obligated to pay any judgment which arises out of the negligent act or failure to act of the Town or its officers or employees. None of the Town expenses reimbursed by the Company under this section shall be surcharged to the Residents. In the event the Town institutes litigation or an administrative proceeding against the Company for a breach of this franchise or for an interpretation of this franchise, and the Town is the prevailing party, the Company shall reimburse the Town for all costs related thereto, including reasonable expert and attorney's fees. If the Company is the prevailing party, the Town shall reimburse the Company for its costs related thereto, including reasonable expert and attorney's fees.

§ 9.2. Payment of Expenses Incurred by Town in Relation to Ordinance.

Upon request by the Town, the Company shall pay the Town for expenses incurred in publication of notices and ordinances arising out of the negotiations or process for obtaining the franchise.

§ 9.3. Financial Responsibility.

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 the franchise.

**ARTICLE 10. UNDERGROUND CONSTRUCTION AND OVERHEAD CONVERSION**

§ 10.1. Underground Electrical Distribution Lines in New Areas.

Notwithstanding any ordinance to the contrary, the Company will place newly constructed electrical distribution lines underground to serve newly developed subdivision areas in accordance with the Company's tariffs, extension policies and Town subdivision regulations, provided, however, that all new underground utilities are installed prior to paving of streets, alley and ways.

**ARTICLE 11. TRANSFER OF FRANCHISE**

§ 11.1. Consent of Town Required.

The Company shall not transfer or assign any rights under this franchise, unless the Town Board shall approve in writing such transfer or assignment. Approval of the transfer or assignment shall not be unreasonably withheld.

§ 11.2. Transfer Costs

In the event the Company transfers or assigns any rights under this franchise after approval by the Town, or in the event there is a change in the ownership of the Company which results in the Company owning less than 50 percent of the assets of the new entity, any reasonable costs incurred by the Town associated with the transfer or change in ownership, including attorneys' fees, shall be borne by the Company.

**ARTICLE 12. PURCHASE OR CONDEMNATION**

§ 12.1. Town's Right to Purchase or Condemn.

The right of the Town to construct, purchase or condemn any public utility works or ways, and the rights of the Company in connection therewith, as provided by the Colorado Constitution and statutes, are hereby expressly reserved.

§ 12.2 Continued Cooperation by Company.

In the event the Town exercises its option to purchase or condemn, the Company agrees that, at the Town's request, it will continue to supply and maintain its facilities under this franchise, for the duration of the term of this franchise pursuant to terms and conditions negotiated for such continued operation. Company shall cooperate with the Town by making available then existing pertinent Company records which are not privileged to enable the Town to evaluate the feasibility of acquisition by the Town of Company facilities.

**ARTICLE 13. REMOVAL OF COMPANY FACILITIES AT END OF FRANCHISE**

§ 13.1. Limitations on Company Removal.

In the event this franchise is not renewed at the expiration of its term or the Company terminates any service provided herein for any reason whatsoever, and the Town has not purchased or condemned the system and has not provided for alternative electrical service, or if the franchise is forfeited, the Company shall have no right to remove said system pending resolution of the disposition of the system. Subject to the then applicable Town ordinances and resolutions, the Company shall have the right to continue to serve the Town and the Town's residents. The Company further agrees it will not withhold any temporary services necessary to protect the public and shall be entitled only to monetary compensation in no greater amount than it would have been entitled to were such services provided during the term of this franchise. Only upon receipt of written notice from the Town stating that the Town has adequate alternative electrical energy sources to provide for the people of the Town shall the Company be entitled to remove any or all of said systems in use under the terms of this franchise.

**ARTICLE 14. NONCOMPLIANCE**

§ 14.1. Notification.

In the event either party believes that the other party has violated this Franchise Agreement or has not complied fully with any provision of this Franchise Agreement, then such party (the "Notifying Party") may give written notice to the other party (the "Defending Party") describing in reasonable detail the nature of the violation or non-compliance and the provisions of this Franchise Agreement which have allegedly been violated or are not in compliance. The Defending Party shall, within thirty (30) days, either (a) correct and cure the violation or non-compliance, (b) commence correction and cure of the violation or non-compliance and continue such correction and cure in good faith and with due diligence to completion, if such correction and cure can not be reasonably completed within such 30 days, or (c) respond to the Notifying Party in writing, if the Defending Party disputes the claim of violation or non-compliance, and such writing shall respond with particularity to the allegations contained in the Notifying Party's notice.

§ 14.2. Mediation.

If the Defending Party disputes the claim of violation or non-compliance, or fails timely to cure or dispute the claim, then the Notifying Party may elect to have the disagreement submitted to mediation by a disinterested, experienced, and qualified mediator, by giving written notice of such election to the other party by not later than 60 days after the initial notification under Section 14.1. The parties shall then seek to agree upon a mediator, but if they are unable to do so within 10 days after such notice of mediation, then each party shall designate a mediator and the two designated mediators shall select a third mediator. The parties agree to cooperate reasonably and in good faith with the mediator(s), but the mediation is non-binding and the mediator(s) shall have no authority to decide the dispute. Each party agrees to pay for one-half of the cost of the mediation. If mediation has not resolved the dispute within 60 days, then mediation shall terminate with regard to such dispute.

§ 14.3. Litigation.

Before a Notifying Party may file suit to enforce rights or remedies to which it believes it may be entitled under this Franchise Agreement, the Notifying Party must first exhaust its prelitigation remedies as set forth and described in paragraphs 14.1, and 14.2 of this Franchise Agreement. The prevailing party in any such litigation shall be entitled to an award of its reasonable costs and expenses related to the litigation, including reasonable attorney fees.

§ 14.4. Remedies.

As the Company's sole remedy for the Town's breach or threatened breach of any of Town's obligations under this Franchise Agreement, the Company shall be entitled to equitable relief, including a temporary restraining order, an injunction, and/or specific performance of such obligation. The rights of the Town under this franchise are in addition to, and shall not be read to limit, any immunities the Town may enjoy under federal, State or local law.

No provision of this franchise shall be deemed to bar the right of the Town to seek or obtain judicial relief from a violation of any provision of the franchise or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of the Town to recover monetary damages for such violations by the Company, or to seek and obtain judicial enforcement of Company's obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

§ 14.5. Not to Affect Other Rights.

The provisions of this Article 16 shall not have the effect of releasing or waiving any right of action by any person or corporation, including, without limitation, any party to this Franchise Agreement or the State of Colorado, for any right, penalty, forfeiture which may have arisen or accrued under any law of this state.

**ARTICLE 15. AMENDMENTS**

§ 15.1. Amendments to Franchise.

At any time during the term of this franchise, the Town, through its Town Board, or the Company may propose amendments to this franchise by giving 30 days’ written notice to the other of the proposed amendment(s) desired and both parties thereafter, through their designated representatives, will negotiate within a reasonable time in good faith in an effort to agree on mutually satisfactory amendment(s). The Town shall provide for any agreed to amendment by Ordinance. The word “amendment” as used in this section does not include a change authorized in section 3.3.

**ARTICLE 16. MISCELLANEOUS**

§ 16.1. Successors and Assigns.

The rights, privileges, franchises and obligations granted and contained in this ordinance shall inure to the benefit of and be binding upon Mountain Parks Electric, Inc., and any permitted successors and assigns.

§ 16.2. Third Parties.

Nothing contained in this franchise shall be construed to provide rights to third parties.

§ 16.3. Representatives.

Both parties shall designate from time to time in writing representatives for the Company and the Town who will be the persons to whom notices shall be sent regarding any action to be taken under this ordinance. Notice shall be in writing and forwarded by certified mail to the persons and addresses as hereinafter stated, unless the person or addresses are changed at the written request of either party. Until any such change shall hereafter be made, notices shall be sent to the Town Manager and to the Company’s general manager. Currently the addresses are as follows:

For the Town           Town Manager  
                                  Town of Fraser  
                                  PO Box 370  
                                  Fraser, CO 80442

For the Company       General Manager  
                                  Mountain Parks Electric, Inc.  
                                  321 W. Agate Avenue  
                                  P.O. Box 170



§ 16.4. 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 forthwith enter into good faith negotiations and proceed with due diligence to draft a term that will achieve the original intent of the parties hereunder.

§ 16.5. Entire Agreement.

This franchise constitutes the entire agreement of the parties. There have been no representations made other than those contained in this franchise.

**ARTICLE 17. APPROVAL**

§ 17.1. Board Approval

This grant of franchise shall not become effective unless approved by a vote in favor of the agreement by a majority of the members of the Town Board and acceptance by the Company as provided below.

§ 17.2. Company Approval.

The Company shall file with the Town clerk its written acceptance of this franchise and of all of its terms and provisions within ten days after the adoption of this franchise by the Town Board. The acceptance shall be in form of execution of a copy of this Ordinance as provided below. If the Company shall fail to timely file its written acceptance as herein provided, this franchise shall be and become null and void.

**ARTICLE 18. REPRESENTATIONS AND WARRANTIES**

§ 18.1. Town Authority.

The Town represents and warrants that the execution and delivery of this franchise and the performance of all covenants and agreements of the Town contained in this franchise are authorized by the Constitution and laws of the State of Colorado and the execution, delivery and performance of this franchise by the Town are authorized and have been duly authorized by ordinance.

§ 18.2. Company Authority.

The Company represents and warrants that the execution and delivery of this franchise and the performance of all covenants and agreements of the Company contained in this franchise are authorized by the Constitution and laws of the State of Colorado and the execution, delivery and

performance of this franchise by the Company are authorized and have been duly authorized by the Company.

**ARTICLE 19. ENVIRONMENT AND CONSERVATION**

§ 19.1. Environmental Leadership.

The Town and the Company agree that sustainable development, affordability, and environmental excellence and innovation shall form the foundation of the Utility Service provided by the Company under this Franchise. The Town acknowledges that Company purchases more than 95% of its electric energy from Tri-State Generation & Transmission Association, Inc., a wholesale generation and transmission company. Company’s contract requires Company to purchase 95% of its energy from Tri-State. As of January 1, 2020, Company does not own or operate any generation facilities; however, Company does purchase less than 5% of its energy needs from a wholly owned subsidiary via power purchase agreements for solar energy. The Company agrees to continue to pursue reduction of carbon emissions attributable to electric generation facilities with a combination of energy conservation and energy efficiency measures and implementing the use of renewable energy resources on both a distributed and centralized basis. The Company shall meet the requirements of applicable environmental laws and regulations and shall consider environmental issues in its planning and decision making.

§ 19.2 Conservation.

The Town and the Company recognize and agree that Energy Conservation programs offer opportunities for the efficient use of energy and possible reduction of energy costs. At the Town’s request, the Company shall provide the Town with information on how the Town may take advantage of reducing energy consumption in Town facilities and how the Town may participate in energy conservation and energy efficiency programs sponsored by the Company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Municipal Seal this \_\_\_\_\_ Day of \_\_\_\_\_, 2020.

Town of Fraser

\_\_\_\_\_  
Philip Vandernail, Mayor

ATTEST:

\_\_\_\_\_  
Antoinette McVeigh, Town Clerk

Accepted and approved this \_\_\_\_ day of \_\_\_\_\_, 2020.

Mountain Parks Electric, Inc.

\_\_\_\_\_  
Jeff Hauck, President

Attest:

\_\_\_\_\_  
\_\_\_\_\_, Secretary

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