

**ORDINANCE NO 385  
CITY OF CREEDE, COLORADO**

**AN ORDINANCE APPROVING A FRANCHISE AGREEMENT WITH  
SAN LUIS VALLEY RURAL ELECTRIC COOPERATIVE, INC. AND  
REPEALING ARTICLE 2 ELECTRIC FRANCHISE OF CHAPTER 5 OF  
THE CREEDE MUNICIPAL CODE**

**WHEREAS**, the City of Creede ("City") approved an electric franchise with San Luis Valley Rural Electric Cooperative ("Cooperative") in 1990 with a 25 year term which is due to expire in July, 2015 and the City and Cooperative desire to approve a new franchise agreement ("Franchise Agreement"); and

**WHEREAS**, prior to first reading, the Cooperative caused proper notice to be published by publishing in the Mineral County Miner, a newspaper of general circulation in the City of Creede, for three successive weeks in compliance with C.R.S. §31-32-102, and proof of publication has been provided to the Board of Trustees; and

**WHEREAS**, prior to second reading, the Cooperative caused proper notice to be published by publishing in the Mineral County Miner, a newspaper of general circulation in the City of Creede, for two weeks in compliance with C.R.S. §31-32-103, and proof of publication has been provided to the Board of Trustees; and

**WHEREAS**, the City and Cooperative have negotiated the terms and conditions of a new franchise agreement; and

**WHEREAS**, the Board of Trustees finds that the franchise fee rate of 5% is reasonable and necessary to pay for the cost of administration and oversight of the Franchise Agreement and franchise activities of the Cooperative; and

**WHEREAS**, the Board of Trustees of the City of Creede has determined that the proposed Franchise Agreement conforms to the statutory requirements for public utility franchises, and that the Franchise Agreement preserves and promotes the health, safety and general welfare of the Creede community.

**NOW, THEREFORE, BE IT ORDAINED** by the Board of Trustees of the City of Creede:

**Section 1. Recitals Incorporated.** The above and foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the Board of Trustees.

**Section 2. Repeal of Article 2, Chapter 5 of Creede Municipal Code.** Article 2 Electric Franchise of Chapter 5 of the Creede Municipal Code is hereby repealed in its entirety.

**Section 3. Grant of Franchise.** The City of Creede hereby grants a franchise for the non-exclusive right to provide electricity service within the City in accordance with the terms and conditions set forth in **Exhibit A: Franchise Agreement** attached hereto and made part of this Ordinance.

**Section 4. Severability.** If any provision of this Ordinance, or the application of such provision to any person or circumstance, is for any reason held to be invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without

the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable. The Board of Trustees hereby declares that it would have passed this Ordinance and each provision thereof, even though any one of the provisions might be declared unconstitutional or invalid. As used in this Section, the term "provision" means and includes any part, division, subdivision, section, subsection, sentence, clause or phrase; the term "application" means and includes an application of an ordinance or any part thereof, whether considered or construed alone or together with another ordinance or ordinances, or part thereof, of the City.

**Section 5. Effective Date.** This Ordinance shall take effect thirty days after the date of final passage.

**Section 6. Safety Clause.** The Board of Trustees hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the City of Creede, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Board of Trustees further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

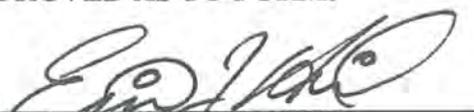
**Section 7. Publication by Posting.** The Town Clerk is ordered to publish this Ordinance by title only in the Mineral County Miner and by posting in the official designated places of posting notices along with a statement that a copy of the Ordinance in full is available for public inspection at the office of the Town Clerk during normal business hours.

**INTRODUCED, APPROVED, and PASSED ON FIRST READING on July 7, 2015, and ordered published for two weeks.**

By:   
Eric Grossman, Mayor

Attest:   
Randi Snead, Town Clerk

**APPROVED AS TO FORM:**

By:   
Eric J. Heil, Town Attorney

**INTRODUCED, APPROVED, PASSED ON SECOND AND FINAL READING on August 4, 2015.**

By:   
Eric Grossman, Mayor

Attest:   
Randi Snead, Town Clerk

**FRANCHISE AGREEMENT  
BETWEEN THE  
CITY OF CREEDE  
AND  
SAN LUIS VALLEY RURAL ELECTRIC COOPERATIVE, INC.**

**ARTICLE 1  
DEFINITIONS**

For the purpose of this franchise agreement ("**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.

**"Board"** or **"Board of Trustees"** refers to and is the legislative body of the City of Creede, Colorado.

**"City"** refers to the City of Creede, a Colorado statutory town.

**"Co-op"** refers to and is the San Luis Valley Rural Electric Cooperative, Inc., its successors, assigns, affiliates, and subsidiaries.

**"Facilities"** refer to and are all apparatuses reasonably necessary for the Co-op to provide electric service, telecommunication and fiber optic services into, within and through the City, including but not limited to plants, works, systems, substations, transmission and distribution structures, lines, equipment, pipes, mains, conduit, transformers, underground lines, meters, meter reading devices, communication and data transfer equipment, fiber optic cables, control equipment, street lights, wires, cables and poles.

**"Force Majeure"** refers to the inability to undertake an obligation of this Franchise Agreement due to a cause that could not be reasonably anticipated by a party or is beyond its reasonable control after exercise of best efforts to perform, including but not limited to fire, strike, war, riots, terrorist's acts, acts of governmental authority, acts of God, floods, epidemics, quarantines, labor disputes, unavailability or shortages of materials or equipment or failures or delays in delivery of materials. Neither the City nor the Company shall be in breach of this Franchise Agreement if a failure to perform any of the duties under this Franchise Agreement is due to a Force Majeure condition.

**"Party"** or **"Parties"** refers to and includes the Co-op and the City, either singularly or collectively, as the context requires.

**"Public Project"** refers to (1) any public work or improvement within the City that is wholly owned or wholly funded by the City; 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, or any Colorado county. For the purpose of this definition, funds received by the City from any granting agency, whether public or private, will be considered City Funds.

**"Public Utility Easement"** refers to any easement over, under, or above public or private property, lawfully acquired by or dedicated to the use of public utility companies, including the Co-op, for the placement of public utility facilities, including but not limited to Co-op facilities.

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

**"Revenues"** refer to and are those amounts of money which the Co-op receives from any source within the City from the sale of electricity, telecommunications and fiber optics under rates authorized by the Co-op to its customers within the City (unless otherwise preempted by applicable federal or state law) and represents amounts billed under such rates as adjusted for refunds, net write-off of uncollectible accounts, corrections or regulatory adjustments. Regulatory adjustments refer to, by way of explanation, but not limitation, credits, surcharges, refunds, and pro-forma adjustments pursuant to federal or state regulation. "Revenues" shall exclude any revenues from the sale of electricity, telecommunications and fiber optics to the City.

**"Streets"** refer to and are streets, alleys, viaducts, bridges, roads, lanes and other public rights-of-way in the City. "Streets" shall also include public easements and other public places within the City that are suitable locations for the placement of facilities as specifically approved by the City in writing for the Co-op's use.

## **ARTICLE 2 GRANT OF FRANCHISE**

**2.1 Grant of Franchise.** The City hereby grants to the Co-op the non-exclusive right to use the Streets within the City to furnish, sell, transport, transmit, and distribute electricity, telecommunication and fiber optic service including the transmission of voice, video and data services, to the City and to all Residents of the City. The City also hereby grants to the Co-op the right to acquire, construct, install, locate, maintain, operate and extend into, within and through the City, all Facilities reasonably necessary to furnish, sell, transport, transmit and distribute electricity, telecommunication and fiber optic service within and through the City. Such electrical energy and telecommunication and fiber optic services shall be furnished at the rates and under the terms and

conditions established by the Board of Directors of the Co-op and for service to like members as on file in the office of said Co-op at Monte Vista, Colorado.

- A. The Co-op and City will meet at five (5) year intervals after the execution of this Franchise Agreement to consider adjusting the cost of telecommunication and fiber optic services to City facilities.
- B. The rights granted in this Franchise Agreement encompass the nonexclusive right to provide street lighting service to the City. These rights shall extend to all areas of the City, as it is now constituted and to additional areas as the City may increase in size by annexation or otherwise.
- C. The Co-op shall neither, as to rates, charges, service, facilities, rules, regulations or in any other respect, make or grant any preference or advantage to any corporation or person nor subject any corporation or person to any prejudice or disadvantage.
- D. Co-op will from time to time during the term of this Franchise Agreement, make such enlargements and extensions of its distribution system as the business of the Cooperative and the growth of the City justify, in accordance with the Rules and Regulations prescribed by the Board of Directors of said Co-op.
- E. If the boundaries of the City are expanded during the term of this Franchise Agreement, the Co-op shall extend service to Residents in the expanded area at the earliest practicable time and in accordance with the Co-op's extension policy. Service to the expanded area shall be in accordance with requirements the terms of this Franchise Agreement, including payment of franchise fees.
- F. The rights granted by this Franchise Agreement are not, and shall not be deemed to be, granted exclusively to the Co-op, and the City reserves the right to make or grant a similar franchise to any other person, firm, or corporation.
- G. Except as otherwise specifically provided herein, the City retains the right through the exercise of its police power to use, control, and regulate the use of the Streets, and the space above and beneath said Streets. The City retains the right to impose such other regulations as may be determined by the City to be necessary in the reasonable exercise of its police power to protect the health, safety, and welfare of the public. This Franchise Agreement is not a grant of any authorization for the Co-op to engage in any activities other than electric, telecommunication and fiber optic services.

**2.2 Binding Contract.** This Franchise Agreement constitutes a valid and binding contract between the Co-op and the City. In the event that the franchise fee specified herein is declared illegal, unconstitutional, or void for any reason by any court or other proper authority, the Co-op shall be contractually bound to pay rental fees monthly to

the City in an aggregate amount that would be, as nearly as practical, equivalent to the amount which would have been paid by the Co-op as a franchise fee hereunder as consideration for the use of the City's streets and surcharge such fees in accordance with Article 3.

**2.3 Term of Franchise.** This Franchise Agreement shall take effect September 3, 2015 and shall supersede any prior franchise granted to the Co-op by the City. The term of this Franchise Agreement shall be twenty (20) years and shall expire on September 2, 2035, unless extended by mutual consent.

### **ARTICLE 3 FRANCHISE FEE**

**3.1 Franchise Fee.** As consideration for the franchise rights granted herein, and in recognition of the fact that the grant to the Co-op of the right to use City Streets, 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 Co-op of the use of City Streets is a valuable right, the Co-op shall pay the City a sum equal to five percent (5%) of all Revenues (excluding revenues received from the City for the provision of electricity, telecommunications and fiber-optic service, to the City for its own consumption or the provision of street lighting service to the City) which the Co-op shall be permitted to add as a surcharge. Such franchise fee may be adjusted within the term of this Franchise Agreement by the City giving not less than ninety (90) days' notice to Co-op.

**3.2 Remittance Schedule.** Franchise fee revenues shall be remitted by the Co-op to the City monthly not more than thirty (30) days following the close of each month. All payments shall be made to the City Clerk. In the event that either the City or the Co-op discovers that there has been an error in the calculation of the franchise fee payment to the City, the error whether an underpayment or overpayment shall be spread over the same time period as the error. In no event shall either Party be required to refund or collect any overpayment or underpayment more than 3 years old.

**3.3 Audit Rights; Protection of Confidential Information.** The City Administrator, or his or her agent, shall have the right once each calendar year to audit franchise fee payments to ascertain that the franchise fee has been correctly computed and paid. All information obtained by the person or persons conducting such audit shall be kept confidential to the extent permissible under the Colorado Open Records Act and shall be utilized for the sole purpose of verifying that the franchise fee has been correctly computed and paid.

**3.4 Franchise Fee Payment in Lieu of Certain Taxes and Other Fees.** The City accepts payment of the franchise fee by the Co-op in lieu of any occupation tax, occupancy tax, license tax, or similar tax or fee the City might charge the Co-op for the privilege of providing electric, telecommunication or fiber optic services in the City, for the use or occupation of City Streets, or for the installation, operation, and maintenance

of Co-op Facilities. Payment of the franchise fee does not exempt the Co-op from any lawful taxation upon its property or from any other tax not related to the Franchise Agreement including the payment of head taxes, sales taxes, or other permit fees or taxes assessed generally upon businesses.

**3.5 Obligation in Lieu of Fee.** In the event that the franchise fee specified herein is declared void for any reason by a court of competent jurisdiction, unless prohibited by law, the Co-op shall be obligated to pay the City, at the same times and in the same manner as provided in the Franchise Agreement, an aggregate amount equal to the amount which the Co-op would have paid as a franchise fee as consideration for the use of the City Streets. The Co-op shall collect the amounts agreed upon through a surcharge to customers upon electric, telephone and fiber optic services provided to City Residents.

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

**4.1 Obligations Regarding Co-op Facilities.** The Co-op shall install, maintain, repair, renovate and replace its Facilities with due diligence in a good and workmanlike manner. Co-op Facilities shall not interfere with the City's water mains, sewer mains or other City uses of the Streets. The Co-op shall construct and maintain its Facilities in such a way as to minimize interference with trees and other natural features.

**4.2 Restoration of Service.** Annually or as needed, the City and the Co-op will exchange contact information necessary so either Party can contact the other Party on a twenty-four (24) hour basis and communicate status information concerning interruptions of electric, telecommunication or fiber optic services in any part of the City. The Co-op will maintain a telephone number where customers may report an outage and/or obtain available outage status information from the Co-op on a twenty four (24) hour basis concerning interruption of electric, telecommunication or fiber optic services in any part of the City.

- A. Any preplanned outage, disruption or discontinuance of the services described in this Franchise Agreement by the Co-op, will be given to the City by the Co-op within 48 hours prior to the planned outage or as soon as reasonably practical.
- B. In the event the Co-op's electric system within the City or any part thereof, is partially or wholly destroyed or incapacitated, the Co-op shall use due diligence to restore such systems to satisfactory service within the shortest practicable time.
- C. All property disturbed by Co-op excavation or construction activities shall be restored by the Co-op at its expense to substantially the former condition, which

existed prior to the activities according to existing City laws, ordinances and regulations.

**4.3 Relocation of Co-op Facilities.** Upon the City's request, the Co-op shall relocate, at the Co-op's expense, Facilities in the Streets that interfere with a Street construction project or other public improvement or public project undertaken by the City with public funds. The relocations set forth in this Franchise Agreement shall be completed within a reasonable time, not to exceed 180 days from the later of the date on which the City designee requests in writing that the relocation commence, or the date when the Co-op is provided all supporting documentation. Upon request of the Co-op, the City may also grant the Co-op reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension. Any revision by the City of supporting documentation provided to the Co-op that causes the Co-op to substantially redesign and/or change its plans regarding facility relocation shall be deemed good cause for a reasonable extension of time to complete the relocation under the Franchise Agreement. In the event that the City requests the Co-op to relocate the same Facilities within two (2) years of completion of a prior relocation made at the Co-op's expense, the subsequent relocation shall be at the City's expense, unless said relocation is necessary to remedy public health and safety concerns not reasonably foreseeable by the City at the time of the prior relocation.

**4.4 As-Built Drawings.** The Co-op shall supply drawings to the Town as required for any Town project as requested by the Town. When use of the project is complete, all drawings shall be returned to the Co-op.

**4.5 Damage.** The Co-op shall promptly repair all damage to the Streets or property in the streets and eliminate any dangerous condition in the Streets caused by Co-op activities or Facilities. If such damage poses an immediate hazard to the health or safety of the public, the City shall provide notice of the situation to the Co-op immediately, and may take reasonable action to abate said hazard, and the Co-op shall reimburse the City for said reasonable action; provided, however, that the Co-op shall not be liable for costs incurred by the City for providing emergency police or fire services generally made available to the public. In all other instances of damage to the Streets or property in the Streets or dangerous conditions in the Streets caused by Co-op activities or Facilities, the City shall give notice to the Co-op of the damage or condition and allow the Co-op a reasonable time to repair said damage or eliminate said condition. If the Co-op fails to repair the damage or eliminate the condition within a reasonable time after notice, the City may repair the damage or eliminate the condition, and surcharge the Co-op, but shall not perform any work on Co-op Facilities.

**4.6 Annual Review.** The Co-op and City will meet annually to review technological advances in the Co-op's equipment and service that could be mutually beneficial to the City and its residents.

**4.7 Extension of Facilities.** Upon receipt of the City's authorization for billing and construction, the Co-op shall extend its Facilities to provide electricity to the City for municipal uses within the City boundaries, without requiring the City to advance funds prior to construction.

## **ARTICLE 5** **COMPLIANCE**

**5.1 Police Powers.** The Co-op expressly acknowledges the City's right to adopt, from time to time, in addition to the provisions contained herein, such laws, including ordinances and regulations, as the City may deem necessary in the exercise of its governmental powers. As of the time this Franchise Agreement takes effect, the City is not aware of any City laws and regulations which conflict with any provision of this Franchise Agreement. If the City considers making any substantive changes in its local laws, ordinances or regulations that may significantly impact the Co-op's operations in the City Streets, it will make a good faith effort to advise the Co-op of such consideration.

**5.2 Compliance with Applicable Laws.** The Co-op and all of its contractors shall promptly and fully comply with all applicable Federal, State and City laws, ordinances, rules and regulations, as may be amended from time to time. The Co-op shall require its contractors working in and upon the streets to hold the necessary licenses and permits required by the City.

**5.3 Compliance with City Requirements.** The Co-op will comply with all City building and zoning codes and requirements regarding curb and pavement cuts, excavating, digging, and related construction activities, as may be amended from time to time. The installation, renovation, replacement and maintenance of any Co-op facilities in and upon the City streets or other City property by or on behalf of the Co-op shall be subject to permit, inspection to ensure that said work has been performed in accordance with all City ordinances and regulations applicable to all franchised, licensed, or permitted users of the Streets, and approval by the City. Such permitting inspection and approval may include, but shall not be limited to, the following matters: location of City facilities, cutting and pruning of trees and shrubs; provided, however, Co-op' shall have the right to cut, prune, and/or remove vegetation in accordance with its standard vegetation management requirements and procedures, and disturbance of pavement, sidewalks and surfaces of City streets or other City property. The Co-op agrees to cooperate with the City in conducting inspections and shall promptly perform any remedial action at company expense, lawfully required by the City pursuant to any such inspection.

**ARTICLE 6**  
**CITY USE OF CO-OP FACILITIES**

**6.1 City Use of Distribution Poles.** The City shall have the right to attach, without paying a pole attachment fee, City-owned police, fire, traffic control equipment, banners and holiday lighting to Co-op distribution poles and street lighting poles within the City in a manner that complies with the applicable Safety Codes. All other attachments must be approved by the Co-op, and the Co-op reserves the right to charge a reasonable fee for such attachments. The City shall hold harmless and indemnify the Co-op for all liability associated with the City's facilities on the Co-op's poles. The City's use of the Co-op's poles shall be in such a manner as not to constitute a safety hazard or to interfere with the Co-op's use of the poles. Any construction or reconfiguration that, in the sole judgment of the Co-op, is required because of the City's attachment of equipment to Co-op distribution poles shall be paid for by the City.

**6.2 Trenches Available for City Use.** If the Co-op opens a trench to install its Facilities, the Co-op shall provide advance notice to the City to permit the City to install City Facilities in the same trench at the City's expense. The City's installation of its Facilities shall not interfere with the Co-op's Facilities or delay the commencement or completion of the Co-op's construction project.

**ARTICLE 7**  
**INDEMNIFICATION OF THE CITY**

**7.1 City Held Harmless and Indemnified.** The Co-op shall indemnify, defend, and hold the City harmless from and against all liability, damage, or judgments, and all claims or demands arising out of Co-op's operations within the City pursuant to this Franchise Agreement. The City shall provide prompt written notice to the Co-op of the pendency of any claim or action against the City arising out of the exercise by the Co-op of its franchise rights. The Co-op and the City shall be permitted, at their own respective expense, to appear and defend or to assist in the defense of such claim(s). The Co-op shall not be obligated to indemnify, defend, or hold the City harmless to the extent any liability, damage, judgment, claim, demand or lien 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 to the extent that any liability, damage, judgment, claim, demand, or lien arises out of or in connection with the use of City Facilities.

**ARTICLE 8**  
**UNDERGROUND CONVERSION OF OVERHEAD ELECTRIC FACILITIES**

**8.1 Undergrounding of New Lines.** Co-op shall place all newly constructed electrical distribution lines underground unless approved otherwise by the City.

Undergrounding shall only be required for electric distribution lines of 7,500 volts or less.

**8.2 Conversion of Existing Overhead Lines to Underground.** Co-op and City shall meet annually during the month of September, or such other time as is mutually convenient, to review the Co-op's Two Year Capital Work Plan and the Co-op's Ten Year Capital Work Plan. The City shall present which sections of the existing overhead electric distribution lines it desires to underground and the Co-op and City shall mutually agree on when such undergrounding will occur and the Co-op shall include the agreed upon projects in the Ten Year Capital Work Plan and, if applicable, in the Two Year Capital Work Plan. The Co-op shall not withhold approval of the projects requested by the City except where necessary, at the Co-op's sole discretion, for safety or protection of the electric system's integrity. The Co-op shall prepare a detailed, good faith cost estimate of the cost of the projects for the City to review.

**8.3 Planning and Coordination of Undergrounding Projects.** The City and Co-op shall mutually plan in advance the scheduling of undergrounding projects as part of the review and planning for other City and Co-op construction projects. The purpose of such meetings shall be to further cooperation between the City and the Co-op to achieve the orderly undergrounding of Co-op facilities.

**8.4 Cooperation with Other Utilities.** When undertaking an undergrounding project, the City and Co-op shall work with other utilities or companies that have overhead lines in the area in an attempt to underground all lines as part of the same project.

## **ARTICLE 9 TRANSFER OF FRANCHISE**

**9.1 Consent of City Required.** The Co-op shall not transfer or assign any rights under this Franchise Agreement to an unaffiliated third party, except by merger with such third party, or, except when the transfer is made in response to legislation or regulatory requirements, without the City's written approval of such transfer or assignment. The City shall have the right to require a transfer fee to be paid from such transferee to the City. Approval of the transfer or assignment shall not be unreasonably withheld.

## **ARTICLE 10 MUNICIPALIZATION**

**10.1 City's Right to Condemn.** During the term of this Franchise Agreement, the City shall have the right to condemn the Facilities of the Co-op only as provided under applicable law.

**10.2 Operation of a Municipal Utility or Competing Distributors.** If, during the term of this Franchise Agreement, the City operates a municipal utility or issues to another entity a franchise to use the Streets for the placement of electric and/or gas Facilities, the Co-op shall no longer be required to collect and pay franchise fees under Article 3 unless substantially the same terms and conditions apply to the service provided by the City or by the other entity.

## **ARTICLE 11** **BREACH**

**11.1 Breach.** If the Co-op fails to perform any of the terms and conditions of this Franchise Agreement and such failure is within the Co-op's control, the City may notify the Co-op of the specific failure and shall allow the Co-op a reasonable time within which to remedy the failure. If the Co-op does not remedy the failure and the failure is of a substantial nature, the Board of Trustees may terminate this Franchise Agreement after a full evidentiary hearing. Termination of this Franchise Agreement shall be by ordinance enacted by the affirmative vote of a majority of the members of the entire Board. In addition to termination, the City shall have any other remedy provided at law or equity for the enforcement of contracts, including, without limitation, specific performance to the extent the same may be ordered by a court of competent jurisdiction.

**11.2 Force Majeure.** Neither the City nor the Co-op shall be in breach of this Franchise Agreement if a failure to perform any of the duties under this franchise is due to force majeure.

**11.3 Judicial Review.** Any such termination of the Franchise Agreement shall be subject to judicial review as provided by law and shall be brought in the District Court of the Twelfth Judicial District for the State of Colorado.

## **ARTICLE 12** **MISCELLANEOUS**

**12.1 Amendments to Franchise.** This Franchise Agreement may be amended only by written agreement signed by both the Co-op and the City, which is approved in the same manner as is required for the approval of this Franchise Agreement.

**12.2 Successors and Assigns.** The rights, privileges, franchises and obligations, in whole or in part, granted and contained in this ordinance shall inure to the benefit of and be binding upon Co-op, its successors, assigns, affiliates, and subsidiaries.

**12.3 Third Parties.** Nothing contained in this Franchise Agreement shall be construed to provide rights to third parties.

**12.4 Continuation of Utility Service.** In the event this Franchise Agreement is not renewed at the expiration of its term or is terminated for any reason, the Co-op agrees to continue to provide utility service. The Co-op further agrees that it will not withhold any temporary utility services necessary to protect the public.

**12.5 Representatives.** Both parties shall designate, from time to time, representatives for the Co-op and the City to whom notices shall be sent regarding any action to be taken under this ordinance. Notice shall be in writing and shall be delivered in person or by certified mail to the persons and addresses hereinafter stated, unless the persons and addresses are changed at the written request of either party. Until any such change shall be made, notices shall be sent as follows:

To the City Administrator:  
City of Creede  
P.O. Box 457  
2223 N. Main Street  
Creede, CO 81130

To the Co-op:  
Chief Executive Officer  
San Luis Valley Rural Electric Cooperative, Inc.  
3625 W US highway 160  
Monte Vista, CO 81144

**12.6 Severability.** Should any one or more provisions of this Franchise Agreement 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 substitute term that will achieve the original intent of the Parties hereunder.

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

**12.8 Headings for Reference Only.** The headings in this Franchise Agreement are for reference only and convey no substantive rights or impose no substantive obligations on the Parties.

**12.9 No Waiver of Rights.** Neither the City nor the Co-op waives any rights under the statutes and constitution of the State of Colorado or of the United States except as otherwise specifically set forth herein.

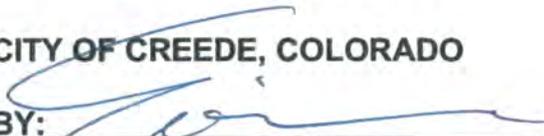
**12.10 Prevailing Party.** In any judicial or administrative action to enforce any of the terms or conditions of this Franchise Agreement each party shall be responsible for its own legal fees and costs.

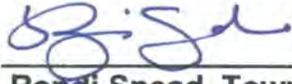
**12.11 Approval of Franchise.** The Co-op shall promptly execute, in writing, its acceptance of this Franchise Agreement and of any amendment of this Franchise Agreement following the City's final approval of the same. The failure by the Co-op to execute such an acceptance within forty-five (45) days of said final adoption by the City shall be deemed an acceptance of such Franchise Agreement or amendment thereof.

**12.12 Payment of Ordinance Expenses.** The Co-op shall reimburse the City for actual out-of-pocket expenses incurred in publishing notices and ordinances and conducting elections related to this Franchise Agreement.

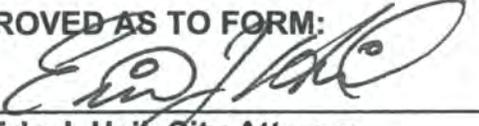
**[EXECUTION PAGE FOLLOWS]**

CITY OF CREEDE, COLORADO

BY:   
Eric Grossman, Mayor

ATTEST:   
Randi Snead, Town Clerk

APPROVED AS TO FORM:

BY:   
Eric J. Heff, City Attorney

ACCEPTED:  
SAN LUIS VALLEY RURAL ELECTRIC COOPERATIVE, INC.,

BY:   
Loren Howard,  
Chief Executive Officer