

ELECTRIC UTILITY FRANCHISE AGREEMENT
BETWEEN THE
CITY OF CRAIG, COLORADO
AND
YAMPA VALLEY ELECTRIC ASSOCIATION, INC.

EFFECTIVE
[DATE]
TO
[DATE]

TABLE OF CONTENTS

Article 1. Definitions

§ 1.0. Definitions.	6
---------------------	---

Article 2. Grant of Franchise

§ 2.1. Grant of Franchise.	7
§ 2.2. Scope of Grant	8
§ 2.3. Street Lighting Service	8
§ 2.4. Term of Franchise.	8
§ 2.5. Recreation Areas.	8
§ 2.6. Trees and Shrubs.	8

Article 3. Franchise Fee

§ 3.1. Franchise Fee.	9
§ 3.2. Payment Schedule.	9
§ 3.3. Change of Franchise Fee and Other Franchise Terms.	9
§ 3.4. Franchise Fee Payment in Lieu of Other Fees.	9
§ 3.5. Contract Obligation.	9
§ 3.6. Communications	10

Article 4. Supply, Construction and Design

§ 4.1. Supply of Electricity.	10
§ 4.2. Restoration of Service.	10
§ 4.3. Obligations Regarding Association Facilities.	10
§ 4.4. Excavation and Construction.	11
§ 4.5. Relocation of Association Facilities.	11
§ 4.6. Service to New Areas.	12
§ 4.7. Subdivision Review.	12
§ 4.8. Technological Improvements.	12

Article 5. Compliance

§ 5.1. City Regulation.	13
§ 5.2. Compliance with City Requirements.	13
§ 5.3. City Review of Construction and Design	13
§ 5.4. Compliance with Rural Development Electric Programs and PUC Regulations.	13
§ 5.5. Inspection.	13

Article 6. Effect of Franchise on Tariffs

§ 6.1. Effect of Franchise on Tariffs	14
---------------------------------------	----

Article 7. Reports to City

§ 7.1. Bills.	14
§ 7.2. Copies of Tariffs.	14
§ 7.3. Audit of Franchise Fee Payments.	14

Article 8. City Use of Association Facilities

§ 8.1. City Use.	15
§ 8.2. Underground Conduit.	15

Article 9. Indemnification of the City

§ 9.1. City Held Harmless.	16
§ 9.2. Payment of Expenses Incurred by City in Relation to Ordinance.	16
§ 9.3. Financial Responsibility.	16

Article 10. Underground Construction and Overhead Conversion

§ 10.1. Underground Electrical Distribution Lines in New Areas.	17
§ 10.2. Overhead Conversion.	17

Article 11. Transfer of Franchise

§ 11.1. Consent of City Required.	17
-----------------------------------	----

Article 12. Purchase or Condemnation

§ 12.1. Right to Purchase or Condemn.	17
§ 12.2. Continued Cooperation by Association.	17

Article 13. Removal of Association Facilities at End of Franchise

§ 13.1. Limitations on Association Removal.	18
---	----

Article 14. Forfeiture

§ 14.1. Notification.	18
§ 14.2. Litigation.	18
§ 14.3. Termination.	19
§ 14.4. Not to Affect Others.	19

Article 15. Amendments

§ 15.1. Amendments to Franchise.	19
----------------------------------	----

Article 16. Miscellaneous

§ 16.1. Successors and Assigns.	19
§ 16.2. Third Parties.	19
§ 16.3. Representatives.	19
§ 16.4. Severability.	20
§ 16.5. Entire Agreement.	20
§ 16.6. Governing Law, Venue, and Enforcement.	20
§ 16.7. Force Majeure.	20
§ 16.8. Governmental Immunity.	21

Article 17. Approval

§ 17.1. Board Approval.	21
§ 17.2. Association Approval.	21

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. The words "include," "includes" and "including" are deemed to be followed by the words "without limitation." Words not defined in this article shall be given their common ordinary meaning.

1.1. City refers to and is the municipal corporation designated as the City of Craig, Moffat County, Colorado and includes the territory as currently is or may in the future be included within the boundaries of the City of Craig.

1.2. Association refers to and is Yampa Valley Electric Association, Inc., 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. Council or City Council refers to and is the governing body of the City.

1.4. Distribution Facilities refers to and is only that portion of the Association’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, and shall include YVEA’s use of broadband technology to furnish, sell and distribute electricity as provided herein. Notwithstanding the contrary, this Agreement neither expands nor limits the Association’s rights under applicable law to provide commercial broadband services.

1.5. Facilities refer to and are all facilities reasonably necessary to provide electricity into, within and through the City and include without limitation plants, works, systems, substations, transmission and distribution structures, lines, equipment, conduit, transformers, underground lines, meters, wires, cables and poles.

1.6. Public Project refers to: (1) any public work or improvement within the City that is wholly or beneficially owned by the City; or (2) any public work or improvement within the City where more than 50 percent of the funding is provided by any combination of the City, the federal government, the State of Colorado, any Colorado county, or other political subdivision of the state of Colorado and the project is or will be primarily or wholly owned by any of the foregoing or any combination thereof. Notwithstanding the foregoing, any public work or improvement the purpose of which is solely for the promotion or improvement of aesthetics shall not be a Public Project herein.

1.7. Public Utility Easements refer to and are all current and future public and easements dedicated by or for the benefit of the City for the purposes of the placement of utilities. Public Utility Easements excludes private easements held by third parties for the purposes of placement of utilities.

1.8. 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.

1.9. 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 City.

1.10. Revenues refer to and are those amounts of money which the Association receives from its customers within the City for the sale of electricity as adjusted for refunds, the net write-off of uncollectible accounts, corrections or other approved adjustments approved by the Association Board of Directors or as required by applicable law.

1.11. Streets and Other Public Ways refer to and are all current and future streets, alleys, viaducts, bridges, roads, lanes and other public right-of-way in the City, but specifically excluding parks, open space, trails, and irrigation ditches. Notwithstanding the contrary, to the extent YVEA is currently using or occupying said parks, trails, open space or irrigation ditches pursuant to another legal right, this Agreement does not impact such use, nor does this Agreement preclude any future use as may be otherwise authorized in writing by the City

ARTICLE 2. GRANT OF FRANCHISE

§ 2.1. Grant of Franchise.

The City hereby grants to Association for the period specified in and subject to the conditions, terms and provisions contained in this franchise, the exclusive right to, produce, furnish, sell, and distribute electricity to the City and to all residents of the City. Subject to the conditions, terms and provisions contained in this franchise, the City also hereby grants to the Association an exclusive right to acquire, construct, install, locate, maintain, repair, replace, relocate, upgrade, operate, and extend into, within and through the City all Facilities reasonably necessary to furnish, sell and distribute electricity within and through the City and a nonexclusive right to make reasonable use of the Streets and Other Public Rights-of-Way and Public Utility Easements as may be necessary to carry out the terms of this franchise. 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. The City reserves the right to itself to make or grant uses in the Streets and Other Public Rights-of-Way and Public Utility Easements not involving distribution and sale of electricity for electrical power provided any such use or grant of such use shall not conflict or interfere with the requirements of the Association to construct, install, locate, maintain, repair, replace, relocate, upgrade, or operate its lines and facilities in accordance with safe practices and procedures prescribed by applicable law or the National Electric Safety Code, and in accordance with the requirements set forth in Article 4., Section 4.3 and Article 10, Section 10.1, hereof. Nothing herein shall abrogate or expand the City's right of condemnation to acquire Association Facilities pursuant to Colorado Revised Statutes § 31-15-707.

§ 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 Rights-of-Way and Public Utility Easements, 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 Rights-of-Way and Public Utility Easements as may be hereafter laid out, opened, located, or constructed within the boundaries of City. The Association is further granted the right, privilege and authority to excavate in, occupy and use any and all Streets and Other Public Rights-of-Way and Public Utility Easements, subject to the City'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 City and the provisions of this franchise apply with full and equal force to the street lighting service provided by the Association, regardless whether the streetlighting facilities are owned, operated, or maintained by the City or the Association. 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 pursuant to Association's applicable tariffs. Wherever reference is made to Association facilities, equipment, system or plant in this franchise, this reference shall be deemed to include Association-owned street lighting facilities, equipment, system and plant. Notwithstanding anything to the contrary, if the City takes ownership of Association-owned facilities pursuant to applicable law, City agrees to pay the costs associated with transfer of such streetlighting facilities in addition to the fair market value of such facilities.

§ 2.4. Term of Franchise.

This franchise shall take effect on _____ 1, 2024. The term of this franchise shall be for twenty years, beginning with said effective date of this franchise and expiring on _____, 2044.

§ 2.5. Recreation Areas.

Notwithstanding the grant of rights in Sections 2.1 and 2.2, and excepting the Association's obligation to furnish facilities to the City's buildings, parks, street lights and other operations serving the community, the Association 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 City. Said approval shall not be unreasonably withheld.

§ 2.6. Vegetation Management.

The Association shall have the right to trim or cut down such trees, shrubbery, and other vegetation and to control the growth of the same by chemical means, mechanical means, or otherwise, 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. Prior to the

commencement of work, the Association will notify property owners consistent with best practices in the industry..

City shall not plant any trees or shrubbery that at the time of planting, or within the reasonably foreseeable future, will interfere with YVEA's Facilities.

ARTICLE 3. FRANCHISE FEE

§ 3.1. Franchise Fee.

In consideration for the grant of this franchise, the Association shall collect and pay to the City a sum equal to three percent (3%) of all Revenue received quarterly from the sale of electric power within the City. The Association shall have the right to surcharge the residents a franchise fee equivalent to the fee paid by the Association to the City. Periodic billing statements by the Association 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 City Finance Director

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

Once during each five-year period of the term of this franchise, the City may give notice to the public and to the Association 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 City and the Association shall negotiate in good faith in an effort to agree on the amount of the fee, provided however, any renegotiated franchise fee shall be surcharged by the Association to its members and customers within the City.

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

Payment of the franchise fee by the Association is accepted by the City 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. The City may impose, and Association shall pay road cut permits, inspection fees and permits, and other similar costs and fees uniformly applied throughout the City and does not exempt the Association from payment of other fees or taxes assessed generally upon businesses.

§ 3.5. Contract Obligation.

This franchise constitutes a valid and binding contract between the Association and the City.

§ 3.6. Communications

The Parties shall coordinate the preparation and timing of all press releases, blog posts, news reports or other similar announcements related to the proposal, approval, execution, and amendment of this Agreement and the transactions contemplated herein. Neither Party shall disseminate or knowingly permit to be disseminated such materials without the prior written consent of the other Party, such consent not to be unreasonably withheld. Notwithstanding the contrary herein either party may disclose information related to this Agreement as required by applicable law.

ARTICLE 4. SUPPLY, CONSTRUCTION AND DESIGN

§ 4.1. Supply of Electricity.

The Association shall provide electric service that conforms to applicable laws and generally accepted utility engineering and operating practices at a financially responsible price. YVEA shall use commercially reasonable efforts to maintain power quality to all customers. Power outages and emergencies shall receive the highest priority.

§ 4.2. Restoration of Service.

In the event the Association's electric system, or any part thereof, is partially or wholly destroyed or incapacitated, the Association shall use due diligence to restore its system to satisfactory service. The Association shall promptly perform reasonable remedial action at its expense if the system failure or system damage is caused by the Association's negligent action or inaction or is due to an electrical equipment failure or Act of God. The cost of system failure or damages caused by the City, including lack of enforcement of its obligations under Articles 4.3 and 4.4, or caused by third parties, shall be borne by the person or entity causing the failure.

§ 4.3. Obligations Regarding Association Facilities.

The Association shall install, maintain, repair, renovate and replace its Facilities with due diligence in a good and workmanlike manner and the Association's Facilities will be of sufficient quality and durability to provide reasonably continuous and adequate electric service to the City and its members and customers. The Association shall locate its Facilities within the City so as to cause minimum interference with any of the City's facilities or property, including without limitation water lines, sewer lines, storm drains, and the proper use of Streets and Other Public Rights-of-Way and Public Utility Easements, provided the City has taken all reasonable precautions to prevent new permanent structures or development from encroaching closer than the minimum clearances required by the then current National Electric Safety Code. The Association shall install and maintain its facilities so as to reasonably limit interference with the rights or reasonable convenience of property owners whose property adjoins any of the said Streets and Other Public Rights-of-Way, and in such a way so as to reasonably limit interference with trees and other natural features.

§ 4.4. Excavation and Construction.

All excavation and construction work done by the Association shall be done in a timely and expeditious manner which minimizes the inconvenience to the public and individuals and shall comply with duly adopted City laws and regulations. All public and private property whose use is disturbed by Association excavation or construction activities shall be restored by the Association, at its expense, to substantially its former condition within 120 days following completion, provided that the property condition as restored complies with NESC guidelines and applicable law. Reasonable extensions shall be granted by the City for good cause. The Association shall comply with the City's requests for reasonable and prompt action to remedy all damage, except for vegetation management in compliance with this Agreement, to private property adjacent to Streets and Other Public Rights-of-Way and Public Utility Easements where the Association is performing construction, excavation, maintenance or repair work. The City reserves the right to restore property and remedy damages caused by Association activities at the expense of the Association in the event the Association fails to perform such work within 120 days after notice from the City and to charge the Association the cost of such restoration and remedial action and such charges shall be paid by the Association to the City within thirty (30) days.

§ 4.5. Relocation of Association Facilities.

Association shall relocate its Facilities located in any Streets and Other Public Rights-of-Way and Public Utility Easements pursuant to this franchise, at its own expense, except where waived by the City, whenever the City, in the proper exercise of its police power, performs any Public Project which shall include, but is not limited to grading, regrading, changing the center line or otherwise improve any Street or Public Way or construct or reconstruct any sewer or water system therein and shall, with due regard to seasonable working conditions, order Association to relocate permanently its Facilities or equipment located in Streets and Other Public Rights-of-Way and Public Utility Easements.

If the Association Facilities required to be relocated as provided for above were originally installed outside of Streets and Other Public Rights-of-Way and Public Utility Easements, the City shall pay the relocation costs.

If the City shall require Association to adapt or conform its distribution system, or in any way alter, relocate or change its property for the benefit of any other person, firm, corporation or entity, other than the City, to use the Streets and Other Public Rights-of-Way and Public Utility Easements, then Association's obligation to change, alter, or relocate its facilities is contingent upon such person, firm, corporation or entity paying Association for the costs of the requested change, alteration or relocation prior to design and/or construction.

The City shall make reasonable efforts to notify Association by August 1st of the year prior to the scheduled construction of any anticipated relocation(s), change(s), or alteration(s) of Association's Facilities as provided in this Section 4.5, so that Association may adequately plan or budget for such relocation(s), change(s), or alteration(s). Except for construction due to emergency and construction where YVEA's estimated project costs are less than \$50,000.00, the City shall give Association one hundred eighty (180) days' notice, prior to the scheduled construction of plans

requiring any such relocation(s), change(s), or alteration(s) of Association's Facilities as provided in this Section 4.5, so that Company may adequately plan or budget for such relocation(s), change(s), or alteration(s).

Relocated underground facilities shall be underground. Relocated aboveground facilities shall be aboveground unless the City agrees to pay the additional cost of moving them underground.

§ 4.6. Service to New Areas.

If the boundaries of the City are expanded within the Association's certificated service area during the term of this franchise, the Association shall extend service to residents in the expanded area at the earliest practicable time and in accordance with the Association's extension policy. Service to the expanded area shall be in accordance with the terms of this franchise agreement, including payment of franchise fees.

All new electric distribution Facilities shall be installed underground to the extent reasonably practicable unless waived in writing by the City.

§ 4.7. Development Review.

The City shall timely submit any subdivision plats or planned unit development plans to the Association which shows the developer's plan for all utilities. Within fifteen (15) days of receipt, the Association shall analyze any such plats or plans submitted to it by the City and respond to any request by the City for information regarding the adequacy of its facilities necessary to serve such proposed plat or plan and answer any other questions posed to the Association by the City regarding said plat or plan as are within the knowledge of the Association. Upon request by the Association, the City may grant an extension of its time to perform such analysis and respond to such requests, which extension shall not be unreasonably withheld by the City.

§ 4.8. Technological Improvements.

The Association shall generally introduce and install electrical energy technological advances in its equipment and service within the City when such advances are technically and economically feasible and are safe and beneficial to the City and its residents. Such technological advances may include 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 Association for its use or for use of others as the Association may license.

ARTICLE 5. COMPLIANCE

§ 5.1. City Regulation.

The City expressly reserves, and the Association expressly recognizes, the City's right and duty to adopt, from time to time, in addition to the provisions herein contained, such ordinances, rules, and regulations as may by the City 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 City Requirements.

The Association will comply with all City requirements regarding curb and pavement cuts, excavating, digging and related construction activities. If requested by the City, the Association shall submit copies of reports of annual and long-terms 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 City may require that all installations be coordinated with the City's street improvement programs. The City Manager, or designee, shall be the City's agent for inspection and for compliance with City ordinances and regulations on any such project.

§ 5.3. Distribution Facilities Exempt from City Review of Construction and Design.

Notwithstanding anything to the contrary, the Association's construction, installation, location, maintenance, repair, replacement, relocation, upgrade, or operation its lines and facilities used for distribution of electricity shall be exempt the City's Code, regulations and ordinances concerning building, planning and zoning. For the avoidance of doubt, the Association shall be required to obtain applicable City permits for excavation and traffic closure and comply with all permit requirements when the Association's activities involve either excavation and/ traffic closure. Except for emergencies, the City will require that all installations be coordinated with the City's street improvement programs provided the coordination does not unreasonably delay the construction.

§ 5.4. Compliance With Tariffs.

The electrical energy which the Association distributes shall conform with the tariff provisions of the Association setting standards, as the same may be amended from time to time.

§ 5.5. Inspection.

The City shall have the right to inspect at all reasonable times any portion of the Association's system used to serve the City and its residents, members and customers. The City shall also have access to records of the Association reasonably necessary for the purpose of determining Association compliance with this franchise. The Association agrees to cooperate with the City in conducting the inspection and to correct any discrepancies affecting the City's interest in a prompt and efficient manner.

ARTICLE 6. EFFECT OF FRANCHISE ON TARIFFS

§ 6.1. Effect of Franchise on Tariffs..

The City and the Association recognize that the lawful provisions of the Company's tariffs are controlling over any inconsistent provision in this franchise dealing with the same subject matter to the extent that they are consistent with the City's rights to franchise and to exercise police powers as provided by the Colorado Constitution and statutes.

ARTICLE 7. REPORTS TO CITY

§ 7.1. Bills.

On request by the City, the Association shall, at commercially reasonable cost, provide a list of City 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 Association shall provide the City upon request with a complete listing of all the City's accounts and a list of real property within the City which is owned by the Association.

§ 7.2. Copies of Tariffs.

The Association shall keep on file, in its Steamboat Springs office and a local office if it is regularly staffed by a non-field employee of the Association, all tariffs, rules, regulations and policies approved by the board of directors relating to service by the Association to the City and its residents. Such tariffs, rules, regulations, and policies shall be made available to the City via mail or e-mail upon written request.

§ 7.3 Audit of Franchise Fee Payments.

- (A) Access to Documents. The City Finance Director, or other representatives authorized by the City, shall have access to the books of the Association reasonably necessary to ascertain that the franchise fee has been correctly computed, upon at least ten (10) business days' notice by the City. City agrees that any information City obtains from Association shall be treated by the City as confidential and proprietary in accordance with applicable law, including the Colorado Open Records Act, § 24-72-203, C.R.S., to the extent that such statute applies.
- (B) Association Response to Audit. If an audit contemplated by this section reveals the Association has underpaid the City, then City shall provide Association written notification regarding the existence of such underpayment, and Association shall proceed in good faith to verify the existence of the underpayment. Association shall have thirty (30) days within which to examine the City's findings. If Association agrees with the City's findings and the underpayment is less than or equal to \$5,000.00, Association shall remit the amount of underpayment to City, plus interest Association within ten business (10) days after the end of the 30-day period. If the underpayment is in excess of \$5,000.00, then the Association shall pay the

underpayment amount in equal payments over the same period the error was undiscovered or to the end of the term of this Agreement. The cost of the audit shall be borne by the City unless the audit discloses that the Association has underpaid the franchise fee by 103% or more, in which case the reasonable costs of the audit shall be reimbursed to the City by the Association.

- (C) Overpayment of Franchise Fee. In the event Association discovers an error, whether by audit contemplated in this Section 7.3 or otherwise, that results in an overpayment of the franchise fee to the City and said overpayment is in excess of \$5,000.00, a credit for the overpayment shall be spread over the same period the error was undiscovered or to the end of the term of this Agreement including any extensions, whichever is shorter. If the overpayment is \$5,000.00 or less, credit shall be taken against the next franchise fee payment.

ARTICLE 8. CITY USE OF ASSOCIATION FACILITIES

§ 8.1. City Use.

The City shall have the right to use all poles and suitable overhead structures constructed by Association within public easements, streets and other ways as outlined in a separate attachment agreement, for public governmental uses, which uses shall not include the distribution or transmission of electricity. The City's right of use as stated in this section is expressly conditioned upon the City meeting Association's requirements for attachment, including (i) provision by the City of a make ready design plan for the particular requested attachment (ii) compliance with all Association rules, regulations, operating procedures, and policies regarding joint use, and (iii) execution by City and Association of Association's standard attachment/joint use agreement in substantially the form of the attached Exhibit "A". Such uses by the City shall be without cost of application for joint use or fee for authorized attachment, with the exception of City activities subject to C.R.S. Section 40-15-601 *et seq.* and, in particular, Section 604(2)(b). Association shall assume no liability, nor shall it be put to any additional expense in connection with the use of said poles and structures by the City. Such use shall be in such a manner as not to constitute a safety hazard or to interfere with Association's use of same and shall comply with the National Electric Safety Code. Association may, at its sole discretion, subject to applicable laws, allow others holding a franchise, except for electric service, from the City to so utilize such poles and suitable overhead structures upon reasonable terms and conditions to be agreed upon by Association and such holder of a franchise from the City, provided that the third party meets Association's requirements for attachment, including (i) provision by the third party of a make ready design plan for the particular requested attachment, (ii) compliance with all Association's rules, regulations, operating procedures, and policies regarding joint use, and (iii) execution by the third party and Association of Association's standard attachment/joint use agreement.

§ 8.2. Underground Conduit.

If the Association installs new electric underground conduit or opens a trench or replaces such conduit, the Association shall provide adequate advance notice to permit additional installation of similar conduit and pull wire for the City. If the City wants additional similar conduit and pull

wire installed, it will so notify the Association and provide similar conduit and pull wire at its expense to the Association which will install it at the expense of the City, or such additional persons who are providing a service to the City, provided that such action by the City will not unnecessarily interfere with the Association's facilities or delay the accomplishment of the project.

ARTICLE 9. INDEMNIFICATION OF THE CITY

§ 9.1. City Held Harmless.

The Association shall save the City harmless and indemnify the City from and against all liability or damage and all claims or demands whatsoever in nature, and reimburse the City for all its reasonable expenses, including costs and attorney's fees, arising out of the negligent operations of the Association within the City and the securing of and the negligent exercise by the Association of the franchise rights granted in this ordinance, including any third party claims, administrative hearings and litigation. The Association shall not be obligated to pay any judgment which arises out of the negligent, or more culpable, act or failure to act of the City or its officers or employees. None of the City expenses reimbursed by the Association under this section shall be surcharged to the Residents.

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

The Association shall pay in advance or reimburse (at the City's option) the City for expenses incurred in publication of notices and ordinances arising out of the negotiations or process for obtaining the franchise.

§ 9.3. Financial Responsibility.

At the time of the execution of this Agreement, and from time to time at the City's request, not more frequently than annually, the Association shall submit to the City, as a confidential document, proof of its ability to meet its obligations under this Agreement, including its ability to indemnify the City as a required by this article. This proof may take the form of proof of insurance coverage, adequate funding of self-insurance, or the provision of a bond. The Association shall supply the City with a list of its insurance companies with the types of coverage, but not maximum levels of insurance. However, Association shall certify that such insurance provides a minimum of coverage equal to \$5,000,000 general liability coverage. Said list shall be kept current by annual revisions during the term of the franchise and given to the City when requested. The City may require, from time to time, and the Association agrees to provide, additional reasonable proof of funding of the Association's indemnification obligations as a self-insured, if Association is acting as a self-insurer. Association shall cause its insurer to be required to notify City of any lapse or reduction in insurance coverage and Association shall produce to City evidence that it has completed this obligation.

ARTICLE 10. UNDERGROUND CONSTRUCTION AND OVERHEAD CONVERSION

§ 10.1. Underground Electrical Distribution Lines in New Areas.

Notwithstanding any ordinance to the contrary, where existing distribution lines may not be used to serve new residential and commercial developments the Association will place newly constructed electrical distribution lines underground to serve new residential and commercial developments in accordance with the Association's tariffs, extension policies and City subdivision regulations, provided, however, such subdivision regulations shall not conflict or interfere with the Association's requirements for safe distances set forth in §4.3, and provided further that all new underground utilities are installed prior to paving of streets, alley and ways. For avoidance of doubt, the Association's obligations pursuant to this section 10.1 shall not apply to transmission lines, which will be placed above ground.

§ 10.2. Overhead Conversion.

Notwithstanding Section 4.5 of this Franchise and any ordinance to the contrary, when requested by the City, the Association will move electric distribution facilities located in Streets and Other Public Rights-of-Way and Public Utility Easements in the City from aboveground to underground at the City's cost, in accordance with Association's tariffs, extension policies, and this Franchise Agreement. Prior to commencing an undergrounding project the Association will furnish a cost estimate of the project to the City. The Association will furnish the City with a detailed invoice of all costs.

ARTICLE 11. TRANSFER OF FRANCHISE

§ 11.1. Consent of City Required.

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

ARTICLE 12. PURCHASE OR CONDEMNATION

§ 12.1. Right to Purchase or Condemn.

The right of the City to construct, purchase or condemn any public utility works or ways, and the rights of the Association in connection therewith, as provided by the Colorado Constitution and statutes, are hereby expressly reserved. Notwithstanding anything herein to the contrary, Association's rights of condemnation and its rights pursuant to Colorado Revised Statutes § 40-15-601 et seq. are also expressly reserved.

§ 12.2 Continued Cooperation by Association.

In the event the City exercises its option to purchase or condemn, the Association agrees that, at the City'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. Association shall cooperate with the City by making available then existing pertinent Association records which are not confidential or privileged to enable the City to evaluate the feasibility of acquisition by the City of Association facilities.

ARTICLE 13. REMOVAL OF ASSOCIATION FACILITIES AT END OF FRANCHISE

§ 13.1. Limitations on Association Removal.

In the event this franchise is not renewed at the expiration of its term or the Association terminates any service provided herein for any reason whatsoever, and the City has not purchased or condemned the system and has not provided for alternative electrical service, or if the franchise is forfeited, the Association shall have no right to remove said system pending resolution of the disposition of the system except for (i) emergencies, or (ii) to comply with the National Electric Safety Code, or (iii) redundant, unnecessary, outdated or replaced equipment. The Association 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 City stating that the City has adequate alternative electrical energy sources to provide for the people of the City shall the Association 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 materially breached 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 cannot 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. 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.

§ 14.3. Termination.

In addition to the foregoing remedies, if the Association does not remedy the material breach within the time allowed in the notice provision above, the City may, at its sole option, terminate this franchise. This remedy shall be in addition to the City's right to exercise any of the remedies provided for elsewhere in this franchise. Any such termination shall be subject to judicial review as provided by law. Except as provided herein, nothing in this franchise shall limit or restrict any legal rights or remedies that either party may possess arising from any alleged breach of this franchise.

§ 14.4. 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 City, through its City Board, or the Association 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 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 Association, 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 Association and the City who will be the persons to whom notices shall be sent regarding any action to be taken under this franchise. 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 City Manager and to the Association's Chief Executive Officer. Currently the addresses are as follows:

For the City City of Craig
 ATTN: City Manager
 300 W. 4th Street
 Craig, Colorado 81625

For the Association Yampa Valley Electric Association, Inc.
 ATTN: Chief Executive Officer
 2211 Elk River Road
 Steamboat Springs, CO 80428

No agent or representative of Association has the power to amend, modify, alter or waive any of the provisions of the terms of this franchise. Any promises, agreements, or representations made by an agent or representative of Association not herein set forth shall be void and of no effect.

§ 16.4. Severability.

Should any one or more provisions of this Franchise Agreement or the application thereof be determined by a court of competent jurisdiction to be illegal or unenforceable, except for the requirement to pay franchise charges, such invalidity shall not affect other provisions or the application of the Agreement, which can be given effect without the invalid provision(s), and to this end, the provisions of this Agreement are severable; provided, however, that the parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft a provision 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.

§ 16.6. Governing Law, Venue, and Enforcement.

This Agreement shall be governed by and interpreted according to the law of the State of Colorado. Venue for any action arising under this Agreement shall be in the appropriate court for Moffat County, Colorado.

§ 16.7 Force Majeure

No party shall be liable or responsible to the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("Impacted Party") reasonable control, including, without limitation, the following force majeure events ("Force Majeure Event(s)": (a) acts of God; (b) flood, fire,

earthquake, epidemics, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; [(g) strikes, labor stoppages or slowdowns, or other industrial disturbances; (h) telecommunication breakdowns, power outages or shortages, lack of warehouse or storage space, inadequate transportation services, or inability or delay in obtaining supplies of adequate or suitable materials; and (i) other similar events beyond the reasonable control of the Impacted Party. The Impacted Party shall give notice within 30 days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause.

§ 16.8 Governmental Immunity

Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to the City, its elected and appointed officials, employees, contractors, or agents, or any other person acting on behalf of the City and, in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.

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 City Council.

§ 17.2. Association Approval.

YVEA shall file with the City Clerk its written acceptance of this franchise and of all of its terms and provisions no later than thirty (30) days after its receipt of written notice that the second reading of this franchise ordinance has been approved by the City Council. The acceptance shall be in form and content approved by the City Attorney. If YVEA shall fail to timely file its written acceptance as herein provided, this franchise shall be and become null and void.

[Signature Page Follows]

THE CITY OF CRAIG, COLORADO

By: _____

Mayor

ATTEST:

City Clerk

DATE: _____, 202_.

ACCEPTED AND AGREED TO:

YAMPA VALLEY ELECTRIC
ASSOCIATION (YVEA)

By: _____

City's Mailing Address and Phone Number:

City of Craig

300 W. 4th Street

Craig, Colorado 81625