

ORDINANCE NUMBER 222

AN ORDINANCE GRANTING TO K.C. ELECTRIC ASSOCIATION, INC., A NON EXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE, AND MAINTAIN AN ELECTRIC DISTRIBUTION SYSTEM IN THE STREETS, ALLEYS AND PUBLIC WAYS OF THE TOWN OF HUGO

WHEREAS, pursuant to Ordinance No. 180, passed on July 6, 1987, by the Board of Trustees of the Town of Hugo, Colorado, hereinafter referred to as the "Town", the Town did grant a non-exclusive franchise to K.C. Electric Association, Inc., a Cooperative Corporation, organized and existing under the laws of the State of Colorado, hereinafter referred to as the "Cooperative", which term will expire by its terms on July 6, 2007; and

WHEREAS, during the term of the franchise agreement, the Cooperative has heretofore been, and now is, constructing, reconstructing, operating, servicing when needed, and maintaining an electric distribution system within the Town, and the Cooperative has satisfactorily continued to construct, reconstruct, operate, service when needed, and maintain the present electric distribution system within the Town, using for such purposes the streets, alleys, and other public ways of the Town; and

WHEREAS, the parties agree that it will be mutually beneficial to the Town, its inhabitants, and the Cooperative to maintain and have in place within the Town an electric distribution system, constructed, reconstructed, operated, serviced when needed, and maintained by the Cooperative, on terms that will assure the full control and use of the streets, alleys, and / or other public places for the public, the safety of the persons and property of the public insofar as the maintenance and operation of the system is concerned, and the continuity of the service upon the same classifications of service in the Town as the classifications of service in other towns within the certified territory served by the Cooperative and upon the same rates and charges of the Cooperative for electric power and service charged to the Town, its inhabitants, and consumers within the Town in each classification as the rates and charges of the Cooperative charged to other towns and their inhabitants and consumers served by the Cooperative; and

WHEREAS, The Cooperative has duly published in the Eastern Colorado Plainsman, a weekly newspaper of general circulation in the Town, its "Notice of Intention" to apply to the Board of Trustees of the Town of Hugo, Colorado, as provided by law and the Orders of the Board of Trustees (C.R.S., Title 31, Article 32, Section 102, as amended) for a franchise by Ordinance to provide electric power to the Town of Hugo, Colorado, and the inhabitants therein and has presented this Ordinance to the Board of Trustees for its consideration.

NOW, THEREFORE, BE IT RESOLVED AND ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF HUGO:

SECTION ONE

There is hereby granted to the Cooperative, for the period and upon the terms and conditions hereinafter specified, the right, privilege and authority to locate, build, construct, acquire, purchase, extend, maintain, and operate into, within, and through the Town all necessary, needful, and convenient poles, pole lines, posts, wires, transformers, guy posts and guy wires, apparatus, appliances and works for the purchase, generation,

transmission, and distribution of electrical energy, with the right and privilege to furnish, sell, and distribute the electrical energy to the Town, and the inhabitants thereof, for light, heat, and power or other purposes, by means of conduits, cables, poles with wires strung thereon, or otherwise on, over, under, along, across and through any and all streets, alleys, viaducts, bridges, roads, lanes, and other public ways and places in the Town.

SECTION TWO

In exercising the rights set forth in Section One, the Cooperative agrees to comply with all applicable Town ordinances concerning the use of Town streets, alleys, and public ways. Whenever the Cooperative, in the construction or maintenance of its system or in the installation of any extension thereto, shall cut into, take up any pavement, shall make any excavation, or otherwise impact any street, alley, or public place, within the boundaries of the Town, the same shall be done only after reasonable notice to the Town Manager, and then in a manner that is consistent with Town ordinances and in a manner so as to not unduly interfere with the use of such thoroughfares by the public. Thereafter, the Cooperative, shall at its expense, restore the Town streets, alleys, and public places to the condition which existed prior to the work being done. The Cooperative in constructing and maintaining the electrical distribution system, and in entering and using the Town streets, alleys, avenues, and public places, shall not in any manner interfere with or damage any Town or citizen improvement without the express permission or consent of the Town or citizen, as the case may be. The Cooperative shall conduct its work so as to cause minimum interference with the proper use of streets, alleys, and other public ways and places and to cause minimum interference with the rights or reasonable convenience of property owners whose property adjoins any of the streets, alleys, or other public ways and places. The Cooperative agrees that it shall be subject to all reasonable regulations of general application which may now or hereafter be prescribed by general ordinance of the Town with respect to the use of the public streets, alleys, and other public places of the Town. Should it become necessary for the Cooperative, in exercising its rights and performing its duties hereunder, to interfere with any sidewalk, pavement, water main, sewer, or any other public or private improvement, the Cooperative shall repair or cause to be repaired and restored to its original condition such sidewalk, graveled or paved street, road, alley, water main, sewer, or other public or private improvement after the installation of its poles, conduits, or other structures, and in default thereof, after notice, the Town may make such repair and charge the cost thereof to, and collect the same from, the Cooperative.

SECTION THREE

The term of this agreement shall be twenty (20) years measured from the effective date of the final passage of this Ordinance and shall, at that time, replace existing Town Ordinance No. 180.

SECTION FOUR

The Cooperative's electric distribution system shall be constructed, reconstructed, operated, serviced as needed, and maintained in a workman-like manner in accordance with all applicable existing safety codes. The Cooperative agrees for and on behalf of itself, its lessees, successors, and assigns, that for and during the term and period of this

agreement, the Cooperative will maintain in the Town an adequate, modern, standard and sufficient electric system and equipment and will maintain and operate the same in modern and adequate fashion. The Cooperative agrees to extend and enlarge its electric system, as may be needed, during the term of this agreement as the business of the Cooperative and the growth of the Town so justify. Enlargements and extensions of the Cooperative's distribution system shall be in accordance with the National Electric Safety Code, and amendments thereto, and the Cooperative's Standards for Service, Rules and Regulations, Service Connection and Extension Policies and such other documentation as in effect and on file with the Public Utilities Commission of the State of Colorado, if applicable. The Cooperative shall, at all times, make and keep full and complete plats, maps, and records showing the exact location of all property of the Cooperative used in the exercise of the rights and privileges granted hereunder and to allow access to the Town for the review of the location plats, maps, and records.

SECTION FIVE

The Cooperative shall maintain its structures, apparatus, equipment, poles, wires, and conduits as to afford all reasonable protection against injury or damage to persons or property there from and the Cooperative shall save and hold the Town harmless and indemnify the Town from all liability, claims, demands, judgments, litigation, suits or damage and all reasonable expense, to include, but not be limited to, reasonable attorney fees, necessarily accruing against the Town arising out or resulting from the negligent exercise by the Cooperative of any of the rights and privileges hereby granted; provided that the Cooperative shall have had notice of the pendency of any action against the Town arising out of such exercise by the Cooperative of said rights and privileges and be permitted at Cooperative's own expense to appear and defend or assist in the defense of the same. None of the Towns' damages or expenses, in such case, reimbursed by the Cooperative under this section shall be surcharged solely to the residents of the Town. The Cooperative shall maintain worker's compensation insurance in accordance with the laws of the State of Colorado and shall insure its operations of at least two million dollars for any one accident and five hundred thousand dollars for property damage, such insurance to be available to indemnify and hold harmless the Town from any damages or injury to persons or property, and loss and expense caused by the negligence or the default of the Cooperative.

SECTION SIX

The Cooperative, from time to time, may promulgate such rules, regulations, terms, and conditions governing the conduct of its business, including the utilization of electrical energy and payment thereof, and the interference with, or alteration of any of the Cooperative's property upon the premises of its customers, as shall be necessary to insure a continuous and uninterrupted service to each and all of its customers and the proper measurement thereof and payment therefore, provided that the Cooperative shall keep on file in its office at Hugo, Colorado, available to the public, copies of its Rate Schedules, Standards for Service, Rules and Regulations, and Service Connection and Extension Policies concurrently in effect and on file with the Public Utilities Commission of the State of Colorado, if applicable, or other competent authority having jurisdiction in the premises. The classification of service in the Town will be the same as the classification of service in other towns served by the Cooperative and the rates and charges for electric service of consumers and users in the Town in each classification will be the same as rates and charges of the Cooperative in other towns of the same class served by the Cooperative.

SECTION SEVEN

The electric distribution system constructed, reconstructed, serviced when needed and maintained by the Cooperative is and shall remain the sole property of the Cooperative.

SECTION EIGHT

Under the supervision of the properly constituted authority of the Town, the Cooperative shall be allowed to enter upon Town property to trim or cut trees or shrubs or portions of trees or shrubbery as may be reasonably necessary to allow the Cooperative to construct, reconstruct, service, and maintain its electric system. As to trees, shrubs, or other structures of interference that may be located upon private property, the Cooperative agrees to contact and make arrangements for removal with the landowner.

SECTION NINE

As a further consideration for this franchise agreement, and as accepted by the Town in lieu of all occupancy and license fees or any other assessment or excise for the use of the Town streets, alleys, and other public ways, the Cooperative agrees to pay a franchise fee for the use of the Town streets, alleys, and other public ways based on a sum equal to five per cent (5%) of the gross revenue derived from the sale of electricity within the corporate limits of the Town for electrical energy furnished for light, heat or power, or other purposes, for electric service furnished. All amounts paid to the Cooperative by the Town or any of its departments for electric service shall be excluded from computations of the franchise fee. Payment of the franchise fee accruing after the effective date of this ordinance shall be made in monthly installments not more than thirty days following the close of the month for which payment is to be made. At the time such monthly payment is made by the Cooperative, the Cooperative shall file with the monthly payment a certification of such revenue. The effective date of the imposition of the franchise fee shall be the effective date of this franchise by Ordinance. In the event any applicable legislation or final Order of Court were to subsequently prevent the payment of the franchise fee, the parties agree to revise this agreement so as to otherwise allow for compensation to be paid to the Town for the use of its streets, alleys, and public ways in an amount comparable to the historical sum paid as a franchise fee.

SECTION TEN

Nothing in this franchise agreement shall be so construed as to prevent the Cooperative from selling or assigning all of its rights, title or interest, gained or authorized under or by virtue of the terms of this agreement. However, such sale or assignment shall not be made without the consent of the Town, which consent shall not be unreasonably withheld. The Town shall have up to sixty (60) days after receiving notice from the Cooperative of such sale or assignment to review and approve the sale or assignment. Further, in the event of assignment, all provisions of this agreement which are obligatory upon, or which inure to the benefit of the Cooperative shall also be obligatory upon and inure to the benefit of any and all successors and assigns of the Cooperative.

SECTION ELEVEN

If the Cooperative shall be in default in the performance of any of the terms and conditions of this Ordinance and agreement and shall continue in default for more than thirty (30) days after receiving notice from the Board of Trustees of the Town of such default, the Board of Trustees may, by Ordinance duly passed and adopted, terminate all rights granted under this Ordinance to the Grantee. The notice of default shall specify the provision or provisions in default. The notice shall be in writing and shall be served in the manner provided by the laws of Colorado for the service of original notices in civil actions. In the event of cancellation or other termination of this franchise pursuant thereto, the

Town may require the Cooperative, at Cooperative's own expense, to forthwith remove all its construction and equipment from the streets, alleys, and public ways in the Town and restore the same in good condition, satisfactory to the Town or its authorized representative, provided however, that upon the transfer, assignment, or sub-letting of this franchise by the Cooperative with the approval of the Town, said removal requirement may not be enforced by the Town.

SECTION TWELVE

This Ordinance / agreement shall be approved in accordance with Title 31, Article 32, Part 1, of the Colorado Revised Statutes. Upon approval and publication, an authenticated copy shall be provided to the Cooperative.

Passed and adopted this ___ day of _____, 2007.

PATSIE E. SMITH
MAYOR

ATTEST:

GARALD L. ENSIGN
TOWN CLERK