

ORDINANCE NO. 12

SERIES 2012

AN ORDINANCE GRANTING A FRANCHISE TO THE GUNNISON COUNTY ELECTRIC ASSOCIATION, INC., A COLORADO ELECTRIC COOPERATIVE, TO OPERATE AN ELECTRIC SUPPLY AND DISTRIBUTION SYSTEM IN THE TOWN OF CRESTED BUTTE

WHEREAS, the Town of Crested Butte, Colorado (the "**Town**") is a home rule municipality duly and regularly organized and validly existing as a body corporate and politic under and by virtue of the Constitution and laws of the State of Colorado;

WHEREAS, pursuant Chapter 5, Article 1 of the Crested Butte Municipal Code (the "**Code**"), the Town has the right to grant franchises to public utilities by duly adopted ordinance;

WHEREAS, Gunnison County Electric Association, Inc. ("**GCEA**"), a Colorado electric cooperative's Franchise Agreement with the Town dated February 12, 1997, as amended, expired on February 12, 2011;

WHEREAS, the Town staff and GCEA have been in negotiations since late 2011 on a new franchise agreement governing GCEA's right to furnish and distribute electricity in Crested Butte;

WHEREAS, the Town staff and GCEA have reached agreement on the terms satisfactory to both parties governing GCEA's activities in furnishing and distributing electricity in Crested Butte;

WHEREAS, the Town staff recommends entering into a new franchise agreement with GCEA that includes terms agreed upon with GCEA; and

WHEREAS, the Town Council finds that the Town entering into a new franchise agreement with GCEA upon such terms as the Town staff has found acceptable is in the best interest of the health, safety and general welfare of the residents and visitors of the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CRESTED BUTTE, COLORADO, THAT,

Section 1. Repeal of Chapter 5, Article 3. All of the provisions of Chapter 5, Article 3 of the Code, as amended by Ordinance No. 7, Series, 2012, are hereby repealed in their entirety and replaced with the Franchise Agreement ("**Agreement**") adopted pursuant to this ordinance.

Section 2. Approval of Franchise Agreement. The Town Council hereby approves and adopts the proposed Agreement with GCEA attached hereto as **Exhibit "A"** which grants

GCEA the right to furnish, sell and distribute electricity to the Town and to all residents of the Town. Subject to the conditions, terms, and provisions contained in the Agreement, the Town also grants to GCEA the right to acquire, construct, install, locate, maintain, operate and extend into, within and through the Town all facilities reasonably necessary to furnish, sell and distribute electricity within and through the Town and the right to make reasonable use of the streets, alleys and other public rights-of-way and public easements as may be reasonably necessary to carry out the terms of this Agreement. The use of the streets, alleys and other public rights-of-way and public easements shall not be exclusive and the Town reserves the right to itself to make or grant a similar use of the same and other streets, alleys and other public rights-of-way and public easements to any other person, firm or corporation, and to otherwise exercise its police powers in such regard.

Section 3. **Cooperation.** In accordance with the Agreement, GCEA shall promptly and fully comply with all ordinances, regulations, permits and orders adopted, approved and made by the Town, in particular those regarding street and curb cuts, excavating, digging and any other construction related activities.

Section 4. **Assignment; Transfer.** Any sale, assignment or transfer of the Agreement or any rights granted thereunder shall require the consent of the Town.

Section 5. **Term of Franchise.** The term of the franchise rights given to GCEA shall be as set forth in the Agreement.

Section 6. **Execution; Undertakings.** The Mayor is hereby authorized to execute the Agreement on behalf of the Town and the Town Manager is hereby authorized to undertake such actions and delegate such responsibilities consistent with the provisions of the Agreement as are deemed necessary and appropriate to carry out the terms thereof.

Section 7. **Severability.** If any section, sentence, clause, phrase, word or other provision of this ordinance is for any reason held to be unconstitutional or otherwise invalid, such holding shall not affect the validity of the remaining sections, sentences, clauses, phrases, words or other provisions of this ordinance, or the validity of this ordinance shall stand notwithstanding the invalidity of any section, sentence, clause, phrase, word or other provision.

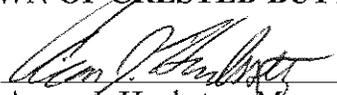
Section 8. **Savings Clause.** Except as amended hereby, the Crested Butte Municipal Code, as amended, shall remain valid and in full force and effect. Any provision of any ordinance previously adopted by the Town which is in conflict with this ordinance is hereby repealed as of the enforcement date hereof.

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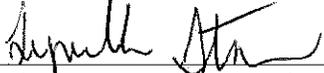
INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS 27th DAY OF SEPTEMBER, 2012.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS 5TH DAY OF NOVEMBER, 2012.

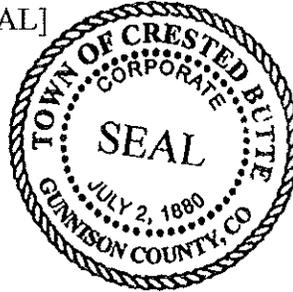
TOWN OF CRESTED BUTTE, COLORADO

By: 
Aaron J. Huckstep, Mayor

ATTEST:


Lynelle Stanford, Acting Town Clerk

[SEAL]



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FRANCHISE AGREEMENT

A FRANCHISE AGREEMENT GRANTING A FRANCHISE TO THE GUNNISON COUNTY ELECTRIC ASSOCIATION, INC., A COLORADO ELECTRIC COOPERATIVE ("GCEA"), TO OPERATE AN ELECTRIC SUPPLY AND DISTRIBUTION SYSTEM IN THE TOWN OF CRESTED BUTTE, COLORADO ("TOWN"), AND FIXING THE TERMS AND CONDITIONS OF SUCH GRANT.

WHEREAS, the Gunnison County Electric Association, Inc., a Colorado electric cooperative ("GCEA") desires to secure a franchise to construct, maintain, and operate an electric supply and distribution system for the sale of electricity for light, heat, and power within the Town of Crested Butte, Colorado; and

WHEREAS, the Town Council of the Town of Crested Butte, a Colorado home rule municipality ("Town"), deems the granting of a franchise on the terms and conditions as set forth herein to be in the best interests of the Town, its inhabitants, property owners and visitors, and desires to grant a franchise to GCEA.

NOW, THEREFORE, for and in consideration of the above recitals and the mutual covenants and promises set forth herein, the parties agree as follows:

ARTICLE 1

1. GRANT OF FRANCHISE

The Town grants to GCEA, for the period specified in and subject to the conditions, terms and provisions contained in this franchise, the right to furnish, sell and distribute electricity to the Town and all residents of the Town. Subject to conditions, terms, and provisions contained in this franchise, the Town also grants to GCEA the right to acquire, construct, install, locate, maintain, operate, and extend into, within and through the Town and the right to make reasonable use of the streets, alleys, and other public rights-of-way and public easements as may be reasonably necessary to carry out the terms of this franchise. These rights shall extend to all areas of the Town as it is now constituted and to additional areas within the Town's boundaries as the Town may increase in size by annexation.

1.1 Effective Date and Duration. Upon execution hereof by GCEA, this franchise shall take effect for a period of fifteen (15) years retroactive to February 12, 2012 and expiring on February 12, 2027 unless extended by agreement of the Town and GCEA.

ARTICLE 2

2. FRANCHISE FEES

- 2.1 **Annual Funding.** In consideration of the grant of this franchise, GCEA will initially fund up to ten thousand dollars (\$10,000) per year. These funds may be utilized at the Town's discretion, for street lights, school crosswalks, public walkway lighting, public clocks, public sign lighting, seasonal decorative lighting and the receptacles to facilitate such seasonal lighting. These funds may also be utilized for energy efficient upgrades to public facilities. The funds may also be used for energy efficient projects including without limitation lighting efficiency upgrades, electric appliance upgrades, insulation upgrades, pump and motor efficiency upgrades. Studies to determine the practicality of efficiency and renewable energy proposals require the mutual agreement between the Town and GCEA, which will not be unreasonably withheld. This funding level shall be adjusted annually by the Town as measured by the Consumer Price Index Urban (Denver) CPI published by the Bureau of Labor Statistics, 911 Walnut Street, 15th Floor, Kansas City, Missouri 64106, or any successor, comparable index.

Funding Amount = \$10,000 X (Current year CPI / 2011 Baseline CPI)

If any portion of the annual funding is unused, the unused funding amount will be carried over for the following two (2) calendar years. At the end of the respective carryover period or at the end of the term of the franchise, the unused portion of the annual funding amount will expire.

GCEA will account for the funding amounts on a first in/first out basis by using all available unexpired carryover funding amounts for request before using the current year's funding amount.

The Town, at its option, may use the current year's funding amount and the available unexpired funding amounts during any calendar year. If the Town's street lighting or other mutually agreed project expenditures exceed the available balance of funding amounts, the Town shall pay the excess cost.

GCEA agrees to provide the Town an annual written summary and accounting, no later than the 28th day of February of each year of all annual funding credits and undergrounding credits used by the Town in the previous calendar year and the balance of lighting and undergrounding credits carried over for the benefit of the Town.

- 2.2 **Credit from Prior Franchise.** As additional consideration for this franchise, GCEA agrees to carry-over the unused fund balance of \$21,601.76. This balance was accrued under section 2.1 Annual Funding, of the previous franchise agreement and the Addendum effective January 01, 1999 incorporated in the Franchise as Exhibit A of the previous Franchise Agreement that expired February 12, 2012. These funds may be utilized at the Town's pleasure for street lights, school crosswalk, public walkway lighting fixtures, and seasonal decorative lighting and other mutually agreed project expenditures under section 2.1. It may also be used to supplement the available fund balance as set forth in section 2.1. Unused funds will expire at the end of the term of this agreement.
- 2.3 **Provision of Electricity.** GCEA will provide, at its expense, all electrical energy necessary to service the Town for street, school crosswalk, seasonal decorative lighting, public clocks and public walkway lighting purposes only. All electrical energy provided for the purpose of such lighting will be offset by GCEA's Green Power Program.
- 2.4 **Ornamental Lighting.** If the Town wishes to install exterior ornamental lighting, GCEA will do so and bill the Town for GCEA's actual cost of installation. This cost may be paid in whole or in part with the \$10,000 per year funded to the Town as set forth in Article 2.1 above. However, the cost of underground electrical conduit and/or supply lines for the installation of ornamental lighting will be borne by GCEA. Said installation shall be made within a reasonable time as GCEA's work load permits. Any ornamental street lighting shall be installed in accordance with the then current edition of the National Electrical Code.
- 2.5 **No Surcharge of Franchise Fee.** It is the intention and agreement of the Town and GCEA that so long as the Town accepts the municipal street lighting fixtures, electrical energy, reserve funds, and the credit from the prior franchise agreement, as set forth in this franchise, the consumers of energy located within the Town will not be surcharged to reimburse GCEA for such franchise fees. In the event that GCEA is ordered, by an entity of competent jurisdiction, to place a surcharge upon consumers of GCEA located in the Town to pay for such franchise fees as described herein, the Town may, at its option, reopen and renegotiate the terms of this Article 2 in order to avoid such a surcharge.
- 2.6 **Sustainable Energy Initiatives.** The Town and GCEA have goals to study, evaluate and implement clean, sustainable, reliable electrical energy sources that are economically prudent and provide affordable alternatives to conventional electric generation methods. The Town and GCEA agree to cooperate as appropriate to develop plans that meet these objectives and the goals as outlined in the Town's Energy Action Plan. Further, GCEA agrees to cooperate

with the Town, as appropriate and beneficial, on renewable energy projects and other new technology as it becomes available.

ARTICLE 3

3. SUPPLY, CONSTRUCTION AND DESIGN

- 3.1 **Supply of Electricity.** GCEA shall take all reasonable and necessary steps to provide an adequate supply of electricity to its consumers within the Town at the lowest reasonable cost consistent with long-term, reliable supplies. If the supply of electricity to said consumers should be interrupted, GCEA shall take all necessary and reasonable actions to restore such supply within the shortest practicable time. The kind and quality of service shall conform to standard electrical engineering and operating practices and shall be, at a minimum, equivalent to that furnished to other comparable municipalities in the State of Colorado. The distribution of electrical energy by GCEA shall conform with the applicable standards promulgated by the PUC and with the tariff provisions of GCEA setting standards for such distribution, as they may be amended from time to time.
- 3.2 **Restoration of Service.** In the event GCEA's electric system, or any part, thereof, is partially or wholly destroyed or incapacitated, GCEA shall use due diligence to restore its system to satisfactory service within the shortest practicable time.
- 3.3 **Obligations Regarding GCEA Facilities.** GCEA shall install, maintain, repair, renovate and replace its facilities with due diligence in a good and workmanlike manner. GCEA's facilities will be of sufficient quality and durability to provide safe, efficient and reliable electric service to the Town and its residents and property owners, GCEA shall use reasonable good faith efforts not to interfere with the Town's water mains, sewer mains or other municipal utilities use and shall minimize any disruption of the use of streets and other public places, and shall be responsible for repairing, at its expense, all damage done to municipal facilities and rights-of-way resulting from GCEA's failure to exercise reasonable good faith efforts. Similarly, GCEA shall use reasonable good faith efforts not to interfere with the rights or reasonable convenience of property owners whose property adjoins the public rights-of-way, and shall be responsible for repairing, at its expense, all damage done to such private property resulting from GCEA's failure to exercise reasonable good faith efforts. GCEA shall also erect, locate and maintain its facilities in such a way so as to limit, to the greatest extent possible after best efforts, interference with historical, and other natural features and will be permitted only upon receipt of prior written approval by the Town. GCEA will consult with the town on removal or significant alterations to trees with the exception of an emergency condition. GCEA facilities shall be

installed in public easements as approved by the Town, so as to cause a minimal amount of interference with such property.

- 3.4 **Excavation and Construction.** All excavation and construction work done by GCEA shall be done in accordance with all Town laws and regulations in a timely and expeditious manner which minimizes the inconvenience to the public and individuals. GCEA will provide a one week advanced notice for any significant or major construction activity that may cause inconvenience to the public or interrupt Town services within Town property or public rights-of-way. In the event of an emergency or service interruption, GCEA will notify the Town as soon as practical of such activity. All public and private property disturbed by GCEA excavation or construction activities shall be timely restored by GCEA, at its expense, to substantially its former condition. GCEA shall warrant any restorations or improvements within public rights-of-way performed by GCEA or its agents for a period of two years after completion. GCEA shall not be responsible to replace landscaping in public rights-of-way.
- 3.5 **Relocation of GCEA Facilities.** GCEA shall relocate any facility within the Town that is reasonably necessary in order to facilitate a change in street grade, water main, wastewater, storm water or other Town public works project. Prior to the commencement of work on any such public works project, the Town shall confer with the GCEA in order to design such public work in a manner to, as far as practicable, avoid the necessity for relocation of the GCEA's distribution lines and/or equipment. GCEA shall not be responsible for any removal, relaying or relocation costs required solely for aesthetic reasons or which are not supported by reasonable electrical engineering standards and practices. GCEA shall only be required to remove, relay or relocate any specific portion of its underground or overhead distribution lines or equipment, at the GCEA's expense, only once. If the Town requests removal, relaying or relocation of the same GCEA's distribution lines and/or equipment a second time during the term of this franchise, the Town shall bear the entire cost of each removal, relaying or relocation. Relocation of underground facilities shall be underground. Relocation of above ground facilities shall be above ground unless the Town agrees to pay the additional cost of undergrounding the facilities and only when such undergrounding is supported by engineering standards and practices. The Town may elect to fund such undergrounding projects in whole or part under the provisions outlined in Section 4.2 to the extent funds are available under those provisions.
- 3.6 **Service to New Areas.** If the boundaries of the Town are expanded during the term of this franchise, GCEA shall timely extend service to users in the expanded area, in accordance with GCEA's Extension Policy and this franchise.

- 3.7 **Planned Power Outages.** In the event the planned activities of GCEA necessitate a partial or complete power outage in the Town, GCEA agrees to inform the Town Manager or the Town Manager's designee no less than seven (7) days prior to such outage, or as soon as reasonably possible following the decision by GCEA, in order to minimize disruption to the community.

ARTICLE 4

4. COMPLIANCE

- 4.1 **Town Regulation.** The Town expressly reserves, and GCEA hereby recognizes, the Town's right and duty to adopt, from time to time, in addition to the provisions herein contained, such ordinances and rules and regulations as may be deemed necessary by the Town in the reasonable exercise of its taxation power and its police powers for the protection of the health, safety and welfare of its citizens.
- 4.2 **Undergrounding of Existing Facilities.** The Town may elect to use the remaining \$32,978.46 in the existing undergrounding reserve fund to pay part of the cost of underground existing facilities which unreasonably interfere with the reasonable use of private or public real property. When the owner of private real property desires the undergrounding of existing facilities, the Town and GCEA shall review such application to determine if undergrounding is warranted. If so determined, GCEA shall prepare an itemized estimate of the costs of such undergrounding and provide it to the Town for its review. The Town and GCEA shall then negotiate in good faith to determine the scope and estimated costs of the project. Costs of such projects "as built" shall be divided equally among GCEA, the Town through its reserve fund if agreed to at its sole discretion, and the owner(s) of the affected property(s), if any, unless otherwise agreed. If the Town requests that GCEA facilities be converted from overhead to underground, solely as a benefit to the Town and without involvement from any affected property owner, the cost shall be equally shared between GCEA and the Town. Such conversions are limited to the funding level in the reserve fund.

This provision shall not be construed to bind either party or infer a position by either party as to who is responsible for the expense of undergrounding electrical facilities. The reserve fund shall remain in an interest bearing account with a lending institution, designated by the Town. All interest earned shall be included in the fund.

Any facility shall be eligible for cost-sharing relocation pursuant to this subsection only one time during the term of this Franchise.

- 4.3 **Consultation with Town Regarding Construction and Design.** Prior to construction of any transmission lines or generating plant, substation, or similar structure within the Town, GCEA shall provide the Town with reasonable notice of its intent to construct and shall furnish to the Town a copy of the plans for such facilities. Upon reasonable notice from the Town, GCEA agrees to meet with the Town prior to construction of such facilities to discuss the perceived impacts such construction may have and to pursue the possible mitigation of those impacts. Any buildings or similar structures shall be subject to approval by the Board of Zoning and Architectural Review ("BOZAR").
- 4.4 **Compliance with PUC Regulations.** The electrical energy which GCEA distributes shall conform with the all current GCEA Rules and Regulations and applicable standards promulgated by the PUC in its Rules Regulating the Service of Electric Utilities, or any successor standards, and with standard setting tariff provisions of GCEA, that may be amended from time to time.
- 4.5 **Inspection.** The Town and its designees shall have the right to inspect at all reasonable times any portion of GCEA's system used to serve the Town and its residents. The Town and its designees shall also have access at all reasonable times to GCEA records for the purpose of determining GCEA compliance with this franchise. GCEA agrees to cooperate with the Town in conducting such inspections and to correct any discrepancies affecting the Town's interest in a prompt and efficient manner.

ARTICLE 5

5. TOWN USE OF GCEA FACILITIES

- 5.1 **Town Use.** The Town shall have the right to use all poles and suitable overhead structures constructed by GCEA within the Town for public governmental uses, which uses shall not include the distribution or transmission of electricity. Such uses by the Town shall be without cost; provided GCEA shall be indemnified and 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 Town, and said use shall be in such a manner as not to constitute a safety hazard or to interfere unnecessarily with GCEA's use of same, and shall comply with the National Electrical Safety Code. GCEA shall allow others holding a franchise, except for electric service, from the Town to so utilize such poles and suitable overhead structures upon reasonable terms and conditions to be agreed upon by GCEA and such holder of a franchise from the Town.
- 5.2 **Underground Conduit.** If GCEA installs new electric underground conduit or opens a trench or replaces such conduit, GCEA shall provide adequate advance

notice of such activity to permit additional installation of conduit and wire for the Town and other underground users. If the Town desires to have additional conduit and wire installed for its use, it will so notify GCEA and provide similar conduit and wire to GCEA at the Town's expense. GCEA agrees to install such conduit and wire for the Town, and the Town shall pay the prorated amount of GCEA's actual cost attributable to installing the Town's conduit and wire. "Actual Cost" shall not include GCEA's cost of opening and closing the trench.

ARTICLE 6

6. PUBLICATION COSTS

- 6.1 **Payment of Expenses Incurred by the Town.** GCEA shall pay in advance or timely reimburse the Town for its publication costs associated with the ordinance approving this franchise.

ARTICLE 7

7. UNDERGROUND CONSTRUCTION

- 7.1 **Underground Electrical Distribution Lines in New Areas.** GCEA shall place electrical distribution lines underground to serve new areas in accordance with GCEA's tariffs and line extension policies and the Town's ordinances and regulations.

ARTICLE 8

8. EXTENSION POLICY

- 8.1 **Compliance with Policy.** GCEA shall forthwith file with the Town Clerk its Extension Policy as filed with the Public Utilities Commission of Colorado, and GCEA shall not make or refuse to make any extension except as permitted by said policy. In addition, upon acceptance of this franchise, GCEA, at its own expense, shall have copies of its Extension Policy as filed with the Public Utilities Commission of Colorado available for distribution upon request of any person.

ARTICLE 9

9. ASSIGNMENT

- 9.1 **Approval Required.** Neither party shall sell or otherwise transfer any rights or obligations pursuant to this franchise without the prior written approval of the other, which approval shall not be unreasonably withheld. The grounds for any disapproval shall be set forth in writing.

ARTICLE 10

10. AMENDMENT

- 10.1 **Benefit of Other Franchises.** GCEA shall advise the Town within sixty (60) days of the execution of a subsequent franchise agreement entered into by GCEA and any other municipality within the State of Colorado, or any change to any existing franchise agreement. If any change occurs in the terms of an existing franchise by GCEA with any other municipality, or GCEA enters into any new franchise agreement with any other municipality, the Town may review and request an amendment of any term or provision of this franchise, including the consideration to be received by the Town as a part of this franchise. GCEA shall not be obligated to amend the terms of this franchise unless such change is to the equivalent provision contained in a new or amended franchise entered into by GCEA with any other municipality in the State of Colorado.
- 10.2 **Requests for Amendments.** The Town and GCEA recognize and agree that substantial, industry-wide changes regarding the sale and distribution of electrical energy may occur during the term of this franchise. At any time during the term of this franchise, either party may propose amendments to this franchise by giving thirty (30) days written notice to the other party. Thereafter, both parties will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s).

ARTICLE 11

11 ATTORNEY'S FEES

- 11.1 **Fees and Costs Awarded.** Should either party bring an action to enforce or interpret the terms and provisions hereof, or the rights of the parties, the prevailing party in any such action shall be entitled to all of its costs including without limitation, expert and other witness fees, and reasonable attorneys' fees incurred in such action.

ARTICLE 12

12. MISCELLANEOUS

- 12.1 **Successors and Assigns.** The rights, privileges, franchises and obligations granted and contained in this franchise shall inure to the benefit of and be binding upon the parties, their successors and assigns. Any such assignment shall be subject to the provision requiring prior written approval as set forth in Paragraph 9.1 above.
- 12.2 **Representatives.** Each party shall designate from time to time in writing, representatives for itself 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 or hand-delivery to the persons and addresses as hereinafter stated, unless the persons and addresses are changed by written notice to either party, delivered in person or by certified mail to the other party. Until any such changes are made, notices shall be sent to the Town Manager and to GCEA's Chief Executive Officer. Currently the addresses are as follows:

For the Town of Crested Butte:

Town Manager
Town of Crested Butte
P.O. Box 39
Crested Butte, CO 81224-0039

For GCEA:

Chief Executive Officer
Gunnison County Electric Assn, Inc.
P.O. Box 180
Gunnison, CO 81230-0180

- 12.3 **Severability.** In the event anyone or more of the provisions of this franchise or the enforcement thereof, shall be determined by a court with jurisdiction to be illegal, unlawful, or unconstitutional, the same shall not be construed to alter, annul, or repeal or otherwise affect any of the remaining terms, provisions, restrictions, requirements, or conditions of this franchise.
- 12.4 **Entire Agreement.** This franchise constitutes the entire agreement of the parties. There have been no representations made other than those contained in this franchise.
- 12.5 **Changes in Utility Regulation.** In the event new federal or state legislation materially affects the terms and conditions of this franchise, the parties agree to renegotiate the affected terms and conditions in good faith.
- 12.6 **Indemnification.** GCEA shall indemnify, defend and save the Town harmless from and against all liability or damage and all claims and demands whatsoever in nature arising out of the operations of GCEA within the Town pursuant to this franchise and shall pay all reasonable expenses arising therefrom, inclusive of attorneys' fees and costs. The Town and GCEA will each provide prompt written notice to the other of the pendency of any claim or action against either party arising out of the exercise by GCEA of its rights under this franchise. The Town and GCEA will each be permitted, at their own expense, to appear and defend or to assist in defense of such claim. Notwithstanding any provision hereof to the contrary, GCEA shall not be obligated to indemnify, defend or hold the Town harmless to the extent any liability, damage, claim and/or demand arises out of or is in connection with the negligent act(s) or failure(s) to act of the Town or Town's officers, agents or employees.
- 12.7 **Insurance.** GCEA shall provide the Town with proof of liability insurance consisting of a certificate of insurance and shall notify the Town of any changes to GCEA's liability insurance. The amounts of insurance shall not be less than \$10,000,000.00 per occurrence and shall cover the company's premises, facilities and operations including the risk of explosion, collapse, and underground hazards.
- 12.8 **Default: Remedies.** The failure of a party to timely observe or perform any obligation, term or condition required to be observed or performed under this franchise that is not cured within twenty (20) days following receipt of written notice of such failure, or such shorter or longer time period where otherwise provided in this franchise, shall constitute a material default under this franchise and shall allow the non-defaulting party to recover damages due to such default, including reasonable attorneys' fees costs and expenses, (ii) terminate this

franchise, and/or (iii) pursue all remedies available at law and in equity. All remedies may be independently and concurrently applied.

ARTICLE 13

13. APPROVAL

13.1 Council Approval. This grant of franchise shall not become effective unless adopted by Ordinance by the Town Council of Crested Butte, Colorado.

13.2 GCEA Approval. GCEA shall execute this franchise within thirty (30) days after its receipt of written notice that the Ordinance adopting this franchise has been approved by the Town Council.

WHEREFORE, the parties have executed this franchise to be effective as set forth in Article 1.1 hereof.

GUNNISON COUNTY ELECTRIC ASSOCIATION, INC., a Colorado Electric Cooperative

TOWN OF CRESTED BUTTE, a Colorado home rule municipality

BY [Signature]
Michael J. McBride, GCEA CEO

BY [Signature]
Aaron J. Huckstep, Mayor

Date: 11/8/2012

Date: 11/6/12

ATTEST:
[Signature]
Paul Hudgeons, Secretary

ATTEST:
[Signature]
Lynelle Stanford, Acting Town Clerk

[SEAL]

