

COPY

TOWN OF TIMNATH

ORDINANCE NO. 2-2005

AN ORDINANCE OF THE BOARD OF TRUSTEES
OF THE TOWN OF TIMNATH APPROVING A
FRANCHISE AGREEMENT WITH POUFRE VALLEY
RURAL ELECTRIC ASSOCIATION, INC. FOR
ELECTRICITY

WHEREAS, the Town of Timnath and the Poudre Valley Rural Electric Association, Inc. currently have a franchise agreement for the provision of electrical services; and

WHEREAS, Poudre Valley Rural Electric Association, Inc. has updated its franchise agreements with other municipalities and seeks to update its agreement with the Town of Timnath; and

WHEREAS, the updated franchise agreement increases the franchise fee, establishes and undergrounding fund, and has a term which expires on December 31, 2029.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF TIMNATH AS FOLLOWS:


Section 1. The Franchise Agreement between the Town of Timnath and the Poudre Valley Rural Electric Association, Inc. is hereby approved in substantially the same form as attached hereto.

Section 2. Repeal. All other ordinances or portions thereof inconsistent or conflicting with this Ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

Section 3. Severability. If any article, section, paragraph, sentence, clause, or phrase of this Ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The Board of Trustees hereby declares that it would have passed this Ordinance and each part or parts hereof irrespective of the fact that any one or part or parts be declared unconstitutional or invalid.


Section 4. Safety. This Ordinance is deemed necessary for the immediate protection of the health, welfare and safety of the community.

INTRODUCED, READ, PASSED AND ORDERED PUBLISHED this 2nd day of February, 2005.



Donna Benson, Mayor

ATTEST:



Linda Thompson, Town Clerk

FRANCHISE AGREEMENT BETWEEN
THE TOWN OF TIMNATH
AND
POUDRE VALLEY RURAL ELECTRIC ASSOCIATION
FOR ELECTRICAL SERVICES

FEBRUARY 2005

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ARTICLE 1 - DEFINITIONS

Section 1.0 For the purpose of this franchise, the following words and phrases shall have the meaning given in this article. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined in this article shall be given their common and ordinary meaning.

1.1 "Board" or "Town Board" refers to and is the legislative body of the Town.

1.2 "Association" refers to and is Poudre Valley Rural Electric Association, Inc. and its successors and assigned, but does not include its affiliates, subsidiaries or any other entity in which it has an ownership interest.

1.3 "Distribution Facilities" refer 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.

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

1.5 "Public Easements" refer to and are public and dedicated easements created and available for use by investor-owned, cooperative, or other public utilities for their facilities.

ARTICLE 2 - GRANT OF FRANCHISE

Section 2.1 Grant of Franchise. The Town of Timnath hereby grants to the Association, for the period specified in and subject to the conditions, terms and provisions contained in this franchise, a nonexclusive right to furnish, sell and distribute electricity to the Town and to all residents of the Town. Subject to the conditions, terms and provisions contained in this franchise, the Town also hereby grants to the Association a nonexclusive right to acquire, construct, install, locate, maintain, operate and extend into, within and through the Town all facilities reasonably necessary to furnish, sell and distribute electricity within and through the Town and a nonexclusive right to make reasonable use of the streets and other public places and public easements as may be 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 as the Town may increase in size by annexation or otherwise.

Section 2.2 Street Lighting Service. The rights granted in this franchise encompass the nonexclusive franchise to provide street lighting service to the Town and the provisions of this franchise apply with full and equal force to the street lighting service provided by the 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. 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.

Section 2.3 Term of Franchise. This franchise agreement shall take effect 30 days after its execution. The term of this franchise shall begin with said effective date of this franchise and expire on December 31, 2029.

The Association shall report to the Town within sixty (60) days of the execution of a subsequent franchise or of any change of franchise in other municipalities that could have a significant financial impact on the consideration to be paid by the Association to the Town hereunder. If the Town Board decides the consideration shall be so changed, it shall provide for such change by Ordinance, provided, however, that any change in the franchise fee is then allowed to be surcharged by the Association; and provided, further, that the consideration is not higher than the highest consideration paid by the Association to any municipality within the State of Colorado. For purposes of this section, consideration means the franchise fee established in Article 3, Section 1; the undergrounding program established in Article 10, Section 2; and also includes any other provision which is of similar significant financial benefit to the Town.

Section 3.4 Franchise Fee Payment in Lieu of Other Fees. Payment of the franchise fee by the Association is accepted by the Town in lieu of any occupancy tax, license tax, permit charge, inspection fee, or similar tax on the privilege of doing business or in connection with the physical operation thereof, but does not exempt the Association from any lawful taxation upon its property or any other tax not related to the franchise or the physical operation thereof and does not exempt the Association from payment of head taxes or other fees or taxes assessed generally upon businesses.

ARTICLE 4 - SUPPLY, CONSTRUCTION AND DESIGN

Section 4.1 Supply of Electricity. The Association shall take all reasonable and necessary steps to provide an adequate supply of electricity to its customers at the lowest reasonable cost consistent with long-term reliable supplies. If the supply of electricity to its customers should be interrupted, the Association shall take all necessary and reasonable actions to restore such supply within the shortest practicable time.

ARTICLE 5 - COMPLIANCE

Section 5.1 Town Regulation. The Town expressly reserves, and the Association expressly recognizes, the Town's right and duty to adopt, from time to time, in addition to the provisions herein contained ordinances and rules and regulations as may by the Town be deemed necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens.

Section 5.2 Compliance With Town Requirements. The Association will comply with all Town requirements regarding curb and pavement cuts, excavating, digging and related construction activities. If requested by the Town, the Association shall submit to the Town copies of reports of annual and long-term planning for capital improvement projects with descriptions of required street cuts, excavation, digging and related construction activities within thirty (30) days after issuance. Except for emergencies, the Town may require that all installations be coordinated with the Town's street improvement programs. The Town Administrator shall be the Town's agent for inspection and for compliance with Town ordinances and regulations on any such projects.

Section 5.3 Town Review of Construction and Design. Prior to construction of any significant facilities above ground; or, for electrical energy, any transmission lines or generating plant, building, substation, or similar structure within the Town, the Association shall furnish to the Town the plans for such facilities. In addition, the Association shall assess and report on the impact of such proposed construction on the Town environment. Such plans and reports may be reviewed by the Town to ascertain, without limitation [1] that all applicable laws including building and zoning codes and air and water pollution regulations are complied with, [2] that aesthetic and good planning principles have been given due consideration, and [3] that adverse impact on the environment has been minimized.

Section 5.4 Compliance with Standards. The electrical energy which the Association distributes shall conform with the standards adopted by the Association's board of directors, as the same may be amended from time to time. A copy of such standards shall be kept on file at the PUC and at the Association's office for inspection by the Town.

Section 5.5 Compliance With Air and Water Pollution Laws. The Association shall use its best efforts to take measures which will result in its facilities meeting the standards required by applicable Federal and State air and water pollution laws. Upon the Town's request, the Association will provide the Town with a status report of such measures.

Section 5.6 Inspection. The Town shall have the right to inspect at all reasonable times any portion of the Association's system used to serve the Town and its residents. The Town shall also have access to Association records for the purpose of determining Association compliance with this franchise. The Association agrees to cooperate with the Town in conducting the inspection and to correct any discrepancies affecting the Town's interest in a prompt and efficient manner.

ARTICLE 6 - LAWFUL PROVISIONS OF TARIFFS

Section 6.1 Tariff Provisions. Notwithstanding the deregulated nature of the Association, the Town and the Association recognize that the lawful provisions of the Association's tariffs are consistent with the restrictions and limitations of Article XXV of the Colorado Constitution regarding the rights of municipalities to franchise are controlling over any inconsistent provision in this franchise dealing with the same subject matter. In the opinion of the Association, no provision of this franchise is inconsistent with any of the currently effective provisions of the Association's tariffs.

Section 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 installations of similar conduit and pull wire for the Town. If the Town wants additional similar conduit and pull wire installed, it will so notify the Association and provide similar conduit and pull wire at its expense to the Association which will install it without further expense to the Town provided that such action by the Town will not unnecessarily interfere with the Association's facilities or delay the accomplishment of the project.

ARTICLE 9 - INDEMNIFICATION OF THE TOWN

Section 9.1 Town Held Harmless. The Association shall indemnify, defend and save the Town harmless from and against all liability or damage and all claims or demands whatsoever in nature arising out of the operations of the Association within the Town pursuant to this franchise and the securing of and the exercise by the Association of the franchise rights granted in this franchise and shall pay all reasonable expenses arising therefrom. The Town will provide prompt written notice to the Association of the pendency of any claim or action against the Town arising out of the exercise by the Association of its franchise rights. The Association will be permitted, at its own expense, to appear and defend or to assist in defense of such claim. Notwithstanding any provision hereof to the contrary, the Association shall not be obligated to indemnify, defend or hold the Town harmless to the extent any claim, demand or lien arises out of or in connection with any negligent act or failure to act of the Town or any of its officers or employees.

Section 9.2 Payment of Expenses Incurred by Town in Relation to Ordinance. At the Town's option, the Association shall pay in advance or reimburse the Town for expenses incurred in publication of notices and ordinances and for photocopying of documents arising out of the negotiations or process for obtaining the franchise. The Association shall also be responsible for attorney fees.

D. In addition to the provisions of this section, the Town may require additional facilities to be moved underground at the Town's expense, pursuant to Colorado law.

E. The Town acknowledges that the establishment of this undergrounding fund creates no vested right in the Town to the undergrounding monies. Further, if such monies are not expended pursuant to the conditions hereof, the fund is not convertible to cash or available for any other purposes.

Section 10.3 Review of Undergrounding Program. Representatives of both the Town and the Association shall meet periodically to review the Association's undergrounding program. This review shall include:

- (a) Underground programs, including conversions and replacements which have been accomplished or are underway by the Association, together with the Association's plans for additional undergrounding;
- (b) Undergrounding projects anticipated by the Town.

Such meetings shall be held to achieve a continuing program for the orderly undergrounding of electrical lines in the Town.

Section 10.4 Cooperation With Other Utilities. When undertaking a project of undergrounding, the Town and the Association shall work with other utilities or companies which have their lines overhead to attempt to have all lines undergrounded as part of the same project. When other utilities or companies are placing their lines underground, the Association shall cooperate with these utilities and companies and undertake to underground Association facilities as part of the same project where feasible. The Association shall not be required to pay the costs of any other utility in connection with work under this section.

ARTICLE 13

REMOVAL OF ASSOCIATION FACILITIES AT END OF FRANCHISE

Section 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 Town has not purchased or condemned the system and has not provided for alternative electrical service, the Association shall have no right to remove said system pending resolution of the disposition of the system. 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 Town stating that the Town has adequate alternative electrical energy sources to provide for the people of the Town shall the Association be entitled to remove any or all of said systems in use under the terms of this franchise.

ARTICLE 14

SMALL POWER PRODUCTION AND COGENERATION

Section 14.1 Association to Purchase. The Town expressly reserves the right to engage in the production of electricity. The Association agrees to negotiate for the purchase of Town-generated power in accordance with its tariffs.

ARTICLE 15 - FORFEITURE

Section 15.1 Forfeiture. Both the Association and the Town recognize there may be circumstances whereby compliance with the provisions of this franchise is impossible or is delayed because of circumstances beyond the Association's control. In those instances, the Association shall use its best efforts to comply in a timely manner and to the extent possible. If the Association fails to perform any of the

ARTICLE 17 - MISCELLANEOUS

Section 17.1 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 the Association, its successors and assigns.

Section 17.2 Third Parties. Nothing contained in this franchise shall be construed to provide rights to third parties.

Section 17.3 Representatives. Both parties shall designate from time to time in writing representatives for the Association and the Town who will be the persons to whom notices shall be sent regarding any action to be taken under this ordinance. Notice shall be in writing and forwarded by certified mail or hand delivery to the persons and addresses as hereinafter stated, unless the persons and addresses are changed at the written request of either party, delivered in person or by certified mail. Until any such change shall hereafter be made, notices shall be sent to the Town Mayor and to the Association's General Manager. Currently the addresses are as follows:

For the Town of Timnath:

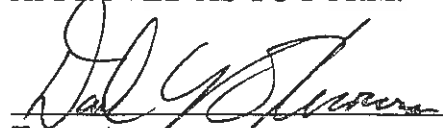
Town Mayor
Town of Timnath
4100 Main Street
Timnath, CO 80547

For the Association:

General Manager
Poudre Valley Rural Electric Assn., Inc.
P.O. Box 272550
Ft. Collins, CO 80527-2550

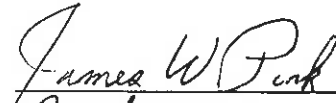
Section 17.4 Severability. Should any one or more provisions of this franchise be determined to be illegal or unenforceable, all other provisions nevertheless shall

APPROVED AS TO FORM:



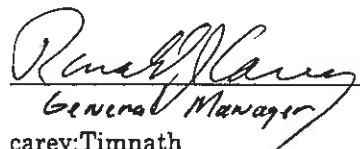
Town Attorney

POUDRE VALLEY RURAL ELECTRIC
ASSOCIATION



President

ATTEST:



General Manager
carey:Timnath