

ORDINANCE #17 - 08

AN ORDINANCE GRANTING TO MOON LAKE ELECTRIC ASSOCIATION, INC. A  
NON-EXCLUSIVE FRANCHISE FOR THE CONSTRUCTION, OPERATION AND  
MAINTENANCE OF AN ELECTRICAL DISTRIBUTION SYSTEM IN  
DAGGETT COUNTY, STATE OF UTAH.

RECITALS:

WHEREAS, Moon Lake Electric Association, Inc., a Utah corporation, (Company) desires to construct, maintain, and operate an electrical distribution and/or transmission system within Daggett County (County); and

WHEREAS, Daggett County, in the exercise of its police power, ownership, and use rights over and in the public right-of-way, and pursuant to its other regulatory authority, has determined that it is in the best interest of the public to grant to Company, its successors and assigns, a non-exclusive franchise to operate its business within Daggett County,

MEnt 028062 Bk 88 Pg 93  
Date: 03-JUL-2017 8:13:44AM  
Fee: None Filed By: KL  
KERI PALLESEN, Recorder  
DAGGETT COUNTY  
For: DAGGETT COUNTY

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS THAT:

ARTICLE I  
FRANCHISE AGREEMENT; TERM OF FRANCHISE: RENEWAL

1.1 Grant of Franchise. In accordance with this ordinance, Daggett County hereby renews its Franchise Agreement with Moon Lake Electric Association, Inc. The term of this Franchise is for a period of fifty (50) years from its effective date, with all terms and conditions as stated herein and as agreed to by the parties.

1.2 Renewal. At least one hundred twenty (120) days prior to the expiration of this Franchise Agreement, the Company and Daggett County may agree to either extend the term of this Franchise for a mutually acceptable period of time, or the parties shall use best faith efforts to renegotiate a replacement franchise.

ARTICLE II  
COMPANY EXCAVATIONS AND RELOCATIONS

2.1 Franchise Rights to Use Public Property. The Company shall have the right to excavate in, occupy, and use any and all such streets, highways, viaducts, bridges, roads, lanes, public ways, and other public places ("Public Ways") subject to the conditions of Daggett County's ordinances, rules and regulations. Daggett County shall require that entities collocating facilities within Public Ways maintain at least a two foot separation from centerline of power line

Ent 028062 Bk 88 Pg 93  
Date: 03-JUL-2017 8:13:44AM  
Fee: None Filed By: KL  
KERI PALLESEN, Recorder

facilities to allow for pole additions and replacements by Company as necessary.

2.2 Company Duty to Relocate. Whenever Daggett County shall, in the interest of the public convenience, necessity, health, safety, and general welfare, require the relocation or reinstallation of any property of the Company or its successors, in any of the streets, alleys, rights-of-way, or public property of Daggett County, it shall be the obligation of the Company, upon notice of such requirement, to promptly commence work to remove, relocate, or reinstall such property as may be reasonably necessary to meet the requirements of Daggett County. Such relocation, removal, or reinstallation by the Company shall be at Company's expense. Before requiring a relocation of electric facilities, Daggett County shall, with the assistance and consent of the Company, identify a reasonable alignment for the relocated electric facilities within the Public Ways of Daggett County. Any money and all rights of reimbursement from the State of Utah or the federal government, to which the Company may be entitled for work done by the Company pursuant to this paragraph, shall be the property of the Company. Daggett County shall assign or otherwise transfer to the Company all rights it may have to recover costs for such work performed by the Company and shall reasonably cooperate with the Company's efforts to obtain reimbursement. Daggett County shall request State of Utah and Federal funds, as applicable, to aide in the relocation of powerline facilities when seeking financial aid for projects which require powerline relocation.

2.3 Relocation for Private Development. The Company shall not be obligated to pay the cost of any relocation that is required or made a condition of a private development. If the removal or relocation of facilities is caused directly or otherwise by an identifiable development of property in the area, or is made for the convenience of a customer, the Company may charge the expense of removal and relocation to the developer or customer.

2.4 Daggett County's Duty to Obtain Approval to Move Company Property; Emergency. Except as otherwise provided herein, Daggett County shall not, without the prior written approval of the Company, intentionally alter, remove, relocate, or otherwise interfere with any Company facilities unless such removal is required to prevent imminent loss to life or property.

2.5 Subdivision Plat Notification. Before Daggett County grants final approval to any new subdivision within Company's service territory, Daggett County shall submit the plat for review to the Company and receive confirmation that the Company has determined that it can supply electricity to the proposed new subdivision.

PLAN, DESIGN, CONSTRUCTION, AND INSTALLATION  
OF THE COMPANY FACILITIES; MAINTENANCE

3.1 Information Exchange. Sufficient documentation outlining the location for the installation of any Facilities will be provided to the County by Company. County shall have a ten (10) business day comment period from the date received to ensure the location of the proposed Facilities will not interfere with other uses within public rights-of-way. It is understood that Company will work in good faith as to not encumber or interfere with other uses within the said County public rights-of-way. Written notification to the Daggett County Planning and Zoning board chairman may include any of the following, E-Mail, U.S. Postal Service or in person. Should Company not hear from the County within the review period they may proceed with the location of any Facilities addressed in the documentation provided.

3.2 Annual Information Coordination. Upon request, by either Daggett County or Company, the Company and Daggett County shall meet for the purpose of exchanging information and documents regarding construction and other similar work within Daggett County, with a view toward coordinating their respective activities in those areas where such coordination may prove mutually beneficial. Any information regarding future capital improvements that may involve land acquisition shall, upon request, be treated with confidentiality.

3.3 Repair of Private Property. At any time the Company (in furtherance of its supplying electric service), disturbs the yard, residence, or other real or personal property of a customer, to the extent such repair or replacement was made necessary as a direct result of the operations of the Company, the Company shall restore or repair, at the expense of the Company, any fence, grass, soil, shrubbery, bushes, flowers, other low level vegetation, sprinkler system, irrigation system, gravel, flat concrete, or asphalt damaged or displaced, provided, however, the Company shall not be obligated under this Section to incur costs in excess of those customarily incurred by the Company. The requirements imposed upon the Company extend to any subcontractor or independent contractor that the Company might employ to perform the tasks outlined in this Section.

3.4 Excavation. The Company shall have the right to excavate the Public Ways subject to reasonable conditions and requirements of Daggett County. The Company will abide by all applicable ordinances and all reasonable rules, regulations, and requirements of Daggett County, and Daggett County may inspect the manner of such work and require remedies as may be necessary to assure compliance.

3.5 Compliance With Applicable Laws. All electric lines,

poles, towers, pipes, conduits, equipment, property, and other structures or assets installed or used under color of this Franchise, shall be used, constructed, and maintained in accordance with applicable federal, state, and Daggett County laws and regulations, and shall be kept current with new codes as required by law.

3.6 Location to Minimize Interference. Such lines, poles, towers, pipes, conduits, equipment, property, structures, and assets shall be located so as to cause minimum interference with the use of Daggett County's Public Ways by others, and shall cause minimum interference with the rights of property owners who adjoin the Public Ways.

3.7 Repair Damage. If, during the course of work on its facilities, the Company causes damage to or alters any Public Way or public property, the Company shall replace and restore it in as good a condition as existed before the work commenced. The Company will abide by all reasonable regulations and requirements of Daggett County ordinances pertaining to such work(s).

3.8 Safety Standards. The Company's work, while in progress, shall be properly protected at all times with suitable barricades, flags, lights, flares, or other devices as are reasonably required by applicable safety regulations or standards imposed by law.

3.9 Authority to Trim and Remove Vegetation.

a) The Company or its contractor may prune all trees and vegetation which overhang the Public Ways, whether such trees or vegetation originate within or outside the Public Ways, to prevent the branches or limbs or other part of such trees or vegetation from interfering with the Company's Electrical Facilities. Nothing contained in this Section shall prevent the Company, when necessary from cutting down and removing any trees which may come into contact with Company's electric facilities.

b) The Company shall make a reasonable best effort, including written notice, to notify owners of property adjacent to the trees to be trimmed at least seventy-two (72) hours prior to doing the work.

c) The Company shall hold harmless Daggett County and its officers, agents, and employees from and against any and all damages arising out of or resulting from the removal, trimming, mutilation, of or any injury to any tree or trees, shrubs or shrubbery proximately caused by the Company or its officers, agents, employees, contractors, or subcontractors.

ARTICLE IV

## POLICE POWER

Daggett County expressly reserves, and the Company expressly recognizes County'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 Daggett County, be deemed necessary in the exercise of its police power for the protection of the health, safety, and welfare of its citizens and their properties.

## ARTICLE V ELECTRICAL SERVICE

5.1 Duty to Supply Electricity. Subject to the terms of this Franchise Agreement, state law, and the terms and conditions imposed by the Public Utilities Commission, the Company shall furnish electricity within Daggett County, to Daggett County and to the inhabitants thereof, and to any person or persons or corporation doing business in Daggett County. The Company shall at all times, take all reasonable and necessary steps to assure 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 Company shall take all necessary and reasonable actions to restore such supply at the soonest practicable time.

5.2 Upgrading System. The Company will, from time to time during the term of this Franchise, make such enlargements and extensions of its electric system as are necessary to adequately provide for the requirements of Daggett County and the inhabitants thereof. Such enlargements and extensions shall be made in accordance with the Company's currently effective tariffs and line extension policies as approved by its Board of Directors, the rules of the Public Service Commission, and state law.

5.3 Promulgation of Rules for Company Operations. The Company, from time to time, may, in accordance with the requirements of the Public Service Commission, promulgate such rules, regulations, terms and conditions governing the conduct of its business, including the utilization of electricity; and the interference with, or alteration of, any of the Company's property upon the premises of its customers, as shall be necessary to insure a continuous and uninterrupted service to each and all its customers and the proper measurement thereof.

## ARTICLE VI

## TRANSFER OF FRANCHISE

The Company shall not transfer or assign any rights under this Franchise to another entity except transfers and assignments by operation of law, unless Daggett County shall first give its approval in writing, which approval shall not be unreasonably withheld; provided, however, inclusion of this Franchise as property subject to the lien of the Company's mortgage(s) shall not constitute a transfer or assignment.

### ARTICLE VII EARLY TERMINATION OR REVOCATION OF FRANCHISE

7.1 Grounds for Termination. Daggett County may terminate or revoke this Franchise Agreement and all rights and privileges herein provided for any of the following reasons:

a) The Company, by act or omission, materially violates a duty or obligation herein set forth in any particular within the Company's control, and with respect to which redress is not otherwise herein provided. In such event Daggett County may after hearing, determine that such failure is of a material nature; and thereupon, after written notice given Company of such determination, Company shall, within thirty (30) days of such notice, commence efforts to remedy the conditions identified in the notice, and will have six (6) months from the date it receives notice to remedy the conditions. After the expiration of such six (6) months period and failure to correct such conditions, Daggett County may declare this Franchise forfeited, and thereupon the Company shall have no further rights or authority hereunder; provided, however, that any such declaration of forfeiture shall be subject to judicial review as provided by law, and provided further that in the event such failure is of such nature that it cannot be reasonably corrected within the six (6) months' time provided above, Daggett County shall provide additional time for the reasonable correction of such alleged failure.

b) The Company becomes insolvent, unable, or willing to pay its debts, its adjudged bankrupt, or all or part of its facilities should be sold under an instrument to secure a debt and is not redeemed by the Company within thirty (30) days; or

c) In furtherance of the Company policy or through acts or omissions done within the scope and course of employment, a director or officer of the Company knowingly engages in conduct or makes a material misrepresentation with or to Daggett County, that is fraudulent or in violation of a felony criminal statute of the State of Utah.

7.2 Reserved Rights. Nothing contained herein shall be deemed

to preclude the Company from pursuing any legal or equitable rights or remedies it may have to challenge the action of Daggett County.

ARTICLE VIII  
COMPANY INDEMNIFICATION

8.1 No Daggett County Liability. Except as otherwise specifically provided herein, Daggett County shall in no way be liable or responsible for any loss or damage to property or any injury to, or death of any, person that may occur in the construction, operation, or maintenance by the Company of its lines and appurtenances hereunder.

8.2 Company Indemnification of Daggett County. The Company shall indemnify, defend, and hold Daggett County harmless from and against claims, demands, liens, and all liability or damage of whatsoever kind on account of or arising from the grant of this Franchise, the exercise by the Company of the related rights, or from the operations of the Company within Daggett County. Said indemnification shall include but not be limited to the Company's negligent acts or omissions pursuant to its use of the rights and privileges of this Franchise, including construction, operation, and maintenance of electrical lines and appurtenances whether or not any such use, act, or omission complained of is authorized, allowed, or prohibited by the Franchise.

8.3 Notice of Indemnification. Daggett County shall (a) give prompt written notice to the Company of any claim, demand, or lien with respect to which Daggett County seeks indemnification hereunder and (b) unless in Daggett County's judgment a conflict of interest may exist between Daggett County and the Company with respect to such claim, demand, or lien, permit the Company to assume the defense or such claim, demand, or lien. Notwithstanding any provisions hereof to the contrary, the Company shall not be obligated to indemnify, defend, or hold Daggett County harmless to the extent any claim, demand, or lien arises out of or in connection with any negligent act or failure to act of Daggett County or any of its officers or employees.

ARTICLE IX  
REMEDIES

9.1 Non-Contestability. Neither Daggett County nor the Company will take any action for the purpose of securing modification of this Franchise before either the Public Service Commission or any court of competent jurisdiction; provided, however, that neither shall be precluded from taking any action it deems necessary to resolve difference in interpretation of the Franchise nor shall the Company be precluded from seeking relief from the courts in the event Public Service Commission orders, rules, or regulations conflict with

or make performance under the Franchise illegal.

9.2 Breach of Contract. In the event the Company or Daggett County fails to fulfill any of their respective obligations under this Franchise, Daggett County, or the Company, whichever the case may be, will have a breach of contract claim and remedy against the other in addition to any other remedy provided by law, provided that no remedy which would have the effect of amending the specific provisions of this Franchise shall become effective without such action which would be necessary to formally amend the Franchise.

#### ARTICLE X NOTICES

Unless otherwise specified herein, all notices from the Company to Daggett County pursuant to or concerning this Franchise Agreement shall be delivered to Daggett County's office. Unless otherwise specified herein, all notices from Daggett County to the Company pursuant to or concerning this Franchise shall be delivered to Moon Lake's office.

#### ARTICLE XI CHANGING CONDITIONS

The Company and Daggett County recognize that many aspects of the electric utility business are currently the subject of discussion, examination, and inquiry by different segments of the industry and affected regulatory authorities, and that these activities may ultimately result in fundamental changes in the way the Company conducts its business and meets its service obligations. In recognition of the present state of uncertainty respecting these matters, the Company and Daggett County each agree, on request of the other during the term of this Franchise, to meet with the other and discuss in good faith whether it would be appropriate in view of developments of the kind referred to above during the term of this Franchise, to amend this Franchise or enter into separate, mutually satisfactory arrangements to effect a proper accommodation of any such development.

#### ARTICLE XII AMENDMENT

12.1 Proposed Amendment. At any time during the term of this Franchise Agreement, Daggett County or the Company may propose amendments to this Franchise Agreement by giving thirty (30) days written notice to the other of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s).



12.2 Amendments. No amendment or amendments to this Franchise Agreement shall be effective until mutually agreed upon by Daggett County and the Company.


ARTICLE XIII  
SEVERABILITY

13.1 Conditions. If any section, sentence, paragraph, term, or provision of this Franchise Agreement or the Franchise Ordinance is for any reason determined to be or rendered illegal, invalid, or superseded by other lawful authority, including any state or federal, legislative, regulatory or administrative authority having jurisdiction thereof or determined to be unconstitutional, illegal, or invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such determination shall have no effect on the validity of any other section, sentence, paragraph, term, or provision hereof, all of which will remain in full force and effect for the term of the Franchise Agreement or any renewal or renewals thereof.

13.2 No Benefit to Third-Party Beneficiaries. No provision of this Franchise Agreement shall be interpreted to confer upon any person or entity, a third party benefit. It is the intent of this Franchise Agreement that all benefits be strictly limited to the parties hereto.


APPROVED and ADOPTED this 13<sup>th</sup> day of June, 2017.


ATTEST:

  
\_\_\_\_\_  
Brian Raymond  
County Clerk/Treasurer




DAGGETT COUNTY  
BOARD OF COMMISSIONERS

  
\_\_\_\_\_  
Jack Lytle, Chair

  
\_\_\_\_\_  
Clyde Slaugh, Commissioner

  
\_\_\_\_\_  
Randy Asay, Commissioner

MOON LAKE:

  
\_\_\_\_\_  
Grant J. Earl, General Manager