

**ORDINANCE NO. 2004-4
TOWN OF RICO**

**GRANTING TO THE SAN MIGUEL POWER ASSOCIATION, INC., ITS
SUCCESSORS AND ASSIGNS, AN ELECTRIC LIGHT, HEAT AND POWER
FRANCHISE**

Whereas, on or about July 11, 1989, the Town of Rico, by Ordinance No. 280, granted San Miguel Power Association, Inc. ("SMPA") an exclusive franchise to operate within the municipal boundaries of the Town of Rico, State of Colorado (the "Town"), which franchise expires on July 11, 2004; and,

Whereas, the Home Rule Charter of the Town of Rico, Article X, grants the Town the authority to enter into Franchise Agreements which do not exceed 20 years; and,

Whereas, the Board of Trustees of the Town of Rico finds that entering a Franchise Agreement with SMPA will provide essential public infrastructure and will thereby promote the health, safety and general welfare of the Rico community;

NOW, THEREFORE BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF RICO, the following:

SECTION 1. There is hereby granted to SMPA, its successors and assigns, the right, privilege or franchise for a terms of fifteen (15) years from and after July 11, 2004, to erect, construct, maintain and operate in the present and future streets, alleys and public places in the Town, and its successors, electric light and power lines, together with all the necessary or desirable appurtenances (including, but not limited to, underground conduits, poles, towers, wires, transmission lines and telegraph and telephone lines for its own use), for the purpose of supplying electricity to the Town and the inhabitants thereof, for light, heat, power and other purposes.

SECTION 2. The kind and quality of service to be furnished by SMPA hereunder shall conform to standard electrical engineering and operating practices and shall be equivalent to that furnished to other municipalities of the State of Colorado of the same class as and similarly situated to the Town.

SECTION 3. SMPA shall furnish electrical energy within the corporate limits of the Town or any addition to the Town and to the inhabitants and any person or persons or corporation doing business in the Town or any addition thereto at the rates and under the terms and conditions set forth in SMPA's published tariffs.

SECTION 4. Poles and towers shall be so erected as to interfere as little as possible with traffic over said streets and alleys. The location of all poles, towers and conduits shall be fixed under the supervision of the Board of Trustees of the Town, or its designee, but not so as to unreasonably interfere with the proper operation of said lines.

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SECTION 5. It is agreed and understood that the Town reserves the right to purchase or condemn the electrical distribution system of SMPA in a manner provided by law.

SECTION 6. For the rights and privileges granted by this franchise to SMPA, and so long as SMPA shall exercise the rights and privileges granted thereby, SMPA agrees to pay quarterly to the Town, in cash, a sum equal to two percent (2%) of the gross revenue derived by SMPA from the sale and use of electrical power and energy within the corporate limits of the Town, said payments to be in lieu of any municipal, occupation or license tax upon SMPA, its property or business, however, notwithstanding the foregoing, the municipal sales tax shall apply to all electricity sold at retail in the Town of Rico. The term "gross revenue" as used herein shall be construed to mean any revenue of SMPA derived from the sale and use of electric power and energy within the Town beginning July 11, 2004, after adjustment for the net write-off of uncollectible accounts and any corrections of bills theretofore rendered.

SECTION 7. The quarterly payments herein specified shall be made not later than the 25th day of the month following the preceding calendar quarter. Each payment shall be supported by a statement verified by a duly authorized representative of SMPA as to its truth or correctness, showing the gross revenues for the period covered by said payments. The books of SMPA showing gross revenues derived from the sale and use of electric power and energy within the corporate limits of the Town shall be open for inspection by the Board of Trustees of the Town or its authorized representatives at all reasonable times for the purpose of verifying said adjusted gross revenues.

SECTION 8. SMPA shall so maintain its electrical equipment and distribution systems as to afford all reasonable protection against injury or damage to persons or property therefrom, and SMPA shall indemnify the Town from all liability or damage and all reasonable expenses necessarily accruing against the Town arising out of the negligent exercise by SMPA of the rights and privileges hereby granted; provided that SMPA shall have had notice of the pendency of any action against the Town arising out of such exercise by SMPA of said rights and privileges and be permitted at its own expense to appear or defend or assist in the defense of the same.

SECTION 9. Ordinance No. 280 AN ORDINANCE GRANTING TO THE SAN MIGUEL POWER ASSOCIATION INC., ITS SUCCESSORS AND ASSIGNS, AN ELECTRICAL LIGHT, HEAT AND POWER FRANCHISE is hereby repealed in its entirety upon the effective date of this ordinance.

SECTION 10. This Ordinance shall take effect as soon as it shall have been approved and published as required by law and deposited and recorded in the office of the Recorder and Clerk of the Town.

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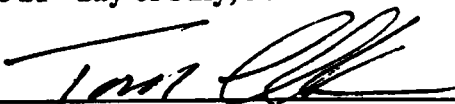
SECTION 11. Pursuant to §10.6 of the Rico Home Rule Charter, this Franchise Agreement shall be subject to periodic review by the Board of Trustees, which shall occur only after providing at least sixty days (60) advance written notice to SMPA.

SECTION 12. EFFECTIVE DATE. This Ordinance shall be effective immediately upon final adoption, and shall be retroactive in its application to the date of expiration of the former Franchise Agreement with SMPA entered into by Ordinance No. 280.

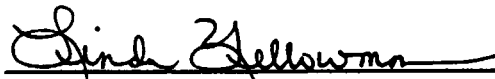
SECTION 13. POSTING AND PUBLISHING. This Ordinance shall be posted at the Rico Post Office and Rico Town Hall and published in the Rico Sun-Times.

INTRODUCED, READ, APPROVED AND ADOPTED BY THE BOARD OF TRUSTEES OF THE TOWN OF RICO on the 16th day of June, 2004.

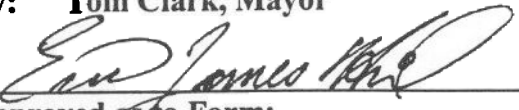
READ AND APPROVED ON SECOND AND FINALLY READ AFTER CONDUCTING A PUBLIC HEARING BY THE BOARD OF TRUSTEES OF THE TOWN OF RICO on the 21st day of July, 2004.



By: Tom Clark, Mayor



Attest Linda Yellowman, Town Clerk
[Town Seal]



Approved as to Form:
Eric James Heil, Esq., Town Attorney