

AGREEMENT

THIS AGREEMENT (“Agreement”) is made and entered into effective the ___ day of ___, ___ by and between the City of Pueblo, a Colorado municipal corporation (“City”) and Black Hills Colorado Electric, LLC, a Delaware limited liability company (“Black Hills”). The City and Black Hills may be individually referred to as “Party” or collectively referred to as “Parties.”

WITNESSETH

WHEREAS, Black Hills is an investor owned public utility engaged in the generation, transmission, distribution and sale of electric energy and electric service within the corporate limits of the City; and

WHEREAS, on August 10, 2010, the electors of the City of Pueblo approved Ordinance No. 8186, which granted a twenty (20) year electric utility franchise to Black Hills; and

WHEREAS, pursuant to C.R.S. 31-15-707(1)(a)(IV), the City asserts it is authorized to condemn and purchase the electric works facilities of Black Hills, at intervals of ten (10) or fifteen (15) years after the franchise’s effective date; and

WHEREAS, on September 25, 2017, by Resolution No. 13790, the City Council declared the City’s intent to terminate its franchise agreement with Black Hills on August 10, 2020, and to create a municipal electric utility enterprise, subject to assessing the legal, financial, and operational feasibility of municipalization; and

WHEREAS, in 2018 and 2019, the City and Black Hills commissioned feasibility studies of the costs and implications of the City acquiring the electric assets of Black Hills and assuming responsibility for providing electric service to Black Hills’ existing customers. The consultants retained by the City and Black Hills to perform the feasibility studies have reached different conclusions regarding the economic and logistical feasibility of the City purchasing Black Hills’ electric assets and creating a municipal electric utility; and

WHEREAS, the Parties understand and agree that the costs and legal expenses associated with the City obtaining regulatory approval from the Colorado Public Utilities Commission and other regulatory bodies and the legal costs and expenses associated with a subsequent condemnation proceeding would be expensive for the City’s taxpayers and Black Hills; and

WHEREAS, the purchase of Black Hills’ electric assets and the formation of a municipal electric utility would be required to be approved by the electors of the City at a Special Municipal Election; and

WHEREAS, the Parties are desirous of spending their resources on economic development efforts in the City of Pueblo and supporting community organizations that provide essential services to the citizens of Pueblo; and

WHEREAS, due to the time, costs, and legal expenses associated with the municipalization effort and the uncertainty of electoral and judicial outcomes, the Parties agree that it is in the public interest to reach a compromise and settlement of disputes.

NOW THEREFORE, in consideration of the foregoing recitals and of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto hereby agree as follows:

ARTICLE 1 DEFINITIONS

For purposes of this Agreement, the following words and phrases shall have the meaning given in this Article. When not inconsistent with context, words used in the present tense include the future tense, words in the plural include the singular and words in the singular include the plural. 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 “Base Electric Rates” refers to the following components of Black Hills’ rates that are provided in its publicly available tariff: customer charge, energy charge, demand charge, and the General Rate Schedule Adjustment.
- 1.2 “Black Hills” refers to Black Hills Colorado Electric, LLC, a Delaware limited liability company and its successor and assigns.
- 1.3 “City” refers to the City of Pueblo, a municipal corporation of the State of Colorado, organized and existing under Article XX of the Constitution of the State of Colorado and the Home Rule Charter of the City.
- 1.4 “City Council” or “Council” refers to the legislative body of the City.
- 1.5 “Energy Cost Adjustment” refers to the rate component that is provided in Black Hills’ publicly available tariff.
- 1.6 “Force Majeure” means any occurrence or condition beyond the reasonable control of Black Hills that prevents Black Hills from performing its obligations under this Agreement, including but not limited to, acts of terrorism, acts of governmental authority, acts of God, labor disputes, natural disasters, tornado, earthquake, flood, lightning, fire, storm, or explosion, which substantially impair Black Hills’ ability to perform.
- 1.7 “Franchise” refers to City Ordinance No. 8186 and the Franchise Agreement between the City and Black Hills, which expires by its own terms on August 12, 2030.

- 1.8 “Government Imposition” means a change in federal, state, or local requirements or charges that are projected to cause the Company’s annual total cost of service to increase by \$2,000,000 or greater, including, but not limited to: taxes; the cost-of-service regulatory framework; regulations imposed on energy, emissions, the environment; or reclamation requirements imposed after the effective date of this Agreement upon the Company.
- 1.9 “Material Change” refers to any year in which Black Hills’ actual return as compared to its authorized return is of a negative amount of \$4,000,000 or more, as provided in Black Hills’ annual report that is publicly filed to the PUC on or before April 30th pursuant to 4 CCR 723-3-3006.
- 1.10 “Parks” refers to municipal parks, park areas, playgrounds, play fields, lake facilities, swimming pools, fountains, recreation and community buildings, tennis and baseball arenas and golf courses, inside the corporate limits of the City.
- 1.11 “Public Utilities Commission,” “PUC,” or “Commission” refers to the Public Utilities Commission of the State of Colorado or other state agencies succeeding to the regulatory powers of the Public Utilities Commission.
- 1.12 “Streets” or “City Streets” refers to the surface, the airspace above the surface, the airspace above the surface of any City dedicated streets, alleys, sidewalks, bridges, roads, viaducts, lanes, public easements, and other rights-of-way within the City.

ARTICLE 2
RENEWABLE ENERGY

- 2.1 Black Hills agrees to cooperate with the City to accomplish the City’s goal of becoming a one hundred percent (100%) renewable energy municipality by 2035.
- 2.2 Before December 31, 2022, to achieve customer rate savings, the Company shall hold through a Colorado PUC proceeding a Request for Proposals for the competitive acquisition of renewable generation in an aggregate amount of up to 200 megawatts. The Company shall propose to the Colorado PUC to reflect the associated rate savings of the acquisition of any new resources from this process through the Company’s Energy Cost Adjustment. The Company anticipates that electric rate savings from the acquisition of new resources of 200 MW over the life of the resources will attain between \$117-\$284 million in savings benefiting customers.
- 2.3 Before December 31, 2024, Black Hills agrees that it will facilitate the development of six (6) community solar gardens, three (3) of which must include subscription set asides that are reserved for low-income customers. The

community solar gardens will permit the Company's customers an alternative method to achieve renewable and rate benefits.

ARTICLE 3 ELECTRIC RATES

- 3.1 Concurrent with Black Hills' requirements in Article 2 to acquire new renewable resources that achieve electric rate savings, Black Hills agrees that it will not seek an increase to Base Electric Rates effective before January 1, 2025, through a rate review before the Colorado Public Utilities Commission. This electric base rate freeze is binding on Black Hills, unless: (1) an event of Force Majeure occurs; (2) a Government Imposition occurs; or (3) a Material Change occurs.

ARTICLE 4 CHARITABLE SUPPORT

- 4.1 In recognition of the City's incurrence of expenses associated with assessing the legal, financial, and operational feasibility of municipalization, Black Hills shall provide during the remaining term of its Franchise contributions in an amount of \$400,000 for the purpose of providing low-income energy assistance to City residents. Black Hills' contributions as required by this Article 4.1 are not recoverable from Black Hills' electric utility customers.
- 4.2 Before the end of its Franchise, Black Hills agrees to make additional contributions to organizations and projects located in the City and in Pueblo County that are not recoverable from Black Hills' electric utility customers. The contributions shall be of no less than \$7.5 million as follows:
- (a) An average of \$400,000 annually consisting of cash and in-kind contributions to community organizations and projects; and
 - (b) An average of \$350,000 annually consisting of cash and in-kind contributions for economic development, including the recruitment of new employers to the City.
- 4.3 Black Hills shall provide an annual report to the City on the contributions made under this Article 4.

ARTICLE 5 ECONOMIC DEVELOPMENT

- 5.1 Units 5 and 6. Black Hills agrees to undertake good-faith efforts to facilitate the redevelopment of Units 5 and 6 located on the City's Riverwalk at 105 S. Victoria St., Pueblo, Colorado 81003, by selling such property to a developer, for redevelopment. Concurrent with the sale of the Units 5 and 6 property, Black Hills will complete necessary environmental remediation associated with the sale, as agreed by Black Hills and the developer. To the extent Black Hills' sale of the

Units 5 and 6 property results in revenues exceeding the net-book value of the same, subject to PUC approval, the Company shall use those revenues to offset incremental costs associated with the environmental remediation of the property or the replacement of Black Hills' service center.

- 5.2 Other real estate development. Black Hills, and/or an affiliate company, shall make financial and in-kind investments of not less than an aggregate amount of \$4 million before January 1, 2025, and an additional \$2 million before August 12, 2030, in real estate or properties located in the City. Black Hills agrees to collaborate with the City to identify projects for development in the City's downtown area or commercial development located within the City's corporate limits that attract jobs and drive economic development. The investments required in this Article 5.2 are not recoverable from Black Hills' electric utility customers, excluding potential customers receiving contracts for electric service as authorized by Section 40-3-104.3 of the Colorado Revised Statutes. Black Hills shall provide an annual report to the City on the contributions made under this Article 5.2.
- 5.3 New Black Hills Service Center. On or before December 31, 2020, Black Hills will submit to the City a feasibility analysis for development of a new customer service center to be located in the City. Black Hills will consider an existing facility or building a new facility with all locations to be in the City. After any development of a new customer service center, Black Hills will redevelop its existing service center located at 105 South Victoria Ave, Pueblo, Colorado 81003, or make it available for redevelopment.
- 5.4 Board Meetings. Black Hills agrees to have a meeting of its Board of Directors in the City of Pueblo prior to December 31, 2023.

ARTICLE 6 ELECTRIC UTILITY SERVICE

- 6.1 On or before December 30, 2020, Black Hills agrees to develop for City review a report on the feasibility of establishing a new electric rate schedule applicable for businesses who produce alternative agricultural products, including, but not limited to, hemp. If the Company's report demonstrates the feasibility of offering a new electric rate schedule for alternative agriculture businesses, then the Company shall consult with the City on the terms and conditions of the new electric rate schedule. After obtaining approval of the new electric rate schedule from the City, the Company shall submit for PUC approval the new electric rate schedule.
- 6.2 During the remaining term of its Franchise, Black Hills agrees to invest no less than \$200 million in system-wide assets to support Black Hills' rating in the top quartile of electric utility companies for system reliability.

- 6.3 Through the duration of the Franchise, Black Hills agrees to create (and continue in operation for the duration of its Franchise) a new advisory stakeholder group consisting of residential and business customers, non-profit organizations, and elected officials. The advisory stakeholder group shall meet with Black Hills twice every year at meetings held in the City. During meetings, Black Hills shall provide an update on new initiatives and new filings, as well as inform the advisory stakeholder group on important issues Black Hills faces.

ARTICLE 7 STREET LIGHTING

- 7.1 During the remaining term of its Franchise, Black Hills will invest \$2.6 million dollars for the purpose of enhancing lighting service to the City's Streets and Parks, including, without limitation, pedestrian lights, street and parking lot lights and playground lights. Black Hills agrees to cooperate with the City in using the City's undergrounding fee as an additional funding source for said lighting improvements and replacements. The Parties will agree to the projects to be completed. Black Hills' investments undertaken pursuant to this Article 7.1 are included in Black Hills' rates for electric service pursuant to Black Hills' publicly available tariff, resulting in the City funding portions of these investments.

ARTICLE 8 BLACK HILLS' FRANCHISE

- 8.1 The Parties understand that before August 11, 2020, the City is expecting to conduct a ballot election on issues pertaining to the formation of a municipal electric utility and termination of the Black Hills Franchise. The Parties agree that this Agreement does not restrict, alter, or otherwise impede the right of the City to conduct any such ballot election taking place before August 11, 2020. This Agreement shall be automatically terminated and each Party will be released from all obligations under this Agreement if the outcome of the ballot election results in the City's pursuit of forming a municipal electric utility. If there is a ballot issue on the items addressed in this Article 8.1 and the ballot issue is not successful, the Parties shall continue to perform their respective obligations under this Agreement.
- 8.2 If this Agreement is not automatically terminated by August 11, 2020 pursuant to Article 8.1, the City agrees, with the exception provided in Article 8.3, that through the remaining term of the Franchise it will not seek to: (1) form a municipal electric utility; (2) seek to acquire Black Hills' assets to enable a municipal electric utility to provide electric service; or (3) terminate Black Hills' current Franchise to enable a municipal electric utility to provide electric service.
- 8.3 After August 11, 2020, through the remaining term of the Franchise, if there is a successful citizen-sponsored petition that results in the City's pursuit of forming a

municipal electric utility, this Agreement shall be automatically terminated and each Party will be released from all obligations under this Agreement.

ARTICLE 9 ENFORCEMENT

- 9.1 Records. For purposes of verifying Black Hills' payments under this Agreement, upon request the City shall have access, until the end of the current Franchise, to all Black Hills' records relating to all payments made by Black Hills under Article 4 (Charitable Support) and Article 5 (Economic Development) of this Agreement.
- 9.2 Breach. If a party (the "breaching party") to this Agreement fails or refuses to perform any of the terms or conditions of this Agreement (a "breach"), the other party (the "non-breaching party") may provide written notice to the breaching party of such breach. Upon receipt of such notice, the breaching party shall be given ninety (90) days, subject to Force Majeure, in which to remedy the breach. If the breaching party does not remedy the breach within the time allowed in the notice, the non-breaching party may obtain specific performance of the applicable term or condition, but not any damages. The Parties agree that monetary damages for any breach of this Agreement will not provide appropriate or adequate relief for such breach.

If a breach is of such a type or nature that it cannot reasonably be remedied in ninety (90) days, the breaching party shall immediately inform and demonstrate to the non-breaching party of the fact that the breach cannot reasonably be remedied in ninety (90) days. The breaching party shall immediately begin work to cure the breach and shall diligently and expeditiously prosecute to completion all work necessary to remedy the breach. In the event a breach is not cured through the diligent and expeditious actions required, then the non-breaching party may terminate this Agreement. Upon termination, each Party will be released from all obligations under this Agreement.

ARTICLE 10 MISCELLANEOUS

- 10.1 In the event of any litigation arising under this Agreement, the court shall award to the prevailing Party its costs and reasonable attorney fees. Exclusive venue for any such litigation shall be Pueblo County, Colorado. All such litigation shall be filed in the District Court, County of Pueblo, State of Colorado and each Party submits to the personal and subject jurisdiction of such District Court.
- 10.2 This Agreement expresses the entire understanding of the Parties and supersedes and abrogates any and all prior dealings and commitments, whether oral or written, with respect to the subject matter of this Agreement and this Agreement may not be amended or modified except in writing signed by both Parties. Any

waiver of any provision of this Agreement must be in writing and signed by the Party whose rights are being waived. No waiver of any breach of any provision hereof shall be or be deemed to be a waiver of any preceding or subsequent breach of the same or any other provision of this Agreement. The failure of either Party to enforce or seek enforcement of the terms of this Agreement following any breach shall not be construed as waiver of such breach.

- 10.3 This Agreement shall be construed in accordance with and be governed by the laws of the State of Colorado without regard to conflict of law principles.
- 10.4 Any notice required or permitted to be given or delivered under this Agreement shall be in writing and shall be given by personal delivery, or by the United States Postal Service, by registered or certified mail, postage prepaid, or by reputable national overnight courier service:
- (a) If to City, Mayor, City of Pueblo, 1 City Hall Place, Second Floor, Pueblo, CO 81003 with a copy to City Attorney, 1 City Hall Place, Third Floor, Pueblo, CO 81003,
 - (b) If to Black Hills, Attn: Vance Crocker, 105 S. Victoria Ave., Pueblo, CO 81003; or
 - (c) or to such other person or address as either Party shall specify in written notice given to the other Party pursuant to the provision of this Article 10.4.

Any notice shall be deemed delivered on the day on which personal delivery is made or three (3) days after deposit in the mail in the case of registered or certified mail, or one (1) business day in the case of overnight courier.

- 10.5 Time is of the essence hereof. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns, provided Black Hills may not assign this Agreement or any interest herein without the express written consent of the City.
- 10.6 The persons signing this Agreement in the name of and on behalf of the Parties represent and warrant that they have the requisite power and authority to enter into, execute, and deliver this Agreement, and that this Agreement is a valid legally binding obligation of each Party enforceable against each Party in accordance with its terms.
- 10.7 In no event shall the City, its officers, agents or employees be liable to Black Hills for damages, including without limitation, compensatory, punitive, indirect, special or consequential damages, resulting from or arising out of or related to this Agreement or the performance or breach thereof by City or the failure or delay of City in the performance of any covenant or provision under this Agreement on its part to be performed. In consideration of City entering into this Agreement, Black

Hills hereby waives and discharges the City, its officers, agents, and employees from all claims for any and all such damages.

- 10.8 If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the other provisions of this Agreement which shall remain in full force and effect.
- 10.9 Each party acknowledges that this Agreement was fully negotiated by the Parties and, therefore, no provision of this Agreement shall be interpreted against any Party because such Party or its legal representative drafted such provision.
- 10.10 The provisions of this Agreement are for the exclusive benefit of the Parties hereto and their successors and permitted assigns, and no third party shall be a beneficiary, or have any rights by virtue of this Agreement.
- 10.11 This Agreement shall take effect on the day and year first above written and shall terminate at the conclusion of the Black Hills Franchise.
- 10.12 This Agreement may be executed in two (2) or more counterparts, and each such counterpart shall be deemed for all purposes to be an original and all such counterparts shall together constitute but one and the same original.

Executed effective the day and year first above written.

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