

**MARGARET H. OLSON
COUNTY ATTORNEY**



Criminal Division

PATRICIA S. CASSELL
Chief Prosecutor

BLAKE R. HILLS
Prosecuting Attorney

RYAN P. C. STACK
Prosecuting Attorney

IVY TELLES
Prosecuting Attorney

Summit County Courthouse • 60 N. Main • P.O. Box 128 • Coalville, Utah 84017
Telephone (435) 336-3206 Facsimile (435) 336-3287
email: (first initial)(last name)@summitcounty.org

Civil Division

DAVID L. THOMAS
Chief Deputy

JAMI R. BRACKIN
Deputy County Attorney

HELEN E. STRACHAN
Deputy County Attorney

JOINT STAFF REPORT

To: Summit County Council

From: David L. Thomas, Chief Civil Deputy
Patrick Putt, Community Development Director
Peter Barnes, Planning and Zoning Administrator

Date: November 2, 2018

Re: Gorgoza Mutual Water Company Proposal

1. Gorgoza Mutual Water Company (“Gorgoza”) has proposed to place an above ground water distribution system within the County right-of-way on Pinebrook Blvd (the “Project”).
2. On October 10, 2018, the Council held a work session to discuss the use of the County right-of-way by water utilities. The Council requested County Staff to determine the appropriate process for Gorgoza to complete with respect to the Project.
3. The County Attorney’s Office has opined that all users of the County right-of-way, including public and private water utilities, need to obtain a franchise agreement with the County.¹ This opinion is based upon the following:
 - a. UCA §17-50-306 (authorizing counties to require franchise agreements for use of the county right-of-way).
 - b. White v. Salt Lake City, 239 P.2d 210, 213 (Utah 1952) (Salt Lake County properly granted to Salt Lake City a franchise to place water mains and pipes within the county right-of-way).
 - c. UCA §72-7-102(3)(a) (highway authority has exclusive jurisdiction to govern use of its right-of-way).

1. County Attorney’s Confidential Legal Memorandum, dated October 15, 2018.

d. Summit County Code §7-1-4 (“No person shall construct, install, maintain, or operate a private utility, public utility, or telecommunications service on, over, through or within the county right of way, . . . unless that person has been granted a franchise by the county council. . . .”).

For the Council’s convenience, a draft water utility franchise agreement is appended to this Joint Staff Report.

4. The Department of Community Development determined on May 23, 2018 that an above ground water distribution system is not a specific use listed on the Snyderville Basin Development Code Use Table (Summit County Code §10-2-10). Section 10-2-10 states:

In cases where a proposed use is not listed in the table, the community development director shall compare the nature and characteristics of the proposed use with those of the uses specifically listed and make a determination if the proposed use is similar in nature and logically fits into any of the categories listed. Where it is determined that the proposed use is consistent with an existing category or use, the proposed use shall be permitted, conditional, or prohibited as the existing use with which it has been associated. In cases where a use is similar in nature to more than one category, the more specific category shall apply. If it is determined that the proposed use is not similar in nature to any of the uses listed, the use shall be prohibited unless and until this title is amended to specifically include the use. The community development director may refer any use inquiry to the planning commission for consideration.

The Community Development Director reviewed the §10-2-10 Use Table and determined that a “Public Facilities” use was similar in nature and characteristic to an above ground water distribution system. Public Facilities are defined in the Snyderville Basin Development Code as:

PUBLIC FACILITIES, MAJOR: Facilities needed to support development as determined by the county council/county manager based upon the adopted levels of service. "Major public facilities" include, but are not limited to, the following:

- A. Transportation facilities, including roads, highways, transportation centers, park and ride lots, intermodal centers, road maintenance buildings, and intersections; and
- B. Central water systems, including water quality, water treatment and storage capacity, and transmission/distribution system capacity; and
- C. Sanitary sewer systems, including treatment facilities, interceptors and outfall sewers, lateral and collector sewers; and

- D. Fire protection and suppression, including fire stations, fire equipment, trucks, hoses, and other apparatus necessary for the suppression of fires; and
- E. Stormwater management facilities, including manmade structures or natural systems designed to collect, convey, hold, divert or discharge stormwater, and including stormwater sewers, canals, detention structures and retention structures; and
- F. Police protection, including correctional facilities, administrative offices, search and rescue facilities; and
- G. Animal control facilities; and
- H. Mosquito abatement facilities.

PUBLIC FACILITIES, MINOR: A use, facility, or structure owned or managed by the county, or a quasi-public entity, that provides a function, activity, or service for public benefit and provides less impact than major public facilities. Minor public facilities include, but are not limited to, the following: bus shelters, pump stations, odor control facilities, wells, antennas, etc. (emphasis added)

Public Facilities (Major and Minor) are conditional uses in all zones throughout the Snyderville Basin Planning District. A conditional use permit requires a public hearing and decision by the Snyderville Basin Planning Commission. Gorgoza has not made an application for such a permit.

5. The County Engineer has previously determined that Gorgoza must obtain an excavation permit to commence actual construction of the Project within the County right-of-way. (Summit County Code §7-1-8(A)).

6. In sum, County staff has been very clear with Gorgoza on the required process for the Project: (a) obtain a franchise agreement, (b) apply for a conditional use permit, and (c) if the conditional use permit is granted, apply for an excavation permit. Gorgoza's position has been that it need only acquire an excavation permit. County staff continues to disagree with Gorgoza's position.

enclosure

**FRANCHISE AGREEMENT
BETWEEN SUMMIT COUNTY, UTAH
AND
GORGOZA MUTUAL WATER COMPANY**

This **FRANCHISE AGREEMENT** ("**Franchise**") is made and entered into effective as of the ___ day of _____, 2018 ("**Effective Date**"), by and between SUMMIT COUNTY, a body corporate and politic of the State of Utah, whose address is 60 N. Main Street, P.O. Box 128, Coalville, Utah 84017 ("**County**"), and GORGOZA MUTUAL WATER COMPANY, nonprofit corporation of the State of Utah, whose address is _____ ("**Grantee**"). The County and the Grantee are referred to individually as a "**Party**" and collectively as the "**Parties**".

The County hereby acknowledges that the Grantee has the financial, legal, and technical ability to provide services, facilities, and equipment necessary to supply and transmit irrigation, snow making, and culinary water to the inhabitants of the County and persons and corporations beyond the limits thereof and in connection therewith to maintain and establish a network in, under, along, over and across present and future streets, alleys and rights-of-way of the County, consisting of underground water mains and pipes, together with all necessary and desirable appurtenances (the "**Water Utility Services**"). Having afforded the public adequate notice and opportunity for comment, the Parties desire to enter into this non-exclusive Franchise for the provision of Water Utility Services on the terms set forth herein.

The County has authority pursuant to U.C.A. §17-50-306 to "grant franchises along and over the public roads and highways for all lawful purposes, upon such terms, conditions and restrictions as in the judgment of the county legislative body are necessary and proper, to be exercised in such manner as to present the least possible obstruction and inconvenience to the traveling public." Summit County Code ("**Code**"), Title 7, Chapter 1 governs franchise agreements.

SECTION 1

Definition of Terms

- 1.1 Terms.** For the purpose of this Franchise, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. 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:
- A. "**County**" means Summit County, Utah, or the lawful successor, transferee, or assignee thereof.
 - B. "**County Right-of-Way**" means the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, boulevard, drive, or other similar public way within the County, which, consistent with the

purposes for which it was dedicated, may be used for the purpose of installing and maintaining private utilities, public utilities, and telecommunication services.

- C. “Franchise” means a non-exclusive initial authorization, or renewal thereof, issued by the County which authorizes the construction, maintenance or operation of a public utility, private utility, or telecommunication service system along the County Right-of-Way. A Franchise shall not be construed to include any general license required for the privilege of transacting and carrying on a business within the County as may be required by other ordinances and laws of the County, or for attaching devices to poles or structures, whether owned by the County or a private entity, or for excavating or performing other work in or along the County Right-of-Way, unless otherwise provided in a Grantee’s Franchise Agreement.
- D. “Franchise Agreement” means a contract entered into pursuant to Code §7-1-4 between the County and a Grantee that sets forth the terms and conditions under which a Franchise will be granted and exercised.
- E. “Grantee” means Gorgoza Mutual Water Company, a nonprofit corporation of the State of Utah, or the lawful successor, transferee, or assignee thereof.
- F. “Person” means an individual, partnership, association, joint stock company, organization, corporation, joint venture, limited liability company, or any lawful successor thereto or transferee thereof, but such term does not include the County.
- G. “Service Area” means the present boundaries of the County, and shall include any additions thereto by annexation or other legal means.
- H. “Subscriber” means a Person or user who lawfully receives Water Utility Service from the Grantee.

SECTION 2

Grant of Franchise

2.1 Grant. The County hereby grants to the Grantee a non-exclusive Franchise which authorizes the Grantee the right, privilege and authority to construct, maintain, operate, upgrade, and relocate, at Grantee’s sole cost and expense, its water distribution and transmission lines and related appurtenances, including underground conduits and structures (collectively referred to herein as “**Water Facilities**”) in, along, among, upon, across, above, over, under, or in any manner connected with County Rights-of-Way within the Service Area, for the provision of Water Utility Services to residents of Summit County, Utah.

Commented [DT1]: This is where you would list other uses within the right of way – well houses, pumps, water filling stations, etc.

2.2 Competitive Equity. The Grantee acknowledges and agrees that the County reserves the right to grant one (1) or more additional franchises or other similar lawful authorization to provide Water Utility Services within the County.

2.3 Term. The Franchise granted hereunder shall be for a term of ten (10) years commencing on the Effective Date, unless otherwise lawfully terminated in accordance with the terms of this Franchise.

SECTION 3

Standards of Service

3.1 Conditions of Occupancy. The Water Facilities installed by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of County Rights-of-Way and with the rights and reasonable convenience of property owners who own property that adjoins any of such County Rights-of-Way. All Water Facilities shall be constructed, installed, maintained, cleared of vegetation, renovated or replaced in accordance with applicable rules, ordinances and regulations of the County.

3.2 Other Ordinances.

3.2.1 The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance and regulations, to the extent the provisions of the ordinance or regulations do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise. Neither Party may unilaterally alter the material rights and obligations set forth in this Franchise. In the event of a conflict between any ordinance and this Franchise, the Franchise shall control, provided however, that the Grantee agrees that it is subject to the lawful exercise of the police power of the County.

3.2.2 Except in the case of an emergency, Grantee shall, prior to commencing new construction or major reconstruction work in the County Right-of-Way, apply for any permit from the County as may be required by the County's ordinances, which permit shall not be unreasonably withheld, conditioned, or delayed. Grantee will abide by all applicable ordinances and all reasonable rules, regulations and requirements of the County, and the County may inspect the manner of such work and require remedies as may be reasonably necessary to assure compliance. Notwithstanding the foregoing, Grantee shall not be obligated to obtain a permit to perform emergency repairs.

3.3 Restoration of County Rights-of-Way. If, during the course of the Grantee's construction, operation, maintenance, or replacement of the Water Facilities, Grantee causes damage to or alters the County Right-of-Way or to public property, Grantee shall replace and restore such County Right-of-Way at Grantee's expense to the condition of the County Right-of-Way existing immediately prior to such damage or alteration and in a manner reasonably approved by the County Engineer.

3.4 Relocation for the County. Upon its receipt of reasonable advance written notice, to be not less than five (5) business days in the event of a temporary relocation and no less than ten (10) business days for a permanent relocation, the Grantee shall, at its own expense except as provided by law or entitlement, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the County Right-of-Way, any property of the Grantee when requested by the County by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or

establishment of street grade, installation of sewers, drains, gas or water pipes, power lines or other municipal utility infrastructure, or any other type of public structures or improvements which are not used to compete with the Grantee's services, or any other reason requested by the County.

3.5 Relocation for a Third Party. The Grantee shall, on the request of any Person holding a lawful permit issued by the County, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the County Right-of-Way as necessary any property of the Grantee, provided: (A) the expense of such is paid by said Person benefiting from the relocation, including, if required by the Grantee, making such payment in advance; and (B) the Grantee is given reasonable advance written notice to prepare for such changes. For purposes of this subsection, "reasonable advance written notice" shall be no less than ten (10) business days in the event of a temporary relocation, and no less than sixty (60) days for a permanent relocation.

3.6 Trimming of Trees and Shrubbery. After obtaining the prior written consent of the County, the Grantee shall have the authority to trim trees or other natural growth overhanging or interfering with any of its Water Facilities within the County Rights-of-Way in the Service Area so as to prevent vegetation from coming into contact or interfering with the operation of the Water Facilities. Such pruning shall comply with the *American National Standard for Tree Care Operation (ANSI A300)* and be conducted under the direction of an arborist certified with the International Society of Arboriculture. A growth inhibitor treatment may be used for trees and vegetation species that are fast-growing and problematic. The Grantee shall reasonably compensate the County for any damage caused by such trimming, or shall, in its sole discretion and at its own cost and expense, with the prior written consent of the County, reasonably replace all trees or shrubs damaged as a result of any construction, operation, maintenance, or replacement of the Water Facilities undertaken by the Grantee. Such replacement shall satisfy any and all obligations the Grantee may have to the County pursuant to the terms of this subsection. Nothing herein shall give the Grantee the right to trim trees not within the County Right-of-Way without the permission of the landowner or without the permission of the County upon showing of public need.

3.7 Safety Requirements. Construction, operation, maintenance, and replacement of the Water Facilities shall be performed in an orderly and workmanlike manner. All such work shall be performed in accordance with generally applicable federal, state, and local regulations. The Water Facilities shall not endanger or unreasonably interfere with the safety of Persons or property in the Service Area.

3.8 Aerial and Underground Construction. Prior to construction or replacement, in each case, all applicable permits shall be applied for and granted and all fees shall be paid. All other codes and ordinances of the County that pertain to such construction shall be complied with.

3.8.1 In those areas of the Service Area where all of the transmission or distribution facilities of the respective public utilities are underground, the Grantee likewise shall construct, operate, and maintain all of its Water Facilities underground.

3.8.2 In those areas of the Service Area where the transmission or distribution facilities of the respective public utilities are both aerial and underground, the Grantee shall consult with the County Engineer to determine whether the construction will be aerial or underground, and wherever possible depending on the season and the location, construct, operate, maintain,

and replace all of its Water Facilities, or any part thereof, underground. If the reason for not putting the Water Facilities underground is seasonal, subject to County waiver as weather and other conditions may require, the Grantee shall make reasonable efforts to move such facilities underground as weather permits, but no later than June 30 of the next summer.

3.8.3 For the purposes of this Franchise, facilities to be placed “underground” shall be at least twenty four (24) inches below the surface grade.

3.9 **Extensions of Water Facilities.** The Grantee shall have the right, but not the obligation, to extend Water Facilities into any portion of the Service Area where another operator is providing Water Utility Services, into any annexed area which is not contiguous to the present Service Area of the Grantee, or into any area which is financially or technically infeasible due to extraordinary circumstances.

3.10 **Trenching; Notice.** Before installing new Water Facilities or replacing existing Water Facilities, Grantee shall first notify the County of such work by written notice and shall allow the County, at its own expense, (to include a pro rata share of the trenching costs), to share the trench of Grantee to make its own improvement therein, provided that such action by the County will not unreasonably interfere with Grantee’s Water Facilities or delay project completion.

3.11 **Technical Standards.** The Grantee is responsible for insuring that the Water Facilities are designed, installed, operated, maintained, and replaced in a manner that fully complies with federal, state and local rules as revised or amended from time to time. As provided in these rules, the County shall have, upon request, the right to obtain a copy of tests and records required in accordance with appropriate rules.

3.12 **Emergency Use.** In the case of any emergency or disaster, the Grantee shall, upon the request of the County, make available its Water Facilities for the County to provide emergency culinary water during emergency or disaster periods. The County shall permit only authorized persons to operate the equipment and take reasonable precautions to prevent any use of the Grantee’s Water Facilities in any manner that results in inappropriate use, or any loss or damage to the Water Facilities. Except to the extent expressly prohibited by law, the County agrees to hold the Grantee, its employees, officers and assigns harmless from any claims arising out of the emergency use of its facilities by the County, including, but not limited to, reasonable attorneys’ fees and costs.

3.13 **Subscriber Service Standards.**

3.13.1 **Office hours and availability.**

3.13.1.1 The Grantee will maintain a local, toll-free or collect call telephone access line and an active website with email capability, which will be available to Subscribers twenty-four (24) hours a day, seven (7) days a week.

3.13.1.1.1 Trained representatives of the Grantee will be available to respond to Subscriber telephone and email inquiries during normal business hours.

3.13.1.1.2 After normal business hours, an access line will be available to be answered by a service or an automated response system, including a phone answering system. Inquiries received after normal business hours must be responded to by a trained representative of the Grantee on the next business day.

3.13.2 Installations, outages and service calls. Under normal operating conditions, each of the following standards will be met no less than ninety-five percent (95%) of the time, as measured by the Grantee on a quarterly basis:

3.13.2.1 Standard installations will be performed within thirty (30) calendar days after an order has been placed and the Subscriber is ready to take service. Standard installations are those that are located up to one hundred twenty-five (125) feet from the existing distribution system.

3.13.2.2 Excluding conditions beyond its control, the Grantee will begin working on service interruptions promptly after the interruption becomes known. The Grantee will begin actions to correct other service problems the next business day after notification of the service problem.

3.13.3 Communications between the Grantee and Subscribers.

3.13.3.1 Notifications to Subscribers. Subscribers will be notified of any changes in rates and services as soon as possible in writing. Notice will be given to Subscribers a minimum of thirty (30) days in advance if the change is within the control of the Grantee.

3.13.3.2 Billing:

3.13.3.2.1 Bills will be clear, concise and understandable. Bills will be fully itemized. Bills will also clearly describe all activity during the billing period, including optional charges, rebates and credits.

3.13.3.2.2 In case of a billing dispute, the Grantee will respond to a written complaint from a Subscriber within thirty (30) days from receipt of the complaint.

3.13.3.3 Credits for service will be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted.

3.13.4 The County reserves its right to establish lawful standards beyond those established by this Franchise including:

3.13.4.1 Customer service requirements.

3.13.4.2 Construction schedules and other construction related requirements.

3.13.4.3 Consumer protection laws.

3.14 **Regulatory Compliance**. Grantee agrees to comply with the following regulatory standards:

3.14.1 Title 1, Chapter 5, Section 2 of the Summit County Code of Health (Water Concurrence).

3.14.2 Utah Code Ann. Title 11, Chapter 36a (Impact Fees Act).

3.14.3 Utah Code Ann. Title 73, Chapter 10, Section 32 (Water Conservation Plan).

SECTION 4

Regulation by the County

4.1 **Franchise Fee**. The Grantee shall pay to the County an annual franchise fee of \$7,500.00, which shall be due on April 1st of each calendar year. A service charge of one and a half percent (1.5%) per month of the total amount due shall be imposed on late payments.

4.2 **Renewal of Franchise**.

4.2.1 At least one hundred twenty (120) days prior to the expiration of this Franchise, Grantee and the County either shall meet to discuss extending the term of this Franchise for a mutually acceptable period of time or use best efforts to renegotiate a replacement Franchise. Grantee shall have the right to continue using the County Rights-of-Way as set forth herein, under the same terms and conditions, so long as the Parties are negotiating in good faith towards an extension or replacement Franchise; provided that the County retains all rights it may have to terminate the Grantee's right to provide services within Summit County or to occupy the County Rights-of-Way on a prospective basis, using any and all available legal means. If the County and Grantee are unable to agree on a replacement Franchise, nothing herein shall limit the Parties' respective legal rights.

4.2.2 The Grantee and the County agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the County and the Grantee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the County may grant a renewal thereof.

4.3 **Transfer of Franchise**. The Grantee's right, title, or interest in the Franchise shall not be sold, transferred or assigned to another entity, except transfers and assignments by operation of law, or to affiliates, parents or subsidiaries of Grantee which assume all of Grantee's obligations hereunder, without the prior written consent of the County, such consent not to be unreasonably withheld. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or

Electrical Facilities in order to secure indebtedness. Within thirty (30) days of receiving a request for transfer, the County shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If the County has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request, consent by the County shall be deemed given.

SECTION 5

Review of Books and Records

The Grantee agrees that the County, upon thirty (30) days written notice to the Grantee, may review such of its books and records at the Grantee's business office, during normal business hours and on a nondisruptive basis, as is reasonably necessary to ensure compliance with the terms of this Franchise. Such records shall include, but shall not be limited to, any public records required to be kept by the Grantee pursuant to the rules and regulations of the State of Utah. Such notice shall specifically reference the section of the Franchise which is under review, so that the Grantee may organize the necessary books and records for easy access by the County. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years from the date of the book or record. Notwithstanding anything to the contrary set forth herein, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature, nor disclose books and records of any affiliate which is not providing Water Utility Service in the Service Area. The County agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. The Grantee shall not be required to provide Subscriber information.

SECTION 6

Insurance and Indemnification

6.1 Insurance Requirements. The Grantee shall maintain in full force and effect, at its own cost and expense, during the term of the Franchise, Comprehensive Commercial General Liability Insurance in the amount of Five Million Dollars (\$5,000,000) combined single limit per occurrence and Ten Million Dollars (\$10,000,000) aggregate for bodily injury and property damage. The Grantee shall provide to the County an Endorsement to the Insurance Policy designating the County as an additional primary insured. Such Endorsement shall provide that such insurance coverage is primary and not contributory to any insurance policy maintained by the County. Additionally, the Grantee shall maintain in full force and effect, Automobile Liability insurance with limits of no less than \$500,000 combined single limit per accident for bodily injury and property damage. Such insurance shall be noncancellable except upon thirty (30) days prior written notice to the County. The Grantee shall increase the limits of such insurance to at least the amount of the Limitation of Judgments described in Section 63G-7-604 of the Governmental Immunity Act of Utah, as calculated by the state risk manager every two years and stated in Utah Admin. Code R37-4-3.

6.2 Indemnification. The Grantee agrees to indemnify, save and hold harmless, and defend the County, its officers, boards and employees, from and against any and all claims, demands, liens, and

all liability for damages of whatsoever kind, including but not limited to any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of the Grantee's use or occupancy of the County Right-of-Way or any of Grantee's acts or omissions pursuant to or related to this Franchise, and to pay any and all costs, including reasonable attorneys' fees incurred by the County in defense of such claims, demands or liens brought thereunder. The County shall: (a) give prompt written notice to Grantee of any claim, demand or lien with respect to which the County seeks indemnification hereunder; and (b) permit Grantee to assume the defense of such claim, demand, or lien. Notwithstanding the foregoing, the Grantee shall not indemnify the County for any damages, liability or claims resulting from the willful misconduct or negligence of the County. All settlements of claims, demands, liens and liability triggered by this indemnification provision shall require the consent of the County, which consent shall not be unreasonably withheld.

SECTION 7

Enforcement and Termination of Franchise

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

7.1.1 The Grantee fails to make a timely payment of the Franchise Fee as required under Section 4.1 of this Franchise and does not correct such failure within sixty (60) calendar days after written notice by the County of such failure. Subsequent non-payments shall not be subject to a cure period and the County may elect to terminate this Franchise upon the issuance of a written notice to Grantee; or

7.1.2 The Grantee, by act or omission, materially violates a material duty herein set forth in any particular within the Grantee's control, and with respect to which redress is not otherwise herein provided. In such event, the County, acting by or through its County Manager, may determine, after hearing, that such failure is of a material nature, and thereupon, after written notice giving the Grantee notice of such determination, the Grantee, within sixty (60) calendar days of such notice, shall commence efforts to remedy the conditions identified in the notice and shall have ninety (90) calendar days from the date it receives notice to remedy the conditions. After the expiration of such 90-day period and failure to correct such conditions, the County may declare the Franchise forfeited and this Franchise terminated, and thereupon, the Grantee shall have no further rights or authority hereunder; provided, however, that any such declaration of forfeiture and termination 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 90-day time period provided above, the County shall provide additional time for the reasonable correction of such alleged failure if the reason for the noncompliance was not the intentional or negligent act or omission of the Grantee.

7.2 Remedies at Law. In the event the Grantee or the County fails to fulfill any of their respective obligations under this Franchise, the County or the Grantee, whichever the case may be, shall have a breach of contract claim and remedy against the other, in addition to any other remedy provided herein or by law; provided, however, that no remedy that would have the effect of

amending the specific provisions of this Franchise shall become effective without such action that would be necessary to formally amend the Franchise.

7.3 Third Party Beneficiaries. The benefits and protection provided by this Franchise shall inure solely to the benefit of the County and the Grantee. This Franchise shall not be deemed to create any right in any Person who is not a Party and shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party (other than the permitted successors and assigns of the Parties hereto).

7.4 Uncontrollable Events. The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by strikes, acts of God, power outages, or other events reasonably beyond its ability to control including any delays caused by the County.

7.5 Bonds and Surety

7.5.1 Except as expressly provided herein, the Grantee shall not be required to obtain or maintain bonds or other surety as a condition of being awarded the Franchise or continuing its existence. The Grantee and the County recognize that the costs associated with bonds and other surety may be ultimately borne by the Subscribers in the form of increased rates for Water Utility Services. Initially, no bond or other surety will be required. In the event that one is required in the future, the County agrees to give the Grantee at least sixty (60) days prior written notice thereof stating the exact reason for the requirement.

7.5.2 Notwithstanding the above provisions, the Grantee shall be responsible for standard performance bonds and insurance required for encroachment permits for work done within the County Rights-of-Way.

7.6 Termination by Grantee. Notwithstanding any other provision of this Franchise to the contrary, Grantee may terminate this Franchise with or without cause six months after giving the County and Grantee's Subscribers notice of Grantee's intent to terminate. Upon termination, Grantee shall cease all operations of the Electrical Facilities located within the County Rights-of-Way.

SECTION 8

Annexation

Upon the annexation of any territory to the County, the rights granted herein shall extend to the annexed territory to the extent the County has such authority. All Water Facilities owned, maintained, or operated by Grantee located within any County Rights-of-Way of the annexed territory shall thereafter be subject to all of the terms hereof.

SECTION 9

Miscellaneous Provisions

9.1 Actions of Parties. In any action by the County or the Grantee that is mandated or permitted under the terms hereof, such Party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

9.2 Entire Agreement. This Franchise (a) supersedes all previous Franchise agreements between the Parties, and (b) constitutes the entire agreement between the Grantee and the County on the subject of Water Utility Service. Amendments to this Franchise for any purpose, including but not limited to any changes in state or federal law, shall be mutually agreed to in writing by the Parties.

9.3 Notice. Unless expressly otherwise agreed between the Parties, every notice or response required by this Franchise to be served upon the County or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party when placed in a properly sealed and correctly addressed envelope: (a) upon receipt when hand delivered with receipt/acknowledgment, or (b) upon receipt when sent certified or registered mail.

The notices or responses to the County shall be addressed as follows:

Summit County Manager
60 North Main Street
PO Box 128
Coalville UT 84017

With Copy to:

Summit County Attorney
60 North Main Street
P.O. Box 128
Coalville, UT 84017

The notices or responses to the Grantee shall be addressed as follows:

Gorgoza Mutual Water Company
Attn: _____

With Copy to:

Edwin C. Barnes
Clyde Snow
201 South Main Street, Suite 1300
Salt Lake City, Utah 84111

The County and the Grantee may designate such other address or addresses from time to time by giving notice to the other in the manner provided for in this Section.

9.4 Descriptive Headings. The captions to sections and subsections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

9.5 Severability. If any section, subsection, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.

9.6 Applicable Law. The terms and conditions contained herein shall be interpreted according to the laws of the State of Utah, except where expressly preempted by federal law.

9.7 No Waiver. Neither the County nor Grantee shall be excused from complying with any of the terms and conditions of this Franchise by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions.

9.8 Counterparts. This Franchise may be executed in several counterparts and all so executed shall constitute one agreement binding on all the Parties, notwithstanding that each of the Parties are not signatory to the original or the same counterpart. Further, executed copies of this Franchise delivered by facsimile shall be deemed an original signed copy of this Franchise.

IN WITNESS WHEREOF, the Parties hereto sign and cause this Franchise to be executed.

SUMMIT COUNTY

Kim Carson, Chair
Summit County Council

ATTEST:

Kent Jones
Summit County Clerk

APPROVED AS TO FORM:

David L. Thomas
Chief Civil Deputy

IN WITNESS WHEREOF, the Parties hereto sign and cause this Franchise to be executed.

GORGOZA MUTUAL WATER COMPANY, a
nonprofit corporation of the State of Utah

By: _____
Its: _____