



Alcaldía de Medellín

Draft Agreement No. 2020

COUNCIL OF MEDELLÍN

“Whereby pro tempore powers have been granted”

THE COUNCIL OF MEDELLÍN,

By virtue of the constitutional and legal authority, especially those conferred by Article 313, Section 3 of the Political Constitution and Article 71 of Law 136/1994

HEREBY AGREES

Article One. Purpose. Grant, within the terms and conditions provided for herein, extraordinary powers to the municipal mayor to amend Article Three of Municipal Agreement 12/1998, by which the bylaws of the industrial and commercial company EMPRESAS PÚBLICAS DE MEDELLÍN E.S.P. are adopted, in relation to the corporate purpose of EPM. The term for exercising these powers is six (6) months from the date on which this Agreement comes into effect.

Article Two. Scope. The powers granted to the mayor shall be limited to defining which of the following activities, services and functions will be added to the purpose of EMPRESAS PÚBLICAS DE MEDELLÍN E.S.P. set forth in Article 3 of Municipal Agreement No. 12/1998:





Alcaldía de Medellín

- a. Offer products and provide services to third parties related to any type of: energy, water, waste, combustible gases, biofuels, linear infrastructure, sustainable mobility, information and communication technologies, shared services and "land preparation of for irrigation, drainage or flood protection".
- b. Produce, transform, manage and commercially exploit: infrastructure, information, knowledge, by-products, and all types of goods; as well as develop financing offers, solutions for people, homes, businesses and industry; provide insurance correspondent services, provide tourism services associated with the company's infrastructure and make investments for the fulfillment of its purposes, all of the foregoing in relation to its corporate purpose.
- c. Define that the Board of Directors can adapt the development of the corporate purpose to perform activities aimed at seeking the benefit of new technologies that ensure a degree of updated competitiveness in the activities performed, in accordance with the company's nature.

Paragraph: In no case may the powers hereby conferred be interpreted or extended to decisions related to the sale of the company's assets, privatizations, mergers, spin-offs or operations other than the modification of the corporate purpose, nor for administrative restructuring involving the elimination of positions or loss of jobs.

Article Three. Definition of activities. While exercising these powers, the Mayor may exclude, from among the activities, services and functions mentioned in Article Two herein, those that are incompatible or conflicting with the commitments that EPM has signed with its financial creditors.





Alcaldía de Medellín

Article Four. Technical study. The decree issued by the Mayor by virtue of the extraordinary powers hereby granted, shall be supported by a technical study that justifies the activities, services and functions added to the current purpose of EPM. This document must be public and available for reference by citizens and supervisory bodies on the websites of the Municipality of Medellín and EPM.

Article Five. Effect. This Agreement shall take effect as of its publication in the Official Gazette.





Alcaldía de Medellín

EXPLANATORY STATEMENTS

1. Background

The purpose of this Draft Agreement is to broaden the current corporate purpose of Empresas Públicas de Medellín E.S.P. (EPM), explaining the reasons why it is necessary and appropriate to modify the bylaws of this industrial and commercial government company.

This proposal is submitted for the consideration of the Council because the bylaws of Empresas Públicas de Medellín E.S.P. can only be reformed by means of an Agreement issued by the Council of Medellín, on the initiative of the Mayor, in accordance with Article 29 of Municipal Agreement No. 12/1998.

The traditional vision of residential public utilities, defined in Laws 142 and 143/1994, has evolved significantly and this, together with the way in which EPM's corporate purpose was defined more than 20 years ago, makes it a "straitjacket" that limits the use of new opportunities so that EPM can continue to provide excellent services and continue to grow in areas beyond residential public utilities and their related activities, given that, based on the current corporate purpose, it cannot carry out new economic activities that are now clear opportunities for the organization, and that would allow it to provide a wider range of solutions to its customers/users for the benefit of Medellín and the regions where EPM operates.

In addition, with respect to the Municipality of Medellín, the current administration's Governance Program poses important challenges for EPM within the context of the Fourth Industrial Revolution and the global transition to renewable energy, aiming for EPM to lead the processes of technological innovation, ensuring environmental conservation and protection, and thus maximizing the opportunity to universalize and maintain the quality of its services. It also aims for EPM to be able to perform in the different alternatives derived from power generation, infrastructure, telecommunications, sanitation, solid waste management and information management, among others.

Consequently, the Governance Program visualizes EPM as follows:

"In the 21st century, EPM has the potential to continue growing as a company, expand its services nationally and internationally, create new business roadmaps and make a place for itself in previously unexplored markets".





Alcaldía de Medellín

2. Regulatory Framework

2.1. Council powers conferred to the Mayor

Below is the explanation of the need to confer extraordinary powers to the Mayor, in consideration of the procedures and formalities that EPM must previously fulfill with its financial creditors, in those cases where it decides to modify its corporate purpose.

In addition to the internal generation of funds to finance its business plans, EPM has required access to debt resources from different sources of financing, such as Multilateral and Development Banking, Local and International Commercial Banking and Local and International Capital Markets, among other sources, as a whole the so-called financial creditors.

In their due diligence processes, banks assess the company's financial situation and its financial projections, considering the lines of business in effect at the time of the analyses performed and the signing of the credit agreements. Based on the results of their respective due diligence, the credit committees of each entity make the decision whether or not to grant the loan and define the financing conditions, in accordance with the risk profile identified.

The credits obtained take the form of agreements, which contain the credit terms, the commitments and the obligations of the parties, among other things. Two of the most relevant clauses in credit agreements are called "Covenants" and "Events of Default". These clauses typically describe the debtor's commitments and obligations, the events that are considered a default under the credit agreement and their consequences.

Several credit agreements signed with international financial creditors contain the obligation of EPM to maintain its legal existence and not to engage (participate/initiate) in business other than its principal or related business ("Related Business") defined as any business related, auxiliary or complementary to the business of EPM and its subsidiaries on the signature date of the agreement, except in the cases approved by the financial creditor. Additionally, one of the documents submitted to the financial creditors for signing the agreements is the company's current by-laws, which contain the corporate purpose in effect at the time of signature.

The documentation of international issues provides that EPM may not engage in business other than related business, understood as any business that is related or supplementary to that in effect at the time of the issue. Only with the written consent of the Bondholders, the Issuer and the Trustee may the Agreement be amended or supplemented (Indenture). In addition, the Indenture describes the methodology for calling for meetings of the Bondholders upon written request that sets forth in detail the proposed action to be taken at such meeting. If the procedure set forth in the Indenture is not followed, an Event of Default is deemed to have occurred.





Alcaldía de Medellín

In addition, the credit agreements signed with international banks such as the Inter-American Development Bank, AFD and JBIC, among others, establish that unless EPM has the express written authorization of the respective bank, EPM shall not make any significant changes in the nature of business or in the way it has conducted business up to the date of the respective Agreement.

If the modification of the corporate purpose results in a modification of the respective credit agreement, each of the modification minutes must be approved by the Ministry of Finance and Public Credit and may subsequently be signed by the parties.

In turn, in the case of bond issues on the local capital market, something similar occurs, since Article 6.4.1.1.4.2 of Decree 2555/2010 “*Special prohibitions of the issuing company*”, states that “During the term of the issue, the issuing entity may not change its corporate purpose, spin-off, merge, transform or reduce its capital with the repayment of contributions, unless authorized by the meeting of bondholders with the majority required to approve the modification of the terms of the loan.” (SFT)

In this same sense, EPM has the policy of enforcing and strictly complying with the basic principles of the company's relationship with the financial public such as **(i) Timeliness:** reporting in a quick and timely manner as soon as it becomes aware of events or changes that could modify EPM's financial situation, the risk in general and the lines of business that were initially approved by the financiers, among others; **(ii) Truthfulness:** delivering or providing the information in a truthful and verifiable manner, which substantiates the event or the change that occurs or that is going to occur at EPM; **(iii) Completeness:** to delivering all the relevant information that will allow them to carry out all the analyses in an integral manner; **(iv) Rigor:** in the fulfillment of the contractual commitments and/or obtaining the corresponding waivers or authorizations in a timely manner.

The consequences that EPM could incur in the event of bypassing the creditor approval process are as follows:

- Constituting an event of default of the respective credit agreement and, as a result, of all EPM's external debt. External debt agreements include the concept of "cross default", which means that, if an event of default is incurred on one of the agreements, such default is extended to the other external debt agreements. An event of default implies the mandatory prepayment of the debt, in which case EPM would have to pay all its external creditors approximately COP 13 trillion almost immediately.
 - Negative impact on EPM's image, as this would be the first event of default by a public sector company in Colombia.
 - Diminished credibility and confidence of the financial public.
 - Possible restriction on access to new funding.
 - Tightening of future credit conditions:
 - o Higher interest rate
 - o Shorter repayment term
 - o Increase in financial covenants
- Decrease in the credit risk ratings of EPM and its subsidiaries





Alcaldía de Medellín

In order to meet these obligations with financial creditors, the Council of Medellín must be asked to grant extraordinary powers to the Mayor within a framework defined by the Council itself, to reform the corporate purpose following discussion and evaluation with financial creditors.

In accordance with the foregoing, the Agreement is aimed, by virtue of the provisions of Article 313, Section 3 of the Political Constitution, which indicate that Councils may authorize the Mayor to exercise specific pro tempore functions corresponding to the Council; at the Council of Medellín granting powers to the Municipal Mayor for the term established in the Agreement, as of its publication, so that, within the framework of the provisions laid down in Article 2, he may define the corporate purpose of EPM, as a consequence of the agreements made by EPM with its creditors, due to the change in the company's corporate purpose.

In turn, the framework of the agreement in which the Mayor may determine the corporate purpose of EPM is cited below, noting that, to that extent, the Mayor may remove activities from those provided therein, but not add new ones.

Once the decree is issued by the Municipal Mayor pursuant to the powers granted, it is understood to be added to Article 3 of Municipal Agreement No. 12/1998.

By means of this Agreement, it is proposed that pro tempore powers be granted to the municipal mayor, by virtue of the provisions of Article 313, Section 3 of the Political Constitution, which indicates the possibility that the councils may authorize the mayor to exercise specific pro tempore functions corresponding to the council.

Finally, it specifies that the exercise of such power, established in Article 71, Paragraph 2, of Law 136/1994 states that the agreements referred to in Article 313, Section 3 of the Political Constitution, can only be issued at the initiative of the mayor. Similarly, Article 29 of the EPM Bylaws states that "*These statutes may only be reformed by means of an agreement issued by the Council of Medellín, on the initiative of the Municipal Mayor.*"

2.2. Modification of the corporate purpose of residential public utility companies

In the current context, it is important to emphasize that, regarding whether or not corporate purpose of residential public utility companies is exclusive, Law 1955/2019, which issued the 2018-2022 National Development Plan, Article 290, Paragraph 2 ratifies the possibility that public utility companies have - and have had - to carry out activities other than residential public utilities.

The corporate purpose of public utility companies is regulated by Article 18 of Law 142/1994, which states the following:

"ARTICLE 18. PURPOSE. The purpose of the public utility company is to provide one or more of the public utilities to which this law applies, or to carry out one or more of the complementary activities, or both.



Alcaldía de Medellín

Regulatory commissions may require a public utility company to have an exclusive purpose when they establish that the multiplicity of the purpose limits competition and does not produce economies of scale or agglomeration economies for the users' benefit. In any case, public utility companies with multiple corporate purposes must keep separate accounts for each of the services they provide; and the cost and mode of operations between each service must be explicitly recorded.

Public utility companies may participate as partners in other public utility companies; or in those whose main purpose is the provision of a service or good that is essential for the fulfillment of their corporate purpose, if there is not already a wide offer of this good or service on the market. They may also associate, in the fulfillment of their corporate purpose, with national or foreign persons, or create consortia with them.

PARAGRAPH. Regardless of their corporate purpose, all legal entities are entitled to make investments in public utility companies. The purpose of organized communities shall always be understood to include the powers to promote and incorporate public utility companies, under the conditions of this law and the law regulating them. In the public tenders referred to in this law, preference shall be given to companies in which such communities hold a majority, if these companies are on equal terms with the other participants." (Underlining added for emphasis)

This Article points out the possibility of a residential public utility company (ESP, for the Spanish original) to have "multiple corporate purposes", as long as the aforementioned conditions are met. Thus, the Superintendency of Residential Public Utilities has repeatedly expressed its opinion regarding the multiple corporate purpose of ESPs, stating:

"The Legal Advisory Office of this Superintendency, in concepts SSPD-OJ-2007-182, SSPD-OJ-2007-227, SSPD-OJ-2008-294 and SSPD-OJ-2009-574, has repeatedly stated that public utility companies may carry out activities other than the provision of public utilities, as long as they are provided for in their corporate purpose.

In fact, in concept SSPD-OJ-2009-574, this Advisory Office stated:

"Article 18 of Law 142/1994 states that the purpose of companies providing public utilities is the provision of one or more of the public utilities to which that law applies or which may result from complementary activities of those services.

With regard to the interpretation of the aforementioned law, this Legal Advisory Office has repeatedly expressed itself in different concepts, including SSPD-OJ-2007-182, SSPD-OJ-2007-227, and has stated that free initiative and free competition should be applied in the provision of public utilities, without any restriction on the corporate purposes and activities to be carried out. Similarly, it has been noted that public utility companies may provide other services as long as they





Alcaldía de Medellín

are included in their corporate purpose and it does not jeopardize the efficient and continuous provision of the service, they are responsible for.

Considering the foregoing, the company may provide the services listed as long as they are part of its corporate purpose. Otherwise, such provision must be preceded by the respective bylaw reform considering, for such purpose, the laws governing regional industrial and commercial companies". [Concept SSPD 20/2016. Underlining added for emphasis]

Accordingly, the historical position of this entity has been to point out that it is permissible for a public utility company to have a multiple corporate purpose. However, the Council of State, through ruling dated June 4, 2015 (File No. 73001233100020030063401 -37.566, issued by Judge Jaime Orlando Santofimio Gamboa), as part of an action of contractual disputes, stated the following:

"So, if the legislator stopped to point out that the (sic) "the purpose of the public utility company is to provide one more of the public utilities to which this law applies...", it is obvious that the intention of the law is for this purpose to be exclusive, which, without a doubt, aims for efficiency in the provision of these utilities and the other purposes provided for in Article 2 of the Law, by incorporating an imperative mandate that cannot be modified by the company itself, and much less ignored in the field of the services it assumes for legal purposes.

(...) That said, the Court concludes that a residential public utility company may not engage in activities that are different from and not connected with the corporate purpose of the company, since that would misrepresent its legal nature.

Although they are decisions with *inter-party* and, therefore, generally non-binding effects, it gave rise to a debate on the interpretation of whether or not the purpose of ESPs is exclusive. In this regard, it is the legislator, through Law 1955/2019, which issued the 2018-2022 National Development Plan, who came to settle the difference between the interpretations, in favor of that broad interpretation of the scope of the corporate purpose of these companies.

"The purpose of Residential Public Utility Companies, together with their complementary activities, as regards the provision of the services referred to in Law 142/1994, shall continue to prevail with respect to the other activities they perform in the terms of the provisions of Articles 99 et seq. of the Commercial Code." (Par. 2, Article 290, Law 1955/2019. Underlining added for emphasis)

Law 1955/2019 provides clarity regarding the possibility of the ESPs to have multiple purposes (including services other than residential public utilities), as long as the residential public utilities (RPU) remain prevalent. The law therefore ratifies the broad interpretation, saying that the provision of RPU "*will continue to prevail over the other activities carried out*", so the ESPs have been enabled to include in their corporate purpose types of activities other than the provision of public utilities, provided that the prevalence of such provision is guaranteed. This prevalence must be understood in the sense that the





Alcaldía de Medellín

efficient and continuous provision of the service under their responsibility is not jeopardized.

The above context provides certainty that activities other than RPU can be included in the corporate purpose of EPMs, a modification that would allow a broad framework of action in line with the evolution of technologies, market requirements and new services of the fourth industrial revolution.

In addition, the modification of the corporate purpose provides greater certainty in the provision of the various services currently provided by EPM which, although some are not classified as residential public utilities, have been enabled due to the close connection therewith. However, they may be subject to different interpretations, such is the case of EPM's financing card, as in the ruling of the Administrative Court of Antioquia, dated February 21, 2014, the Court considered that "*EPM Decree 1692/2008 is null and void, since it implements the activity of financing goods and services to users of Empresas Públicas de Medellín E.S.P., which does not fall within the scope of Municipal Agreement 12/1998 (Bylaws of EPM E.S.P.)*" (File No. 05001-23-31-000-2009-01037-00, currently pending a second instance ruling by the Council of State).

Based on the above, it can be concluded that purpose of public utility companies is exclusive but can be multiple, provided that the plurality of purposes which constitutes their main activity is provided for in their corporate purpose, with the sole exception of the possibility for regulatory committees to require a public utility company to have an exclusive purpose, if they establish that the multiplicity of the purpose limits competition and does not produce economies of scale or agglomeration economies for the users' benefit (Article 18, Law 142/1994).

In addition, for the purposes of the different activities that an ESP intends to carry out, it is important to consider the application of Article 99 of the Commercial Code to companies providing public utilities, by the express mandate of Article 19.15 of Law 142/1994, which states the following regarding legal capacity:

“Art. 99. Capacity of the Company. The company's capacity shall be limited to the development of the company or activity provided for in its purpose. Acts directly related to the corporate purpose and those whose purpose is to exercise the rights or fulfill the obligations legally or conventionally derived from the existence and activity of the company, shall be understood to be included in the corporate purpose”.
(Underlining added for emphasis)

3. The current and future environment of residential public utilities.

As societies move forward, their requirements and needs regarding RPUs are becoming more and more demanding and sophisticated. For example, today it is not enough to collect solid waste and take it to a sanitary landfill; it is now necessary to separate, classify and recycle it; waste water must be properly treated; even city planning involves directing works towards urban drainage; the supply of electricity to homes and businesses now finds customers and users who wish to harness solar energy and demand energy





Alcaldía de Medellín

efficiency options; cities or regions whose evolution demands the direct participation of EPM in the search for new developments for mobility, smart city solutions, and cutting-edge technology services.

In short, the development of RPU has undergone significant changes and is now, once again, compelled to transform itself due to the phenomena of urbanization and technological change that give rise to a host of possibilities both in terms of improvements in efficiency in management and in the provision of the services themselves.

In detail, the process of urbanization that is being developed throughout the world and with greater rigor in Latin America, has involved greater densification of urban centers, reaching 77.1% of the population located in the municipal capitals in the case of Colombia.

In these conditions, people emerge as the focal point of the efforts of local administrations and companies, with different facets and needs that go beyond the traditional RPUs. This brings with it a challenge for cities and their administrations and an opportunity for companies in the provision of these services.

On the one hand, the pressure on the demand for solutions in basic services beyond the traditional vision of RPUs, together with the vulnerability to which these urban and rural centers have become exposed in terms of water sources, waste disposal and the conventional energy supply and consumption model, implies a different approach to making them sustainable, which means extracting energy from renewable sources and favoring the use and reuse of water for other more pressing needs. Options such as solar and wind energy, sustainable mobility, urban drainage, and the use of materials that were previously considered waste and are now potential energy sources, construction materials or fertilizers, are opportunities that could be developed by EPM. Likewise, "smart networks" raise the need to rethink not only the way in which energy networks are managed but also, and very especially, the way in which the institutions providing these services relate to their customers/users.

Similarly, the evolution of digital technologies opens up windows of opportunity for the provision of digital services whose convergence, focused on the inhabitants of the regions, is what creates "smart cities". Technologies such as the Internet of things, cloud computing, scientific data analysis tools and artificial intelligence, to name just a few, and the security associated with their use, are the means to create new business models geared towards digital services such as platforms for citizen security, sustainable mobility, air quality, geographic information and transactive energy, among others, through which we could create greater value, generate new income and become a relevant player in support of the materialization of the smart city

One of the specific effects that this dynamic has had on traditional RPU companies is a decrease in their market share, on the one hand due to downward pressure on prices and on the other hand due to the entry of new agents who are competing for the market.

In summary, the traditional vision of the RPUs is beginning to be insufficient and demands changes in the actions of the ESPs and EPM in the face of the challenges posed by





Alcaldía de Medellín

phenomena such as technology, the use of new sources and changes in the consumption behavior and needs of inhabitants, among others.

4. Current situation of EPM and its future

EPM has played a leading role in the history of the city of Medellín, the Department of Antioquia and the country. It currently provides the RPU's of electricity, natural gas, water supply and wastewater management directly in Valle de Aburrá and, through its subsidiary EMVARIAS E.S.P., the service of sanitation in the city of Medellín.

But the current scope of EPM goes far beyond Valle de Aburrá. Based on a solid growth strategy, EPM is now operating in different regions of Colombia and abroad. Thus, the electricity service reaches the entire Department of Antioquia and, together with its four national energy distribution subsidiaries, serves about 25% of the demand in Colombia, in the departments of Caldas, Quindío, Santander and Norte de Santander. Additionally, with its international subsidiaries in Panama, El Salvador and Guatemala, it has more than 6.7 million customers, in an area of 178,000 km² and a presence in more than 460 municipalities.

Similarly, in relation to the business of power generation, EPM's role is highlighted by an installed capacity of 3,556.77 MW and a 23% share in the country's generation. This generation capacity is possible thanks to an infrastructure that includes 36 hydroelectric power plants and 2 thermal power plants.

Today, water supply and wastewater management services reach several parts of the Department of Antioquia and other regions of the country and Latin America through its water subsidiaries, achieving more than 15% of the national market share with a presence in 23 municipalities in Colombia, as well as Mexico and Chile.

In turn, the natural gas network service has shown a high level of growth in recent years, now reaching 119 communities of the Department of Antioquia.

Thus, the efforts of several generations have allowed EPM to provide RPU's of excellent quality and coverage with a deep social sense in all the regions where it operates and be a driver for the development of the city of Medellín, creating economic value for its stakeholders of more than COP 9.5 trillion in 2019¹. In terms of financial results, the company's revenue, profit and EBITDA performance stands out, which have been growing consistently until reaching an estimated EBITDA of COP 2.7 trillion by the end of 2019. In line with this growth, there has also been a sustained increase in transfers to the Municipality of Medellín, as well as reinvestment to ensure the future sustainability of EPM.

However, the company's historical performance and the actions taken so far to ensure sustainability will be insufficient if the company is not able to adapt to the changes



¹ Information estimated at September 2019.



Alcaldía de Medellín

mentioned, to evolve its offer towards the delivery of comprehensive solutions in the world of electricity, water, solid waste and the use of new technologies, and to engage in new business possibilities in line with its capacities and positioning in the regions where it operates.

In this sense, EPM's track record and experience in providing RPU's has allowed it to acquire knowledge, capabilities, infrastructure and significant information that serve as a platform to face new challenges, such as selling water of different qualities, entering the linear infrastructure market, promoting the opportunities of the Fourth Industrial Revolution, exploiting its infrastructure to offer services and products other than residential public utilities, drawing on the experience in shared services that are currently only being provided to group companies, monetizing the information of its businesses, irrigation districts, proximity to customers to offer solutions for the home and businesses that complement the provision of RPU's.

Therefore, it is of interest to EPM to expand its corporate purpose in order to benefit from the competitive advantages of the knowledge and experience it has accumulated in providing its services, regarding aspects of technology, scientific and technical skills of its staff, infrastructure, studies and information systems, among others, as well as entering new geographies, businesses and market niches, through the delivery of comprehensive solutions, responding to signs of the future that have become evident in the world of public utilities that are seeing their possibilities become increasingly limited in relation to RPU's.

4.1. EPM in the light of the 2020-2023 Governance Program of the Medellín Mayor's Office

According to Article 259 of the Political Constitution of 1991 and Laws 131/1994 and 741/2002, the governance program is a political instrument for the management of the municipality's development, governance and public administration, which enshrines the responsibilities for the future of the city, which is adopted through the Municipal Development Plan.

In this regard, the current administration, in its Governance Program, specifically referred to the business vision for EPM as follows:

"We dream of a company that leverages the context of the Fourth Industrial Revolution and the global transition toward renewable energies as an opportunity to universalize and maintain the quality of its services, leads technological innovation processes, develops conservation and environmental protection processes, and provides resources for the social development of Medellín".

[...] The technical capacity and knowledge of its employees have allowed for innovations and cutting-edge developments in areas such as power generation, infrastructure, telecommunications, sanitation, solid waste management, and information management, among others. In the 21st century, EPM has the potential to continue growing as a company, expand its services nationally and internationally.





Alcaldía de Medellín

create new business roadmaps and make a place for itself in previously unexplored markets.

[...] EPM will aim to enter the infrastructure market for the construction of trenchless public utility networks, highways and underground subway lines [...], leveraging the opportunity to participate in a market that will grow exponentially in the coming years".

4.2. The scope of EPM's corporate purpose according to the current bylaws

Since its creation in 1955, EPM's corporate purpose has always been the provision of residential public utilities and their complementary activities. Article 3 of Municipal Agreement No. 12/1998 of the Council of Medellín, "Whereby the bylaws of industrial and commercial company EMPRESAS PÚBLICAS DE MEDELLÍN E.S.P. are adopted" establishes its corporate purpose:

“Article 3. Corporate Purpose. *The corporate purpose of EMPRESAS PÚBLICAS DE MEDELLÍN E.S.P. is to provide residential public utilities in the areas of water supply, sewerage, electricity, combustible gas distribution, basic public switched telephone and local mobile telephony in the rural sector, and other telecommunications services. It may also provide the residential public utilities of sanitation, as well as the complementary activities of each and every one of these public utilities, as well as waste treatment and disposal.*

In order to fulfill its corporate purpose, EMPRESAS PÚBLICAS DE MEDELLÍN, without affecting the ownership of its assets, may develop all types of contracts or associate or create consortia with other natural or legal persons, national or foreign, providers or users, in order to achieve universality, quality and efficiency in the provision of residential public utilities to its users, always ensuring the general wellbeing and improvement of the quality of life of the population, complying with specific technical criteria, legal rigor, operating costs and provision of services, as well as solidarity and the redistribution of income."

Paragraph: *For the same purpose, it may enter into strategic alliances, joint ventures and sign any type of agreement or contract for business collaboration, that will enable it to fulfill its purpose; participate in activities for the promotion of innovation, scientific research and technological development in the fields related to public utilities that make up its purpose and sign agreements to offer or receive technical cooperation, in accordance with the laws in force on the subject; and, in general, all those activities that are part of its corporate purpose or are necessary for the fulfillment of its purposes".*

The foregoing leads to the conclusion that EPM does not currently have the legal capacity to engage in activities that go beyond traditional residential public utilities and their complementary, related or associated activities, while the public utility companies with which it competes have aggressively broadened their corporate purpose to engage in new activities, which have been enabled by technological development, and others that generate profitability without being directly related to the provision of RPU.





Alcaldía de Medellín

In the same vein, the law regulating the incorporation of Simplified Stock Companies (S.A.S., for the Spanish original), Law 1258/2008, has even led some ESPs to state that their corporate purpose is to carry out any lawful commercial or civil activity, which obviously allows them to react immediately to the needs of the market or customers/users, without having to reform their bylaws to start offering new services or products.

5. Proposed adjustment to the EPM Bylaws to broaden its scope

In order to be in tune with the new reality, below is a proposal for the revision and adjustment of the EPM Bylaws, specifically in relation to its corporate purpose, so as to allow the organization to maintain the provision of residential public utilities as its prevalent activity and to expand its role as a leading player in the advancement of the city of Medellín and the regions where it operates, by maximizing all its capabilities.

These changes are intended to provide EPM with a legal capacity that, complemented by its human, technical and financial capabilities, will infuse it with a new dynamic that will ensure a clear leadership position in the regions and economic activities that it will carry out in the years to come.

Below is the proposal for the inclusion of activities, services and/or business approaches that are intended to be added to the corporate purpose of EPM, which will be the framework of the extraordinary powers granted by the Council to the Municipal Mayor, to reform Article 3 of the EPM Bylaws.

- a. Offer products and provide services to third parties related to any type of: energy, water, waste, combustible gases, biofuels, linear infrastructure, sustainable mobility, information and communication technologies, shared services and "land preparation of for irrigation, drainage or flood protection".
- b. Produce, transform, manage and commercially exploit: infrastructure, information, knowledge, by-products, and all types of goods; as well as develop financing offers, solutions for people, homes, businesses and industry; provide insurance correspondent services, provide tourism services associated with the company's infrastructure and make investments for the fulfillment of its purposes, all of the foregoing in relation to its corporate purpose.
- c. Define that the Board of Directors can adapt the development of the corporate purpose to perform activities aimed at seeking the benefit of new technologies that ensure a degree of updated competitiveness in the activities performed, in accordance with the company's nature.

5.1. Scope of this proposal

5.1.1. When the scope of EPM is broadened from "*residential public utilities in the areas of water supply, sewerage, electricity, combustible gas distribution, basic public switched telephony and local mobile telephony in the rural sector, and other telecommunications*



Alcaldía de Medellín

services” to “*offer products and provide services to third parties related to any type of: energy, water, waste, combustible gases, biofuels, linear infrastructure, sustainable mobility, information and communication technologies, shared services and "land preparation of for irrigation, drainage or flood protection"*”, it opens up a new and varied range of possibilities for the company so that, without ever leaving aside its current core activity of RPU, which continue to be prevalent, it can incorporate new activities in its business activities that will enable it to keep up with the dynamics of these sectors.

Thus, for example, its scope is not limited only to the residential public utility of electricity, but to the possibility of producing, selling, installing, leasing and operating solar panels, or any other device for distributed generation, self-generation and energy storage, as well as exploring any other type of energy, systems aimed at increasing its reliability and developing solutions (individual or collective) for non-interconnected zones, providing advice on energy efficiency (*ESCO Energy Service Company*), and any other energy supply, such as thermal districts of heat or cold and the concession and/or provision of public lighting.

In relation to water, initiatives are enabled such as the possibility of producing, collecting, treating, transporting and selling water from different sources (rain, sea, river, etc.) and of different qualities (raw, reused, waste, etc.), as well as installing, leasing and operating systems or devices associated, among others, with the conduction, purification, monitoring and treatment thereof (both centralized and distributed, individual or collective). The provision of services related to the conservation of water basins, irrigation districts and urban drainage is also enabled.

Furthermore, by mentioning that EPM will be able to "*offer products and provide services to third parties*", the target market for new business initiatives is broadened so that it is not limited exclusively to persons who are users of residential public utilities, but also to third parties of any legal nature (public, private, mixed, legal or natural persons), promoting new services in geographical areas where EPM is not yet operating, such as offering innovative solutions for energy storage, rainwater storage and saving devices for homes and industries. In this same sense, it enables the offering of shared services, referring to those services that EPM currently provides to the subsidiaries of the EPM Group and that could be offered to other companies or public or private entities under competitive and efficient conditions, leveraging its infrastructure and expertise in activities such as payroll, billing and recruitment services, among others.

The current corporate purpose mentions the provision of the service of sanitation and "*waste treatment and disposal*", since, at the time of its definition, the concepts of waste were not differentiated and everything was treated as waste, garbage, residues or refuse. Thus, it is necessary to update these concepts in view of the evolution of the sector and the different types of waste that can be disposed of, treated and used, so that, by establishing in this proposal the possibility of offering products and providing services related to any type of waste, EPM is enabled not only to engage in fields such as the management of hazardous waste, electrical and electronic equipment, construction and demolition waste, among others, but also in all the activities performed around them (collection, transport, separation, use, disposal and sale) and their comprehensive





Alcaldía de Medellín

management, promoting the reduction, recycling and reuse of waste, allowing progress in the country's sustainable development goals set out as part of the strategies of the circular economy, such as the provision of services associated with extended producer responsibility.

By including the possibility of offering products and services related to any type of linear infrastructure, it would draw on the experience and knowledge that EPM has accumulated throughout its track record in developing this infrastructure, such as the construction of energy, gas, aqueduct, sewage and road networks associated with the RPU projects it has executed. It would benefit from its experience in hydroelectric projects that have required the construction and maintenance of access roads, tunnels and bridges, as well as the construction of interceptors, underground networks (sewage, water and gas) and the use of trenchless technology, among others, that involve the execution of civil and road infrastructure necessary for their installation, operation, maintenance and replacement.

In terms of sustainable mobility, it is important to highlight EPM's experience and knowledge in issues associated with its power resources (natural gas and electricity), which would enable it to offer a wide range of services or products that promote this type of mobility, thus making a positive impact on the environment, the well-being of citizens and also contributing to the development of smart cities, which also includes the improvement of physical infrastructure and the development and implementation of technologies aimed at strengthening mobility and air quality.

In principle, the development of these initiatives is focused on three central themes, the first being improving people's access to clean or sustainable mobility technologies, by creating incentives aimed at reducing the gap between their current cost and pollutants (diesel and gasoline) or facilitating alternative means such as the rental of gas, electric and battery-powered vehicles, vehicle conversion and car sharing systems; the second, with emphasis on investment in the necessary infrastructure to create a broad and reliable ecosystem, which allows the users of these technologies to cover their travel needs without interruptions or significant differences with respect to the productivity and comfort currently offered by conventional technologies, such as the construction or operation of natural gas refueling or electric charging stations, private charging systems; and the third, aimed at finding strategies that improve the benefits for those who decide to use non-polluting technologies. In this sense, the inclusion of this concept in the corporate purpose opens up the possibility of building, operating, renting and commercially exploiting charging and energy supply infrastructure for electric vehicles, for energy storage or for the supply of any type of fuel or biofuel, or any other type of energy associated with sustainable mobility.

As for the Information and Communication Technologies (ICTs) that promote smart cities and the Fourth Industrial Revolution, it should be considered that they are a vital tool in the transformation of the 21st century processes of the city and the dynamics of companies and households, managing to offer emerging technological advances in a number of fields, including automation (home automation), artificial intelligence, block chain, nanotechnology, quantum computing, biotechnology and the Internet of things, among





Alcaldía de Medellín

other technologies or tools to be developed in the future. It is in this type of technologies in which EPM must be present, not only to make use of them within its processes, but also to play a leading role in their development by promoting innovative solutions. In this sense, it is necessary to adjust the purpose of EPM in order to enable it, in addition to providing "residential public utilities", to offer "comprehensive solutions" and thus harness all the potential offered by the world of data analysis, the Internet and information and communication technologies.

It is important to mention that basic public switched telephony is no longer a residential public utility by virtue of Law 1341/2009 and in relation to telecommunications services, the name established by the Law is broader, which is Information and Communications Technologies, covering a wider spectrum of technologies and services, as it is defined as "...the set of resources, tools, equipment, software, applications, networks and means that enable the compilation, processing, storage and transmission of information such as voice, data, text, video and images...".

The development of regions and the appropriate use of water resources are an essential component of government policies and EPM actions. Through the provision of the service and operation of irrigation districts, EPM can play a relevant role in the implementation of projects to provide areas with irrigation, water drainage and flood protection for agricultural development. Although these activities are categorized by Law 41/1993 as public utilities, they are not residential public utilities, nor do they involve the supply of drinking water, so at present, EPM cannot offer such services, despite having the necessary capacities and knowledge to do so.

5.1.2. Moving forward in the scope of the proposed new corporate purpose, by stating that EPM will be able to *"Produce, transform, manage and commercially exploit: infrastructure, information, knowledge, by-products, and all types of goods; as well as develop financing offers, solutions for people, homes, businesses and industry; provide insurance correspondent services, provide tourism services associated with the company's infrastructure and make investments for the fulfillment of its purposes, all of the foregoing in relation to its corporate purpose."*, it is important to point out that:

With this proposal, the framework of activities that can be developed by EPM would consist, predominantly, of the provision of RPU and those that are assimilated or defined as such and, in addition, of the other activities to be included that are indicated in subsection (a) (*"Offer products and provide services to third parties related to any type of..."*). All of them are listed in detail regarding their scope in subsection (b), indicating at the end that *"all of the foregoing in relation to its corporate purpose"*, aiming to broaden its field of action, taking advantage of the different business opportunities, the knowledge and expertise acquired and that which it will acquire in its business activities, maximizing the use of its infrastructure, data and information, the exploitation of by-products, tangible and intangible assets, including the supply, operation and maintenance of all the associated elements.





Alcaldía de Medellín

In this vein, EPM could participate in:

- The sale of biosolids, which are the result of wastewater treatment, or derivatives such as fertilizers, when the biosolids are treated with transformation and disposal processes.
- Offer services that allow the use of intangible assets that are the product or result of study, innovation, scientific research, technological development and experience acquired in EPM's performance of these activities.
- Database monetization initiatives and data analysis services, as a way of tapping into information commercially and creating value with the assets that can be shared with third parties, such as services for the capture and subsequent sale of information from instrumented networks with which EPM carries out the activities of its corporate purpose.
- Engage in the production and/or sale of elements such as solar panels, wind turbines for the generation of wind energy, geothermal energy equipment, energy storage cells, transactive energy applications and other items necessary to broaden coverage and/or participation in initiatives that promote the efficient use of energy or the use of non-conventional renewable sources.
- Develop financing offers that leverage not only the residential public utilities that are already provided, but all other activities in which EPM participates in the development of its corporate purpose.
- Provide correspondent services to insurance companies and carry out the mass sale of insurance policies associated with the activities carried out by EPM, in order to take advantage of its infrastructure, customer service networks and knowledge regarding the coverage needs offered by the insurance companies associated with the implementation of EPM's activities.
- Provide third parties with services derived from EPM's commercial capabilities, such as reading, review, assessment, billing, collection, cut-off, reconnection, as well as portfolio management, customer service, credit risk management and collection, among others; as a way to draw on the experience, infrastructure and knowledge that EPM has accumulated throughout its history.
- Provide third parties with services derived from EPM's technical capabilities, such as construction of WWTPs, landfills, waste transfer stations and service networks, including operation, maintenance and replacement.
- By including the possibility of commercially exploiting all types of goods, it enables the option to supply, operate, install, maintain, sell or commercialize and, in general, carry out any activity that allows it to commercially exploit all the elements associated with the performance of the activities contained in its corporate purpose, such as: gas appliances, electrical appliances, energy saving light bulbs, water saving kits, etc., develop solutions for people, homes, businesses and industry associated with the activities carried out by EPM, such as home automation that allow the automation of processes through the integration of technologies in operation systems, energy management and communications,





Alcaldía de Medellín

among others, to offer B2B - B2C (business to business or business to customer) solutions, such as installation, cleaning, repair and maintenance of electrical appliances, gas appliances and equipment used in such market segments to promote the effective enjoyment of the products and services offered by EPM. It also includes all the initiatives that promote the development of smart cities, based on the interactive and mobile relationship between a set of objects and players, to facilitate the application of new technologies, the efficient use of resources (energy, water, gas, etc.), the improvement of the quality of life and the capacity to respond to the new needs of their inhabitants.

- The provision of tourism services, through the acquisition, development and/or use of EPM's infrastructure, such as the reservoirs and forest reserves that it must conserve as a result of the implementation of its projects and their surrounding areas, as well as other company-owned properties; these activities would be mainly aimed at strengthening programs related to social procurement and community engagement, through different types of social and cultural projects (educational museums), the activation of the local economy and environmental care.
- Provide the service of treatment and renewal of dielectric oils and the use of other waste or by-products produced in the different businesses in which the company holds a share.
- Efficiently manage EPM's property assets, with the aim of promoting their use for other activities that maximize their value. This may include property assets that are no longer necessary for the operation of EPM's businesses but warrant the assessment of a better alternative of use, such as:
 - Carrying out actions to avoid the occupation of and squatting on the properties by third parties.
 - Goods associated with projects that have fulfilled the purpose for which they were acquired or have reached the end of their useful life.
 - Idle infrastructure management.
 - Dismantling assets in compliance with environmental regulations.
 - Purchase of goods outside the public utility area of certain projects, which are required for associated future infrastructure.

Finally, by stating that EPM may "...make investments for the fulfillment of its purposes..." the possibility of developing its purpose through any form of association is enabled, such as strategic alliances, investment in companies, creation of new companies, such as a subsidiary of postal services, management of real estate assets or construction of energy and water infrastructure, shared services, etc., thus allowing for adaptation to commercial, regulatory, technical, economic and market needs.

5.1.3. Finally, subsection c) of the proposal, "*Define that the Board of Directors can adapt the development of the corporate purpose to perform activities aimed at seeking the benefit of new technologies that ensure a degree of updated competitiveness in the activities performed, in accordance with the company's nature*" is aimed at having a mechanism that will provide EPM with versatility, management capacity and immediate





Alcaldía de Medellín

action in the face of the development of new technologies that are not yet known and that may place it in unequal conditions in the future to compete with other companies that have more direct mechanisms to start performing such activities.

The regulatory support of this proposal is based on the power of Municipal Councils to create industrial and commercial government companies, and when creating them, to define their objectives, organic structure (name, legal nature, headquarters, among others) in accordance with Article 313, Section 6 of the Political Constitution and Article 50 of Law 489/1998. Accordingly, the EPM Bylaws adopted by Agreement 12/1998, contain the management bodies and the roles assigned to each of them, including the Board of Directors.

Consequently, subsection c) proposes the assignment of a role or attribution to the Board of Directors in addition to those detailed in Article 17 of said agreement.

Additionally, this proposal is based on Articles 88 and 90 of Law 489/1998, considering that the Board of Directors is a management body of the company and one of its functions is to formulate the general policy of the company, control the general operation of the organization and verify its compliance with the policies adopted, as well as those laid down in the company bylaws, as proposed in this draft agreement, by including the text proposed in Article 3 of the EPM bylaws.

"Article 88. Business management and administration. The management and administration of industrial and commercial government companies shall be the responsibility of a Board of Directors and a Manager or CEO. (...)"

"Article 90. Functions of the boards of directors of industrial and commercial government companies. The boards of directors of industrial and commercial government companies shall be responsible for:

a) Formulating the company's general policy, the administrative development plan and the plans and programs that must be proposed, according to the Organic Planning Law and the Organic Budget Law, for their inclusion in the sectoral plans and, through these plans, in the National Development Plan; (...)

d) Monitoring the general functioning of the organization and verifying its compliance with the policy adopted; (...)

e) Any others indicated by the law and the company bylaws.

It is important to mention that the function to be assigned consists of adapting the framework development of the corporate purpose already set by the Council and to be specified by the Mayor as part of the extraordinary powers conferred on him, to carry out activities that enable new technologies, in order to maintain an updated degree of competitiveness in the activities it carries out, that is, in those already defined by its corporate purpose. Thus, for example, if a law were to emerge that regulates the use of drones for any purpose, requiring that this activity be expressly included within the corporate purpose of the legal entity that intends to use them, the Board of Directors,





Alcaldía de Medellín

through the corresponding administrative act could adapt the corporate purpose in that sense, so that EPM could use these devices to deliver its bills and check the electrical infrastructure, among others.

According to Article 50 of Law 489/1998, the act of creating administrative entities, which include decentralized entities such as an industrial and commercial government company, must determine their objectives, organic structure (name, legal nature, headquarters, etc.) and budgetary support. This is applicable to regional entities by virtue of the provisions of Paragraph 1 of Article 68 of the same law. Thus it is the Municipal Council who is determining the objectives for EPM and, with criteria defined in the same act, establishes the possibility for the Board of Directors to specify or detail the scope of the corporate purpose, within the framework established by the Municipal Council in this draft Agreement.

It is not a question, then, of the Municipal Council authorizing an open modification of EPM's corporate purpose, but on the contrary, it is clearly determining what the corporate purpose is, only that, under certain circumstances, previously indicated herein, it makes it possible for its scope to be detailed, thus complying with the provisions of the Constitutional Court:

"But, of course, Congress has full constitutional powers to decide in each case whether to create one or more mixed-economy companies or associations, or whether to authorize their incorporation, provided that it determines in a concrete and specific manner what their purpose will be, the regime to which it/they will be subject and, if there are resources coming directly from the National treasury, it determines the amount of public resources to be allocated as a contribution or share. The same will occur in the case of departments, districts and municipalities, for which the corresponding provisions will be made in the respective ordinances or agreements..." (Ruling C-196/1994) (SFT)

6. Possible consequences of not updating EPM's corporate purpose

The wording of EPM's current corporate purpose, as set out above, is limited to the provision of RPU's and, in this regard, the company's possibilities for offering services to its customers are also restricted to the definitions of RPU's and complementary and related activities in the terms set out by law and by the regulating entity. It has also been pointed out that, with the emergence of new technologies, changing trends in residential public utilities, market pressures and increasing demands from stakeholders, public utility companies are bound to broaden their scope of action, or risk becoming outdated and jeopardizing their sustainability.

This implies a series of risks if the company's current corporate purpose is maintained.

- Possible loss of competitiveness against other agents that are authorized to offer new products and services.
- Possible obsolescence of the company due to the failure to engage in the provision of new products or services.





Alcaldía de Medellín

- Possible impairment of the company's value and, consequently, possible decrease in transfers to the municipality.

DANIEL QUINTERO CALLE
MAYOR

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