

ORDINANCE NO. 1915

INTRODUCED BY: BENSON, BULLOCK, CARSON, DOUGLAS, ELLIOTT, FORD,  
MCELDFOWNEY, MORENO, TETER

AN ORDINANCE TO REPEAL ORDINANCE 1881 AND AMEND THE  
FRANCHISE BETWEEN THE CITY OF COMMERCE CITY AND PUBLIC  
SERVICE COMPANY OF COLORADO d/b/a XCEL ENERGY

WHEREAS, in 1986, the City Council of the City of Commerce City (the “City”) adopted Ordinance No. 765, which granted to Public Service Company of Colorado (“PSCo”) a franchise to make use of City rights-of-way and other City property in order to provide gas and electric utility service to Commerce City residents (the “Franchise”) and which set forth certain terms and conditions related to such use (the “Franchise Agreement”), including the fees PSCo was obligated to pay thereunder;

WHEREAS, pursuant to Ordinance No. 765, the Franchise was set to expire on May 13, 2011;

WHEREAS, to ensure City staff was provided sufficient time to negotiate amendments to the Franchise Agreement that would provide the greatest benefit to Commerce City residents and allow the Franchise to continue, the City Council, on May 9, 2011, September 12, 2011, and December 12, 2011, passed emergency ordinances numbered 1862, 1872, 1881, respectively, each of which were intended to amend the Franchise Agreement to extend the term of the Franchise for specific periods of months;

WHEREAS, PSCo did not execute the franchise amendment approved by Ordinance 1881 (the “Purported Third Amendment”);

WHEREAS, the parties agree that their respective interests will be served by amending the Franchise Agreement to extend its term and delete certain annexation requirements as set forth in the Third Amendment to Franchise Agreement attached hereto;

WHEREAS, the City has determined that its best interests will be served by rescinding the Purported Third Amendment;

WHEREAS, the City and PSCo have reached tentative agreement on the terms of a new franchise agreement;

WHEREAS, under this Ordinance No. \_\_\_\_\_, all terms of the current Franchise Agreement will remain unchanged and in full force and effect except as expressly amended by the Third Amendment to Franchise Agreement attached hereto; and

WHEREAS, City Council finds that the adoption of this ordinance is in the best interest of the residents of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COMMERCE CITY, COLORADO, AS FOLLOWS:

**SECTION 1.** Section 22-4 of the Franchise Agreement, as set forth in Section 1 of Ordinance No. 765, is hereby amended to read as follows:

**22-4. Term of Franchise.**

This franchise shall take effect on August 1, 1986, and shall supersede the franchise granted to Public Service Company of Colorado by City of Commerce City Ordinance No. 100, which otherwise expires on November 21, 1986. The term of this franchise shall expire on January 1, 2013, or such earlier date a new franchise, as identified in the Third Amendment to Franchise Agreement executed by the parties, is approved by the qualified electors of the city at a special or general election held in the year 2012, in which event such early termination date shall be the date such voter approval is codified.

**SECTION 2.** Section 22.29 of the Franchise Agreement (Annexation to the City), as set forth in Section 1 of Ordinance No. 765, is hereby repealed and deleted in its entirety.

**SECTION 3.** The effective date of the amendments set forth in the Third Amendment to Franchise Agreement attached hereto shall be December 13, 2011.

**SECTION 4.** Except as expressly amended hereby, the Franchise Agreement shall remain in full force and effect.

**SECTION 5.** Ordinance 1881 is hereby repealed in its entirety, and the Former Third Amendment is hereby rescinded and declared void.

**SECTION 6.** The Mayor and the City Clerk are hereby authorized and directed to sign and attest the Extension Amendment on behalf of the City of Commerce City.

INTRODUCED, PASSED ON FIRST READING AND PUBLIC NOTICE ORDERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2012.

PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2012.

CITY OF COMMERCE CITY, COLORADO

\_\_\_\_\_  
Sean Ford, Mayor

ATTEST:

\_\_\_\_\_  
Laura J. Bauer, CMC, City Clerk