

FRANCHISE AGREEMENT BETWEEN THE CITY OF COMMERCE CITY, COLORADO AND
PUBLIC SERVICE COMPANY OF COLORADO

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ARTICLE I
DEFINITIONS

For the purpose of this franchise, the following words and phrases shall have the meaning given in this Article. When not inconsistent with context, words used in the present tense include the future tense, words in the plural include the singular and words in the singular include the plural. The word “shall” is mandatory and “may” is permissive. Words not defined in this Article shall be given their common and ordinary meaning.

- §1.1 “City” refers to the City of Commerce City, a home rule municipality and municipal corporation of the State of Colorado.
- §1.2 “City Council” or “Council” refers to the legislative body of the City.
- §1.3 “City Designee” means one or more City representatives designated by the City Manager to act as the City’s primary contact(s) with the Company regarding the franchise.
- §1.4 “Clean Energy” refers to energy produced from Renewable Energy Resources, eligible energy sources, and by means of advanced technologies that cost-effectively capture and sequester carbon emissions produced as a by-product of power generation. For purposes of this definition, “cost” means all those costs as determined by the PUC.
- §1.5 “Company” refers to Public Service Company of Colorado and its successors and assigns including affiliates or subsidiaries that undertake to perform any of the obligations under this franchise.
- §1.6 “Company Facilities” refers to all facilities of the Company reasonably necessary to provide gas and electric service into, within and through the City, including but not limited to plants, works, systems, substations, transmission and distribution structures, lines, equipment, pipes, mains, conduit, transformers, underground lines, gas compressors, meters, meter reading devices, communication and data transfer equipment, control equipment, gas regulator stations, street lights, wire, cables and poles.
- §1.7 “Distribution Facilities” refers to those lines designed to operate at the utility’s distribution voltages in the area defined in the Company’s tariffs including substation transformers that transform electricity to a distribution voltage and also includes other equipment within a transforming substation that is not integral to the circuitry of the utility’s transmission system. Distribution Facilities shall not include facilities that are exclusively used to provide street lighting service.
- §1.8 “Electric Gross Revenues” refers to those amounts of money the Company receives from the sale or delivery of electricity in the City after adjusting for refunds, net write-offs of uncollectible accounts, corrections or regulatory adjustments. Regulatory adjustments include, but are not limited to, credits, surcharges, refunds and pro-forma adjustments pursuant to federal or state regulation. “Electric Gross Revenues” shall exclude any revenue from the sale or delivery of electricity to the City as a customer of the Company.
- §1.9 “Energy Conservation” refers to the decrease in energy requirements of specific customers during any selected time period, resulting in a reduction in end-use services.

- §1.10 “Energy Efficiency” refers to the decrease in energy requirements of specific customers during any selected period with end-use services of such customers held constant.
- §1.11 “Force Majeure” refers to the inability to undertake or complete within the time specified any obligation of this franchise due to a cause that could not be reasonably anticipated by a party or is beyond its reasonable control after exercise of best efforts to perform, including but not limited to fire, strike, war, riots, terrorist’s acts, acts of governmental authority, acts of God, floods, epidemics, quarantines, labor disputes, unavailability or shortages of materials or equipment or failures or delays in delivery of materials. Neither the City nor the Company shall be in breach of this franchise if a failure to perform any of the duties under this franchise is due to a Force Majeure condition.
- §1.12 “Gross Revenues” refers to those amounts of money which the Company receives from the sale of gas and electricity within the City under rates authorized by the Public Utilities Commission, as well as from the transportation of gas to its customers within the City and those amounts of money, excluding expense reimbursements, which the Company receives from the use of Company facilities in Streets and Other City Property (unless otherwise preempted by applicable federal or state law), as adjusted for refunds, net write-offs of uncollectible accounts, corrections, or regulatory adjustments. Regulatory adjustments include, but are not limited to, credits, surcharges, refunds and pro-forma adjustments pursuant to federal or state regulation. “Gross Revenues” shall exclude any revenues from the sale of gas or electricity to the City or the transportation of gas to the City as a customer of the Company.
- §1.13 “Other City Property” refers to the surface, the air space above the surface and the area below the surface of any property owned or controlled by the City or hereafter held by the City, which would not otherwise fall under the definition of “Streets”, but which provides a suitable location for the placement of Company facilities as specifically approved in writing by the City.
- §1.14 “Private Project” refers to any project which is not covered by the definition of Public Project.
- §1.15 “Public Project” refers to (1) any public work or improvement within the City that is wholly or beneficially owned by the City; or (2) any public work or improvement within the City where fifty percent (50%) or more of the funding is provided by any combination of the City, the federal government, the State of Colorado, any Colorado county, the Urban Drainage and Flood Control District or the Regional Transportation District, but excluding all other entities established under Title 32 of the Colorado Revised Statutes.
- §1.16 “Public Utilities Commission” or “PUC” refers to the Public Utilities Commission of the State of Colorado or other state agency succeeding to the regulatory powers of the Public Utilities Commission.
- §1.17 “Public Utility Easement” refers to any easement over, under or above public or private property, expressly dedicated to, and accepted by, the City for the use of one or more public utility companies for the placement of utility facilities, including, but not limited to, Company Facilities.
- §1.18 “Renewable Energy Resources” refers to any one or more of the following:
- A. Wind;
 - B. Solar;

- C. Geothermal;
 - D. Biomass from nontoxic plant matter consisting of or from:
 - (1) agricultural crops or their byproducts, urban wood waste, mill residue, slash or brush,
 - (2) animal wastes and products of animal wastes,
 - (3) methane produced at landfills or as a by-product of the treatment of wastewater residuals;
 - E. New hydroelectricity with a nameplate rating of ten megawatts or less and hydroelectricity in existence on January 1, 2005, with a nameplate rating of thirty megawatts or less;
 - F. Fuel cells using hydrogen derived from a Renewable Energy Resource; and
 - G. Recycled energy produced by a generation unit with a nameplate capacity of not more than fifteen megawatts that converts the otherwise lost energy from the heat from exhaust stacks or pipes to electricity and that does not combust additional fossil fuel, including any eligible renewable energy resource as defined in § 40-2-124(1)(a), C.R.S., as amended from time to time.
- §1.19 “Residents” refers to all persons, businesses, industries and governmental agencies, including the City, and any other entity whatsoever, presently located or to be hereinafter located, in whole or in part, within the territorial boundaries of the City.
- §1.20 “Streets” or “City Streets” refers to the surface, the air space above the surface and the area below the surface of any City-dedicated streets, alleys, bridges, roads, lanes, public easements (excluding any easements the terms of which do not permit the use thereof by public utilities), and other public rights-of-way within the City, which are primarily used for motorized vehicle traffic. Public Utility Easements, as defined above, shall not constitute “Streets.”
- §1.21 “Supporting Documentation” refers to all information reasonably required to allow the Company to design and construct any work performed under the provisions of this franchise. Supporting Documentation may include, by way of illustration, but not limitation, construction plans, a description of known environmental issues, the identification of critical right-of-way or easement issues, the final recorded plat for the property, the date the site will be ready for the Company to begin construction, the date electric service and meter set are needed, the date gas service and meter set are needed, and the name and contact information for the City’s project manager.
- §1.22 “Tariffs” refers to those tariffs of the Company on file and in effect with the PUC.
- §1.23 “Transmission Facilities” refers to those lines and related substations designed and operating at voltage levels above the utility’s voltages for Distribution Facilities, including, but not limited to, related substation facilities such as transformers, capacitor banks or breakers that are integral to the circuitry of the Company’s transmission system.

§1.24 “Utility Service” refers to the sale of gas or electricity to Residents by the Company under rates approved by the PUC, as well as the delivery of gas or electricity to Residents by the Company.

ARTICLE II
GRANT OF FRANCHISE

§2.1 Grant of Franchise.

A. Grant. The City hereby grants to the Company, subject to all conditions, limitations, terms and provisions contained in this franchise, the non-exclusive right to make reasonable use of City Streets and Other City Property

- (1) to provide Utility Service to the City and to its Residents under tariffs on file with the PUC; and
- (2) to acquire, purchase, construct, install, locate, maintain, operate and extend into, within and through the City all Company Facilities reasonably necessary for the generation, production, manufacture, sale, storage, purchase, exchange, transmission, transportation and distribution of Utility Service within and through the City.

B. Street Lighting and Traffic Signal Lighting Service. The rights granted by this franchise encompass the nonexclusive right to provide street lighting service and traffic signal lighting service as directed by the City, and the provisions of this franchise shall apply with full and equal force to street lighting service and traffic signal lighting service provided by the Company. Wherever reference is made in this franchise to the sale or provision of Utility Service, these references shall be deemed to include the provision of street lighting service and traffic signal lighting service. Street lighting service and traffic signal lighting service within the City shall be governed by this franchise, any separate agreements between the Company and the City executed on or after the effective date of this franchise and applicable Tariffs.

§2.2 Conditions and Limitations.

A. Scope of Franchise. The grant of this franchise shall extend to all areas of the City as it is now or hereafter constituted that are within the Company’s PUC-certificated service territory; however, nothing contained in this franchise shall be construed to authorize the Company to engage in activities other than the provision of Utility Service.

B. Subject to City Usage. The right to make reasonable use of City Streets to provide Utility Service to the City and its Residents under the franchise is subject to and subordinate to any City usage of said Streets.

C. Prior Grants Not Revoked. This grant is not intended to revoke any prior license, grant or right to use the Streets and such licenses, grants or rights of use are hereby affirmed. Such rights shall, however, be governed by the terms of this franchise.

D. Franchise Not Exclusive. The rights granted by this franchise are not, and shall not be deemed to be, granted exclusively to the Company, and the City reserves the right to make or grant a franchise to any other person, firm or corporation.

§2.3 Effective Date and Term.

A. Effective Date. This franchise shall take effect upon final certification of the results of the November 6, 2012, election approving this franchise (the “Effective Date”) and shall supersede any prior franchise grants to the Company by the City.

B. Term. The Term of this franchise shall be for twenty (20) years from the Effective Date, unless earlier terminated as provided in Article XVIII of this franchise.

ARTICLE III
CITY POLICE POWERS

§3.1 Police Powers. The City shall have the right to adopt, from time to time, in addition to the provisions contained herein, such laws, including ordinances and regulations, as it may deem necessary in the exercise of its governmental powers. If the City considers making any substantive changes in its local codes or regulations that in the City’s reasonable opinion will significantly impact the Company’s operations in the City’s Streets and Other City Property, it will make a good faith effort to advise the Company of such consideration; provided, however, that lack of notice shall not be justification for the Company’s non-compliance with any applicable local requirements.

§3.2 Regulation of Streets or Other City Property. The Company expressly acknowledges the City’s right to adopt, amend and enforce regulations concerning the Company’s access to or use of the Streets and Other City Property, including the requirement to acquire City and other permits prior to commencing any work contemplated by this franchise.

§3.3 Compliance with Laws. The Company shall promptly and fully comply with all laws, regulations, permits and orders enacted by the City.

ARTICLE IV
FRANCHISE FEE

§4.1 Franchise Fee.

A. Fee. In partial consideration for the franchise, which provides for the Company’s use of City Streets, which are valuable public properties acquired and maintained by the City at great expense to its Residents, and in recognition that the grant to the Company of the use of City Streets is a valuable right, the Company shall pay the City a sum equal to three percent (3%) of Gross Revenues. Pursuant to the requirements of Colorado statutes, the Company shall collect this fee through a surcharge upon City residents who are customers of the Company for so long as required by law.

B. Obligation in Lieu of Fee. In the event that the franchise fee specified herein is declared void for any reason by a court of competent jurisdiction, unless prohibited by law and in conformity with law, the Company shall be obligated to pay the City, at the same times and in the same manner as provided in this franchise, an aggregate amount equal to the amount the Company would have paid as a franchise fee as partial consideration for use of the City Streets. The Company may collect the amounts agreed upon through a surcharge upon Utility Service provided to City Residents.

C. Changes in Utility Service Industries. The City and the Company recognize that utility service industries are subject to restructuring initiatives by legislative and regulatory authorities and may also experience other changes as a result of mergers, acquisitions and reorganizations. Some of such initiatives and changes have or may have an adverse impact upon the franchise fee revenues provided for herein. In recognition of the length of the term of this franchise, the Company agrees that in the event of any such initiatives or changes and to the extent permitted by law, upon receiving a written request from the City, the Company will cooperate with and assist the City in modifying this franchise to assure that the City receives an amount in franchise fees or some other form of compensation that is the same amount of franchise fees paid to the City as of the date that such initiatives and changes adversely impact franchise fee revenues.

D. Utility Service Provided to the City. No franchise fee shall be charged to the City for Utility Service provided directly or indirectly to the City for its own consumption, including Street Lighting Service and traffic signal lighting service, unless otherwise directed by the City.

§4.2 Remittance of Franchise Fee.

A. Remittance Schedule. Franchise fee revenues shall be remitted by the Company to the City as directed by the City in monthly installments not more than thirty (30) days following the close of each month.

B. Correction of Franchise Fee Payments. In the event that either the City or the Company discovers that there has been an error in the calculation of the franchise fee payment to the City, it shall provide written notice of the error to the other party. If the party receiving written notice of error does not agree with the written notice of error, that party may challenge the written notice of error pursuant to Section 4.3.D of this franchise; otherwise, the error shall be corrected in the next monthly payment. However, if the error results in an overpayment of the franchise fee to the City, and said overpayment is in excess of Five Thousand Dollars (\$5,000.00), credit for the overpayment shall be spread over the same period of time the error remained undiscovered. All franchise fee underpayments shall be corrected in the next monthly payment, together with interest computed at the rate set by the PUC for customer security deposits held by the Company, from the date when due until the date paid. In no event shall either party be required to fund or refund any overpayment or underpayment made as a result of a Company error that occurred more than three (3) years prior to the discovery of the Company error.

§4.3 Audit of Franchise Fee Payments.

A. Every three (3) years commencing at the end of the third year of this franchise, the Company shall conduct an internal audit to investigate and determine the correctness of franchise fees paid to the City. Such audit shall be limited to the previous three (3) calendar years. The Company shall provide a written report to the City Manager containing the audit findings.

B. If the City disagrees with the results of the audit, and if the parties are not able to informally resolve their differences, the City may conduct its own audit at its own expense, with which the Company shall cooperate fully, including, but not limited to, providing the City's auditor with all information necessary to complete the audit.

C. If the results of a City audit conducted pursuant to Section 4.3(B) conclude that the Company has underpaid the City by two percent (2%) or more, in addition to the Company's obligation to pay such underpaid amounts to the City, the Company shall pay all costs of the City's audit.

D. Fee Disputes. Either party may challenge any written notification of error as provided for in Section 4.2.B of this franchise by filing a written notice to the other party within thirty (30) days of receipt of the written notification of error. The written notice shall contain a summary of the facts and reasons for the party's notice. The parties shall make good faith efforts to resolve any such dispute before initiating any formal legal proceedings for the resolution of such error.

E. Reports. Upon written request by the City, but not more than once per year, the Company shall supply the City with reports, in such formats and providing such details as reasonably requested by the City, of all suppliers of utility service that use Company Facilities to sell or distribute utility service to Residents and the names and addresses of each such supplier.

F. Franchise Fee Payment not in Lieu of Permit or Other Fees. Payment of the franchise fee does not exempt the Company from any other lawful tax or fee imposed generally upon persons conducting business within the City, including any fee for a street closure permit, an excavation permit, a street cut permit or other lawful permit hereafter required by the City, except that the franchise fee provided for herein shall be in lieu of any occupation, occupancy or similar tax for the use of City Streets.

ARTICLE V

ADMINISTRATION OF FRANCHISE

§5.1 City Manager to Administer Franchise. The City Manager shall have the full power and authority to administer this franchise, including the designation of one or more City representatives to act as the Company's primary contact(s) with the City regarding this franchise (the "City Designee(s)"). The City Manager shall provide the Company with the title and current telephone numbers of the City Designee(s), and may change a City Designee by providing written notice of such change to the Company. The City Designee shall have the right, at all reasonable times, to inspect any Company Facilities in City Streets and Other City Property.

§5.2 Company Designee. The Company shall designate a representative to act as the primary liaison with the City and shall provide the City with the name, address and telephone number for the Company's representative under this franchise. The Company may change its designation by providing written notice to the City. The City shall use this liaison to communicate with the Company regarding Utility Service and related service needs for City facilities.

§5.3 Coordination of Work. The Company shall coordinate its activities in City Streets with the City. The City and the Company will meet annually upon the written request of a City Designee to exchange their respective short-term and long-term forecasts and/or work plans for construction and other similar work that may affect City Streets. The City and the Company shall hold such meetings as either deems necessary to exchange additional information with a view toward coordinating their respective activities in those areas where such coordination may prove beneficial and so that the City will be assured that all provisions of this franchise and all

applicable City regulations, ordinances and codes are complied with and that aesthetic and other relevant planning principles have been given due consideration.

ARTICLE VI
SUPPLY, CONSTRUCTION AND DESIGN

§6.1 Purpose. The Company acknowledges the critical nature of the municipal services performed or provided by the City to the Residents that require the Company to provide prompt and reliable Utility Service and related services for City facilities. The City and the Company wish to provide for certain terms and conditions under which the Company will provide Utility Service and related services for the City in order to facilitate and enhance the operation of City facilities. The parties also wish to provide for other processes and procedures related to the provision of Utility Service to the City.

§6.2 Supply. Subject to the jurisdiction of the PUC, the Company shall take all reasonable and necessary steps to provide a sufficient supply of natural gas and electricity to Residents at the lowest reasonable cost consistent with reliable supplies.

§6.3 Service to City Facilities.

A. Transport Gas. To the extent the City is or elects to become a gas transport customer of the Company, the Company shall transport natural gas purchased by the City for use in City facilities pursuant to separate contracts with the City.

B. Charges to the City. No charges to the City by the Company for Utility Service (other than gas transportation, which shall be subject to negotiated contracts) shall exceed the lowest charge for similar service or supplies provided by the Company to any other similarly situated customer of the Company. The parties acknowledge the jurisdiction of the Colorado PUC over the Company's regulated intrastate electric and gas rates.

§6.4 Restoration of Service.

A. Notification. The Company shall provide to the City daytime and nighttime telephone numbers of a designated Company representative from whom a City Designee may obtain status information from the Company on a twenty-four (24) hour basis concerning interruptions of Utility Service in any part of the City.

B. Restoration. In the event the Company's gas system or electric system, or any part thereof, is partially or wholly destroyed or incapacitated, the Company shall use due diligence to restore such systems to satisfactory service within the shortest time or to provide a reasonable alternative to such system if the Company elects not to restore such system.

§6.5 Company Facilities. All Company Facilities within City Streets shall be maintained in good condition and repair.

§6.6 Company Work within the City.

A. All work within City Streets performed or caused to be performed by the Company shall be done:

- (1) in a high-quality manner;

- (2) in a timely and expeditious manner;
- (3) in a manner that minimizes inconvenience to the public;
- (4) in a cost-effective manner, which may include the use of qualified contractors; and
- (5) in accordance with all applicable laws, ordinances, regulations and permits.

B. No Interference with City Facilities. Company Facilities shall not unreasonably interfere with any City facilities, including water facilities, sanitary or storm sewer facilities, communications facilities or other City uses of the Streets, Public Utility Easements or Other City Property. Company Facilities shall be installed and maintained in City Streets, Public Utility Easements and Other City Property so as to minimize interference with other property, trees, landscaping and other improvements and natural features in and adjoining the Streets in light of the Company's obligation under Colorado law to provide safe and reliable utility facilities and services. Company facilities shall not be installed on any Other City Property absent the express written consent of the City.

C. Permit and Inspection. The installation, renovation and replacement of any Company Facilities in the City Streets or Other City Property by or on behalf of the Company shall be subject to permit, inspection and approval by the City. Such inspection and approval may include, but shall not be limited to, the following matters: location of Company Facilities, cutting and trimming of trees and shrubs and disturbance of pavement, sidewalks and surfaces of City Streets or Other City Property. The Company agrees to cooperate with the City in conducting inspections and shall promptly perform any remedial action lawfully required by the City pursuant to any such inspection.

D. Compliance with Applicable Law. The Company and all of its contractors shall comply with the requirements of all municipal laws, ordinances, regulations, permits and standards, including, but not limited to, requirements of all building and zoning codes and requirements regarding curb and pavement cuts, excavating, digging and other construction activities. The Company shall assure that its contractors working in City Streets or Other City Property hold the necessary licenses, registrations and permits required by applicable law. Whenever the Company proposes to make curb or pavement cuts or to excavate, dig or perform any other construction activities in City Streets and Other City Property, the Company and the City shall meet at the City's request to discuss the placement of poles and other similar facilities in order to mitigate adverse impacts of such activities within the City.

E. Increase in Voltage. The Company shall reimburse the City for the cost of upgrading the electrical system or facility of any City building or facility that uses Utility Service where such upgrading is caused or occasioned solely by the Company's decision to increase the voltage of delivered electrical energy. This provision shall not apply to voltage increases required by law, including, but not limited to, a lawful order of the PUC or voltage increases requested by the City.

F. As-Built Drawings. Upon written request of a City Designee, the Company shall provide within fourteen (14) days of project completion, on a project-by-project basis, as-built drawings of any Company Facility installed within the City Streets or contiguous to the City Streets. As used in this Section, as-built drawings refers to the facility drawings as maintained in the Company's geographical information system or any equivalent Company

system. The Company shall not be required to create drawings that do not exist at the time of the request, but the foregoing shall not be construed to affect any obligation to prepare drawings pursuant to any separate agreement.

G. Vegetation Management. The Company shall have the right to cut, prune and/or remove vegetation within the City in accordance with the then-current publications of BEST MANAGEMENT PRACTICES – UTILITY PRUNING OF TREES (International Society of Arboriculture); BEST MANAGEMENT PRACTICES – INTEGRATED VEGETATION MANAGEMENT (International Society of Arboriculture). If the City has concerns or questions about the Company’s vegetation management, it may contact the Company’s Area Manager who will coordinate communications with the Company’s vegetation management department.

§6.7 Excavation and Construction. The Company shall be responsible for obtaining, paying for and complying with all applicable permits for all construction, excavation, maintenance and repair work performed by the Company and its contractors including, but not limited to, excavation, traffic control, street closure and street cut permits, in the manner required by the laws, ordinances and regulations of the City. Although the Company shall be responsible for obtaining and complying with the terms of such permits when performing relocations requested by the City under Section 6.9 of this franchise and undergrounding requested by the City under Article 11 of this franchise, the City will not require the Company to pay the fees charged for such permits. Upon the Company submitting a construction design plan, the City shall promptly and fully advise the Company in writing of all requirements for restoration of City Streets in advance of Company excavation projects in City Streets based upon the design submitted.

§6.8 Restoration. When the Company performs any work in or affecting the City Streets or Other City Property or any landscaping or improvements therein, it shall, at its own expense, promptly remove any obstructions therefrom, repair any damage and restore such City Streets or Other City Property and landscaping and improvements therein to a condition that meets applicable City standards. If weather or other conditions do not permit the complete restoration or repair required by this Section, the Company may, with the approval of the City, temporarily restore the affected City Streets or Other City Property, provided that such temporary restoration is at the Company’s sole expense and provided further that the Company promptly undertakes and completes the required permanent restoration or repair when the weather or other conditions no longer prevent such permanent restoration or repair. If the Company fails to promptly restore or repair the City Streets or Other City Property and landscaping and improvements therein as required by this Section, the City may, upon giving fourteen (14) days written notice to the Company, restore such City Streets or Other City Property, remove the obstruction therefrom or repair the damage; provided, however, that the City’s actions do not interfere with Company Facilities. The Company shall be responsible for the actual cost incurred by the City to restore or repair such City Streets or Other City Property and landscaping and improvements therein or to remove any obstructions therefrom. The City shall not perform work on Company Facilities. Upon request of the City, the Company shall restore the City Streets or Other City Property to a better condition than existed before the work was undertaken, provided that the City shall be responsible for any additional costs of such restoration.

§6.9 Relocation of Company Facilities.

A. Relocation Obligation. The Company shall temporarily or permanently remove, relocate, change or alter the position of any Company Facility in City Streets or in Other City

Property at no cost or expense to the City whenever such removal, relocation, change or alteration is necessary for the completion of any Public Project. Any City-required removal, relocation, change or alteration of Company Facilities located in any Company owned property or any private easement or Public Utility Easement shall be at no cost to the Company. For all relocations, the Company and the City agree to cooperate on the location and relocation of the Company Facilities in the City Streets or Other City Property in order to achieve relocation in the most efficient and cost-effective manner possible. Notwithstanding the foregoing, once the Company has relocated any Company Facility at the City's direction, if the City requests that the same Company Facility be relocated within two (2) years, the subsequent relocation shall not be at the Company's expense unless such subsequent relocation is necessary to remedy public health and safety concerns not reasonably foreseeable by the City at the time of the prior relocation. Nothing provided herein shall prevent the Company from recouping its relocation costs and expenses from third parties.

B. Private Projects. The Company shall not be responsible for the expenses of any relocation required by Private Projects, and the Company has the right to require the payment of estimated relocation expenses from the affected private party before undertaking such relocation

C. Relocation Performance. The relocations set forth in Section 6.9.A of this franchise shall be completed within a reasonable time, not to exceed ninety (90) days from the later of the date on which the City requests, in writing, that the relocation commence, or the date when the Company is provided all Supporting Documentation. The Company shall receive an extension of time to complete a relocation where the Company's performance was delayed due to Force Majeure or the failure of the City to provide adequate Supporting Documentation. The Company has the burden of presenting evidence to reasonably demonstrate the basis for the delay. Upon written request of the Company, the City may also grant the Company reasonable extensions of time for good cause shown, and the City shall not unreasonably withhold any such extension.

D. City Revision of Supporting Documentation. Any revision by the City of Supporting Documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding facility relocation shall be deemed good cause for a reasonable extension of time to complete the relocation under the franchise.

E. Completion. Each relocation pursuant to this Article shall be considered complete only when the Company has actually relocated the Company Facilities, restored the relocation site in accordance with Section 6.8 of this franchise or as otherwise agreed with the City and has removed from the site, or properly abandons on-site, all unused facilities, equipment, material and other impediments.

F. Scope of Obligation. The relocation obligation set forth in this Section shall apply only to Company Facilities located in City Streets or Other City Property; provided that such obligation shall not apply to Company Facilities located on property owned by the Company in fee, or to Company Facilities located in privately-owned easements, on private property for which the Company has a license or permit, or in Public Utility Easements.

G. Underground Relocation. Relocated underground facilities shall be placed underground. Above ground facilities that are relocated shall be placed above ground unless the Company is compensated for the incremental cost to place such facilities underground in

excess of the cost to place such facilities above ground or the City requests that such additional incremental cost be paid out of available funds under Article 11 of this franchise.

H. Coordination.

- (1) When requested in writing by a City Designee or the Company, representatives of the City and the Company shall meet to share information regarding anticipated projects which will require relocation of Company Facilities in City Streets. Such meetings shall be for the purpose of minimizing conflicts where possible and to facilitate coordination with any reasonable timetable established by the City for any Public Project.
- (2) The City shall make reasonable best efforts to provide the Company with two (2) years advance notice of any planned street repaving. The Company shall make reasonable best efforts to complete any necessary or anticipated repairs or upgrades to Company Facilities that are located underneath the street within the two-year period if practical.

I. Proposed Alternatives or Modifications. Upon receipt of written notice of a required relocation, the Company may propose an alternative to or modification of the Public Project requiring the relocation in an effort to mitigate or avoid the impact of the required relocation of Company Facilities. The City shall in good faith review the proposed alternative or modification. The acceptance of the proposed alternative or modification shall be at the sole discretion of the City. In the event the City accepts the proposed alternative or modification, the Company agrees to promptly compensate the City for all additional costs, expenses or delay that the City reasonably determines resulted from the implementation of the proposed alternative. Unless otherwise agreed by the City, the presentation of a proposed alternative or modification shall not be deemed good cause for any extension of time to complete the relocation.

§6.10 New or Modified Service Requested by City. The conditions under which the Company shall install new or modified Utility Service to the City as a customer shall be governed by this franchise and the Company's PUC tariffs. Under no circumstances will the Company install any street lights within City Streets or Other City Property without the express written direction from a City Designee.

§6.11 Service to New Areas. If the territorial boundaries of the City are expanded during the term of this franchise, the Company shall, to the extent permitted by law, extend service to Residents in the expanded area at the earliest feasible time if the expanded area is within the Company's PUC-certificated service territory. Service to the expanded area shall be in accordance with the terms of the Company's PUC tariffs and this franchise, including the payment of franchise fees.

§6.12 City Not Required to Advance Funds. Upon receipt of the City's authorization for billing and construction, the Company shall extend Company Facilities to provide Utility Service to the City as a customer, without requiring the City to advance funds prior to construction. The City shall pay for the extension of Company Facilities once completed in accordance with the Company's extension policy on file with the PUC.

**ARTICLE VII
RELIABILITY**

- §7.1 Reliability. The Company shall operate and maintain Company Facilities efficiently and economically and in accordance with the high standards and best systems, methods and skills consistent with the provision of adequate, safe and reliable Utility Service.
- §7.2 Franchise Performance Obligations. As part of its obligations and commitments under this franchise, the Company shall carry out each of its performance obligations in a timely, expeditious, efficient, economical and workmanlike manner.
- §7.3 Reliability Reports. Upon written request, the Company shall provide the City with a report regarding the reliability of Company Facilities and Utility Service.

**ARTICLE VIII
COMPANY PERFORMANCE OBLIGATIONS**

- §8.1 New or Modified Service to City Facilities. In providing new or modified Utility Service to City facilities, the Company agrees to perform as follows:
- A. Performance. The Company shall complete each project requested by the City within a reasonable time. The Parties agree that a reasonable time shall not exceed one hundred eighty (180) days from the date upon which a City Designee makes a written request and provides the required Supporting Documentation for all Company Facilities other than traffic facilities. The Company shall be entitled to an extension of time to complete a project where the Company's performance was delayed due to Force Majeure. Upon written request of the Company, a City Designee may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension.
 - B. City Revision of Supporting Documentation. Any revision by the City of Supporting Documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding new or modified service to City facilities shall be deemed good cause for a reasonable extension of time to complete the relocation under the franchise. The Company shall promptly advise the City of any claimed extension under this provision, including the estimated length of the claimed extension and the revised date by which the installation or modification is estimated to be completed.
 - C. Completion/Restoration. Each such project shall be complete only when the Company actually provides the service installation or modification required, has restored the project site in accordance with the terms of the franchise, or as otherwise agreed with the City, and has removed from the site or properly abandoned on site any unused facilities, equipment, material and other impediments.
- §8.2 Adjustments to Company Facilities. The Company shall perform adjustments to Company Facilities, including manholes and other appurtenances in Streets and Other City Property, to accommodate City street maintenance, repair and paving operations at no cost to the City. In providing such adjustments to Company Facilities, the Company agrees to perform as follows:
- A. Performance. The Company shall complete each requested adjustment within a reasonable time, not to exceed thirty (30) days from the date upon which the City makes a written request and provides to the Company all information reasonably necessary to perform

the adjustment. The Company shall be entitled to an extension of time to complete an adjustment where the Company's performance was delayed due to Force Majeure. Upon request of the Company, the City may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension.

B. Completion/Restoration. Each such adjustment shall be complete only when the Company has actually adjusted the Company Facility to accommodate the City operations in accordance with City instructions and, if required, has readjusted the Company Facility following City paving operations.

C. Coordination. As requested by the City or the Company, representatives of the City and the Company shall meet regarding anticipated street maintenance operations that will require adjustments to Company Facilities in Streets or Other City Property. Such meetings shall be for the purpose of coordinating and facilitating performance under this Section.

§8.3 Technological Improvements. The Company shall use its best efforts to incorporate, as soon as practical, technological advances in its equipment and service within the City when such advances are technically and economically feasible and are safe and beneficial to the City and its Residents.

§8.4 Third Party Damage Recovery.

A. Damage to Company Interests. If any individual or entity damages any Company Facilities that the Company is responsible to repair or replace, the City will notify the Company of any such incident and will provide to the Company within a reasonable time all pertinent information in its possession regarding the incident and the damage, including the identity of the responsible individual or entity, except that this provision shall not be construed to require any disclosure prohibited by state open records or criminal justice records statutes or other law.

B. Damage to City Interests. If any individual or entity damages any Company Facilities for which the City is obligated to reimburse the Company the cost of the repair or replacement of the damaged Facility, the Company will notify the City of any such incident and will provide to the City within a reasonable time all pertinent information in its possession regarding the incident and the damage, including the identity of the responsible individual or entity, except that this provision shall not be construed to require any disclosure prohibited by law applicable to the Company.

C. Meeting. The Company and the City agree to meet periodically, upon written request of either party, for the purpose of developing, implementing, reviewing, improving and/or modifying mutually beneficial procedures and methods for the efficient gathering and transmittal of information useful in recovery efforts against third parties for damaging Company Facilities.

ARTICLE IX BILLING AND PAYMENT

§9.1 Billing for Utility Services.

A. Unless otherwise provided in its tariffs, the rules and regulations of the PUC or the Public Utility Law, the Company shall render bills monthly to the offices of the City for

Utility Service and other related services for which the Company is entitled to payment and for which the City has authorized payment.

B. Billings for service rendered during the preceding month shall be sent to the person(s) designated by the City, and payment therefor shall be made as prescribed in this agreement and the applicable tariff on file and in effect from time to time with the PUC.

C. The Company shall provide all billings and any underlying support documentation reasonably requested by the City and in an editable and manipulatable electronic format that is acceptable to the Company and the City.

D. The Company agrees to meet with a City Designee at least annually for the purpose of developing, implementing, reviewing and/or modifying mutually beneficial and acceptable billing procedures, methods and formats that may include, without limitation, electronic billing and upgrades or beneficial alternatives to the Company's current most advanced billing technology, for the efficient and cost effective rendering and processing of such billings submitted by the Company to the City.

§9.2 Payment to City. In the event the City determines after written notice to the Company that the Company is liable to the City for payments, costs, expenses or damages of any nature, and subject to the Company's right to challenge such determination, the City may deduct all monies due and owing the City from any other amounts currently due and owing the Company. Upon receipt of such written notice, the Company may request a meeting between the Company's designee and a City Designee to discuss such determination. The City Designee and the Company shall meet at such time and location as is mutually agreeable. As an alternative to such deduction, the City may choose to bill the Company for such assessment(s), in which case, the Company shall pay each such bill within thirty (30) days of the date of receipt of such bill. If the Company challenges the City's determination of liability, the City shall make such payments to the Company pursuant to the Company's tariffs until the challenge has been finally resolved.

ARTICLE X

USE OF COMPANY FACILITIES

§10.1 City Use of Company Electric Distribution Poles. The City shall be permitted to make use of Company electric distribution poles in the City at no cost to the City for the placement of City equipment or facilities necessary to serve a legitimate police, fire, emergency, public safety or traffic control purpose. The Company may allow the use of electric distribution poles for other purposes at the Company's sole discretion. The City will notify the Company in advance and in writing of its intent to use Company distribution poles and the nature of such use unless it is impractical to provide such advance notice because of emergency circumstances, in which event the City will provide such notice as soon as practical. The City shall be responsible for costs associated with modifications to Company electric distribution poles to accommodate the City's use of such poles and for any electricity used. No such use of Company electric distribution poles shall be permitted if such use would constitute a safety hazard or would interfere with the Company's use of Company electric distribution facilities. Any such City use must comply with the National Electric Safety Code and all other applicable laws, rules and regulations.

§10.2 City Use of Company Street Lighting and Traffic Signal Poles.

A. The City shall be allowed to use the Company owned or controlled street lighting as well as company owned and controlled traffic signal poles, at no cost to the City other than the cost of electricity and as otherwise provided in this subsection A, for legitimate police, public safety or traffic control purposes under the terms and conditions set forth in the Tariffs and this franchise and any subsequent agreements that may be entered between the parties. Prior to making any such use of the Company's street lighting and traffic signal lighting poles, the City shall obtain the written approval of the Company, which shall not be unreasonably withheld, conditioned or delayed. No such use shall be allowed if the Company determines in good faith that the City's use of specific street lighting or traffic signal poles is likely to create a safety hazard or interfere with the Company's use of its Utility Facilities or if the use is contrary to the Tariffs. The City shall be responsible for paying the Company's actual cost of inspection to determine whether the proposed use will create a safety hazard or interfere with Company Utility Facilities.

B. The City shall not be required to remove its existing signs, equipment or facilities from street lighting or traffic signal lighting poles unless the Company determines, in good faith, after consultation with the City that attachment of specific equipment or facilities on specific poles is likely to create a safety hazard or interfere with the Company's use of its Utility Facilities. If, after such determination, the City is required to remove its existing equipment or facilities from such poles, the Company shall allow the City thirty (30) days from the date of written notice, including by electronic mail, delivery receipt requested, within which to remove its equipment or facilities. If the City fails to remove the equipment or facilities within such time period, the Company may perform the removal at the City's sole expense.

§10.3 Third Party Use of Company Facilities. If requested in writing by the City, the Company may allow other companies who hold franchises, or otherwise have obtained consent from the City to use the Streets, to utilize Company electric distribution poles for the placement of their facilities upon approval by the Company and agreement upon reasonable terms and conditions including payment of fees established by the Company. Use of other Company facilities by third parties shall be in accordance with the Company's tariffs. No such use shall be permitted if it would constitute a safety hazard or would interfere with the Company's use of Company electric distribution facilities. The Company shall not be required to permit the use of Company distribution facilities for the provision of utility service except as otherwise required by law.

§10.4 City Use of Company Transmission Rights-of-Way. The Company shall offer to grant to the City use of transmission rights-of-way which it now, or in the future, owns in fee within the City for the purposes set forth in and pursuant to the provisions of the Park and Open Space Act of 1984, C.R.S. § 29-7.5-101, *et seq.*, on terms comparable to those offered to other municipalities, provided that the Company shall not be required to make such an offer in any circumstance where such offer would constitute a safety hazard or interfere with the Company's use of the transmission right-of-way. City use of transmission rights-of-way may include use for trails, parks and open space. In order to exercise this right, the City must make specific written request to the Company for any such use.

§10.5 Emergencies. Upon written request, the Company shall assist the City in developing an emergency management plan. In the case of any emergency or disaster, the Company shall, upon oral request of the City, make available Company Facilities for emergency use during the

emergency or the disaster period. Such use of Company Facilities shall be of a limited duration and shall be allowed only if the use does not interfere with the Company's use of Company Facilities.

ARTICLE XI
UNDERGROUNDING OF OVERHEAD FACILITIES

§11.1 Underground Electrical Lines in New Areas. The Company shall, upon payment to the Company of the charges provided in its tariffs or their equivalent, place all newly constructed electrical distribution lines in newly developed areas of the City underground in accordance with applicable laws, regulations and orders.

§11.2 Underground Conversion at Company Expense.

A. Underground Fund. The Company shall budget and allocate an annual amount, equivalent to one percent (1%) of the preceding year's Electric Gross Revenues (the "Fund"), for the purpose of undergrounding existing overhead distribution facilities in the City, as may be requested by a City Designee. Except as provided in §6.9.G, no relocation expenses that the Company would be required to expend pursuant to Article 6 of this franchise shall be charged to this allocation.

B. Unexpended Portion and Advances. Any unexpended portion of the Fund shall be carried over to succeeding years and, in addition, upon request by the City, the Company agrees to advance and expend amounts anticipated to be available under the preceding paragraph for up to three (3) years in advance. Any amounts so advanced shall be credited against amounts to be expended in succeeding years. Any funds left accumulated under any prior franchise, shall be carried over to this franchise. The City shall have no vested interest in monies allocated to the Fund, and any monies in the Fund not expended at the expiration or termination of this franchise shall remain the property of the Company. At the expiration or termination of this franchise, the Company shall not be required to underground any existing overhead facilities under this Article, but may do so in its sole discretion.

C. System-wide Undergrounding. If, during the term of this franchise, the Company should receive authority from the PUC to undertake a system-wide program or programs of undergrounding its electric distribution facilities, the Company shall budget and allocate to the program of undergrounding in the City such amount as may be determined and approved by the PUC, but in no case shall such amount be less than the one percent (1%) of annual Electric Gross Revenues provided above.

D. City Requirement to Underground. In addition to the provisions of this Article, the City may require any above ground Company Facilities to be moved underground at the City's expense.

§11.3 Undergrounding Performance. Upon receipt of a written request from the City, the Company shall underground Company Facilities pursuant to the provisions of this Article, in accordance with the procedures set forth in this Section. Any work on the customer's side of the meter that may be caused by an undergrounding project pursuant to this Article shall not be included within the scope of an undergrounding project for the purposes of this Section and shall not be the responsibility of the Company.

A. Estimates. Promptly upon receipt of an undergrounding request from the City and the Supporting Documentation necessary for the Company to design the undergrounding project, the Company shall prepare a detailed, good faith cost estimate of the anticipated actual cost of the requested undergrounding project for the City to review and, if acceptable to the City, the City will issue a project authorization letter. At the City's request, the Company shall provide all documentation forming the basis of such estimate. The Company shall not proceed with any requested undergrounding project until the City has provided a written acceptance of the Company estimate.

B. Performance.

- (1) The Company shall complete each undergrounding project requested by the City within a reasonable time, not to exceed two hundred forty (240) days from the later of the date upon which a City Designee makes a written request to Company or the date the City provides the Company the Supporting Documentation with which to complete the project.
 - (i) The Company shall have ninety (90) days after receiving the City's written request and Supporting Documentation to design project plans, prepare the good faith estimate, and transmit the same to the City for review. If the City approval of the plans and estimate has not been granted, the Company's good faith estimate will be void sixty (60) days after delivery of the plans and estimate to the City Designee.
 - (ii) If the plans and estimate are approved by the City, the Company shall have one hundred twenty (120) days from date of the City's written authorization, plus any of the ninety (90) days not used in preparing the good faith estimate to complete the project. The City and the Company shall agree to a longer completion date when required for large-scale undergrounding projects.
 - (iii) At the Company's sole discretion, if the good faith estimate has expired because the City Designee has not approved the same within sixty (60) days, the Company may, at its discretion, extend the good faith estimate or prepare a new estimate using current prices. The Company shall be entitled to an extension of time to complete each undergrounding project where the Company's performance was delayed due to a Force Majeure condition. Upon written request of the Company, the City may also grant the Company reasonable extensions of time for good cause shown, and the City shall not unreasonably withhold any such extension.
- (2) Any revision by the City of Supporting Documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding an undergrounding project shall be deemed good cause for a reasonable extension of time to complete the undergrounding project under the franchise. The Company shall promptly advise the City of any claimed extension under this provision, including the estimated length of the claimed extension and the revised date by which the undergrounding project is estimated to be completed.

C. Completion/Restoration. Each undergrounding project shall be deemed complete only when the Company has actually undergrounded the designated Company Facilities,

restored the undergrounding site in accordance with Section 6.8 of this franchise, or as otherwise agreed with the City, and removed from the site or properly abandoned on site any unused facilities, equipment, material and other impediments.

D. Report of Actual Costs. Upon completion of each undergrounding project, the Company shall submit to the City a detailed report of the Company's actual cost to complete the project and the Company shall reconcile this total actual cost with the accepted cost estimate. The report shall be provided within one hundred twenty (120) days after completion of the project and written request from the City.

E. Audit of Undergrounding Projects. The City may require that the Company undertake an independent audit of up to two (2) undergrounding projects in any calendar year. The Fund balance shall be reduced by the cost of any such independent audit. The Company shall cooperate fully with any audit and the independent auditor shall prepare and provide to the City and the Company a final audit report showing the actual costs associated with completion of the undergrounding project. If an audit is required by the City, only those actual project costs confirmed and verified by the independent auditor as reasonable and necessary to complete the undergrounding project shall be charged against the Fund balance.

§11.4 Audit of Underground Fund. Upon written request, every three (3) years commencing at the end of the third year of this franchise, the Company shall cause an independent auditor to investigate and determine the correctness of the charges to the underground fund. Such audits shall be limited to the previous three (3) calendar years. The independent auditor shall provide to the City and the Company a written report containing the auditor's findings. The Company shall reconcile the Fund consistent with the findings contained in the independent auditor's written report. The Company shall pay the costs of the audit and investigation.

§11.5 Cooperation with Other Utilities.

A. When undertaking an undergrounding project, the City and the Company shall coordinate with other utilities or companies that have above-ground facilities located in the area of the undergrounding project to attempt, where practical, to place all such facilities undergrounded as part of the same project. Notwithstanding the foregoing, the parties acknowledge and agree that the Company is without authority to control the actions of any other such utility or company, and the parties' efforts to coordinate undergrounding of facilities under this paragraph shall be made only where practical, in good faith and without guaranty of success and the Company shall not be required to expend funds in association with such coordination.

B. When other utilities or companies place facilities underground, to the extent the Company has received prior written notification, the Company shall cooperate with such utilities and companies and undertake to underground Company facilities as part of the same project where financially, technically and operationally feasible. The Company shall not be required to pay for the cost of undergrounding the facilities of other companies or the City.

§11.6 Planning and Coordination of Undergrounding Projects. The City and the Company shall mutually plan in advance the scheduling of undergrounding projects to be undertaken according to this Article as a part of the review and planning for other City and Company construction projects. The City and the Company agree to meet as necessary to review the progress of current undergrounding projects and to review planned future undergrounding projects. The purpose of such meetings shall be to achieve the orderly undergrounding of Company

Facilities. Representatives of both the City and the Company shall meet periodically to review the Company's undergrounding of Company Facilities and at such meetings shall review:

- (1) Undergrounding, including conversions, Public Projects and replacements that have been accomplished or are underway, together with the Company's plans for additional undergrounding; and
- (2) Public Projects anticipated by the City.

ARTICLE XII

PURCHASE OR CONDEMNATION

§12.1 Municipal Right to Purchase or Condemn.

A. Right and Privilege of City. The right and privilege of the City to construct, purchase or condemn any Company Facilities located within the territorial boundaries of the City, and the Company's rights in connection therewith, as set forth in applicable provisions of the constitution and statutes of the State of Colorado relating to the acquisition of public utilities, are expressly recognized. The City shall have the right, within the time frames and in accordance with the procedures set forth in such provisions, to purchase Company Facilities, land, rights-of-way and easements now owned or to be owned by the Company, where such land, rights-of-way or easements are located within the territorial boundaries of the City. In the event of any such purchase, no value shall be ascribed or given to the rights granted under this franchise in the valuation of the property thus taken.

B. Notice of Intent to Purchase or Condemn. The City shall provide the Company written notice of the City's intent to purchase or condemn Company Facilities not less than twelve (12) months prior to the date the City intends to commence a condemnation action to acquire the Company Facilities. Nothing in this Section shall be deemed or construed to constitute a consent by the Company to the City's purchase or condemnation of Company Facilities.

ARTICLE XIII

MUNICIPALLY PRODUCED UTILITY SERVICE

§13.1 Municipally Produced Utility Service.

A. City Reservation. The City expressly reserves the right to engage in the production of Utility Service to the extent permitted by law. The Company agrees to negotiate in good faith long term contracts to purchase City-generated power made available for sale, subject to applicable statutory requirements and consistent with PUC requirements. The Company further agrees to offer transmission and delivery services to the City that are required by judicial, statutory and/or regulatory directive and that are comparable to the services offered to any other customer with similar generation facilities.

B. Franchise Not to Limit City's Rights. Nothing in this franchise shall be construed to prohibit the City from becoming an aggregator of utility service or from selling utility service to customers should it be permissible under law.

ARTICLE XIV
ENVIRONMENT AND CONSERVATION

§14.1 Environmental Leadership. The City and the Company agree that sustainable development, environmental excellence and innovation shall form the foundation of the Utility Service provided by the Company under this franchise. In furtherance of this ideal, the Company pledges to do the following:

A. Actively pursue reduction of carbon emissions attributable to its electric generation facilities with a rigorous combination of energy conservation and energy efficiency measures, Clean Energy measures and promoting and implementing the use of Renewable Energy Resources on both a distributed and centralized basis.

B. Cost-effectively monitor its operations to mitigate environmental impacts; meet or exceed the requirements of environmental laws, regulations and permits; invest in cost-effective environmentally-sound technologies; consider environmental issues in its planning and decision-making; and support environmental research and development projects and partnerships in our communities through various means, including, but not limited to, corporate giving and employee involvement.

C. Explore ways to reduce water consumption at its facilities and to use recycled water where feasible.

D. Work with the U.S. Fish and Wildlife Service to develop and implement avian protection plans to reduce electrocution and collision risks by eagles, raptors and other migratory birds with transmission and distribution lines.

E. On or before December 1 of each year, provide the City a written report describing the Company's progress in carbon reduction and other environmental efforts, and meet with the City at a mutually convenient time and place for a discussion of such. In meeting its obligation under this section, the Company is not precluded from providing existing internal and external reports that may be used for other reporting requirements.

§14.2 Conservation. The City and the Company recognize and agree that energy conservation programs offer opportunities for the efficient use of energy and possible reduction of energy costs. The City and the Company further recognize that creative and effective energy conservation solutions are crucial to sustainable development. The Company recognizes and shares the City's objectives to advance the implementation of cost-effective Energy Efficiency and Energy Conservation programs that direct opportunities to Residents to manage more efficiently their use of energy and thereby create the opportunity to reduce their energy bills.

A. In furtherance of the above-stated objectives, the Company commits to offer programs that endeavor to capture market opportunities for cost-effective energy efficiency improvements such as municipal specific programs that provide cash rebates for efficient lighting, energy design programs to assist architects and engineers to incorporate energy efficiency in new construction projects, and recommissioning programs to analyze existing systems to optimize performance and conserve energy according to current and future Demand Side Management ("DSM") programs. In doing so, the Company recognizes the importance of (i) implementing cost-effective programs the benefits of which would otherwise be lost if not pursued in a timely fashion; and (ii) developing cost-effective

programs for the various classes of the Company's customers, including low-income customers.

B. The Company shall advise the City and its Residents of the availability of assistance that the Company makes available for investments in energy conservation through newspaper advertisements, bill inserts and energy efficiency workshops and by maintaining information about these programs on the Company's website. Further, the Company will designate a conservation representative to act as the primary liaison with the City who will provide the City with information on how the City may take advantage of reducing energy consumption in City facilities and how the City may participate in energy conservation and energy efficiency programs sponsored by the Company. As such, the Company and the City commit to work cooperatively and collaboratively to identify, develop, implement and support programs offering creative and sustainable opportunities to Company customers and Residents, including low-income customers and Residents.

C. Company Cooperation – Renewable Energy Resource Programs.

- (1) The Company agrees to help the City participate in Company programs, and when opportunities exist to partner with others, such as the State of Colorado, the Company will help the City pursue those opportunities. In addition, and in order to assist the City and its Residents' participation in Renewable Energy Resource programs, the Company shall:
 - (i) Notify the City regarding all eligible Renewable Energy Resource programs;
 - (ii) Provide the City with technical support regarding how the City may participate in Renewable Energy Resource programs; and
 - (iii) Advise Residents regarding eligible Renewable Energy Resource programs.
- (2) Notwithstanding the foregoing, to the extent any Company assistance is needed to support Renewable Energy Resource Programs that are solely for the benefit of Company customers located within the City, the Company retains the sole discretion as to whether to incur such costs.

§14.3 Continuing Commitment. It is the express intention of the City and the Company that the collaborative effort provided for in this Article continue for the entire term of this agreement. The City and the Company also recognize, however, that the programs identified in this Article may exist for a limited duration and that the regulations and technologies associated with energy conservation may change. Given this variability, the Company agrees to maintain its commitment to sustainable development and Energy Conservation for the term of this agreement by continuing to provide leadership, support and assistance, in collaboration with the City, to identify, develop, implement and maintain new and creative programs similar to the programs identified in this agreement in order to help the City achieve its environmental goals.

§14.4 PUC Approval. Nothing in this Article shall be deemed to require the Company to invest in technologies or otherwise incur costs that it has a good faith belief the PUC will prohibit the Company from recovering through the ratemaking process.

ARTICLE XV
TRANSFER OF FRANCHISE

- §15.1 Consent of City Required. The Company shall not transfer or assign any rights under this franchise to an unaffiliated third party, except by merger with such third party, unless the City approves a transfer or assignment in writing, except when such transfer is made in response to legislation or regulatory requirements,. Approval of a transfer or assignment shall not be unreasonably withheld, conditioned or delayed.
- §15.2 Transfer Fee. In order that the City may share in the value this franchise adds to the Company's operations, any transfer or assignment of rights granted under this franchise requiring City approval, as set forth herein, shall be subject to the condition that the Company shall promptly pay to the City a transfer fee in an amount equal to the proportion of the City's population then provided Utility Service by the Company to the population of the City and County of Denver then provided Utility Service by the Company, multiplied by one million dollars (\$1,000,000.00). Except as otherwise required by law, such transfer fee shall not be recovered from a surcharge placed on the rates solely of Residents.

ARTICLE XVI
CONTINUATION OF UTILITY SERVICE

- §16.1 Continuation of Utility Service. In the event this franchise is not renewed at the expiration of its term or is terminated for any reason, and the City has not provided for alternative utility service, the Company shall have no right to remove any Company Facilities or discontinue providing Utility Service unless otherwise ordered by the PUC, and shall continue to provide Utility Service within the City until the City arranges for utility service from another provider. The Company further agrees that it will not withhold any temporary Utility Services necessary to protect the public. The City agrees that in the circumstances of this Article, the Company shall be entitled to monetary compensation as provided in the Company's Tariffs and, upon the City complying with applicable provisions of law, the Company shall be entitled to collect from Residents and shall be obligated to pay the City, at the same times and in the same manner as provided in the franchise, an aggregate amount equal to the amount which the Company would have paid as a franchise fee as consideration for use of the City's Streets. Only upon receipt of written notice from the City stating that the City has adequate alternative Utility Service for Residents and upon order of the PUC shall the Company be allowed to discontinue the provision of Utility Service to the City and its Residents.

ARTICLE XVII
INDEMNIFICATION AND IMMUNITY

- §17.1 City Held Harmless. The Company shall indemnify, defend and hold the City harmless from and against claims, demands, liens and all liability or damage of whatsoever kind on account of or arising from the grant of this franchise, the exercise by the Company of the related rights, or from the operations of the Company within the City, and shall pay the costs of defense plus reasonable attorney fees. The City shall (a) give prompt written notice to the Company of any claim, demand or lien with respect to which the City seeks indemnification hereunder and (b) unless in the City's judgment a conflict of interest may exist between the City and the Company with respect to such claim, demand or lien, shall permit the Company to assume the defense of such claim, demand or lien with counsel satisfactory to the City. If such defense is assumed by the Company, the Company shall not be subject to liability for any settlement made by the City without the Company's consent. If such defense is not assumed by the Company or

if the City determines that a conflict of interest exists, the parties reserve all rights to seek all remedies available in this franchise against each other. Notwithstanding any provision hereof to the contrary, the Company shall not be obligated to indemnify, defend or hold the City harmless to the extent any claim, demand or lien arises out of or in connection with any negligent or intentional act or failure to act of the City or any of its officers or employees.

§17.2 Immunity. Nothing in this Section or any other provision of this agreement shall be construed as a waiver of the notice requirements, defenses, immunities and limitations the City may have under the Colorado Governmental Immunity Act, C.R.S. §24-10-101, *et. seq.*, or of any other defenses, immunities or limitations of liability available to the City by law.

ARTICLE XVIII BREACH

§18.1 Non-Contestability. The City and the Company agree to take all reasonable and necessary actions to assure that the terms of this franchise are performed. The Company reserves the right to seek a change in its tariffs including but not limited to the rates, charges, terms, and conditions of providing Utility Service to the City and its Residents, and the City retains all rights that it may have to intervene and participate in any such proceedings.

§18.2 Breach.

A. Notice/Cure/Remedies. Except as otherwise provided in this franchise, if a party (the “breaching party”) to this franchise fails or refuses to perform any of the terms or conditions of this franchise (a “breach”), the other party (the “non-breaching party”) may provide written notice to the breaching party of such breach. Upon receipt of such notice, the breaching party shall be given a reasonable time, not to exceed thirty (30) days, in which to cure the breach. If the breaching party does not cure the breach within the time allowed in the notice, the non-breaching party may exercise the following remedies for such breach:

- (1) Demand specific performance of the applicable term or condition; and
- (2) Recovery of actual damages from the date of such breach incurred by the non-breaching party in connection with the breach, but excluding any consequential damages.

B. Termination of Franchise by City. In addition to the foregoing remedies, if the Company fails or refuses to perform any material term or condition of this franchise (a “material breach”), the City may provide written notice to the Company of such material breach. Upon receipt of such notice, the Company shall be given a reasonable time, not to exceed ninety (90) days, in which to remedy the material breach. If the Company does not remedy the material breach within the time allowed in the notice, the City may, at its sole option, terminate this franchise. This remedy shall be in addition to the City’s right to exercise any of the remedies provided for elsewhere in this franchise. Upon such termination, the Company shall continue to provide Utility Service to the City and its Residents until the City makes alternative arrangements for such service and until otherwise ordered by the PUC and, upon the City complying with applicable provisions of law, the Company shall be entitled to collect from Residents and shall be obligated to pay the City, at the same times and in the same manner as provided in the franchise, an aggregate amount equal to the amount which the Company would have paid as a franchise fee as consideration for use of the City Streets.

C. Company Shall Not Terminate Franchise. In no event does the Company have the right to terminate this franchise.

D. No Limitation. Except as provided herein, nothing in this franchise shall limit or restrict any legal rights or remedies that either party may possess arising from any alleged breach of this franchise.

ARTICLE XIX AMENDMENTS

§19.1 Proposed Amendments. At any time during the term of this franchise, the City or the Company may propose amendments to this franchise by giving thirty (30) days written notice to the other of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s). However, nothing contained in this Section shall be deemed to require either party to consent to any amendment proposed by the other party.

§19.2 Effective Amendments. No alterations, amendments or modifications to this franchise shall be valid unless executed by an instrument in writing by the parties, adopted with the same formality used in adopting this franchise, to the extent required by law. Neither this franchise, nor any term hereof, may be changed, modified or abandoned, in whole or in part, except by an instrument in writing, and no subsequent oral agreement shall have any validity whatsoever.

§19.3 Increases in Franchise Fee, Underground Fund Contribution.

A. The Company shall report to the City, within sixty (60) days, the execution or change of any franchise under which a municipality receives a franchise fee greater than is provided in Section 4.1 herein or in which the undergrounding fund is greater than established in Section 11.2 herein.

B. Once each year the City Council may, by ordinance, change the franchise fee and the undergrounding fund percentage to that provided under any municipal franchise entered into by the Company in Colorado, after first giving thirty (30) days notice to the Company.

ARTICLE XX EQUAL OPPORTUNITY

§20.1 Economic Development. The Company is committed to the principle of stimulating, cultivating and strengthening the participation and representation of persons of color, women and members of other under-represented groups within the Company and in the local business community. The Company believes that increased participation and representation of under-represented groups will lead to mutual and sustainable benefits for the local economy. The Company is also committed to the principle that the success and economic well-being of the Company is closely tied to the economic strength and vitality of the diverse communities and people it serves. The Company believes that contributing to the development of a viable and sustainable economic base among all Company customers is in the best interests of the Company and its shareholders.

§20.2 Employment.

A. The Company is committed to undertaking programs that identify, consider and develop persons of color, women and members of other under-represented groups for positions at all skill and management levels within the Company.

B. The Company recognizes that the City and the business community in the City, including women and minority owned businesses, provide a valuable resource in assisting the Company to develop programs to promote persons of color, women and members of under-represented communities into management positions and agrees to keep the City regularly advised of the Company's progress by providing the City with a copy of the Company's annual affirmative action report upon the City's written request.

C. In order to enhance the diversity of the employees of the Company, the Company is committed to recruiting diverse employees by strategies such as partnering with colleges, universities and technical schools with diverse student populations, utilizing diversity specific media to advertise employment opportunities, internships, and engaging recruiting firms with diversity specific expertise.

D. The Company is committed to developing a world-class workforce through the advancement of its employees, including persons of color, women and members of under-represented groups. In order to enhance opportunities for advancement, the Company will offer training and development opportunities for its employees. Such programs may include mentoring programs, training programs, classroom training and leadership programs.

E. The Company is committed to a workplace free of discrimination based on race, color, religion, national origin, gender, age, military status, sexual orientation, marital status or physical or mental disability or any other protected status in accordance with all federal, state or local laws. The Company shall not, solely because of race, creed, color, religion, sex, age, national origin or ancestry or handicap, refuse to hire, discharge, promote, demote or discriminate in matters of compensation, against any person otherwise qualified, and further agrees to insert the foregoing provision or its equivalent in all agreements the Company enters into in connection with this franchise.

F. The Company shall identify and consider women, persons of color and other underrepresented groups to recommend for its Board of Directors, consistent with the responsibility of boards to represent the interests of the Shareholders, customers and employees of the Company.

§20.3 Contracting.

A. It is the Company's policy to make available to minority and women owned business enterprises and other small and/or disadvantaged business enterprises the maximum practical opportunity to compete with other service providers, contractors, vendors and suppliers in the marketplace. The Company is committed to increasing the proportion of Company contracts awarded to minority and women owned business enterprises and other small and/or disadvantaged business enterprises for services, construction, equipment and supplies to the maximum extent consistent with the efficient and economical operation of the Company.

B. The Company agrees to maintain and continuously develop contracting and community outreach programs calculated to enhance opportunity and increase the

participation of minority and women owned business enterprises and other small and/or disadvantaged business enterprises to encourage economic vitality. The Company agrees to keep the City regularly advised of the Company's programs.

C. The Company shall maintain and support partnerships with local chambers of commerce and business organizations, including those representing predominately minority owned, women owned and disadvantaged businesses, to preserve and strengthen open communication channels and enhance opportunities for minority owned, women owned and disadvantaged businesses to contract with the Company.

§20.4 Coordination. City agencies provide collaborative leadership and mutual opportunities or programs relating to City based initiatives on economic development, employment and contracting opportunity. The Company agrees to review Company programs and mutual opportunities responsive to this Article with these agencies, upon their request, and to collaborate on best practices regarding such programs and coordinate and cooperate with the agencies in program implementation.

ARTICLE XXI
MISCELLANEOUS

§21.1 No Waiver. Neither the City nor the Company 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.

§21.2 Successors and Assigns. The rights, privileges, and obligations, in whole or in part, granted and contained in this franchise shall inure to the benefit of and be binding upon the Company, its successors and assigns, to the extent that such successors or assigns have succeeded to or been assigned the rights of the Company pursuant to Article 15 of this franchise.

§21.3 No Third Party Beneficiaries. Nothing contained in this franchise shall be construed to provide rights to third parties.

§21.4 Notice. Both parties shall designate from time to time in writing representatives for the Company and the City who will be the persons to whom notices shall be sent regarding any action to be taken under this franchise. Notice shall be in writing and forwarded by certified mail or hand delivery to the persons and addresses as hereinafter stated, unless the persons and addresses are changed at the written request of either party, delivered in person or by certified mail. Until any such change shall hereafter be made, notices shall be sent as follows:

To the City:

City Manager
City of Commerce City
7887 East 60th Avenue
Commerce City, CO 80022

With a copy to:

City Attorney
City of Commerce City
7887 East 60th Avenue
Commerce City, CO 80022

To the Company:

Regional Vice President, Customer and
Community Services
Public Service Company of Colorado
P.O. Box 840
Denver, Colorado 80201

With a copy to:

Legal Department
Public Service Company of Colorado
P.O. Box 840
Denver, Colorado 80201

§21.5 Examination of Records.

A. The parties agree that a duly authorized representative of the City shall have the right to examine any books, documents, papers, and records of the Company reasonably related to the Company's compliance with the terms and conditions of this franchise agreement. Information shall be provided within thirty (30) days of any written request. Any books, documents, papers, and records of the Company in any form that are requested by the City that contain confidential information shall be conspicuously identified as "confidential" or "proprietary" by the Company. In no case shall any privileged communication be subject to examination by the City pursuant to the terms of this section. "Privileged communication" means any communication that would not be discoverable due to the attorney-client privilege or any other privilege that is generally recognized in Colorado, including but not limited to the work product privilege. The work product privilege shall include information developed by the Company in preparation for PUC proceedings.

B. With respect to any information requested by the City which the Company identifies as "Confidential" or "Proprietary":

- (1) The City will maintain the confidentiality of the information by keeping it under seal and segregated from information and documents that are available to the public;
- (2) The information shall be used solely for the purpose of determining the Company's compliance with the terms and conditions of this franchise agreement;
- (3) The information shall only be made available to City employees and consultants who represent in writing that they agree to be bound by the provisions of this subsection B;
- (4) The information shall be held by the City for such time as is reasonably necessary for the City to address the franchise issue(s) that generated the request and shall be returned to the Company, without duplication in any manner, when the City has concluded its use of the information. The parties agree that in most cases, the information should be returned within one hundred twenty (120) days. However, in the event that the information is needed in connection with any action that requires more time, including, but not necessarily limited to litigation, administrative proceedings and/or other disputes, the City may maintain the information until such issues are fully and finally concluded.

C. If an Open Records Act request is made by any third party for confidential or proprietary information that the Company has provided to the City pursuant to this franchise agreement, the City will promptly notify the Company of the request and shall allow the Company to defend such request at its sole expense, including filing a legal action in any

court of competent jurisdiction to prevent disclosure of such information. In any such legal action the Company shall join the person requesting the information and the City. In no circumstance shall the City provide to any third party confidential information provided by the Company pursuant to this franchise agreement without first providing the written notice required hereunder, complying with the terms of this franchise agreement and conferring with the Company. The Company shall defend, indemnify and hold the City harmless from any claim, judgment, costs or attorney fees incurred in participating in such proceeding.

D. Unless otherwise agreed between the parties, the following information shall not be provided by the Company: confidential employment matters, specific information regarding any of the Company's customers, information related to the compromise and settlement of disputed claims including but not limited to PUC dockets, information provided to the Company which is declared by the provider to be confidential, and which would be considered confidential to the provider under applicable law.

E. PUC Filings. Upon written request, the Company shall provide the City copies of all applications, advice letters and periodic reports, together with any accompanying non-confidential testimony and exhibits, filed by the Company with the Colorado Public Utilities Commission.

F. Information. Upon written request, the Company shall provide the City Manager or the City Manager's designee with:

- (1) A copy of the Company's or its parent company's consolidated annual financial report, or alternatively, a URL link to a location where the same information is available on the Company's web site;
- (2) Subject to legitimate security concerns, maps or schematics indicating the location of specific Company Facilities, including gas or electric lines, located within the City to the extent such maps or schematics are in existence at the time of the request and related to a specific, ongoing project of the City; and
- (3) A copy of any report required to be prepared for a federal or state agency detailing the Company's efforts to comply with federal and state air and water pollution laws.

§21.6 List of Utility Real Property. The Company shall provide the City, upon request not more than every two (2) years, a list of electric utility related real property owned in fee by the Company within the County. All such records shall be kept by the Company for a minimum of four (4) years.

§21.7 Payment of Taxes and Fees.

A. The Company shall pay and discharge as they become due, promptly and before delinquency, all taxes, assessments, rates, charges, license fees, municipal liens, levies, excises or imposts, whether general or special, or ordinary or extra-ordinary, of every name, nature and kind whatsoever, including all governmental charges of whatsoever name, nature or kind, which may be levied, assessed, charged or imposed or that may become a lien or charge against this agreement ("Impositions"), provided that Company shall have the right to contest any such impositions and shall not be in breach of this Section so long as it is actively contesting such impositions.

B. The City shall not be liable for the payment of taxes, late charges, interest or penalties of any nature other than pursuant to applicable tariffs on file and in effect from time to time with the PUC.

- §21.8 Conflict of Interest. The parties agree that no official, officer or employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein, and the Company further agrees not to hire or contract for services any official, officer or employee of the City to the extent prohibited by law, including ordinances and regulations of the City.
- §21.9 Certificate of Public Convenience and Necessity. The City agrees to support the Company's application to the PUC to obtain a certificate of public convenience and necessity to exercise its rights and obligations under this franchise.
- §21.10 Authority. Each party represents and warrants that except as set forth below, it has taken all actions that are necessary or that are required by its ordinances, regulations, procedures, bylaws or applicable law to legally authorize the undersigned signatories to execute this franchise on behalf of the parties and to bind the parties to its terms. The persons executing this franchise on behalf of each of the parties warrant that they have full authorization to execute this franchise. The City acknowledges that notwithstanding the foregoing, the Company requires a certificate of public convenience and necessity from the PUC in order to operate under the terms of this franchise.
- §21.11 Severability. Should any one or more provisions of this franchise be determined to be unconstitutional, illegal, unenforceable or otherwise void, all other provisions nevertheless shall remain effective; provided, however, to the extent allowed by law, the parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft one or more substitute provisions that will achieve the original intent of the parties hereunder.
- §21.12 Force Majeure. Neither the City nor the Company shall be in breach of this franchise if a failure to perform any of the duties under this franchise is due to Force Majeure, as defined herein.
- §21.13 Earlier Franchises Superseded. This franchise shall constitute the only franchise between the City and the Company for the furnishing of Utility Service, Street Lighting Service and traffic signal lighting service and it supersedes and cancels all former franchises between the parties hereto.
- §21.14 Titles Not Controlling. Titles of the paragraphs herein are for reference only, and shall not be used to construe the language of this franchise.
- §21.15 Applicable Law. Colorado law shall apply to the construction and enforcement of this franchise, and venue for any litigation arising out of this franchise shall be in Adams County, Colorado.
- §21.16 Payment of Expenses Incurred by City in Relation to Franchise Agreement. The Company shall pay for expenses reasonably incurred by the City for the adoption of this franchise, including the publication of notices, publication of ordinances and photocopying of documents.

[The remainder of this page intentionally left blank. Signature page(s) follow(s).]

IN WITNESS WHEREOF, the parties have caused this agreement to be executed as of the day and year first above written.

CITY OF COMMERCE CITY

Sean Ford, Mayor

ATTEST:

Laura J. Bauer, CMC, City Clerk

Approved as to form:

Gregory D. Graham, Assistant City Attorney

Recommended for approval:

Brian K. McBroom, City Manager

Roger Tinklenberg, Director
Department of Finance

**PUBLIC SERVICE COMPANY OF
COLORADO**

By: _____
Jerome Davis, Regional Vice President,
Customer and Community Relations

Attest: _____
Asst. Secretary