

FRANCHISE AGREEMENT

BETWEEN

THE TOWN OF NEW CASTLE, COLORADO

AND

PUBLIC SERVICE COMPANY OF COLORADO

- ARTICLE 1 DEFINITIONS
- ARTICLE 2 GRANT OF FRANCHISE
- ARTICLE 3 TOWN POLICE POWERS
- ARTICLE 4 FRANCHISE FEE
- ARTICLE 5 ADMINISTRATION OF FRANCHISE
- ARTICLE 6 SUPPLY, CONSTRUCTION, AND DESIGN
- ARTICLE 7 RELIABILITY
- ARTICLE 8 COMPANY PERFORMANCE OBLIGATIONS
- ARTICLE 9 BILLING AND PAYMENT
- ARTICLE 10 USE OF COMPANY FACILITIES
- ARTICLE 11 UNDERGROUNDING OF OVERHEAD FACILITIES
- ARTICLE 12 PURCHASE OR CONDEMNATION
- ARTICLE 13 MUNICIPALLY PRODUCED UTILITY SERVICE
- ARTICLE 14 ENVIRONMENT AND CONSERVATION
- ARTICLE 15 TRANSFER OF FRANCHISE
- ARTICLE 16 CONTINUATION OF UTILITY SERVICE
- ARTICLE 17 INDEMNIFICATION AND IMMUNITY
- ARTICLE 18 BREACH
- ARTICLE 19 AMENDMENTS
- ARTICLE 20 EQUAL OPPORTUNITY
- ARTICLE 21 MISCELLANEOUS

TABLE OF CONTENTS

| | | |
|-----------|---|---|
| ARTICLE 1 | DEFINITIONS | 1 |
| §1.1 | “Clean Energy” | 1 |
| §1.2 | “Company” | 1 |
| §1.3 | “Company Facilities” | 1 |
| §1.4 | “Council” or “Town Council” | 1 |
| §1.5 | “Electric Gross Revenues” | 1 |
| §1.6 | “Energy Conservation” | 1 |
| §1.7 | “Energy Efficiency” | 1 |
| §1.8 | “Force Majeure Event” | 1 |
| §1.9 | “Gross Revenues” | 1 |
| §1.10 | “Industry Standards” | 2 |
| §1.11 | “Other Town Property” | 2 |
| §1.12 | “Private Project” | 2 |
| §1.13 | “Public Project” | 2 |
| §1.14 | “Public Utilities Commission” or “PUC” | 2 |
| §1.15 | “Public Utility Easement” | 2 |
| §1.16 | “Relocate,” “Relocation,” or “Relocated” | 3 |
| §1.17 | “Renewable Energy Resources” | 3 |
| §1.18 | “Residents” | 3 |
| §1.19 | “Streets” or “Town Streets” | 3 |
| §1.20 | “Supporting Documentation” | 3 |
| §1.21 | “Tariffs” | 3 |
| §1.22 | “Town” | 3 |
| §1.23 | “Utility Service” | 3 |
| ARTICLE 2 | GRANT OF FRANCHISE | 4 |
| §2.1 | Grant of Franchise. | 4 |
| §2.2 | Conditions and Limitations. | 4 |
| §2.3 | Effective Date and Term. | 4 |
| ARTICLE 3 | TOWN POLICE POWERS | 5 |
| §3.1 | Police Powers | 5 |
| §3.2 | Regulation of Streets and Other Town Property | 5 |
| §3.3 | Compliance with Laws | 5 |
| ARTICLE 4 | FRANCHISE FEE | 5 |
| §4.1 | Franchise Fee. | 5 |
| §4.2 | Remittance of Franchise Fee. | 6 |
| §4.3 | Franchise Fee Payment Not in Lieu of Permit or Other Fees | 7 |
| ARTICLE 5 | ADMINISTRATION OF FRANCHISE | 7 |
| §5.1 | Town Designee | 7 |
| §5.2 | Company Designee | 8 |
| §5.3 | Coordination of Work | 8 |

| | | |
|------------|--|----|
| ARTICLE 6 | SUPPLY, CONSTRUCTION, AND DESIGN | 8 |
| §6.1 | Purpose | 8 |
| §6.2 | Supply | 8 |
| §6.3 | Charges to the Town for Service to Town Facilities..... | 8 |
| §6.4 | Restoration of Service. | 9 |
| §6.5 | Obligations Regarding Company Facilities..... | 9 |
| §6.6 | As-Built Drawings | 10 |
| §6.7 | Excavation and Construction..... | 11 |
| §6.8 | Restoration..... | 11 |
| §6.9 | Relocation of Company Facilities. | 11 |
| §6.10 | New or Modified Service Requested by Town | 13 |
| §6.11 | Service to New Areas | 13 |
| §6.12 | Town Not Required to Advance Funds if Permitted by Tariffs | 13 |
| §6.13 | Technological Improvements | 13 |
| ARTICLE 7 | RELIABILITY | 14 |
| §7.1 | Reliability | 14 |
| §7.2 | Franchise Performance Obligations | 14 |
| §7.3 | Reliability Reports..... | 14 |
| ARTICLE 8 | COMPANY PERFORMANCE OBLIGATIONS | 14 |
| §8.1 | New or Modified Service to Town Facilities | 14 |
| §8.2 | Adjustments to Company Facilities..... | 15 |
| §8.3 | Third Party Damage Recovery. | 15 |
| ARTICLE 9 | BILLING AND PAYMENT | 16 |
| §9.1 | Billing for Utility Services. | 16 |
| §9.2 | Payment to Town..... | 16 |
| ARTICLE 10 | USE OF COMPANY FACILITIES | 16 |
| §10.1 | Town Use of Company Electric Distribution Poles | 16 |
| §10.2 | Third Party Use of Company Electric Distribution Poles | 16 |
| §10.3 | Town Use of Company Transmission Rights-of-Way | 17 |
| §10.4 | Emergencies | 17 |
| ARTICLE 11 | UNDERGROUNDING OF OVERHEAD FACILITIES..... | 17 |
| §11.1 | Underground Electrical Lines in New Areas..... | 17 |
| §11.2 | Underground Conversion at Expense of Company. | 18 |
| §11.3 | Undergrounding Performance | 18 |
| §11.4 | Audit of Underground Program..... | 20 |
| §11.5 | Cooperation with Other Utilities | 20 |
| §11.6 | Planning and Coordination of Undergrounding Projects | 20 |
| ARTICLE 12 | PURCHASE OR CONDEMNATION..... | 21 |
| §12.1 | Municipal Right to Purchase or Condemn. | 21 |

| | | |
|------------|--|----|
| ARTICLE 13 | MUNICIPALLY PRODUCED UTILITY SERVICE..... | 21 |
| §13.1 | Municipally Produced Utility Service. | 21 |
| ARTICLE 14 | ENVIRONMENT AND CONSERVATION | 22 |
| §14.1 | Environmental Leadership..... | 22 |
| §14.2 | Conservation..... | 22 |
| §14.3 | Continuing Commitment. | 23 |
| §14.4 | PUC Approval | 23 |
| §14.5 | Sustainability Committee | 23 |
| ARTICLE 15 | TRANSFER OF FRANCHISE | 23 |
| §15.1 | Consent of Town Required..... | 23 |
| §15.2 | Transfer Fee..... | 24 |
| ARTICLE 16 | CONTINUATION OF UTILITY SERVICE | 24 |
| §16.1 | Continuation of Utility Service | 24 |
| ARTICLE 17 | INDEMNIFICATION AND IMMUNITY..... | 24 |
| §17.1 | Town Held Harmless | 24 |
| §17.2 | Immunity | 25 |
| ARTICLE 18 | BREACH..... | 25 |
| §18.1 | Change of Tariffs..... | 25 |
| §18.2 | Breach..... | 25 |
| ARTICLE 19 | AMENDMENTS | 26 |
| §19.1 | Proposed Amendments | 26 |
| §19.2 | Effective Amendments | 26 |
| ARTICLE 20 | EQUAL OPPORTUNITY | 27 |
| §20.1 | Economic Development | 27 |
| §20.2 | Employment. | 27 |
| §20.3 | Contracting. | 28 |
| §20.4 | Coordination..... | 28 |
| ARTICLE 21 | MISCELLANEOUS..... | 28 |
| §21.1 | No Waiver | 28 |
| §21.2 | Successors and Assigns | 28 |
| §21.3 | Third Parties | 28 |
| §21.4 | Notice | 29 |
| §21.5 | Examination of Records | 30 |
| §21.6 | List of Utility Property | 30 |
| §21.7 | PUC Filings | 30 |
| §21.8 | Information | 30 |
| §21.9 | Payment of Taxes and Fees | 31 |

| | | |
|----------------------|---|----|
| §21.10 | Conflict of Interest..... | 31 |
| §21.11 | Certificate of Public Convenience and Necessity | 31 |
| §21.12 | Authority..... | 31 |
| §21.13 | Severability..... | 31 |
| §21.14 | Force Majeure..... | 31 |
| §21.15 | Earlier Franchises Superseded..... | 31 |
| §21.16 | Titles Not Controlling..... | 31 |
| §21.17 | Applicable Law | 31 |
| §21.18 | Payment of Expenses Incurred by Town in Relation to Franchise Agreement..... | 31 |
| §21.19 | Costs of Compliance with Franchise | 31 |
| §21.20 | Conveyance of Town Streets, Public Utility Easements or Other Town Property . | 32 |
| §21.21 | Audit | 32 |
| §21.22 | Land Use Coordination..... | 32 |
| SIGNATURE PAGE | | 33 |

ARTICLE 1 DEFINITIONS

For the purpose of this franchise agreement (“Franchise” or “Franchise Agreement”), the following words and phrases shall have the meaning given in this Article or elsewhere in this Agreement. 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 or in this Agreement shall be given their common and ordinary meaning.

- §1.1 “Clean Energy” means energy produced from Renewable Energy Resources (as defined below), 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 Public Utilities Commission of the State of Colorado (“PUC”).
- §1.2 “Company” refers to Public Service Company of Colorado, a Colorado corporation, and an Xcel Energy company and its successors and assigns including affiliates or subsidiaries that undertake to perform any of the obligations under this Franchise.
- §1.3 “Company Facilities” refer to all facilities of the Company which are reasonably necessary or desirable to provide gas and/or electric service into, within and through the Town, including but not limited to plants, works, systems, substations, transmission and distribution structures and systems, 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 as well as all associated appurtenances.
- §1.4 “Council” or “Town Council” refers to and is the legislative body of the Town.
- §1.5 “Electric Gross Revenues” refers to those amounts of money that the Company receives from the sale and/or delivery of electricity in the Town, after adjusting for refunds, net write-offs of accounts, corrections, or Regulatory Adjustments (as defined below). 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 for the sale and/or delivery of electricity to the Town as a customer of the Company.
- §1.6 “Energy Conservation” means the decrease in energy requirements of specific customers during any selected time period, resulting in a reduction in end-use services.
- §1.7 “Energy Efficiency” means the decrease in energy requirements of specific customers during any selected period with end-use services of such customers held constant.
- §1.8 “Force Majeure Event” means the inability to undertake an obligation of this Franchise Agreement due to a cause, condition or event that could not be reasonably anticipated by a party, or is beyond a party’s reasonable control after exercise of best efforts to perform.

Such cause, condition, or event includes, but is not limited to, fire, strike, war, riots, terrorist 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 the delivery of materials. Neither the Town 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 Event.

- §1.9 “Gross Revenues” refers to those amounts of money the Company receives from the sale of gas and/or electricity within the Town under rates authorized by the Public Utilities Commission, as well as from the transportation of gas to its customers within the Town, as adjusted for refunds, net write-offs of uncollectible accounts, corrections, expense reimbursements 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 Town-owned facilities for use by the Town government or the transportation of gas to the Town.
- §1.10 “Industry Standards” refers to standards developed by government agencies and generally recognized organizations that engage in the business of developing utility industry standards for materials, specifications, testing, construction, repair, maintenance, manufacturing, and other facets of the electric and gas utility industries. Such agencies and organizations include, but are not limited to the U.S. Department of Transportation, the Federal Energy Regulatory Commission (FERC), the Colorado Public Utilities Commission, the American National Standards Institute (ANSI), the American Society for Testing and Materials (ASTMP), the Pipeline Research Council International, Inc. (PRCI), the American Society of Mechanical Engineers (ASME), the Institute of Electric and Electronic Engineers (IEEE), the Electric Power Research Institute (EPRI), the Gas Technology Institute (GTI), the National Fire Protection Association (NFPA), and specifically includes the National Electric Safety Code (NESC).
- §1.11 “Other Town Property” refers to the surface, the air space above the surface, and the area below the surface of any property owned by the Town or directly controlled by the Town due to the Town’s real property interest in the same or hereafter owned by the Town, that 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 Town. Other Town Property does not include Public Utility Easements.
- §1.12 “Private Project” refers to any project not included in the definition of Public Project.
- §1.13 “Public Project” refers to (1) any public work or improvement within the Town that is wholly owned by the Town; or (2) any public work or improvement within the Town where at least fifty percent (50%) or more of the funding is provided by any combination of the Town, the federal government, the State of Colorado, or any Colorado county, but excluding all entities established under Title 32 of the Colorado Revised Statutes.
- §1.14 “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.

- §1.15 “Public Utility Easement” refers to any platted easement over, under, or above public or private property, expressly dedicated to, and accepted by, the Town for the use of public utility companies for the placement of utility facilities, including but not limited to Company Facilities.
- §1.16 “Relocate,” “Relocation,” or “Relocated” refers to the definition assigned such terms in Section 6.8.A of this Franchise.
- §1.17 “Renewable Energy Resources” means wind, solar, and geothermal resources; energy produced from biomass from nontoxic plant matter consisting of agricultural crops or their byproducts, urban wood waste, mill residue, slash, or brush, or from animal wastes and products of animal wastes, or from methane produced at landfills or as a by-product of the treatment of wastewater residuals; new hydroelectricity with a nameplate rating of ten (10) megawatts or less; hydroelectricity in existence on January 1, 2005, with a nameplate rating of thirty (30) megawatts or less; fuel cells using hydrogen derived from a Renewable Energy Resource; recycled energy produced by a generation unit with a nameplate capacity of not more than fifteen (15) 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, and includes any eligible renewable energy resource as defined in §40-2-124(1)(a), C.R.S., as the same may be amended from time to time.
- §1.18 “Residents” refers to all persons, businesses, industries, governmental agencies, including the Town, and any other entity whatsoever presently located or to be hereinafter located, in whole or in part, within the territorial boundaries of the Town.
- §1.19 “Streets” or “Town Streets” refers to the surface, the air space above the surface, and the area below the surface of any Town-dedicated or Town-maintained streets, alleys, bridges, roads, lanes, access easements, and other public rights-of-way within the Town, which are primarily used for vehicle traffic. Streets shall not include Public Utility Easements and Other Town Property.
- §1.20 “Supporting Documentation” refers to all information reasonably required or needed in order to allow the Company to design and construct any work performed under the provisions of this Franchise. Supporting Documentation may include, but is not limited to, construction plans, a description of environmental issues known to the Town, 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 gas service and meter set are needed, and the name and contact information for the Town’s project manager.
- §1.21 “Tariffs” refer to those tariffs of the Company on file and in effect with the PUC or other governing jurisdiction, as amended from time to time.
- §1.22 “Town” refers to the Town of New Castle, a municipal corporation of the State of Colorado.
- §1.23 “Utility Service” refers to the sale of gas or electricity to Residents by the Company under Tariffs approved by the PUC, as well as the delivery of gas to Residents by the Company.

ARTICLE 2
GRANT OF FRANCHISE

§2.1 Grant of Franchise.

A. Grant. The Town 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 Town Streets, Public Utility Easements (as applicable) and Other Town Property:

(1) to provide Utility Service to the Town and to its Residents under the Tariffs; and

(2) to acquire, purchase, construct, install, locate, maintain, operate, upgrade and extend into, within and through the Town, all Company Facilities reasonably necessary for the generation, production, manufacture, sale, storage, purchase, exchange, transportation, transmission, and distribution of Utility Service within and through the Town.

B. Street Lighting and Traffic Signal Lighting Service. Street lighting service and traffic signal lighting service within the Town shall be governed by Tariffs on file with the PUC.

§2.2 Conditions and Limitations.

A. Scope of Franchise. The grant of this Franchise shall extend to all areas of the Town 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 Town Usage. The Company's right to make reasonable use of Town Streets to provide Utility Service to the Town and its Residents under this Franchise is subject to and subordinate to any Town usage of said Streets.

C. Prior Grants Not Revoked. This grant and Franchise is not intended to and does not revoke any prior license, grant, or right to use the Streets, Other Town Property or Public Utility Easements, and such licenses, grants or rights of use are hereby affirmed.

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 Town reserves the right to make or grant a franchise to any other person, firm, or corporation.

§2.3 Effective Date and Term.

A. Term. This Franchise shall take effect on November 10, 2016 (the "Effective Date"), and shall supersede any prior franchise grants to the Company by the Town. This Franchise shall terminate on November 9, 2036, unless extended by mutual consent.

**ARTICLE 3
TOWN POLICE POWERS**

- §3.1 Police Powers. The Company expressly acknowledges the Town’s 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 Town considers making any substantive changes in its local codes or regulations that in the Town’s reasonable opinion will significantly impact the Company’s operations in the Town’s Streets, Public Utility Easements and Other Town 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 and Other Town Property. The Company expressly acknowledges the Town’s right to enforce regulations concerning the Company’s access to or use of the Streets and/or Other Town Property, including requirements for permits.
- §3.3 Compliance with Laws. The Company shall promptly and fully comply with all laws, regulations, permits and orders lawfully enacted by the Town that are consistent with Industry Standards. Nothing herein provided shall prevent the Company from legally challenging or appealing the enactment of any laws, regulations, permits and orders enacted by the Town.

**ARTICLE 4
FRANCHISE FEE**

- §4.1 Franchise Fee.
- A. Fee. In partial consideration for this Franchise, which provides the certain terms related to the Company’s use of Town Streets, Public Utility Easements and Other Town Property, which are valuable public properties acquired and maintained by the Town at the expense of its Residents, and in recognition of the fact that the grant to the Company of this Franchise is a valuable right, the Company shall pay the Town a sum equal to three percent (3%) of Gross Revenues (the “Franchise Fee”). To the extent required by law, the Company shall collect the Franchise Fee from a surcharge upon Town Residents who are customers of the Company.
- B. Obligation in Lieu of Franchise 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, the Company shall be obligated to pay the Town, at the same times and in the same manner as provided in this Franchise, an aggregate amount equal to the amount that the Company would have paid as a Franchise Fee as partial consideration for use of the Town Streets, Public Utility Easements and Other Town Property. Such payments shall be made in accordance with applicable provisions of law. Further, to the extent required by law, the Company shall collect the amounts agreed upon through a surcharge upon Utility Service provided to Town Residents who are customers of the Company.

C. Changes in Utility Service Industries. The Town and the Company recognize that utility service industries are the subject of restructuring initiatives by legislative and regulatory authorities, and are also experiencing other changes as a result of mergers, acquisitions, and reorganizations. Some of such initiatives and changes 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 Town, the Company will cooperate with and assist the Town in making reasonable modifications of this Franchise Agreement in an effort to provide that the Town receives an amount in Franchise Fees or some other form of compensation that is the same amount of Franchise fees paid to the Town as of the date that such initiatives and changes adversely impact Franchise Fee revenues.

D. Utility Service Provided to the Town. No Franchise Fee shall be charged to the Town for Utility Service provided directly or indirectly to the Town for its own consumption, including street lighting service and traffic signal lighting service, unless otherwise directed by the Town in writing and in a manner consistent with Company Tariffs.

§4.2 Remittance of Franchise Fee.

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

B. Correction of Franchise Fee Payments. In the event that either the Town or the Company discovers that there has been an error in the calculation of the Franchise Fee payment to the Town, either party shall provide written notice of the error to the other party. Subject to the following sentence, if the party receiving written notice of the error does not agree with the written notice of error, that party may challenge the written notice of error pursuant to Section 4.2.D of this Franchise; otherwise, the error shall be corrected in the next monthly payment. However, subject to the terms of the Tariff, if the error results in an overpayment of the Franchise Fee to the Town, and said overpayment is in excess of Five Thousand Dollars (\$5,000.00), correction of the overpayment by the Town shall take the form of a credit against future Franchise Fees and shall be spread over the same period the error was undiscovered or the Town shall make a refund payment to the Company. If such period would extend beyond the term of this Franchise, the Company may elect to require the Town to provide it with a refund instead of a credit, with such refund to be spread over the same period the error was undiscovered, even if the refund will be paid after the termination date of this Franchise. 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. Subject to the terms of the Tariffs, in no event shall either party be required to fund or refund any overpayment or underpayment made as a result of a Company error which occurred more than five (5) years prior to the discovery of the error.

C. Audit of Franchise Fee Payments.

(1) Company Audit. At the request of the Town, every three (3) years commencing at the end of the third calendar year of the Term of this Franchise, the Company shall conduct an internal audit, in accordance with the Company's auditing principles and policies that are applicable to electric and gas public utilities that are developed in accordance with the Institute of Internal Auditors, to investigate and determine the correctness of the Franchise Fees paid to the Town. Such audit shall be limited to the previous three (3) calendar years. Within a reasonable time after the audit, the Company shall provide a written report to the Town Clerk containing the audit findings and summarizing the audit procedures followed.

(2) Town Audit. If the Town disagrees with the results of the Company's audit, and if the parties are not able to informally resolve their differences, the Town may conduct its own audit at its own expense, in accordance with generally accepted auditing principles and procedures applicable to electric and gas public utilities similar to the Company, and the Company shall cooperate by, including but not necessarily limited to, providing the Town's auditor with non-confidential information that would reasonably be required to be disclosed under applicable state sales and use tax laws.

(3) Underpayments. If the results of a Town audit conducted pursuant to Subsection C(2) concludes that the Company has underpaid the Town by five percent (5%) or more, in addition to the obligation to pay such amounts to the Town, the Company shall also pay all reasonable costs of the Town's audit. The Company shall not be responsible for any errors in third party data that is used in association with audits, including without limitation, Geotax data.

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 notice of error before initiating any formal legal proceedings for the resolution of such error.

E. Reports. To the extent allowed by law, upon written request by the Town, but not more frequently than once each year, the Company shall supply the Town with a list of the names and addresses of registered natural gas suppliers and brokers of natural gas that utilize Company Facilities to sell or distribute natural gas in the Town during the preceding 12-month period. The Company shall not be required to disclose any confidential or proprietary information.

§4.3 Franchise Fee Payment Not in Lieu of Permit or Other Fees. Payment of the Franchise Fee by the Company to the Town does not exempt the Company from any other lawful tax or fee imposed generally upon persons doing business within the Town, except that the Franchise Fee provided for herein shall be in lieu of any occupation, occupancy or similar tax or fee for the Company's use of Town Streets, Public Utility Easements or Other Town Property under the terms set forth in this Franchise.

**ARTICLE 5
ADMINISTRATION OF FRANCHISE**

- §5.1 Town Designee. The Town Clerk shall designate in writing to the Company an official or officials having full power and authority to administer this Franchise (“Town Designee” or “Town Designees”). The Town Clerk may also designate one or more Town representatives to act as the primary liaison with the Company as to particular matters addressed by this Franchise and shall provide the Company with the names and telephone numbers of said Town Designees. The Town Clerk may change these designations by providing written notice to the Company. The Town Designees shall have the right, at all reasonable times and with reasonable notice to the Company, to inspect any Company Facilities in Town Streets and Other Town Property.
- §5.2 Company Designee. The Company shall designate a representative to act as the primary liaison with the Town and shall provide the Town with the name, address, and telephone number for the Company’s representative under this Franchise (“Company Designee”). The Company may change its designation by providing written notice to the Town. The Town shall use the Company Designee to communicate with the Company regarding Utility Service and related service needs for Town facilities.
- §5.3 Coordination of Work. Company and Town agree to coordinate their activities in Town Streets, Public Utility Easements and Other Town Property. The Town and the Company will meet upon the written request of the Town Designee or the Company at least annually but not more than quarterly to exchange their respective non-confidential short-term and long-term forecasts and/or work plans for construction and other similar work which may affect Town Streets and Other Town Property, including, but not limited, to the following: (1) any planned Town Streets paving projects; (2) proposed changes to the Town’s municipal code and other regulations that may impact Company Facilities and operations in the Town; (3) land use and future utility development in Town Streets; (4) undergrounding projects provided for in this Franchise Agreement; and (5) excavation in Town Streets and Other Town Property. The Town and Company shall hold such additional 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 to either party and so that the Town will be assured that all applicable provisions of this Franchise, applicable building and zoning codes, and applicable Town air and water pollution regulations are complied with, and that aesthetic and other relevant planning principles have been given due consideration.

**ARTICLE 6
SUPPLY, CONSTRUCTION, AND DESIGN**

- §6.1 Purpose. The Company acknowledges the critical nature of the municipal services performed or provided by the Town to the Residents that require the Company to provide prompt and reliable Utility Service and the performance of related services for Town facilities. The Town and the Company wish to provide for certain terms and conditions under which the Company will provide Utility Service and perform related services for the Town in order to facilitate and enhance the operation of Town facilities. They also wish to

provide for other processes and procedures related to the provision of Utility Service to the Town.

§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 gas and electricity to Residents at the lowest reasonable cost consistent with reliable supplies.

§6.3 Charges to the Town for Service to Town Facilities. No charges to the Town 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 PUC over the Company's regulated intrastate electric and gas rates. All charges to the Town shall be in accord with the Tariffs.

§6.4 Restoration of Service.

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

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

§6.5 Obligations Regarding Company Facilities.

A. Company Facilities. All Company Facilities within Town Streets, Public Utility Easements that are not located on private property, and Other Town Property shall be maintained in good repair and condition.

B. Company Work within the Town. All work within Town Streets and Other Town Property performed or caused to be performed by the Company shall be performed:

- (1) in a high-quality manner that is in accordance with Industry Standards;
- (2) in a timely and expeditious manner;
- (3) in a manner that reasonably 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 Town laws, ordinances and regulations that are consistent with Industry Standards and the Tariffs.

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

D. Permit and Inspection. The installation, renovation, and replacement of any Company Facilities in the Town Streets, Public Utility Easements that are not located on private property, or Other Town Property by or on behalf of the Company shall be subject to permit, inspection and approval by the Town in accordance with applicable Town laws. Such permitting, inspection and approval may include, but shall not be limited to, the following matters: location of Company Facilities, cutting and pruning of trees and shrubs and disturbance of pavement, sidewalks and surfaces of Town Streets, or Other Town Property; provided, however, the Company shall have the right to cut, prune, and/or remove vegetation in accordance with its standard vegetation management requirements and procedures. The Company agrees to cooperate with the Town in conducting inspections and pursuant to any such inspection shall promptly perform any remedial action lawfully required by the Town that is consistent with Industry Standards.

E. Compliance. Subject to the provisions of Section 3.3 above, the Company and all of its contractors shall comply with the requirements of applicable municipal laws, ordinances, regulations, permits, and standards lawfully adopted that are consistent with Industry 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 require that its contractors working in Town Streets and Other Town Property hold the necessary licenses and permits required by law.

F. Increase in Voltage. The Company shall reimburse the Town for the cost of upgrading the electrical system or facility of any Town building or facility that uses Utility Service where such upgrading is solely caused or occasioned 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 final order of the PUC, or voltage increases requested by the Town.

§6.6 As-Built Drawings. Within thirty (30) days after written request of the Town Designee, but no sooner than fourteen (14) days after project completion, the Company shall commence its internal process to permit the Company to provide, on a project by project basis, as-built drawings of any Company Facility installed within the Town Streets, Public Utility Easements that are not located on private property, or Other Town Property or contiguous thereto. If the requested information must be limited or cannot be provided pursuant to regulatory requirements or Company data privacy policies, the Company shall promptly notify the Town of such restrictions. The Town acknowledges that the requested information may be confidential information of the Company and the Company asserts that

disclosure to members of the public would be contrary to the public interest. Accordingly, the Town shall deny the right of inspection of the Company's confidential information as set forth in § 24-72-204(3)(a)(IV) C.R.S., as may be amended from time to time (the "Open Records Act"). If an Open Records Act request is made by any third party for confidential or proprietary information that the Company has provided to the Town pursuant to this Franchise, the Town will immediately 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 Town. In no circumstance shall the Town provide to any third party confidential information provided by the Company pursuant to this Franchise without first conferring with the Company. Provided the Town complies with the terms of this Section, the Company shall defend, indemnify, and hold the Town harmless from any claim, judgment, costs, or attorney fees incurred in participating in such proceeding. As used in this Section, as-built drawings refers to hard copies of the facility drawings as maintained in the Company's business records and shall not include information maintained in the Company's geographical information system. The Company shall not be required to create drawings that do not exist at the time of the request.

- §6.7 Excavation and Construction. The Company shall be responsible for obtaining, paying for, and complying with all applicable permits, in the manner required by the laws, ordinances, and regulations of the Town, to the extent consistent with Industry Standards. Although the Company shall be responsible for obtaining and complying with the terms of such permits when performing Relocations requested by the Town under Section 6.9 of this Franchise Agreement and undergrounding requested by the Town under Article 11 of this Franchise, the Town will not require the Company to pay the fees charged for such permits. Upon the Company's submitting a construction design plan, the Town shall promptly and fully advise the Company in writing of all requirements for the restoration of Town Streets, Public Utility Easements that are not on private property, or Other Town Property in advance of Company excavation projects based upon the design submitted.
- §6.8 Restoration. Subject to the provisions of Section 6.5.D of this Franchise Agreement, when the Company performs any work in or affecting the Town Streets, Public Utility Easements that are not located on private property, or Other Town Property, it shall, at its own expense, promptly remove any obstructions placed thereon or therein by the Company and restore such Town Streets, Public Utility Easements that are not located on private property, or Other Town Property to a condition that is substantially the same as existed before the work, and that meets applicable Town standards. If weather or other conditions do not permit the complete restoration required by this Section, the Company may, with the approval of the Town, temporarily restore the affected Town Streets, Public Utility Easements that are not located on private property, or Other Town Property, provided that such temporary restoration is not at the Town's expense and provided further that the Company promptly undertakes and completes the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Upon the request of the Town, the Company shall restore the Streets, Public Utility Easements that are not located on private property, or Other Town Property to a better condition than existed before the Company work was undertaken, provided that the Town shall be

responsible for any incremental costs of such restoration not required by then-current Town standards, and provided the Town seeks and/or grants, as applicable, any additional required approvals. If the Company fails to promptly restore the Town Streets, Public Utility Easements that are not located on private property, or Other Town Property as required by this Section, and if, in the reasonable discretion of the Town, immediate action is required for the protection of public health, safety or welfare, the Town may restore such Streets, Public Utility Easements that are not located on private property, or Other Town Property or remove the obstruction therefrom; provided, however, Town actions do not interfere with Company Facilities. The Company shall be responsible for the actual cost incurred by the Town to restore such Town Streets, Public Utility Easements that are not located on private property, or Other Town Property or to remove any obstructions therefrom. In the course of its restoration of Town Streets, Public Utility Easements or Other Town Property under this Section, the Town shall not perform work on Company Facilities unless specifically authorized by the Company in writing on a project-by-project basis and subject to the terms and conditions agreed to in such authorization.

§6.9 Relocation of Company Facilities.

A. Relocation Obligation. The Company shall temporarily or permanently relocate, change or alter the position of any Company Facility (collectively, “Relocate(s),” “Relocation(s)” or “Relocated”) in Town Streets or in Other Town Property at no cost or expense to the Town whenever such Relocation is necessary for the completion of any Public Project. In the case of Relocation that is necessary for the completion of any Public Project in a Public Utility Easement, the Company shall not be responsible for any Relocation costs. In the event of any Relocation contemplated pursuant to this Section 6.9.A, the Company and the Town agree to cooperate on the location and Relocation of the Company Facilities in the Town Streets or Other Town 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 Town’s direction, if the Town requests that the same Company Facility be Relocated within two (2) years, the subsequent Relocation shall not be at the Company’s expense. Nothing provided herein shall prevent the Company from obtaining reimbursement of its Relocation costs from third parties.

B. Private Projects. Subject to Section 6.9(F) of this Franchise Agreement, 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 party causing, or responsible for, the Relocation before undertaking the 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 one hundred twenty (120) days from the later of the date on which the Town Designee 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 a Force Majeure Event or the failure of the Town 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 Town may also grant the Company reasonable extensions of time for good cause shown and the Town shall not unreasonably withhold or condition any such extension.

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

E. Completion. Each such Relocation shall be complete only when the Company actually Relocates the Company Facilities, restores the Relocation site in accordance with Section 6.7 of this Franchise or as otherwise agreed with the Town, and properly abandons on site all unused Company Facilities, equipment, material and other impediments. "Unused" for the purposes of this Franchise shall mean that the Company is no longer using the Company Facilities in question and has no plans to use the Company Facilities in the foreseeable future.

F. Scope of Obligation. Notwithstanding anything to the contrary in this Franchise Agreement, the Company shall not be required to Relocate any Company Facilities from property (a) owned by the Company in fee; or (b) in which the Company has a property right, grant, or interest, including, without limitation, an easement.

G. Underground Relocation. Underground Company Facilities shall be Relocated underground. Above ground Company Facilities shall be Relocated above ground unless the Company is paid for the incremental amount by which the underground cost would exceed the above ground cost of Relocation, or the Town 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 the Town Designee or the Company, representatives of the Town and the Company shall meet to share information regarding anticipated projects which will require Relocation of Company Facilities in Town Streets and Other Town Property. Such meetings shall be for the purpose of minimizing conflicts where possible and to facilitate coordination with any reasonable timetable established by the Town for any Public Project.

(2) The Town 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 in the Streets within the two-year period if practicable.

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 Town shall in good faith review the proposed alternative or modification. The acceptance of the proposed alternative or

modification shall be at the discretion of the Town. In the event the Town accepts the proposed alternative or modification, the Company agrees to promptly compensate the Town for all additional costs, expenses, or delay that the Town reasonably determines resulted from the implementation of the proposed alternative.

- §6.10 New or Modified Service Requested by Town. The conditions under which the Company shall install new or modified Utility Service to the Town as a customer shall be governed by this Franchise and the Company's Tariffs and the Tariffs shall control in the event of a conflict.
- §6.11 Service to New Areas. If the territorial boundaries of the Town 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 practicable time provided 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 Tariffs and this Franchise, including the payment of Franchise Fees and undergrounding of new facilities as provided in Article 11 of this Franchise Agreement.
- §6.12 Town Not Required to Advance Funds if Permitted by Tariffs. Upon receipt of the Town's authorization for billing and construction, the Company shall install Company Facilities to provide Utility Service to the Town as a customer, without requiring the Town to advance funds prior to construction. The Town shall pay for the installation of Company Facilities once completed in accordance with the Tariffs. Notwithstanding anything to the contrary, the provisions of this Section allowing the Town to not advance funds prior to construction shall only apply to the extent permitted by the Tariffs.
- §6.13 Technological Improvements. The Company shall use its best efforts to incorporate, as soon as practicable, technological advances in its equipment and service within the Town when such advances are technically and economically feasible and are safe and beneficial to the Town and its Residents.

ARTICLE 7 RELIABILITY

- §7.1 Reliability. The Company shall operate and maintain Company Facilities efficiently and economically, in accordance with Industry Standards, and in accordance with the standards, systems, methods and skills consistent with the provision of adequate, safe and reliable Utility Service.
- §7.2 Franchise Performance Obligations. The Company recognizes that, 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 Town with a report regarding the reliability of Company Facilities and Utility Service.

ARTICLE 8
COMPANY PERFORMANCE OBLIGATIONS

§8.1 New or Modified Service to Town Facilities. In providing new or modified Utility Service to Town facilities, the Company agrees to perform as follows:

A. Performance. The Company shall complete each project requested by the Town within a reasonable time. The parties agree that a reasonable time shall not exceed one hundred eighty (180) days from the date upon which the Town 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 a Force Majeure Event. Upon request of the Company, the Town designee may also grant the Company reasonable extensions of time for good cause shown and the Town shall not unreasonably withhold any such extension.

B. Town Revision of Supporting Documentation. Any revision by the Town of Supporting Documentation provided to the Company that causes the Company to substantially redesign and/or substantially change its plans regarding new or modified service to Town facilities shall be deemed good cause for a reasonable extension of time to complete the project under this Franchise.

C. Completion/Restoration. Each such project shall be complete only when the Company actually provides the service installation or modification required, restores the project site in accordance with the terms of this Franchise or as otherwise agreed with the Town and properly abandons on site any unused Company Facilities, equipment, material and other impediments.

§8.2 Adjustments to Company Facilities. The Company shall perform adjustments to Company Facilities that are consistent with Industry Standards, including manhole rings and other appurtenances in Streets and Other Town Property to accommodate Town Street maintenance, repair, and paving operations at no cost to the Town. 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 Town 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 a Force Majeure Event. Upon request of the Company, the Town may also grant the Company reasonable extensions of time for good cause shown and the Town shall not unreasonably withhold any such extension.

B. Completion/Restoration. Each such adjustment shall be complete only when the Company actually adjusts and, if required, readjusts, Company Facilities to accommodate Town operations in accordance with Town instructions following Town paving operations.

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

§8.3 Third Party Damage Recovery.

A. Damage to Company Facilities. If any individual or entity damages any Company Facilities, to the extent permitted by law, the Town will notify the Company within a reasonable time of any such incident of which it has knowledge and will provide to the Company all pertinent information within the Town's possession regarding the incident and the damage, including the identity of the responsible individual or entity.

B. Damage to Company Facilities for which the Town is Responsible. If any individual or entity damages any Company Facilities for which the Town is obligated to reimburse the Company for the cost of the repair or replacement, to the extent permitted by law, the Company will notify the Town of any such incident of which it has knowledge and will provide to the Town within a reasonable time all pertinent information within its possession regarding the incident and the damage, including the identity of the responsible individual or entity.

C. Meeting. The Company and the Town 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 9
BILLING AND PAYMENT**

§9.1 Billing for Utility Services.

A. Monthly Billing. Unless otherwise provided in the Tariffs, the rules and regulations of the PUC, or the Public Utility Law, the Company shall render bills monthly to the offices of the Town for Utility Service and other related services for which the Company is entitled to payment.

B. Address for Billing. Billings for service rendered during the preceding month shall be sent to the person(s) designated by the Town and payment for same shall be made as prescribed in this Franchise and the applicable Tariffs.

C. Supporting Documents. To the extent requested by the Town, the Company shall provide all billings and any underlying Supporting Documentation reasonably requested by the Town in an editable and manipulatable electronic format that is acceptable to the Company and the Town.

D. Annual Meetings. The Company agrees to meet with the Town designee on a reasonable basis at the Town's request, but no more frequently than once a year, for the purpose of developing, implementing, reviewing, and/or modifying mutually beneficial and acceptable billing procedures, methods, and formats which 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 Town.

§9.2 Payment to Town. In the event the Town determines after written notice to the Company that the Company is liable to the Town for payments, costs, expenses or damages of any nature, and subject to the Company's right to challenge such determination, the Town may deduct all monies due and owing the Town 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 designee of the Town to discuss such determination. The Town agrees to attend such a meeting. As an alternative to such deduction and subject to the Company's right to challenge, the Town may 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 unless it challenges the validity of the charge. If the Company challenges the Town determination of liability, the Town shall make such payments to the Company for Utility Service received by Town pursuant to the Tariffs until the challenge has been finally resolved.

ARTICLE 10 USE OF COMPANY FACILITIES

§10.1 Town Use of Company Electric Distribution Poles. The Town shall be permitted to make use of Company electric distribution poles in the Town, subject to the Tariffs, without a use fee for the placement of Town equipment or facilities necessary to serve a legitimate police, fire, emergency, public safety or traffic control purpose or, with respect to, among other things, banners or other ornamental attachments, to the extent agreed to by the parties in writing. The Town shall notify the Company in advance and in writing of its intent to use Company's electric distribution poles, and the nature of such use, unless it is impracticable to provide such advance notice because of emergency circumstances, in which event the Town shall provide such notice as soon as practicable. The Town shall be responsible for costs associated with modifications to Company electric distribution poles to accommodate the Town's use of such Company electric distribution poles and for any electricity used. No such use of Company electric distribution poles may occur if it would constitute a safety hazard or would interfere with the Company's use of Company Facilities. Any such Town use must comply with the National Electric Safety Code, Industry Standards, and all other applicable laws, rules and regulations.

§10.2 Third Party Use of Company Electric Distribution Poles. If requested in writing by the Town, the Company may allow other companies who hold franchises, or otherwise have obtained consent from the Town to use the Streets, to utilize Company electric distribution poles in Town Streets and Other Town Property, subject to the Tariffs, 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. No such use shall be permitted if it would constitute a safety hazard or would interfere with the Company's use

of Company Facilities. The Company shall not be required to permit the use of Company electric distribution poles for the provision of utility service except as otherwise required by law.

§10.3 Town Use of Company Transmission Rights-of-Way. The Company shall offer to grant to the Town use of transmission rights-of-way which it now, or in the future, owns in fee within the Town for trails, parks, and open space on terms comparable to those offered to other municipalities; provided, however, that the Company shall not be required to make such an offer in any circumstance where such use would constitute a safety hazard or would interfere with the Company's use of the transmission right-of-way. In order to exercise this right, the Town must make specific, advance written request to the Company for any such use and must enter such written agreements as the Company may reasonably require.

§10.4 Emergencies. Upon written request, the Company shall assist the Town in developing an emergency management plan that is consistent with Company policies. The Town and the Company shall work cooperatively with each other in any emergency or disaster situation to address the emergency or disaster.

ARTICLE 11 UNDERGROUNDING OF OVERHEAD FACILITIES

§11.1 Underground Electrical Lines in New Areas. Upon payment to the Company of the charges provided in the Tariffs or their equivalent, the Company shall place all newly constructed electrical distribution lines in newly developed or newly annexed areas of the Town underground in accordance with applicable laws, regulations and orders of the Town. Such underground construction shall be consistent with Industry Standards.

§11.2 Underground Conversion at Expense of Company.

A. Underground Conversion Program. The Company shall budget and allocate an annual amount, equivalent to one percent (1%) of the preceding year's Electric Gross Revenues, for the purpose of undergrounding its existing overhead electric distribution facilities located within the Town, in Town Streets or Other Town Property, as may be requested by the Town Designee (the "Underground Program"), so long as the underground conversion does not result in end use customers of the Company incurring any costs related to the conversion and does not require the Company to obtain any additional land use rights. If the Town requires Relocation of overhead electric facilities in the Streets and Other Town Property and the Company determines that there is not adequate room within the Streets and Other Town Property to relocate the Facilities overhead, the Company may relocate the Facilities underground and may charge the cost of undergrounding to the Underground Program.

B. Unexpended Portion and Advances. Any unexpended portion of the Underground Program available for undergrounding Facilities within the Town that is unused within a calendar year shall be carried over to succeeding years within the term of the Franchise Agreement and, in addition, upon request by the Town, the Company agrees to advance

and expend amounts anticipated to be available under the preceding paragraph for up to three (3) years in advance provided that at least three (3) years remain under the term of this Franchise Agreement. Any amounts so advanced shall be credited against amounts to be expended in succeeding years. Any funds left accumulated in the Underground Program under any prior Franchise shall be carried over to this Franchise. Notwithstanding the foregoing, the Town shall have no vested interest in monies allocated to the Underground Program and any monies in the Underground Program 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 pursuant to 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 system wide, the Company will budget and allocate to the program of undergrounding in the Town 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. Town Requirement to Underground. In addition to the provisions of this Article, the Town may require any above ground Company Facilities in Streets and Other Town Property to be moved underground at the Town's expense.

§11.3 Undergrounding Performance. Upon receipt of a written request from the Town, the Company shall underground Company Facilities pursuant to the provisions of this Article, in accordance with the procedures set forth in this Section.

A. Estimates. Promptly upon receipt of an undergrounding request from the Town 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 project for the Town to review and, if acceptable to the Town, the Town will issue a project authorization. At the Town's request, the Company will provide all documentation that forms the basis of the estimate that is not proprietary. The Company will not proceed with any requested project until the Town has provided a written acceptance of the Company's estimate.

B. Performance. The Company shall complete each undergrounding project requested by the Town within a reasonable time considering the size and scope of each project, not to exceed two hundred forty (240) days from the later of the date upon which the Town designee makes a written request or the date the Town provides to the Company all required Supporting Documentation. The Company shall have one hundred twenty (120) days after receiving the Town's written request to design project plans, prepare the good faith estimate, and transmit same to the Town designee for review. If Town 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 Town Designee. If the plans and estimate are approved by the Town, the Company shall have one hundred twenty (120) days to complete the project, from the date of the Town Designee's authorization of the underground project, plus any of the one hundred twenty (120) unused days in preparing the good faith estimate. At the Company's sole discretion, if the good faith estimate has

expired because the Town designee has not approved the same within sixty (60) days, the Company may 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 Event. Upon written request of the Company, the Town may also grant the Company reasonable extensions of time for good cause shown and the Town shall not unreasonably withhold any such extension.

C. Town Revision of Supporting Documentation. Any revision by the Town 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 this Franchise.

D. Completion/Restoration. Each such undergrounding project undertaken pursuant to this Article shall be complete only when the Company actually undergrounds the designated Company Facilities and restores the undergrounding site in accordance with Section 6.7 of this Franchise, or as otherwise agreed with the Town. When performing underground conversions of overhead facilities, the Company shall make reasonable efforts consistent with its contractual obligations to persuade joint users of Company distribution poles to remove their facilities from such poles within the time allowed by this Article.

E. Report of Actual Costs. Upon completion of each undergrounding project undertaken pursuant to this Article, the Company shall submit to the Town 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 Town.

F. Audit of Underground Projects. The Town may require the Company to undertake an independent audit of up to two (2) undergrounding projects in any calendar year. The Town shall make any such request in writing within one hundred twenty (120) days of receipt of the report of actual costs, as referenced in Section 11.3.E of this Franchise Agreement. Such audits shall be limited to projects completed within 12 months prior to the date of the audit request. The cost of any such independent audit shall reduce the amount of the Underground Program balance. The Company shall cooperate with any audit and the independent auditor shall prepare and provide to the Town and the Company a final audit report showing the actual costs associated with completion of the project. If a project audit is required by the Town, only those actual project costs confirmed and verified by the independent auditor as reasonable and necessary to complete the project shall be charged against the Underground Program balance.

§11.4 Audit of Underground Program. Upon written request, every three (3) years commencing at the end of the third calendar year of this Franchise, the Company shall cause an independent auditor to investigate and determine the correctness of the charges to the Underground Program. Such audits shall be limited to the previous three (3) calendar years. Audits performed pursuant to this Section shall be limited to charges to the Underground

Program and shall not include an audit of individual underground projects. The independent auditor shall provide to the Town and the Company a written report containing its findings. The Company shall reconcile the Underground Program balance consistent with the findings contained in the independent auditor's written report. The costs of the audit and investigation shall be charged against the Underground Program balance.

§11.5 Cooperation with Other Utilities. When undertaking an undergrounding project the Town and the Company shall coordinate with other utilities or companies that have their facilities above ground to attempt to have all facilities undergrounded as part of the same project. When other utilities or companies are placing their facilities underground, to the extent the Company has received prior written notification, the Company shall cooperate with these 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 any costs of undergrounding the facilities of other companies or the Town.

§11.6 Planning and Coordination of Undergrounding Projects. The Town 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 Town and Company construction projects. The Town and the Company agree to meet, as required, to review the progress of the current undergrounding projects and to review planned future undergrounding projects. The purpose of such meetings shall be to further cooperation between the Town and the Company in order to achieve the orderly undergrounding of Company Facilities. Representatives of both the Town and the Company shall meet periodically to review the Company's undergrounding of Company Facilities and at such meetings shall review:

A. Undergrounding, including conversions, Public Projects, and replacements that have been accomplished or are underway, together with the Company's plans for additional undergrounding; and

B. Public Projects anticipated by the Town.

ARTICLE 12
PURCHASE OR CONDEMNATION

§12.1 Municipal Right to Purchase or Condemn.

A. Right and Privilege of Town. The right and privilege of the Town to construct, own and operate a municipal utility, and to purchase pursuant to a mutually acceptable agreement or condemn any Company Facilities located within the territorial boundaries of the Town, and the Company's rights in connection therewith, as set forth in applicable provisions of the constitution, statutes and case law of the State of Colorado relating to the acquisition of public utilities, are expressly recognized. The Town shall have the right, within the time frames and in accordance with the procedures set forth in the foregoing sources of law, to condemn Company Facilities, land, rights-of-way and easements now

owned or to be owned by the Company located within the territorial boundaries of the Town. In the event of any such condemnation, no value shall be ascribed or given to the right to use Town Streets or Other Town Property granted under this Franchise in the valuation of the property thus condemned.

B. Notice of Intent to Purchase or Condemn. The Town shall make reasonable efforts to provide the Company at least one (1) year's prior written notice of the Town's intent to purchase or condemn Company Facilities. Nothing in this Section shall be deemed or construed to constitute consent by the Company to the Town's purchase or condemnation of Company Facilities, nor a waiver of any Company defenses or challenges related thereto.

ARTICLE 13 MUNICIPALLY PRODUCED UTILITY SERVICE

§13.1 Municipally Produced Utility Service.

A. Town Reservation. The Town 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 Town-generated power made available for sale, consistent with PUC requirements and other applicable requirements. The Company further agrees to offer transmission and delivery services to the Town 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 Town's or Company's Rights. Nothing in this Franchise prohibits the Town from becoming an aggregator of utility service or from selling utility service to customers should it be permissible under law, nor does it affect the Company's rights and obligations pursuant to any Certificate of Public Convenience and Necessity granted by the PUC.

ARTICLE 14 ENVIRONMENT AND CONSERVATION

§14.1 Environmental Leadership. The Town 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. The Company agrees to continue to 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. The Company shall continue to cost-effectively monitor its operations to mitigate environmental impacts; shall meet the requirements of environmental laws, regulations and permits; shall invest in cost-effective, environmentally sound technologies; shall consider environmental issues in its planning and decision making; and shall support environmental research and development projects and partnerships in our communities through various means,

including but not limited to corporate giving and employee involvement. The Company shall continue to explore ways to reduce water consumption at its facilities and to use recycled water where feasible. The Company shall continue to 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. If requested in writing by the Town on or before December 1st of each year, the Company shall provide the Town a written report describing its progress in carbon reduction and other environmental efforts, and the parties shall meet 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 Town 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 Town and the Company further recognize that creative and effective Energy Conservation solutions are crucial to sustainable development. The Company recognizes and shares the Town's stated 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. The Company commits to offer programs that attempt 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. The Company shall advise the Town 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, at the Town's request, the Company's Area Manager shall act as the primary liaison with the Town who will provide the Town with information on how the Town may take advantage of reducing energy consumption in Town facilities and how the Town may participate in Energy Conservation and Energy Efficiency programs sponsored by the Company. As such, the Company and the Town 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. The Company agrees to help the Town participate in Company programs and, when opportunities exist to partner with others, such as the State of Colorado, the Company will help the Town pursue those opportunities. In addition, and in order to assist the Town and its Residents' participation in Renewable Energy Resource programs, the Company shall: notify the Town regarding eligible Renewable Energy Resource programs; provide the Town with technical support regarding how the Town may participate in Renewable Energy Resource programs; and advise Residents regarding eligible Renewable Energy

Resource programs. Notwithstanding the foregoing, to the extent that any Company assistance is needed to support Renewable Energy Resource Programs that are solely for the benefit of Company customers located within the Town, the Company retains the sole discretion as to whether to incur such costs.

- §14.3 Continuing Commitment. It is the express intention of the Town and the Company that the collaborative effort provided for in this Article continue for the entire term of this Franchise. The Town and the Company also recognize, however, that the programs identified in this Article may be for a limited duration and that the regulations and technologies associated with Energy Conservation are subject to change. Given this variability, the Company agrees to maintain its commitment to sustainable development and Energy Conservation for the term of this Franchise by continuing to provide leadership, support and assistance, in collaboration with the Town, to identify, develop, implement and maintain new and creative programs similar to the programs identified in this Article in order to help the Town achieve its environmental goals.
- §14.4 PUC Approval. Nothing in this Article shall be deemed to require the Company to invest in technologies or to incur costs that it has a good faith belief the PUC will not allow the Company to recover through the ratemaking process.
- §14.5 Sustainability Committee. To the extent the Town has a sustainability committee, it shall provide the Company an opportunity to have a Company representative on such committee. Any Company representative may participate in regular committee meetings for the purpose of providing information on Company programs and offerings and will be a meaningful participant as it relates to Company programs and offerings.

ARTICLE 15 TRANSFER OF FRANCHISE

- §15.1 Consent of Town 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, or, except when the transfer is made in response to legislation or regulatory requirements, unless the Town approves such transfer or assignment in writing. Approval of the transfer or assignment shall not be unreasonably withheld, conditioned, or delayed.
- §15.2 Transfer Fee. In order that the Town may share in the value this Franchise adds to the Company's operations, any transfer or assignment of rights granted under this Franchise requiring Town approval, as set forth herein, shall be subject to the condition that the Company shall promptly pay to the Town a transfer fee in an amount equal to the proportion of the Town's then-population provided Utility Service by the Company to the then-population of the City and County of Denver 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 only on the rates of Residents.

ARTICLE 16
CONTINUATION OF UTILITY SERVICE

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

ARTICLE 17
INDEMNIFICATION AND IMMUNITY

§17.1 Town Held Harmless. The Company shall indemnify, defend, and hold the Town harmless from and against claims, demands, liens, and all liability or damage of whatsoever kind on account of or directly arising from the grant of this Franchise or the exercise by the Company of its related rights, but in both instances only to the extent caused by the Company, and the Company shall pay the costs of defense plus reasonable attorneys' fees. The Town shall (a) give prompt written notice to the Company of any claim, demand, or lien with respect to which the Town seeks indemnification hereunder; and, (b) unless in the Town's judgment a conflict of interest may exist between the Town 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 reasonably satisfactory to the Town. If such defense is assumed by the Company, the Company shall not be subject to liability for any settlement made without its consent. If such defense is not assumed by the Company or if the Town 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 Town 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 Town or any of its officers, agents or employees, or to the extent that the claim, lien, or demand arises out of the Town's status as a customer of record of the Company.

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

ARTICLE 18 BREACH

§18.1 Change of Tariffs. The Town 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 Town and its Residents, and the Town 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 remedy the Breach or, if such Breach cannot be remedied in thirty (30) days, such additional time as may be reasonably needed to remedy the Breach, but not exceeding an additional thirty (30) day period, or such other time as the parties may agree. If the Breaching Party does not remedy the Breach within the time allowed in the notice, the Non-Breaching Party may exercise the following remedies for such Breach:

(1) specific performance of the applicable term or condition to the extent allowed by law; 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 special, punitive or consequential damages.

B. Termination of Franchise by Town. 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 Town 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 or, if such Material Breach cannot be remedied in ninety (90) days, such additional time as reasonably needed to remedy the Material Breach, but not exceeding an additional ninety (90) day period, or such other time as the parties may agree. If the Company does not remedy the Material Breach within the time allowed in the notice, the Town may, in its sole discretion, terminate this Franchise. This remedy shall be in addition to the Town’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 Town and its Residents (and shall

continue to have associated rights and grants needed to provide such service) until the Town makes alternative arrangements for such service and until otherwise ordered by the PUC, and the Company shall be entitled to collect from Residents and, upon the Town complying with applicable provisions of law, shall be obligated to pay the Town, at the same times and in the same manner as provided in this Franchise, an aggregate amount equal to the amount which the Company would have paid as a Franchise Fee as consideration for use of the Town Streets and Other Town Property. Unless otherwise provided by law, the Company shall be entitled to collect such amount from Residents.

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 19 AMENDMENTS

§19.1 Proposed Amendments. At any time during the term of this Franchise, the Town 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 in writing by the parties, which alterations, amendments, or modifications shall be adopted with the same formality used in adopting this Franchise, to the extent required by law. Neither this Franchise, nor any term herein, 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. Any amendment of the Franchise shall become effective only upon the approval of the PUC, if such PUC approval is required.

ARTICLE 20 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 committed also 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. Programs. 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. Businesses. The Company recognizes that the Town and the business community in the Town, 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 Town regularly advised of the Company's progress by providing the Town a copy of the Company's annual affirmative action report upon the Town's written request.

C. Recruitment. 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. Advancement. 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. Non-Discrimination. 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, gender, sexual orientation, marital status, age, military status, national origin, ancestry, or physical or mental disability, refuse to hire, discharge, promote, demote or discriminate in matters of compensation, against any person otherwise qualified.

F. Board of Directors. The Company shall identify and consider women, persons of color and other under-represented 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. Contracts. 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. Community Outreach. 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 Town regularly advised of the Company's programs.

C. Community Development. 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. Town agencies provide collaborative leadership and mutual opportunities or programs relating to Town 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 21 MISCELLANEOUS

§21.1 No Waiver. Neither the Town 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. Upon a transfer or assignment pursuant to Article 15, the Company shall be relieved from all liability from and after the date of such transfer.

§21.3 Third Parties. 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 Town 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, reputable overnight courier 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. Notice shall be deemed received (a) three (3) days after being mailed via the U.S. Postal Service, (b) one (1) business day after mailed if via reputable overnight courier, or (c) upon hand delivery if delivered by courier. Until any such change shall hereafter be made, notices shall be sent as follows:

To the Town:

Town Clerk
Town of New Castle
P.O. Box 90
New Castle, Colorado 81647

With a copy to:

Garfield & Hecht, P.C.
Attn: New Castle Town Attorney
420 7th Street, Suite 100
Glenwood Springs, Colorado 81601

To the Company:

Regional Vice President, Customer and Community Relations
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

and

Area Manager
Public Service Company of Colorado
P.O. Box 840
Denver, Colorado 80201

Any request involving any audit specifically allowed under this Franchise shall also be sent to:

Audit Services
Public Service Company of Colorado
P.O. Box 840
Denver, Colorado 80201

- §21.5 Examination of Records. The parties agree that any duly authorized representative of the Town and the Company shall have access to and the right to examine any directly pertinent, non-confidential books, documents, papers, and records of the other party involving any activities related to this Franchise. All such records must be kept for a minimum of the lesser of three (3) years or the time period permitted by a party's record retention policy. To the extent that either party believes in good faith that it is necessary in order to monitor compliance with the terms of this Franchise to examine confidential books, documents, papers, and records of the other party, the parties agree to meet and discuss providing confidential materials, including, but not limited to, providing such materials subject to a reasonable confidentiality agreement that effectively protects the confidentiality of such materials and complies with PUC rules and regulations.
- §21.6 List of Utility Property. The Company shall provide the Town, upon request not more than once every two (2) years, a list of electric utility-related real property owned in fee by the Company within the County in which the Town is located. All such records must be kept by the Company for a minimum of three (3) years or such shorter duration if required by Company policy.
- §21.7 PUC Filings. Upon written request by the Town, the Company shall provide the Town non-confidential copies of all applications, advice letters, and periodic reports, together with any accompanying non-confidential testimony and exhibits, filed by the Company with the Public Utilities Commission. Notwithstanding the foregoing, notice regarding any gas and electric filings that may affect Utility Service rates in the Town shall be sent to the Town upon filing.
- §21.8 Information. Upon written request, the Company shall provide the Town Clerk or the Town Clerk's designee with:
- A. 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 website;
 - B. Maps or schematics indicating the location of specific Company Facilities (subject to Town executing a confidentiality agreement as required by Company policy), including gas or electric lines, located within the Town, to the extent those maps or schematics are in existence at the time of the request and related to an ongoing project within the Town. The Company does not represent or warrant the accuracy of any such maps or schematics; and
 - C. 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.

§21.9 Payment of Taxes and Fees.

A. Impositions. Except as otherwise provided herein, 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 extraordinary, 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 which may become a lien or charge against this Franchise (“Impositions”), provided that the 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. Town Liability. The Town shall not be liable for the payment of taxes, late charges, interest, or penalties of any nature other than pursuant to applicable Tariffs.

§21.10 Conflict of Interest. The parties agree that no official, officer, or employee of the Town 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 Town to the extent prohibited by law, including ordinances and regulations of the Town.

§21.11 Certificate of Public Convenience and Necessity. The Town 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.

§21.12 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 charter, ordinances, regulations, procedures, bylaws, or applicable law, to legally authorize the undersigned signatories to execute this Franchise Agreement 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 Town 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.

§21.13 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.

§21.14 Force Majeure. Neither the Town 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 Event, as defined herein.

§21.15 Earlier Franchises Superseded. This Franchise shall constitute the only franchise between the Town and the Company related to the furnishing of Utility Service, and it supersedes and cancels all former franchises between the parties hereto.

§21.16 Titles Not Controlling. Titles of the paragraphs herein are for reference only, and shall not be used to construe the language of this Franchise.

§21.17 Applicable Law. Colorado and federal law shall apply to the construction and enforcement of this Franchise, as well as to the performance obligations of the parties. Neither party shall be required to violate local, state, or federal law when performing its obligations hereunder. The parties agree that venue for any litigation arising out of this Franchise shall be in the District Court for Garfield County, State of Colorado.

§21.18 Payment of Expenses Incurred by Town in Relation to Franchise Agreement. The Company shall pay for expenses reasonably incurred by the Town for the adoption of this Franchise, limited to the publication of notices, publication of ordinances, election expenses, and photocopying of documents, and other similar expenses.

§21.19 Costs of Compliance with Franchise. The parties acknowledge that PUC rules, regulations and final decisions may require that costs of complying with certain provisions of this Franchise be borne by customers of the Company who are located within the Town.

§21.20 Conveyance of Town Streets, Public Utility Easements or Other Town Property. In the event the Town vacates, releases, sells, conveys, transfers or otherwise disposes of a Town Street, or any portion of a Public Utility Easement or Other Town Property in which Company Facilities are located, the Town shall reserve an easement in favor of the Company over that portion of the Street, Public Utility Easement or Other Town Property in which such Company Facilities are located. The Company and the Town shall work together to prepare the necessary legal description to effectuate such reservation. For the purposes of Section 6.8.A of this Franchise, the land vacated, released, sold, conveyed, transferred or otherwise disposed of by the Town shall no longer be deemed to be a Street or Other Town Property from which the Town may demand the Company temporarily or permanently Relocate Company Facilities at the Company's expense.

§21.21 Audit. For any audits specifically allowed under this Franchise, such audits shall be subject to the Tariff and PUC rules and regulations. Audits in which the auditor is compensated on the basis of a contingency fee arrangement shall not be permitted.

§21.22 Land Use Coordination. The Town shall coordinate with the Company regarding its land use planning. This coordination shall include meeting with the Company and identifying areas for future utility development.

(Signature page follows.)

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

TOWN OF NEW CASTLE

ATTEST:

Clerk, Town of New Castle

Mayor, Town of New Castle

APPROVED AS TO FORM:
(if applicable)

Town Attorney, Town of New Castle

**PUBLIC SERVICE COMPANY OF
COLORADO, a Colorado corporation**

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

STATE OF COLORADO)
)SS.
COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this __day of _____, 2016 by Jerome Davis, Regional Vice President, Customer and Community Relations of Public Service Company of Colorado, a Colorado corporation.

WITNESS MY HAND AND OFFICIAL SEAL.

Notary Public
My Commission expires: _____.

(SEAL)