

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

- ARTICLE 1 DEFINITIONS
- ARTICLE 2 GRANT OF FRANCHISE
- ARTICLE 3 CITY 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 USE OF COMPANY FACILITIES
- ARTICLE 10 UNDERGROUNDING OF OVERHEAD FACILITIES
- ARTICLE 11 PURCHASE OR CONDEMNATION; MUNICIPAL UTILITY
- ARTICLE 12 ENVIRONMENT AND CONSERVATION
- ARTICLE 13 TRANSFER OF FRANCHISE
- ARTICLE 14 CONTINUATION OF UTILITY SERVICE
- ARTICLE 15 INDEMNIFICATION AND IMMUNITY
- ARTICLE 16 BREACH
- ARTICLE 17 AMENDMENTS
- ARTICLE 18 EQUAL OPPORTUNITY
- ARTICLE 19 MISCELLANEOUS

TABLE OF CONTENTS

ARTICLE 1 DEFINITIONS

- §1.1 City
- §1.2 City Council
- §1.3 Company
- §1.4 Company Facilities
- §1.5 Electric Gross Revenues
- §1.6 Gross Revenues
- §1.7 Private Project
- §1.8 Public Project
- §1.9 Public Utilities Commission
- §1.10 Public Utility Easement
- §1.11 Renewable Resource
- §1.12 Residents
- §1.13 Streets or City Streets
- §1.14 Supporting Documentation
- §1.15 Tariffs
- §1.16 Utility Service

ARTICLE 2 GRANT OF FRANCHISE

- §2.1 Grant of Franchise
- §2.2 Conditions and Limitations
- §2.3 Effective Date and Term

ARTICLE 3 CITY POLICE POWERS

- §3.1 Police Powers
- §3.2 Regulation of Streets or Other City Property
- §3.3 Compliance With Laws

ARTICLE 4 FRANCHISE FEE

- §4.1 Franchise Fee
- §4.2 Remittance of Franchise Fees
- §4.3 Franchise Fee Payment Not In Lieu of Permit or other Fees

ARTICLE 5 ADMINISTRATION OF FRANCHISE

- §5.1 City Designee
- §5.2 Company Designee
- §5.3 Coordination of Work

ARTICLE 6 SUPPLY, CONSTRUCTION, AND DESIGN

- §6.1 Purpose
- §6.2 Supply
- §6.3 Service to City Facilities
- §6.4 Restoration of Service
- §6.5 Obligations Regarding Company Facilities
- §6.6 Excavation and Construction

- §6.7 Restoration and Damage
- §6.8 Relocation of Company Facilities
- §6.9 Adjustments to Company Facilities
- §6.10 New or Modified Service Requested by City
- §6.11 Service to New Areas
- §6.12 City Not Required to Advance Funds
- §6.13 Technological Improvements

ARTICLE 7 RELIABILITY

- §7.1 Reliability
- §7.2 Franchise Performance Obligations

ARTICLE 8 COMPANY PERFORMANCE OBLIGATIONS

- §8.1 New or Modified Service to City Facilities
- §8.2 Third Party Damage Recovery

ARTICLE 9 USE OF COMPANY FACILITIES

- §9.1 City Use of Company Facilities
- §9.2 Third Party Use of Company Facilities
- §9.3 City Use of Company Transmission Rights-of-Way
- §9.4 Emergencies

ARTICLE 10 UNDERGROUNDING OF OVERHEAD FACILITIES

- §10.1 Underground Electrical Lines in New Areas
- §10.2 Underground Conversion at Expense of Company
- §10.3 Undergrounding Performance
- §10.4 Audit of Underground Fund
- §10.5 Cooperation with Other Utilities
- §10.6 Planning and Coordination of Undergrounding Projects

ARTICLE 11 PURCHASE OR CONDEMNATION; MUNICIPAL UTILITY

- §11.1 Municipal Right to Purchase or Condemn
- §11.2 Municipally-Produced Utility Service

ARTICLE 12 ENVIRONMENT AND CONSERVATION

- §12.1 Environmental Leadership
- §12.2 Energy Conservation and Efficiency
- §12.3 Continuing Commitment
- §12.4 PUC Approval

ARTICLE 13 TRANSFER OF FRANCHISE

- §13.1 Consent of City Required
- §13.2 Transfer Fee

ARTICLE 14 CONTINUATION OF UTILITY SERVICE

- §14.1 Continuation of Utility Service

ARTICLE 15 INDEMNIFICATION AND IMMUNITY

§15.1 City Held Harmless

§15.2 Immunity

ARTICLE 16 BREACH

§16.1 Non-Contestability

§16.2 Breach

ARTICLE 17 AMENDMENTS

§17.1 Proposed Amendments

§17.2 Effective Amendments

§17.3 Elections

ARTICLE 18 EQUAL OPPORTUNITY

§18.1 Economic Development

§18.2 Employment

§18.3 Contracting

ARTICLE 19 MISCELLANEOUS

§19.1 No Waiver

§19.2 Successors and Assigns

§19.3 Third Parties

§19.4 Notice

§19.5 Examination of Records

§19.6 Payment of Taxes and Fees

§19.7 Conflict of Interest

§19.8 Certificate of Convenience and Necessity

§19.9 Authority

§19.10 Severability

§19.11 Force Majeure

§19.12 Earlier Franchises Superseded

§19.13 Titles Not Controlling

§19.14 Applicable Law

§19.15 Payment of Expenses Incurred

ARTICLE 1 DEFINITIONS

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

- §1.1 “City” refers to the City of Louisville, a home rule municipal corporation of the State of Colorado.
- §1.2 “City Council” or “Council” refers to the legislative body of the City.
- §1.3 “Company” refers to Public Service Company of Colorado d/b/a Xcel Energy and its successors and assigns consistent with Article 13, and including affiliates or subsidiaries that undertake to perform any of the obligations under this franchise.
- §1.4 “Company Facilities” refer to all facilities of the Company reasonably necessary to provide gas and electric service into, within and through the City, including but not limited to plants, works, systems, substations, transmission and distribution structures, lines, equipment, pipes, mains, conduit, transformers, underground lines, gas compressors, meters, meter reading devices, communication and data transfer equipment, control equipment, gas regulator stations, street lights, wire, cables and poles.
- §1.5 “Electric Gross Revenues” refers to those amounts of money which the Company receives from the sale or delivery of electricity in the City, after adjusting for refunds, net write-offs of uncollectible accounts, corrections, or regulatory adjustments. Regulatory adjustments include, but are not limited to, credits, surcharges, refunds, and pro-forma adjustments pursuant to federal or state regulation. “Electric Gross Revenues” shall exclude any revenue for the sale or delivery of electricity to the City.
- §1.6 “Gross Revenues” refers to those amounts of money which the Company receives from the sale of gas and electricity to Residents under rates authorized by the Public Utilities Commission, as well as from the transportation of gas to Residents and from the use of Company facilities within the Streets (unless otherwise preempted by applicable federal or state law), as adjusted for refunds, net write-offs of uncollectible accounts, corrections, or regulatory adjustments. Regulatory adjustments include, but are not limited to, credits, surcharges, refunds, and pro-forma adjustments pursuant to federal or state regulation. “Gross Revenues” shall exclude any revenues from the sale of gas or electricity to the City or the transportation of gas to the City.
- §1.7 “Private Project” refers to any project which is not covered by the definition of Public Project.

- §1.8 “Public Project” refers to (1) any public work or improvement within the City that is wholly owned or wholly funded by the City; or (2) any public work or improvement within the City where fifty percent (50%) or more of the funding is provided by any combination of the City, the federal government, the State of Colorado or any other governmental entity, including but not limited to the Regional Transportation District, the Urban Drainage and Flood Control District, or any Colorado municipality or county, but excluding all other entities established under Title 32 of the Colorado Revised Statutes.
- §1.9 “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.
- §1.10 “Public Utility Easement” refers to any easement over, under, or above public property, lawfully acquired by or dedicated to the use of the Company, its predecessors in interest, or other public utility companies for the placement of public utility facilities, including but not limited to Company Facilities. Public Utility Easement shall not include any easement for the use of the Company that is located within the Streets.
- §1.11 “Renewable Resource” shall have the meaning set forth in the rules of the PUC establishing a Renewable Energy Standard, as the same may be amended from time to time. At the time of the execution of this franchise, the Renewable Energy Standard is located at 4 CCR 723-3-3650 to 3656.
- §1.12 “Residents” refer to all persons, businesses, industries, governmental agencies, including the City, and any other entity whatsoever, presently located or to be hereinafter located, in whole or in part, within the territorial boundaries of the City.
- §1.13 “Streets” or “City Streets” refers to the surface, the air space above the surface and the area below the surface of any City dedicated streets, alleys, bridges, roads, lanes, public easements, and other public rights-of-way within the City, excluding any public easements the terms of which do not permit the use thereof by the Company. Streets shall also include other public places within the City that are suitable locations for the placement of Company Facilities as specifically approved in writing by the City. Streets shall not include Public Utility Easements.
- §1.14 “Supporting Documentation” refers to all information reasonably required 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 known environmental issues, the identification of critical right of way or easement issues, the final recorded plat for the property, the date the site will be ready for the Company to begin construction, the date electric service and meter set are needed, the date gas service and meter set are needed, and the name and contact information for the City’s project manager.
- §1.15 “Tariffs” refer to those tariffs of the Company on file and in effect with the PUC.

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

**ARTICLE 2
GRANT OF FRANCHISE**

§2.1 Grant Of Franchise.

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

(1) to provide Utility Service to the City and to its Residents under Tariffs on file with the PUC; and

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

B. Street Lighting And Traffic Signal Lighting Service. The rights granted by this franchise encompass the nonexclusive right to provide street lighting service and traffic signal lighting service as directed by the City, and the provisions of this franchise shall apply with full and equal force to street lighting service and traffic signal lighting service provided by the Company. Wherever reference is made in this franchise to the sale or provision of Utility Service, these references shall be deemed to include the provision of street lighting service and traffic signal lighting service. Street lighting service and traffic signal lighting service within the City shall be governed by this franchise, any separate agreements between the Company and the City executed on or after the effective date of this franchise, and 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 City as it is now or hereafter constituted; however, nothing contained in this franchise shall be construed to authorize the Company to engage in activities other than the provision of Utility Service.

B. Subject To City Usage. The right to make reasonable use of City Streets under the franchise is subject to and subordinate to any City usage of said Streets.

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

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

§2.3 Effective Date and Term.

A. Term. This franchise shall take effect on January 1, 2008, and shall supersede any prior franchise grants to the Company by the City. This franchise shall expire on December 31, 2027, unless extended by mutual consent.

**ARTICLE 3
CITY POLICE POWERS**

§3.1 Police Powers. The Company expressly acknowledges the City'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.

§3.2 Regulation Of Streets Or Other City Property. The Company expressly acknowledges the City's right to enforce regulations concerning the Company's access to or use of the Streets, including requirements for permits.

§3.3 Compliance With Laws. The Company shall promptly and fully comply with all laws, regulations, permits, and orders enacted by the City that are applicable to the Company's provision of Utility Service within the City.

**ARTICLE 4
FRANCHISE FEE**

§4.1 Franchise Fee.

A. Fee. In consideration for the franchise, which provides for the Company's use of City Streets, which are valuable public properties acquired and maintained by the City at great expense to its Residents, and in recognition that the grant to the Company of the use of City Streets is a valuable right, the Company shall pay the City a sum equal to three percent (3%) of all Gross Revenues. Except as otherwise provided by law, the Company shall collect this fee from a surcharge upon Residents who are customers of the Company.

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

C. Changes In Utility Service Industries. The City and the Company recognize that utility service industries are 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 have or may have an adverse impact upon the franchise fee revenues provided for herein. In recognition of the length of the term of this franchise, the Company agrees that in the event of any such initiatives or changes, upon receiving a written request from the City, and to the extent permitted by law, the Company will cooperate with and assist the City in modifying this franchise to assure that the City receives an amount in franchise fees or some other form of compensation that is the same amount of franchise fees paid to the City as of the date that such initiatives and changes adversely impact franchise fee revenues; provided, however, that except as provided by law, the Company shall be entitled to collect such amounts from City Residents in conjunction with the provision of Utility Service.

D. Utility Service Provided to the City. No franchise fee or amount paid in lieu thereof shall be charged to the City for Utility Service provided to the City for its own consumption, including street lighting service and traffic signal lighting service.

§4.2 Remittance Of Franchise Fee.

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

B. Correction Of Franchise Fee Payments. In the event that either the City or the Company discovers that there has been an error in the calculation of the franchise fee payment to the City, it shall provide written notice to the other party of the error. If the party receiving written notice of error does not agree with the written notice of error, that party may challenge the written notice of error pursuant to Section 4.2.C of this franchise; otherwise, the error shall be corrected in the next monthly payment. However, if the error results in an overpayment of the franchise fee to the City, and said overpayment is in excess of Five Thousand Dollars (\$5,000.00), credit for the overpayment shall be spread over the same period the error was undiscovered. All franchise fee underpayments shall be corrected in the next monthly payment, together with interest computed at the rate set by the PUC for customer security deposits held by the Company, from the date when due until the date paid. In no event shall either party be required to fund or refund any overpayment or underpayment made as a result of a Company error which occurred more than three (3) years prior to the discovery of the Company error.

C. 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.

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

E. Audit Rights; Protection of Confidential Information. The City finance director, or his or her agent, shall have access to the metering records of the Company during normal business hours upon reasonable notice for the purpose of auditing to ascertain that the franchise fee has been correctly computed and paid. The City may use the metered information obtained from franchise fee audits for the purpose of enforcing its sales and use tax laws. Except for such use and for such disclosures as may be required by law, all information obtained by the finance director during a franchise fee audit shall be kept confidential and shall be utilized for the sole purpose of verifying that the franchise fee has been correctly computed and paid.

§4.3 Franchise Fee Payment Not In Lieu Of Permit Or Other Fees. Payment of the franchise fee does not exempt the Company from any other lawful tax or fee imposed generally upon similar classes of businesses operating within the City, including any fee for a street closure permit, an excavation permit, a street cut permit, or other lawful permits hereafter required by the City, except that the franchise fee provided for herein shall be in lieu of any occupancy tax, occupation tax or other fee for the use of City Streets.

ARTICLE 5 ADMINISTRATION OF FRANCHISE

§5.1 City Designee. The City Manager of the City is hereby designated to the Company as an official having full power and authority to administer the franchise. The City may also designate one or more City 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 name and telephone numbers of said City representatives. The City may change these designations by providing written notice to the Company. The City Manager and the City's other designees shall have the right, at all reasonable times, to inspect any Company Facilities in City Streets.

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

§5.3 Coordination Of Work.

A. The Company agrees to meet with the City's designees upon written request for the purpose of reviewing, implementing, or modifying mutually beneficial procedures for the efficient processing of Company bills, invoices and other requests for payment.

B. The Company agrees to coordinate its activities in City Streets with the City. The City and the Company will meet annually upon the written request of the City designees to exchange their respective short-term and long-term forecasts and/or work plans for construction and other similar work which may affect City Streets. The City and Company shall hold such meetings as either deems necessary to exchange additional information with a view towards coordinating their respective activities in those areas where such coordination may prove beneficial and so that the City will be assured that all provisions of this franchise, building and zoning codes, and 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 City to the Residents which require the Company to provide prompt and reliable Utility Service and the performance of related services for City facilities. The City and the Company wish to provide for certain terms and conditions under which the Company will provide Utility Service and perform related services for the City in order to facilitate and enhance the operation of City facilities. They also wish to provide for other processes and procedures related to the provision of Utility Service to the City.

§6.2 Supply. 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 Service To City Facilities.

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

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

§6.4 Restoration Of Service.

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

B. Restoration. In the event the Company's gas system or electric system, or any part thereof, is partially or wholly destroyed or incapacitated, the Company shall use due diligence to restore such systems to satisfactory service within the shortest practicable 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 City Streets shall be maintained in good repair, condition and appearance.

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

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

C. No Interference With City Facilities. Company Facilities shall not interfere with any City facilities, including water facilities, sanitary or storm sewer facilities, communications facilities, or any other City uses of the Streets. Company Facilities shall be installed and maintained in City Streets so as to minimize interference with other property, trees, and other improvements and natural features in and adjoining the Streets, including both then-existing and then-planned improvements of which the Company has been advised in writing.

D. Permit And Inspection. The installation, renovation, repair, and replacement of any Company Facilities in the City Streets by or on behalf of the Company shall be subject to permit, inspection and approval by the City. Such inspection and approval may include, but not be limited to, the following matters: location of Company Facilities, cutting and trimming of trees and shrubs, and disturbance of pavement, sidewalks, and surfaces of City Streets. The Company agrees to cooperate with the City in conducting inspections and

shall promptly perform any remedial action lawfully required by the City pursuant to any such inspection.

E. Compliance. The Company and all of its contractors shall comply with the requirements of all municipal laws, ordinances, regulations, permits, and standards, including but not limited to requirements of all building and zoning codes, and requirements regarding curb and pavement cuts, excavating, digging, and other construction activities. The Company shall assure that its contractors working in City Streets hold the necessary licenses and permits required by law.

F. As-Built Drawings. Upon written request of the City designee, the Company shall provide within fourteen (14) days, on a project by project basis, as-built drawings of any Company Facility installed within the City Streets or contiguous to the City Streets. Such as-built drawings refers to the facility drawings maintained in the Company's geographical information system or any equivalent system. The Company shall not be required to create drawings that do not exist at the time of the City's request, but the foregoing shall not be construed to affect any obligation to prepare drawings pursuant to any separate agreement.

G. Increase in Voltage. Unless otherwise prohibited by law, the Company shall reimburse the City for the cost of upgrading the electrical system or facility of any City building or facility that uses Utility Service where such upgrading is occasioned by the Company's decision to increase the voltage of delivered electrical energy.

§6.6 Excavation And Construction. The Company shall be responsible for obtaining, paying for, and complying with all applicable permits including, but not limited to, excavation, street closure and street cut permits, in the manner required by the laws, ordinances, and regulations of the City. Although the Company shall be responsible for obtaining and complying with the terms of such permits when performing relocations requested by the City under Section 6.8 of this franchise and undergrounding requested by the City under Article 10 of this franchise, the City will not require the Company to pay the fees charged for such permits.

§6.7 Restoration and Damage.

A. Restoration. When the Company performs any work in or affecting the City Streets or any landscaping or improvements therein, it shall, at its own expense, promptly remove any obstructions therefrom, repair any damage, and restore such City Streets and landscaping and improvements therein to a condition that meets applicable City standards. If weather or other conditions do not permit the complete restoration or repair required by this Section, the Company may with the approval of the City, temporarily restore the affected City Streets, provided that such temporary restoration is at the Company's sole expense and provided further that the Company promptly undertakes and completes the required permanent restoration or repair when the weather or other conditions no longer prevent such permanent restoration or repair. If the Company fails to promptly restore or repair the City Streets and landscaping and improvements therein as required by this Section, the City may, upon giving fourteen (14) days' written notice to the Company,

restore such City Streets, remove the obstruction therefrom or repair the damage; provided however, City actions do not interfere with Company Facilities. The Company shall be responsible for the actual cost incurred by the City to restore or repair such City Streets and landscaping and improvements therein or to remove any obstructions therefrom. The City shall not perform work on Company Facilities. Upon request of the City, the Company shall restore the City Streets to a better condition than existed before the work was undertaken, provided that the City shall be responsible for any additional costs of such restoration.

B. Damage. In addition, the Company shall promptly repair any damage to the City Streets and remedy any situation within the City Streets that is caused by Company activities or Company Facilities that results in a dangerous condition or otherwise poses an immediate hazard to the health or safety of the public. Upon the City becoming aware of any such situation, the City shall provide notice to the Company as soon as practicable under the circumstances, and the Company shall promptly upon receipt of such notice take action to abate said dangerous condition or hazard. If the Company fails to repair such damage or eliminate the dangerous condition within a reasonable time after notice, the City may take reasonable action to abate said dangerous condition or hazard, and the Company shall reimburse the City for said reasonable action; provided, however, that the Company shall not be liable for costs incurred by the City for providing emergency police or fire services generally made available to the public and the City shall not perform work on Company Facilities.

§6.8 Relocation Of Company Facilities.

A. Relocation Obligation. The Company shall at its sole cost and expense temporarily or permanently remove, relocate, change or alter the position or depth of any Company Facility in City Streets whenever the City Manager shall determine that such removal, relocation, change or alteration is necessary for the completion of any Public Project. For all relocations, the Company and the City agree to cooperate on the location and relocation of the Company Facilities in the City Streets in order to achieve relocation in the most efficient and cost-effective manner possible. Notwithstanding the foregoing, once the Company has relocated any Company Facility at the City's direction, if the City requests that the same Company Facility be relocated within two years, the subsequent relocation shall not be at the Company's expense unless said subsequent relocation is necessary to remedy public health and safety concerns not reasonably foreseeable by the City at the time of the prior relocation.

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

C. Relocation Performance. The relocations set forth in Section 6.8.A of this franchise shall be completed within a reasonable time, not to exceed ninety (90) days from

the later of the date when the City designee requests in writing that the relocation commence or the date when the City provides the Company all Supporting Documentation. For all relocations, the Company shall promptly advise the City of any need for additional information necessary for such design. The Company shall be entitled to an extension of time to complete a relocation where the Company's performance was delayed due to a cause that could not be reasonably anticipated by the Company or is beyond its reasonable control, after exercise of best efforts to perform, including without limitation fire, strike, war, riots, acts of governmental authority, acts of God, forces of nature, judicial action, unavailability or shortages of labor, materials or equipment and failures or delays in delivery of materials. Upon request of the Company, the City may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension.

D. City Revision of Supporting Documentation. Any revision by the City of the Supporting Documentation that causes the Company to substantially redesign or substantially change its plans regarding facility relocation shall be deemed good cause for a reasonable extension of time to complete the relocation under the franchise. The Company shall promptly advise the City of any claimed extension under this provision, including the estimated length of the claimed extension and the revised date by which the relocation is estimated to be completed.

E. Completion. Each such relocation shall be deemed 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 City, and removes from the site or properly abandons on site all unused facilities, equipment, material and other impediments.

F. Scope of Obligation. The relocation obligation set forth in this Section shall only apply to Company Facilities located in City Streets. The obligation shall not apply to Company Facilities located on property owned by the Company in fee, or to Company Facilities located in privately-owned easements or Public Utility Easements, unless such Public Utility Easements are on or in City-owned property.

G. Underground Relocation. Underground facilities shall be relocated underground. Above ground facilities shall be placed 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 City requests that such additional incremental cost be paid out of available funds under Article 10 of this franchise.

H. Coordination. When requested in writing by the City designee or the Company, representatives of the City and the Company shall meet to share information regarding anticipated projects which will require relocation of Company Facilities in City Streets. Such meetings shall be for the purpose of minimizing conflicts where possible and to facilitate coordination with any timetable established by the City for any Public Project.

I. Proposed Alternatives Or Modifications. Upon receipt of written notice of a required relocation, the Company may propose an alternative to or modification of the

Public Project requiring the relocation in an effort to mitigate or avoid the impact of the required relocation of Company Facilities. The City shall in good faith review the proposed alternative or modification. The City's acceptance or rejection of the proposed alternative or modification shall be at the sole discretion of the City Manager. In the event the City accepts the proposed alternative or modification, the Company agrees to promptly compensate the City for all additional costs, expenses or delay that resulted from the implementation of the proposed alternative. Unless otherwise agreed by the City, the presentation of a proposed alternative or modification shall not be deemed good cause for any extension of time to complete the relocation.

§6.9 Adjustments To Company Facilities. The Company shall perform adjustments to Company Facilities, including manholes, guy wires and other appurtenances in the Streets, to accommodate City Street maintenance, repair and paving operations at no cost to the City. In providing such adjustments to Company Facilities, the Company agrees to perform as follows:

A. Performance. The Company shall complete each requested adjustment within a reasonable time, not to exceed thirty (30) days from the date when the City Manager 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 cause that could not be reasonably anticipated by the Company or is beyond its reasonable control, after exercise of best efforts to perform, including but not limited to fire, strike, war, riots, acts of governmental authority, acts of God, judicial action, unavailability or shortages of materials or equipment and failures or delays in delivery of materials. Upon request of the Company, the City Manager may also grant the Company reasonable extensions of time for good cause shown and the City Manager shall not unreasonably withhold any such extension.

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

§6.10 New Or Modified Service Requested By City. The conditions under which the Company shall install new or modified utility service to the City as a customer shall be governed by this franchise and the Company's PUC Tariffs.

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

§6.12 City Not Required To Advance Funds. Upon receipt of the City's authorization for billing and construction, the Company shall extend Company Facilities to provide Utility Service

to the City as a customer, without requiring the City to advance funds prior to construction. The City shall pay for the extension of Company Facilities once completed in accordance with the Company's extension policy on file with the PUC.

- §6.13 Technological Improvements. The Company shall use its best efforts to incorporate, as soon as practicable, technological advances, upgrades and improvements in its equipment, facilities and service within the City when such advances are technically and economically feasible and are safe and beneficial to the City and its Residents. The City shall not oppose the efforts of the Company to incorporate such advances, upgrades and improvements.

ARTICLE 7 RELIABILITY

- §7.1 Reliability. The Company shall operate and maintain Company Facilities efficiently and economically and in accordance with the high standards and best systems, methods, and skills then reasonably available and 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.

ARTICLE 8 COMPANY PERFORMANCE OBLIGATIONS

- §8.1 New or Modified Service To City Facilities. In providing new or modified Utility Service to City facilities, the Company agrees to perform as follows:
- A. Performance. The Company shall complete each project requested by the City within a reasonable time. The Parties agree that a reasonable time shall not exceed one hundred eighty (180) days from the date upon which the City designee makes a written request and provides the required Supporting Documentation as described in this section. The Company shall be entitled to an extension of time to complete a project where the Company's performance was delayed due to a cause that could not be reasonably anticipated by the Company or is beyond its reasonable control, after exercise of best efforts to perform, including but not limited to, fire, strike, war, riots, acts of governmental authority, acts of God, forces of nature, judicial action, unavailability or shortages of materials or equipment and failures or delays in delivery of materials. Upon request of the Company, the City designee may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension.
- B. City Revision of Supporting Documentation. Any revision by the City of Supporting Documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding new or modified service to City facilities shall be deemed good cause for a reasonable extension of time to complete the

installation or modification under the franchise. The Company shall promptly advise the City of any claimed extension under this provision, including the estimated length of the claimed extension and the revised date by which the installation or modification is estimated to be completed.

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

§8.2 Third Party Damage Recovery.

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

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

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

ARTICLE 9
USE OF COMPANY FACILITIES

§9.1 City Use Of Company Facilities. The City shall be permitted to make use of Company Facilities in the City at no cost to the City for the placement of City equipment or facilities necessary to serve any police, fire, emergency, public safety or traffic control purpose, or any purpose related to operation of the City's water or sewer utilities. The City will notify the Company in writing in advance of its intent to use Company facilities and the nature of such use. The City shall be responsible for costs associated with modifications to

Company Facilities to accommodate the City's use of such Company Facilities and for any electricity used. No such use of Company Facilities shall be required if it would constitute a safety hazard or would interfere with the Company's use of Company Facilities. Any such City use must comply with the National Electric Safety Code and all other applicable laws, rules and regulations.

§9.2 Third Party Use Of Company Facilities. If requested in writing by the City, the Company may allow other companies who hold franchises, or otherwise have obtained consent from the City to use the Streets, to utilize Company Facilities 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 Facilities for the provision of utility service by the City or by third parties.

§9.3 City Use Of Company Transmission Rights-Of-Way. The Company shall offer to grant to the City use of transmission rights-of-way which it now, or in the future, owns in fee within the City for parks and open space; provided, however, that the Company shall not be required to make such an offer in any circumstance where such offer would constitute a safety hazard or would interfere with the Company's use of the transmission right-of-way. This Section is not intended and shall not be construed to revoke or affect any prior license, grant or right to use Company transmission rights-of-way.

§9.4 Emergencies. Upon written request, the Company shall assist the City in developing an emergency management plan. In the case of any emergency or disaster, the Company shall, upon verbal request of the City, make available Company Facilities for emergency use during the emergency or the disaster period. Such use of Company Facilities shall be of a limited duration and will only be allowed if the use does not interfere with the Company's own use of Company Facilities.

ARTICLE 10 UNDERGROUNDING OF OVERHEAD FACILITIES

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

§10.2 Underground Conversion At Expense Of Company.

A. Underground Fund. The Company shall budget and allocate an annual amount, equivalent to one percent (1%) of the preceding year's Electric Gross Revenues (the "Fund"), for the purpose of undergrounding existing overhead distribution facilities in the City, as may be requested by the City, provided that the undergrounding shall extend for a minimum distance of one (1) block or 750 feet, whichever is less, or as may be mutually

agreed by the parties. Except as provided in §6.8.G, no relocation expenses which the Company would be required to expend pursuant to Article 6 of this franchise shall be charged to this allocation.

B. Unexpended Portion And Advances. Any unexpended portion of the Fund shall be carried over to succeeding years and, in addition, upon request by the City designee, the Company agrees to expend amounts anticipated to be available under the preceding paragraph for up to three (3) years in advance. Any amounts so expended shall be credited against amounts to be expended in succeeding years. Any funds accumulated under any prior franchise shall be carried over to this Fund balance. The City shall have no vested interest in any monies in the Fund not expended as of the date of expiration or termination of this franchise.

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

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

§10.3 Undergrounding Performance. Upon receipt of a written request from the City, the Company shall, to the extent of monies available in the Fund and as otherwise provided herein, underground Company Facilities in accordance with the procedures set forth in this Section.

A. Performance. The Company shall complete each undergrounding project requested by the City within a reasonable time, not to exceed one hundred eighty (180) days from the later of the date upon which the City designee makes a written request and the date the City provides to the Company all Supporting Documentation. 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 cause that could not be reasonably anticipated by the Company or is beyond its reasonable control, after exercise of best efforts to perform, including but not limited to, fire, strike, war, riots, acts of governmental authority, acts of God, forces of nature, judicial action, unavailability or shortages of materials or equipment and failures or delays in delivery of materials. Upon request of the Company, the City may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension.

B. City Revision of Supporting Documentation. Any revision by the City of Supporting Documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding an undergrounding project shall be deemed good cause for a reasonable extension of time to complete the undergrounding

project under the franchise. The Company shall promptly advise the City of any claimed extension under this provision, including the estimated length of the claimed extension and the revised date by which the undergrounding project is estimated to be completed.

C. Completion/Restoration. Each such undergrounding project shall be deemed complete only when the Company actually undergrounds the designated Company Facilities, restores the undergrounding site in accordance with Section 6.7 of this franchise or as otherwise agreed with the City designee and removes from the site or properly abandons on site any unused facilities, equipment, material and other impediments.

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

E. Report Of Actual Costs. Upon completion of each undergrounding project, the Company shall submit to the City a detailed report of the Company's actual cost to complete the project and the Company shall reconcile this total actual cost with the accepted cost estimate.

F. Audit Of Underground Projects. The City may require that the Company undertake an independent audit of any undergrounding project for five hundred thousand dollars (\$500,000.00) or greater. The cost of any such independent audit shall reduce the amount of the Fund. The Company shall cooperate fully with any audit and the independent auditor shall prepare and provide to the City and the Company a final audit report showing the actual costs associated with completion of the project. If a project audit is required by the City, only those actual project costs confirmed and verified by the independent auditor as incurred by the Company to complete the particular City undergrounding project shall reduce the Fund.

§10.4 Audit Of Underground Fund. Upon written request of the City, but no more frequently than once every three (3) years, the Company shall audit the Fund for the City. Such audits shall be limited to the previous three (3) calendar years. The Company shall provide the audit report to the City and shall reconcile the Fund consistent with the findings contained in the audit report. The Company's cost of the internal audit shall not be charged against the Fund.

§10.5 Cooperation With Other Utilities. When undertaking an undergrounding project the City 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, the City shall provide the Company written notice of the specific undergrounding project. 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 the cost of undergrounding the facilities of other companies or the City.

§10.6 Planning And Coordination Of Undergrounding Projects. The City and the Company shall mutually plan in advance the scheduling of undergrounding projects to be undertaken according to this Article as a part of the review and planning for other City and Company construction projects. In addition, the City and the Company agree to meet, as required, to review the progress of then-current undergrounding projects and to review planned future undergrounding projects. The purpose of such meetings shall be to further cooperation between the City and the Company to achieve the orderly undergrounding of Company Facilities. At such meetings, the parties shall review:

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

B. Public Projects anticipated by the City.

ARTICLE 11 PURCHASE OR CONDEMNATION; MUNICIPAL UTILITY

§11.1 Municipal Right To Purchase Or Condemn.

A. Right And Privilege Of City. The right and privilege of the City to construct, purchase or condemn any Company Facilities located within the territorial boundaries of the City, and the Company's rights in connection therewith, as set forth in applicable provisions of the constitution and statutes of the State of Colorado and the City Charter relating to the acquisition of public utilities, are expressly recognized. The City shall have the right, consistent with such provisions, to purchase or 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 City. In the event of any such purchase or condemnation, no value shall be ascribed or given to the rights granted under this franchise in the valuation of the property thus taken.

B. Notice Of Intent To Purchase or Condemn. The City shall provide the Company no less than one (1) year's prior written notice of its intent to purchase or condemn Company Facilities. Nothing in this section shall be deemed or construed to constitute a consent by the Company to the City's purchase or condemnation of Company Facilities.

§11.2 Municipally-Produced Utility Service.

A. City Reservation. The City expressly reserves the right to engage in the production of utility service to the extent permitted by law. The Company agrees to negotiate in good faith long term contracts to purchase City-generated power made available for sale, including contracts for rebates, bill credits and/or net metering in relation to solar, wind or

other renewable energy resources generated by the City at its facilities, consistent with and subject to applicable statutory and PUC requirements.

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

ARTICLE 12 ENVIRONMENT AND CONSERVATION

§12.1 Environmental Leadership. The Company is committed to sustainable development and energy conservation for the term of this franchise by continuing to provide leadership, support and assistance, in collaboration with the City, to identify, develop, implement and maintain new and creative programs. The Company shall strive to conduct its operations in a way that avoids adverse environmental impacts where feasible, subject to the ongoing regulatory oversight of the PUC. In doing so, the Company shall consider environmental issues in its planning and decision-making, and shall invest in environmentally sound technologies when such technologies are deemed prudent and feasible. The Company shall continue with its voluntary carbon reduction program to reduce greenhouse gas emissions and 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.

§12.2 Energy Conservation and Efficiency.

A. Energy Efficiency Programs. The City and the Company recognize and agree that Energy Conservation and Efficiency programs offer opportunities for the efficient use of energy and reduction of customers' energy consumption and costs. The Company recognizes and shares the City's desire to advance the implementation of cost-effective Energy Conservation and Efficiency programs, which direct opportunities to the Company's customers to manage more efficiently their use of energy and, thereby, create the opportunity to reduce their energy consumption, costs, and impact on the environment. The Company shall seek authority from the PUC to develop and offer energy efficiency programs to its customers. Subject to PUC approval, the Company commits to offer Demand Side Management (DSM) programs and succeeding programs, which provide customers the opportunity to reduce their energy usage. In doing so, the Company recognizes the importance of (i) implementing cost-effective programs, the benefits of which could otherwise be lost if not pursued in a timely fashion and (ii) developing cost-effective energy management programs for the various classes of the Company's customers. The Company shall advise the City and the Company's customers of the availability of assistance that the Company makes available for investments in energy conservation through its Account Managers, Area Manager, newspaper advertisements, bill inserts and energy efficiency workshops and by maintaining information regarding these programs on the Company's website.

B. Renewable Resource Programs. The Company agrees to consider Renewable Resource programs as an integral part of the Company's provision of Utility Service to its customers. The Company agrees to comply with the mandates of Colorado House Bill 1281, which doubles the renewable energy standard established by voters with the 2004 passage of Amendment 37. Unless otherwise provided by law or PUC order, the Company will obtain electricity from renewable sources equivalent to at least 20% of retail sales by 2020. The Company will promote a role for Renewable Resources in its future resource acquisitions, consistent with acceptable rate impacts, legislative requirements, and applicable provisions of law.

The Company will continue to promote existing or new programs in its service territory to comply with applicable provisions of law relating to renewable resources. The City shall actively support the Company's compliance with the renewable resource standards required by law. The Company agrees that, in complying with this provision, it shall take the following steps to encourage participation by the City and the Company's customers in available renewable resource programs:

- (1) Notify the City regarding eligible renewable resource programs;
- (2) Provide the City with support regarding how the City may participate in eligible renewable resource programs; and
- (3) Advise customers regarding participation in eligible renewable resource programs.

§12.3 Continuing Commitment. 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 to identify, develop, implement and maintain new and creative programs similar to the programs identified in this franchise.

§12.4 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, reached after a reasonable evaluation or inquiry to the PUC that the PUC will not allow the Company to recover through the ratemaking process.

ARTICLE 13 TRANSFER OF FRANCHISE

§13.1 Consent Of City Required. The Company shall not transfer or assign any rights under this franchise to an unaffiliated third party, except by merger with such third party, or, except when the transfer is made in response to legislation or regulatory requirements, unless the City approves such transfer or assignment in writing. Approval of the transfer or assignment shall not be unreasonably withheld.

§13.2 Transfer Fee. In order that the City may share in the value this franchise adds to the Company's operations, any transfer or assignment of rights granted under this franchise

requiring City approval, as set forth herein, shall be subject to the condition that the Company shall promptly pay to the City a transfer fee in an amount equal to the proportion of the City's 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 14 CONTINUATION OF UTILITY SERVICE

§14.1 Continuation of Utility Service. In the event this franchise is not renewed at the expiration of its term or is terminated for any reason, and the City has not provided for alternative utility service, the Company shall continue to provide Utility Service within the City until the City arranges for utility service from another provider. The Company further agrees that it will not withhold any temporary Utility Services necessary to protect the public. The City agrees that in the circumstances of this Article, the Company shall be entitled to monetary compensation only as provided in the Company's Tariffs on file with the Public Utilities Commission and the Company shall be entitled to collect from Residents and shall be obligated to pay the City, at the same times and in the same manner as provided in the franchise, an aggregate amount equal to the amount which the Company would have paid as a franchise fee as consideration for use of the City's Streets. Only upon receipt of written notice from the City stating that the City has adequate alternative Utility Service for Residents and upon order of the PUC shall the Company be allowed to discontinue the provision of Utility Service to the City and its Residents.

ARTICLE 15 INDEMNIFICATION AND IMMUNITY

§15.1 City Held Harmless. The Company shall indemnify, defend and hold the City harmless from and against claims, demands, liens and all liability or damage of whatsoever kind on account of or arising from the grant of this franchise, the exercise by the Company of the related rights, or from the operations of the Company within the City, and shall pay the costs of defense plus reasonable attorneys' fees. The City shall (a) give prompt written notice to the Company of any claim, demand or lien with respect to which the City seeks indemnification hereunder and (b) unless in the City's judgment a conflict of interest may exist between the City and the Company with respect to such claim, demand or lien, shall permit the Company to assume the defense of such claim, demand, or lien with counsel satisfactory to the City. If such defense is assumed by the Company, the Company shall not be subject to any liability for any settlement made without its consent. If such defense is not assumed by the Company or if the City determines that a conflict of interest exists, the parties reserve all rights to seek all remedies available in this franchise against each other. Notwithstanding any provision hereof to the contrary, the Company shall not be obligated to indemnify, defend or hold the City harmless to the extent any claim, demand

or lien arises out of or in connection with any negligent or intentional act or failure to act of the City or any of its officers or employees.

§15.2 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 City 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 City by law.

ARTICLE 16 BREACH

§16.1 Non-Contestability. The City and the Company agree to take all reasonable and necessary actions to assure that the terms of this franchise are performed and neither will take any action to set aside or invalidate this franchise before any court or regulatory authority of competent jurisdiction. However, the Company reserves the right to seek a change in its Tariffs concerning rates, charges, terms, and conditions of providing Utility Service to the City and its Residents.

§16.2 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. 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; and

(2) recovery of actual damages from the date of such breach incurred by the non-breaching party in connection with the breach, but excluding any consequential damages.

B. Termination Of Franchise By City. In addition to the foregoing remedies, if the Company fails or refuses to perform any material term or condition of this franchise (a “material breach”), the City may provide written notice to the Company of such material breach. Upon receipt of such notice, the Company shall be given a reasonable time, not to exceed ninety (90) days, in which to remedy the material breach. If the Company does not remedy the material breach within the time allowed in the notice, the City may, at its sole option, terminate this franchise. This remedy shall be in addition to the City’s right to exercise any of the remedies provided for elsewhere in this franchise. Upon such termination, the Company shall continue to provide Utility Service to the City and its Residents until the City makes alternative arrangements for such service and until

otherwise ordered by the PUC and the Company shall be entitled to collect from Residents and shall be obligated to pay the City, at the same times and in the same manner as provided in the franchise, an aggregate amount equal to the amount which the Company would have paid as a franchise fee as consideration for use of the City Streets. In no event does the Company have the right to terminate this franchise.

C. 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 17 AMENDMENTS

- §17.1 Proposed Amendments. At any time during the term of this franchise, the City or the Company may propose amendments to this franchise by giving thirty (30) days written notice to the other of the proposed amendment(s). Nothing contained herein shall be deemed to require either party to consent to any amendment proposed by the other party.
- §17.2 Effective Amendments. No alterations, amendments or modifications to this franchise shall be valid unless executed by an instrument in writing by the parties, adopted with the same formality used in adopting this franchise. Neither this franchise, nor any term hereof, may be changed, modified or abandoned, in whole or in part, except by an instrument in writing, and no subsequent oral agreement shall have any validity whatsoever.
- §17.3 Elections. This franchise and any amendments or modifications hereto may be subject to approval by a vote of the registered electors of the City to the extent and in the manner required by the City Charter, as in effect and amended from time to time.

ARTICLE 18 EQUAL OPPORTUNITY

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

A. The Company is committed to undertaking programs that identify, consider and develop persons of color, women and members of other under-represented groups for

positions at all skill and management levels within the Company.

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

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

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

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

F. The Company shall identify and consider women, persons of color and other 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.

§18.3 Contracting.

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

B. The Company agrees to maintain and continuously develop contracting and community outreach programs calculated to enhance opportunity and increase the participation of minority and women owned business enterprises and other small and/or disadvantaged business enterprises to encourage economic vitality. The Company agrees to keep the City regularly advised of the Company's programs.

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

ARTICLE 19 MISCELLANEOUS

- §19.1 No Waiver. Neither the City nor the Company shall be excused from complying with any of the terms and conditions of this franchise by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions, to insist upon or to seek compliance with any such terms and conditions.
- §19.2 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 13 of this franchise.
- §19.3 Third Parties. Nothing contained in this franchise shall be construed to provide rights to third parties or to impose duties in favor of third parties.
- §19.4 Notice. Both parties shall designate from time to time in writing representatives for the Company and the City who will be the persons to whom notices shall be sent regarding any action to be taken under this franchise. Notice shall be in writing and forwarded by certified mail or hand delivery to the persons and addresses as hereinafter stated, unless the persons and addresses are changed at the written request of either party, delivered in person or by certified mail. Until any such change shall hereafter be made, notices shall be sent as follows:

To the City:

City Manager
City of Louisville
749 Main Street
Louisville, CO 80027

Director of Public Works

749 Main Street
Louisville, CO 80027

With a copy to:

City Attorney
City of Louisville
749 Main Street
Louisville, CO 80027

To the Company:

Regional Vice President
Public Service Company of Colorado
P.O. Box 840
Denver, CO 80201

With a copy to:

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

§19.5 Examination Of Records.

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

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

(1) The City will maintain the confidentiality of the information by keeping it under seal and segregated from information and documents that are available to the public;

(2) The information shall be used solely for the purpose of determining the Company's compliance with the terms and conditions of this franchise;

(3) The information shall only be made available to City employees, and to consultants who represent in writing that they agree to be bound by the provisions of this subsection B;

(4) The information shall be held by the City for such time as is reasonably necessary for the City to address the franchise issue(s) that generated the request, and shall be returned to the Company when the City has concluded its use of the information. The parties agree that in most cases, the information should be returned within one hundred twenty (120) days. However, in the event that the information is needed in connection with any action that requires more time, including, but not necessarily limited to litigation, administrative proceedings and/or other disputes, the City may maintain the information until such issues are fully and finally concluded.

C. If an Open Records Act request is made by any third party for confidential or proprietary information that the Company has provided to the City pursuant to this franchise, the City will promptly notify the Company of the request and shall allow the Company to defend such request at its sole expense, including filing a legal action in any court of competent jurisdiction to prevent disclosure of such information. In any such legal action the Company shall join the person requesting the information and the City. In no circumstance shall the City provide to any third party confidential information provided by the Company pursuant to this franchise without first conferring with the Company. The Company shall defend, indemnify and hold the City harmless from any claim, judgment, costs or attorney fees incurred in participating in such proceeding.

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

E. The Company shall provide the City, upon request not more than every two (2) years, a list of utility related property owned or leased by the Company within the City. All such records must be kept for a minimum of four (4) years.

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

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

(1) a copy of the Company's or its parent company's consolidated annual financial report, or alternatively, a URL link to a location where the same information is available on the Company's web site;

(2) maps or schematics indicating the location of specific Company Facilities, including gas or electric lines, located within the City, to the extent those maps or schematics are in existence at the time of the request; and

(3) a copy of any report required to be prepared for a federal or state agency detailing the Company's efforts to comply with federal and state air and water pollution laws.

§19.6 Payment Of Taxes And Fees.

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

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

§19.7 Conflict Of Interest. The parties agree that no official, officer or employee of the City shall have any personal or beneficial interest whatsoever in the Utility Services or Company Facilities described herein (other than as a customer of the Company or as otherwise permitted by applicable ethics laws) and the Company further agrees not to hire or contract for services with any official, officer or employee of the City to the extent prohibited by law, including ordinances and regulations of the City.

§19.8 Certificate of Convenience and Necessity. The City agrees to support any application the Company may file with the PUC to obtain a certificate of public convenience and necessity to exercise the rights and obligations granted under this franchise, to the extent such application is consistent with this franchise.

§19.9 Authority. Each party represents and warrants that except as set forth below, it has taken all actions that are necessary or that are required by its ordinances, regulations, procedures, bylaws, or applicable law, to legally authorize the undersigned signatories to execute this franchise on behalf of the parties and to bind the parties to its terms. The parties represent that the person(s) executing this franchise on behalf of each of the parties have full authorization to execute this franchise. The City acknowledges that notwithstanding the foregoing, the Company requires a certificate of public convenience and necessity from the PUC in order to operate under the terms of this franchise. The Company acknowledges

that any ordinance approving this franchise is subject to referendum as provided in the City Charter.

§19.10 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, 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.

§19.11 Force Majeure. Neither the City nor the Company shall be in breach of this franchise if a failure to perform any of the duties under this franchise is due to uncontrollable forces, which shall include, but not be limited to: accidents, breakdown of equipment, shortage of materials, shortage of labor, acts of God, floods, storms, fires, sabotage, terrorist attack, strikes, riots, war, labor disputes, forces of nature, the authority and orders of government, and other causes or contingencies of whatever nature beyond the reasonable control of the party affected, which could not reasonably have been anticipated and avoided.

§19.12 Earlier Franchises Superseded. This franchise shall constitute the only franchise between the City and the Company for the furnishing of Utility Service, street lighting service, and traffic signal lighting service, and it supersedes and cancels all former franchises between the parties hereto.

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

§19.14 Applicable Law. Colorado law shall apply to the construction and enforcement of this franchise. The parties agree that venue for any litigation arising out of this franchise shall be in the District Court for Boulder County, State of Colorado.

§19.15 Payment of Expenses Incurred. The Company shall reimburse the City for actual out-of-pocket expenses incurred in publishing notices and ordinances, and conducting any elections related to this franchise.

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

ATTEST:

Nancy Varma, City Clerk

APPROVED AND FORWARDED:


Light, Harrington & Dawes, P.C.
City Attorney

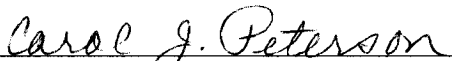
CITY OF LOUISVILLE

By: _____

Charles L. Sisk, Mayor

**PUBLIC SERVICE COMPANY OF
COLORADO**

By: 
Riley Hill
Regional Vice President

Attest: 
Asst. Secretary

Reviewed
Legal


GAS & ELECTRIC FRANCHISE ORDINANCES
(PSC of CO / XCEL ENERGY)

1977-544

1989-994

1997-1258

1999-1296

2002-1378

2004-1449

2004-1458

2005-1472

2007-1522

2007-1527



P. O. Box 840
Denver, Colorado 80201-0840

January 28, 2008

Charles L. Sisk, Mayor
City of Louisville
749 Main Street
Louisville, CO 80027

Dear Mayor Sisk:

This letter is intended to clarify the Company's position regarding Section 1.8 of the franchise agreement between the City of Louisville (the "City") and Public Service Company of Colorado ("Public Service" or the "Company"), and is given in connection with the City's approval of the franchise agreement. Section 1.8 of the franchise agreement, which is to become effective on January 1, 2008, defines "Public Project".

The Company acknowledges that projects of the urban renewal authority of the City of Louisville may qualify in certain circumstances as a "Public Project" as defined in the franchise agreement. However, there may also be circumstances where all aspects of a project of the urban renewal authority may not qualify as a "Public Project" under Section 1.8 of the franchise.

Due to the fact that there is some uncertainty as to whether the specific circumstances of a particular urban renewal project will qualify in whole or in part in all instances as a "Public Project", our position is not to include the urban renewal authority of the City of Louisville within the definition of "Public Project" in the franchise agreement. Our approach will be to review each urban renewal project on a case-by-case basis to determine whether or not it qualifies as a "Public Project". We do not intend to force the City to relinquish its position that particular urban renewal projects may qualify for the benefits associated with a "Public Project", but ask that the City not request that we relinquish our position that particular urban renewal projects may not qualify as a "Public Project" under the franchise.

As we have discussed on several occasions during the course of negotiating this franchise, one objective of the City has been to obtain the same benefits that Denver received in its new franchise agreement with Public Service. Our approach to this issue with Louisville is similar to our approach in negotiating the Denver franchise. The definition of "Public Project" in the Denver franchise does not include an urban renewal authority. Our approach in the Louisville franchise negotiations is the same.

Letter to Charles L. Sisk
January 28, 2008
Page -2-

Again, we acknowledge that projects of the urban renewal authority of the City of Louisville may qualify as a "Public Project", yet the Company believes that each project should qualify on the merits of the specific project. In light of the fact that we have successfully come to agreement on all other aspects of the franchise agreement, as well as the "Street Lighting and Traffic Signal Lighting Service Agreement", and the "right of first purchase" letter agreement, we encourage the Louisville staff and City Council to move ahead with the renewal of the franchise agreement.

Yours truly,

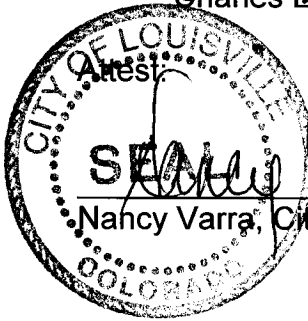
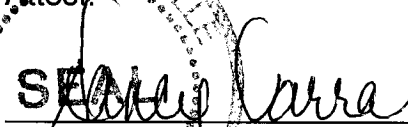
A handwritten signature in cursive script that reads "Riley Hill". The signature is written in black ink and is positioned above the printed name and title.

Riley Hill
Regional Vice President
Customer and Community Relations

AGREED TO AND ACCEPTED THIS 28th DAY OF January,
2008.

City of Louisville

By: 
Charles L. Sisk, Mayor

 Attest:

Nancy Varra, City Clerk