CITY OF BOULDER
CITY COUNCIL AGENDA ITEM

MEETING DATE: August 4, 2020

AGENDA TITLE

Introduction, first reading, and consideration of a motion to order published by title only Ordinance 8410 submitting to the registered electors of the City of Boulder at the municipal coordinated election to be held on Tuesday, November 3, 2020, the question of a franchise by the City of Boulder, Colorado, being granted to Public Service Company of Colorado, its successors and assigns, to furnish, sell, and distribute gas and electricity to the city and to all persons, businesses, and industries within the city and the right to acquire, construct, install, locate, maintain, operate, and extend into, within, and through said city all facilities reasonably necessary to furnish, sell, and distribute gas and electricity within the city and the right to make reasonable use of all streets, public easements and other city property as herein defined as may be necessary, and fixing the terms and conditions thereof; setting forth the ballot title, specifying the form of the ballot and other election procedures; and setting forth related details.

PRESENTERS

Jane S. Brautigam, City Manger
Thomas A. Carr, City Attorney
David Gehr, Chief Deputy City Attorney
Kathy Haddock, Senior Counsel
Deb Kalish, Senior Counsel
Steve Catanach, Director of Climate Initiatives
Jonathan Koehn, Chief Resilience and Sustainability Officer
Matthew Lehrman, Energy Strategy Advisor
Lex Telischak, Electrical Engineer

EXECUTIVE SUMMARY

The purpose of this agenda item is for council to consider a motion to complete first reading of a ballot measure that will propose to the voters a ballot question of whether to approve a franchise with Public Service Company of Colorado ("Xcel Energy"). Second reading and public hearing is scheduled for August 18, 2020. The franchise is part of a comprehensive agreement with Xcel Energy that would suspend the city's municipalization effort in return for assurance that Xcel Energy would meet its goal of 80 percent reduction in carbon emissions by 2030 and a partnership to help the city meet its goal of 100 percent renewable electricity by 2030. The agreement is structured to provide accountability and enforceability through the realistic possibility that the city could create a municipal electric utility if Xcel Energy does not meet specified carbon emission targets in specific years on its way to an 80 percent gross emissions reduction from 2005 levels by 2030.

The proposed schedule is as follows:

- August 4, 2020 First Reading Franchise
- August 18, 2020 Second Reading Public Hearing
- September 1, 2020 Deadline to place measures on the ballot
- November 3, 2020 Election Day
- January 2021 Franchise effective if approved by the voters and PUC

STAFF RECOMMENDATION

Suggested Motion Language:

Staff requests council consideration of this matter and action in the form of the following motion:

Motion to introduce, pass on first reading, and order published by title only Ordinance 8410 submitting to the registered electors of the City of Boulder at the municipal coordinated election to be held on Tuesday, November 3, 2020, the question of a franchise by the City of Boulder, Colorado, being granted to Public Service Company of Colorado, its successors and assigns, to furnish, sell, and distribute gas and electricity to the city and to all persons, businesses, and industries within the city and the right to acquire, construct, install, locate, maintain, operate, and extend into, within, and through said city all facilities reasonably necessary to furnish, sell, and distribute gas and electricity within the city and the right to make reasonable use of all streets, public easements and other city property as herein defined as may be necessary, and fixing the terms and conditions thereof; setting forth the ballot title, specifying the form of the ballot and other election procedures; and setting forth related details.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic – The opportunity exists for Boulder to transition to a new sustainable, low-carbon emission society, and it is coming much faster than anyone had anticipated just a few years ago. The growing differential between the rising costs of fossil fuels and the declining costs of renewable energy technologies is setting the stage for the emergence of a new economic paradigm in electricity delivery for the next century. Boulder is poised to help accelerate this process to tackle climate change, secure energy independence, and grow a sustainable 21st century economy all at the same time.

- Environmental – The energy discussion in Boulder is driven by concerns about the environmental impact of our current energy system. The combustion of fossil fuels is warming earth's atmosphere and changing our climate. Human activities are estimated to have caused approximately 1.0°C of global warming above pre-industrial levels, with a likely range of 0.8°C to 1.2°C. According to the IPCC[1], global warming is likely to reach 1.5°C between 2030 and 2052 if it continues to increase at the current rate. Such an increase in global temperatures will be catastrophic. To change this course, we must achieve dramatic near-term reductions in greenhouse gas emissions by rapidly transitioning from fossil fuels to renewable energy. There is growing agreement that the most viable path to deep emission reductions in the next 10 years is the conversion of 80 percent or more of all energy use—in buildings, transportation and business processes—to electricity generated from renewable energy sources. Any agreement between the Boulder community and Xcel Energy must enable Boulder to reduce fossil fuel demand from buildings and transportation; rapidly transition to an energy system and economy that is powered 100 percent or more by renewable electricity with 50 percent or more of that produced locally.

- Social – To reach our clean energy goals, we must build across an energy system that is accessible to every person equally regardless of race or income and support solutions that include all people. Despite emerging opportunities, many are left out of the new energy economy. For example, many energy efficiency and renewable energy efforts are supported by federal and state tax credits and grants that benefit higher-income homeowners and exclude tenants and lower-income households, who are more likely to be people of color. The partnership activities identified with Xcel Energy are intended to address the multiple challenges facing communities.

OTHER IMPACTS

- Fiscal – If the franchise is adopted the Utility Occupation Tax will end. The general fund portion of the tax will be replaced by a franchise fee.

[1] https://www.ipcc.ch/sr15/

- Staff time – Implementing the proposed partnership will require significant staff work and financial resources will be necessary to support this work.

PUBLIC FEEDBACK

A public hearing is scheduled tentatively for August 18, 2020. The agreement reflects several years of robust community conversation on the community's relationship with Xcel Energy, including settlement discussions in 2016 and 2017, and incorporates public input on the agreement from town halls conducted in June 2020 and dozens of emails received by city council and staff this summer.

ANALYSIS

In 2010, the City of Boulder embarked on a significant undertaking to change the future of electric service and energy management for its residents and businesses. As directed by council, city staff has been analyzing the viability of various options to help the community achieve its Energy Future goals. The process is grounded in commitments to be objective and to include as many viewpoints as possible. No matter which energy path the city chooses to take, it strives to be a leader in reducing the impact its electric use has on climate change and in providing equitable local energy services that meet the unique needs and community values of Boulder.

The community's Energy Future goals prioritize an emissions-free electricity supply; the ability to develop accessible and innovative energy efficiency and demand-side management programs that enhance customers' control; a structure that supports economic vitality through low costs and high reliability, as well as the creation of a high-tech test bed; and, the opportunity to work with energy consumers to meet their diverse needs. Boulder's vision, either in partnership with Xcel Energy or through a municipal utility, is to transform from a utility model centered on selling more electrons to a new business model in which the mission is to collaborate with customers to provide options to use fewer electrons and produce no carbon emissions.

Over the past several months, the city has been working closely with Xcel Energy to design a potential settlement agreement that will allow the Boulder community to make significant progress on its clean electricity and climate-related goals. The Franchise Agreement that is proposed is part of a larger effort that will result in the city and Xcel Energy developing a partnership that will result in the city suspending its efforts at municipalization. Ultimately, if council approves, the city will need to approve several agreements. The council will consider those agreements after a public hearing on August 18, with the second reading of the franchise ballot measure ordinance. Those agreements include a settlement agreement and a franchise agreement.

A franchise is a special right or privilege granted by a government to an individual or corporation that does not ordinarily belong to people in general. In the case of the Xcel Energy franchise, it is a grant from the city to Xcel Energy of the right to use city streets, alleys, rights-of-way, public easements and other public property for the purpose of

providing electric and natural gas utility service to the residents and businesses within the city.

The Franchise Agreement also includes terms and conditions agreed to by the city and Xcel Energy regarding the use of the streets. The Franchise Agreement recently negotiated by city staff and Xcel Energy is as an attachment to Proposed Ordinance 8410, **Attachment A**, placing the franchise question on the ballot.

Among the objectives of the negotiations was to ensure that the city would have opportunities to opt out of the franchise if either the relationship was not satisfactory or Xcel Energy's failure to meet state wide objectives related to the reduction and ultimately the elimination of greenhouse gas emissions that result from electricity generation.

Key Terms and Conditions of the Franchise Agreement

The Franchise Agreement documents the rules that govern Xcel Energy's use of the city's streets, public easements, and other property owned by the city. This portion of the memorandum outlines some of the key terms and conditions of the Franchise Agreement and discusses them in greater detail.

- **Grant of Franchise**. The Franchise Agreement grants Xcel Energy a non-exclusive right to place its facilities in city streets, alleys, public easements and other city property in order to provide gas and electric service to the city, its residents, and businesses. The term "other city property" does not include property that meets the home rule charter definitions of "open space" or "park land." Any use of those lands will be required to use the disposition of land provisions in the charter.

- **Opt-out provisions**. The city has negotiated two sets of provisions that will allow it to terminate the franchise. State statute allows the city to opt out of a franchise at the 10- and 15-year anniversary of the franchise. This franchise will allow the city to opt out of the franchise at the five, 10 or 15 year anniversary of the franchise, for any reason, in the city's sole, absolute, and unconditional discretion by either a six person vote of city council or a majority vote of the residents of the city. There is a second set of opt-out provisions that allow the city to terminate the franchise in the years 2023, 2025, and 2028 if Excel Energy does not meet the gross carbon reduction goals expressly set forth in the Franchise Agreement and as further described below. Like the anniversary opt-out, the decision to terminate in these years can be made by a vote of six council members or the voters.

- **City Police Powers**. Xcel Energy expressly recognizes the city's right to adopt ordinances and regulations and Xcel Energy's obligation to comply, not only with city laws, regulations, permit requirements, and orders, but also with federal,

state, and other local government laws and regulations that relate to the terms and conditions of the Franchise Agreement.

- **Franchise Fee**. In consideration of the right to use city streets, alleys, rights of way, public easements, and other city property, Xcel Energy will pay to the city an amount equal to three percent of the gross revenues the company collects from city residents and businesses. The franchise fee is paid to the city's general fund. The franchise fee will replace the existing general fund portion of the Utility Occupation Tax that is presently set to expire at the end of 2022. The right to create an additional occupation tax for the purpose of funding energy related projects is expressly reserved in the Franchise Agreement. The franchise fee, like the Utility Occupation Tax, is passed through the company to Boulder residents and businesses as a surcharge on their energy use. The city will not be surcharged for the energy it uses.

- **Administration of Franchise**. This article concerns the coordination of work by the parties. Xcel Energy agrees to meet with the city on a semi-annual basis to discuss long-term and short-term work plans to avoid unnecessary interference with city streets, easements, and other city property. This is a very efficient approach for the city and Xcel Energy to use to coordinate construction projects and avoids unnecessary duplication of effort and destruction of new infrastructure.

- **Supply, Construction, and Design**. Article 6 is the regulatory portion of the Franchise Agreement. In this article, Xcel Energy agrees to provide reliable gas and electric service to city residents and businesses. Xcel Energy expressly agrees to perform work within the city in a timely, expeditious, high quality, cost effective manner, and to comply with all city laws licenses, permits, and written agreements. For public projects, Xcel Energy will continue to relocate facilities in public streets or other city property. To the extent that a public project requires the relocation of facilities in public easements, the city will cover that cost.

- **Reliability**. Xcel Energy is obligated to provide adequate, safe, and reliable utility service to the city. Its failure to do so would likely be a material breach of the Franchise Agreement.

- **Company Performance Obligations**. This article includes requirements for the completion of projects requested by the city. The terms in this article should provide greater certainty in determining when projects must be completed.

- **Billing and Payment**. Billing for utility service is a subject matter reserved for the PUC. This section largely references the requirements of the PUC

regulations. There are additional provisions related to how the parties will cooperate on financial matters.

- **Use of Company Electric Distribution Poles**. The Franchise Agreement gives the city the right to use Xcel Energy distribution poles for police, fire, emergency, public safety, or traffic control purpose. Without this right, the city would be obligated to enter into pole attachment agreements for the use of these poles.

- **Undergrounding of Overhead Facilities**. Xcel Energy reserves one percent of the electric gross revenues received from city residents and businesses for the undergrounding of its facilities within the city. This amount is approximately $1 million and is set aside each year for this purpose. It addresses how estimates are prepared, requires meetings throughout an undergrounding project and explains the time period allotted for each project. It also includes standards related to the planning, coordination and potential to audit projects after completion. In the settlement agreement with Xcel Energy, there are provisions that will allow the city to have access to the undergrounding funds from the time period that the city has been out of the franchise.

- **Purchase or Condemnation**. By entering into the Franchise Agreement, the city does not lose any of its rights to purchase or condemn Xcel Energy facilities in the future. There are also additional requirements related to purchase and condemnation in the settlement agreement.

- **Municipally Produced Utility Service**. The city reserved the right to engage in the production of utility service to the extent permitted by law and Excel Energy has agreed to enter into good faith negotiations to purchase city generated power. Importantly, Excel Energy has also agreed to offer transmission and delivery service to the city, comparable to the service it provides to other electric generators, when such services are permitted (not required) by law. The city and Xcel Energy have a significant history of working together regarding the sale and transmission of energy generated by the water utility's hydroelectric facilities.

- **Environment and Conservation**. The Franchise Agreement includes commitments to further programs and opportunities related to the responsibility to engage in beneficial environmental practices, energy conservation, energy efficiency, and renewable energy within the framework established by the PUC.

- **Transfer of Franchise**. Xcel Energy cannot transfer its rights under the Franchise Agreement to a non-Xcel affiliated company without the approval of the city. However, if Xcel Energy were to transfer its rights under the Franchise Agreement to another unaffiliated entity, Xcel Energy would be required to pay the city a portion of the $1 million transfer fee it has agreed to pay the City and

County of Denver under similar circumstances. The amount would be the proportion of the then number of city residents to the then number of Denver residents.

- **Continuation of Utility Service**. This provision says that if the Franchise Agreement terminates, Xcel Energy will continue to provide service, collect the equivalent of the franchise fee from residents and businesses, and pay that amount to the city. This means that if this Franchise Agreement is approved, the next franchise negotiations will not be held under the spectra of the loss of significant revenue for the General Fund.

- **Indemnification and Immunity**. Xcel Energy will indemnify and defend the city from claims brought against the city as a result of Xcel Energy's operations within the city under the terms of the Franchise Agreement.

- **Miscellaneous**. The remainder of the franchise includes relatively standard provisions including breach of contract, amending the agreement, equal opportunity, and typical boiler plate provisions related to contract compliance, third-party beneficiaries, notice, the provision of information, payments of taxes and fees, conflicts of interest, and force majeure, to name a few.

Partnership with Xcel

The franchise is a part of a larger settlement effort that will result in the city suspending its municipalization efforts and creating a partnership with Xcel Energy. The goal of the settlement negotiations was to explore whether the city could reach an agreement that could satisfy the city's municipalization goals while remaining with Xcel as its electricity supplier. The city's goals can be summarized as the three "D's" and the three "R's." That is, Decarbonize, Decentralize, and Democratize the electricity supply system, subject to fair Rates, excellent Reliability and 100 percent Renewable electricity supply by 2030. The potential agreement addresses some, but not all of these goals. The main features of the settlement can be categorized into five "buckets" as follows:

- Assurance of 80 percent Carbon Reduction by 2030.

- Modern Grid Planning Partnership – Boulder 100 percent Renewable Electricity by 2030.

- Maintain Feasibility of Municipalization in the Future.

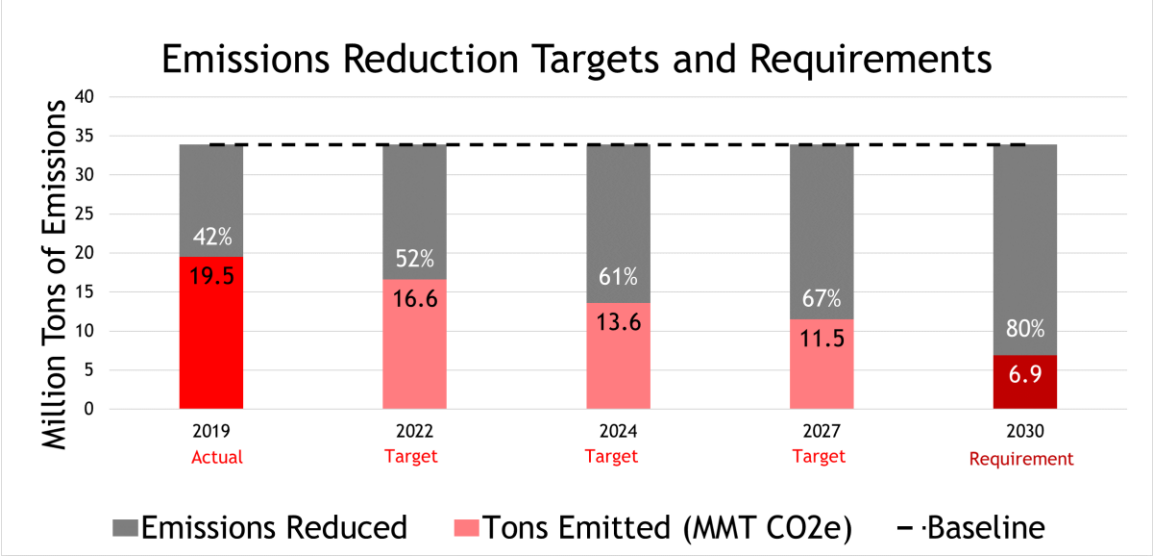
- Undergrounding catch-up - $33 million – half in first five years.

- Passage of a Franchise Ballot Measure and Suspension of Municipalization Effort.

Assurance of 80 percent Carbon Reduction by 2030

One of the driving factors behind the city's effort to create a municipal electric utility was the urgent need to decarbonize the city's electrical supply. In 2019, Colorado passed and signed into law HB 1261, the Climate Action Plan to Reduce Pollution, setting ambitious greenhouse gas emissions reduction targets to combat climate change. HB 1261 codifies statewide emissions reduction goals of 26 percent by 2025, 50 percent by 2030, and 90 percent by 2050, relative to a 2005 baseline level. These targets are roughly consistent with the Intergovernmental Panel on Climate Change's recent call to limit worldwide temperature rise to 1.5°C above preindustrial levels. In a separate but related bill, Senate Bill 19-236 directs the Colorado Public Utilities Commission, which oversees investor-owned utilities such as Xcel Energy, to evaluate Clean Energy Plans submitted by utilities for their ability to reach the 2030 required emission reduction levels. During the course of the negotiations, staff heard from the community that these goals are only meaningful if Xcel actually meets them. Community members insisted that any agreement include provisions for accountability and enforceability. The potential settlement includes the potential for the city to cancel the franchise and to renew its municipalization efforts if Xcel Energy fails to meet specific carbon emission targets. These targets would be measured by actual emissions in specific years.

The Franchise Agreement includes the right for the city to cancel the franchise for any reason in 2026, 2031 and 2036. In addition, the city would be able to cancel the franchise in 2023, 2025 and 2028 if Xcel's emissions exceed specified carbon emission targets. The emission targets are in the years 2022, 2024 and 2027. The following chart summarizes the progression to 80 percent reduction and the specified targets.



The following table summarizes the years during which the city could cancel the franchise and resume municipalization.

Year	Reason to Cancel
2022	Failure to meet emission standard
2024	Failure to meet emission standard
2026	Any reason
2028	Failure to meet emission standard
2031	Any reason
2036	Any reason
2041	End of Franchise

Modern Grid Planning Partnership – Boulder 100 percent Renewable Electricity by 2030

Even if Xcel Energy successfully meets its carbon dioxide emissions reduction goals, the city will require additional effort to meet its goal of 100 percent renewable electricity by 2030. The city will need to devote substantial resources to the effort to decarbonize the electric supply completely. Under the agreement, the structure for this effort would be a partnership between Xcel Energy and the city to explore and pilot local efforts to create a more sustainable and 100 percent renewable electric supply, implement projects that support the transition to an equitable energy future, and result in a more resilient energy supply and system. The partnership would be governed by three bodies. One would be an executive team comprised of Xcel Energy and city leadership. A second would be an oversight team consisting of representatives of the operational levels of both organizations. The third group would be an advisory committee consisting of members of the community, representatives of local businesses and the University of Colorado.

The agreement defines a process for the identification of programs and projects that will drive forward bridging the gap between Xcel's 80 percent emissions goal and the city's 100 percent renewables goal by 2030. The vision and guiding principles that will guide the selection and design of projects and programs are:

Vision

- Boulder has long understood the importance of local climate action and has committed to rapidly transitioning to a clean energy economy and lifestyle through innovative strategies that dramatically reduce greenhouse gas emissions, enhance our community's resilience and support a vital and equitable economy.

Boulder seeks to achieve its energy and climate related goals by reducing fossil fuel demand from buildings and transportation, rapidly transitioning to an energy system and economy that is powered 100 percent by renewable clean electricity with 50 percent or more of that produced locally, and prioritizing progress towards a resilient energy system that prioritizes the most vulnerable members of the community.

- Xcel Energy will be the preferred and trusted provider of the energy its customers need. As such, Xcel Energy - Colorado wants to partner with Boulder to support the City of Boulder's and the community's energy vision, goals and objectives.
- City of Boulder and Xcel Energy will work to support and achieve each other's climate-stabilization visions, for the benefit of the overall City of Boulder community which includes residents and businesses. City of Boulder and Xcel Energy - Colorado will separately and collaboratively pursue innovations in technology that accelerate achievement of the visions described above.
- Xcel Energy's ability to implement innovations rapidly may be constrained by regulatory requirements. Both parties will work toward identifying and minimizing and overcoming both external and internal barriers to the rapid implementation of agreed-upon projects.

Guiding Principles

- The goals of the agreement are to prioritize reducing greenhouse gas emissions associated with gas and electric consumption, electrification, resilience and equality within the City of Boulder.
- City of Boulder and Xcel Energy will work collaboratively to advance the vision and goals of both parties by sharing information, pushing innovation, and adhering to the governance structure set forth by this partnership.
- This partnership will strive to identify projects that meet Boulder's goals and could be scaled and replicated where appropriate in other Colorado communities served by Xcel Energy in the future.
- Pursuit and execution of this partnership will avoid shifting costs to other Xcel Energy – Colorado customers outside of city limits, except to the extent approved and deemed reasonable, by the PUC.
- The parties further wish to utilize the partnership, where appropriate, to test and promote innovative low- and no-carbon technologies and strategies through partnerships with public and private-sector entities such as the University of Colorado and federal labs.
- Both parties agree to support efforts and collaborate when appropriate on federal and private grants and other funding models as available that help to achieve the goals and objectives set forth within the agreement.
- Boulder recognizes that Xcel Energy is subject to a state regulatory framework when it works to advance the goals set within the agreement. Both parties also recognize that Xcel Energy's efforts must continue to support a healthy utility company. The City of Boulder plans to support related measures to the extent they are consistent with its energy future goals and Xcel Energy's efforts for regulatory change to advance the collaborative projects.

Additionally, the agreement identifies the first set of specific projects on which Xcel Energy has agreed to cooperate. These projects include developing microgrids in the city, undergrounding electrical lines and creating a net zero environment at Chautauqua, developing Alpine Balsam as a sustainable net zero community and a hydrogen energy storage project. The agreement calls for cost sharing for these efforts. It is important to note that these projects represent a beginning of the partnership activities. The near-term projects were selected and designed for their ability to unlock additional actions as they continue to be designed through the partnership structure. This "pipeline" of projects is guided by a process that begins with a visioning process and leads to ongoing execution. In this way, as projects are completed, new projects are added to the list.

Many of the potential solutions identified face statutory or regulatory barriers. The agreement would require Boulder and Xcel Energy to cooperate to seek approval for the following regulatory changes:

- Elimination or substantial increase of the state law 120 percent limitation on on-site generation.
- Develop a new tariff to effectuate the rapid conversion of bus fleets to electric buses.
- Allowance of cross-property energy sharing.
- Removal of barriers to large amounts of local distributed generation.
- Facilitation of microgrids in specific projects (Chautauqua and Alpine Balsam as the first sites selected).

Maintain Feasibility of Municipalization in the Future

The enforcement mechanism in the agreement is the city's right to cancel the franchise and resume municipalization. Stopping the effort now, after more than 10 years of effort, will inevitably set back the city's timetable. The agreement provides a structure to make resumption of the municipalization effort feasible. First, Xcel Energy agreed to a $200 million cap which will be adjusted for inflation after year three. This cap includes acquisition of all assets and real property necessary for separation of the facilities from the Xcel system case as well as any damages for going concern and damages to the remainder. The cap also includes the price to purchase two of the six substations that serve Boulder. The agreement also resolves all issues with the remaining four substations. The parties have completed or are nearing completion on the substation design engineering. It is possible that changes to the system or the substations that occur between the completion of the designs and any effort to create a municipal utility will require additional engineering work. Xcel Energy has agreed to pay the cost of any such work.

The agreement also recognizes that the September 14, 2017 and October 28, 2019 PUC orders will stand and apply to the separation of the system if the city pursues

municipalization. The list of assets in the October 28, 2019 order may be used by the city in any future condemnation case, with modifications made necessary by system changes.

Undergrounding Catch-up

Under Xcel's franchises, cities are entitled to have one percent of revenues devoted to undergrounding overhead electrical lines. Xcel has made no new undergrounding payments since the city went out of franchise at the end of 2010, although there were several undergrounding projects completed after 2010 with funds accrued prior to December 2010. Under the previous franchise, the undergrounding generated over $1 million annually. Under the potential settlement agreement, Xcel will agree to pay $33 million for undergrounding during the 20-year franchise. To make up for the lost funds, $16.5 million would be allocated in the first five years of the franchise.

Franchise Ballot Measure and Suspension of Municipalization Effort

To effectuate the terms of the agreement, the city will need to enter into the Franchise Agreement with Xcel Energy. Under the city charter, a franchise requires voter approval. This agenda item is for first reading of an ordinance to place the franchise on the ballot. Second reading and public hearing is scheduled for August 18, 2020.

If the voters approve the franchise and the PUC approves it, the city will dismiss the pending actions before the Federal Energy Regulatory Commission and the Boulder District Court. There is a case in the Colorado Court of Appeals, which is fully briefed and awaiting scheduling of oral argument. That case would proceed to decision. Xcel Energy will complete in-progress design work but stop all future work. Xcel Energy also will release Letters of Credit totaling $4.3 million.

NEXT STEPS

If passed on first reading, the second reading and public hearing is scheduled for August 18, 2020.

ATTACHMENT

A – Proposed Ordinance 8410

ORDINANCE 8410

AN ORDINANCE SUBMITTING TO THE REGISTERED ELECTORS OF THE CITY OF BOULDER AT THE MUNICIPAL COORDINATED ELECTION TO BE HELD ON TUESDAY, NOVEMBER 3, 2020, THE QUESTION OF A FRANCHISE BY THE CITY OF BOULDER, COLORADO, BEING GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, ITS SUCCESSORS AND ASSIGNS, TO FURNISH, SELL, AND DISTRIBUTE GAS AND ELECTRICITY TO THE CITY AND TO ALL PERSONS, BUSINESSES, AND INDUSTRIES WITHIN THE CITY AND THE RIGHT TO ACQUIRE, CONSTRUCT, INSTALL, LOCATE, MAINTAIN, OPERATE, AND EXTEND INTO, WITHIN, AND THROUGH SAID CITY ALL FACILITIES REASONABLY NECESSARY TO FURNISH, SELL, AND DISTRIBUTE GAS AND ELECTRICITY WITHIN THE CITY AND THE RIGHT TO MAKE REASONABLE USE OF ALL STREETS, PUBLIC EASEMENTS AND OTHER CITY PROPERTY AS HEREIN DEFINED AS MAY BE NECESSARY, AND FIXING THE TERMS AND CONDITIONS THEREOF; SETTING FORTH THE BALLOT TITLE, SPECIFYING THE FORM OF THE BALLOT AND OTHER ELECTION PROCEDURES; AND SETTING FORTH RELATED DETAILS.

THE CITY COUNCIL OF THE CITY OF BOULDER FINDS AND RECITES THE FOLLOWING:

A. Public Service Company of Colorado has applied to the city for the grant of a franchise to furnish, sell, and distribute gas and electricity to the city, its residents, businesses, and industries and to make reasonable use of the city streets, public easements, and other city property to do so.

B. Section 108 of the Boulder home rule charter provides that no franchise may be granted by the city except upon the vote of the qualified taxpaying electors.

C. Section 20 of the Boulder home rule charter provides that no proposed ordinance granting any proposed franchise shall be put upon its final passage within 60 days after its introduction, nor until it has been published not less than once a week for two consecutive weeks in one daily newspaper of the city in general circulation.

D. If the qualified taxpaying electors pass the question of granting the franchise that is associated with this ballot question, then the city council intends to subsequently pass an ordinance meeting the requirements of Section 20 of the Boulder home rule charter to grant the franchise to Public Service Company of Colorado.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER:

Section 1. A municipal coordinated election will be held in the City of Boulder, County of Boulder and State of Colorado, on Tuesday, the 3rd day of November 2020.

Section 2. At that election there shall be submitted to the electors of the City of Boulder entitled by law to vote thereon the question of whether or not a franchise shall be granted by the City of Boulder to Public Service Company of Colorado, its successors and assigns, for the use of city streets, public easements, and other city property to furnish, sell, and distribute gas and electricity within the city under the terms and conditions of the Franchise Agreement attached hereto as **Exhibit A**.

Section 3. The official ballot shall contain the following ballot title, which shall also be the designation and submission clause for the question:

Ballot Question No. _____

PUBLIC SERVICE COMPANY FRANCHISE

SHALL THE CITY OF BOULDER GRANT A FRANCHISE TO PUBLIC SERVICE COMPANY OF COLORADO TO FURNISH, SELL, AND DISTRIBUTE GAS AND ELECTRICITY TO THE CITY AND TO ALL PERSONS, BUSINESSES, AND INDUSTRIES WITHIN THE CITY AND THE RIGHT TO MAKE REASONABLE USE OF ALL STREETS AND OTHER PUBLIC PLACES AND PUBLIC EASEMENTS AS MAY BE NECESSARY AS DESCRIBED IN ORDINANCE 8410?

For the Measure ____ Against the Measure ____

Section 4. If a majority of all the votes cast at the election on the question submitted shall be for the question, the question shall be deemed to have passed and meet the requirements for approval by the qualified registered electors in Section 108 of the Boulder home rule charter.

Section 5. After the election where the question has been deemed to have passed, city council will adopt an ordinance meeting the requirements of the Boulder home rule charter that grants the franchise to Public Service Company of Colorado.

Section 6. The city clerk of the City of Boulder shall give public notice of the election on such question as required by law.

Section 7. The officers of the city are authorized to take all action necessary or appropriate to effectuate the provisions of this ordinance.

Section 8. If any section, paragraph, clause, or provisions of this ordinance shall for any reason be held to be invalid or unenforceable, such decision shall not affect any of the remaining provisions of this ordinance.

Section 9. This ordinance is deemed necessary for the protection of the public health, safety, and welfare of the residents of the city, and covers matters of local concern.

Section 10. The city council deems it appropriate that this ordinance be published by title only and orders that copies of the text hereof be available in the office of the city clerk for public inspection and acquisition.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY TITLE ONLY, this 4th day of August 2020.

_____
Sam Weaver,
Mayor

Attest:

_____
Pam Davis,
City Clerk

READ ON SECOND READING, PASSED AND ADOPTED, this 18th day of August 2020.

_____
Sam Weaver,
Mayor

Attest:

_____
Pam Davis,
City Clerk

EXHIBIT A

FRANCHISE AGREEMENT

BETWEEN

THE CITY OF BOULDER, 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 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 "City" 1
§1.2 "Clean Energy" 1
§1.3 "Company" 1
§1.4 "Company Facilities" 1
§1.5 "Council" or "City Council". 1
§1.6 "Electric Gross Revenues" 1
§1.7 "Energy Conservation" 1
§1.8 "Energy Efficiency" 2
§1.9 "Force Majeure Event" 2
§1.10 "Gross Revenues" 2
§1.11 "Industry Standards" 2
§1.12 "Other City Property". 2
§1.13 "Private Project" 2
§1.14 "Public Project" 2
§1.15 "Public Utilities Commission" or "PUC" 3
§1.16 "Public Utility Easement" 3
§1.17 "Relocate," "Relocation," or "Relocated" 3
§1.18 "Renewable Energy Resources" 3
§1.19 "Residents" 3
§1.20 "Streets" or "City Streets". 3
§1.21 "Supporting Documentation" 3
§1.22 "Tariffs" 3
§1.23 "Utility Service" 4
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
§2.4 Opt-Out - Anniversary 5
§2.5 Opt-Out – GHG Progress 5
§2.6 Special Circumstances 5
ARTICLE 3 CITY POLICE POWERS 5
§3.1 Police Powers 5
§3.2 Regulation of Streets and Other City Property 6
§3.3 Compliance with Laws 6
ARTICLE 4 FRANCHISE FEE 6
§4.1 Franchise Fee. 6
§4.2 Remittance of Franchise Fee. 7
§4.3 Franchise Fee Payment Not in Lieu of Permit or Other Fees 8
ARTICLE 5 ADMINISTRATION OF FRANCHISE 8
§5.1 City Designee 8
§5.2 Company Designee 9
§5.3 Coordination of Work. 9

ARTICLE 6 SUPPLY, CONSTRUCTION, AND DESIGN 9
§6.1 Purpose 9
§6.2 Supply 9
§6.3 Charges to the City for Service to City Facilities 9
§6.4 Restoration of Service. 10
§6.5 Obligations Regarding Company Facilities. 10
§6.6 As-Built Drawings. 11
§6.7 Excavation and Construction 12
§6.8 Restoration 12
§6.9 Relocation of Company Facilities. 12
§6.10 New or Modified Service Requested by City 14
§6.11 Service to New Areas 14
§6.12 City Not Required to Advance Funds if Permitted by Tariffs 14
§6.13 Technological Improvements 15
ARTICLE 7 RELIABILITY 15
§7.1 Reliability 15
§7.2 Franchise Performance Obligations 15
§7.3 Reliability Reports 15
ARTICLE 8 COMPANY PERFORMANCE OBLIGATIONS 15
§8.1 New or Modified Service to City Facilities 15
§8.2 Adjustments to Company Facilities 16
§8.3 Third Party Damage Recovery. 16
ARTICLE 9 BILLING AND PAYMENT 17
§9.1 Billing for Utility Services. 17
§9.2 Payment to City 17
ARTICLE 10 USE OF COMPANY FACILITIES 17
§10.1 City Use of Company Electric Distribution Poles 17
§10.2 Third Party Use of Company Electric Distribution Poles. 18
§10.3 City Use of Company Transmission Rights-of-Way 18
§10.4 Emergencies 18
ARTICLE 11 UNDERGROUNDING OF OVERHEAD FACILITIES 18
§11.1 Underground Electrical Lines in New Areas 18
§11.2 Underground Conversion at Expense of Company. 19
§11.3 Undergrounding Performance 19
§11.4 Audit of Underground Program 21
§11.5 Cooperation with Other Utilities 21
§11.6 Planning and Coordination of Undergrounding Projects 21
ARTICLE 12 PURCHASE OR CONDEMNATION 22
§12.1 Municipal Right to Purchase or Condemn. 22
ARTICLE 13 MUNICIPALLY PRODUCED UTILITY SERVICE 22
§13.1 Municipally Produced Utility Service. 22
ARTICLE 14 ENVIRONMENT AND CONSERVATION 23
§14.1 Environmental Leadership 23
§14.2 Conservation. 23
§14.3 Continuing Commitment 24
§14.4 PUC Approval 24

ARTICLE 15 TRANSFER OF FRANCHISE 24
§15.1 Consent of City Required 24
§15.2 Transfer Fee 24
ARTICLE 16 CONTINUATION OF UTILITY SERVICE 25
§16.1 Continuation of Utility Service 25
ARTICLE 17 INDEMNIFICATION AND IMMUNITY 25
§17.1 City Held Harmless. 25
§17.2 Immunity 26
ARTICLE 18 BREACH 26
§18.1 Change of Tariffs 26
§18.2 Breach. 26
ARTICLE 19 AMENDMENTS 27
§19.1 Proposed Amendments. 27
§19.2 Effective Amendments 27
ARTICLE 20 EQUAL OPPORTUNITY 27
§20.1 Economic Development 27
§20.2 Employment. 28
§20.3 Contracting. 28
§20.4 Coordination 29
ARTICLE 21 MISCELLANEOUS 29
§21.1 No Waiver 29
§21.2 Successors and Assigns. 29
§21.3 Third Parties. 29
§21.4 Notice. 29
§21.5 Examination of Records 31
§21.6 List of Utility Property. 31
§21.7 PUC Filings. 31
§21.8 Information. 31
§21.9 Payment of Taxes and Fees. 32
§21.10 Conflict of Interest. 32
§21.11 Certificate of Public Convenience and Necessity. 32
§21.12 Authority 32
§21.13 Severability 32
§21.14 Force Majeure 32
§21.15 Earlier Franchises Superseded. 32
§21.16 Titles Not Controlling. 33
§21.17 Applicable Law. 33
§21.18 Payment of Expenses Incurred by City in Relation to Franchise Agreement. 33
§21.19 Costs of Compliance with Franchise. 33
§21.20 Conveyance of City Streets, Public Utility Easements or Other City Property 33
§21.21 Audit. 33
§21.22 Land Use Coordination 33

Signature Page 34

PUBLIC SERVICE COMPANY OF COLORADO

AND

THE CITY OF BOULDER, COLORADO

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 "City" refers to the City of Boulder, a municipal corporation of the State of Colorado.

§1.2 "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").

§1.3 "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.

§1.4 "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 City, 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.

§1.5 "Council" or "City Council" refers to and is the legislative body of the City.

§1.6 "Electric Gross Revenues" refers to those amounts of money that the Company receives from the sale and/or delivery of electricity in the City, after adjusting for refunds, net write-offs of accounts, corrections, or Regulatory Adjustments (as defined below in this section). 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 City as a customer of the Company.

§1.7 "Energy Conservation" means the decrease in energy requirements of specific customers during any selected time period, resulting in a reduction in end-use services.

§1.8 "Energy Efficiency" means the decrease in energy requirements of specific customers during any selected period with end-use services of such customers held constant.

§1.9 "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 City nor the Company shall be in breach of this Franchise if a failure to perform any of the duties under this Franchise is due to a Force Majeure Event.

§1.10 "Gross Revenues" refers to those amounts of money the Company receives from the sale of gas and/or electricity within the City under rates authorized by the Public Utilities Commission, as well as from the transportation of gas to its customers within the City, 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 City or the transportation of gas to the City.

§1.11 "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 (ASTM), 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).

§1.12 "Other City Property" refers to the surface, the air space above the surface and the area below the surface of any property owned by the City or directly controlled by the City due to the City's real property interest in the same or hereafter owned by the City, 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 City. Other City Property including Public Utility Easements. Other City Property does not include property that are defined in the Boulder City Charter as open space or park land.

§1.13 "Private Project" refers to any project not included in the definition of Public Project.

§1.14 "Public Project" refers to (1) any public work or improvement within the City that is wholly owned by the City; or (2) any public work or improvement within the City where at least 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 Colorado county, but excluding all entities established under Title 32 of the Colorado Revised Statutes.

§1.15 "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.

§1.16 "Public Utility Easement" refers to any platted easement over, under, or above public or private property, expressly dedicated to, and accepted by, the City for the use of public utility companies for the placement of utility facilities, including but not limited to Company Facilities.

§1.17 "Relocate," "Relocation," or "Relocated" refers to the definition assigned such terms in Section 6.9.A of this Franchise.

§1.18 "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.

§1.19 "Residents" refers 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.

§1.20 "Streets" or "City Streets" refers to the surface, the air space above the surface and the area below the surface of any City-dedicated or City-maintained streets, alleys, bridges, roads, lanes, access easements, and other public rights-of-way within the City, which are primarily used for vehicle traffic. Streets shall not include and Other City Property.

§1.21 "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 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 gas service and meter set are needed, and the name and contact information for the City's project manager.

§1.22 "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.

§1.23 "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 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, Public Utility Easements (as applicable) and Other City Property:

(1) to provide Utility Service to the City 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 City 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 City.

B. Street Lighting and Traffic Signal Lighting Service. Street lighting service and traffic signal lighting service within the City 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 City as it is now or hereafter constituted that are within the Company's PUC-certificated service territory; however, nothing contained in this Franchise shall be construed to authorize the Company to engage in activities other than the provision of Utility Service.

B. Subject to City Usage. The Company's right to make reasonable use of City Streets to provide Utility Service to the City and its Residents under this Franchise is subject to and subordinate to any City 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 City 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 City reserves the right to make or grant a franchise to any other person, firm, or corporation.

§2.3 Effective Date and Term. This Franchise shall take effect on January 1, 2021 (the "**Effective Date**") and shall supersede any prior franchise grants to the Company by the City. This Franchise shall terminate on December 31, 2040, unless extended by mutual consent or as provided below.

§2.4 Opt-Out - Anniversary. The City is authorized to end this Franchise, by either a vote of six city council members or by a majority vote of the qualified electors at the next available regular or special election. The city will notify the Company that it will end the franchise, if by vote of the city council or of its intent to refer the question to the voters and the next scheduled regular or special election, within 30 days after the five, ten, or fifteen-year anniversary of the date the PUC approves this franchise.

§2.5 Opt-Out – GHG Progress. The Company is required by C.R.S. Sections 25-7-105 and 40-2-125.5 to reduce the greenhouse gas emissions associated with electricity sales by eighty percent from 2005 levels. The Company will file a clean energy plan in 2021 with its electric resource plan to demonstrate its pathway to meet the 80% reduction in carbon dioxide emissions by 2030 and identify pathways to provide customers with energy generated from one-hundred-percent clean energy sources by 2050.

A. The City may end this franchise if the Company does not meet the emission targets listed below. The Company agrees to meet the following system-wide emission reduction targets (measured in absolute greenhouse emissions from a 2005 baseline) associated with their Colorado-based generation and operations.

2022: 16.6M short tons

2024: 13.6M short tons

2027: 11.5M short tons

2030: 6.9M short tons

The Company's emissions will be verified on an annual basis through reporting outlets such as the Climate Registry, company reports, and state or federal regulatory filings. The decision to end the franchise will be made during the years 2023, 2025, and 2028 by the city council or by a vote of the people as describe in paragraph 2.4. above to take place within the same year. For good cause shown and with mutual agreement between the parties, these thresholds may be adjusted due to extraordinary circumstances.

§2.6 Special Circumstances. The parties agree and acknowledge that there are special circumstances that warrant these and other provisions throughout this Franchise Agreement, and the City has provided valuable consideration for such.

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. If the City considers making any substantive changes in its local codes or regulations that in the City's reasonable opinion will significantly impact the Company's operations in the City's Streets, Public Utility Easements and Other City Property, it will make a good faith effort to advise the Company of such consideration; provided, however, that lack of notice shall

not be justification for the Company's non-compliance with any applicable local requirements.

§3.2 Regulation of Streets and 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, Public Utility Easements, and/or Other City 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 City 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 City.

ARTICLE 4
FRANCHISE FEE

§4.1 Franchise Fee.

A. Fee. In consideration for this Franchise Agreement, which provides the certain terms related to the Company's use of City Streets, Public Utility Easements and Other City Property, which are valuable public properties acquired and maintained by the City 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 City a sum equal to three percent (3%) of Gross Revenues (the "Franchise Fee"). The Company shall collect the Franchise Fee from a surcharge upon City 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 City, 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 City Streets, Public Utility Easements and Other City 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 City Residents who are customers of the Company.

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 may have an adverse impact upon the Franchise Fee revenues provided for herein. In recognition of the length of the term of this Franchise, the Company agrees that in the event of any such initiatives or changes and to the extent permitted by law, upon receiving a written request from the City, the Company will cooperate with and assist the City in making reasonable modifications of this Franchise Agreement in an effort to provide that the City receives an amount in Franchise Fees or some other form of compensation that is the same amount of Franchise fees paid to the City as of the date that such initiatives and changes adversely impact Franchise Fee revenues.

D. Utility Service Provided to the City. No Franchise Fee shall be charged to the City for Utility Service provided directly or indirectly to the City for its own consumption, including street lighting service and traffic signal lighting service, unless otherwise directed by the City 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 City as directed by the City 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 City or the Company discovers that there has been an error in the calculation of the Franchise Fee payment to the City, 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 City, and said overpayment is in excess of Five Thousand Dollars ($5,000.00), correction of the overpayment by the City 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 City 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 City 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 City, 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 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 City. Such audit shall be limited to the previous three (3) calendar years. Within a reasonable period of time after the audit, the Company shall provide a written report to the City Clerk summarizing the testing procedures followed along with any potential findings.

(2) City Audit. If the City disagrees with the results of the Company's audit, and if the parties are not able to informally resolve their differences, the City may conduct its own audit at its own expense, in accordance with generally accepted auditing principles applicable to electric and gas utilities, and the Company shall cooperate by providing the

City's auditor with non-confidential information that would be required to be disclosed under applicable state sales and use tax laws.

(3) Underpayments. If the results of a City audit conducted pursuant to Subsection 4.2.C(2) concludes that the Company has underpaid the City by five percent (5%) or more, in addition to the obligation to pay such amounts to the City, the Company shall also pay all reasonable costs of the City'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 City, but not more frequently than once each year, the Company shall supply the City 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 City 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 Company to City does not exempt the Company from any other lawful tax or fee imposed generally upon persons doing business within the City, 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 City Streets, Public Utility Easements or Other City Property under the terms set forth in this Franchise. Notwithstanding anything in this section to the contrary, the City reserves the right to adopt and implement lawful taxes or fees to fund city energy related projects.

ARTICLE 5
ADMINISTRATION OF FRANCHISE

§5.1 City Designee. The City shall designate in writing to the Company an official or officials having full power and authority to administer this Franchise ("City Designee" or "City Designees"). 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 names and telephone numbers of said City Designees. The City may change these designations by providing written notice to the Company. The City's Designees shall have the right, at all reasonable times and with reasonable notice to the Company, to inspect any Company Facilities in City Streets, Public Utility Easements, and Other City Property.

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

§5.3 Coordination of Work. Company and City agree to coordinate their activities in City Streets, Public Utility Easements and Other City Property. The City and the Company will meet annually upon the written request of the City Designee 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, including but not limited to any planned City Streets paving projects. The City and Company shall hold such meetings as either deems necessary to exchange additional information with a view toward coordinating their respective activities in those areas where such coordination may prove beneficial and so that the City will be assured that all City laws, rules and regulations, as well as all applicable provisions of this Franchise, applicable building and zoning codes, and applicable City 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 that 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. 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 City for Service to City Facilities. 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. All charges to the City shall be in accord with the Tariffs.

§6.4 Restoration of Service.

A. Notification. The Company shall provide to the City daytime and nighttime telephone numbers of a Company Designee from whom the City 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 within the City, 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 City Streets and Other City Property shall be maintained in good repair and condition.

B. Company Work within the City. All work within City Streets and Other City 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 City laws, ordinances and regulations that are consistent with Industry Standards and the Tariffs.

C. No Interference with City Facilities. Company Facilities shall not unreasonably interfere with any City facilities, including water facilities, sanitary or storm sewer facilities, communications facilities, or other City uses of the Streets, Public Utility Easements or Other City Property. Company Facilities shall be installed and maintained in City Streets, Public Utility Easements, and Other City Property so as to reasonably minimize interference with other property, trees, and other improvements and natural features in and adjoining the Streets and Other City 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 City Streets, Public Utility Easements, or Other City Property by or on behalf of the Company shall be subject to permit, inspection and approval by the City in accordance with applicable City 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 City Streets, Public Utility Easements, or Other City 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 City in conducting inspections and shall promptly perform any remedial action lawfully required by the City pursuant to any such inspection 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, 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 use commercially reasonable efforts to require that its contractors working in City Streets, Public Utility Easements, and Other City Property hold the necessary licenses and permits required by law.

F. Increase in Voltage. The Company shall reimburse the City for the cost of upgrading the electrical system or facility of any City building or facility that uses Utility Service where such upgrading is 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 City.

§6.6 As-Built Drawings.

A. Within thirty (30) days after written request of the City 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 City Streets or contiguous to the City Streets.

B. If the requested information must be limited or cannot be provided pursuant to regulatory requirements, the Company shall promptly notify the City of such restrictions. The City acknowledges that the requested information is 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 City 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 City pursuant to this Franchise, the City 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 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. Provided the City complies with the terms of this Section, the Company shall defend, indemnify and hold the City harmless from any claim, judgment, costs or attorney fees incurred in participating in such proceeding.

C. 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 City, to the extent consistent with Industry Standards. Upon the Company submitting a construction design plan, the City shall promptly and fully advise the Company in writing of all requirements for the restoration of City Streets in advance of Company excavation projects in City Streets, 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 City Streets, Public Utility Easement, or Other City Property, it shall, at its own expense, promptly remove any obstructions placed thereon or therein by the Company and restore such City Streets, Public Utility Easements, or Other City Property to a condition that is substantially the same as existed before the work and that meets applicable City standards. If weather or other conditions do not permit the complete restoration required by this Section, the Company may with the approval of the City, temporarily restore the affected City Streets, Public Utility Easements, or Other City Property, provided that such temporary restoration is not at the City'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 City, the Company shall restore the Streets, Public Utility Easements, or Other City Property to a better condition than existed before the Company work was undertaken, provided that the City shall be responsible for any incremental costs of such restoration not required by then-current City standards, and provided the City seeks and/or grants, as applicable, any additional required approvals. If the Company fails to promptly restore the City Streets or Other City Property as required by this Section, and if, in the reasonable discretion of the City, immediate action is required for the protection of public health, safety or welfare, the City may restore such Streets, Public Utility Easements, or Other City Property or remove the obstruction therefrom; 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 such City Streets or Other City Property or to remove any obstructions therefrom. In the course of its restoration of City Streets, Public Utility Easements or Other City Property under this Section, the City 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 City Streets or Other City Property at no cost or expense to the City 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 6.8.A, the Company and the City agree to cooperate on the location and Relocation of the Company Facilities in the City Streets or Other City Property in order to achieve Relocation in the most efficient and cost-effective manner possible. Notwithstanding the foregoing, once the Company has Relocated any Company Facility at the City's direction, if the City requests that the same Company Facility be Relocated within two (2) years, the subsequent Relocation shall not be at the Company's expense. Nothing provided herein shall prevent the Company from obtaining reimbursement of its Relocation costs from third parties.

B. Private Projects. Subject to Section 6.8.F, 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 City 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 City to provide adequate Supporting Documentation. The Company has the burden of presenting evidence to reasonably demonstrate the basis for the delay. Upon written request of the Company, the City may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold or condition any such extension.

D. City Revision of Supporting Documentation. Any revision by the City of Supporting Documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding 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 6.9 of this Franchise or as otherwise agreed with the City, and properly removes or 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, 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 City requests that such additional incremental cost be paid out of available funds under Article 11 of this Franchise.

H. Coordination.

(1) When requested in writing by 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, Public Utility Easements, and/or Other City Property. Such meetings shall be for the purpose of minimizing conflicts where possible and to facilitate coordination with any reasonable timetable established by the City for any Public Project.

(2) The City shall make reasonable best efforts to provide the Company with two (2) years' advance notice of any planned Street repaving. The Company shall make reasonable best efforts to complete any necessary or anticipated repairs or upgrades to Company Facilities that are located 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 City 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 City. In the event the City accepts the proposed alternative or modification, the Company agrees to promptly compensate the City for all additional costs, expenses or delay that the City reasonably determines resulted from the implementation of the proposed alternative.

§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 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 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.

§6.12 City Not Required to Advance Funds if Permitted by Tariffs. Upon receipt of the City's authorization for billing and construction, the Company shall install 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 installation of Company Facilities once completed in accordance with the Tariffs. Notwithstanding anything to the contrary, the provisions of this Section allowing the City 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 City when such advances are technically and economically feasible and are safe and beneficial to the City 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 City with a report regarding the reliability of Company Facilities and Utility Service.

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 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 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 substantially change its plans regarding new or modified service to City facilities shall be deemed good cause for a reasonable extension of time to complete the Relocation under 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 City and properly removes or 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 City Property, to accommodate City Street maintenance, repair and paving operations at no cost to the City. In providing such adjustments to Company Facilities, the Company agrees to perform as follows:

A. Performance. The Company shall complete each requested adjustment within a reasonable time, not to exceed thirty (30) days from the date upon which the City makes a written request and provides to the Company all information reasonably necessary to perform the adjustment. The Company shall be entitled to an extension of time to complete an adjustment where the Company's performance was delayed due to a Force Majeure Event. Upon request of the Company, the City may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension.

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

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

§8.3 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 City will notify the Company of any such incident of which it has knowledge 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.

B. Damage to Company Facilities for which the City is Responsible. If 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, to the extent permitted by law, the Company will notify the City of any such incident of which it has knowledge 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.

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

D. Annual Meetings. The Company agrees to meet with the City Designee on a reasonable basis at the City'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 City.

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

ARTICLE 10
USE OF COMPANY FACILITIES

§10.1 City Use of Company Electric Distribution Poles. The City shall be permitted to make use of Company electric distribution poles in the City, without a use fee for the placement of City equipment or facilities necessary to serve a legitimate police, fire, emergency, public safety or traffic control purpose. The City 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 City shall provide such notice as soon as practicable. The City shall be responsible for costs associated with modifications to Company electric distribution poles to accommodate the City'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 City 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 City, the Company may allow other companies who hold franchises, or otherwise have obtained consent from the City to use the Streets, to utilize Company electric distribution poles in City Streets and Other City 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 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 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 City 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 City in developing an emergency management plan that is consistent with Company policies. The City 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 areas of the City underground in accordance with applicable laws, regulations and orders of the City. 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 in City Streets (excluding privately owned electrical equipment, Public Utility Easements, and Other City Property within the City, as may be requested by the City 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 City requires Relocation of overhead electric facilities in the Streets and Other City Property and the Company determines that there is not adequate room within the Streets and Other City 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 City 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 City, the Company agrees to advance and expend amounts anticipated to be available under the preceding paragraph for up to three (3) years in advance provided 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 City 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 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 and the Boulder Revised Code 1981, the City may require any above-ground Company Facilities in Streets, Public Utility Easements, and Other City Property to be moved underground at the City's expense.

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

A. Estimates. Promptly upon receipt of an undergrounding request from the City and the Supporting Documentation necessary for the Company to design the undergrounding project, the Company shall prepare a detailed, good faith cost estimate of the anticipated actual cost of the requested project for the City to review and, if acceptable to the City, the City will issue a project authorization. At the City'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 City has provided a written acceptance of the Company's estimate.

B. Performance. The Company shall complete each undergrounding project requested by the City 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 City designee makes a written request or the date the City provides to the Company all required Supporting Documentation. The Company shall have one hundred twenty (120) days after receiving the City's written request to design project plans, prepare the good faith estimate, and transmit same to the City designee for review. If City approval of the plans and estimate has not been granted, the Company's good faith estimate will be void sixty (60) days after delivery of the plans and estimate to the City designee. If the plans and estimate are approved by the City, the Company shall have one hundred twenty (120) days to complete the project, from the date of the City 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 City 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 City may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension.

C. 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 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 City. 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 City a detailed report of the Company's actual cost to complete the project and the Company shall reconcile this

total actual cost with the accepted cost estimate. The report shall be provided within one hundred twenty (120) days after completion of the project and written request from the City.

F. Audit of Underground Projects. The City may require the Company to undertake an independent audit of up to two (2) undergrounding projects in any calendar year. The City 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 in the calendar year when the audit is requested. 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 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 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 City 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 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, 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 City.

§11.6 Planning and Coordination of Undergrounding Projects. The City and the Company shall mutually plan in advance the scheduling of undergrounding projects to be undertaken according to this Article as a part of the review and planning for other City and Company construction projects. The City and the Company agree to meet, as 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 City and the Company in order to achieve the orderly undergrounding of Company Facilities. Representatives of both the City and the Company shall meet periodically to review the Company's undergrounding of Company Facilities and at such meetings shall review:

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 City.

ARTICLE 12
PURCHASE OR CONDEMNATION

§12.1 Municipal Right to Purchase or Condemn.

A. Right and Privilege of City. The right and privilege of the City to construct, 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 City, 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 City shall have the right, within the time frames and in accordance with the procedures set forth in such provisions, 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 City. In the event of any such condemnation, no value shall be ascribed or given to the right to use City Streets, Public Utility Easements (unless specifically granted solely to the Company), or Other City Property granted under this Franchise in the valuation of the property thus sold.

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, nor a waiver of any Company defenses or challenges related thereto.

ARTICLE 13
MUNICIPALLY PRODUCED UTILITY SERVICE

§13.1 Municipally Produced Utility Service.

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

B. Franchise Not to Limit City's or Company'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, 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 City and the Company agree that sustainable development, environmental excellence and innovation shall form the foundation of the Utility Service provided by the Company under this Franchise. 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 City on or before December 1st of each year, the Company shall provide the City 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 City and the Company recognize and agree that Energy Conservation programs offer opportunities for the efficient use of energy and possible reduction of energy costs. The City and the Company further recognize that creative and effective Energy Conservation solutions are crucial to sustainable development. The Company recognizes and shares the City's 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 City and its Residents of the availability of assistance that the Company makes available for investments in Energy Conservation through newspaper advertisements, bill inserts and Energy Efficiency workshops and by maintaining information about these

programs on the Company's website. Further, at the City's request, the Company's Area Manager shall act as the primary liaison with the City who will provide the City with information on how the City may take advantage of reducing energy consumption in City facilities and how the City may participate in Energy Conservation and Energy Efficiency programs sponsored by the Company. As such, the Company and the City commit to work cooperatively and collaboratively to identify, develop, implement and support programs offering creative and sustainable opportunities to Company customers and Residents, including low-income customers. The Company agrees to help the City participate in Company programs and, when opportunities exist to partner with others, such as the State of Colorado, the Company will help the City pursue those opportunities. In addition, and in order to assist the City and its Residents' participation in Renewable Energy Resource programs, the Company shall: notify the City regarding eligible Renewable Energy Resource programs; provide the City with technical support regarding how the City 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 City, the Company retains the sole discretion as to whether to incur such costs.

§14.3 Continuing Commitment. It is the express intention of the City and the Company that the collaborative effort provided for in this Article continue for the entire term of this Franchise. The City 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 City, to identify, develop, implement and maintain new and creative programs similar to the programs identified in this Article in order to help the City achieve its environmental goals.

§14.4 PUC Approval. Nothing in this Article shall be deemed to require the Company to invest in technologies or to incur costs that it has a good faith belief the PUC will not allow the Company to recover through the ratemaking process.

ARTICLE 15
TRANSFER OF FRANCHISE

§15.1 Consent of City Required. The Company shall not transfer or assign any rights under this Franchise to an unaffiliated third party, except by merger with such third party, 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, conditioned or delayed.

§15.2 Transfer Fee. In order that the City may share in the value this Franchise adds to the Company's operations, any transfer or assignment of rights granted under this Franchise requiring City approval, as set forth herein, shall be subject to the condition that the Company shall promptly pay to the City a transfer fee in an amount equal to the proportion of the City's 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 City 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 City Property or discontinue providing Utility Service unless otherwise ordered by the PUC, and shall continue to provide Utility Service within the City until the City arranges for utility service from another provider. The City acknowledges and agrees that the Company has the right to use Streets, Other City 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 City 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 City's compliance with applicable provisions of law, shall be obligated to pay the City, at the same times and in the same manner as provided in this Franchise, an aggregate amount equal to the amount which the Company would have paid as a Franchise Fee as consideration for use of the City's Streets, Public Utility Easements, and Other City Property. 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 17
INDEMNIFICATION AND IMMUNITY

§17.1 City Held Harmless. The Company shall indemnify, defend and hold the City harmless from and against claims, demands, liens and all liability or damage of whatsoever kind on account of or directly arising from the grant of this Franchise or the exercise by the Company of the related rights, but in both instances only to the extent caused by the Company, 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 reasonably satisfactory to the City. 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 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, agents or

employees or to the extent that the City is acting in its capacity 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 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 18
BREACH

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

§18.2 Breach.

A. Notice/Cure/Remedies. Except as otherwise provided in this Franchise, if a party (the "Breaching Party") to this Franchise fails or refuses to perform any of the terms or conditions of this Franchise (a "Breach"), the other party (the "Non-Breaching Party") may provide written notice to the Breaching Party of such Breach. Upon receipt of such notice, the Breaching Party shall be given a reasonable time, not to exceed thirty (30) days in which to remedy the Breach or, if such Breach cannot be remedied in thirty (30) days, such additional time as 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 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 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 City may, in its sole discretion, 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 (and shall continue to have associated rights and grants needed to provide such service) 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, upon the City complying with applicable provisions of law, shall be obligated to pay the City, at the same times and in the same manner as provided in this Franchise, an aggregate amount equal to the amount which the Company would have paid as a Franchise Fee as consideration for use of the City Streets, Public Utility Easements, and Other City 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 City or the Company may propose amendments to this Franchise by giving thirty (30) days' written notice to the other of the proposed amendment(s) desired and both parties thereafter, through their designated representatives, will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s). However, nothing contained in this Section shall be deemed to require either party to consent to any amendment proposed by the other party.

§19.2 Effective Amendments. No alterations, amendments or modifications to this Franchise shall be valid unless executed 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 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. 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 City 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. City agencies provide collaborative leadership and mutual opportunities or programs relating to City based initiatives on economic development, employment and contracting opportunity. The Company agrees to review Company programs and mutual opportunities responsive to this Article with these agencies, upon their request, and to collaborate on best practices regarding such programs and coordinate and cooperate with the agencies in program implementation.

ARTICLE 21
MISCELLANEOUS

§21.1 No Waiver. Neither the City nor the Company shall be excused from complying with any of the terms and conditions of this Franchise by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions, to insist upon or to seek compliance with any such terms and conditions.

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

City Manager
City of Boulder
P.O. Box 791
Boulder, Colorado, 80304

With a copy to:

City Attorney
City of Boulder
P.O. Box 791
Boulder, Colorado, 80304

To the Company:

Senior Director, State Affairs 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 City 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 City, 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 City is located. All such records must be kept 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 City, the Company shall provide the City 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 City shall be sent to the City upon filing.

§21.8 Information. Upon written request, the Company shall provide the City Clerk or the City 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 City executing a confidentiality agreement as required by Company policy), 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 related to an ongoing project within the City. 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. City Liability. The City shall not be liable for the payment of 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 City shall have any personal or beneficial interest whatsoever in the services or property described herein and the Company further agrees not to hire or contract for services any official, officer or employee of the City to the extent prohibited by law, including ordinances and regulations of the City.

§21.11 Certificate of Public Convenience and Necessity. The City agrees to support the Company's application to the PUC to obtain a Certificate of Public Convenience and Necessity to exercise its rights and obligations under this Franchise.

§21.12 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 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 City acknowledges that notwithstanding the foregoing, the Company requires a Certificate of Public Convenience and Necessity from the PUC in order to operate under the terms of this Franchise.

§21.13 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 City nor the Company shall be in breach of this Franchise if a failure to perform any of the duties under this Franchise is due to a Force Majeure Event, as defined herein.

§21.15 Earlier Franchises Superseded. This Franchise shall constitute the only franchise between the City 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 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.

§21.18 Payment of Expenses Incurred by City in Relation to Franchise Agreement. The Company shall pay for expenses reasonably incurred by the City for the adoption of this Franchise, limited to the incremental cost of the franchise election, publication of notices, publication of ordinances, 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 City.

§21.20 Conveyance of City Streets, Public Utility Easements or Other City Property. In the event the City vacates, releases, sells, conveys, transfers or otherwise disposes of a City Street, or any portion of a Public Utility Easement or Other City Property in which Company Facilities are located, the City shall reserve an easement in favor of the Company over that portion of the Street, Public Utility Easement or Other City Property in which such Company Facilities are located. The Company and the City 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 City shall no longer be deemed to be a Street or Other City Property from which the City 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 City 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.

CITY OF BOULDER, a Colorado home rule city

ATTEST:

_____
Mayor, City of Boulder

_____
City Clerk, City of Boulder

APPROVED AS TO FORM:

_____ Dated: _____
City Attorney' Office, City of Boulder

PUBLIC SERVICE COMPANY OF COLORADO, a Colorado corporation

_____
Hollie Horvath Velasquez
Senior Director, State Affairs and
Community Relations

STATE OF COLORADO)
)SS.
COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this __ day of _____, 2020 by Hollie Horvath Velasquez, Senior Director, State Affairs and Community Relations of Public Service Company of Colorado, a Colorado corporation.

WITNESS MY HAND AND OFFICIAL SEAL.

_____
Notary Public

My Commission expires: _____.

(SEAL)