

**FRANCHISE AGREEMENT BETWEEN THE TOWN OF FRASER, COLORADO AND
PUBLIC SERVICE COMPANY OF COLORADO**

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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 “Town” refers to the Town of Fraser, a municipal corporation in the State of Colorado.
- §1.2 “Clean Energy” means energy produced from Renewable Energy Resources, eligible energy sources, and by means of advanced technologies that cost-effectively capture and sequester carbon emissions produced as a by-product of power generation. For purposes of this definition, “cost” means all those costs as determined by the PUC.
- §1.3 “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 reasonably necessary or desirable to provide gas service into, within and through the Town, including but not limited to plants, works, systems, transportation and distribution structures and systems, lines, equipment, pipes, mains, conduit, underground lines, gas compressors, meters, meter reading devices, communication and data transfer equipment, control equipment, gas regulator stations, as well as all associated appurtenances.
- §1.5 “Board” or “Town Board” refers to and is the legislative body of the Town.
- §1.6 “Energy Conservation” means the decrease in energy requirements of specific customers during any selected time period, resulting in a reduction in end-use services.
- §1.7 “Energy Efficiency” means the decrease in energy requirements of specific customers during any selected period with end-use services of such customers held constant.
- §1.8 “Force Majeure Event” means the inability to undertake an obligation of this Franchise Agreement due to a cause, condition or event that could not be reasonably anticipated by a party or is beyond its reasonable control after exercise of best efforts to perform, including but not limited to fire, strike, war, riots, terrorist acts, acts of governmental authority, acts of God, floods, epidemics, quarantines, labor disputes, unavailability or shortages of materials or equipment or failures or delays in the delivery of materials. Neither the Town nor the Company shall be in breach of this Franchise if a failure to perform any of the duties under this Franchise is due to a Force Majeure Event.

- §1.9 “Gross Revenues” refers to those amounts of money that the Company receives from the sale of gas within the Town under rates authorized by the Public Utilities Commission, as well as from the transportation of gas to its customers within the Town, as adjusted for refunds, net write-offs of uncollectible accounts, corrections, 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 or transportation of gas to the Town.
- §1.10 “Industry Standards” refers to standards developed by government agencies and generally recognized organizations that engage in the business of developing utility industry standards for materials, specifications, testing, construction, repair, maintenance, manufacturing, and other facets of the gas utility industry. Such agencies and organizations include, but are not limited to the U.S. Department of Transportation, the Federal Energy Regulatory Commission (FERC), the Pipeline and Hazardous Materials Safety Administration (PHMSA), 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 Gas Technology Institute (GTI), and the National Fire Protection Association (NFPA).
- §1.11 “Open Space” refers to privately-owned property protected by real covenant, or publicly-owned property protected by covenant and/or designated by ordinance or resolution of the Town Board, which covenant or designation designates the property for use as one (1) or more of the following: a community buffer; a wildlife corridor and habitat area; a wetland; a view corridor; agricultural land; an area of archeological, historical, geologic or topographic significance; an area containing significant renewable and/or nonrenewable natural resources; and/or other undesignated, typically non-irrigated, undeveloped land uses. Open Space shall not include Parks.
- §1.12 “Other Town Property” refers to the surface, the air space above the surface and the area below the surface of any property owned by the Town or directly controlled by the Town due to the Town’s real property interest in the same or hereafter owned by the Town, that would not otherwise fall under the definition of “Streets,” but which provides a suitable location for the placement of Company Facilities as specifically approved in writing by the Town. Other Town Property does not include Public Utility Easements.
- §1.13 “Parks” refers to land area owned by the Town, either independently or with another governmental or quasi-governmental entity, that is developed and maintained for active or passive recreational use and is open for the general public’s use and enjoyment; which, by way of example only, may include public playfields, courts, and other recreation facilities, or may include greenways, water features, picnic areas, or natural areas.
- §1.14 “Private Project” refers to any project not included in the definition of Public Project.
- §1.15 “Public Project” refers to (1) any public work or improvement within the Town that is wholly owned by the Town; or (2) any public work or improvement within the Town

where fifty percent (50%) or more of the funding is provided by any combination of the Town, the federal government, the State of Colorado, any Colorado county, or the special districts known as Grand County Water and Sanitation District No. 1 and Winter Park Ranch Water and Sanitation District (“Water and Sanitation Districts”) or their successors, to the extent of Water and Sanitation District projects within the Town that directly benefit the Town, but excluding all other entities established under Title 32 of the Colorado Revised Statutes.

- §1.16 “Public Utilities Commission” or “PUC” refers to the Public Utilities Commission of the State of Colorado or other state agency succeeding to the regulatory powers of the Public Utilities Commission.
- §1.17 “Public Utility Easement” refers to any platted easement over, under, or above public or private property, expressly dedicated to, and accepted by, the Town for the use of public utility companies for the placement of utility facilities, including but not limited to Company Facilities.
- §1.18 “Relocate,” “Relocation,” or “Relocated” refers to the definition assigned such terms in Section 6.9.A of this Franchise.
- §1.19 “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; and 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; and 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 shall be amended from time to time.
- §1.20 “Residents” refers to all persons, businesses, industries, governmental agencies, including the Town, and any other entity whatsoever, presently located or to be hereinafter located, in whole or in part, within the territorial boundaries of the Town.
- §1.21 “Streets” or “Town Streets” refers to the surface, the air space above the surface and the area below the surface of any Town-dedicated or Town-maintained streets, alleys, bridges, roads, lanes, access easements, and other public rights-of-way within the Town, which are primarily used for vehicle traffic. Streets shall not include Public Utility Easements and Other Town Property.
- §1.22 “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 Town's project manager.

§1.23 "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.

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

ARTICLE 2 GRANT OF FRANCHISE

§2.1 Grant of Franchise.

A. Grant. The Town hereby grants to the Company, subject to all conditions, limitations, terms, and provisions contained in this Franchise, the non-exclusive right to make reasonable use of Town Streets, Public Utility Easements (as applicable) and Other Town Property:

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

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

B. New Company Facilities in Other Town Property, Excluding Parks and Open Space. For all Other Town Property that is not a Park or Open Space, the Town's grant to the Company of the right to locate Company Facilities in, on, over or across such Other Town Property shall be subject to the Company's already having or first receiving from the Town approval of the location of such Company Facilities, in the Town's reasonable discretion; and (2) the terms and conditions of the use of such Other Town Property shall be governed by this Franchise as may be reasonably supplemented to account for the unique nature of such Other Town Property; by way of illustration and example only, the Town may want to condition the use of Other Town Property that is a golf course upon the Company not constructing Company Facilities in fairways or greens or during peak golf season. Nothing in this subsection B, shall modify or extinguish pre-existing Company property rights. Further, this paragraph shall not prohibit the Company from modifying, replacing or upgrading Company Facilities already located in Parks or Open Space in accordance with the terms and conditions of the Town license agreement, permit or other agreement that granted the Company the right to use such Other Town Property

or, if there is no such license agreement, permit or other agreement, in accordance with this Franchise.

C. New Company Facilities in Other Town Property that are Parks or Open Space. The Town's grant to the Company of the right to locate Company Facilities in, on, over or across Other Town Property that is a Park or Open Space shall be subject to (1) the Company's already having or first receiving from the Town a revocable license, permit or other agreement approving the location of such Company Facilities, which the Town may grant or deny in its sole discretion; and (2) the terms and conditions of such revocable license agreement, permit or other written agreement. Nothing in this subsection C. shall modify or extinguish pre-existing Company property rights. Further, this paragraph shall not prohibit the Company from modifying, replacing or upgrading Company Facilities already located in Parks or Open Space in accordance with the terms and conditions of the Town license agreement, permit or other agreement that granted the Company the right to use such Parks or Open Space or, if there is no such license agreement, permit or other agreement, in accordance with this Franchise.

§2.2 Conditions and Limitations.

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

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

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

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

§2.3 Effective Date and Term.

A. Term. This Franchise shall take effect on March 5, 2019, and shall supersede any prior franchise grants to the Company by the Town. This Term of this Franchise shall terminate on March 4, 2039, unless extended by mutual consent.

**ARTICLE 3
TOWN POLICE POWERS**

- §3.1 Police Powers. The Company expressly acknowledges the Town's right to adopt, from time to time, in addition to the provisions contained herein, such laws, including ordinances and regulations, as it may deem necessary in the exercise of its governmental powers. If the Town considers making any substantive changes in its local codes or regulations that in the Town's reasonable opinion will significantly impact the Company's operations in the Town's Streets, Public Utility Easements and Other Town Property, it will make a good faith effort to advise the Company of such consideration; provided, however, that lack of notice shall not be justification for the Company's non-compliance with any applicable local requirements.
- §3.2 Regulation of Streets or Other Town Property. The Company expressly acknowledges the Town's right to enforce regulations concerning the Company's access to or use of the Streets, and Other Town Property. In addition, the Company acknowledges the Town's right to require the Company to obtain permits for work in Streets, Other Town Property, and Public Utility Easements.
- §3.3 Compliance with Laws. The Company shall promptly and fully comply with all laws, regulations, permits and orders lawfully enacted by the Town. Nothing herein provided shall prevent the Company from legally challenging or appealing the enactment or applicability of any laws, regulations, permits and orders enacted by the Town. To the extent that the Company believes that any Town regulations, permits and orders are inconsistent with Industry Standards, the Town agrees to meet with the Company upon the Company's written request for consideration of the matters at issue within a reasonable period of time.
- §3.4 Industry Standards. In enacting laws and regulations and issuing permits that affect the Company's access to or use of the Streets, Other Town Property and Public Utility Easements, the Town agrees to make good faith efforts to make its regulations and permit conditions consistent with Industry Standards to the extent practicable, and the Company agrees to make good faith efforts to advise the Town of Industry Standards that affect the Company's operations within the Town. Without limiting the Town's police power in any way, the Town will take into consideration any input from the Company on new regulations and permit conditions that the Company believes unnecessarily increase its cost of operations within the Town.

**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 Town Streets, Public Utility Easements and Other

Town Property, which are valuable public properties acquired and maintained by the Town at the expense of its Residents, and in recognition of the fact that the grant to the Company of this Franchise is a valuable right, the Company shall pay the Town a sum equal to three percent (3%) of all Gross Revenues (the “Franchise Fee”). To the extent required by law, the Company shall collect the Franchise Fee from a surcharge upon Town Residents who are customers of the Company.

B. Obligation in Lieu of Franchise Fee. In the event that the Franchise Fee specified herein is declared void for any reason by a court of competent jurisdiction, unless prohibited by law, the Company shall be obligated to pay the Town, at the same times and in the same manner as provided in this Franchise, an aggregate amount equal to the amount that the Company would have paid as a Franchise Fee as partial consideration for use of the Town Streets, Public Utility Easements and Other Town Property. Such payments shall be made in accordance with applicable provisions of law. Further, to the extent required by law, the Company shall collect the amounts agreed upon through a surcharge upon Utility Service provided to Town Residents who are customers of the Company.

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

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

§4.2 Remittance of Franchise Fee.

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

B. Correction of Franchise Fee Payments. In the event that either the Town or the Company discovers that there has been an error in the calculation of the Franchise Fee payment to the Town, either party shall provide written notice of the error to the other party. Subject to the following sentence, if the party receiving written notice of the error

does not agree with the written notice of error, that party may challenge the written notice of error pursuant to Section 4.2.D of this Franchise; otherwise, the error shall be corrected in the next monthly payment. However, if the error results in an overpayment of the Franchise Fee to the Town, and said overpayment is in excess of Five Thousand Dollars (\$5,000.00), correction of the overpayment by the Town shall take the form of a credit against future Franchise Fees and shall be spread over the same period the error was undiscovered or the Town shall make a refund payment to the Company. If such period would extend beyond the term of this Franchise, the Company may elect to require the Town to provide it with a refund instead of a credit, with such refund to be spread over the same period the error was undiscovered, even if the refund will be paid after the termination date of this Franchise. All Franchise Fee underpayments shall be corrected in the next monthly payment, together with interest computed at the rate set by the PUC for customer security deposits held by the Company, from the date when due until the date paid. Subject to the terms of the Tariffs, in no event shall either party be required to fund or refund more than five (5) years of any overpayment or underpayment made as a result of a Company error which occurred more than five (5) years prior to the discovery of the error.

C. Audit of Franchise Fee Payments.

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

(2) Town Audit. At the request of the Town, every three (3) years commencing at the end of the third year of this Franchise, the Town may conduct an audit at its own expense, in accordance with generally accepted auditing standards applicable to gas utilities, and the Company shall cooperate by providing the Town's auditor with financial information and customer records necessary to complete such audit consistent with applicable PUC rules and regulations. The Town is encouraged to conduct any audit pursuant to this section at the same time it conducts any sales and use tax audit of the Company.

(3) Underpayments. If the results of a Town audit conducted pursuant to Subsection 4.2.C(2) concludes that the Company has underpaid the Town by five percent (5%) or more, in addition to the obligation to pay such amounts to the Town, the Company shall also pay all reasonable costs of the Town's audit. The Company shall not be responsible for interest or penalties for any errors from information provided by an entity certified by the Colorado Department of Revenue as a "hold harmless entity" or other similar entity recognized by the Department of Revenue.

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

E. Reports. To the extent allowed by law, upon written request by the Town, but not more than once per year, the Company shall supply the Town with the names and addresses of registered gas suppliers and brokers of natural gas that utilize Company facilities to sell or distribute natural gas in Colorado. 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 does not exempt the Company from any other lawful tax or fee imposed generally upon persons doing business within the Town, except that the Franchise Fee provided for herein shall be in lieu of any occupation, occupancy or similar tax or fee for Company's the use of Town Streets, Public Utility Easements and Other Town Property under the terms set forth in this Franchise.

ARTICLE 5 ADMINISTRATION OF FRANCHISE

§5.1 Town Designee. The Town Manager, or his or her designee, shall have full power and authority to administer this Franchise and shall act as the primary liaison with the Company as to particular matters addressed by this Franchise. The Town Manager may change these designations by providing written notice to the Company. The Town's designee shall have the right, at all reasonable times, to inspect any Company Facilities in Town Streets and Other Town Property.

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

§5.3 Coordination of Work.

A. The Company agrees to coordinate its activities in Town Streets, Public Utility Easements and Other Town Property with the Town. The Town and the Company will meet annually upon the written request of the Town designee to exchange their respective short-term and long-term forecasts and/or work plans for construction and other similar work which may affect Town Streets, including but not limited to any planned Town Streets paving projects. The Town 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 Town will be assured that all applicable provisions of this Franchise, applicable building and zoning codes, and applicable Town air and water pollution regulations are complied with, and that aesthetic and other relevant planning principles have been given due consideration.

B. In addition to the foregoing meetings, the Company and the Town agree to use good faith efforts to provide notice to one another whenever a) the Company initiates plans to significantly upgrade its infrastructure within the Town; and b) third party applicants within the Town initiate private land uses and projects or the Town initiates a public project that requires significant upgrade to future gas utility development by the Company, in order to allow for mutual Town and Company input and consultation for beneficial coordination of activities.

ARTICLE 6 SUPPLY, CONSTRUCTION, AND DESIGN

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

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

§6.3 Charges to the Town for Service to Town Facilities. No charges to the Town by the Company for Utility Service (other than gas transportation which shall be subject to negotiated contracts) shall exceed the lowest charge for similar service or supplies provided by the Company to any other similarly situated customer of the Company. The parties acknowledge the jurisdiction of the PUC over the Company's regulated intrastate gas rates. All charges to the Town shall be in accord with the Tariffs.

§6.4 Restoration of Service.

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

B. Restoration. In the event the Company's gas system within the Town, or any part thereof, is partially or wholly destroyed or incapacitated, the Company shall use due

diligence to restore such system to satisfactory service within the shortest practicable time, or provide a reasonable alternative to such system if the Company elects not to restore such system.

§6.5 Obligations Regarding Company Facilities.

A. Company Facilities. All Company Facilities within Town Streets and Other Town Property shall be maintained in good repair and condition.

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

- (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 laws, ordinances and regulations.

C. No Interference with Town Facilities. Company Facilities shall not unreasonably interfere with any Town facilities, including without limitation water facilities, sanitary or storm sewer facilities, communications facilities, or other Town uses of the Streets, Public Utility Easements or Other Town Property. Company Facilities shall be installed and maintained in Town Streets and Other Town Property so as to reasonably minimize interference with other property, trees, and other improvements and natural features in and adjoining the Streets and Other Town Property in light of the Company's obligation under Colorado law to provide safe and reliable utility facilities and services. Notwithstanding anything in this Subsection C to the contrary, the Company shall comply with all applicable Town standards and specifications for any work undertaken in the Town Streets, Public Utility Easements and Other Town Property, subject to the provisions of Section 3.3 above.

D. Permit and Inspection. The installation, renovation, and replacement of any Company Facilities in the Town Streets or Other Town Property by or on behalf of the Company shall be subject to permit, inspection and approval by the Town in accordance with applicable laws. Such permitting, inspection and approval may include, but shall not be limited to, the following matters: location of Company Facilities, cutting and pruning of trees and shrubs and disturbance of pavement, sidewalks and surfaces of Town Streets or Other Town Property; provided, however, the Company shall have the right to cut, prune, and/or remove vegetation in accordance with its standard vegetation management requirements and procedures. The Company agrees to cooperate with the

Town in conducting inspections and shall promptly perform any remedial action lawfully required by the Town pursuant to any such inspection.

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

§6.6 As-Built Drawings.

A. Within thirty (30) days after written request of the Town designee, but no sooner than fourteen (14) days after project completion, the Company shall commence its internal process to permit the Company to provide, on a project by project basis, as-built drawings of any Company Facility installed within the Town Streets or contiguous to the Town Streets. The Company shall provide the requested documents no later than forty-five (45) days after it commences its internal process.

B. If the requested information must be limited or cannot be provided pursuant to regulatory requirements or Company Tariffs, the Company shall promptly notify the Town of such restrictions. The Town reserves the right to challenge the Company's position. The Town acknowledges that the requested as-built drawings are confidential information of the Company and the Company asserts that disclosure to members of the public would be contrary to the public interest. Accordingly, the Town shall deny the right of inspection of the Company's confidential information as set forth in C.R.S. §24-72-204(3)(a)(IV), as may be amended from time to time (the "Open Records Act"). If an Open Records Act request is made by any third party for confidential or proprietary information that the Company has provided to the Town pursuant to this Franchise, the Town will immediately notify the Company of the request and shall allow the Company to defend such request at its sole expense, including filing a legal action in any court of competent jurisdiction to prevent disclosure of such information. In any such legal action the Company shall join the person requesting the information and the Town. In no circumstance shall the Town provide to any third-party confidential information provided by the Company pursuant to this Franchise without first conferring with the Company. Provided the Town complies with the terms of this Section, the Company shall defend, indemnify and hold the Town harmless from any claim, judgment, costs or attorney fees incurred in participating in such proceeding.

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 or data that do not exist at the time of the request.

§6.7 Excavation and Construction. Subject to Section 3.3, the Company shall be responsible for obtaining, paying for, and complying with all applicable permits, in the manner required by the laws, ordinances, and regulations of the Town. Although the Company shall be responsible for obtaining and complying with the terms of such permits when performing Relocations requested by the Town under Section 6.9 of this Franchise, the Town will not require the Company to pay the fees charged for such permits. Upon the Company submitting a construction design plan, the Town shall promptly and fully advise the Company in writing of all requirements for restoration of Town Streets in advance of Company excavation projects in Town Streets, based upon the design submitted, if the Town's restoration requirements are not addressed in publicly available standards.

§6.8 Restoration. Subject to the provisions of Section 6.5.D, when the Company does any work in or affecting the Town Streets or Other Town Property, it shall, at its own expense, promptly remove any obstructions placed thereon or therein by the Company and restore such Town Streets or Other Town Property to a condition that is substantially the same as existed before the work, and that meets applicable Town standards. If weather or other conditions do not permit the complete restoration required by this Section, the Company may with the approval of the Town, temporarily restore the affected Town Streets or Other Town Property, provided that such temporary restoration is not at the Town's expense and provided further that the Company promptly undertakes and completes the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Upon the request of the Town, the Company shall restore the Streets or Other Town Property to a better condition than existed before the Company work was undertaken, provided that the Town shall be responsible for any incremental costs of such restoration not required by then-current Town standards, and provided the Town seeks and/or grants, as applicable, any additional required approvals. If the Company fails to promptly restore the Town Streets or Other Town Property as required by this Section, and if, in the reasonable discretion of the Town immediate action is required for the protection of public health, safety or welfare, the Town may restore such Streets or Other Town Property or remove the obstruction therefrom; provided however, Town actions do not interfere with Company Facilities. The Company shall be responsible for the actual cost incurred by the Town to restore such Town Streets or Other Town Property or to remove any obstructions therefrom. In the course of its restoration of Town Streets, Public Utility Easements or Other Town Property under this Section, the Town shall not perform work on Company Facilities unless specifically authorized by the Company in writing on a project-by-project basis and subject to the terms and conditions agreed to in such authorization.

§6.9 Relocation of Company Facilities.

A. Relocation Obligation. The Company shall temporarily or permanently relocate, change or alter the position of any Company Facility (collectively, "Relocate(s)," "Relocation(s)" or "Relocated") in Town Streets or in Other Town Property or as otherwise required by Section 13-1-30 of the Town Code, as amended, at no cost or expense to the Town whenever such Relocation is necessary for the completion of any

Public Project. In the event of any 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. For all Relocations contemplated pursuant to this Section 6.9.A, the Company and the Town agree to cooperate on the location and Relocation of the Company Facilities in the Town Streets or Other Town Property in order to achieve Relocation in the most efficient and cost-effective manner possible. Notwithstanding the foregoing, once the Company has Relocated any Company Facility at the Town's direction, if the Town requests that the same Company Facility be Relocated within two (2) years, the subsequent Relocation shall not be at the Company's expense. Nothing provided herein shall prevent the Company from obtaining reimbursement of its Relocation costs and expenses from third parties.

B. Private Projects. Subject to Section 6.9.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 Town designee requests, in writing, that the Relocation commence, or the date when the Company is provided all Supporting Documentation. The Company shall receive an extension of time to complete a Relocation where the Company's performance was delayed due to a Force Majeure Event or the failure of the Town to provide adequate Supporting Documentation. The Company has the burden of presenting evidence to reasonably demonstrate the basis for the delay. Upon written request of the Company, the Town may also grant the Company reasonable extensions of time for good cause shown and the Town shall not unreasonably withhold or condition any such extension.

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

E. Completion. Each such Relocation shall be complete only when the Company actually Relocates the Company Facilities, restores the Relocation site in accordance with Section 6.8 of this Franchise or as otherwise agreed with the Town, and properly abandons on site all unused Company Facilities, equipment, material and other impediments.

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 but excluding Public Utility Easements, which are addressed in Section 6.9.A.

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.

H. Coordination.

(1) When requested in writing by the Town designee or the Company, representatives of the Town and the Company shall meet to share information regarding anticipated projects which will require Relocation of Company Facilities in Town Streets and Other Town Property. Such meetings shall be for the purpose of minimizing conflicts where possible and to facilitate coordination with any reasonable timetable established by the Town for any Public Project.

(2) The Town shall make reasonable best efforts to provide the Company with two (2) years advance notice of any planned Street repaving. The Company shall make reasonable best efforts to complete any necessary or anticipated repairs or upgrades to Company Facilities that are located underneath the Streets within the two-year period if practicable.

I. Proposed Alternatives or Modifications. Upon receipt of written notice of a required Relocation, the Company may propose an alternative to or modification of the Public Project requiring the Relocation in an effort to mitigate or avoid the impact of the required Relocation of Company Facilities. The Town shall in good faith review the proposed alternative or modification. The acceptance of the proposed alternative or modification shall be at the discretion of the Town. In the event the Town accepts the proposed alternative or modification, the Company agrees to promptly compensate the Town for all additional costs, expenses or delay that the Town reasonably determines resulted from the implementation of the proposed alternative.

§6.10 New or Modified Service Requested by Town. The conditions under which the Company shall install new or modified Utility Service to the Town as a customer shall be governed by this Franchise and the Company's Tariffs and the Tariffs shall control in the event of a conflict.

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

§6.12 Town Not Required to Advance Funds. Upon receipt of the Town's authorization for billing and construction, the Company shall install Company Facilities to provide Utility Service to the Town as a customer, without requiring the Town to advance funds prior to construction. The Town shall pay for the installation of Company Facilities once

completed in accordance with the Tariffs. Notwithstanding anything to the contrary, the provisions of this Section to allow the Town to not advance funds prior to construction shall apply unless prohibited by PUC rules or the Tariffs. The parties agree that as of the date of execution of this Agreement, Company Tariff Sheet R120 governs the terms of installation of Company Facilities for the Town and allows installation of Company Facilities without the Town advancing funds prior to construction.

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

ARTICLE 7 RELIABILITY

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

ARTICLE 8 COMPANY PERFORMANCE OBLIGATIONS

- §8.1 New or Modified Service to Town Facilities. In providing new or modified Utility Service to Town facilities, the Company agrees to perform as follows:
- A. Performance. The Company shall complete each project requested by the Town within a reasonable time. The parties agree that a reasonable time shall not exceed one hundred eighty (180) days from the date upon which the Town designee makes a written request and provides the required Supporting Documentation for all Company Facilities other than traffic facilities, including a copy to the Area Manager as designated in Section 18.4 below. Provided that the Town provides the Company's designated representative with a copy of the Supporting Documentation, the Company shall notify the Town within twenty (20) days of receipt of the request if the Supporting Documentation is sufficient to complete the project. The Company shall be entitled to an extension of time to complete a project where the Company's performance was delayed due to a Force Majeure Event. Upon request of the Company, the Town designee may also grant the Company

reasonable extensions of time for good cause shown and the Town shall not unreasonably withhold any such extension.

B. Town Revision of Supporting Documentation. Any revision by the Town of Supporting Documentation provided to the Company that causes the Company to substantially redesign and/or substantially change its plans regarding new or modified service to Town facilities shall be deemed good cause for a reasonable extension of time to complete the 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 Town and properly abandons on site any unused Company Facilities, equipment, material and other impediments.

§8.2 Adjustments to Company Facilities. The Company shall perform adjustments to Company Facilities that are consistent with Industry Standards, including manhole rings and other appurtenances in Streets and Other Town Property, to accommodate Town Street maintenance, repair and paving operations at no cost to the Town. In providing such adjustments to Company Facilities, the Company agrees to perform as follows:

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

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

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

§8.3 Third Party Damage Recovery.

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

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

ARTICLE 9 BILLING AND PAYMENT

§9.1 Billing for Utility Services.

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

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

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

D. Annual Meetings. The Company agrees to meet with the Town designee on a reasonable basis at the Town's request, but no more frequently than once a year, for the purpose of developing, implementing, reviewing, and/or modifying mutually beneficial and acceptable billing procedures, methods, and formats which may include, without limitation, electronic billing and upgrades or beneficial alternatives to the Company's current most advanced billing technology, for the efficient and cost effective rendering and processing of such billings submitted by the Company to the Town.

§9.2 Payment to Town. In the event the Town determines after written notice to the Company that the Company is liable to the Town for payments, costs, expenses or damages of any

nature, and subject to the Company's right to challenge such determination, the Town may deduct all monies due and owing the Town from any other amounts currently due and owing the Company. Upon receipt of such written notice, the Company may request a meeting between the Company's designee and a designee of the Town to discuss such determination. The Town agrees to attend such a meeting. As an alternative to such deduction and subject to the Company's right to challenge, the Town may bill the Company for such assessment(s), in which case, the Company shall pay each such bill within thirty (30) days of the date of receipt of such bill unless it challenges the validity of the charge. If the Company challenges the Town determination of liability, the Town shall make such payments to the Company for Utility Service received by the Town pursuant to the Tariffs until the challenge has been finally resolved.

ARTICLE 10 PURCHASE OR CONDEMNATION

§10.1 Municipal Right to Purchase or Condemn.

A. Right and Privilege of Town. The right and privilege of the Town to construct, own and operate a municipal utility, and to purchase pursuant to a mutually acceptable agreement or condemn any Company Facilities located within the territorial boundaries of the Town, and the Company's rights in connection therewith, as set forth in applicable provisions of the constitution, statutes and case law of the State of Colorado relating to the acquisition of public utilities, are expressly recognized. The Town shall have the right, within the time frames and in accordance with the procedures set forth in 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 Town. In the event of any such condemnation, no value shall be ascribed or given to the right to use Town Streets or Other Town Property granted under this Franchise in the valuation of the property thus sold.

B. Notice of Intent to Purchase or Condemn. The Town 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 Town's purchase or condemnation of Company Facilities, nor a waiver of any Company defenses or challenges related thereto.

ARTICLE 11 ENVIRONMENT AND CONSERVATION

§11.1 Environmental Leadership. The Town and the Company agree that sustainable development, environmental excellence and innovation shall form the foundation of the Utility Service provided by the Company under this Franchise. The Company agrees to continue to actively pursue reduction of carbon emissions attributable to its electric generation facilities with a rigorous combination of Energy Conservation and Energy Efficiency measures, Clean Energy measures, and promoting and implementing the use of Renewable Energy Resources on both a distributed and centralized basis. The

Company shall continue to cost-effectively monitor its operations to mitigate environmental impacts; shall meet the requirements of environmental laws, regulations and permits; shall invest in cost-effective, environmentally sound technologies; shall consider environmental issues in its planning and decision making; and shall support environmental research and development projects and partnerships in our communities through various means, including but not limited to corporate giving and employee involvement. The Company shall continue to explore ways to reduce water consumption at its facilities and to use recycled water where feasible. The Company shall continue to work with the U.S. Fish and Wildlife Service to develop and implement avian protection plans to reduce electrocution and collision risks by eagles, raptors and other migratory birds with transmission and distribution lines. If requested in writing by the Town on or before December 1st of each year, the Company shall provide the Town a written report describing its progress in 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.

§11.2 Conservation. The Town and the Company recognize and agree that Energy Conservation programs offer opportunities for the efficient use of energy and possible reduction of energy costs. The Town and the Company further recognize that creative and effective Energy Conservation solutions are crucial to sustainable development. The Company recognizes and shares the Town's stated objectives to advance the implementation of cost-effective Energy Efficiency and Energy Conservation programs that direct opportunities to Residents to manage more efficiently their use of energy and thereby create the opportunity to reduce their energy bills. The Company commits to offer programs that attempt to capture market opportunities for cost-effective Energy Efficiency improvements such as municipal specific programs that provide cash rebates for efficient lighting, energy design programs to assist architects and engineers to incorporate Energy Efficiency in new construction projects, and recommissioning programs to analyze existing systems to optimize performance and conserve energy according to current and future demand side management ("DSM") programs. In doing so, the Company recognizes the importance of (i) implementing cost-effective programs, the benefits of which would otherwise be lost if not pursued in a timely fashion; and (ii) developing cost-effective programs for the various classes of the Company's customers, including low-income customers. The Company shall advise the Town and its Residents of the availability of assistance that the Company makes available for investments in Energy Conservation through newspaper advertisements, bill inserts and Energy Efficiency workshops and by maintaining information about these programs on the Company's website. Further, at the Town's request, the Company's Area Manager shall act as the primary liaison with the Town who will provide the Town with information on how the Town may take advantage of reducing energy consumption in Town facilities and how the Town may participate in Energy Conservation and Energy Efficiency programs sponsored by the Company. As such, the Company and the Town commit to work cooperatively and collaboratively to identify, develop, implement and support programs offering creative and sustainable opportunities to Company customers and

Residents, including low-income customers. The Company agrees to help the Town participate in Company programs and, when opportunities exist to partner with others, such as the State of Colorado, the Company will help the Town pursue those opportunities. In addition, and in order to assist the Town and its Residents' participation in Renewable Energy Resource programs, the Company shall: notify the Town regarding eligible Renewable Energy Resource programs; provide the Town with technical support regarding how the Town may participate in Renewable Energy Resource programs; and advise Residents regarding eligible Renewable Energy Resource programs. Notwithstanding the foregoing, to the extent that any Company assistance is needed to support Renewable Energy Resource Programs that are solely for the benefit of Company customers located within the Town, the Company retains the sole discretion as to whether to incur such costs.

- §11.3 Continuing Commitment. It is the express intention of the Town and the Company that the collaborative effort provided for in this Article continue for the entire term of this Franchise. The Town and the Company also recognize, however, that the programs identified in this Article may be for a limited duration and that the regulations and technologies associated with Energy Conservation are subject to change. Given this variability, the Company agrees to maintain its commitment to sustainable development and Energy Conservation for the term of this Franchise by continuing to provide leadership, support and assistance, in collaboration with the Town, to identify, develop, implement and maintain new and creative programs similar to the programs identified in this Article in order to help the Town achieve its environmental goals.
- §11.4 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 12 TRANSFER OF FRANCHISE

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

required by law, such transfer fee shall not be recovered from a surcharge placed only on the rates of Residents.

ARTICLE 13 CONTINUATION OF UTILITY SERVICE

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

ARTICLE 14 INDEMNIFICATION AND IMMUNITY

§14.1 Town Held Harmless. The Company shall indemnify, defend and hold the Town harmless from and against claims, demands, liens and all liability or damage of whatsoever kind on account of or directly arising from the grant of this Franchise, 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 Town shall (a) give prompt written notice to the Company of any claim, demand or lien with respect to which the Town seeks indemnification hereunder; and, (b) unless in the Town's judgment a conflict of interest may exist between the Town and the Company with respect to such claim, demand or lien, shall permit the Company to assume the defense of such claim, demand, or lien with counsel reasonably satisfactory to the Town. If such defense is assumed by the Company, the Company shall not be subject to liability for any settlement made without its consent. If such defense is not assumed by the Company or if the Town determines that a conflict of interest exists, the parties reserve all rights to seek all remedies available in this Franchise against each other. Notwithstanding any provision hereof to the contrary, the Company shall not be obligated to indemnify, defend or hold the Town harmless to the extent any claim, demand or lien arises out of or in connection with any negligent or intentional act or failure to act of the

Town or any of its officers, agents or employees or to the extent that the Town is acting in its capacity as a customer of record of the Company.

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

ARTICLE 15 BREACH

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

§15.2 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 Town. In addition to the foregoing remedies, if the Company fails or refuses to perform any material term or condition of this Franchise (a “Material Breach”), the Town may provide written notice to the Company of such Material Breach. Upon receipt of such notice, the Company shall be given a reasonable time, not to exceed sixty (60) days in which to remedy the Material Breach or, if such Material Breach cannot be remedied in sixty (60) days, such additional time as reasonably needed to remedy the Material Breach, but not exceeding an additional sixty

(60) day period, or such other time as the parties may agree. If the Company does not remedy the Material Breach within the time allowed in the notice, the Town may, in its sole discretion, terminate this Franchise. This remedy shall be in addition to the Town's right to exercise any of the remedies provided for elsewhere in this Franchise. Upon such termination, the Company shall continue to provide Utility Service to the Town and its Residents (and shall continue to have associated rights and grants needed to provide such service) until the Town makes alternative arrangements for such service and until otherwise ordered by the PUC and the Company shall be entitled to collect from Residents and, upon the Town complying with applicable provisions of law, shall be obligated to pay the Town, at the same times and in the same manner as provided in this Franchise, an aggregate amount equal to the amount which the Company would have paid as a Franchise Fee as consideration for use of the Town Streets and Other Town Property. Unless otherwise provided by law, the Company shall be entitled to collect such amount from Residents.

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

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

ARTICLE 16 AMENDMENTS

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

§16.2 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 17 EQUAL OPPORTUNITY

§17.1 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.

§17.2 Employment.

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

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

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

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

E. Non-Discrimination. The Company is committed to a workplace free of discrimination based on race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability or any other protected status in accordance with all federal, state or local laws. The Company shall not, solely because of race, creed, color, religion, gender, sexual orientation, marital status, age, military status, national origin or 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.

§17.3 Contracting.

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

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

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

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

ARTICLE 18
MISCELLANEOUS

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

§18.2 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 12 of this Franchise. Upon a transfer or assignment pursuant to Article 12, the Company shall be relieved from all liability from and after the date of such transfer, except as otherwise provided in the conditions imposed by the Town in authorizing the transfer or assignment and under state and federal law.

§18.3 Third Parties. Nothing contained in this Franchise shall be construed to provide rights to third parties.

§18.4 Notice. Both parties shall designate from time to time in writing representatives for the Company and the Town who will be the persons to whom notices shall be sent regarding any action to be taken under this Franchise. Notice shall be in writing and forwarded by certified mail, reputable overnight courier or hand delivery to the persons and addresses as hereinafter stated, unless the persons and addresses are changed at the written request of either party, delivered in person or by certified mail. Notice shall be deemed received (a) three (3) days after being mailed via the U.S. Postal Service, (b) one (1) business day after mailed if via reputable overnight courier, or (c) upon hand delivery if delivered by courier. Until any such change shall hereafter be made, notices shall be sent as follows:

To the Town:

Town Manager, Town of Fraser
P.O. Box 370
Fraser, CO 80442

With a copy to:

Rod McGowan, P.C.
P.O. Box 500
Granby, CO 80446

To the Company:

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

With a copy to:

Legal Department
Public Service Company of Colorado

P.O. Box 840
Denver, Colorado 80201

and

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

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

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

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

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

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

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

(4) The confidential information shall be held by the Town for such time as is reasonably necessary for the Town to address the Franchise issue(s) that generated the

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

- §18.6 Confidential or Proprietary Information. If an Open Records Act (§24-72-201 et seq. C.R.S.) request is made by any third party for confidential or proprietary information that the Company has provided to the Town pursuant to this Franchise, the Town will promptly notify the Company of the request and shall allow the Company to defend such request at its sole expense, including filing a legal action in any court of competent jurisdiction to prevent disclosure of such information. In any such legal action the Company shall join the person requesting the information and the Town. In no circumstance shall the Town provide to any third party confidential information provided by the Company pursuant to this Franchise without first conferring with the Company. The Company shall defend, indemnify and hold the Town harmless from any claim, judgment, costs or attorney fees incurred in participating in such proceeding. Unless otherwise agreed between the parties, the following information shall not be provided by the Company: confidential employment matters, specific information regarding any of the Company's customers, information related to the compromise and settlement of disputed claims including but not limited to PUC dockets, information provided to the Company which is declared by the provider to be confidential, and which would be considered confidential to the provider under applicable law.
- §18.7 List of Utility Property. The Company shall provide the Town, upon request not more than once every two (2) years, a list of gas utility-related real property owned in fee by the Company within the County in which the Town is located. The list shall include the legal description of the real property, and where available on the deed, the physical street address. If the physical address is not available on the deed, if the Town requests the physical address of the real property described in this Section 18.7, to the extent that such physical street address is readily available to the Company, the Company shall provide such address to the Town. All such records must be kept for a minimum of three (3) years or such shorter duration if required by Company policy.
- §18.8 PUC Filings. Upon written request by the Town, the Company shall provide the Town non-confidential copies of all applications, advice letters and periodic reports, together with any accompanying non-confidential testimony and exhibits, filed by the Company with the Public Utilities Commission. Notwithstanding the foregoing, notice regarding any gas filings that may affect Utility Service rates in the Town shall be sent to the Town upon filing.
- §18.9 Information. Upon written request, the Company shall provide the Town Clerk or the Town Clerk's designee with:

A. A copy of the Company's or its parent company's consolidated annual financial report, or alternatively, a URL link to a location where the same information is available on the Company's website;

B. Maps or schematics indicating the location of specific Company Facilities (subject to Town executing a confidentiality agreement as required by Company policy), including gas electric lines, located within the Town, to the extent those maps or schematics are in existence at the time of the request and related to an ongoing project within the Town. The Company does not represent or warrant the accuracy of any such maps or schematics; and

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

§18.10 Payment of Taxes and Fees.

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

B. Town Liability. The Town shall not be liable for the payment of late charges, interest or penalties of any nature other than pursuant to applicable Tariffs.

§18.11 Conflict of Interest. The parties agree that no official, officer or employee of the Town shall have any personal or beneficial interest whatsoever in the services or property described herein and the Company further agrees not to hire or contract for services any official, officer or employee of the Town to the extent prohibited by law, including ordinances and regulations of the Town.

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

§18.13 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 Town acknowledges that

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

- §18.14 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.
- §18.15 Force Majeure. Neither the Town nor the Company shall be in breach of this Franchise if a failure to perform any of the duties under this Franchise is due to a Force Majeure Event, as defined herein.
- §18.16 Earlier Franchises Superseded. This Franchise shall constitute the only franchise between the Town and the Company related to the furnishing of Utility Service, and it supersedes and cancels all former franchises between the parties hereto.
- §18.17 Titles Not Controlling. Titles of the paragraphs herein are for reference only, and shall not be used to construe the language of this Franchise.
- §18.18 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 Grand County, State of Colorado.
- §18.19 Payment of Expenses Incurred by Town in Relation to Franchise Agreement. The Company shall pay for expenses reasonably incurred by the Town for the adoption of this Franchise, limited to the publication of notices, publication of ordinances, and photocopying of documents and other similar expenses.
- §18.20 Costs of Compliance with Franchise. The parties acknowledge that PUC rules, regulations and final decisions may require that costs of complying with certain provisions of this Franchise be borne by customers of the Company who are located within the Town.
- §18.21 Conveyance of Town Streets, Public Utility Easements or Other Town Property. In the event the Town vacates, releases, sells, conveys, transfers or otherwise disposes of a Town Street, or any portion of a Public Utility Easement or Other Town Property in which Company Facilities are located, the Town shall reserve an easement in favor of the Company over that portion of the Street, Public Utility Easement or Other Town Property in which such Company Facilities are located. The Company and the Town shall work together to prepare the necessary legal description to effectuate such reservation. For the purposes of Section 6.9.A of this Franchise, the land vacated, released, sold, conveyed, transferred or otherwise disposed of by the Town shall no longer be deemed to be a Street

or Other Town Property from which the Town may demand the Company temporarily or permanently Relocate Company Facilities at the Company's expense.

§18.22 Land Use Coordination. The Town and the Company shall coordinate regarding the Town's land use planning and the Company's development plans. This coordination shall include meetings between the Parties 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 of _____, 2019.

TOWN OF FRASER

ATTEST:

Clerk, Town of Fraser

Mayor, Town of Fraser

APPROVED AS TO FORM:
(if applicable)

Town Attorney, Town of Fraser

PUBLIC SERVICE COMPANY OF COLORADO, a Colorado corporation

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

STATE OF COLORADO)
)SS.
COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2019 by Jerome Davis, Regional Vice President, Customer and Community Relations of Public Service Company of Colorado, a Colorado corporation.

WITNESS MY HAND AND OFFICIAL SEAL.

Notary Public
My Commission expires:

(SEAL)