

**ORDINANCE NO. 5569**

**AN EMERGENCY ORDINANCE CALLING A REGULAR MUNICIPAL ELECTION TO BE HELD ON TUESDAY, THE 2ND DAY OF NOVEMBER, 1993, IN THE CITY OF BOULDER, COLORADO, AND PROVIDING FOR THE SUBMISSION TO THE ELECTORS ENTITLED TO VOTE THEREON OF 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 AND OTHER PUBLIC PLACES AND PUBLIC EASEMENTS AS HEREIN DEFINED AS MAY BE NECESSARY; AND FIXING THE TERMS AND CONDITIONS THEREOF; AND SETTING FORTH DETAILS IN RELATION THERETO.**

WHEREAS, Public Service Company of Colorado has applied under City of Boulder Charter Section 108 for a franchise;

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

Section 1. That a regular municipal election is hereby called to be held in the various precincts and at the polling places of the City of Boulder, County of Boulder and State of Colorado, on Tuesday, the 2nd day of November, 1993, between the hours of 7:00 a.m. and 7:00 p.m..

Section 2. At said 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, in the following form:

See attached Exhibit A

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

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; AND IN CONNECTION THEREWITH, IN THE EVENT OF ~~INSOLVENCY~~ UNCOLLECTABILITY, SHALL CITY TAXES BE INCREASED BY UP TO EIGHT MILLION DOLLARS BY DEEMING THE FRANCHISE FEE TO BE ~~DEEMED~~ AN OCCUPATION OR A SALES AND USE TAX, AND SHALL THE CITY BE PERMITTED TO COLLECT, RETAIN, AND EXPEND THE FULL PROCEEDS OF SUCH TAX, NOTWITHSTANDING ANY STATE RESTRICTION ON FISCAL YEAR SPENDING, INCLUDING WITHOUT LIMITATION THE RESTRICTIONS OF ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION?

FOR THE MEASURE \_\_\_\_\_ AGAINST THE MEASURE \_\_\_\_\_

Section 4. The city clerk of the City of Boulder shall give public notice of the election on such measure:

(a) By causing notice to be published in the Boulder Daily Camera, a daily newspaper of general circulation and published in the city, three times, a week apart, the first publication to be at least twenty days before election day; and

(b) By mailing to "All Registered Voters" at each address within the city at which a voter is registered no sooner than twenty-five days before the election, and no later than fifteen days before the election, a notice entitled "NOTICE OF ELECTION TO INCREASE TAXES."

This notice shall include only:

(1) The election date and hours for voting, the ballot title and text of the measure by this ordinance submitted to the voters, and the office address and telephone number of the city clerk;

(2) The estimated or actual total of city fiscal year spending for the current fiscal year and each of the past four fiscal years, and the overall percentage and estimated dollar increase for the next fiscal year;

(3) An estimate of the maximum dollar amount of the tax and of city fiscal year spending without the tax for the next full fiscal year; and

(4) Two summaries, no more than five hundred words each, one for and one against the measure, of written comments filed with the city clerk no later than thirty days before the election. No summary shall mention names of persons or private groups, nor any endorsement of or resolutions against the measure. The city clerk shall maintain on file and accurately summarize all relevant written comments; and

(c) Such additional notice as is required by law.

Section 5. The officers of the City are authorized to take all action necessary or appropriate to effectuate the provisions of this ordinance.

Section 6. 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 7. 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 8. 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.

Section 9. The city council finds that an emergency exists due to the September 7, 1993 deadline for certification of election ballots and therefore orders that this ordinance

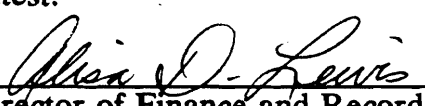
be effective immediately upon its passage.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED

BY TITLE ONLY this 6th day of July, 19 93

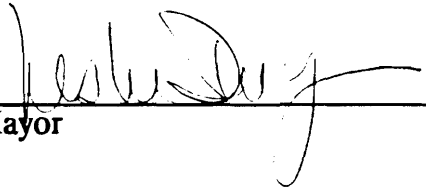
  
\_\_\_\_\_  
Mayor

Attest:

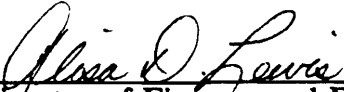
  
\_\_\_\_\_  
Director of Finance and Record  
Ex-Officio City Clerk

READ ON SECOND READING, AMENDED, AND ORDERED PUBLISHED

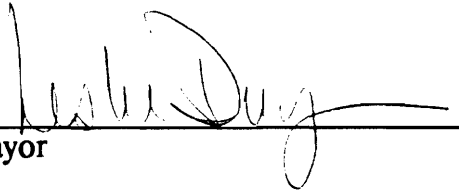
BY TITLE ONLY this 17th day of August, 1993.

  
\_\_\_\_\_  
Mayor

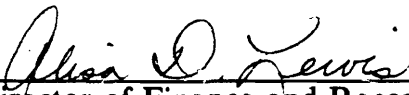
Attest:

  
for Director of Finance and Record  
Ex-Officio City Clerk

READ ON THIRD READING, AMENDED, PASSED, ADOPTED AS AN  
EMERGENCY MEASURE BY TWO-THIRDS OF THE COUNCILMEMBERS  
PRESENT, AND ORDERED PUBLISHED BY TITLE ONLY this 7th day of  
September, 1993.

  
\_\_\_\_\_  
Mayor

Attest:

  
for Director of Finance and Record  
Ex-Officio City Clerk

CM AD DDG

5569  
ORDINANCE NO. PO-9302 *add 11/2/93*

*Q55*

AN ORDINANCE GRANTING A FRANCHISE BY THE CITY OF BOULDER TO PUBLIC SERVICE COMPANY OF COLORADO, ITS SUCCESSORS AND ASSIGNS, THE RIGHT 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 AND OTHER PUBLIC PLACES AND PUBLIC EASEMENTS AS HEREIN DEFINED AS MAY BE NECESSARY; AND FIXING THE TERMS AND CONDITIONS THEREOF; AND SETTING FORTH DETAILS IN RELATION THERETO.

EXHIBIT A

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BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER:

ARTICLE I

DEFINITIONS

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

1.1 "BRC" refers to the Boulder Revised Code, 1981, as amended.

1.2 "City" refers to the home rule City of Boulder, Boulder County, Colorado organized under a charter adopted pursuant to Article XX, Section 6 of the Colorado Constitution and includes the territory which currently is or in the future is included within the boundaries of the City of Boulder, and also includes all other land owned, leased or otherwise controlled by the City of Boulder, including without limitation park land and open space land.

1.3 "Company" refers to Public Service Company of Colorado and its successors and assigns, and includes its affiliates, subsidiaries or any other entity in which it has a controlling ownership interest, whether directly or indirectly.

1.4 "Council" or "City Council" refers to the legislative body of the City.

1.5 "Distribution Facilities" refer to only that portion of the Company's electric system which delivers electric energy from the substation breakers to the point-of-delivery of the customer, including without limitation all devices connected to that system, as well as that portion of the Company's gas system which delivers gas from the low pressure side of the regulator station to the point-of-delivery of the customer, including without limitation all devices connected to that system.

1.6 "Facilities" refer to all facilities reasonably necessary to provide gas and electricity into, within and through the City and include without limitation plants, works, systems, substations, transmission and distribution structures, lines, equipment, pipes, mains, conduit, transformers, underground lines, gas compressors, gas regulators, meters, wires, cables and poles.

1.7 "Gas" or "Natural Gas" refers to such gaseous fuels as natural, artificial, synthetic, liquefied natural, liquefied petroleum, or manufactured gas, or any mixture thereof.

1.8 "Open space land" refers to an interest in land owned and maintained by the City, and designated as open space under the City Charter.

1.9 "Park" or "Park Land" refers to any interest in land that is any recreation or park area owned and maintained by the City, and designated as a park or park land under the City Charter.

1.10 "Public Easements" refer to public and dedicated easements available directly or indirectly, specifically or by implication for use by public utilities for their facilities.

1.11 "Public Utilities Commission" or "PUC" refers to the Public Utilities Commission of the State of Colorado or other authority succeeding to the regulatory powers of the Public Utilities Commission.

1.12 "Residents" refer to all persons, businesses, industries, governmental agencies, and any other entities whatsoever, presently located or to be hereinafter located, in whole or in part, within the territorial boundaries of the City.

1.13 "Revenues" refer to those amounts of money which the Company receives from its customers within the City from the furnishing, sale, distribution and transportation of gas and from the sale of electricity as well as from the use of its facilities within the City by others, as adjusted pursuant to regularly accepted rate making practices, including the net write off of uncollectible accounts, refunds and other regulatory adjustments.

1.14 "Streets and Other Public Places" refer to and are streets, alleys, viaducts, bridges, roads, lanes and other public places in said City.

## ARTICLE 2

### GRANT OF FRANCHISE

§ 2.1 Grant of Franchise. The City of Boulder hereby grants to the Company, for the period specified in and subject to the conditions, terms and provisions contained in this franchise, a non-exclusive right to furnish, sell, distribute and transport gas and electricity within the City and to all residents of the City. Subject to the conditions, terms and provisions contained in this franchise, the City also hereby grants to the Company a non-exclusive right to acquire, construct, install, locate, maintain, operate and extend into, within and through the City all facilities reasonably necessary to furnish, sell, distribute and transport gas and electricity within and through the City and a non-exclusive right to make reasonable use of the streets and other public places and public easements as may be necessary to carry out the terms of this franchise subject to the City's prior right of usage thereof for municipal purposes and subject to the applicable requirements and review

process set forth in the B.R.C. 1981, as amended. These rights shall extend to all areas of the City as it is now constituted and to additional areas as the City may increase in size by annexation or otherwise. The City and the Company do not waive any of their rights under the statutes and Constitution of the State of Colorado and the United States except as otherwise specifically set forth herein. The City retains the right to impose such regulations as may be determined by the City Council to be necessary in the exercise of its police power to protect the health, safety and welfare of the public. Nothing herein contained shall limit or restrict the Company's right to challenge the validity of any such regulations or the interpretation given to any such regulations or BRC provisions by the City.

**§ 2.2 Exclusions.**

(1) This franchise does not grant to the Company the right, privilege or authority to engage in the telecommunications business.

(2) The right to use and/or occupy said streets and other public places for the purposes set forth herein is not, and shall not be deemed to be, an exclusive franchise, and the City reserves the right to itself to make or grant a similar use of streets and other public places to any other person, firm or corporation.

(3) This franchise does not grant to the Company the right, privilege or authority to use or occupy any park or park land, open space land or exclusive utilities department interests in land within the City except to the extent that the Company is currently using or occupying said land or as otherwise authorized in writing by the City. The Company shall not expand its use or occupancy of said land except by specific written authorization of the City; but nothing herein contained shall limit or restrict the Company's right to maintain, renovate, repair or replace any such facilities currently occupying said land subject to the requirements of Section 4.3, below.

**§ 2.3 Street Lighting Service.** The rights granted in this franchise encompass the non-exclusive franchise to provide street lighting service to the City and the provisions of this franchise apply with full and equal force to the street lighting service provided by the Company; however, that additional provisions governing such service shall be incorporated into a separate street lighting agreement to be executed concurrently with this franchise. Wherever reference is made to the sale of electricity or to the provision of electric service in this franchise, these references shall be deemed to include the provision of street lighting service. Wherever reference is made to Company facilities, equipment, system or plant in this franchise, this reference shall be deemed to include all Company-owned street lighting facilities, equipment, system and plant.

**§ 2.4 Supervision.** The City Manager, or his or her designee is hereby designated the official of the City having full power and authority to take appropriate action for and on behalf of the City and its inhabitants to enforce the provisions of this franchise and to investigate any alleged violations or failures of the Company to comply with the provisions

hereof or to adequately and fully discharge its responsibilities and obligations hereunder. The failure or omission of said official City representative to so act shall not constitute any waiver or estoppel nor limit independent action by other City officials.

§ 2.5 Term of Franchise. This franchise shall take effect on August 4, 1990. The term of this franchise shall be for 20 years, expiring on August 3, 2010.

### ARTICLE 3

#### FRANCHISE FEE

§ 3.1 Franchise Fee. In consideration for the grant of this franchise, the Company shall pay the City a sum equal to three percent (3%) of all revenues received as defined herein. In the event that the Company should become insolvent or seek protection under the bankruptcy laws of the United States, **or in the event that a court determines that the franchise fee is not fully collectable by the City for any reason**, the franchise fee payable by the Company hereunder shall be deemed to be assessed by the City as an occupation tax for the purposes of establishing the Company's ability to discharge its obligations hereunder, as well as for the purpose of establishing the City's relative priority among creditors to receive payment by the Company hereunder. In the event that a court determines that such occupation tax is not fully collectable by the City for any reason, the franchise fee shall be deemed an additional sales and use tax, collectable under the City's sales and use tax code. In either event, such tax shall be excluded from the base to determine fiscal year spending effective upon insolvency, and the City shall thereafter be permitted to collect, retain, and expend the full proceeds of such tax, notwithstanding any state restriction on fiscal year spending, including without limitation the restrictions of Article X, Section 20 of the Colorado Constitution. The franchise fee is the only monetary payment to the City for the rights granted in this franchise. Payment of the franchise fee shall not exempt the Company from any other lawful taxation upon its property or from fees and taxes that are uniform and generally applicable to all businesses alike.

§ 3.2 Payment Schedule For the franchise fee owed on revenues accruing to the Company after the effective date of this franchise from the furnishing, sale, distribution and transportation of gas and from the sale of electricity within the City, payment shall be made in monthly installments not more than thirty (30) days following the close of the month for which payment is to be made. For the franchise fee owed on revenues accruing to the Company after the effective date of this franchise from the use of its overhead facilities within the City by others, payment shall be made within ninety (90) days following the close of the calendar year for which payment is to be made. Initial and final payments shall be prorated for the portions of the months at the beginning and end of the term of this franchise. All payments shall be made to the City Finance Director. The City Finance Director, or other authorized representatives of the City, shall have access to the books of the Company for the purpose of auditing and checking to ascertain that the franchise fee has been correctly computed and paid.

**§ 3.3 Change of Franchise Fee and Other Franchise Terms.** Once during each calendar year of this franchise, the City Council, upon giving thirty (30) days notice to the Company of its intention so to do, may review and change the franchise fee and any other significant financial benefit that the City may be entitled to receive as a part of the franchise; provided, however, the Council may only change the franchise fee and other significant financial benefits to be received by the City under the terms of this franchise to cause the City to receive under this franchise a franchise fee or significant financial benefit equivalent to that which the Company may pay (or obligate itself to provide the benefit of) to any city or town in the State of Colorado in any other franchise under which the Company supplies gas or electric service. If the City Council decides the franchise fee or other significant financial benefit should be changed, it shall provide for such change by Ordinance; provided, however, that any change in the franchise fee or other significant financial benefit shall not be higher than the highest franchise fee or other significant financial benefit paid by the Company under a franchise to any municipality within the State of Colorado. Any such change of franchise fee or other significant financial benefit shall not be considered an amendment, renewal or enlargement of this franchise.

**§ 3.4 Company to Report.** The Company shall report to the City, within sixty (60) days of execution, the terms of any franchise or of any change of franchise in other municipalities that may be greater than or different from the franchise fee or other significant financial benefit to the City contained in this franchise.

**§ 3.5 Franchise Fee Payment in Lieu of Other Taxes.** Payment of the franchise fee by the Company is accepted by the City in lieu of any occupation tax or occupational license fee, tax, permit, or charge, or similar tax on the privilege of doing business, but does not exempt the Company from any other lawful taxation.

**§ 3.6 Contract Obligation.** This franchise ordinance constitutes a valid and binding contract between the Company and the City. In the event that the franchise fee specified in this ordinance is declared illegal, unconstitutional or void for any reason by any court or other proper authority, the Company shall be contractually bound to pay an amount to the City that would be, as near as practical, equivalent to the amount which would have been paid by the Company as a franchise fee hereunder. Any such amounts paid by the Company shall be deemed by the parties to qualify for surcharge pursuant to the Colorado Public Utilities Law.

**§ 3.7 Payment of Fee Refundable.** Except as otherwise provided herein, in the event that the Company overpays the franchise fee in an amount less than or equal to \$5,000, credit for the overpayment shall be taken by the Company against the next franchise fee payment. If the Company overpays the franchise fee in an amount greater than \$5,000 but less than \$25,000, credit for the overpayment shall be spread over a period not to exceed three (3) years as specified by the City. If the overpayment is in an amount greater than \$25,000, credit for the overpayment shall be spread over a period not to exceed five (5) years as specified by the City. In no event shall the City be required to refund any overpayment

made as a result of a Company error which occurred more than three (3) years prior to the discovery of the Company error. Upon discovery by the Company of any such error by the Company, the Company shall promptly notify the City.

## ARTICLE 4

### SUPPLY, CONSTRUCTION AND DESIGN

§ 4.1 Supply of Gas and Electricity. The Company shall take all reasonable and necessary steps to provide an adequate supply of gas and electricity to the City and its residents in the City at the lowest reasonable cost consistent with maintaining reliable service over the long-term. Should electric power or energy be made available to the Company from whatever source, including any agency or instrumentality of the United States of America, at less total cost than the total cost which would be incurred by the Company to supply such power or energy from its own systems and under circumstances which will not adversely affect the Company's operations, the Company will utilize its best efforts to purchase such lower cost power or energy and to pass on to its customers any savings resulting from the purchase. If the supply of gas or electricity to its customers should be interrupted, the Company shall take all necessary and reasonable actions to restore such supply within the shortest practical time.

§ 4.2 Restoration of Service. In the event the Company's electric or gas system, or any part thereof, is partially or wholly destroyed or incapacitated, the Company shall use due diligence to restore its system to satisfactory service within the shortest practical time.

§ 4.3 City Review of Construction Design. Except in emergency circumstances, or unless otherwise requested, prior to construction or reconstruction of any significant gas or electric facilities or, of a building or similar structure within the City, the Company shall furnish to the City a description of the type of construction and proposed location thereof. In addition, upon request, the Company shall assess and report on the impact of the proposed construction on the City environment. Such plans and reports may be reviewed by the City to ensure, inter alia, (1) that all City ordinances including without limitation, building and land use regulation codes are complied with, (2) that all state and federal laws including without limitation, air, water quality and hazardous waste regulations are complied with, (3) that aesthetic and good planning principles have been given due consideration, and (4) that adverse impacts on the environment have been minimized. The Company shall comply with all regulatory requirements of the City and shall incorporate all other reasonable changes requested by the City. Nothing herein shall limit or restrict the Company's ability to challenge the validity or applicability of any City ordinance or regulation or of any state or federal laws. In addition, the Company shall undertake in good faith to advise the City in advance of reconstruction of other facilities within the City which the Company believes may be of interest to the City. For the purposes of this Section 4.3, the term reconstruction shall mean repair or replacement work by the Company on significant facilities, such as transmission lines, distribution feeder lines and substations, which work materially alters the

existing character and appearance of the subject facility in such a way so that its presence within the streets and other public places and public easements is significantly expanded over its original condition. For the purposes of this Section 4.3, the term distribution feeders shall mean primary 3 phase voltage electric lines that interconnect Company substations along with any significant 3 phase laterals therefrom that are not isolated from the interconnect lines by fuse protection.

**§ 4.4 Installation and Maintenance of Company Facilities.** The Company shall install, maintain, repair, renovate, relocate, and replace its facilities with due diligence in a good and workmanlike manner, and the Company's facilities will be of sufficient quality and durability to provide adequate and efficient gas and electric service to the City and its residents. Except for emergencies, the construction, excavation, installation, maintenance, renovation, repair, relocation and replacement of any facilities by the Company shall be subject to permitting, inspection and approval of location by the official City representative. Such regulation shall include, but not be limited to the following matters: location of facilities in the streets and other public places and public easements, disturbance and reconstruction of pavement, sidewalks and surface of streets, alleys, dedicated easements and driveways. All Company facilities shall be installed so as to cause a minimal amount of interference with such property. Company facilities shall not interfere with any water mains or sewer mains or City telecommunication facilities or any other municipal use of the City's streets and rights-of-way. Specifically, the Company and the City will attempt to maintain an eight (8) foot horizontal separation between Company underground facilities and City owned water and sewer mains whenever reasonable. When not reasonable, the party installing new facilities shall place its facilities within the streets and other public places and public easements in a location that provides for maximum available separation between its facilities and the facilities of the other party. In no event shall either party be required to purchase or obtain private easements or rights-of-way in order to maintain separation of facilities. The Company shall erect and maintain its facilities in such a way so as to minimize interference with trees and other natural features and vegetation. In addition, the City and its residents may, upon request, plant Company approved species in the Company's easement. The Company shall file with the City a list of generally approved Company species, which list may be amended from time to time. No planting of Company approved species shall be allowed unless or until prior written notice is given to the Company by the person desiring to make such a planting and approval for such a planting is obtained; provided, however, the City shall not have violated this Section and shall have no liability to the Company in the event that such persons fail to notify and obtain the required approval from the Company. The Company reserves the right, in its sole discretion, to remove any unauthorized planting and shall have no liability to the City for such action. Notice shall include the location where the planting is to be made and the species to be planted.

**§ 4.5 Excavation, Construction and Restoration.** All construction, excavation, maintenance and repair work done by the Company shall be done in a timely and expeditious manner which minimizes the inconvenience to the public and individuals. All such construction,



excavation, maintenance and repair work done by the Company shall comply with all applicable codes of the City and the Company shall be responsible for obtaining all applicable permits and shall only pay the reasonable City costs of administration associated therewith. All public and private property disturbed by Company construction or excavation activities caused as a result of work within the streets and other public places and public easements shall promptly be restored by the Company at its expense to substantially its former condition. The Company shall not be required to restore such disturbed property to substantially its former condition when that former condition violates any restrictions in public easements. All restoration work under this section shall be subject to inspection by the official City representative and compliance by the Company with reasonable remedial action required by said official pursuant to the inspection. The Company shall comply with the City's requests for reasonable and prompt action to remedy all damage to public and private property caused as a result of the Company's construction, excavation, maintenance and repair work within the streets and other public places and public easements. All such remedial work shall be performed at the Company's expense. If the Company fails to perform its restoration and remediation of public property to substantially its former condition within sixty (60) days after notice by the City, or such larger time period as may be mutually agreed to by the parties (agreement to which by the City shall not be unreasonably withheld), the City shall have the right to perform said restoration and remediation at the Company's expense. The Company shall reimburse the City within sixty (60) days of billing for such work. The Company shall use its best efforts to expedite any work required to be performed as a result of a City project.

§ 4.6 Relocation of Company Facilities. If at any time the City requests the Company to relocate any facility installed or maintained in streets and other public places and public easements, or pursuant to this franchise or previous franchises, in order to permit the City to construct any public improvement, or to build any public project, or for any municipal purpose in which the City has a financial or ownership interest, such relocation shall be made by the Company at the Company's expense; provided, however, that, in the event the City requests that the Company relocate the same facilities within twelve (12) months from the completion of the first relocation, the subsequent relocation(s) shall be at the sole cost of the City and; provided further, that the Company shall not be responsible for the expenses of relocations which primarily benefit a private project. Similarly, the Company shall have no obligation to relocate any facilities which were installed by the Company on Company-owned right-of-way prior to any annexation of land which may occur pursuant to Article 9 hereof. Any such relocation shall be completed within a reasonable time not to exceed ninety (90) days from the date on which the City requests that such relocation work commence; provided, however, that such time period may be enlarged with the approval of the City, which approval shall not be unreasonably withheld. The Company shall, in any event, be granted an extension of time for completion of the relocation equivalent to any delay caused by conditions not under its control. Following relocation of Company facilities, all property disturbed by said relocation shall be restored to substantially its former condition by the Company at the Company's expense within a reasonable time period. Relocated underground facilities shall be underground. Relocated aboveground facilities

shall be aboveground unless the City either agrees to pay the additional cost of moving them underground or requests that such additional cost be paid out of available funds under Section 12.2 or out of such other funds as may be available excluding Company funds or, unless the Company determines, in its sole judgment, that financial or efficiency considerations dictate otherwise. Except where required to serve the City as a customer, nothing herein contained shall be construed to impose any obligation upon the City to make any payment for any relocation of Company's facilities whether located within, or without, said designated areas. Nothing herein contained shall be construed to require relocation of Company's facilities within private easements or other privately held property rights of the Company.

§ 4.7 Service to New Areas. If the boundaries of the City are expanded during the term of this franchise, the Company shall extend service to residents and other City lands in the expanded area at the earliest practical time and in accordance with the Company's extension policy. New service to the expanded area shall be in accordance with the terms of this franchise agreement, including payment of franchise fees.

§ 4.8 City Not Required to Advance Funds. Upon receipt of the City's authorization for billing and construction, the Company shall extend its facilities to provide gas and electric service to the City for municipal uses within the City limits or outside the City and within the Company certificated service area, without requiring the City to advance funds prior to construction.

§ 4.9 Technological Improvements and Energy Conservation and Efficiency. The Company shall introduce and install, as soon as practicable, technological and energy conservation and efficiency advances in its equipment within the City when such advances are technically and economically feasible and are safe and beneficial to the residents of the City and their properties. Upon request by the City, the Company shall review and promptly report advances which have occurred in the gas or electric utility industry in the previous year. The Company shall give equal consideration to the City in proposing energy conservation and efficiency programs. On or before December 31, 1994, the Company shall meet with the City to discuss the full spectrum of energy conservation and efficiency programs in existence at such time. If conditions have not changed in any such two year period, such meetings may be waived by mutual consent of the parties.

§ 4.10 Prudent Avoidance. The Company shall include the concept of prudent avoidance with respect to planning, siting, construction, and operation of transmission lines within the City. Prudent avoidance shall mean the striking of a reasonable balance between the potential health effects of exposure to magnetic fields and the cost and impacts of mitigation of such exposure by taking steps to reduce the exposure at reasonable or modest cost as required by the Rules Regulating the Service of Electric Utilities promulgated by the Public Utilities Commission, as same may be amended from time to time. Any determination regarding the proper implementation by the Company of the concept of prudent avoidance shall rest solely with the Public Utilities Commission.

## ARTICLE 5

### COMPLIANCE

§ 5.1 City Regulation. The City expressly reserves, and the Company expressly recognizes, the City's right and duty to adopt, from time to time, in addition to the provisions herein contained, such charter provisions, ordinances and rules and regulations as may by the City be deemed necessary in the exercise of its police power for the protection of the health, safety and welfare of its residents and their properties.

§ 5.2 Capital Improvements. Representatives of the City and the Company shall meet annually to discuss annual and long-term planning for capital improvement projects contemplated by each within the City. The Company shall use its best efforts to include within its capital improvement projects the plans of the City relating to same. The Company and the City shall exchange copies of their reports regarding annual and long-term planning for capital improvement projects with descriptions of construction activities including, to the extent known, the timing and method of construction and shall exchange said copies within thirty (30) days after issuance thereof. Except for emergencies, the City may require that all installations be coordinated with the City's municipal planning and street improvement programs. The City Manager or designee shall be the City's agent for inspection and for compliance with City ordinances and regulations on any such projects.

§ 5.3 Compliance with PUC Regulations. The gas and electrical energy which the Company distributes shall conform with the standards promulgated by the PUC in the Rules Regulating the Service of Gas and Electric Utilities, and with the tariff provisions of the Company setting standards, as the same may be amended from time to time, and the City shall have access to all records of the Company monitoring compliance with such standards. Prior to final adoption by the City of this franchise, the Company shall file with the PUC such amendments to its tariffs as may be necessary to make its tariff provisions compatible with the provisions of this franchise and shall report to the City any changes that have been made for this purpose.

§ 5.4 Compliance with Air and Water Quality and Hazardous Materials Laws. The Company shall use its best efforts to take measures which will result in its facilities and operations meeting the standards required by applicable city, county, federal, and state air and water quality laws, and laws regulating transportation, use, and handling of hazardous materials. Upon request, the Company will provide the City with a status report of such measures.

§ 5.5 Inspection. The City shall have the right to inspect at all reasonable times any portion of the Company's system used to serve the City and its residents. The City shall also have the right to inspect and conduct an audit of Company records for the purpose of determining Company compliance with this franchise, at all reasonable times. The Company

agrees to cooperate fully with the City in conducting the inspection and audit and to correct any discrepancy affecting the City's interest in a prompt and efficient manner.

§ 5.6 Bills. On request by the City, the Company shall provide a list of City account numbers and items metered.

## ARTICLE 6

### REPORTS TO CITY

§ 6.1 Reports on Company Operations. The Company shall submit reasonable financial and other necessary reports containing or based on information available from the Company's books and records as the City may from time to time request with respect to the operations of the Company under this franchise, provided that such information can be provided at a reasonable cost. Such reports may be changed from time to time as may be mutually agreeable to the City and the Company. Initially the City requests, by May 1 of each year, the following reports:

(1) an annual report for the prior calendar year; such report shall set forth the return earned by the Company upon operations and all components of the rate base used for calculation of such return as is currently provided or as may in the future be provided to the Public Utilities Commission in connection with various adjustment clause provisions. In addition, such annual report shall include a detailed statement of the annual electric and gas revenues received from residents of the City and the calculation of the franchise fee due and owing thereon, as well as a statement of the amount available in the current calendar year for underground conversion under Article 12 of this franchise, the amount expended in the prior calendar year, and a statement of amounts carried over or advanced, if any; and

~~(2) on an annual basis, the return earned by the Company on its operations and the rate base within the City; and~~

(32) a list of all real property and leasehold interests in real property owned by the Company within the City, excepting public and other easements. Upon request by the City, such list shall include the legal description and land area of each listed property and shall be accompanied by a map showing the location of each listed property and shall include real property and leasehold interests in real property owned by the Company within the Boulder Valley Comprehensive Plan area, as identified by the City; and

(43) short term (less than three (3) years) and long range (over three (3) years) plans for all capital improvements, construction and excavation within the City or affecting service to the City and its residents; and

(54) on an annual basis, a five (5) year forecast of franchise fees to be paid to the City.

§ 6.2 Copies of Tariffs and PUC Filings. Unless otherwise requested, the Company shall file with the City all tariffs, rules, regulations and policies filings made by the Company and subject to approval by the PUC relating to service by the Company to the City and its residents, substantially concurrently with the filing of same by the Company.

## ARTICLE 7

### CITY USE OF COMPANY FACILITIES

§ 7.1 City Use. All poles and suitable overhead structures constructed by the Company within the City may be used by the City for the purpose of stringing wires, provided space is available. Such use shall not include the distribution or transmission of electricity, nor shall such use interfere with the Company's use of such facilities or create an unreasonable hazard. Such use by the City shall be without cost; provided, however, that the Company shall not be responsible for any modifications to the system or for payment of any costs necessitated by such use.

§ 7.2 Future Easements. The City and the Company shall utilize their best efforts to identify future easements that may be mutually beneficial to the parties.

§ 7.3 Underground Conduit. If the Company installs new electric underground conduit or opens a trench or replaces such conduit, the Company shall provide adequate advance notice to permit additional installation of similar conduit and pull-wire for the City. If the City wants additional similar conduit and pull-wire installed, it will so notify the Company and provide similar conduit and pull-wire at its expense, to the Company which will install it without further expense to the City, provided that such action by the City does not unnecessarily interfere with the Company's facilities or delay the accomplishment of the project.

## ARTICLE 8

### JOINT USE

§ 8.1 Joint Use. The Company shall permit use by others of poles and suitable overhead structures constructed by the Company so long as such grantees are not in competition with the Company and so long as such grantees obtain the permission of the City and pay to the City its appropriate fees, if any; provided such joint use does not unreasonably interfere with the Company's use of these facilities, and provided also that said use: (i) does not create a safety hazard; and (ii) that the Company shall assume no liability nor shall it be put to any additional expense in connection therewith.

## ARTICLE 9

### ANNEXATION TO THE CITY

§ 9.1 Annexation to the City. When a property owned by the Company becomes eligible for voluntary annexation to the City and is not simultaneously eligible for voluntary annexation to another municipal corporation, the Company shall petition to annex the same upon request made by the City, provided that no condition of such annexation shall impair the Company's ownership or then existing use of its property and water or water rights for public utility purposes. Except as herein provided, the Company agrees to meet all terms and conditions imposed upon the annexation by the City that are no more stringent than those imposed generally upon property owners seeking annexation of their land to the City. The Company shall be exempted from a public donation of land, money or water rights arising from such mandatory annexation under this Section to the extent that the portion of land requested is committed, dedicated and being utilized by facilities involved in generating, transmitting or distributing electric energy or gas services under this ordinance, and provided further that said exemption from public donation shall not extend to any unimproved portion of land or portion of land not so committed, dedicated and currently used.

## ARTICLE 10

### RIGHT OF FIRST PURCHASE/USE OF COMPANY LAND

§ 10.1 Right of First Purchase. In the event that the Company at any time during the term of this franchise proposes to sell or dispose of any of its real property located within the City, it shall grant the City the right of first purchase of same. The Company shall obtain and provide to the City a qualified appraisal on any such property and the City shall have sixty (60) days from the date of receipt of such appraisal in which to exercise the right of first purchase by giving written notice to the Company. Should the City not provide the required written notice, the Company may proceed to negotiate with others for the sale of such property provided that the Company may not sell such property for an amount less than ninety percent (90%) of the appraised value without first providing the City an opportunity to purchase such property at such lesser price, in which event the City must notify the Company in writing within thirty (30) days from the date of receipt of such notice if it wishes to purchase such property. It is understood that nothing in this paragraph shall preclude the Company from transferring real property to a subsidiary or affiliate without first according the City the rights referred to above, provided that if the transferee proposes to sell or dispose of such property, it shall not do so without first affording the City the rights referred to above.

§ 10.2 Use of Company Land. The Company recognizes and supports the City's purchase and preservation of open space land and its participation with Boulder County in what is commonly referred to as the Boulder Valley Comprehensive Plan area. In acknowledgment

of the unique relationship which exists between the City and Boulder County as related to the creation of the Boulder Valley Comprehensive Plan area, the Company agrees that, so long as not inconsistent with or prohibited by the Company's ownership interest, it will offer to grant the use of Company owned land, water facilities and rights-of-way lying within the Boulder Valley Comprehensive Plan area, as amended, by the public for the purposes set forth in the Parks and Open Spaces Act of 1984, to the extent that such use does not interfere with the Company's use of such lands, water facilities and rights-of-way; it being recognized that the Company has the primary responsibility to operate and use such land, water facilities and rights-of-way for public utility purposes. Nothing herein contained shall require the Company to make such an offer with respect to the surface of water facilities. The intent expressed herein shall be applicable to all land, water facilities and rights-of-way subsequently acquired by the Company within the presently designated open space land within the Boulder Valley Comprehensive Plan area, as amended. The Company shall assume no liability for any such use nor shall the Company be put to any additional expense in connection therewith. When presented with a request by the City to utilize such land, water facilities or rights-of-way, the Company and the City shall meet to discuss in good faith the nature of the requested use and the manner of same.

## ARTICLE 11

### INDEMNIFICATION OF THE CITY

§ 11.1 City Held Harmless. The Company shall indemnify, defend and save the City harmless from and against all lawsuits, liability, damage, claims, demands, judgments, and losses whatsoever in nature and reimburse the City for all its reasonable expenses, arising out of the operations of the Company within the City pursuant to this franchise (including the Company's street cutting operations) and the securing of and the exercise by the Company of the franchise rights granted in this ordinance, including without limitation any third party claim, administrative hearing, or litigation. The City will provide prompt written notice to the Company of the pendency of any claim or action against the City arising out of the exercise by the Company of its franchise rights. The Company will be permitted, at its own expense, to appear and defend or to assist in defense of such claim. None of the City expenses reimbursed by the Company under this Article shall be surcharged to customers within the City. Nothing contained herein shall obligate the Company to save the City harmless and indemnify the City to the extent any lawsuits, liability, damage, claims, demands, judgments and losses shall have been found, by final decision of a court of competent jurisdiction in an action where the City is a party, to have arisen out of or in connection with any negligent act or failure to act of the City or of its officers, agents or employees.

§ 11.2 Payment of Expenses Incurred by City in Relation to Ordinance. At the City's option, the Company shall pay in advance or reimburse the City for expenses incurred in the election process for obtaining the franchise and for copying of documents arising out of the negotiations or the election process for obtaining the franchise.

§ 11.3 Financial Responsibility. At the time of the execution of this ordinance, and from time to time at the City's request, but not more frequently than annually, the Company shall submit to the City Attorney, as a confidential document, proof of its ability to meet its obligations under this ordinance, including without limitation its ability to indemnify the City as required by this article. This proof may take the form of insurance coverage, adequate funding of self-insurance, or the provision of a bond. The Company shall supply the City with a list of its insurance companies with the types of coverage but not levels of insurance. Said list shall be kept current by annual revisions as of January 1 of each year during the term of the franchise. The City may require, from time to time, and the Company agrees to provide additional reasonable funding of the Company's indemnification obligations as a self-insured, if the Company is acting as a self-insurer.

## ARTICLE 12

### UNDERGROUND CONSTRUCTION AND OVERHEAD CONVERSION

§ 12.1 Underground Electrical Lines in New Areas. The Company will place all newly constructed electrical distribution lines underground to the extent required by Company's tariffs, City subdivision regulations, and B.R.C. 1981.

§ 12.2 Overhead Conversion at Expense of Company.

~~A~~(1) Each year during the term of this franchise, as and when requested by the City, the Company shall make available for expenditure one percent (1%) of the preceding calendar year's electric revenues derived from customers within the City for the purpose of undergrounding or reconfiguring electric distribution or transmission lines in streets and other public places within the City; provided, however, that any such undergrounding or reconfiguring of any distribution line shall extend for a minimum distance of one (1) City block or 750 feet, whichever is less, or as may be mutually agreed to by the parties, and; provided further, that any undergrounding or reconfiguring of any transmission line shall be dependent upon safety concerns and protection of the operating integrity of the Company's electric system, which determination shall be made solely by the Company, on a case-by-case basis in accordance with prudent engineering and utility practices.

~~B~~(2) Any unexpended portion of the one percent (1%) of electric revenue shall be carried over to succeeding years and, in addition, upon request by the City, the Company shall anticipate amounts to be available for up to three (3) years in advance. Any amounts to be advanced shall be credited against amounts to be expended in succeeding years until such advances are eliminated. In addition, the parties shall meet during the first six months of year 18 of this franchise (i.e. January-June), or at such other time as the parties may mutually agree, to discuss the progress with which existing overhead distribution or transmission lines within the City are being placed underground or are being reconfigured pursuant to the terms of this Article 12. Such meetings shall be for the purpose of identifying those electric distribution or transmission lines which the City anticipates



undergrounding or reconfiguring during the remaining term of the franchise. The selection of specific undergrounding or reconfiguring projects to be accomplished pursuant to the terms hereof shall be left with the City. The scheduling of such projects shall be left with the Company; provided, however, that the Company agrees to use due diligence to see that those undergrounding or reconfiguring projects agreed to by the parties are, to the extent reasonably practicable, completed prior to the expiration of this franchise. No relocation expenses which the Company is required to expend pursuant to Section 4.6 shall be charged to this allocation.

~~E~~(3) Funds to be expended pursuant to this section shall not be used in any project or situation to the extent that the City has received federal and state funds for the purpose of undergrounding utilities. Funds to be expended pursuant to this section may be used for "matching" purposes with state or federal monies.

~~D~~(4) If the PUC authorizes a system-wide program or programs of undergrounding electric distribution or transmission lines, the Company will allocate to the undergrounding/reconfiguration program created herein such amount as is authorized by the PUC, but such amounts shall in no case be less than the one percent (1%) of annual electric revenues as set forth in Section 12.2(A1).

~~E~~(5) In addition to the provisions of this section, the City may require additional distribution or transmission lines to be moved underground or to be reconfigured at the City's expense.

~~F~~(6) The City acknowledges that the establishment of this undergrounding/reconfiguration program creates no right of the City to any cash payment from the Company but, rather, creates only the right to have the Company utilize the program created in this Article to underground or reconfigure the Company's electric distribution or transmission lines pursuant to the terms of this Article 12. Further, if such monies are not expended pursuant to the conditions hereof, the program is not convertible to cash or available for any other purpose. Notwithstanding the expiration of this franchise agreement, the Company shall complete any undergrounding/reconfiguration projects identified by the City and accepted by the Company prior to the expiration hereof so long as any such projects are evidenced by a scheduled construction commitment executed by both parties. The Company shall not unreasonably withhold acceptance of such project(s).

**§ 12.3 Review of Undergrounding/Reconfiguration Program.** The City and the Company shall mutually plan in advance the undergrounding and reconfiguration projects which shall be undertaken according to the provisions of this section, and shall establish reporting procedures acceptable to both parties pursuant to which matters such as the accounting procedures used by the Company in administering the program shall be communicated to the City. The final decision as to which projects are undertaken rests with the City. The Company shall not withhold approval of the plans of the City except where reasonably necessary for safety or to protect the operating integrity of the Company's electric system.

Representatives of both the City and the Company shall meet periodically to review the Company's undergrounding/reconfiguration program. This review shall include:

- (a) undergrounding and reconfiguration projects, including conversions and replacements which have been accomplished or are underway by the Company, together with the Company's plans for additional undergrounding or reconfiguration; and
- (b) undergrounding and reconfiguration projects anticipated by the City.

§ 12.4 Cooperation to Underground All Overhead Lines. At the time that any overhead electric distribution lines are placed underground pursuant to this franchise, the Company shall notify any licensee having access to affected Company poles that such poles are to be abandoned and vacated, and the Company shall request that the facilities of any such licensee also be removed. The Company shall cooperate so that facilities of the City, franchisees of the City, and telecommunications companies are undergrounded as part of the same project where feasible or otherwise cooperate to minimize the cost of placing such additional facilities underground. This obligation shall be qualified by the requirement that such cooperation shall not unreasonably interfere with the Company's use of its underground facilities, not constitute an additional expense to the Company and not create an additional safety hazard. When other utilities or companies are placing their lines underground, the Company shall cooperate with these utilities and companies and undertake to underground Company facilities as part of the same project where feasible. The Company shall not be required to pay the costs of any other utility in connection with work under this section.

## ARTICLE 13

### TRANSFER OF FRANCHISE

§ 13.1 Consent of City Required. The Company shall not transfer or assign any rights under this franchise to a third party, excepting only corporate reorganizations of the Company not including a third party, unless the City shall approve in writing such transfer or assignment. Approval of the transfer or assignment shall not be unreasonably withheld.

§ 13.2 Transfer Fee. In order that the City may share in the value this franchise adds to the Company's operation, any transfer or assignment of rights under this franchise requiring the approval of the City shall be subject to the condition that the transferee shall promptly pay to the City a pro rata share of one million dollars (\$1,000,000), which pro rata amount of one million dollars (\$1,000,000) shall be calculated by multiplying one million dollars (\$1,000,000) times a fraction of the then population of the City as the numerator and the then population of the City of Denver as the denominator. Such transfer fee shall not be recovered from the City or from the City residents or property owners through electric or gas rates of customers in the City or by surcharge by the transferee or the Company.

## ARTICLE 14

### PURCHASE OR CONDEMNATION

§ 14.1 City's Right to Purchase or Condemn. The right of the City to construct, purchase or condemn any public utility works or ways and the rights of the Company in connection therewith, as provided by the Colorado Constitution and statutes, are hereby expressly reserved and each party shall have the rights provided by law relating to condemnation; provided, however, no award shall be made for the value of the franchise or public rights-of-way.

§ 14.2 Continued Cooperation by Company. In the event the City should elect to condemn the public utility works and ways of the Company, the Company agrees that, at the City's request, it will continue to supply any service it supplies under this franchise, in whole or in part, at the City's request, for the duration of the term of this franchise. In addition, the Company's facilities shall be available for continued service until nine (9) months after a final order is entered in a condemnation proceeding or the effective date of a purchase agreement between the parties; provided, however, that said obligation to maintain the facilities shall not exceed a twenty-four (24) month period after the termination of the franchise. The Company shall continue to provide service pursuant to the terms of this franchise for said twenty-four months until the City has either purchased or condemned the Company's facilities or alternative arrangements have been made to supply gas and electricity to the City and its residents, whichever date shall earlier occur. The City shall not pay for any services that are no longer required.

The Company shall cooperate with the City by making available then existing pertinent Company records which are not privileged to enable the City to evaluate the feasibility of acquisition by the City of Company facilities. The Company shall not be obligated to conduct studies or accrue data without reimbursement by the City, but will make such studies if reimbursed its costs for the same. The Company shall take no action which could inhibit the City's ability to effectively or efficiently use the acquired systems. At the City's request, the Company shall supply gas and electricity for use by the City in the City-owned system.

## ARTICLE 15

### REMOVAL OF COMPANY FACILITIES AT END OF FRANCHISE

§ 15.1 Limitations on Company Removal.

~~A~~(1) In the event this franchise is not renewed at the expiration of its term, unless the City has purchased or condemned the system as provided in Section 14.2, or has provided for alternative gas or electrical service, or as otherwise provided in this section, the Company shall not remove said system pending resolution of the disposition of the system.

~~B~~(2) The Company further agrees it will not withhold any temporary services necessary to protect the public and shall be entitled only to monetary compensation in no greater amount than it would have been entitled to were services provided during the term of this franchise.

~~C~~(3) At the City's request and within a reasonable time not to exceed nine (9) months, the Company shall remove from the streets and other public places and public easements all facilities belonging to the Company located above the surface of the ground which are not purchased by the City at the termination of the franchise, at the Company's expense. Further, the Company, at the request of the City, shall remove at the Company's expense all underground facilities which are not purchased by the City within nine (9) months after the receipt by the Company of a written notice from the official City representative that said underground facilities constitute a hazardous condition or interfere with a municipal use of the subsurface of said streets and other public places and public easements. All public property shall be restored by the Company to substantially its former condition after said removal. The Company need not remove any property from said streets and other public places and public easements which it shall continue to use and maintain pursuant to contractual arrangements with the City. Nothing herein contained shall be construed as requiring the Company to remove any facilities within said streets and other public places and public easements which the Company has the right to operate and maintain independent of those rights granted in this franchise, if in fact such a right exists. Nothing herein contained shall be deemed a waiver of the City's rights independent of those set forth in this Section 15.1(~~C~~3), if in fact such rights exist.

## ARTICLE 16

### CITY GAS AND ELECTRICITY, SMALL POWER PRODUCTION AND COGENERATION

§ 16.1 Transportation of Gas. The City expressly reserves the right to obtain or produce gas. Upon request by the City, the Company shall transport natural gas purchased by the City for use in City facilities pursuant to separate contracts with the City. The Company agrees to negotiate the terms and conditions upon which said gas will be transported in accordance with its tariffs and applicable PUC rules and regulations. Should the contracts covering the subject matter of this Section no longer be subject to regulation by the PUC, the Company agrees to negotiate terms and conditions upon which said gas will be transported which are comparable to other transportation contracts most recently negotiated by the Company with other similarly situated customers. In such a case, the City shall not be responsible for paying any of the Company's legal costs relative to negotiating any such contract.

§ 16.2 City Electricity. The City expressly reserves the right to obtain or produce electricity. The Company agrees to negotiate for the purchase of City generated power in accordance with its tariffs and applicable federal and state rules and regulations. Should the contracts

covering the subject matter of this Section no longer be subject to regulation by federal or state regulatory authorities, the Company agrees to negotiate for the purchase of City generated power on terms and conditions comparable to other contracts most recently negotiated with other similarly situated customers by the Company. In such a case, the City shall not be responsible for paying any of the Company's legal costs relative to negotiating any such contract.

§ 16.3 No Curtailment. The Company shall not curtail contractual purchases of City generated electricity except in emergency situations or as specified in the Company's tariffs.

§ 16.4 City Fleet Refueling Station and Fleet Conversion. The Company shall, on an annual basis, meet with the City to discuss the use of compressed natural gas in city-owned vehicles and the benefits of constructing a state-of-the-art pressurized fleet refueling station.

## ARTICLE 17

### FORFEITURE

§ 17.1 Forfeiture. If the Company fails to perform any of the terms or conditions of this franchise (other than a failure to pay franchise fees pursuant to Sections 3.1 and 3.2, above) and such failure is not a condition of force majeure, the City, acting by and through its Council may determine, after hearing, that such failure is of a substantial nature. Upon receiving notice of such determination, the Company shall have a reasonable time, not to exceed six (6) months, within which to remedy the violations unless the parties otherwise agree in writing. If after such reasonable time corrective actions have not been successfully taken, the City, acting by and through its Council, shall determine whether any or all rights and privileges granted the Company under this franchise shall be forfeited. If the Company fails to pay franchise fees pursuant to Sections 3.1 and 3.2 above and if such failure is not a condition of force majeure, the City shall provide written notice of such failure to the Company. If after receiving said written notice from the City, the Company fails to make the required payment within twenty (20) days, the City, acting by and through its Council, may determine, after hearing, that such failure constitutes a forfeiture of the rights granted herein. For the purposes of this section, the term force majeure shall mean acts of God, strikes, lockouts, acts of public enemies, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, civil disturbances, explosions, inability with reasonable diligence to obtain materials, and any other causes not within the control of the party claiming a suspension, which by the exercise of due diligence such party shall not have been able to avoid or overcome.

§ 17.2 Judicial Review. Any such declaration of forfeiture shall be subject to judicial review as provided by law.

§ 17.3 Other Legal Remedies. Nothing herein contained shall limit or restrict any legal rights that the City or the Company may possess arising from any alleged violation of this franchise.

§ 17.4 Continued Obligations. Upon forfeiture, the Company shall continue to provide service to the City and its residents until the City makes alternative arrangements for such service. If the Company fails to provide continued service, it shall be liable for damages to the City and its residents; provided, however, that nothing herein contained shall create a private right of action against the Company by the residents for any such failure by the Company. The City shall have standing to enforce all provisions of this section.

## ARTICLE 18

### CHANGING CONDITIONS

§ 18.1 Changing Conditions. The Company and the City recognize that many aspects of the gas and electric utility businesses are currently the subject of discussion, examination and the inquiry by different segments of the industries and affected regulatory authorities and that these activities may ultimately result in fundamental changes in the way the Company conducts its business and meets its service obligations. In recognition of the present state of uncertainty respecting these matters, the Company and the City each agree, on request of the other during the term of this franchise, to meet with the other and discuss in good faith whether it would be appropriate, in view of developments of the kind referred to above during the term of this franchise, to amend this franchise or enter into separate, mutually satisfactory arrangements to effect a proper accommodation of any such developments.

## ARTICLE 19

### AMENDMENTS

§ 19.1 Amendments to Franchise. At any time during the term of this franchise, the City, through its City Council, or the Company may propose amendments to this franchise by giving thirty (30) days written notice to the other of the proposed amendments desired and both parties thereafter will negotiate within a reasonable time in good faith in an effort to agree on mutually satisfactory amendments. The word "amendment" as used in this section does not include any change authorized in Section 3.3.

## ARTICLE 20

### MISCELLANEOUS

§ 20.1 Successors and Assigns. The rights, privileges, franchises and obligations granted and contained in this ordinance shall inure to the benefit of and be binding upon the Company,

its successors and assigns. The Company shall not assign this franchise except as provided in Section 13.1 above.

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

§ 20.3 Representatives. 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 ordinance. Notice shall be in writing and forwarded by certified mail or hand delivery to the persons and addresses as hereinafter stated, unless the persons and addresses are changed at the written request of either party, delivered in person or by certified mail. Until any such change shall hereafter be made, notices shall be sent to the City Manager and to the Company's Boulder Division Manager. Currently the addresses are as follows:

For the City of Boulder:  
P.O. Box 791  
Boulder, Colorado 80306

For the Company:  
2655 North 63rd Street  
Boulder, Colorado 80301

§ 20.4 Severability. Should any one or more provisions of this franchise be determined to be illegal or unenforceable, all other provisions nevertheless shall remain effective; provided, however, the parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft a term that will achieve the original intent of the parties hereunder.

§ 20.5 Entire Agreement. This franchise constitutes the entire agreement of the parties. There have been no representations made other than those contained in this franchise.

§ 20.6 Breach of Contract. In the event the Company fails to fulfill a substantial obligation under this franchise, the City will have a breach of contract claim against the Company, in addition to any other remedy provided by law.

§ 20.7 No Waiver. Neither the City nor the Company shall be excused from complying with any provisions of this franchise by any failure of the other to insist upon or to seek compliance with such provisions.

§ 20.8 Reimbursement of City Costs. In the event the City institutes litigation against the Company for a breach of this franchise or for an interpretation of the franchise, and the City is the prevailing party, the Company shall reimburse the City for all costs related thereto, including reasonable attorneys' fees.

## ARTICLE 21

### APPROVAL

§ 21.1 Voter Approval. This grant of franchise shall not become effective unless approved by a majority vote of the qualified electors of the City voting thereon at a municipal election to be held on Tuesday, the 2nd day of November 1993.

§ 21.2 Company Approval. The Company shall file with the City Clerk its written acceptance of this franchise within ten (10) days prior to the municipal election. The Company shall file with the City Clerk its written ratification thereof within ten (10) days after the approval of this franchise by the qualified electors of the City at said municipal election. The acceptance and ratification shall be in a form and content approved by the City Attorney. If the Company shall fail to timely file its written acceptance and ratification as herein provided, this franchise shall be and become null and void.

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### STREET LIGHTING AGREEMENT

THIS AGREEMENT, made and entered into this 7<sup>th</sup> day of September, 1993, by and between PUBLIC SERVICE COMPANY OF COLORADO, a corporation duly organized and existing under the laws of the State of Colorado (the "Company"), and the CITY OF BOULDER, a Colorado municipal corporation existing under the Constitution of the State of Colorado (the "City").

#### WITNESSETH:

WHEREAS, the Company is a public utility engaged in the distribution and sale of electric energy and electric service within the corporate limits of the City and presently provides street lighting service to the City under the terms of an agreement authorized by the City and a Franchise granted by the people of the City at an election held on August 4, 1970, which franchise expired on August 4, 1990, and

WHEREAS, the City and the Company desire to enter into an agreement for the continued service of street lighting to the City, which agreement shall be contingent upon the approval by the registered electors of the City at an election to be held on November 2, 1993 of a franchise granting to the Company the right to continue the distribution and sale of electric energy and electric service in the City.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and promises of the parties hereto, it is hereby agreed as follows:

1. Earlier Contracts Superseded. This contract shall constitute the only agreement between the City and the Company for the furnishing of street lighting service by the Company to the City and the payments therefor by the City to the Company and it

supersedes and cancels all former street lighting agreements between the parties hereto.

2. Service Provided. The Company shall furnish and sell to the City, and the City shall take and purchase from the Company, during the term hereof, all street lighting service used by the City in the City under the terms and conditions hereinafter provided.

3. Character of Service. Street lighting service shall be the illumination of streets, parks, alleys and public ways and places by means of Company-owned non-ornamental and ornamental street lights located in the City or along the streets adjacent to the city limits thereof, supplied from the Company's overhead or underground electric distribution system.

Company-owned non-ornamental street lights shall consist of luminaires attached to brackets mounted on the Company's standard wood or composition poles of the type used in its electric distribution system, and luminaires attached to vehicular underpass structures or vehicular tunnels.

Company-owned ornamental street lights shall consist of luminaires attached to Company-owned ornamental standards.

4. Installation of Facilities. Street lighting facilities shall be installed when requested and authorized by the City in accordance with the following:

a. Company shall furnish and install permanent non-ornamental and ornamental street lights supplied by overhead or underground feed from overhead or underground distribution circuits in accordance with the Company's tariffs on file from time to time with the Public Utilities Commission of the State of Colorado and any applicable rules and regulations of the Public Utilities Commission of the State of Colorado, provided that such

units are for permanent use of the City and provided that the City shall cause to be installed any conduit and foundations for street lighting units in new bridges, viaducts, or other similar structures, as an integral part of said structures, where necessary to supply street lighting requested by the City. Vehicular underpass structures or vehicular tunnels and ornamental street lights shall be supplied by an underground feed unless mutually agreed to otherwise. The Company shall furnish and install special ornamental standards when requested by the City in order to accommodate City traffic signals and Company-owned luminaires, provided that the City shall bear any cost in excess of a standard ornamental pole installation and any cost of replacing the existing pole with such dual-purpose standard. Street lights and poles which are acquired by the City from a source other than the Company shall be provided street lighting service upon request by the City and, provided further, such street lights and poles meet Company standards for safety, suitability, supply, engineering, and a minimum order of fifty (50) lights and poles are ordered so as to minimize costs and promote the Company's ability to maintain the same.

b. The Company shall install at the request of the City temporary street lighting installations, provided that the City shall bear the cost of installing and removing all facilities necessary to supply the service requested, less the salvage value of the materials used. Temporary installations shall be any street lighting unit installed for periods not to exceed 18 months, unless otherwise agreed. In the event an installation planned as a permanent installation is removed within 18 months, it shall be deemed to be a temporary installation and the City shall reimburse the Company accordingly.

c. Any location or relocation of the Company's facilities in the said public ways

and places required, caused or occasioned by any City project shall be at the cost of the Company, it being understood that the Company will not be responsible for the expenses of relocations required by the City which primarily benefit a private project. Such relocation shall be accomplished by the Company in accordance with a schedule established by the City after consultation with the Company. The Company shall reconstruct, replace or restore any street, alley, or public way or place in a timely fashion, and any water, sewer or other facility of the City disturbed by the Company, without cost to the City to a condition acceptable to the City consistent with reasonable standards of safety and appearance.

d. The type and rating of all equipment shall not be less than the standard of the equipment most recently installed in the City and comparable to that currently accepted in the industry, provided that the type and rating of special ornamental standards to accommodate City traffic signals and Company-owned luminaires shall be subject to mutual agreement by the City and the Company.

e. The Company shall have the right to make excavations and parking and paving cuts necessary for the operation and maintenance of street lighting service, including the installation of new or moving of existing street lighting facilities as provided herein, subject to all pertinent Ordinances and Rules and Regulations of the City provided, however, that the Company shall so locate its plants, works, substations, transmission and distribution structures, lines, equipment, mains, pipes and conduits within the City so as to cause minimum interference with the proper use of streets, and public ways and to cause minimum interference with the rights or reasonable convenience of property owners whose property adjoins any of the street and public ways.

f. The Company shall use its best efforts to obtain, at the lowest possible cost, easements for its street lighting units in those instances where the distance between the curb line and the property line along the street is less than three feet. In the event the Company is unsuccessful, the City will assist the Company in acquiring such easements, or will acquire them on behalf of the Company.

g. The Company shall furnish annually to the City a record of all lamps installed, which shall clearly specify the location, type and lumen rating of each lamp, and shall furnish with each monthly bill a list of all additions and deletions, specifying like information.

h. City traffic signals and street identification and traffic control signs may be installed on Company-owned poles located on public streets without prior authorization from the Company only if such poles are not wood, there are no other electric distribution facilities present on the poles (other than electric wiring), and the City installed device will not constitute a safety problem for Company personnel. The Company shall assume no liability nor shall it be put to any additional expense in connection therewith and the use of said poles by the City shall be in such manner as to not unnecessarily interfere with the Company's use of same or to create a hazard to personnel of the Company or the public. In those instances where the City does not attach such signs to the Company's poles, the City will endeavor to so locate them so that the closest part of said signs will be a minimum of 5 feet from the Company poles.

i. Except as provided above, or in the Franchise or other agreements between the Company and the City, the City shall place no equipment on the Company's poles or

fixtures.

j. The Company will use its competitive bidding process, for the procurement of hardware and the installation of street lighting facilities. Contract bids will be evaluated at least annually to ensure that costs and quality of material and work remain competitive. Costs to the City will be based on the lowest responsive evaluated bid cost meeting the Company's criteria.

5. Operation and Maintenance. The Company shall maintain and repair all of its facilities in accordance with the applicable tariffs utilized in providing street lighting service within the City.

The Company shall periodically paint all initially painted street light standards and brackets, including any special ornamental standards accommodating City traffic signals and Company-owned luminaires, but shall not be required to do so more than once in every 5 years.

The Company shall conduct, upon the request and in cooperation with the City, sample studies of the outage rate of street lights being paid for by the City or its departments. These studies are to be statistically reliable at the 90% level of confidence. If the study shows that more than 2% of street lights are not operating, the Company shall pay the City each ensuing month an amount of money equal to a percentage of the prior month's total charges for all street light service billed to the City and its departments, where the percentage is equal to the outage rate resulting from the sample study minus 2%, rounded to the nearest tenth of one percent. Were the outage rate to exceed 2%, the Company may request permission to conduct a new sample study in cooperation with the

City, but no sooner than 30 days following the most recent sample study.

The Company agrees to provide and mail, at least annually, a separate insert in its bills to all customers located within the City informing them of specific procedures for reporting outages of street lights.

6. Rates. The City shall pay the Company for street lighting service pursuant to the rates set forth in Company tariffs on file and in effect from time to time with the Public Utilities Commission of the State of Colorado.

7. Improvements. The City shall at all times be the beneficiary of any improvements in the art of street illumination, and the Company agrees to cooperate with the City in the application of such improvements to street lighting service. As burn-outs occur the Company agrees to substitute lamps of increased efficiency for lamps in existing luminaires under like conditions of cost and service.

The Company also agrees upon request of the City to increase the light intensity on streets by replacing its existing street lighting luminaires not classified as temporary, at no expense to the City. The City will designate the lumen rating required and will pay the appropriate monthly rate on file, in effect from time to time, with the Public Utilities Commission of the State of Colorado.

The Company agrees to investigate and, if appropriate, to develop, in cooperation with the City, new, alternative street light and/or traffic signal facilities and to support before the Public Utilities Commission applicable tariffs which are consistent with and reflect the purchase, installation and/or maintenance of such facilities by the Company.

8. Billing and Payment. On or about the first day of each month the Company

shall render bills to the offices of the City and in the number of copies requested from time to time by the City Manager for street lighting service rendered during the preceding month, and payment for same shall be made not later than 30 days after receipt of such bills. The Company shall notify the City in writing of any rate change requests made to the Public Utilities Commission as soon as reasonably possible.

9. Determination of Lumen Rating. The lumen rating of electric discharge lamps shall be considered as the nominal rated initial lumens determined in accordance with standard industry practices.

10. Lighting Period. Lighting Periods are as follows:

Burning Dusk to Dawn. This means the operation of street lighting units by automatic control equipment from approximately eighteen minutes after sunset to approximately eleven minutes before sunrise, with a total burning time of approximately 4,140 hours per year. All street lighting rates of the Company, unless otherwise indicated in the specific rate, are for Burning Dusk to Dawn service.

Burning Dawn to Dusk. This means the operation of street lighting units during the time each day from dawn to dusk with approximately 4,620 burning hours per year. Such service would normally only be required for service to certain understructure locations.

Burning 24 Hours per Day. This means continuous lamp operation during all hours of the day and night.

11. Ownership - Removal. All material and equipment furnished and installed



by the Company, whether paid for by the City or the Company, shall at all times be and remain the property of the Company and the Company shall have a reasonable time after the termination of this agreement and upon failure to negotiate a new agreement, provided that the Company complies with its obligations under the Franchise granted by the people of the City of Boulder and the jurisdiction and orders of the Public Utilities Commission of Colorado, in which to remove such material and equipment.

12. Liability - Indemnity. The Company agrees to supply street lighting service in accordance with the terms hereof continuously and without interruption, insofar as reasonable diligence will permit. The Company shall restore service within a reasonable time after notification by the City or otherwise of any failure or interruption of street lighting service. The Company shall not be liable for failure or default in delivery or total or partial interruption of service caused by accidents, acts of God, floods, fires, strikes, riots, wars, authority and orders of government, or any other causes and contingencies beyond its control, nor shall the Company be liable for injury or damage occasioned by City traffic lights or other facilities attached to Company facilities or resulting from the fault or failure of non-Company owned street lighting facilities. Except as above provided, the Company shall save and keep harmless the City from any and all damages and liabilities it may have or sustain by reason of the carrying out of the terms hereof by the Company.

13. Damage to Street Lighting Facilities. If any individual damages any Company-owned street lighting installation by violation of any traffic or other ordinance of the City, or in any other unlawful manner, the City will notify the Company of any such incident and will endeavor with reasonable diligence and effort to determine responsibility for such

incident.

14. Term - Effective Date. This agreement shall be effective for a period coincident with the term of that certain franchise granted to Company by City and approved by the taxpaying electors of the City at an election to be held on November 2, 1993.

15. Assignment. The benefits of this agreement shall inure to and its obligations shall be binding upon the successors and assigns of the respective parties hereto.

16. Remedies. In addition to any other remedies provided by law to either of the parties to this agreement, each party hereto shall have the right to enjoin any substantial breach or threatened breach of this agreement by the other, and shall also have the right to specific performance of this agreement.

17. Notices and Options. Any notice or options provided for by this agreement or by law to be given, served or exercised by or upon the Company may be given or served by depositing in the United States mails, postage prepaid, a letter addressed to the Company at such address as the Company shall designate in writing, or may be personally served upon the Company, or any person hereinafter authorized by the Company to receive such notice, and any notice or option provided for by this agreement to be given, served or exercised by or upon City may be given or served by depositing in the United States mails, postage prepaid, a letter addressed to the City Manager, Box 791, Boulder, Colorado 80306. Any notice or notices given or served as provided herein shall be effectual and binding for all purposes upon the principals of the parties so served.

18. Amendment. No alterations, amendments or modifications hereof shall be valid unless executed by an instrument in writing by the parties with the same formality as

this agreement. Neither this agreement, nor any term hereof, can be changed, modified or abandoned, in whole or in part, except by an instrument in writing, and no subsequent oral agreement shall have any validity whatsoever.

19. No Discrimination In Employment. The Company shall not refuse to hire, discharge, promote or demote or discriminate in matters of compensation against any person otherwise qualified, solely because of race, creed, color, religion, sex, age, national origin or ancestry or handicap: and further agrees to insert the foregoing provision or its equivalent in all contracts to which the Company is a party which affect or relate to its activities in connection with this agreement.

20. Payment of Taxes. 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 agreement. The Company reserves whatever rights it may otherwise have to protest such imposts.

21. Approval By City Council. This agreement is subject to approval by the City Council.

22. Appropriation By City Council. Any and all obligations of the City under and pursuant to this agreement are subject to prior annual appropriations of monies expressly made by the City Council of the City for the purposes of this agreement and paid to the City.

In witness whereof, this agreement is executed by the City and the Company on the  
day and year first above written.

CITY OF BOULDER, COLORADO

*ST Honey*  
\_\_\_\_\_  
Stephen T. Honey, City Manager

Attest:

*Alan D Lewis*  
\_\_\_\_\_  
Director of Finance and Record  
Ex-officio City Clerk

PUBLIC SERVICE COMPANY OF COLORADO,  
A COLORADO CORPORATION

By: *Philip D. [Signature]*  
\_\_\_\_\_  
Vice President  
Title: Division Customer Operations

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