ORDINANCE NO. 8186

AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO BLACK HILLS / COLORADO ELECTRIC UTILITY COMPANY, L.P. TO FURNISH AND SELL ELECTRICITY TO THE CITY AND TO ALL RESIDENTS WITHIN THE CITY, AND THE NON-EXCLUSIVE RIGHT TO ACQUIRE, PURCHASE, CONSTRUCT, INSTALL, MAINTAIN, OPERATE AND EXTEND INTO, WITHIN AND THROUGH SAID CITY ALL FACILITIES REASONABLY NECESSARY FOR THE GENERATION, PRODUCTION, SALE, PURCHASE, EXCHANGE, TRANSMISSION AND DISTRIBUTION OF ELECTRIC UTILITY SERVICE WITHIN AND THROUGH THE CITY, TOGETHER WITH THE RIGHT TO MAKE REASONABLE USE OF THE STREETS AND PUBLIC UTILITY EASEMENTS OF THE CITY AS HEREBIN DEFINED AS MAY BE NECESSARY, AND FIXING THE TERMS, CONDITIONS, AND REQUIREMENTS APPLICABLE TO ALL OF THE FOREGOING.

BE IT ORDAINED BY THE PEOPLE OF PUEBLO, COLORADO:

ARTICLE 1
DEFINITIONS

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

§1.1 "City" refers to the City of Pueblo, a municipal corporation of the State of Colorado.

§1.2 "City Council" or "Council" refers to the legislative body of the City.

§1.3 "City Facilities" means all facilities owned by the City or by any enterprise of the City, and all facilities used by the City, or any enterprise of the City, reasonably necessary to provide any and all municipal services into, within and through the City, and all facilities owned, leased, possessed or otherwise used by the City, or any enterprise of the City, in connection with the provision of any services or functions which the City, or any enterprise of the City, is now or may in the future be authorized to provide or to exercise under its charter or applicable law.
§1.4 "Clean Energy" means energy produced from Renewable Energy Resources, eligible energy sources, and by means of advanced technologies that cost-effectively capture and sequester carbon emissions produced as a by-product of power generation. For purposes of this definition, "cost" means all those costs as determined and authorized by the PUC.

§1.5 "Company" refers to Black Hills/Colorado Electric Utility Company L.P. d/b/a Black Hills Energy and its successors and assigns including affiliates or subsidiaries that undertake to perform any of the obligations under this Franchise.

§1.6 "Company Facilities" refer to all facilities owned or legally and beneficially used by the Company reasonably necessary to provide electric service into, within and through the City, including but not limited to plants, works, electric systems, substations, transmission and distribution structures, lines, equipment, pipes, mains, conduit, transformers, underground lines, meters, meter reading devices, communication and data transfer equipment, control equipment, street lights, wire conductors, cables and poles.

§1.7 Customer Service Center” means a business office conveniently located for residential and business customer access within the City of Pueblo which is:

(a) Open daily during normal business hours (currently 8:00 am to 4:00 pm), Monday through Friday, except holidays ("ordinary business hours");

(b) Staffed with company employees present onsite during ordinary business hours set forth above;

(c) Available to provide general information and guidance and, if necessary, to schedule an appointment, concerning:

1) contacting Company’s Call Centers for initiation, termination, cancellation and resumption of customer electrical service, or make changes to existing service; and to answer questions concerning billing statements,

2) addressing general customer service issues, energy efficiency, ways in which customer bills may be minimized, budget billing programs designed to provide level payments by customers over the course of a year, Company and third-party energy payment assistance programs, weatherization programs and any other services which are available by Company to customers to assist customers in paying their bills and minimizing their energy usage, and general questions and complaints regarding all regulated services and activities of the Company conducted pursuant to this Franchise or otherwise, or

3) redirecting customer specific issues to the appropriate Company personnel responsible for assistance requested by the customer.

The Company’s service center at 105 S Victoria Ave, Pueblo, Colorado may be used for the “Customer Service Center” within the meaning of this definition.

§1.8 “Emergency” means a sudden or unforeseen situation or occurrence which would lead a reasonably prudent person to believe that immediate action is necessary to protect life, health, or property.
§ 1.9 "Enterprise" means an enterprise as defined in Colo. Const. Art. X, Sec. 20.

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

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

§ 1.12 "Force Majeure" means the inability to undertake an obligation of this Franchise due to a cause that could not be reasonably anticipated by a party or is beyond its reasonable control, after exercise of best efforts to perform, including but not limited to fire, strike, war, riots, acts of governmental authority, acts of God, floods, epidemics, quarantines, labor disputes, unavailability or shortages of materials or equipment or failures or delays in delivery of materials. Neither the City nor the Company shall be in breach of this Franchise if a failure to perform any of the duties under this Franchise is due to a Force Majeure condition.

§ 1.13 "Gross Revenues" refers to those amounts of money, which the Company receives from the sale of electricity within the City under rates authorized by the Public Utilities Commission, as adjusted for refunds, net write-offs of uncollectible accounts, corrections or regulatory adjustments. Regulatory adjustments include, but are not limited to, credits, surcharges, refunds, and pro-forma adjustments including, by way of example, but not limited to purchase capacity cost adjustments, fuel cost adjustments, transmission cost adjustments or other adjustments) pursuant to federal or state regulation. "Gross Receipts" shall include any revenues from the sale of electricity to the City. The term "Gross Revenues" shall also include any amounts of money which the Company receives from the retail wheeling of electricity in the City but shall not include any amounts received for wholesale wheeling.

§ 1.14 "Other City Property" refers to the surface, the air space above the surface and the area below the surface of any property owned or controlled by the City or hereafter held by the City, that would not otherwise fall under the definition of "Streets." As to any Company Facilities authorized on Other City Property, the terms of this Franchise shall control except to the extent such Franchise terms are inconsistent with the terms of any easements, rights-of-way, licenses or similar rights held by the Company on such Other City Property.

§ 1.15 "Private Project" refers to any project which is not covered by the definition of "Public Project."

§ 1.16 "Public Project" refers to (1) any public work or improvement within the City that is wholly or beneficially owned by the City or an enterprise of the City, or which is being acquired by the City or enterprise of the City under a lease-purchase agreement; or (2) any public work or improvement within the City where fifty percent (50%) or more of the funding is provided by any combination of the City, any enterprise of the City, the federal government, the State of Colorado, or Pueblo County; or (3) a relocation project necessitated or reasonably required by changes to, or realignment of, any road system or utility system owned by the City or by any City enterprise.
§ 1.17 "Public Utilities Commission" or "PUC" or "Commission" refers to the Public Utilities Commission of the State of Colorado or other state agency succeeding to the regulatory powers of the Public Utilities Commission.

§ 1.18 "Public Utility Easement" refers to any easement over, under, or above public or private property, lawfully acquired by or dedicated generally for public utility use and the placement of public utility facilities, including but not limited to Company Facilities. Public Utility Easement shall not include any easement for the use of the Company that is located within the Streets or in Other City Property or any easements, rights-of-way or licenses or similar rights held by the Company on any other property located in the City limits.

§ 1.19 "Renewable Energy Resources" means any eligible renewable energy resource as defined in any federal or state law establishing a renewable portfolio standard, such as § 40-2-124(1)(a), C.R.S., as the same shall be amended from time to time, or any similar statute hereafter enacted.

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

§ 1.21 "Streets" or "City Streets" refers to the surface, the air space above the surface and the area below the surface of any City dedicated streets, alleys, sidewalks, bridges, roads, viaducts, lanes, public easements, and other public rights-of-way within the City. Streets shall not include Public Utility Easements or park properties.

§ 1.22 "Street Lighting Facilities" refers to all Company Facilities necessary to provide Street Lighting Service under a Street Lighting agreement with City.

§ 1.23 "Street Lighting Service" refers to the illumination of Streets and Other City Property by means of Company-owned non-ornamental street lights and Company-owned ornamental street lights located in the City or along the Streets adjacent to the City limits thereof, supplied from Company's overhead or underground electric distribution system.

§ 1.24 "Supporting Documentation" refers to all information reasonably required in order to allow the Company to design and construct any work performed under the provisions of this Franchise.

§ 1.25 "Tariffs" refer to those tariffs of the Company on file and in effect with the PUC.

§ 1.26 "Traffic Facilities" refers to any City-owned or authorized traffic signal, traffic signage or other traffic control or monitoring device, equipment or facility, including all associated controls, connections and other support facilities or improvements, located in any Streets or Other City Property.

§ 1.27 "Utility Service" refers to the regulated sale of electricity and any other regulated services by Company to Residents under rates approved by the Commission.
ARTICLE 2
GRANT OF FRANCHISE

§2.1 Grant of Franchise.

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

(1) To furnish and sell electricity to the City and to all Residents within the City, under tariffs on file with the PUC, and to otherwise carry out the terms of this franchise.

(2) Subject to the term, conditions, and provisions contained in this Franchise, the City also hereby grants to the Company a non-exclusive right to construct, install, maintain, and operate all facilities reasonably necessary to provide electricity within the City by reasonable non-exclusive use of said City Streets, as may be necessary to carry out the terms of this Franchise.

(3) These rights and obligations 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, which are within the service territory of the Company, as established by the Commission.

(4) To acquire, purchase, construct, install, locate, maintain, operate, and extend into, within and through the City all Company Facilities reasonably necessary for the generation, production, manufacture, sale, purchase, exchange, transmission, transportation and distribution of electric utility service within and through the City.

B. Street Lighting Service. The rights granted by this Franchise encompass the nonexclusive right to provide Street Lighting Service as directed by the City, and the provisions of this Franchise shall apply with full and equal force to Street Lighting Service provided by the Company. Wherever reference is made in this Franchise to the sale or provision of Utility Service, these references shall be deemed to include the provision of Street Lighting Service. Street Lighting Service within the City shall be governed by tariffs on file with the Colorado PUC, and pursuant to the terms set forth in a separate "Street Lighting Agreement" entered into between the parties concurrently with this Franchise.

C. Customer Service Office and Customer Payment Locations. During the term of this Franchise, the Company shall maintain a Customer Service Office in Pueblo. In addition, for the convenience of its customers, the Company shall maintain the payment drop box at its Customer Service Office and customer payment locations with at least two (2) retailers in Pueblo that do not provide payday lending, pawn service or cash advances.
§2.2 Conditions And Limitations.

A. Scope of Franchise. The grant of this Franchise shall extend to all areas of the City as it is now or hereafter constituted; however, nothing contained in this Franchise shall be construed to authorize the Company to engage in activities other than the provision of electric utility service or in areas not expressly authorized by the Commission.

B. Subject to City Usage. The authorization granted herein is subject to the City's prior and paramount right to use of the Streets, public easements and other public places for public or municipal purposes, and is also subject to the City's exercise of its lawful police power, including, but not limited to, planning, zoning, subdivision, permit and building code requirements.

C. Prior Property Interests Not Revoked. This grant is not intended to revoke any prior license, easement, or right to use real property and such licenses, easements or rights of use are hereby affirmed. Such rights shall, however, be governed by the terms of this Franchise.

D. Franchise Not Exclusive. The authorization to use and occupy said Streets, Public Utility Easements, 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 make or grant a similar authorization to such use of Streets, Public Utility Easements and other public places to any other person, firm or corporation.

E. Rights Retained. The City retains the right:

1. To terminate the Franchise as provided in Article 18 for substantial misuse, substantial non-use or material failure of Company to substantially comply with the provisions hereof,

2. To use, control and regulate the use of Streets, Public Utility Easements and other public places and the space above and beneath them, including, without limitation the right to perform work on its Streets, roadways, rights of way, Public Utility Easements and public places, by constructing, altering, renewing, paving, widening, grading, blasting or excavating; the right to build and install systems, facilities and projects of any nature; and the right to require relocation of Company's facilities in accordance with the terms of this Franchise,

3. To require proper and adequate extension of plant, facilities and service consistent with the police powers of the City and the Public Utilities Laws, Commission rules and the Company's Commission-approved tariffs,

4. To require the maintenance of plant, facilities and service consistent with the police powers of the City and the Public Utilities Laws, Commission rules and the Company's Commission-approved tariffs,
(5) To establish reasonable standards of service and quality of products and to prevent discrimination in service or rates consistent with the police powers of the City and the Public Utilities Laws, Commission rules and the Company’s Commission-approved tariffs,

(6) To require continuous and nondiscriminatory service to residence in accordance with the terms of this Franchise throughout the entire period hereof, consistent with the police powers of the City and the Public Utilities Laws, Commission rules and the Company’s Commission-approved tariffs,

(7) To impose such other necessary general regulations for the safety, welfare and accommodation of the public as permitted or required by the Pueblo City Charter or municipal ordinances.

F. No Other Rights Conferred. This Franchise does not confer rights upon Company other than as expressly provided herein. No privilege or power of eminent domain is bestowed by this grant. No right or privilege passes, or is conferred, by implication under this Franchise Agreement. Nothing herein precludes Company from exercising any statutory powers of eminent domain provided under federal or state law. Nothing herein grants any rights to Company in or upon Other City Property.

G. No Warranty. The grant of the Franchise is not a warranty of title or any other property interest in any Street, Public Utility Easement, or other public place.

H. Waiver. Both parties waive as of the effective date of this Franchise Agreement, any claim or defense that any provision of this Franchise Agreement, as it exists on the effective date of this Franchise Agreement, is unenforceable or otherwise invalid or void. Neither party waives the right to challenge the validity of any applicable law.

§2.3 Effective Date and Term.

A. Term. The term of the franchise granted by this Ordinance shall be for twenty (20) years. This Franchise shall take effect at 12:00 am on August 12, 2010, and shall supersede any prior Franchise grants to the Company by the City. This Franchise shall terminate at 11:59.99 pm on August 12, 2030, unless extended by mutual consent.

B. Execution. The Company shall execute this Franchise and deliver five (5) executed originals to the City Manager prior to final approval by the City Council of the ordinance referring the grant of this Franchise to the qualifying taxing electors of the City at a duly called election. The Franchise shall only become effective upon the majority vote of the qualified taxing electors voting thereon. The question of its being granted shall be submitted to such vote by ordinance, upon deposit with the Director of Finance of the expense (to be determined by the Director of Finance) of such submission by the Company for the Franchise. Within one week after effective date of the ordinance approving this Franchise, the President of the City Council and other necessary or proper officials of the City are hereby authorized and directed to sign this Franchise in the name of the City, and the City Clerk is hereby authorized and directed to attest to the same under seal.
of the City, and to do all things necessary for the delivery of this Franchise at a duly called

election.

C. Acceptance and Obligations. The grant of the Franchise shall not become effective
unless and until Company has (a) filed an unconditional acceptance of the Franchise grant in
the form appended hereto as Exhibit “A”; and (b) made all payments, posted all securities
and guarantees, and supplied all information that it is required to supply prior to or upon the
effective date of the Franchise. Company shall file with the city clerk its written
unconditional acceptance of this Franchise and all of its terms and provisions at least ten
(10) days prior to the special municipal franchise election. Company shall file with the city
clerk its written ratification thereof, in the form appended hereto as Exhibit “B” within ten
(10) days after the approval of this ordinance by the qualified electors of the City at said
special municipal franchise election. If Company shall fail to timely file its written
acceptance or ratification as herein provided, this Franchise shall be and become null and
void.

D. Condition Precedent.

(1) Concurrently with this Franchise, the City and the Company have agreed to
terms on a "Street Lighting Agreement (the "Street Lighting Agreement")}. The Street
Lighting Agreement shall be effective concurrently with this Franchise and the Company
shall signify its acceptance of the Street Lighting Agreement by executing the Street
Lighting Agreement and delivering five (5) executed originals to the City Manager
concurrently with its delivery of the executed originals of this Franchise. Failure to
execute and deliver the Street Lighting Agreement to the City in accordance with this
section shall render this Franchise void and of no further force and effect.

ARTICLE 3
CITY POLICE POWERS

§3.1 Police Powers. Unless otherwise pre-empted by state or federal law, all ordinances of
general application, including, but not limited to, zoning and all other land use ordinances,
building, fire, health, electrical, plumbing and mechanical codes, now in existence or
hereafter enacted by the City, shall be fully applicable to the exercise of this Franchise, and
Company shall comply therewith. Unless pre-empted by state or federal law, the City
expressly reserves, and the Company expressly acknowledges the City’s right to adopt,
from time to time, in addition to the provisions contained herein, such laws, charter
provisions, ordinances, rules and regulations, as it may deem necessary in the lawful
exercise of its governmental powers, which may include the imposition of non-
discriminatory fees payable by the Company and other businesses to defray costs
incurred by the City in supervising and regulating the Company and other businesses.
The City acknowledges the Company’s right to oppose the adoption of such laws, charter
provisions, ordinances, rules and regulations. If the City considers making any substantive
changes in its local codes or regulations that in the City’s reasonable opinion will substantially
and materially impact the Company’s operations in the City's Streets, the City shall make a
good faith effort to advise the Company of such consideration; provided, however, that lack
of notice shall not be justification for the Company's non-compliance with any applicable local requirements.

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

§3.3 Use of Streets Limited. Streets within the City shall not be occupied by or used by Company except under provisions of this Franchise and as otherwise available for use by the general public. Company shall not use City Streets to store or park company vehicles when such vehicles are not in active use, but shall store same on off-street parking areas provided or leased by Company for such purpose.

§3.4 Use of Utility Poles. This Franchise shall not be deemed to expressly or impliedly authorize the Company to utilize poles or conduits owned by any public or private utility which are located within the Streets, without the express consent of the utility, including the City.

ARTICLE 4
FRANCHISE FEE

§4.1 Franchise Fee.

A. Fee. In partial consideration for the Franchise, which provides for the Company's use of City Streets, which are valuable public properties acquired and maintained by the City at great expense to its Residents, and in recognition that the grant to the Company of the use of City Streets is a valuable right, the Company shall collect from its customers and shall pay to the City a sum equal to three percent (3%) of all Gross Revenue. To the extent required or provided for by law, the Company shall collect this fee from a surcharge upon City residents, including businesses, who are customers of the Company. Included within "Gross Revenue" shall be all amounts paid to the Company by the City or any of its departments, including amounts paid by the Board of Water Works of Pueblo, Colorado for its meters located within the City.

B. Obligation in Lieu of Fee. In the event that the Franchise fee specified herein is declared void for any reason by a court of competent jurisdiction, unless prohibited by law, the Company shall be obligated to pay the City, at the same times and in the same manner as provided in the Franchise, an aggregate amount equal to the amount which the Company would have paid as a Franchise fee as partial consideration for use of the City Streets. To the extent required by law, the Company shall collect the amounts agreed upon through a surcharge upon Utility Service provided to City Residents, or at the option of the City the City shall have the right to impose any lawful occupation fees or similar tax reasonably equivalent on an annual basis to said franchise fee.

C. Changes in Utility Service Industries. The City and the Company recognize that utility service industries are the subject of restructuring initiatives by legislative and regulatory authorities, and are also experiencing other changes as a result of mergers, acquisitions, and reorganizations. Some of such initiatives and changes have or may
have an adverse impact upon the Franchise fee revenues provided for herein. In recognition of the length of the term of this Franchise, the Company agrees that in the event any such initiatives or changes adversely impact the Franchise fee revenues, to the extent permitted by law, upon receiving a written request from the City, the Company will cooperate with and assist the City in modifying this Franchise to provide for an amount in Franchise fees or some other form of compensation that may be assessed to the Company’s customers in the City and that will provide the same level of funding as the amount of Franchise fees that would have been paid to the City prior to such initiatives and changes.

§4.2 Remittance of Franchise Fee.

A. **Remittance Schedule.** Franchise fee revenues shall be remitted by the Company to the City as directed by the City in monthly installments not later than thirty (30) days following the close of each month. Upon written request of the City, the Company shall provide to the City at the time of remittance of each installment of the Franchise Fee a copy of all calculations and supporting documentation (sometimes referred to as “work papers”) used in calculating the installment then paid. On or before November 1 of each year during the term of this Franchise, the Company shall provide the City with its estimate of the total Franchise Fee which it estimates may be paid to the City for the next succeeding calendar year. All franchise fee payments shall be made by check payable to the City, or upon mutual agreement, by electronic funds transfer, made to a City bank account identified by the Director of Finance of the City of Pueblo.

B. **Correction of Franchise Fee Payments.** In the event that either the City or the Company discovers that there has been an error in the calculation of the Franchise fee payment to the City, it shall provide written notice to the other party of the error. If the party receiving the written notice of error does not agree with the written notice of error, that party may challenge the written notice of error pursuant to Section 4.2.E of this Franchise; otherwise, the error shall be corrected in the next monthly payment. However, if the error results in an overpayment of the Franchise fee to the City, and said overpayment is in excess of Ten Thousand Dollars ($10,000.00), credit for the overpayment shall be spread over the same period the error was undiscovered. All Franchise fee underpayments shall be corrected in the next monthly payment, together with interest computed at the rate set by the PUC for customer security deposits held by the Company, from the date when due until the date paid. In no event shall either party be required to fund or refund any overpayment or underpayment made as a result of a Company error which occurred more than three (3) years prior to the discovery of the Company error.

C. **Change of Franchise Fee.** The City Council during the year 2013 and every third year thereafter during the term of this franchise, upon giving sixty (60) days notice to the Company of its intention to do so, may reconsider the consideration to be paid by the Company under this article. If the City Council decides that the franchise fee should be increased or decreased, it shall provide for such increase or decrease by ordinance. The Company agrees to pay whatever franchise fee is so established by the City in this section; provided, however, no increase shall exceed 1% of the annual Gross Revenues, and further provided, that the cumulative aggregate increases shall not result in the franchise fee being greater than 5% of the annual Gross Revenues. The City shall only raise the franchise fee
on Company’s customers if it also raises the franchise fee of any and all other electric franchisees granted an electric franchise to the same level imposed on Company and its customers. The City will decrease the franchise fee imposed on Company and its customers to the level imposed on the other electric franchisees if the City decreases the franchise fee of any other electric franchisee.

D. Reconciliation and Audit of Franchise Fee Payments.

(1) The City shall endeavor to keep the Company advised of all annexations into the City so that the Company may timely change its billing to all customer meters in the annexed area to change the associated taxes and to charge the franchise fee. Additionally, the City shall assist the Company, as requested, in identifying any customer meters for which the City has agreed to waive or reduce sales taxes or the franchise fee for any period of time.

(2) Every two (2) years commencing, at the end of 2012, the Company shall conduct an internal audit to investigate and determine the correctness of the Franchise fee paid to the City during the prior period. In connection with such audit, as requested, the City will assist the Company in reconciling its records with City records so that Company may confirm the accuracy of its Franchise Fee payments. The Company shall provide a written report to the City Manager containing the audit findings regarding the Franchise fee paid to the City for the previous period. The Company shall also supply such supporting documents as the City may reasonably request.

(3) The City may, at any time, conduct its own audit at its own expense, and the Company shall cooperate fully, including, but not necessarily limited to, providing the City's auditor with all information reasonably necessary to complete the audit.

(4) If the results of a City audit conducted pursuant to subsection D(3) concludes that the Company has underpaid the City by two percent (2%) or more, in addition to the obligation to pay such amounts to the City, the Company shall also pay all costs of the audit.

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

F. Report Regarding Pole Attachments. Upon written request by the City, but not more than once per year, the Company shall supply the City with reports, in such formats and providing such details as reasonably requested by the City, of all persons or entities that have Company-permitted pole attachments, or which use available space in company
conduits, on Company Facilities within the City, and the names and addresses of each such person or entity.

§4.3 Franchise Fee Payment Not in Lieu of Permit or Other Fees. So long as the Company performs its obligations under this Franchise Agreement, including payment of the franchise fee, the Company will be exempt from the payment of any license fees or license charges to the City, but payment of the Franchise fee does not exempt the Company from any other lawful tax or fee imposed generally upon persons doing business within the City, including any sales or use tax, fee for a street closure permit, pavement impact fee, excavation permit, a street cut permit, or other lawful permits hereafter required by the City, except that the Franchise fee provided for herein shall be in lieu of any occupation or similar tax for the use of City Streets. If for any reason the Company does not make payment of the Franchise fee, the City may institute such license fee, license charge, occupation tax or other, similar tax for use of City Streets, as well as exercising other remedies available under the terms of this Franchise.

ARTICLE 5
ADMINISTRATION OF FRANCHISE

§5.1 City Designee. The City Manager shall designate in writing to the Company an official having full power and authority to administer the Franchise. The City may also designate one or more City representatives to act as the primary liaison with the Company as to particular matters addressed by this Franchise and shall provide the Company with the name and telephone numbers of said City representatives. The City may change these designations by providing written notice to the Company. The City's designee shall have the right, at all reasonable times, to inspect any Company Facilities in City Streets.

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

§5.3 Coordination of Work.

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

B. The Company and City agree to mutually coordinate the Company's activities in City Streets. The City and the Company will meet annually, in the month of October of each calendar year, at a time and place mutually agreed, to exchange their respective short-term and long-term forecasts and/or work plans for construction and other similar work which may affect City Streets. The City and Company shall hold such meetings as either deems necessary to exchange additional information with a view towards
coordinating their respective activities in those areas where such coordination may prove beneficial and so that the City will be assured that all provisions of this Franchise, building and zoning codes, and air and water pollution regulations are complied with, and that aesthetic and other relevant planning principles have been given due consideration.

ARTICLE 6
SUPPLY, CONSTRUCTION, AND DESIGN

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

§6.2 Supply. Pursuant to its duties and obligations under Colorado statutes and Colorado Public Utility Commission regulations, the Company shall take all reasonable and necessary steps to assure an adequate supply of electricity to the City and its residents, at just and reasonable rates.

§6.3 Service to City Facilities. Charges to the City. The parties acknowledge the jurisdiction of the Colorado PUC over the Company's regulated electric retail rates. Service to the City shall be provided at the rates set forth in the Company's Commission-approved tariff as the same may be amended from time to time pursuant to Commission order. No charges to the City by the Company for Utility Service shall exceed the lowest charge for similar service or supplies provided by the Company to any other similarly situated customer of the Company. The City has the right to intervene in all dockets filed by the Company with the Commission including dockets to establish the Company's rates.

§6.4 Restoration of Service.

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

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

§6.5 Obligations Regarding Company Facilities.

A. Company Facilities. All Company Facilities within City Streets shall be maintained in good repair and condition.
B. **Company Work Within the City.** All work within City Streets performed or caused to be performed by the Company shall be done:

1. in a good and workmanlike manner;

2. in accordance with all applicable laws, ordinances, and regulations; and,

3. with all applicable permitting and other fees and charges paid in full.

Additionally, consistent with the nature of the project and the conditions in effect during the project, the Company will endeavor to complete such work in a timely and expeditious manner and in a manner which minimizes inconvenience to the public.

C. **No Interference with City Facilities.** Company Facilities shall not interfere with any City Facilities, facilities of City enterprises, special districts or other municipal or quasi-municipal uses of City Streets and rights of way, including, but not limited to: water facilities, sanitary or storm sewer facilities, telecommunication facilities, other communication facilities, traffic signal lights, street lights or other City or authorized public uses of the Streets; and if and where Company Facilities may be authorized upon Other City Property, Company Facilities shall not interfere with City’s present and future use of Other City Property. The Company shall endeavor to install and maintain Company Facilities in City Streets (and, if and where authorized, in Other City Property) so as to minimize interference with other property, trees, and other improvements and natural features in and adjoining the Streets, provided, however, that Company shall not be prevented from engaging in such lawful activities as may be required to maintain the safety and reliability of Company’s Facilities. Company Facilities shall be located and installed and maintained in conformity with the National Electrical Safety Code.

D. **Permit and Inspection.** The installation, maintenance, renovation, and replacement of any Company Facilities in the City Streets and Public Utility Easements (and, if and where authorized, in Other City Property) by or on behalf of the Company shall be subject to applicable permit, inspection and approval requirements of the City, payment of all required fees, and posting of any required securities (unless waived). Such permit, inspection and approval requirements may include, but shall not be limited to the following matters: location of Company Facilities within the City Streets and Public Utility Easements (and, if authorized, in Other City Property), cutting and trimming of trees and shrubs (such as the requirement to use licensed tree trimmers), and disturbance of pavement, sidewalks, and surfaces of City Streets or Other City Property. The City shall not be arbitrary or capricious in permitting, inspection or approval processes. The Company agrees to cooperate with the City in conducting inspections and shall promptly perform any remedial action lawfully and reasonably required by the City pursuant to any such inspection. Except in emergency circumstances, prior to construction of any new generation plant, substations, transmission facilities, buildings, or similar structures within the City, the Company shall furnish to the City the plans for such structures.

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

F. **Increase in Voltage.** The Company shall reimburse the City for the cost of upgrading the electrical system or facility of any City building or facility that uses Utility Service where such upgrading is caused or occasioned by the Company's decision to increase the voltage of delivered electrical energy.

G. **As-Built Drawings.** Upon reasonable written request of the City designee, the Company shall provide, within 14 days of the request, as-built drawings of any Company Facility installed within the City Streets or contiguous to the City Streets. As used in this section, as-built drawings refers to the facility drawings as maintained in the Company's geographical information system or any equivalent electronic or paper-based system. The Company shall not be required to create drawings that do not exist at the time of the request.

H. **No Third Party Rights.** Nothing in this Article 6 shall be construed to provide rights to third parties nor shall it excuse any third-party from liability caused by negligent or intentional action.

§6.6 **Excavation and Construction Related Damages.** The Company shall remedy, or caused to be remedied, within a reasonable time, all damage caused by the Company or its contractors to private property located adjacent to Streets or dedicated easements caused by the Company’s excavation or construction activities in the City Streets or dedicated easements.

§6.7 **Restoration of City Streets.**

A. When the Company does any work in or affecting the City Streets or Other City Property (if and where authorized), the Company shall, upon completion, without cost to the City, promptly remove any obstructions therefrom and restore such City Streets or Other City Property to a condition that meets applicable written City standards. If weather or other conditions do not permit the complete restoration required by this Section, the Company may, with the approval of the City, temporarily restore the affected City Streets or Other city Property, provided that such temporary restoration is without cost to the City and provided further that the Company promptly undertakes and completes the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Upon the request of the City, the Company shall restore the Streets or Other City Property to a better condition than existed before the work was undertaken, provided that the City shall be responsible for any additional costs of such restoration. If the Company fails to promptly restore the City Streets or Other City Property as required by this Section, and if in the reasonable discretion of the City immediate action is required for the protection of public health and safety, the City may, upon giving three (3) days' written
notice to the Company, restore such City Streets or Other City Property or remove the obstruction therefrom; provided however, that the City's actions shall not unreasonably interfere with Company Facilities. The Company shall be responsible for the actual cost incurred by the City to restore such City Streets or Other City Property or to remove any obstructions therefrom. In the course of its restoration of City Streets or Other City Property under this Section, the City shall not perform work on Company facilities unless specifically authorized by the Company in writing on a project by project basis and subject to the terms and conditions agreed to in such authorization.

B. To the extent reasonably practicable, the Company will endeavor to accommodate the reasonable desires of any property owner respecting location within easements or rights-of-way traversing private land of above ground boxes or appurtenances constituting a part of the Company Facilities. Additionally, to the extent reasonably practicable, the Company will continue its existing practice of attempting to contact the occupants of all private property in advance of entering such property for the purpose of construction or initial installation of Company Facilities within easements or rights-of-way traversing such property. If any easements or rights-of-way traversing private land are disturbed by Company's activities, Company will substantially restore such easements and rights-of-way consistent with good utility practice and as required by any terms of such easements and rights-of-way. The Company may, but shall not be required, to reasonably restore or replace landscaping, fencing or other improvements located in such easements and rights-of-way except as otherwise provided by law or the terms of its easements and rights-of-way.

§6.8 Relocation of Company Facilities at Public Projects.

A. Relocation Obligation. The Company shall, without cost to the City, temporarily or permanently remove, relocate, change or alter the position of any Company Facility in City Streets or in Other City Property whenever the City shall determine that such removal, relocation, change or alteration is necessary for the completion of any Public Project. For all such relocations, the Company and the City agree to confer on the location and relocation of the Company Facilities in the City Streets or Other City Property in order to achieve relocation in the manner which is most efficient and cost-effective for City. Notwithstanding the foregoing, once the Company has relocated any Company Facility at the City's direction, if the City requests that the same Company Facility be relocated within two years, the subsequent relocation shall not be at the Company's expense. Following relocation from the public right-of-way or city streets, all property shall be restored to its former condition or better by the Company at its expense. Company will not be required to relocate its equipment or facilities from private easements without full payment of the relocation costs to the Company.

City shall consider reasonable alternatives in designing its public works projects and exercising its authority under this section so as not to arbitrarily cause Company unreasonable additional expense. If alternative public right-of-way space if available, City shall also provide a reasonable alternative location for Company's facilities. City shall give Company written notice of an order or request to vacate a public right-of-way; provided, however, that its receipt of such notice shall not deprive Company of its right to operate and maintain its existing facilities in such public right-of-way until it (a) if applicable,
receives the reasonable cost of relocating the same and (b) obtains a reasonable public right-of-way, dedicated utility easement, or private easement alternative location for such facilities.

B. **Private Project.** The Company shall not be responsible for the expenses of any relocation required by Private Projects, and the Company has the right to require the payment of estimated relocation expenses from the affected private party before undertaking such relocation. To the extent the City orders or requests Company to relocate its facilities or equipment for the benefit of a commercial or Private Project at the request of a commercial or private developer, another non-public entity, then Company shall receive payment for the cost of such relocation as a precondition to relocating its facilities or equipment.

C. **Relocation Performance.** The relocations set forth in Section 6.7.A of this Franchise shall be completed within a reasonable time. Subject to delays caused by Force Majeure or by City revisions to supporting documents, in the case of relocations with an estimated cost of $250,000 or less, the Company shall use commercially reasonable efforts to complete such relocations within ninety (90) days, and in the case of relocations with an estimated cost of greater than $250,000, the Company shall use commercially reasonable efforts to complete such relocations within one hundred-twenty (120) days, from the later of the date on which the Director requests, in writing, that the relocation commence, or the date when the Company is provided the Supporting Documentation, except as otherwise provided herein.

D. **Process for Preplanned and Priority Relocations.** At the request of the City in connection with a particular major preplanned relocation, priority relocations or relocations involving unusual circumstances the Company and the City may agree in writing upon procedures to coordinate such relocations. Such procedures, once agreed upon, shall not be modified by either party without the written consent of the other party.

E. **City Revision of Supporting Documentation.** Any revision by the City of Supporting Documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding facility relocation shall be deemed good cause for a reasonable extension of time to complete the relocation under the Franchise.

F. **Completion.** Each such relocation shall be complete only when the Company actually relocates the Company Facilities, restores the relocation site in accordance with Section 6.7.A of this Franchise or as otherwise agreed with the City, and removes from the site or properly abandons on-site all unused facilities, equipment, material and other impediments.

G. **Utility Easements For Which Relocation Obligation Does Not Apply.** The relocation obligation set forth in this Section shall only apply to Company Facilities located in City Streets or in Other City Property. The obligation shall not apply to Company Facilities located on property owned by the Company in fee, or to Company Facilities located in privately-owned easements or in Public Utility Easements. The
provisions of this Section 6.7 shall also not apply to Company Facilities located in Other City Property within any easements, rights-of-way, licenses or similar rights held by Company and the Company’s rights and obligations as to such Facilities shall be governed by the terms of the instruments creating such rights.

H. **Coordination.** A representative of the Company shall, if notified in advance and when possible, attend monthly rights of way coordination meetings of the City, for any pending Public Project involving relocation of Company Facilities. Such meetings shall be for the purpose of minimizing conflicts where possible and to facilitate coordination with any timetable established by the City for any Public Project.

I. **Proposed Alternatives or Modifications.** Upon receipt of written notice of a required relocation, the Company may propose an alternative to or modification of the Public Project requiring the relocation in an effort to mitigate or avoid the impact of the required relocation of Company Facilities, particularly transmission facilities ("mitigation proposal"). The City shall perform a reconnaissance review of the mitigation proposal at no charge to the Company. As a result of the reconnaissance review of the mitigation proposal, the City shall, in good faith, estimate its cost to implement the mitigation proposal and shall communicate that estimate in writing to the Company, so that the Company can make an informed decision as to whether it will request that the mitigation proposal be implemented. The acceptance of the proposed alternative or modification shall be at the sole discretion of the City, provided, however, that such acceptance shall not be unreasonably withheld. In the event the City accepts the proposed alternative or modification, the Company agrees to promptly compensate the City for all additional costs, expenses or delay that the City reasonably determines will result from the implementation of the proposed alternative.

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

§6.10 **City Not Required to Advance Funds.** Upon receipt of the City's authorization for billing and construction, the Company shall extend Company Facilities to provide Utility Service to the City as a customer, without requiring the City to advance funds prior to construction. The City shall pay for the extension of Company Facilities once completed in accordance with the Company's extension policy on file with the PUC.

§6.11 **Technological Improvements.** The Company will continue to evaluate technological advances in the utility industry for cost-effective opportunities to improve service and/or reduce costs consistent with the provision of safe and reliable service to its customers and will use reasonable efforts to implement technological advances identified by the Company which the Company believes are consistent with its obligation to provide safe, reliable service at just and reasonable rates. The Company reserves the right to seek authorization from the Commission prior to implementing any technological advances.
§6.12 **Movement of Buildings.** Company shall, upon request by any person holding a building moving permit, license or other approval issued by the City or State, temporarily remove, raise or lower its wires to permit the moving of buildings. The expense of such removal, raising or lowering shall be paid by the person requesting same, and Company shall be authorized to require such payment in advance. Company shall be given not less than thirty (30) business day's oral or written notice to arrange for such temporary wire changes. If the request to raise or lower wires to permit the moving of buildings is made by the City for a municipal purpose, the removal, raising or lowering shall be without cost to the City. If a line is de-energized or temporarily relocated at the request of a party other than the City, the Company may seek reimbursement from the party seeking the relocation.

**ARTICLE 7**

**RELIABILITY**

§7.1 **Reliability.** The Company shall operate and maintain Company Facilities efficiently and economically and in accordance with the all applicable Federal and State standards, including standards promulgated by the North American Energy Reliability Corporation ("NERC") and of the Commission and consistent with the national utility standards for the provision of adequate, safe, and reliable Utility Service.

§7.2 **Reliability Reports.** The Company shall provide the City with a copy of any and all reports provided to any State or Federal agency regarding the reliability of Company Facilities and Utility Service in Colorado contemporaneously with the filing of any such report with the agency. Nothing herein shall require Company to prepare reports not otherwise in existence or otherwise required by federal or state laws.

**ARTICLE 8**

**COMPANY PERFORMANCE OBLIGATIONS**

§8.1 **Service To City Facilities.** The conditions under which the Company shall install new or modified Utility Service to City Facilities shall be governed by this Franchise, the Company's approved Commission tariffs and to the extent applicable, the Street Lighting Service Agreement ("SLS Agreement"), effective concurrently with this Franchise. In providing any such new or modified Utility Service to City Facilities, the Company agrees to perform as follows:

A. **Performance.** The Company shall complete each such new or modified Utility Service within a reasonable time, subject to delays due to (i) Force Majeure or other cause that could not be reasonably anticipated by the Company, (ii) City revision of Supporting Documentation that causes the Company to substantially redesign and/or change its plans regarding such City Projects, (iii) action or inaction of the City, (iv) for other good cause shown, or (v) as otherwise agreed to by the parties.

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

§8.2 Adjustments to Company Facilities to Accommodate Street Maintenance, Repair and Paving Operations. The Company shall perform adjustments to Company Facilities, including manholes and other appurtenances in Streets and Other City Property, to accommodate City street maintenance, repair and paving operations ("City operations") at no cost to the City. In providing such adjustments to Company Facilities, the Company agrees to perform as follows:

A. Performance. The Company shall complete each requested adjustment within a reasonable time, subject to delays due to (i) Force Majeure or other cause that could not be reasonably anticipated by the Company, (ii) City revision of Supporting Documentation that causes the Company to substantially redesign and/or change its plans regarding such City Projects, (iii) action or inaction of the City, (iv) for other good cause shown, or (v) as otherwise agreed to by the parties.

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

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

§8.3 Third Party Damage Recovery.

A. Damage to Company Interests. If any third-party damages any Company Facilities that the Company is responsible to repair or replace, to the extent permitted by law, upon request for information by Company to City, the City will provide to the Company within a reasonable time all pertinent information within its possession regarding the incident and the damage, including the identity of the responsible third-party.

B. Damage to City Interests. If any third-party damages any Company Facilities for which the City is obligated to reimburse the Company for the cost of the repair or replacement of the damaged facility, to the extent permitted by law the Company will notify the City of any such incident and will provide to the City within a reasonable time all pertinent information within its possession regarding the incident and the damage, including the identity of the responsible third-party.

C. Meeting. The Company and the City agree to meet periodically, upon written request of either party, for the purpose of developing, implementing, reviewing, improving and/or modifying mutually beneficial procedures and methods for the efficient gathering and transmittal of information useful in recovery efforts against third parties for damaging Company Facilities.
ARTICLE 9
BILLING AND PAYMENT

§9.1 Billing for Utility Services.

A. Unless otherwise provided in its tariffs, the rules and regulations of the Commission, or the laws of Colorado, the Company shall render bills monthly to the offices of the City for Utility Service obtained by the City, and other related services for which the Company is entitled to payment from City and for which the City has authorized payment.

B. Billings for service rendered during the preceding month, except for billings pursuant to the Agreement, shall be sent to the person(s) designated by the City and payment for same shall be made as prescribed in the Agreement and the applicable tariff on file and in effect from time to time with the Commission.

C. The Company shall provide all billings and any underlying support documentation reasonably requested by the City. The billings and documentation shall be provided in an editable and manipulatable electronic format that is acceptable to the Company and the City, as soon as such technology is available to the Company.

D. Upon request of the City, the Company will meet with the City for the purpose of developing, implementing, reviewing, and for modifying mutually beneficial and acceptable billing procedures, methods, and formats which may include, without limitation, electronic billing and upgrades or beneficial alternatives to the Company’s current most advanced billing technology, for the efficient and cost effective rendering and processing of such billings submitted by the Company to the City. No such discussions will require Company to implement a billing system other than one used for all of its customers in Colorado, except as a pilot program approved by the Commission.

§9.2 Payment to City. In the event the City reasonably determines that the Company is liable to the City for payments, costs, expenses or damages of any nature, the City shall send written notice to the Company advising the Company of such determination and providing reasonable supporting documentation regarding such determination. Upon receipt of such written notice, the Company may request a meeting between the Company’s designee and a designee of the City Manager to discuss such determination. The Company shall notify the City within thirty (30) days after its receipt of such written notice if the Company disputes all or any portion of the City’s determination of liability. The Company shall pay the undisputed portion of such liability within thirty (30) days of the date of receipt of the City’s written notice. The Company shall not be required to pay the disputed portion of such liability until thirty (30) days after final resolution of such dispute pursuant to the Company’s tariffs or by settlement or litigation. If the Company fails to pay any such liability within the time provided by this section 9.2, subject to Commission rules, the City may deduct the unpaid amount from amounts owed by the City to Company for Utility Services.
ARTICLE 10
USE OF COMPANY FACILITIES

§10.1 City Use of Company Facilities.

A. Emergency Use: In the event of an Emergency, the City shall be permitted by Company to make use of Company Facilities in the City at no cost to the City for the placement of City equipment or facilities necessary to serve a legitimate police, fire, municipal, public safety or traffic control purpose, or for any other emergency purpose consistent with the City’s police powers. Such use of Company Facilities shall be of a limited duration and will only be allowed if the use does not substantially interfere with the Company’s own use of Company Facilities. To the extent practicable, given the nature and extent of any emergency, the City will notify the Company in writing in advance of its intent to use Company facilities and the nature of such use. The City shall be responsible for costs associated with modifications to Company Facilities to accommodate the City’s temporary use of such Company Facilities and for any electricity used. Any such City use must comply with the National Electric Safety Code (2008) (hereafter “NESC”); 4 CCR 723-3-3200, and all other applicable laws, rules and regulations.

B. Non-Emergency Use: The City shall be permitted to make reasonable attachments of its communication systems to the Company’s electrical distribution or transmission system, including underground facilities, at the City’s expense, provided such use does not unreasonably interfere with the use of such systems for electrical energy or create an unreasonable hazard. The City shall complete the pole attachment process outlined by the Company. This process requires that the City shall sign a Pole Attachment Agreement and Permit that outlines the NESC requirements for making attachments to company-owned facilities. In accordance with this Franchise, Company will not require a rental fee or other charge for the City to reasonably attach communication systems to the Company’s electric distribution system. The City shall communicate its intent to attach communication systems by filling out and submitting “Exhibit C”, Attachment Permit Form when City is requesting to make any attachment to Company’s electric distribution system. Company may refuse to attach City communication systems if the Company reasonably determines that such use of Company’s facilities by City attachment would cause an unsafe or unstable condition. Such use by City may include, by way of illustration but not by way of limitation, the attachment of municipal or public safety telecommunications network cables or facilities or intelligent traffic management systems or the attachment of cables for transmitting television or radio signals. The Company shall not be responsible for any modifications to Company’s Facilities or for payment of any costs necessitated by such use by the City, but shall not otherwise charge the City for such attachment. A copy of the Company’s current Attachment Agreement is included as Exhibit D to this franchise. Company reserves the right to refuse City attachments if the Company reasonably determines that such attachment will interfere with Company safety requirements or otherwise determines such attachment is not reasonable or prudent. Nothing under this Section 10.1(B) shall confer any right upon a third party to use Company Facilities.
§10.2 Third Party Use of Company Facilities. If requested in writing by the City, the Company shall allow other companies who hold franchises, or otherwise have obtained consent from the City to use the Streets, to utilize Company Facilities for the placement of their facilities upon approval by the Company and agreement upon reasonable terms and conditions including payment of fees established by the Company. Company reserves the right to refuse to allow such attachments if the Company reasonably determines that such attachments will interfere with Company safety requirements or otherwise determines such attachments are not reasonable or prudent. The Company’s consent to allow such use of Company Facilities shall not be unreasonably withheld. No such use shall be permitted if it would violate terms of the Telecommunications Act of 1996, (Pub. Law. No. 104-104, 110 Stat. 56).

§10.3 City Use of Company Transmission Rights-of-Way. To the extent Company is authorized to do so under the terms of its rights-of-way, the Company shall permit the City use of rights-of-way which Company may now, or in the future, own or have an interest in within the City for the purposes set forth in and pursuant to the provisions of the Colorado Park and Open Space Act of 1984, C.R.S. Section 29-7-5-101, et seq., provided that the Company shall not be required to make such an offer in any circumstances where such offer would materially interfere with the Company’s use of rights-of-way. If the Company’s offer of use is accepted by the City, then any improvements deemed appropriate by the City and consistent with the purpose of the Park and Open Space Act of 1984 shall be made by the City at the City’s expense.

§10.4 Emergencies. Upon written request, the Company shall assist and fully cooperate with the City in developing an emergency management plan. In the case of any Emergency or disaster, the Company shall, upon verbal request of the City, make available Company Facilities for emergency use during the Emergency or the disaster period. Such use of Company Facilities shall be of a limited duration and will only be allowed if the use does not interfere with the Company’s own use of Company Facilities. In the case of any Emergency or disaster, the City shall, upon verbal request of the Company, make available City facilities for emergency use during the Emergency or the disaster period. Such use of City facilities shall be of a limited duration and will only be allowed if the use does not interfere with the City’s own use of City facilities. Nothing in this section shall be construed to prevent or limit the City’s power of eminent domain as provided by law.

ARTICLE 11
UNDERGROUNDING OF OVERHEAD FACILITIES

§11.1 Underground Policy. The official public policy of the City is that all new and relocated utility lines be placed underground.

§11.2 Underground Electrical Lines. The Company shall, upon payment to the Company of the charges provided in its tariffs or under any agreement entered into between the Company and any third party, place all newly constructed electrical distribution lines underground as required by and in accordance with the Company’s tariffs and as required by subdivision or other regulations adopted by the City or other proper authority as set forth in Chapter 4 of
Title XII and Chapters 2 and 4 of Title XVII of the Pueblo Municipal Code as it exists or may be amended, replaced or renumbered, and City Ordinance No. 7560 relating to utilities, defining and regulating overhead electrical feeder lines, and providing penalties for violation thereof. Newly constructed electric distribution lines are lines that did not exist prior to their construction. Any existing overhead line that requires an upgrade does not constitute a new line.

§11.3 Underground Conduit. In addition to the rights given the City under this Article, whenever the Company installs new underground conduits or replaces existing underground conduits, the Company shall provide reasonable advance notice to the City, prior to placing newly constructed electrical distribution lines in newly developed areas underground, so that the City may elect to request that the Company install additional conduit for the City. If City wants additional conduit installed, it will notify Company and provide conduit to the Company at the City’s expense. The City will pay to the Company any additional or incremental cost required to install the City’s conduit. City and Company shall cooperate to minimize installation costs of underground conduit and minimize cutting the streets.

§11.4 Undergrounding Conversion Fee.

A. Undergrounding Fee. In further consideration for this Franchise, in addition to the Franchise Fee payable under this Franchise, the Company shall collect from its customers during the term of the Franchise, a sum equal to one half of one percent (0.5%) of the current charges appearing on each customer statement (except that portion of current charges constituting pass through of the Franchise Fee) (the "Undergrounding Fee") for the purpose of undergrounding existing overhead distribution facilities in streets and other public places within the City and the associated service lines, as requested by the City in the exercise of its police powers and in accordance with the provisions of this Franchise. To the extent required or provided for by law, the Company shall collect the Undergrounding Fee from a surcharge upon City residents, including businesses, who are customers of the Company, in the manner provided by Tariff Sheet No. 48 of the Company’s tariff or any similar future tariff provision. The Undergrounding Fee shall not be imposed upon, charged to, added to or collected from the City or City Enterprises.

B. Payment or Deposit of Undergrounding Fee. Undergrounding Fees collected by the Company shall be paid to the City at the time and in the manner that the Company pays Franchise Fees to the City. Alternatively, at the request of the City, the Company agrees to deposit, on at least a monthly basis, the Undergrounding Fees collected by the Company into one or more segregated, interest-bearing accounts, in the Company’s name but for the benefit of the City, at institutions selected by the City and, upon such deposit, the Company shall not be responsible for any losses that might be incurred as a result of the failure or performance of such institutions.

C. Undergrounding Eligible Projects. Any undergrounding of any distribution line shall extend for a minimum distance of one City block or 750 feet, whichever is less, or as may be mutually agreed to by the parties. The determination of undergrounding projects that can be completed with the amount of funds available from the Underground Fee shall be made by the City, after consultation with the Company, and shall be dependent
upon safety concerns and protection of the operating integrity of the Company’s electric system, which determination shall be made by the Company on a case-by-case basis in accordance with prudent engineering and utility practices (“Eligible Projects”). The Company shall be responsible for all of the work associated with any all Eligible Project.

D. Advances of Undergrounding Fees. In the event the City proposes an Eligible Project which has an estimated cost that exceeds the amount of Undergrounding Fees then collected, upon request by the City, the Company agrees to advance and expend the additional amounts required to complete such Eligible Project; provided, however, that the Company shall not be required to advance more than the amount anticipated to be available from collection of the Undergrounding Fee for the two (2) year period following such request (or the remaining term of this Franchise if less than 2 years). The Company shall be entitled to recoup such advances from subsequent collection of Undergrounding Fees and, without the Company’s consent, the City shall not propose another Eligible Project until the Company has recouped such advances. No relocation expenses which the Company would be required to expend pursuant to Article 6 (except for § 6.8 B thereof), Article 12, or Article 13 of this Franchise shall be payable out of the Underground Fund. City may, at any time, by Ordinance duly adopted by its City Council, temporarily suspend or terminate the collection of Undergrounding Fees, and thereafter, it may likewise re-impose such Fees by Ordinance; provided, however, that no suspension of the Undergrounding Fees shall be effective unless and until the Company has recouped any amounts advanced pursuant to this Section 11.4D.

E. System Wide Undergrounding. If, during the term of this Franchise, the Company should receive authority from the Commission to undertake a system wide program or programs of undergrounding its electric distribution facilities, the Company will budget and allocate to the program of undergrounding in the City such amount as may be determined and approved by the Commission, but in no case shall such amount be less than the Undergrounding Fee. Unless otherwise required by the Commission, funds for the undergrounding program shall be in addition to, and shall not in any way diminish the payment of the Franchise Fee provided in Article 4 of this Agreement.

F. City Requirement to Underground. In addition to the provisions of this Article, the City may require any above ground Company Facilities to be moved underground at the City’s expense pursuant to the City’s police power.

§11.5 Undergrounding Performance. Promptly upon receipt of a request for an Eligible Project and all Supporting Documentation from the City necessary to design such Project, the Company shall prepare a detailed, good faith cost estimate of the anticipated actual cost of the requested project for the City to review and, if acceptable, issue a project authorization. At the City’s request, the Company will provide all documentation which forms the basis of the estimate. The Company will not proceed with any requested project until the City has provided a written acceptance of the estimate. Upon receipt of a written acceptance of the estimate, the Company shall, to the extent of monies collected from the Underground Fee and advanced by the Company pursuant to Section 11.2B of this Franchise, underground the facilities that are the subject of the request in
in accordance with the procedures set forth in this Section. This section does not apply to relocations under §6.7 of this Franchise Agreement.

A. **Timing.** The Company shall complete each Eligible Project within a commercially reasonable time.

B. **Performance Standards.** Performance under this Article shall be subject to the standards of Article 8 of this Agreement.

C. **Report of Actual Costs.** Upon completion of each undergrounding project, the Company shall submit to the City a detailed report of the Company’s actual cost to complete the project and the Company shall reconcile this total actual cost with the accepted cost estimate. In the event the Underground Fee collections have been paid to the City, upon completion of an Eligible Project, the City shall promptly pay the Company for its actual costs. In the event the Underground Fee collections have been deposited in one or more interest-bearing accounts at the request of the City, upon completion of an Eligible Project, upon twenty (20) days prior written notice to City, the Company may reimburse itself for its actual costs.

D. **Audit of Underground Projects.** The City may require that the Company undertake an independent audit of up to two (2) undergrounding projects in any calendar year. The cost of any such independent audit shall be paid for out of the Undergrounding Fee collections. The Company shall cooperate fully with any audit and the independent auditor shall prepare and provide to the City and the Company a final audit report showing the actual costs associated with completion of the project. If a project audit is requested by the City, only those actual project costs confirmed and verified by the independent auditor shall be charged to the Fund.

§11.6 **Audit of Underground Fund.** Upon written request, every three (3) years commencing at the end of the third year of this Franchise, either the Company or the City may cause an independent auditor to investigate and determine the correctness of the Undergrounding Fee collections and costs of Eligible Projects paid for by such Underground Fee collections. Such audits shall be limited to the previous three (3) calendar years. The auditor shall provide a written report containing its findings to the City and the Company. The Company shall reconcile the Fund consistent with the findings contained in the independent auditor’s written report. If there are no adjustments required by the independent auditor, the costs of the audit and investigation shall be paid by the Undergrounding Fee collections. If adjustments are required, the Company shall pay the costs of the audit and investigation and they shall not be paid out of the Undergrounding Fee collections.

§11.7 **Cooperation with Other Utilities.** At the time any Company electrical line is placed underground pursuant to this Article, the Company shall notify any City Licensee having access to affected Company poles that such poles are to be abandoned and vacated and the Company shall request that any such facilities belonging to other Licensees be removed. When undertaking an undergrounding project the City and the Company shall use reasonable efforts to coordinate with other utilities or companies that have their facilities above ground to attempt to have all facilities undergrounded as part of the same project.
When other utilities or companies are placing their facilities underground, to the extent the Company has received prior notification, the Company may cooperate with these utilities and companies and undertake to underground Company facilities as part of the same project where financially, technically and operationally feasible; provided, however, that such undergrounding will not represent an increased expense to the Company and not create an unreasonable safety hazard or otherwise interfere with the Company's use of its underground facilities. The Company shall not be required to pay for the cost of undergrounding the facilities of other companies or the City in connection with this Article.

§11.8 Planning and Coordination of Undergrounding Projects. The City and the Company shall mutually plan in advance the scheduling of undergrounding projects to be undertaken according to this Article. The City and the Company agree to meet, as required, to review the progress of the current undergrounding projects and to review planned future undergrounding projects. Such meetings shall be to further cooperation between the City and the Company to achieve the orderly undergrounding of Company Facilities. Representatives of both the City and the Company shall meet periodically to review the Company's undergrounding of Company Facilities and at such meetings shall review:

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

B. Public Projects anticipated by the City

ARTICLE 12
PURCHASE OR CONDEMNATION

§12.1 Municipal Right to Purchase or Condemn.

A. Right and Privilege of City. The right and privilege of the City to purchase or condemn any Company Facilities located within the territorial boundaries of the City, and the Company's rights in connection therewith, as set forth in applicable provisions of the constitution and statutes of the State of Colorado relating to the acquisition of public utilities, and the City's rights as set forth in its Charter and ordinances, are expressly recognized. The City shall have the right, within the time frames and using the procedures set forth in such provisions, to purchase Company Facilities, land, rights-of-way and easements now owned or to be owned by the Company located within the territorial boundaries of the City. In the event of any such purchase, no value shall be ascribed or given to the rights granted under this Franchise in the valuation of the property thus taken.

B. Value Upon Condemnation. Neither the Company nor the City agree at this time upon any particular method for valuation of any interest in Company Facilities or other property to be condemned, but each party reserves all rights to advocate for such method of valuation as it may elect.
C. **Notice of Intent to Purchase or Condemn.** The City shall provide the Company such notice of intent to purchase or condemn Company Facilities as may be required by law. Nothing in this section shall be deemed or construed to constitute consent by the Company to the City's purchase or condemnation of Company Facilities.

D. **Limitations on Company Removal.** If, at the time of termination of this franchise, no renewal has been negotiated between the City and Company, the Company shall have no right to remove facilities from streets, public ways and dedicated easements. Upon request by the City, made in writing, Company facilities located in public streets, ways and dedicated easements which are not purchased by the City at the termination of this franchise shall be removed by the Company at Company expense and all public and private property shall be restored by the Company at Company expense and all public and private property shall be restored to its former condition. Company need not remove property that it shall continue to own, use and maintain.

E. **Right of First Refusal.** If the Company, at any time during term of this franchise, proposes to sell or dispose of any of its real estate or water facilities lying within the City, the Company shall so notify the City. The property shall be offered to the City for the price contained in a bona fide offer from a third party which is acceptable to the Company. The terms thereof shall be included in the Company's notice to the City. The City shall have thirty (30) days thereafter to give written notice of its interest in, and non-binding preliminary intent, to exercise a right of first refusal to purchase this property. The City shall have an additional thirty (30) days after notice of receipt by the Company of such notice of the City's preliminary non-binding intent to exercise its first right of refusal in which to complete its firm obligation to exercise its right of first refusal. The provisions shall not restrict the rights of the City to purchase or condemn the Company's facilities reserved under Article 12 of this Ordinance.

**ARTICLE 13**

**MUNICIPALLY-PRODUCED UTILITY SERVICE**

§ 13.1 **Municipally-Produced Utility Service.**

A. **City Reservation.** The City expressly reserves (i) the right to engage in the production of electric power, (ii) the right to exercise its Constitutional power to create and operate a municipal electric utility under applicable law and to, thereafter, exercise the rights of a municipal utility including, but not limited to, the right to purchase wholesale power, and (iii) to otherwise exercise each and every power held under its home rule charter.

B. **Sale of Power.** To the extent consistent with statutory requirements and Commission rules and decisions including but not limited to, statutes and rules concerning resource planning, renewable energy standards, and small power producers and co-generators, and subject to the option of the Company to require Commission pre-approval, the Company agrees to negotiate in good faith contracts to purchase City-generated power,
including Renewable Energy Resources, that may be made available for sale to meet the Company’s future resource needs and needs under the renewable energy standards.

C. Delivery Services. To the extent the Company is required by judicial, statutory and/or regulatory directive to provide transmission and/or retail wheeling services, the Company agrees to provide such services on the terms and conditions contained in such directives. As of the effective date of this Franchise, the parties acknowledge that there are currently no judicial, statutory or regulatory directives requiring retail wheeling in Colorado.

D. Company’s Resource Planning. Currently, the Company is required to file resource plans with the Commission at least every four years (with the next scheduled resource plan to be filed in 2011) and renewable energy compliance plans on an annual basis. In connection with the Company’s preparation of these plans, upon request of the Company, the City may provide the Company with information, on a timely basis, concerning the City’s expected future resource needs so that the Company may appropriately plan to meet such needs.

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

F. Exploration of Options to Reduce City Costs. The Company and the City agree to cooperate in the evaluation of options to reduce the City’s costs for electric service including, but not limited to, energy efficiency, peak shaving, renewable energy options, and net metering. The parties will endeavor to timely identify mutually agreeable options that may impact the Company’s 2011 resource plan, the Company’s 2012 renewable energy standards compliance plan, and subsequent resource and renewable energy standards plans. The Company reserves the right to require Commission approval in connection with any mutually agreeable options involving the Company.

G. Net Metering. The Company shall provide net metering service to the City in accordance with Rule 3664 of the Commission’s Rules, or any other applicable, mandatory net metering statute, Commission rule or tariff. If the Commission adopts any permissive net metering service rule or tariff, the Company agrees to confer in good faith with the City to determine whether there are net metering opportunities under the permissive rule or tariff which can be implemented consistent with the Company’s obligations.

ARTICLE 14
ENVIRONMENT AND CONSERVATION

§14.1 Environmental Leadership. The City and the Company agree that low cost, sustainable development, environmental excellence and innovation shall form the foundation of the Utility Services provided by the Company under this Franchise. The Company agrees to
A. Continue to cost-effectively monitor its operations to mitigate environmental impacts; shall meet or exceed the requirements of environmental laws, regulations and permits; invest in cost-effective environmentally-sound technologies; consider environmental issues in its planning and decision-making; and support environmental research and development projects and partnerships in the City through corporate giving, employee involvement and projects including but not limited to the Solar Technology Application Center;

B. Continue to work with the applicable governmental agencies to develop and implement avian protection plans to reduce electrocution and collision risks by eagles, raptors and other migratory birds with transmission and distribution lines; and,

C. As requested by the City, to meet with the City at a mutually convenient time and place for a discussion of the Company’s environmental efforts.

D. The City agrees to support and endorse the Company’s environmental initiatives through advocacy with customers and regulators; provided however, that the City retains the sole discretion as to whether it will endorse particular initiatives in connection with any activities taken that may cause the City or its residents to incur costs.

§14.2 Conservation. The City and the Company recognize and agree that energy conservation programs offer opportunities for the efficient use of energy and possible reduction of energy costs. The City and the Company further recognize that creative and effective energy conservation solutions are crucial to sustainable development. As such, the Company and the City commit to work cooperatively and collaboratively to identify, develop, implement and support programs offering creative and sustainable opportunities to Company customers and Residents, including low-income customers and Residents. The Company agrees to help the City participation in Company programs and when opportunities exist to partner with others, such as the State of Colorado, the Company will help the City pursue those opportunities. In addition, and in order to assist the City and its Residents’ participation in Renewable Energy Resource programs, the Company shall:

(1) notify the City regarding all eligible Renewable Energy Resource programs;

(2) provide the City with technical support regarding how the City may participate in Renewable Energy Resource programs; and

(3) advise Residents regarding eligible Renewable Energy Resource programs.

Notwithstanding the foregoing, to the extent that any Company assistance is needed to support Renewable Energy Resource Programs, the Company retains the sole discretion as to whether to incur such costs. Nothing in this Section shall obligate the Company or the
City to any position taken in any demand-side reduction (DSM) docket before the Commission.

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

§14.4 Commission Approval. Nothing in this Franchise shall be deemed to require the Company to invest in technologies or to incur costs that its management has not elected to pursue or for which the Company has a good faith belief the Commission will not allow the Company to recover the investment through the ratemaking process.

ARTICLE 15
TRANSFER OF FRANCHISE

§15.1 Consent of City Required for Transfer of Franchise. The Company shall not transfer or assign any rights under this Franchise to any third party, unless the City consents to and approves such transfer or assignment in writing. In order to obtain such consent and approval, the Company shall provide to City a request for consent and approval sufficient information showing that the proposed assignee has the technical and financial ability to perform the obligations of Company under this Agreement. Consent and approval may be denied by the City if, based upon the information provided, it reasonably determines that the assignee appears either unwilling or not technically or financially qualified or able to perform the obligations of Company under this Franchise Agreement, or for any other valid municipal or public policy reason.

§15.2 Condition Precedent. Consent of the City shall be, and hereby is made, an express condition precedent to any application to be made to the Commission for any transfer or assignment of this Franchise to any third-party by the Company.

§15.3 Transfer Fee. In order that the City may share in the value this Franchise adds to the Company’s operations, any transfer or assignment of rights granted under this Franchise requiring City approval, as set forth herein, shall be subject to the condition that the Company shall promptly pay to the City a transfer fee in an amount equal to $200,000.00 plus the product of $200,000.00 times the percentage change in the United States Bureau of Labor Statistics Consumer Price Index for Denver-Boulder, all items, all urban consumers, or its successor index, from the date of this Franchise until the date of the approval of the transfer by the City. Except as otherwise required by law, such transfer fee shall not be
solely recovered from, imposed upon, charged to, added to or collected from Residents of the City.

§15.4 **Taxes.** Any transfer of this Franchise or of Company assets located in the City shall be subject to applicable taxes.

**ARTICLE 16**

**CONTINUATION OF UTILITY SERVICE**

§16.1 **Continuation of Utility Service.** In the event this Franchise is not renewed at the expiration of its term or is terminated for any reason, and the City has not provided for alternative utility service, the Company shall have no right to discontinue service or to remove any Company Facilities and the City shall have no right to require the removal of Company Facilities, except as provided in this Franchise and under applicable law, unless otherwise ordered or permitted by the Commission or a Court of competent jurisdiction, and Company shall continue to provide Utility Service within the City until the Court or Commission determines how the City will obtain its utility service. The Company further agrees that it will not withhold any temporary Utility Services necessary to protect the public. The City agrees that in the circumstances of this Article, the Company shall be entitled to monetary compensation as provided in the Company’s tariffs on file with the Public Utilities Commission and the Company shall be entitled to collect from Residents and shall be obligated to pay the City, at the same times and in the same manner as provided in the Franchise, an aggregate amount equal to the amount which the Company would have paid as a Franchise fee as consideration for use of the City’s Streets. Only upon receipt of written notice from the City stating that the City has adequate alternative Utility Service for Residents and upon order of the Commission shall the Company be allowed to discontinue the provision of Utility Service to the City and its Residents.

**ARTICLE 17**

**INDEMNIFICATION AND IMMUNITY**

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

§17.2 Indemnification by Company. The Company shall construct, maintain and operate its plant, equipment, structures and other facilities in a manner which provides protection against injury or damage to persons or property. Company shall save the City harmless and indemnify and defend the City from and against all claims, demands, liability, judgments and loss whatsoever in nature, and reimburse the City, for all its reasonable expenses, including attorney and expert witness fees, arising out of or resulting directly or indirectly from the construction, maintenance and operations of the Company within the City and the securing of and the exercise by Company of the Franchise rights granted herein, including any third-party claims, administrative hearings and litigation. None of the City expenses reimbursed by the Company under the Article shall be surcharged to the City or its residents.

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

ARTICLE 18
BREACH

§18.1 Non-Contestability. The City and the Company agree to take all reasonable and necessary actions to assure that the terms of this Franchise are performed and neither will take any legal action to secure modification of this Franchise. However, the Company reserves the right to seek a change in its rates, charges, terms, and conditions imposed upon customers of providing Utility Service to the City and its Residents, and the City retains all rights to intervene and participate in any such proceedings, and in all proceedings as its interests may appear.

§18.2 Breach.

A. Notice/Cure/Remedies. Except as otherwise provided in this Franchise, if a party (the “breaching party”) to this Franchise fails or refuses to perform any of the terms or conditions of this Franchise (a “breach”), the other party (the “non-breaching party”) may provide written notice to the breaching party of such breach. Upon receipt of such notice, the breaching party shall be given a reasonable time, not to exceed (60) days, subject to Force Majeure, in which to remedy the breach. If the breaching party does not remedy the breach within the time allowed in the notice, the non-breaching party may exercise the following remedies for such breach:

(1) specific performance of the applicable term or condition; and

(2) recovery of actual damages from the date of such breach incurred by the non-breaching party in connection with the breach, but excluding any consequential damages.
If a breach is of such a type or nature that it cannot reasonably be remedied in sixty (60) days, the breaching party shall immediately inform and demonstrate to the non-breaching party of the fact that the breach cannot reasonably be remedied in sixty (60) days. The breaching party shall immediately begin work to cure the breach and shall diligently and expeditiously prosecute to completion all work necessary to remedy the breach.

B. Termination of Franchise by City. In addition to the foregoing remedies, if the Company fails or refuses to perform any material term or condition of this Franchise (a “material breach”), the City may provide written notice to the Company of such material breach. Upon receipt of such notice, the Company shall be given a reasonable time, not to exceed ninety (90) days, subject to Force Majeure, in which to remedy the material breach. If a breach is of such a type or nature that it cannot reasonably be remedied in ninety (90), the Company shall immediately inform and demonstrate to the City of the fact that the breach cannot reasonably be remedied in ninety (90) days. The Company shall immediately begin work to cure the breach and shall diligently and expeditiously prosecute to completion all work necessary to remedy the breach. If the Company does not remedy the material breach within the time provided in this subparagraph B, the City may, at its sole option, terminate this Franchise. This remedy shall be in addition to the City’s right to exercise any of the remedies provided for elsewhere in this Franchise. Upon such termination, the Company shall continue to provide Utility Service to the City and its Residents until the City makes alternative arrangements for such service and until otherwise ordered by the PUC, and the Company shall be entitled to collect from Residents and shall be obligated to pay the City, at the same times and in the same manner as provided in the Franchise, an aggregate amount equal to the amount which the Company would have paid as a Franchise fee as consideration for use of the City Streets.

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

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

E. Costs and Attorneys Fees. If the City initiates any legal action seeking damages for any alleged violation of this Franchise, or to seek enforcement of any of the provisions hereof, then the prevailing party in any such action shall recover from the other party all of its reasonable costs and attorneys fees incurred in connection with the matter, regardless of whether such costs and/or fees were incurred prior to, during or subsequent to the legal action filed by the City.

ARTICLE 19
AMENDMENTS

§19.1 Proposed Amendments. At any time during 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 party of the proposed amendment(s) desired.
Thereafter, both parties, through their designate representatives shall, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s). Proposed amendments to this Franchise shall only become effective in accordance with the provisions of Section 19.2.

§19.2 Effective Amendments. No alterations, amendments or modifications to this Franchise shall be valid unless executed by an instrument in writing by the parties, adopted with the same formality used in adopting this Franchise, to the extent required by law. Neither this Franchise, nor any term hereof, may be changed, modified or abandoned, in whole or in part, except by a written instrument mutually agreed upon, and no subsequent oral agreement shall have any validity whatsoever.

ARTICLE 20
EQUAL EMPLOYMENT OPPORTUNITY

§20.1 Equal Opportunity Employer. The Company shall be an equal opportunity employer and will comply with applicable laws. As an equal opportunity employer, the Company will not discriminate in its employment decisions on the basis of race, color, national origin, sex, religion, age, disability, veteran status or any other characteristic protected by applicable federal, state, or local law. Furthermore, the Company will make reasonable accommodations for qualified individuals with known disabilities unless doing so would result in an undue hardship, safety, and/or health risk. The Company will maintain a nondiscriminatory environment free from prejudice, intimidation or harassment based on any of the above-mentioned grounds. To provide equal employment and advancement opportunities to every applicant and employee, the Company will base its employment decisions on merit, qualifications, experience and abilities.

§20.2 Equal Employment Opportunity and Affirmative Action Policies. The Company is an indirect subsidiary of Black Hills Corporation ("BHC") and is subject to the Equal Employment Opportunity and Affirmative Action policies of BHC. BHC has adopted and published its policy on equal employment opportunity which applies to all terms, conditions, and privileges of employment, including recruiting, hiring, training and development, promotion, transfer, compensation, benefits, educational assistance, termination, layoff, social and recreational programs and retirement. The Company is committed to making employment decisions based on valid requirements, without regard to race, color, national origin, sex, religion, age, disability, veteran status or any other characteristic protected by applicable law. Black Hills has also adopted an Affirmative Action Plan. Copies of the Affirmative Action Plan are available in the BHC Human Resources Department. BHC’s Equal Employment Opportunity and Affirmative Action Policies are also available on the Company’s intranet and in the Company’s Policy Manual and employee handbooks. BHC has an EEO Coordinator who is responsible for compliance with all equal employment opportunity laws and for implementing the BHC Affirmative Action Plans. All personnel with responsibility for employment and personnel decisions are directed to perform their duties in accordance with BHC’s commitment to Equal Employment Opportunity and Affirmative Action. Managers and supervisors must communicate the policy and plan to all employees. The Chairman, President and Chief Executive Officer of BHC, has advised all employees in a
memorandum that BHC will review, audit and analyze its personnel actions rigorously to ensure compliance with these policies. Employees who believe they are not being treated according to these policies have been advised to contact the EEO Coordinator, their supervisor, or the BHC ethics Helpline.

ARTICLE 21
MISCELLANEOUS

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

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

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

§21.4 Notice. Both parties shall designate from time to time in writing representatives for the Company and the City who will be the persons to whom notices shall be sent regarding any action to be taken under this Franchise. Notice shall be in writing and forwarded by certified mail or hand delivery to the persons and addresses as hereinafter stated, unless the persons and addresses are changed at the written request of either party, delivered in person or by certified mail. Until any such change shall hereafter be made, notices shall be sent as follows:

To the City:

City Manager
One City Hall Place
Pueblo, Colorado 81003

and to:

City Attorney
503 N. Main Street, Suite 203
Pueblo, Colorado 81003

To the Company:

Black Hills/ Colorado Electric Utility Company, LP
1515 Wynkoop Street, Suite 500
Denver, Colorado 80202
§21.5 Examination of Records.

A. The parties agree that a duly authorized representative of the City shall have the right to examine any books, documents, papers, and records of the Company reasonably related to the Company's compliance with the terms and conditions of this Franchise. Information shall be provided promptly and in any event within thirty (30) days of any written request. Any books, documents, papers, and records of the Company in any form that are requested by the City, that contain confidential information shall have the confidential information therein contained conspicuously identified as "confidential" or "proprietary" by the Company. Confidential information shall be provided to City, except that in no case shall any privileged communication be subject to examination by the City pursuant to the terms of this section. "Privileged communication" means any communication that would not be discoverable due to the attorney client privilege or any other privilege that is recognized in Colorado, including but not limited to the work product privilege. The work product privilege shall include information developed by the Company in preparation for Commission proceedings. Information which is developed by the Company in preparation for Commission proceedings shall be provided to the City upon the City being granted intervenor status in such proceedings and filing with the Commission of appropriate non-disclosure agreements in conformity with the applicable rules of the Commission and decisions in such proceedings.

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

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

(2) The information shall be used solely for the purpose of determining the Company's compliance with the terms and conditions of this Franchise. The information shall only be made available to City employees and consultants who represent in writing that they agree to be bound by the provisions of this subsection B;

(3) The information may be held by the City for such time as is reasonably necessary for the City to address the Franchise issue(s) that generated the request, and, if requested by Company, shall be returned to the Company or destroyed when the City has concluded its use of the information. The parties agree that in most cases, the information should be returned within one hundred twenty (120) days. However, in the event that the information is needed in connection with any action that requires more time, including, but not necessarily limited to litigation, administrative proceedings and/or other disputes, the City may maintain the information until such issues are fully and finally concluded.
C. If an Open Records Act request is made by any third party for confidential or proprietary information that the Company has provided to the City pursuant to this Franchise, the City will promptly notify the Company of the request and shall allow the Company to defend such request at its sole expense, including filing a legal action in any court of competent jurisdiction to prevent disclosure of such information. In any such legal action the Company shall join the person requesting the information and the City. In no circumstance shall the City provide to any third party confidential information provided by the Company pursuant to this Franchise without first conferring with the Company or as otherwise permitted by a Court of Competent Jurisdiction. The Company shall defend, indemnify and hold the City harmless from any claim, judgment, costs or attorney fees incurred in participating in such proceeding.

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

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

F. Communications with Regulatory Agencies. Upon request of the City, a copy of all petitions, applications, communications, filings and reports submitted by Company to FERC, the Commission or any other Federal or State regulatory commission or agency having jurisdiction in respect to any matters which may specifically impact the City's rights or obligations with regard to this Franchise, shall be served upon the City as required by law or applicable rule. Whether or not required by law or applicable rule to be served upon the City, copies of any petitions or applications by the Company opening any docket at the Commission shall be contemporaneously provided to the City.

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

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

2. maps or schematics in electronic format indicating the location of specific Company Facilities, including electric lines, located within the City, to the extent those maps or schematics are in existence at the time of the request and related to an ongoing project within the City.

3. The Company shall supply to the City, and maintain in an up-to-date condition, in a format compatible with the City's geographic information systems database, as presently existing or as revised by the City, a set of maps showing the following:
a. emergency routes;

b. locations where hazardous materials may exist, including but not limited to, transformers, substations and power plants;

c. any other information as may reasonably be requested by City police, fire or emergency preparedness services.

The Company shall provide the maps set forth in this section to the City at no charge to the City.

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

§21.6 Payment of Taxes And Fees.

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

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

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

§21.8 Certificate of Public Convenience and Necessity. Upon execution of this Franchise by both parties, the City agrees to support any application the Company may file with the Commission to obtain a certificate of public convenience and necessity to exercise the rights and obligations granted under this Franchise.

§21.9 Authority. Each party represents and warrants that except as set forth below, it has taken all actions that are necessary or that are required by its ordinances, regulations, procedures, bylaws, or applicable law, to legally authorize the undersigned signatories to execute this agreement on behalf of the parties and to bind the parties to its terms. The persons executing this agreement on behalf of each of the parties warrant that they have full authorization to execute this agreement. The City acknowledges that notwithstanding the foregoing, the Company requires a certificate of public convenience and necessity from the
Commission to operate under the terms of this Franchise.

§21.10 **Severability.** Should any one or more provisions of this Franchise be determined to be unconstitutional, illegal, unenforceable or otherwise void, all other provisions nevertheless shall remain effective. In the event a provision is determined to be unconstitutional, illegal, unenforceable or otherwise void, all other terms, covenants and conditions of this Franchise and their application not adversely affected thereby shall remain in force and effect; provided, however, that the Parties shall negotiate in good faith to attempt to implement a replacement provision or an equitable adjustment in the provisions of this Franchise with a view toward effecting the purposes of the provision by replacing the provision that is held invalid, illegal, or unenforceable with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be invalid, illegal or unenforceable

§21.11 **Force Majeure.** Neither the City nor the Company shall be in breach of this Franchise if a failure to perform any of the duties under this Franchise is due to Force Majeure, as defined in Section 1.10.

§21.12 **Earlier Franchises Superseded.** This Franchise shall constitute the only franchise between the City and the Company for the furnishing of Utility Service, Street Lighting Service, and it supersedes and cancels all former franchises between the parties hereto.

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

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

§21.15 **Payment of Expenses Incurred by City in Relation to Franchise Agreement.** The Company shall pay for expenses incurred by City in negotiating and concluding this Franchise and for the Franchise election, including the publication of notices, publication of ordinances, and photocopying of documents.

§21.16 **Contract Obligation.** This Franchise constitutes a valid and binding contract between Company and the City. In the event that the Franchise fee, or any financial obligation of Company to the City specified in this Franchise is declared illegal, unconstitutional or void for any reason by decision of any court or other proper authority, fees previously paid under the terms of this Franchise shall be deemed paid pursuant to contract between the City and Company and Company shall not attempt to recoup any Franchise fee previously paid pursuant to the terms of this Franchise.

§21.17 **Bargained For Exchange.** All provisions in this Franchise are part of a bargained-for exchange. The parties agree that no use of any course of negotiations, or the inclusion or exclusion of any term or provision in drafts shall be admissible to demonstrate, as an evidentiary matter in any proceeding, that either party has taken, acceded to or foregone any position.
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first above written.

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

CITY OF PUEBLO

President of City Council

BLACK HILLS/COLORADO ELECTRIC
UTILITY COMPANY L.P. d/b/a BLACK HILLS ENERGY

By

Name: Stuart Levick
Title: V.P., Electric Utilities

[Note – City Officials not to sign until and unless approved by the registered electors, and Company files its acceptance and ratification.]
EXHIBIT “A”

ACCEPTANCE BY BLACK HILLS / COLORADO ELECTRIC UTILITY COMPANY, L.P.
OF AN ELECTRIC FRANCHISE GRANTED BY ORDINANCE NO. 8186
TO BE SUBMITTED TO A VOTE OF THE ELECTORS OF THE CITY OF PUEBLO,
COLORADO

WHEREAS, Black Hills / Colorado Electric Utility Company, L.P. (“Company”) has
negotiated the terms and conditions of a new electric franchise between said Company and the
City of Pueblo, a Municipal Corporation which franchise is as set forth in Ordinance No. 8186
entitled:

AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO
BLACK HILLS / COLORADO ELECTRIC UTILITY COMPANY, L.P. TO
FURNISH AND SELL ELECTRICITY TO THE CITY AND TO ALL
RESIDENTS WITHIN THE CITY, AND THE NON-EXCLUSIVE RIGHT TO
ACQUIRE, PURCHASE, CONSTRUCT, INSTALL, MAINTAIN, OPERATE
AND EXTEND INTO, WITHIN AND THROUGH SAID CITY ALL
FACILITIES REASONABLY NECESSARY FOR THE GENERATION,
PRODUCTION, SALE, PURCHASE, EXCHANGE, TRANSMISSION AND
DISTRIBUTION OF ELECTRIC UTILITY SERVICE WITHIN AND
THROUGH THE CITY, TOGETHER WITH THE RIGHT TO MAKE
REASONABLE USE OF THE STREETS AND PUBLIC UTILITY
EASEMENTS OF THE CITY AS HEREBIN DEFINED AS MAY BE
NECESSARY, AND FIXING THE TERMS, CONDITIONS, AND
REQUIREMENTS APPLICABLE TO ALL OF THE FOREGOING.

NOW, THEREFORE, in consideration of the premises and in pursuance of the provisions
of said Ordinance No. 8186 of Pueblo, Company does hereby accept the franchise and all of its
terms and conditions contained in said Ordinance No. 8186.

IN WITNESS WHEREOF, Company has caused its corporate name to be hereunto
subscribed by its VP, Electric Utilities, and its Corporate Seal to be hereunto affixed,
attested by its Corporate Secretary, as of this 2 day of August, 2010.

BLACK HILLS / COLORADO ELECTRIC UTILITY COMPANY

By Stuart Devik

APPOINTED

Name: Stuart Devik
Title: VP, Electric Utilities

ARREX: Raxnn R. Basham
Name: Raxnn R. Basham
Title: Corporate Secretary
RATIFICATION BY BLACK HILLS / COLORADO ELECTRIC UTILITY COMPANY, L.P. OF FRANCHISE GRANTED BY THE CITY OF PUEBLO, COLORADO BY ORDINANCE NO. 8186 APPROVED BY THE ELECTORS OF THE CITY OF PUEBLO

WHEREAS, a special municipal franchise election was held on Tuesday, August 10, 2010, and at said election the majority of the registered electors of the City of Pueblo voting thereon approved the franchise as set forth in Ordinance No. 8186, entitled:

AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO BLACK HILLS / COLORADO ELECTRIC UTILITY COMPANY, L.P. TO FURNISH AND SELL ELECTRICITY TO THE CITY AND TO ALL RESIDENTS WITHIN THE CITY, AND THE NON-EXCLUSIVE RIGHT TO ACQUIRE, PURCHASE, CONSTRUCT, INSTALL, MAINTAIN, OPERATE AND EXTEND INTO, WITHIN AND THROUGH SAID CITY ALL FACILITIES REASONABLY NECESSARY FOR THE GENERATION, PRODUCTION, SALE, PURCHASE, EXCHANGE, TRANSMISSION AND DISTRIBUTION OF ELECTRIC UTILITY SERVICE WITHIN AND THROUGH THE CITY, TOGETHER WITH THE RIGHT TO MAKE REASONABLE USE OF THE STREETS AND PUBLIC UTILITY EASEMENTS OF THE CITY AS HEREFIN DEFINED AS MAY BE NECESSARY, AND FIXING THE TERMS, CONDITIONS, AND REQUIREMENTS APPLICABLE TO ALL OF THE FOREGOING.

WHEREAS, Ordinance No. 8186 provides that Black Hills / Colorado Electric Utility Company ("Company") shall file with the City Clerk its written ratification of the franchise granted by Ordinance No. 8186 within ten (10) days after the special municipal election;

NOW, THEREFORE, Company hereby ratifies the franchise and all of its terms and conditions contained in said Ordinance No. 8186 and agrees to be bound thereby.

IN WITNESS WHEREOF, Company has caused its corporate name to be hereunto subscribed by its Vice President – Electric Utilities, and its Corporate Seal to be hereunto affixed, attested by its Vice President – Governance and Corporate Secretary, as of this 11th day of August, 2010.

BLACK HILLS / COLORADO ELECTRIC UTILITY COMPANY

By

Name: Stuart A. Wevik
Title: Vice President – Electric Utilities

Name: Roxann R. Basham
Title: Vice President – Governance and Corporate Secretary

20180910.1
(Exhibit C)

Black Hills/Colorado Electric Utility Company, LP
d/b/a
Black Hills Energy

PERMIT TO ATTACH LICENSEE'S FACILITIES

APPLICATION

In accordance with the terms of our Agreement dated __________, 20__, application is hereby made for permission to make attachment of LICENSEE's Facilities to the COMPANY Facilities in and in the vicinity of __________, Colorado, at the locations shown on the sketch attached.

Description (type, quantity, etc.) of facilities: Attach to ___ pole(s), remove ___ pole(s), abandon ___ pole(s)

Dated: __________ 20__

By __________

Title __________

LICENSEE

CONDITIONS

☐ Engineering Review cost is $ __________.

☐ No Make Ready

☐ Make Ready required. The total estimated cost of doing such work is $ __________. After COMPANY receives payment of said amount and acceptance of the conditions herein, COMPANY shall proceed to make such changes in its facilities. After completion of this work, payment shall be adjusted in the following manner: If the actual cost of doing the work exceeds said estimated cost by an amount greater than 5%, then LICENSEE shall make a further payment to COMPANY to cover the excess amount; however, if the actual cost of doing the work is lower than said estimated cost by an amount greater than 5%, then COMPANY shall refund an amount equal to such difference.

If the above meets with your approval, please indicate your acceptance in the space provided below and return with your payment.

ACCEPTED:

Black Hills/Colorado Electric Utility Company, LP
d/b/a
Black Hills Energy

By __________

Title __________

Date __________ 20__

Work Order No. __________

Job Order No. __________

District File No. __________

Licensee

By __________

Title __________

Date __________ 20__

INVENTORY OF POLES USED BY LICENSEE

<table>
<thead>
<tr>
<th>Previous Balance</th>
<th>Added by This Permit</th>
<th>New Balance</th>
</tr>
</thead>
</table>

Black Hills/Colorado Electric Utility Company, LP
d/b/a
Black Hills Energy

By __________

Title __________

Added by This Permit | Date Attachments Made
|----------------------|-----------------------|

PERMIT

Permission is granted Licensee to make attachments to the poles at the locations set forth in the above application.

Permit No. __________
(Exhibit D)
BLACK HILLS(COLORADO ELECTRIC UTILITY COMPANY, L.P.
d/b/a Black Hills Energy

Attachment of Communication Facilities to Distribution Poles Agreement

THIS AGREEMENT is made and entered into this ___ day of __________, 2010, by and between BLACK HILLS(COLORADO ELECTRIC UTILITY COMPANY, L.P. d/b/a Black Hills Energy, (hereinafter referred to as “Company”), and City of Pueblo, Colorado, (hereinafter referred to as “City” or “Licensee”).

WITNESSETH:

WHEREAS, Company owns electrical distribution poles within the corporate limits of City (the “Company Facilities”);

WHEREAS, Licensee desires access to the Company Facilities to attach, install, operate and/or maintain ________, ________, and other necessary facilities (the “Licensee’s Facilities”) used to provide various services (“Services”), as permitted by law, to its citizens and City government authorities and agencies; and

WHEREAS, subject to the terms and conditions set forth herein and as otherwise permitted by the franchise between Company and City, Company agrees to permit the attachment and operation of Licensee’s Facilities on the Company Facilities.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth below, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Scope of Permission. Company hereby grants permission to Licensee to attach and operate Licensee’s Facilities on the Company Facilities to provide the Services. Pursuant to this Agreement, Licensee may also provide telecommunications service (as such term is defined under the Communications Act of 1934) provided Licensee notifies Company of its intent to do so in writing in advance thereof and agrees to pay the additional rates set forth in paragraph 4 hereof. Licensee warrants that it is not now utilizing attachments on Company’s poles for the purpose of providing telecommunications service, or if it is utilizing such attachments for such purpose, it has notified Company prior to execution of this Agreement.

2. Utility Obligations of Company: Reservation of Space.

(a) Utility Obligations. Company has been granted the rights to construct operate and maintain the Company Facilities under its electricity utility franchises. Licensee agrees that this Agreement and the rights granted herein are subject to the needs and requirements of Company in operating its electric utility business including, without limitation, the installation, operation, repair and replacement of any and all of the Company Facilities in a manner that will enable Company to fulfill its electric utility obligations. Nothing in this Agreement shall in any way restrict, modify or alter Company’s absolute right to use, its sole discretion, the Company Facilities in the conduct of its electric utility business.

(b) Reservation of Space. In furtherance of Company’s obligations set forth in paragraph 2(a), Company may reserve space and loading capacity on the Company Facilities for future use as set out in Company’s bona fide development plan contained in Company’s Electric Distribution Construction Standards, which may be amended from time to time by Company.

3. Attachment of Licensee’s Facilities.

(a) Right to Attach. Licensee’s right to attach to the Company Facilities shall be nonexclusive and nondiscriminatory. Company reserves the right to grant to competitors of Licensee and other persons permission to use the Company Facilities. Applications for attachments will be reviewed and approved on a first come, first served, basis and subject to adequate surplus space being available for Licensee’s Facilities. No attachment shall be made which would violate any term or condition of Company’s existing easements, rights-of-way or licenses pursuant to which the pole has been erected and maintained.
(b) Compliance with Laws, Rules and Regulations. Licensee shall at all times install, maintain and remove Licensee’s Facilities in accordance with the requirements and specifications of all applicable federal, state and local laws, including rules and regulations adopted pursuant thereto, including, but not limited to, the National Electrical Safety Code, Company’s Electric Distribution Construction Standards, and the Occupational Safety and Health Act, as each may be amended and updated from time to time, as well as such other reasonably necessary rules as may be set from time to time by Company. Company shall in no way be responsible for the installation, construction, operation or performance of Licensee’s Facilities.

(c) Application to Attach. Prior to installing any of Licensee’s Facilities on the Company Facilities, Licensee shall apply for and receive approval from Company using the application form supplied by Company, a sample of which is attached hereto as Exhibit A, as same may be amended and updated by Company from time to time. Licensee shall fill out said application forms properly and include copies of maps indicating the poles to which Licensee intends to attach and Licensee’s Facilities to be attached thereto. No attachments shall be made unless and until Company issues a permit therefor. Upon receipt of an approved permit, but no sooner, Licensee shall have the right to install, maintain, and use the equipment described in said application upon the poles identified therein, provided that Licensee shall complete installation within sixty (60) days where no make ready work is required on the part of Company and within ninety (90) days where such make ready work is required for the installation of Licensee’s Facilities.

(d) Make Ready and Accommodations. Prior to approving Licensee’s request to attach Licensee’s Facilities on the Company Facilities, Company may, at its sole discretion, inspect the poles to which Licensee intends to attach to determine if any changes are necessary to accommodate Licensee’s request. Licensee shall be responsible for all costs associated with such inspection, which may include, without limitation, engineering, survey and administrative costs. If any of Company’s poles are inadequate to support the additional facilities in accordance with the greater of: (i) specifications of Company’s Electric Distribution Construction Standards or (ii) the National Electrical Safety Code, or as described herein, Company shall indicate on said application the changes necessary to accommodate Licensee, together with the estimated cost of doing such work and shall return the application to Licensee. If Licensee still desires to make the attachments, it shall return the application to Company indicating thereon its approval and shall make a payment to Company of a deposit in said amount to cover such estimated costs. Thereupon, if necessary, Company shall replace such Company Facilities with suitable poles or perform such other necessary work due to the presence of Licensee’s Facilities.

Furthermore, Licensee agrees to pay Company for the portion of the cost and expense attributable to: (i) the increased cost of any larger poles, (ii) the cost of removal of any poles less any salvage value, (iii) the expense of transferring Company’s utility attachment from the old poles to the new poles, and (iv) other costs specified herein. In the event that the installation of Licensee’s Facilities would interfere with attachments already in place belonging to others, the location and method of attachment of Licensee’s facilities shall be determined by Company. Where Licensee’s attachments are made to existing poles by rearranging the facilities thereon, Licensee shall compensate Company and any other owners of facilities on such poles for the full expense incurred in rearranging such facilities. Licensee shall also pay Company for any expenses incurred in strengthening such poles by guys, anchors or other means, in order to permit the attachment of Licensee’s equipment. Licensee shall not use Company’s anchors or guys without Company’s prior written approval. It is understood that the charges for rearranging Company’s facilities to allow such attachments include all costs for such arrangement which include, but are not limited to, all engineering and supervision labor, materials and administrative costs.

(e) Inspections by Company. Company shall have the right, but not an obligation, to inspect any of Licensee’s Facilities on the Company Facilities prior to and during installation, and to conduct random field inspections of Licensee’s Facilities after installation. If Company discovers that Licensee’s Facilities are not installed according to the terms and conditions set out in this Agreement, Company has the right to stop the work and require immediate action by Licensee to correct the installation. Licensee shall pay the entire cost of any inspection done by Company. For all attachments to the Company Facilities which are found by Company or Licensee for which there does not exist an approved permit, Licensee shall immediately submit an application for the attachment and pay any applicable make ready costs for the unauthorized attachments.

(f) Overlapping. Overlapping of Licensee’s Facilities with additional facilities (whether Licensee’s or a third party’s) ("Overlapping") shall be permitted under this Agreement, so long as Licensee gives Company prior written notice of its intent to overlap. Such notice shall contain a detailed description of the Overlapping, including, without limitation, (i) the parties responsible for the Overlapping, (ii) the current attachments to be overlapped, and (iii) any other information reasonably requested by Company. There will be no annual attachment fee for Overlapping; however, make ready costs may be payable by Licensee if applicable.
(g) Maintenance of LICENSEE Facilities. LICENSEE Facilities shall be maintained by LICENSEE at LICENSEE’s expense in a manner satisfactory to COMPANY. A manner satisfactory to the COMPANY must meet the requirements of all bargaining unit labor and local jurisdictional agreements that outline the requirements for a “Qualified Employee.” A qualified employee as defined by OSHA 1910.269 (a) (2) (ii) sections (A), (B) & (C), is a worker who is knowledgeable in the construction and operation of the electric power generation, transmission, and distribution equipment involved in his or her job, along with the associated hazards. Existing labor agreements require any work performed by LICENSEE or 3rd party Contractor under the direction of the LICENSEE on COMPANY owned facilities above the “Communications Safety Zone” must be performed by a “Qualified” union journeyman lineman. Upon receipt of notice from COMPANY that said attachments interfere with COMPANY’s property or pre-existing facilities of others, to include any relocation, removal or rearrangement thereof, or endanger the public or COMPANY’s employees, LICENSEE shall, at its own expense, alter, rearrange, reroute, improve or repair said attachments in such manner as COMPANY may require. The COMPANY shall be under no obligation to replace COMPANY’s structures in any predeterminated time frame should damage occur due to storms or car hits beyond the COMPANY’s control. COMPANY will perform replacement to damaged poles in a reasonable time frame determined by the COMPANY.

4. Fees.

(a) Annual Attachment Fees. N/A per Pueblo Franchise

(b) Late Payments. N/A per Pueblo Franchise

5. Billing. N/A per Pueblo Franchise

6. Licensee’s Records. All Licensee’s records pertaining to attachments to the Company Facilities, including, but not limited to, maps, plats, design drawings, permits and intra-company correspondence, shall be open to Company’s inspection for the purpose of verification under this Agreement. Access shall be granted to Company personnel, or its outside auditors or contract personnel, during normal working hours on fourteen (14) calendar days' notice by Company. All information disclosed under this paragraph 6 shall be deemed confidential and proprietary information. Such information shall not be disclosed to any third party without the consent of Licensee, except pursuant to a valid court order or otherwise required by law.

7. Licensee’s Licenses, Easements, etc. Company assumes no responsibility for securing franchises, rights-of-way permits or easements for the making and maintaining of Licensee’s Facilities over, across, or along streets, alleys, roads, or privately or publicly owned property, or permission to make such attachments to the poles of others. Licensee assumes the duty and responsibility of securing the same. The permission herein granted is likewise subject to all laws, ordinances and regulations now in force or which may hereafter be enacted or promulgated by any governmental body or agency having jurisdiction.

In the event any franchise, license, permit, consent, or easement held by Licensee is revoked, or is hereafter denied to Licensee for any reason, in whole or in part, Licensee’s rights hereunder shall immediately terminate to such extent, and Licensee shall within a reasonable time remove such equipment from Company’s poles as may be required to comply with revocation or denial of authority. Company at its option may terminate this Agreement if Licensee’s authority is revoked in its entirety. However, Licensee’s rights hereunder shall not terminate and Licensee shall not be required to remove its attachments to the extent that and while Licensee is diligently pursuing good faith efforts to contest such denial or revocation in appropriate judicial and/or administrative proceedings, provided that Licensee further agrees to protect, indemnify, and hold harmless Company from any and all claims, demands, or causes of action, suits, or other proceedings of every kind and character resulting from the presence of Licensee’s attachments on the poles of Company, backed by letters of credit, bonds, or guaranties reasonably satisfactory to Company.

8. No Interference with Other Arrangements. In the event that the installation or operation of Licensee’s Facilities, or any part thereof, interfere with telephone, telegraph, radio or television reception or other regularly used communication or signaling arrangements, upon notification thereof by Company, Licensee shall immediately proceed to eliminate, at its expense, the cause of such interference by altering, rearranging, or changing the installation or operation of its system. If it is determined that such interference has been caused by improper installation or operation of Licensee’s Facilities, and the determination was made by Company at its expense, Licensee, when requested by Company, shall reimburse Company for any expense in connection therewith.
9. **Precautions.** Licensee agrees to take any necessary precautions, by the installation of protective equipment or otherwise, to protect all persons and property against injury or damage that may result from attachment of Licensee's Facilities to the Company Facilities. If, in Company's opinion, Licensee has not taken such necessary precautions, Company shall have the right by written notice to Licensee to terminate the permission herein granted. However, Company shall not be considered in any way responsible for the adequacy or inadequacy of such precautions of Licensee.

10. **Indemnification.** Licensee agrees to indemnify, defend and save Company harmless against any loss or damage that may result to the equipment or any property owned or used by Company and from and against any and all legal and other expenses, costs, losses, suits or judgments for damage, injuries, or death arising to persons or property, or in any other manner, by reason of the construction, use or maintenance of Licensee’s Facilities on the poles of Company.

11. **Insurance.** Licensee shall secure commercial general liability insurance satisfactory to Company covering bodily injury and property damage. The insurance required by this Agreement shall include Workers' Compensation and employer's liability coverage in the amount required by applicable law, automobile liability and general liability coverage's, including premises-operations, contractual liability and independent contractor liability for no less than $1,000,000 combined single limit per occurrence and shall name Company as an additional insured. Licensee shall furnish satisfactory Certificates of Insurance before approval is granted and for any renewals thereof to Company so long as this Agreement shall remain in effect. Certificates of Insurance must include a non-restricted thirty (30) days' notice of cancellation or material change provision.

12. **Bond.** N/A for municipal entities

13. **Assignment or Delegation.** Licensee shall not assign, transfer, or sublet any of the rights herein granted, and shall not delegate the performance of its duties required herein without the written consent of Company having first been obtained, which consent shall not unreasonably be withheld. Company may make assignments or delegations upon notice to Licensee.

14. **No Property Rights.** Nothing herein contained shall be construed to confer upon Licensee any property rights in Company's poles or other distribution facilities, or to compel Company to maintain said poles or other distribution facilities longer than the business of Company requires in the sole judgment of Company.

15. **Company's Right of Removal.** Company reserves the right to remove at Licensee's expense Licensee's Facilities or any part of them upon failure of Licensee to comply with any of the conditions hereof, and the permit granted in this Agreement shall thereupon terminate as to the attachments to be removed. Company will not be responsible for the condition of Licensee's equipment which is removed or the equipment it is disconnected from. Licensee shall pay Company for all costs incurred for such removal and for any storage charges Company incurs.

16. **Term and Termination.** This Agreement shall become effective upon signature by the parties hereto and shall remain effective for a term of five (5) years thereafter. Thereafter, this Agreement shall remain in effect until terminated by either party by giving to the other party sixty (60) days written notice of its intent to terminate. Notwithstanding the foregoing, Licensee may terminate this Agreement at any time by giving sixty (60) days written notice to Company, and Company may terminate this Agreement at any time upon an Event of Default, as set forth in paragraph 17. Company reserves the right to renegotiate this Agreement by giving written notice to Licensee if a change in regulations or laws applicable to this Agreement materially alters the assumptions upon which this Agreement was made, or if such change renders this Agreement illegal. If the parties are unable to agree on new terms within thirty (30) days after Company’s written notice was sent to Licensee, this Agreement shall terminate sixty (60) days after such written notice was sent to Licensee. Upon termination for any reason, Licensee shall immediately remove all of Licensee’s Facilities from the Company Facilities.

17. **Events of Default.** The following events shall be deemed to be events of default by Licensee (each, an “Event of Default”):

(a) Licensee shall fail to comply with any term, condition, or covenant of this Agreement, other than the payment of rent, and shall not cure such failure within thirty (30) days after written notice thereof to Licensee; or if such failure cannot reasonably be cured within thirty (30) days, Licensee shall not have commenced to cure such failure within said thirty (30) days and shall not thereafter with reasonable diligence and good faith proceed to cure such failure.
Upon the occurrence of any of such Event of Default, Company shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever: (1) terminate this Agreement in its entirety; (2) revoke the permit covering the pole or poles involved in such default or noncompliance or satisfy the obligations of Licensee to Company from the bond required by Paragraph 12; or (3) obtain service of an attorney to institute suit or other judicial proceeding to remedy any default by Licensee in its performance of the covenants, terms, and conditions of this Agreement.

Pursuit of any of the foregoing remedies shall not preclude pursuit of any other remedies herein provided or any other remedies provided by law, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any rental due to Company hereunder or of any damages accruing to Company by reason of the violation of any terms, conditions, and covenants herein contained.

18. Removal, Abandonment or Modification.

(a) By Licensee. If Licensee intends to remove, abandon or modify any of Licensee's Facilities, Licensee shall give sixty (60) days' written notice to Company describing time, location, reasons and other necessary information as Company may request using the form supplied by Company, a sample of which is attached hereto as Exhibit B, as same may be amended and updated by Company from time to time. Licensee shall use the utmost care in removing or modifying Licensee's Facilities to the satisfaction of Company and shall avoid causing any negative consequences and damages to the Company Facilities. Licensee shall be solely responsible for any consequences and damages caused by its removal, abandonment or modification. Licensee shall remove any abandoned equipment from Company Facilities within thirty (30) days after giving such notice to Company. If Licensee fails to remove its abandoned equipment within such 30-day period, Company may remove the abandoned equipment at Licensee's expense as provided in Paragraph 15.

(b) By Company. If Company intends to abandon, remove, replace, or otherwise modify any of the Company Facilities to which Licensee has secured attachments, Company shall give Licensee sixty (60) days' written notice. If at the expiration of this period any of Licensee's property remains attached to the pole(s), Company may remove Licensee's property and charge a penalty in the amount of One Hundred Fifty Dollars ($150.00) per pole for the costs of such removal. Licensee may, however, avoid this liquidated damage penalty and assume ownership of the abandoned pole if Licensee (1) notifies Company of its intent to do so prior to the expiration of the sixty (60) day notification deadline, (2) pays Company a sum equal to the value of such abandoned pole as calculated by Company and agreed to by Licensee, and (3) agrees in writing to indemnify and hold harmless Company for any and all obligations, liabilities, settlements, judgments, damages, costs, expenses, attorneys' fees or other charges incurred by Company as a result of injury to person or property, regardless of the cause and notwithstanding any fault by Company.

19. No Liability on Company. Licensee agrees and acknowledges that Company has no experience or expertise in any of Licensee's Facilities. Licensee shall be solely responsible for any losses or damages to Licensee's Facilities, including, but not limited to, fiber optic cable, except where it is found that such losses or damages were solely and directly caused by reckless or willful misconduct on the part of Company's employees or agents when working on the Company Facilities.

20. Miscellaneous.

(a) Integration and Amendments. This contract replaces all previous contracts between the parties, and all such prior contracts are hereby mutually terminated by this Agreement. Any amendments to this Agreement must be in writing and signed by authorized representatives of Company and Licensee.

(b) Notice. All communication relating to this Agreement shall be sent by certified mail, return receipt requested, facsimile, or overnight mail to the following addresses, or as may be later designated by written notice to the other party:

If to Company:
Address: Black Hills/Colorado Electric Utility Company, L.P.
d/b/a Black Hills Energy
105 S Victoria Ave
Pueblo, CO 81003
Attention: Tom Ruth, Director Business Operations
(c) **Waiver.** The waiver of either party of a breach or a default of any portion of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or any other provision, nor shall any delay or omission on the part of either party to exercise or avail itself of any right, power or privilege that it has, or may have hereunder, operate as a waiver of any right, power or privilege by such party.

(d) **Severability.** In the event that any provision of this Agreement is held in a proceeding of competent jurisdiction to be unenforceable because it is invalid or in conflict with any law of any relevant jurisdiction, the validity of the remaining provisions shall not be affected.

(e) **Third Party Rights.** Nothing herein contained shall be construed as affecting or limiting the rights or privileges previously conferred by Company to a third party, by contract or otherwise to use the Company Facilities, and Company shall have the right to continue to extend such rights or privileges to others.

(f) **Headings.** Captions and headings contained in this Agreement have been included for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of this Agreement.

(g) **Governing Law and Dispute Resolution.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Colorado and the Federal Communications Act of 1934, as amended, including, without limitation, the Telecommunications Act of 1996. The parties hereby agree to the exclusive jurisdiction of, as may be appropriate, the Federal Communications Commission or any state or federal court within the State of Colorado for resolution of any matters in connection with the interpretation, construction and enforcement of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in triplicate by their respective officers thereunto duly authorized and their corporate seals to be affixed hereto the day and year first above written.

**BLACK HILLS/COLORADO ELECTRIC UTILITY COMPANY, L.P.**

d/b/a Black Hills Energy

Name: **Stuart Wenk**

Signature: **Stuart Wenk**

Title: **VP Electric Utilities**

**CITY OF PUEBLO, COLORADO**

Name: **Lawrence W. Atencio**

Signature: **Lawrence W. Atencio**

Title: **Pueblo City Council President**