Agenda for the

Regular Meeting of the

Englewood City Council

Monday, May 20, 2013

7:30 pm

Englewood Civic Center – Council Chambers
1000 Englewood Parkway
Englewood, CO 80110

1. Call to Order.

2. Invocation.

3. Pledge of Allegiance.

4. Roll Call.

5. Consideration of Minutes of Previous Session.

   a. Minutes from the Regular City Council Meeting of May 6, 2013.

6. Recognition of Scheduled Public Comment. (This is an opportunity for the public to address City Council. Council may ask questions for clarification, but there will not be any dialogue. Please limit your presentation to five minutes.)

   a. Larry Madden from the Englewood Rotary Club will present a check for Englewood Police and Fire Department programs.

   b. A representative of the Greater Englewood Chamber of Commerce will be present to address City Council regarding in-kind services for Chamber-sponsored events.

7. Recognition of Unscheduled Public Comment. (This is an opportunity for the public to address City Council. Council may ask questions for clarification, but there will not be any dialogue. Please limit your presentation to three minutes. Time for unscheduled public comment may be limited to 45 minutes, and if limited, shall be continued to General Discussion.)

   Council Response to Public Comment

Please note: If you have a disability and need auxiliary aids or services, please notify the City of Englewood (303-762-2405) at least 48 hours in advance of when services are needed.

8. Communications, Proclamations, and Appointments.

   a. Proclamation congratulating Craig Hospital on its expansion.

   b. Email from James Garnett announcing his resignation from Keep Englewood Beautiful Commission.

9. Consent Agenda Items.

   a. Approval of Ordinances on First Reading.

      i. Council Bill No. 15 -- Recommendation from the Police Department to adopt a bill for an ordinance approving the acceptance of Victim Assistance Law Enforcement (VALE) grant funding for 2013 in the amount of $18,507.00. **Staff Source: Nancy Wenig, Victim Assistance Coordinator.**

   b. Approval of Ordinances on Second Reading.

      i. Council Bill No. 13 - A bill for an ordinance creating a Citizen Budget Advisory Committee.

   c. Resolutions and Motions.

10. Public Hearing Items. (None scheduled)

11. Ordinances, Resolutions and Motions

   a. Approval of Ordinances on First Reading.

   b. Approval of Ordinances on Second Reading

      i. Council Bill No. 9 – Submitting to a vote of the registered electors of the City of Englewood at the next scheduled municipal election of November 5, 2013, an advisory question as amended to read: Shall the Englewood Municipal Code of the City of Englewood, Colorado ban the retail sale of recreational marijuana, ban recreational marijuana cultivation facilities, while not restricting personal use and growth of marijuana as allowed under the Colorado Constitution, nor shall it affect Englewood's currently licensed medical marijuana businesses, primary care-givers, patients and Code provisions relating thereto.

      ii. Council Bill No. 14, authorizing the renewal of Xcel Energy franchise agreement.

Please note: If you have a disability and need auxiliary aids or services, please notify the City of Englewood (303-762-2405) at least 48 hours in advance of when services are needed.

c. Resolutions and Motions

i. Recommendation from Finance Department to approve a resolution authorizing a supplemental appropriation for the 2012 budget and transfer between funds. **Staff Source: Frank Gryglewicz, Director of Finance and Administrative Services.**

12. General Discussion.

a. Mayor's Choice.

b. Council Members' Choice.

13. City Manager's Report.

14. City Attorney's Report.

15. Adjournment.

Please note: If you have a disability and need auxiliary aids or services, please notify the City of Englewood (303-762-2405) at least 48 hours in advance of when services are needed.

Memorandum

City Manager's Office

TO: Mayor Penn and Members of City Council

THROUGH: Gary Sears, City Manager

FROM: Michael Flaherty, Deputy City Manager

DATE: May 16, 2013

SUBJECT: Greater Englewood Chamber of Commerce-Request to City Council

At the May 20th Study Session, Colleen Mello, Executive Director of the Greater Englewood Chamber of Commerce, will present a request to City Council for consideration of waiver of certain City fees and for in-kind services related to upcoming Chamber events.

Attached are a summary of requested services and costs, and letters from Ms. Mello that describe sponsorship requests for each of the following events:

August 10 – Car Show

August 17 – KOSI Radio "World's Largest Garage Sale"

December 7 - Holiday Parade.

As in previous years, City staff has worked with Ms. Mello to identify costs related to each of these events, and are itemized on the "Chamber Events Summary." While all costs are identified, waiver of fees, totaling $825, is not a direct cost to the City but represents administrative fees established by City Ordinance, which Council may waive.

Other costs, totaling $4300-$6310, include use of City equipment and employee services. These costs are not included in the City Council budget or the budgets of the affected departments and would either have to be absorbed by the affected departments or supplemental appropriations made.

The Chamber has previously received a cash contribution of $5000 for sponsorship of 2013 events, paid from the City Council budget.

Greater Englewood
chamber of commerce
bringing business together™

May 1, 2013

Englewood City Council

Dear Council Members,

The Englewood Chamber of Commerce and KOSI 101 will be sponsoring the ***"Worlds Largest Garage Sale"*** in Englewood on August 17, 2013. We are doing this join adventure because we feel that this is a huge opportunity to promote the City of Englewood to the Denver Metro Area.

We will hold the sale in the RTD Parking Lot at 899 W Floyd Ave from 8:00am to 2:00pm.

As you know the Chamber is a non-profit organization that works with businesses, city departments and citizens to promote our city and provide events for the community. In order for us to provide events such as the Garage Sale we are asking for a few In-Kind Contributions from the City. As City representatives we are asking you to consider the waiving of fees for this event. This event is not for the promotion of the Chamber but a means to promote the City of Englewood. We anticipate that name "Englewood" will be mentioned all day during the 1,000 – 30 second advertising spots. This is a great way to advertise our City to the surrounding communities and we are pleased to be hosting such an event. If you would consider the waiving of fees it would certainly assist us in our endeavors for this event. The fees included are: a $75 temporary usage permit fee and $150 fee for the barricades.

We truly believe this event presents a positive reflection on our business community in regards to the cooperation required between the City and the Chamber to support this type of event. Thank you for your consideration of our request.

Sincerely,
Colleen Mello
Executive Director, Englewood Chamber of Commerce
(303) 789-4473 or

Greater Englewood
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Englewood City Council: May 1, 2013

Dear Council Members,

The Englewood Chamber of Commerce is excited to have the opportunity to be involved in presenting a Car Show this summer for the citizens of Englewood. We are very excited about bringing this event to our community and we are looking forward to both a fun and successful event. We have had many requests from citizens that would like to see this venue and we have several local car enthusiasts that will be participating.

The event will be Saturday, August 10, 2013 from 8:00am – 4:00pm. The car show will be along Windermere Street starting at 3700 S Windermere. We are expecting some 150 show cars to be parked along the street. We are also planning on having vendors that will be selling food and beverages. The spectator parking will be in the Sports Authority Parking Lot.

As City representatives we are asking you to consider the waiving of fees for this event. This event is not for the promotion of the Chamber but an event for the citizens and businesses of Englewood. If you would consider the waiving of these fees it would certainly assist us in providing this to the city. The fees included are: a $75 temporary use fee, $150 banner fee, a $200 digital sign fee and $2000 for police coverage. We would also like to display the Englewood Trolley Car and the antique Fire truck if possible.

We are hopeful that you will seriously consider our request and help us in providing this event for the Englewood Community.

Sincerely,
Colleen Mello
Executive Director, Englewood Chamber of Commerce
(303) 789-4473 or

Greater Englewood
chamber of commerce
bringing business together™

May 1, 2013

Englewood City Council

Dear Council Members,

The Englewood Chamber will be sponsoring the Holiday Parade for the Englewood Community in 2013. The event has now become an event that the citizens expect to see and we are very excited about bringing this showcase event again in 2013. We think this is a great opportunity for our citizens and also for merchants to advertise and promote their businesses for the holiday season.

We will follow a similar proposal to the 2012 Parade with the route and street closures. We are planning on the date being Saturday, December 7th, from 10:00am -11:30am. The parade would start at South Acoma and Englewood Parkway and proceed west on Englewood Parkway to the City Center. As the parade would proceed the streets would then be opened to traffic. We are committed to minimizing the amount of time the streets are closed.

As you know the Chamber is a non-profit organization that works with our local businesses, city departments and citizens to promote our city and provide programs/events for the community. In order for us to provide events such as the Holiday Parade we rely on volunteers and donations from businesses and other organizations within the community. Our members will be volunteering their time and money to ensure the success of the parade.

As City representatives we are asking you to consider the waiving of fees for this event. This event is not for the promotion of the Chamber but a gift to the Englewood community. If you would consider the waiving of fees it would certainly assist us in our endeavors for this event. The fees included are: the cost of the police coverage ($1800); a $75 temporary usage permit fee, a $200 street occupancy fee; a $400 fee for the hanging of a banner advertising the parade, 31219.00 for custodial help *, $340 snow removal *, and $250 for the use of the community room* for a total of $4,284.00. We are actively seeking sponsors to help with our cost which will be about $5684.00, the largest portion of that figure is required for the police coverage and traffic barricades. If you would consider waiving these additional fees it would certainly help us achieve our goal of providing the parade to the citizens of Englewood.

We are also asking for permission to use the Acoma parking lot and the 3400 block of S Acoma for the staging area of the parade.

We truly believe this event presents a positive reflection on our business community for providing this event to the children and citizens of Englewood. We are hopeful that you will seriously consider our request. Please help us to continue this tradition for Englewood residents.

Sincerely,
Colleen Mello
Executive Director, Englewood Chamber of Commerce
(303) 789-4473 or

*In case of inclement weather

Chamber Events Summary Requested City In-Kind Contributions

World's Biggest Garage Sale RTD Parking Lot August 17, 2013	Estimated Costs
Waiver of Fees	
Temporary Use Permit	$ 75
Barricades from street department	$150
Total requested	**$225**

Englewood Car Show - 3700 S Windermere August 10,2013	**Estimated Costs**
Waiver of Fees	
Temporary Use Permit	$75
Banner Placement	$150
Digital Sign	$200
Subtotal	$425
Display of Trolley Car and Antique Fire Truck	??
Employee Costs	
Police Officers - 4 x 8 hours@$50/hour (OT rate)	$2000
Total Requested	**$2425**

Holiday Parade at Englewood Parkway & CityCenter Dec 7	**Estimated Costs**
City Direct Personnel Expenses	
12 Police Officers x 3 hours @$50/hour (OT Rate)	$1800
Banner Placement (employee time)	$ 400
Subtotal direct Costs	**$2200**
Custodial	$1219*
Snow removal	$ 340*
Subtotal with snow removal and custodial	**$1559**

*2011- Actual costs incurred due to snow removal and to inclement weather that required some events to move indoors. Applicable if snow and cold weather repeat in 2013.

Waiver of Fees	
Street Occupancy Permit	$200
Temporary Use Permit	$ 75
Subtotal of fees	**$275**
Use of Community Room – if events moved indoors	$250*

Subtotal with Community Room fee waiver, if necessary	**$525**
Total Requested for Parade (if weather cooperates)	**$2475**
Total (if inclement weather/snow and cold based on 2011)	**$4284**
EFF Expenses – to be reimbursed by Chamber	
Total for all City Events	**$5125**
Total (with snow/inclement weather costs for Parade)	**$7134**

PROCLAMATION

WHEREAS, Englewood's Craig Hospital is ranked among the nation's top rehabilitation hospitals, specializing in the rehabilitation and research of patients with spinal cord injury and traumatic brain injury; and

WHEREAS, Craig Hospital has been transforming the lives of its patients since 1956 and is now set to transform itself by embarking upon an expansion and renovation project that will allow the hospital to provide an even higher level of care and service; and

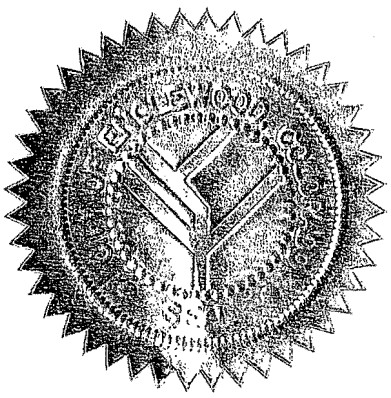
WHEREAS, this investment in Craig Hospital's future will mean enhancements for patient rooms and family areas; expansion of therapy, wellness, and fitness programs; and safer access for patients and family members; and

WHEREAS, Craig Hospital is scheduled to break ground on this expansion and renovation project on Thursday, May 23, 2013; and

WHEREAS, the City of Englewood takes great pride in having Craig Hospital as a part of our community and wishes to congratulate Craig Hospital on its continued and unwavering commitment to the quality and success of patient care;

NOW, THEREFORE, I, Randy P. Penn, Mayor of the City of Englewood, Colorado, offer Englewood's heartfelt congratulations to the administration, staff, patients, and volunteers at Craig Hospital for this remarkable undertaking and offer our best wishes for a seamless and highly successful expansion and renovation project.

GIVEN under my hand and seal this 20th day of May, 2013.



Randy P. Penn, Mayor

Audra Kirk

From: Jd <
Sent: Friday, May 10, 2013 5:47 AM
To: Audra Kirk
Subject: KEB

Audra,
I have decided to resign from KEB effective immediately. I have had some schedule changes that will result in conflicts with meetings and events and rather than guilt myself think it is better to resign now. I have enjoyed the last five years and appreciate the opportunity to have served Englewood.

James Garnett

Sent from my iPad

COUNCIL COMMUNICATION

Date:	Agenda Item:	Subject:
May 20, 2013	9 a i	2013 Victim Assistance Law Enforcement Grant

Initiated By:	Staff Source:
Police Department	Nancy Wenig, Victim Assistance Coordinator

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

City Council has previously approved Victim Assistance and Law Enforcement grants from 1990-2012.

RECOMMENDED ACTION

The Police Department is recommending that City Council adopt a Bill for an Ordinance authorizing the Police Department to accept funding in the amount of $18,507 from the 2013 Victim Assistance Law Enforcement (VALE) Grant.

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The VALE Grant finances approximately 40% of the salary for the Victim Witness Advocate position which is assigned to the Englewood Municipal Court. The Victim Witness Advocate provides services for victims of domestic violence.

FINANCIAL IMPACT

The VALE Grant will fund $18,507 towards the Victim Advocate position.

The funding for the VALE grant program comes from fees that are collected by courts in the 18th Judicial District.

LIST OF ATTACHMENTS

Proposed Bill for an Ordinance

BY AUTHORITY

ORDINANCE NO. ____
SERIES OF 2013

COUNCIL BILL NO. 15
INTRODUCED BY COUNCIL
MEMBER _____

A BILL FOR

AN ORDINANCE AUTHORIZING THE ACCEPTANCE OF A VICTIM ASSISTANCE LAW ENFORCEMENT (VALE) GRANT FROM THE VICTIM ASSISTANCE LAW ENFORCEMENT BOARD OF THE 18TH JUDICIAL DISTRICT.

WHEREAS, the City of Englewood Police Department applied for funding under the VALE Grants Program to be used for funding the Victim/Witness Program in the Englewood Municipal Court; and

WHEREAS, the Victim/Witness Program in the Englewood Municipal Court has served the victims of domestic violence since 1990; and

WHEREAS, the staff seeks Council approval of an Ordinance accepting a 2013 VALE grant funding in the amount of $18,507, for the period of July 1, 2013 to June 30, 2014.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO, AS FOLLOWS:

Section 1. The City Council of the City of Englewood, Colorado hereby authorizes the acceptance of the VALE Grant and accompanying intergovernmental agreement, a copy of which is marked as "Exhibit A" and attached hereto.

Section 2. The Mayor, the Chief of Police and the Director of Finance/Administrative Services are hereby authorized to sign said VALE Grant and accompanying intergovernmental agreement on behalf of the City of Englewood.

Section 3. The funds for the VALE grant come from fines assessed by the Colorado 18th Judicial District. No Federal funds will be used.

Introduced, read in full, and passed on first reading on the 20th day of May, 2013.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 24th day of May, 2013.

Published as a Bill for an Ordinance on the City's official website beginning on the 22nd day of May, 2013 for thirty (30) days.

_____
Randy P. Penn, Mayor

ATTEST:

_____
Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of a Bill for an Ordinance, introduced, read in full, and passed on first reading on the 20th day of May, 2013.

_____
Loucrishia A. Ellis

EXHIBIT A

VICTIM ASSISTANCE AND LAW ENFORCEMENT BOARD

CONTRACT

Pursuant to the Assistance to Victims of and Witnesses to Crimes and Aid to Law Enforcement Act, Article 4.2 Title 24 C.R.S., the Victim Assistance and Law Enforcement Board of the 18th Judicial District has made the following award:

Grantee: Englewood Department of Safety Services
3615 South Elati Street, Englewood, Colorado 80110

Grant number: 13-38

Project Title: Victim/Witness Advocate

Purpose of Grant Funds: Law Enforcement Victim Services

Services/Equipment Being Funded: Portion of Salary and Benefits for Victim Assistance Advocate

Grant Period: July 1, 2013 to June 30, 2014

Amount of Grant Award: $18,507.00

Quarterly Installments: Three (3) Quarterly Payments of $4,626.00 and One (1) Quarterly Payments of $4,629.00.

BE IT UNDERSTOOD THAT:

(1) All disbursements of awards are contingent upon the availability of VALE funds.

(2) The contents of the grant application will become contractual obligations of the grant recipient and are incorporated into this contract as if fully set forth herein.

(3) The grant recipient is required to submit Financial Reports quarterly: October 31, 2013, January 31, 2014, April 30, 2014 and July 31, 2014 for funding for 2013/2014. The report due on July 31, 2014 shall be the year-end report. The VALE Board will provide Financial Reporting Forms. Grant recipients are **required** to use these forms.

(4) The grant recipient is required to submit Program Reports on: January 31, 2014 and July 31, 2014 for funding for 2013/2014. These reports must address any special conditions that are listed in this contract. The report due on July 31, 2014 shall be the year-end report. It shall show totals for the entire year and must address any special conditions that are listed in this contract. The VALE Board will provide Program Reporting Forms. Grant recipients are **required** to use these forms.

Englewood Department of Safety Services
13-38

Reports shall be sent to:

Tara Lassiter, Grant Evaluator
VALE Board
District Attorney's Office
6450 S Revere Pkwy
Centennial, Colorado 80111
(720) 874-8608

(5) Failure to submit these required reports on the dates due may result in suspension of the grant, termination of the grant, return of awarded funds or the loss of future funding by VALE.

(6) Special conditions for the award which have been stipulated between the VALE Board and the grant recipient are as follows:

NONE

(7) Any equipment purchased with VALE funds must remain with the grant recipient. Equipment must be used for the purpose designated in the grant application. Any use by others or transfer of ownership must be reported to the VALE Board, in writing, prior to the occurrence of such use or transfer. The Board may approve such use or transfer or may request return of the equipment.

(8) Any change in the use of grant funds shall be approved by the VALE Board. The request for such change shall be in writing. Approval of the VALE Board shall be obtained prior to any such use.

(9) Amendment of any other terms of this contract shall have prior approval of the Board. Requests for amendment shall be in writing.

(10) The grant recipient shall submit written notification by June 1, 2014 to the VALE Board if the grant recipient will have any remaining funds at the end of the grant period.

All unused funds shall be returned to the VALE Board unless the grant recipient makes a request in writing for use of the funds beyond the grant period and such request has been approved by the VALE Board.

Such requests shall include:

The amount of remaining funds
How the funds will be used
When the funds will be expended
Why the funds were not expended.

Upon receipt of the request, the VALE Board shall decide whether to grant or deny the request without further presentation or hearing.

(11) The grant recipient agrees that all funds received under this grant shall be expended solely for the purposes stated above and that any funds not so expended, including funds lost or diverted to other purposes, shall be repaid to the VALE fund.

(12) The grant recipient agrees to comply with the letter and spirit of the Colorado Anti-discrimination Act of 1957, as amended, and other applicable law respecting discrimination and unfair employment practices (C.R.S. Sec. 24-34-402) and required by Executive Order, Equal Opportunity and Affirmative Action, date April 16, 1975.

(13) Non-compliance with this contract may include failure to submit reports, making unapproved changes to the budget, performance failures or adherence to special conditions. Non-compliance with any portion of this contract may result in:

Suspension of grant funds
Termination of grant
Withholding of funds
Requiring grant recipient to return money to the VALE fund
Other action as deemed necessary by the members of the VALE Board
Any combination of the above.

(14) All grant recipients shall make available to the Board or its authorized designee all current books, records, procedures or other information relative to the grant application and implementation.

(15) The funds granted by this contract for Victim Services shall be disbursed in quarterly installments pending VALE Board approval of all required reports and verification of expenses. The funds granted by this contract for equipment may be dispersed by a single payment for the full amount, pending VALE Board approval of all required reports and verification of expenses.

Englewood Department of Safety Services
13-38

The grant recipient, through the following signatories, understands and agrees that any VALE monies received as a result of the awarding of the grant application shall be subject to the terms of this contract.

_____ Date_____

Project Director
John M. Collins, Chiefof Police

_____ Date_____

Financial Officer
Frank Gryglewicz, Director of Finance

_____ Date_____

Authorizing Official
Randy P. Penn, Mayor

_____ Date_____

Paula Hammond
Chair, VALE Board

Authorized Official: The authorized official is the person who is, by virtue of such person's position, authorized to enter into contracts for the grant recipient.

This could include: Mayor or City Manager, Chairperson of the County Commissioners, District Attorney, President or Chairperson of the Board of Directors, Superintendent, or other Chief Executive Officer.

Financial Officer: The person is responsible for all financial matters related to the program and who has responsibility for the accounting, management of funds, verification of expenditures, audit information and financial reports. The person who actually prepares the finical reports may be under the supervision of the Financial Officer. The Financial Officer must be a person other than the Authorized Official or the Project Director.

Project Director: The person who has direct responsibility for the implementation of the project. This person should combine knowledge and experience in the project area with ability to administer the project and supervise personnel. He/she shares responsibility with the financial Office for seeing that all expenditures are within the approved budget. This person will normally devote a major portion of his/her time to the project and is responsible for meeting all reporting requirements. The Project Director must be a person other than the Authorized Official or the Financial Officer.

BY AUTHORITY

ORDINANCE NO. ____
SERIES OF 2013

COUNCIL BILL NO. 13
INTRODUCED BY COUNCIL
MEMBER JEFFERSON

AN ORDINANCE AMENDING TITLE 2, OF THE ENGLEWOOD MUNICIPAL CODE 2000 BY THE ADDITION OF A NEW CHAPTER 14, ESTABLISHING A BUDGET ADVISORY COMMITTEE FOR THE CITY OF ENGLEWOOD, COLORADO.

WHEREAS, The City's finances and budget activities are important to the very essence of the City of Englewood's community; and

WHEREAS, the City Council recognizes the importance of citizen involvement in setting the scope of the budget activities in the City; and

WHEREAS, this year as well as all future years the Budget Advisory Committee shall meet with the Revenue and Budget Manager, the Director of Finance and Administrative Services and the City Manager at meetings which shall be open to the public and recorded in the same manner as other boards and commissions; and

WHEREAS, each City department shall present its budget to the City Manager and Budget Advisory Committee; and

WHEREAS, Council recognizes that there is a steep learning curve in understanding the budget and making recommendations; and

WHEREAS, the Budget Advisory Committee will be learning the budget process in the initial year; and

WHEREAS, the City Manager shall put together a curriculum or outline of the budget process with the Budget Advisory Committee coordinating agendas for this year and next to reach the Budget Advisory Committee goals and requirements set forth in this Ordinance; and

WHEREAS, the goals/outcomes and accomplishments of the Budget Advisory Committee shall be reviewed at the yearly Council Budget Workshop.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO, AS FOLLOWS:

Section 1. The City Council of the City of Englewood hereby approves amending Title 2, of the Englewood Municipal Code 2000, by adding a new Chapter 14, establishing the Budget Advisory Committee, which shall read as follows:

2-14: BUDGET ADVISORY COMMITTEE:

20-14-1: Purpose: The Budget Advisory Committee (BAC) is established by Council and the City Manager to advise the City on the development, implementation, and evaluation of the annual City Budget. Participation in Budget Advisory Committee is an opportunity not only to advise on the prioritization of how city tax dollars are spent, but also to advise policymakers in their decision-making process in an open and transparent process.

2-14-2: Composition and Membership: The Committee will be comprised of five (5) members appointed by City Council and a non-voting Council liaison.

2-14-3: Terms of Members: Members will be appointed to overlapping terms of three (3) years. The City Council shall make appointments to fill vacancies for unexpired terms.

2-14-4: Compensation:

A. The members of the Committee shall serve without compensation.

B. Reasonable expenses directly related to performing the duties of the Committee shall be allowed.

2-14-5: Powers and Duties:

The Budget Advisory Committee shall have the following powers and duties:

A. The Committee shall meet at least once each month at a time to be established by the City Manager.

B. At the start of each budget year the City Manager shall meet with the Budget Advisory Committee and shall review projections of major revenue sources.

C. The City Manager shall work with the Budget Advisory Committee to establish budget guidelines for the coming year.

D. Each department shall present its budget to the Revenue and Budget Manager, the Director of Finance and Administrative Services, the City Manager and Budget Advisory Committee. Said meetings shall be open to the public and recorded in the same manner as other boards and commissions.

E. Annual capital improvement recommendations shall be made only by the Planning and Zoning Commission as required by the Englewood Home Rule Charter not the Budget Advisory Committee.

F. Once the budgets have been reviewed and have incorporated requests for new programs and/or personnel authorized by the City Manager, the Budget Advisory Committee shall submit a written report of its findings and recommendations (BAC Report). The BAC Report shall be delivered to Council prior to the public hearing regarding the budget.

2-14-6: Appointment of Officers and Adoption of Rules:

A. The Committee shall organize, adopt administrative rules and procedures and elect from its members such officers as it shall deem necessary to accomplish its purposes. Officers of the Committee shall be elected for one-year (1) terms. No officer shall serve in the same capacity for more than two (2) consecutive terms.

B. The chairperson may appoint such standing or special sub-committees from the membership of the Committee as the Committee shall determine necessary or useful in carrying out its purposes and powers. The purpose, term and members of each sub-committee shall be determined by the chairperson.

2-14-7: Sunset Provision: The Budget Advisory Committee and the provisions of Title 2, Chapter 14, shall terminate in three (3) years unless the Committee and the provisions of Title 2, Chapter 14, are renewed by Council ordinance.

Section 2. Safety Clauses. The City Council, hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Englewood, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

Section 3. Severability. If any clause, sentence, paragraph, or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect impair or invalidate the remainder of this Ordinance or its application to other persons or circumstances.

Section 4. Inconsistent Ordinances. All other Ordinances or portions thereof inconsistent or conflicting with this Ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

Section 5. Effect of repeal or modification. The repeal or modification of any provision of the Code of the City of Englewood by this Ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purposes of sustaining any and all proper actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.

Introduced, read in full, and passed on first reading on the 6th day of May, 2013.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 10th day of May, 2013.

Published as a Bill for an Ordinance on the City's official website beginning on the 8th day of May, 2013 for thirty (30) days.

Read by title and passed on final reading on the 20th day of May, 2013.

Published by title in the City's official newspaper as Ordinance No. ___, Series of 2013, on the 24th day of May, 2013.

Published by title on the City's official website beginning on the 22nd day of May, 2013 for thirty (30) days.

This Ordinance shall take effect thirty (30) days after publication following final passage.

Randy P. Penn, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of the Ordinance passed on final reading and published by title as Ordinance No. ___, Series of 2013.

Loucrishia A. Ellis

BY AUTHORITY

ORDINANCE NO. ____
SERIES OF 2013

COUNCIL BILL NO. 9
INTRODUCED BY COUNCIL
MEMBER WOODWARD/GILLIT

AN ORDINANCE SUBMITTING TO A VOTE OF THE REGISTERED ELECTORS OF THE CITY OF ENGLEWOOD AT THE NEXT SCHEDULED MUNICIPAL ELECTION OF NOVEMBER 5, 2013, AN ADVISORY QUESTION TO BAN THE RETAIL SALE OF RECREATIONAL MARIJUANA, BAN RECREATIONAL MARIJUANA CULTIVATION FACILITIES, BAN RECREATIONAL MARIJUANA MANUFACTURING FACILITIES, AND BAN RECREATIONAL MARIJUANA TESTING FACILITIES.

WHEREAS, the City of Englewood ("City") is a home-rule municipality organized and existing under the provisions of the Colorado Constitution Article XX; and

WHEREAS, pursuant to the Constitution, and as further authorized by State statutes, including, but not limited to C.R.S. Section 31-15-401, the City has broad authority to exercise its police powers to promote and protect the health, safety, and welfare of the community and its residents; and

WHEREAS, such police powers include the power to regulate the nature and type of businesses allowed within such community; and

WHEREAS, the voters of Colorado approved Amendment 64 at the 2012 General Election, which will be codified as Section 16 of Article 18 of the Colorado Constitution, authorizing the use, display, purchase, transport, and transfer of one ounce or less of recreational marijuana by a person 21 of age or older; and

WHEREAS, Amendment 64 allows local governments to ban recreational marijuana retail stores, cultivation facilities, product manufacturing facilities and testing facilities; and

WHEREAS, the ban will not restrict personal use of marijuana as allowed under the Colorado Constitution, nor shall it affect Englewood's currently licensed medical marijuana businesses, primary care-givers, patients, and Code provisions relating thereto.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO, THAT:

Section 1. There is hereby submitted to the registered electors of the City of Englewood at the next scheduled municipal election on November 5, 2013 an advisory question, to read as follows:

Question No.

> Shall the Englewood Municipal Code of the City of Englewood, Colorado ban the retail sale of recreational marijuana, ban recreational marijuana cultivation facilities, ban recreational marijuana manufacturing facilities, and ban recreational marijuana testing facilities; while not restricting personal use and growth of marijuana as allowed under the Colorado Constitution, nor shall it affect Englewood's currently licensed medical marijuana businesses, primary care-givers, patients, and Code provisions relating thereto?

_____ Yes _____ No

Section 2. Each elector voting at said election and desirous of voting shall indicate his/her choice by depressing the appropriate counter of the voting machine or by the appropriate marking upon paper ballots where used.

Section 3. The proper officials of the City of Englewood shall give notice of said next scheduled municipal election, such notice shall be published in the manner and for the length of time required by law, and the ballots cast at such election shall be canvassed and the result ascertained, determined, and certified as required by law.

Section 4. Only if the question is approved by the registered electors of the City of Englewood shall the Englewood Municipal Code be amended.

Section 5. If any section, paragraph, clause, or other portion of this Ordinance is for any reason held to be invalid or unenforceable, the invalidity or unenforceability shall not affect any of the remaining portions of this Ordinance.

Introduced, read in full, and passed on first reading on the 15th day of April, 2013.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 19th day of April, 2013.

Published as a Bill for an Ordinance on the City's official website beginning on the 17th day of April, 2013 for thirty (30) days.

Read on second reading and amended on May 6, 2013.

Published as amended by title in the City's official newspaper on the 10th day of May, 2013.

Published as amended on the City's official website beginning on the 8th day of May, 2013 for thirty (30) days.

Read by title and passed as amended on final reading on the 20th day of May, 2013.

Published by title as amended in the City's official newspaper as Ordinance No. ___, Series of 2013, on the 24th day of May, 2013.

Published by title as amended on the City's official website beginning on the 22nd day of May, 2013 for thirty (30) days.

Randy P. Penn, Mayor

ATTEST:

Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of the amended Ordinance passed on final reading and published by title as Ordinance No. ___, Series of 2013.

Loucrishia A. Ellis

BY AUTHORITY

ORDINANCE NO. ____
SERIES OF 2013

COUNCIL BILL NO. 14
INTRODUCED BY COUNCIL
MEMBER WOODWARD

AN ORDINANCE GRANTING A GAS AND ELECTRIC FRANCHISE TO PUBLIC SERVICE COMPANY OF COLORADO DBA XCEL ENERGY, A COLORADO CORPORATION, AND ITS SUCCESSORS AND ASSIGNS INCLUDING AFFILIATES OR SUBSIDIARIES BETWEEN THE CITY OF ENGLEWOOD, COLORADO AND PUBLIC SERVICE COMPANY OF COLORADO.

WHEREAS, the City Council of the City of Englewood passed Ordinance No. 14, Series of 1988 which granted a franchise to Public Service Company of Colorado ("PSCo"), pursuant to the laws of the State of Colorado and the Englewood Municipal Code and said franchise will expire on June 30, 2013; and

WHEREAS, Public Service Company of Colorado dba Xcel Energy has applied for a new twenty (20) year gas and electric franchise; and

WHEREAS, the provision of gas and electric services is necessary for the health, safety and welfare of the citizens of Englewood; and

WHEREAS, the public interest will be benefited by granting a non-exclusive right to PSCo to make reasonable use of the City streets, public utility easements (as applicable) and other City property in order that it may provide gas and electric service to the residents and businesses within the City; and

WHEREAS, all provisions of the Englewood Municipal Code regarding grants of a franchise have been met.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO, AS FOLLOWS:

Section 1. The City Council of the City of Englewood, Colorado hereby authorizes the "Franchise Agreement Between the City of Englewood, Colorado and Public Service Company of Colorado" ("Franchise Agreement"), attached hereto as Exhibit A.

Section 2. The Franchise Agreement shall remain in effect for a period of twenty (20) years, commencing on July 1, 2013.

Section 3. The Mayor is hereby authorized to sign and the City Clerk to attest said Franchise Agreement for and on behalf of the City of Englewood, Colorado.

Introduced, read in full, and passed on first reading on the 6th day of May, 2013.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 10th day of May, 2013.

Published as a Bill for an Ordinance on the City's official website beginning on the 8th day of May, 2013 for thirty (30) days.

Read by title and passed on final reading on the 20th day of May, 2013.

Published by title in the City's official newspaper as Ordinance No. ___, Series of 2013, on the 24th day of May, 2013.

Published by title on the City's official website beginning on the 22nd day of May, 2013 for thirty (30) days.

This Ordinance shall take effect thirty (30) days after publication following final passage.

_____
Randy P. Penn, Mayor

ATTEST:

_____
Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of the Ordinance passed on final reading and published by title as Ordinance No. ___, Series of 2013.

_____
Loucrishia A. Ellis

EXHIBIT A

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

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ARTICLE 1
DEFINITIONS

For the purpose of this franchise agreement ("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 Englewood, a municipal corporation of the State of Colorado.

§1.2 "Clean Energy" means energy produced from Renewable Energy Resources, eligible energy sources, and by means of advanced technologies that cost-effectively capture and sequester carbon emissions produced as a by-product of power generation. For purposes of this definition, "cost" means all those costs as determined by the PUC.

§1.3 "Company" refers to Public Service Company of Colorado, a Colorado corporation and an Xcel Energy company and its successors and assigns including affiliates or subsidiaries that undertake to perform any of the obligations under this Franchise.

§1.4 "Company Facilities" refer to all facilities of the Company reasonably necessary or desirable to provide gas and electric service into, within and through the City, including but not limited to plants, works, systems, substations, transmission and distribution structures, lines, equipment, pipes, mains, conduit, transformers, underground lines, gas compressors, meters, meter reading devices, communication and data transfer equipment, control equipment, gas regulator stations, street lights, wire, cables and poles and all appurtenances thereto.

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

§1.6 "Distribution Facilities" refers to those lines designed to operate at the utility's distribution voltages in the area defined in the Company's tariffs including substation transformers that transform electricity to a distribution voltage and also includes other equipment within a transforming substation which is not integral to the circuitry of the utility's transmission system. Distribution Facilities shall not include facilities that are exclusively used to provide street lighting service.

§1.7 "Electric Gross Revenues" refers to those amounts of money that the Company receives from the sale or delivery of electricity in the City, after adjusting for refunds, net write-offs of accounts, corrections, or regulatory adjustments. Regulatory adjustments include, but are not limited to, credits, surcharges, refunds, and pro-forma adjustments pursuant to federal or state regulation. "Electric Gross Revenues" shall exclude any revenue for the sale or delivery of electricity to the City as a customer of the Company.

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

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

§1.10 "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, terrorist acts, acts of governmental authority, acts of God, floods, epidemics, quarantines, labor disputes, unavailability or shortages of materials or equipment or failures or delays in the delivery of materials. Neither the City nor the Company shall be in breach of this Franchise if a failure to perform any of the duties under this Franchise is due to a Force Majeure condition.

§1.11 "Gross Revenues" refers to those amounts of money that the Company receives from the sale of gas and electricity within the City under rates authorized by the Public Utilities Commission, as well as from the transportation of gas to its customers within the City and those amounts of money, excluding expense reimbursements, which the Company receives from the use of Company Facilities in Streets and Other Public Places (unless otherwise preempted by applicable federal or state law), as adjusted for refunds, net write-offs of uncollectible accounts, corrections, or regulatory adjustments. Regulatory adjustments include, but are not limited to, credits, surcharges, refunds, and pro-forma adjustments pursuant to federal or state regulation. "Gross Revenues" shall exclude any revenues from the sale of gas or electricity to the City or the transportation of gas to the City.

§1.12 "Other City Property" refers to the surface, the air space above the surface and the area below the surface of any property owned by the City or directly controlled by the City due to the City's real property interest in the same or hereafter owned by the City, that would not otherwise fall under the definition of "Streets," but which provides a suitable location for the placement of Company Facilities as specifically approved in writing by the City as set forth in Section 2.1 of this Franchise. Other City Property includes Parks but does not include Public Utility Easements.

§1.13 "Park" refers to any area used as a park, reservation, playground, trail, beach, or any other open area in the City, owned or used by the City and devoted or designated to active or passive recreation, either on a temporary or permanent basis.

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

§1.15 "Public Project" refers to (1) any public work or improvement within the City that is wholly or beneficially owned by the City; or (2) any public work or improvement within the City where fifty percent (50%) or more of the funding is provided by any combination of the City, the federal government, the State of Colorado, any Colorado county, the Regional Transportation District, and the Urban Drainage and Flood Control District, but excluding all other entities established under Title 32 of the Colorado Revised Statutes.

§1.16 "Public Utilities Commission" or "PUC" refers to the Public Utilities Commission of the State of Colorado or other state agency succeeding to the regulatory powers of the Public Utilities Commission.

§1.17 "Public Utility Easement" refers to any platted easement over, under, or above public or private property, expressly dedicated to, and accepted by the City in accordance with applicable law for the use of public utility and other utility-like companies for the placement of utility and/or comparable facilities, including but not limited to Company Facilities.

§1.18 "Relocate," "Relocation," or "Relocated" refers to the definition assigned such terms in Section 6.8.A of this Franchise.

§1.19 "Renewable Energy Resources" means wind, solar, geothermal; biomass from nontoxic plant matter consisting of agricultural crops or their byproducts, urban wood waste, mill residue, slash, or brush, or from animal wastes and products of animal wastes, or from methane produced at landfills or as a by-product of the treatment of wastewater residuals; new hydroelectricity with a nameplate rating of ten (10) megawatts or less; and hydroelectricity in existence on January 1, 2005, with a nameplate rating of thirty (30) megawatts or less; fuel cells using hydrogen derived from a Renewable Energy Resource; and recycled energy produced by a generation unit with a nameplate capacity of not more than fifteen (15) megawatts that converts the otherwise lost energy from the heat from exhaust stacks or pipes to electricity and that does not combust additional fossil fuel, and includes any eligible renewable energy resource as defined in § 40-2-124(1)(a), C.R.S., as the same shall be amended from time to time.

§1.20 "Residents" refers to all persons, businesses, industries, governmental agencies, including the 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 or City-maintained streets, alleys, bridges, roads, lanes, access easements, and other public rights-of-way within the City, which are primarily used for vehicle traffic. Streets shall not include Public Utility Easements and Other City Property.

§1.22 "Supporting Documentation" refers to all information reasonably required or needed in order to allow the Company to design and construct any work performed under the provisions of this Franchise. Supporting Documentation may include, but is not limited to, construction plans, a description of known environmental issues, the identification of critical right of way or easement issues, the final recorded plat for the property, the date the site will be ready for the Company to begin construction, the date gas service and meter set are needed, and the name and contact information for the City's project manager.

§1.23 "Tariffs" refer to those tariffs of the Company on file and in effect with the PUC, the Federal Energy Regulatory Commission or any successor agency, as amended from time-to-time.

§1.24 "Transmission Facilities" refers to those lines and related substations designed and operating at voltage levels above the utility's voltages for Distribution Facilities, including but not limited to related substation facilities such as transformers, capacitor banks, or breakers that are integral to the circuitry of the Company's transmission system.

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

ARTICLE 2
GRANT OF FRANCHISE

§2.1 Grant of Franchise.

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

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

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

B. Street Lighting and Traffic Signal Lighting Service. The rights granted by this Franchise encompass the nonexclusive right to provide street lighting service and traffic signal lighting services, as directed by the City, and the applicable provisions of this Franchise shall apply with full and equal force to street lighting service and traffic signal lighting service provided by the Company. Wherever reference is made in this franchise to the sale or provision of Utility Service, these references shall be deemed to include the provision of street lighting service and traffic signal lighting service. Conflicting provisions of this Franchise notwithstanding, street lighting service and traffic signal lighting service within the City shall be governed by Tariffs.

C. New Company Facilities in Other City Property, Excluding Parks. For all Other City Property that is not a Park, the City's grant to the Company of the right to locate Company Facilities in, on, over or across such Other City Property shall be subject to the Company's already having or first receiving from the City approval of the location of such Company Facilities, in the City's reasonable discretion; and (2) the terms and conditions of the use of such Other City Property shall be governed by this Franchise as

may be reasonably supplemented to account for the unique nature of such Other City Property. Nothing in this subsection C. shall modify or extinguish pre-existing Company property rights. Further, this paragraph shall not prohibit the Company from modifying, replacing or upgrading Company Facilities already located in Parks in accordance with the terms and conditions of the City license agreement, permit or other agreement that granted the Company the right to use such Other City Property or, if there is no such license agreement, permit or other agreement, in accordance with this Franchise.

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

§2.2 Conditions and Limitations.

A. Scope of Franchise. The grant of this Franchise shall extend to all areas of the City as it is now or hereafter constituted that are within the Company's PUC-certificated service territory; however, nothing contained in this Franchise shall be construed to authorize the Company to engage in activities other than the provision of Utility Service, nor does it affect the Company's rights and obligations pursuant to any Certificate of Public Convenience and Necessity granted by the PUC.

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

C. Prior Grants not Revoked. This grant and Franchise does not, and is not intended to revoke any prior license, grant, or right to use the Streets, Other City Property or Public Utility Easements.

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

§2.3 Effective Date and Term.

A. Term. This Franchise shall take effect on _____ __, 2013, and shall supersede any prior franchise grants to the Company by the City. This Franchise shall terminate on _____, 2033, unless extended by mutual consent.

ARTICLE 3
CITY POLICE POWERS

§3.1 Police Powers. The Company expressly acknowledges the City's right to adopt, from time to time, in addition to the provisions contained herein, such laws, including ordinances and regulations, as it may deem necessary in the exercise of its governmental powers. If the City considers making any substantive changes in its local codes or regulations that in the City's reasonable opinion will significantly impact the Company's operations in the City's Streets and Public Utility Easements, it will make a good faith effort to advise the Company of such consideration; provided, however, that lack of notice shall not be justification for the Company's non-compliance with any applicable local requirements.

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

§3.3 Compliance with Laws. The Company shall promptly and fully comply with all laws, regulations, permits and orders lawfully enacted by the City. Nothing herein provided shall prevent the Company from legally challenging or appealing the enactment of any laws, regulations, permits and orders enacted by the City.

ARTICLE 4
FRANCHISE FEE

§4.1 Franchise Fee.

A. Fee. In partial consideration for this Franchise, which provides the certain terms related to the Company's use of City Streets, Public Utility Easements and Other City Property, which are valuable public properties acquired and maintained by the City at great expense to its Residents, and in recognition of the fact that the grant to the Company of this Franchise is a valuable right, the Company shall pay the City a sum equal to three percent (3%) of all Gross Revenues. To the extent required by law, the Company shall collect this fee from a surcharge upon City Residents who are customers of the Company.

B. Obligation in Lieu of Fee. In the event that the franchise fee specified herein is declared void for any reason by a court of competent jurisdiction, unless prohibited by law, the Company shall be obligated to pay the City, at the same times and in the same manner as provided in this Franchise, an aggregate amount equal to the amount that the Company would have paid as a franchise fee as partial consideration for use of the City Streets, Public Utility Easements and Other City Property. Such payment

shall be made in accordance with the applicable provisions of law. Further, to the extent required by law, the Company shall collect the amounts agreed upon through a surcharge upon Utility Service provided to City Residents who are customers of the Company.

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

D. Utility Service Provided to the City. No franchise fee shall be charged to the City for Utility Service provided directly or indirectly to the City for its own consumption, including street lighting service and traffic signal lighting service, unless otherwise directed by the City.

§4.2 Remittance of Franchise Fee.

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

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

C. Audit of Franchise Fee Payments.

(1) Every three (3) years commencing at the end of the third year of this Franchise, the Company shall conduct an internal audit to investigate and determine the correctness of the franchise fee paid to the City. Such audit shall be limited to the previous three (3) calendar years. The Company shall provide a written report to the City Clerk containing the audit findings.

(2) If the City disagrees with the results of the audit, and if the parties are not able to informally resolve their differences, the City may conduct its own audit at its own expense, and the Company shall cooperate, including but not necessarily limited to, providing the City's auditor with all information reasonably necessary to complete the audit.

(3) If the results of a City audit conducted pursuant to subsection C(2) 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 reasonable costs of the City's audit.

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

E. Reports. Upon written request by the City, but not more than once per year, the Company shall supply the City with reports, in such formats and providing such details as reasonably requested by the City, of all suppliers of utility service that utilize Company Facilities to sell or distribute utility service to Residents and the names and addresses of each such supplier, provided the Company shall not be required to disclose any confidential or proprietary information that may not be provided pursuant to the Tariffs or Commission rules. Additionally, and at the request of the City no more than once each year, the Company shall provide the City with a copy of the Company's 10-K report.

§4.3 Franchise Fee Payment not in Lieu of Permit or Other Fees. Payment of the franchise fee does not exempt the Company from any other lawful tax or fee imposed generally upon persons doing business within the City, including any fee for a permit lawfully required by the City, except that the franchise fee provided for herein shall be in lieu of any occupation or similar tax or fee for the use of City Streets, Public Utilities Easements and Other City Property, including but not limited to any rental fee, occupancy fee, occupation fee, or any similar tax or fee.

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 this Franchise. The City Clerk 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 Clerk 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 and Other City Property.

§5.2 Company Designee. The Company shall designate a representative to act as the primary liaison with the City and shall provide the City with the name, address, and telephone number for the Company's representative under this Franchise. 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 coordinate its activities in City Streets, Public Utility Easements and Other City Property with the City. The City and the Company will meet annually upon the written request of the City designee to exchange their respective short-term and long-term forecasts and/or work plans for construction and other similar work which may affect City Streets, including but not limited to any planned City Streets paving project. The City and Company shall hold such meetings as either deems necessary to exchange additional information with a view toward coordinating their respective activities in those areas where such coordination may prove beneficial and so that the City will be assured that all applicable provisions of this Franchise, applicable building and zoning codes, and applicable City air and water pollution regulations are complied with, and that aesthetic and other relevant planning principles have been given due consideration.

B. In addition to the foregoing meetings, the Company agrees to use good faith efforts to provide sufficient notice to the City whenever the Company initiates plans to significantly upgrade its infrastructure within the City, including without limitation the replacement of utility poles and overhead lines, in order to allow for City input and consultation on Company work plans prior to the time that said work plans are finalized so that the beneficial coordination described in A above, may occur.

C. When the Company opens a trench in City Streets and Other City Property, at the City's request, the Company shall meet with the City, as soon as reasonably possible after the City's request to discuss the feasibility of the City safely participating in joint trenching for City facilities.

ARTICLE 6
SUPPLY, CONSTRUCTION, AND DESIGN

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

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

§6.3 Charges to the City for Service to City Facilities.

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

§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 gas system or electric system within the City, or any part thereof, is partially or wholly destroyed or incapacitated so as to impact the provision of Utility Service within the City, 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 and Other City Property shall be maintained in good repair and condition.

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

(1) in a high-quality manner that is in accordance with applicable laws and the Tariffs;

(2) in a timely and expeditious manner;

(3) in a manner that reasonably minimizes inconvenience to the public;

(4) in a cost-effective manner, which may include the use of qualified contractors; and

(5) in accordance with all required City permits.

C. No Interference with City Facilities. Company Facilities shall not unreasonably interfere with any City facilities, including water facilities, sanitary or storm sewer facilities, communications facilities, or other City uses of the Streets, Public Utility Easements or Other City Property. Company Facilities shall be installed and maintained in City Streets, Public Utility Easements and Other City Property so as to reasonably minimize interference with other property, trees, and other improvements and natural features in and adjoining the Streets, Public Utility Easements and Other City Property in light of the Company's obligation under Colorado law to provide safe and reliable utility facilities and services.

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

E. Compliance. Subject to the provisions of Section 3.3, the Company and all of its contractors shall comply with the requirements of 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 require that its contractors working in City Streets, Public Utility Easements or Other City Property hold the necessary licenses and permits required by law.

F. Increase in Voltage. Unless otherwise provided by law, the Company shall reimburse the City for the cost of upgrading the electrical system or facility of any City building or facility that uses Utility Service where such upgrading is caused or occasioned by the Company's decision to increase the voltage of delivered electrical energy. This provision shall not apply to voltage increases requested by the City.

G. As-Built Drawings. After project completion and upon written request of the City designee, the Company shall provide, within fourteen (14) days of the request, on a project by project basis, 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 Company system. The Company shall not be required to create drawings that do not exist at the time of the request.

§6.6 Excavation and Construction. The Company shall be responsible for obtaining, paying for, and complying with all applicable permits including, but not limited to, excavation, street closure and street cut permits, in the manner required by the laws, ordinances, and regulations of the City. Although the Company shall be responsible for obtaining and complying with the terms of such permits when performing relocations requested by the City under Section 6.8 of this Franchise and undergrounding requested by the City under Article 11 of this Franchise, the City will not require the Company to pay the fees charged for such permits. Upon the Company submitting a construction design plan, the City shall promptly and fully advise the Company in writing of all requirements for restoration of City Streets in advance of Company excavation projects in City Streets, based upon the design submitted, if the City's restoration requirements are not addressed in publicly-available standards.

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

unless specifically authorized by the Company in writing on a project by project basis and subject to the terms and conditions agreed to in such authorization.

§6.8 Relocation of Company Facilities.

A. Relocation Obligation. The Company shall temporarily or permanently remove, relocate, change or alter the position of any Company Facility (collectively, "Relocate(s)," "Relocation(s)" or "Relocated") in City Streets or in Other City Property at no cost or expense to the City whenever such Relocation is necessary for the completion of any Public Project. In the case of Relocation that is necessary for the completion of any Public Project in a Public Utility Easement that is not located within a City Street, the Company shall not be responsible for any Relocation costs. In the event of any Relocation contemplated pursuant to this Section 6.8A, the Company and the City agree to cooperate on the location and Relocation of the Company Facilities in the City Streets or Other City Property in order to achieve Relocation in the most efficient and cost-effective manner possible. Notwithstanding the foregoing, once the Company has Relocated any Company Facility at the City's direction, if the City requests that the same Company Facility be Relocated within two (2) years, the subsequent Relocation shall not be at the Company's expense. Nothing provided herein shall prevent the Company from obtaining reimbursement of its Relocation costs from third parties.

B. Private Projects. Subject to Section 6.8.F, the Company shall not be responsible for the expenses of any Relocation required by Private Projects, and the Company has the right to require the payment of estimated Relocation expenses from the party causing, or responsible for, the Relocation before undertaking the Relocation.

C. Relocation Performance. The Relocations set forth in Section 6.8.A of this Franchise shall be completed within a reasonable time, not to exceed ninety (90) days from the later of the date on which the City designee requests, in writing, that the Relocation commence, or the date when the Company is provided all Supporting Documentation. The Company shall notify the City within twenty (20) days of the receipt of the request if the Supporting Documentation is insufficient to complete the project. The Company shall receive an extension of time to complete a Relocation where the Company's performance was delayed due to Force Majeure or the failure of the City to provide adequate Supporting Documentation. The Company has the burden of presenting evidence to reasonably demonstrate the basis for the delay. Upon written request of the Company, the City may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold or condition any such extension.

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

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

F. Scope of Obligation. The Relocation obligation set forth in this Section shall only apply to Company Facilities located in City Streets or Other City Property. Notwithstanding anything to the contrary in this Franchise, the Company shall not be required to Relocate any Company Facilities from property (a) owned by the Company in fee; or (b) in which the Company has a property right, grant or interest, including without limitation an easement, but excluding Public Utility Easements.

G. Underground Relocation. Underground facilities shall be Relocated underground. Above ground facilities shall be Relocated above ground unless the Company is paid for the incremental amount by which the underground cost would exceed the above ground cost of Relocation, or the City requests that such additional incremental cost be paid out of available funds under Article 11 of this Franchise.

H. Coordination.

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

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

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

§6.9 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, extend service to Residents in the expanded area at the earliest practicable time if the expanded area is within the Company's PUC-certificated service territory. Service to the expanded area shall be in accordance with the terms of the Tariffs and this Franchise, including the payment of franchise fees.

§6.10 Company Facilities to Serve City as Customer. Subject to the terms of the Tariff, upon receipt of the City's authorization for billing and construction, the Company shall install Company Facilities to provide Utility Service to the City as a customer, without requiring the City to advance funds prior to construction. The City shall pay for the installation of Company Facilities once completed in accordance with the Tariffs.

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

ARTICLE 7
RELIABILITY

§7.1 Reliability. The Company shall operate and maintain Company Facilities efficiently and economically and in accordance with the high standards and best systems, methods and skills consistent with the provision of adequate, safe and reliable Utility Service.

§7.2 Franchise Performance Obligations. The Company recognizes that, as part of its obligations and commitments under this Franchise, the Company shall carry out each of its performance obligations in a timely, expeditious, efficient, economical and workmanlike manner.

§7.3 Reliability Reports. Upon written request, the Company shall provide the City with a report regarding the reliability of Company Facilities and Utility Service.

ARTICLE 8
COMPANY PERFORMANCE OBLIGATIONS

§8.1 New or Modified Service to City Facilities. In providing new or modified Utility Service to City facilities, the Company agrees to perform as follows:

A. Performance. The Company shall complete each project requested by the City within a reasonable time. Other than for traffic signal facilities, where the Company performance obligations are governed by the Tariff, the parties agree that a reasonable time shall not exceed one hundred eighty (180) days from the date upon which the City designee makes a written request and provides the required Supporting Documentation for all Company Facilities. The Company shall notify the City within twenty (20) days of receipt of the request if the Supporting Documentation is insufficient to complete the project. The Company shall be entitled to an extension of time to complete a project where the Company's performance was delayed due to Force Majeure. Upon request of

the Company, the City designee may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension.

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

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

§8.2 Adjustments to Company Facilities. The Company shall perform adjustments to Company Facilities, including manholes and other appurtenances in Streets, Public Utility Easements and Other City Property, to accommodate City Street maintenance, repair and paving operations at no cost to the City. In providing such adjustments to Company Facilities, the Company agrees to perform as follows:

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

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

C. Coordination. As requested by the City or the Company, representatives of the City and the Company shall meet regarding anticipated Street maintenance operations which will require such adjustments to Company Facilities in Streets, Public Utility Easements 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 individual or entity damages any Company Facilities, to the extent permitted by law the City will notify the Company of any such incident of which it has knowledge and will provide to the Company within a reasonable time all pertinent information within its possession regarding the incident and

the damage, including the identity of the responsible individual or entity.

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

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

ARTICLE 9
BILLING AND PAYMENT

§9.1 Billing for Utility Services.

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

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

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

D. Annual Meetings. The Company agrees to meet with the City designee on a reasonable basis for the purpose of developing, implementing, reviewing, and/or modifying mutually beneficial and acceptable billing procedures, methods, and formats which may include, without limitation, electronic billing and upgrades or beneficial alternatives to the Company's current most advanced billing technology, for the efficient and cost effective rendering and processing of such billings submitted by the Company to the City.

§9.2 Payment to City. In the event the City determines after written notice to the Company that the Company is liable to the City for payments, costs, expenses or damages of any nature, and subject to the Company's right to challenge such determination, the City may deduct all monies due and owing the City from any other amounts currently due and owing the Company. Upon receipt of such written notice, the Company may request a

meeting between the Company's designee and a designee of the City to discuss such determination. The City agrees to attend such a meeting. As an alternative to such deduction and subject to the Company's right to challenge, the City may bill the Company for such assessment(s), in which case, the Company shall pay each such bill within thirty (30) days of the date of receipt of such bill unless it challenges the validity of the charge. If the Company challenges the City determination of liability, the City shall make such payments to the Company for Utility Service received by City pursuant to the Tariffs until the challenge has been finally resolved.

ARTICLE 10
USE OF COMPANY FACILITIES

§10.1 City Use of Company Electric Distribution Poles. The City shall be permitted to make use of Company electric distribution poles in the City, subject to the Tariff, without a use fee for the placement of City equipment or facilities necessary to serve a legitimate police, fire, emergency, public safety or traffic control purpose. The City will notify the Company in advance and in writing of its intent to use Company distribution poles and the nature of such use unless it is impracticable to provide such advance notice because of emergency circumstances, in which event the City will provide such notice as soon as practicable. The City shall be responsible for costs associated with modifications to Company electric distribution poles to accommodate the City's use of such Company electric distribution poles and for any electricity used. No such use of Company electric distribution poles may occur if it would constitute a safety hazard or would interfere with the Company's use of Company Facilities. Any such City use must comply with the National Electric Safety Code and all other applicable laws, rules and regulations.

§10.2 Third Party Use of Company Electric Distribution Poles. If requested in writing by the City, the Company may allow other companies who hold franchises, or otherwise have obtained consent from the City to use the Streets, to utilize Company electric distribution poles in City Streets and Other City Property, subject to the Tariff, for the placement of their facilities upon approval by the Company and agreement upon reasonable terms and conditions including payment of fees established by the Company. No such use shall be permitted if it would constitute a safety hazard or would interfere with the Company's use of Company electric distribution facilities. The Company shall not be required to permit the use of Company electric distribution poles for the provision of utility service except as otherwise required by law.

§10.3 City Use of Company Street Lighting Poles. The City shall be allowed to place attachments on the Company's street lighting poles under the terms and conditions set forth in the Tariffs.

§10.4 City Use of Company Transmission Rights-of-Way. The Company shall offer to grant to the City use of transmission rights-of-way which it now, or in the future, owns in fee within the City for trails and Parks on terms comparable to those offered to other municipalities; provided, however, that the Company shall not be required to make such an offer in any circumstance where such use would constitute a safety hazard or would interfere with the Company's use of the transmission right-of-way. In order to exercise

this right, the City must make specific, advance written request to the Company for any such use and must enter such written agreements as the Company may reasonably require reflecting such comparable terms and conditions.

§10.5 Emergencies. Upon written request, the Company shall assist the City in developing an emergency management plan that is consistent with Company policies. The City and the Company shall work cooperatively with each other in any emergency or disaster situation to address the emergency or disaster.

ARTICLE 11
UNDERGROUNDING OF OVERHEAD FACILITIES

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

§11.2 Underground Conversion at Expense of Company.

A. Underground Fund. The Company shall budget and allocate an annual amount, equivalent to one percent (1%) of the preceding year's Electric Gross Revenues (the "Fund"), for the purpose of undergrounding its existing overhead electric distribution facilities in the City in City Streets or Other City Property, as may be requested by the City Designee.

B. Unexpended Portion and Advances. Any unexpended portion of the Fund shall be carried over to succeeding years and, in addition, upon request by the City, the Company agrees to advance and expend amounts anticipated to be available under the preceding paragraph for up to three (3) years in advance; provided that if there are less than three (3) years remaining under the term of this Franchise, the Company agrees to advance and expend only such amounts that the Company reasonably anticipates will be available under the preceding paragraph for the remaining term of this Franchise. Any amounts so advanced shall be credited against amounts to be expended in succeeding years. Any funds left accumulated under any prior franchise shall be carried over to this Franchise. Notwithstanding the foregoing, the City shall have no vested interest in monies allocated to the Fund and any monies in the Fund not expended at the expiration or termination of this Franchise shall remain the property of the Company. At the expiration or termination of this Franchise, the Company shall not be required to underground any existing overhead facilities pursuant to this Article, but may do so in its sole discretion.

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

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

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

A. Estimates. Promptly upon receipt of an undergrounding request from the City and the Supporting Documentation necessary for the Company to design the undergrounding project, the Company shall prepare a detailed, good faith cost estimate of the anticipated actual cost of the requested project for the City to review and, if acceptable to the City, the City will issue a project authorization. The Company shall notify the City within twenty (20) days of receipt of the request if the Supporting Documentation is insufficient to prepare the cost estimate for the project. The City and the Company agree to meet during the period when the Company is preparing its estimate to discuss all aspects of the project toward the end of enabling the Company to prepare an accurate cost estimate. At the City's request, the Company will provide all documentation that forms the basis of the estimate that is not proprietary. The Company will not proceed with any requested project until the City has provided a written acceptance of the Company estimate.

B. Performance. The Company shall complete each undergrounding project requested by the City within a reasonable time considering the size and scope of each project, not to exceed two hundred forty (240) days from the later of the date upon which the City designee makes a written request or the date the City provides to the Company all Supporting Documentation. The Company shall have one hundred twenty (120) days after receiving the City's written request to design project plans, prepare the good faith estimate, and transmit same to the City designee for review. If City approval of the plans and estimate has not been granted, the Company's good faith estimate will be void sixty (60) days after delivery of the plans and estimate to the City designee. If the plans and estimate are approved by the City, the Company shall have one hundred twenty (120) days to complete the project, from the date of the City designee's authorization of the underground project, plus any of the one hundred (120) unused days in preparing the good faith estimate. At the Company's sole discretion, if the good faith estimate has expired because the City designee has not approved the same within sixty (60) days, the Company may extend the good faith estimate or prepare a new estimate using current prices. The Company shall be entitled to an extension of time to complete each undergrounding project where the Company's performance was delayed due to a Force Majeure condition. Upon written request of the Company, the City may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension.

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

D. Completion/Restoration. Each such undergrounding project undertaken pursuant to this Article shall be complete only when the Company actually undergrounds the designated Company Facilities, restores the undergrounding site in accordance with Section 6.7 of this Franchise, or as otherwise agreed with the City, and removes from the site any unused overhead or ground-mounted facilities, equipment, material and other impediments and properly abandons on site any abandoned underground facilities. "Unused" for the purposes of this Section shall mean that the Company is no longer using the facilities in question and has no plans to use the facilities in the foreseeable future. When performing underground conversions of overhead facilities, the Company shall make reasonable efforts consistent with its contractual obligations to persuade joint users of Company distribution poles to remove their facilities from such poles within the time allowed by this Article.

E. Report of Actual Costs. Upon completion of each undergrounding project undertaken pursuant to this Article, the Company shall submit to the City a detailed report of the Company's actual cost to complete the project and the Company shall reconcile this total actual cost with the accepted cost estimate. The report shall be provided within one hundred twenty (120) days after completion of the project and written request from the City.

F. Audit of Underground Projects. The City may require the Company to undertake an independent audit of up to two (2) undergrounding projects in any calendar year. The cost of any such independent audit shall reduce the amount of the Fund. The Company shall cooperate with any audit and the independent auditor shall prepare and provide to the City and the Company a final audit report showing the actual costs associated with completion of the project. If a project audit is required by the City, only those actual project costs confirmed and verified by the independent auditor as commercially reasonable and necessary to complete the project shall be charged against the Fund balance.

§11.4 Audit of Underground Fund. Upon written request, but no more frequently than once every three (3) years, the Company shall audit the Fund for the City. Such audits shall be limited to the previous three (3) calendar years. The Company shall provide the audit report to the City and shall reconcile the Fund consistent with the findings contained in the audit report. If the City has concerns about any material information contained in the audit, the parties shall meet and make good faith attempts to resolve any outstanding issues. If the matter cannot be resolved to the City's reasonable satisfaction, the Company shall cause an independent auditor to investigate and determine the correctness of the charges to the Fund. The independent 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. The Company shall pay the costs of any audit and investigation from the Fund.

§11.5 Cooperation with Other Utilities. When undertaking an undergrounding project the City and the Company shall coordinate with other utilities or companies that have their facilities above ground to attempt to have all facilities undergrounded as part of the same project. When other utilities or companies are placing their facilities underground, to the

extent the Company has received prior written notification, the Company shall cooperate with these utilities and companies and undertake to underground Company Facilities as part of the same project where financially, technically and operationally feasible. The Company shall not be required to pay for any costs of undergrounding the facilities of other companies or the City.

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

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

B. Public Projects anticipated by the City.

ARTICLE 12
PURCHASE OR CONDEMNATION

§12.1 Municipal Right to Purchase or Condemn.

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

B. Notice of Intent to Purchase or Condemn. The City shall provide the Company no less than one (1) year's prior written notice of its intent to purchase or condemn Company Facilities. Nothing in this Section shall be deemed or construed to constitute a consent by the Company to the City's purchase or condemnation of Company Facilities, nor a waiver of any Company defenses or challenges related thereto.

ARTICLE 13
MUNICIPALLY PRODUCED UTILITY SERVICE

§13.1 Municipally Produced Utility Service.

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

B. Franchise not to Limit City's Rights. Nothing in this Franchise prohibits the City from becoming an aggregator of utility service or from selling utility service to customers.

ARTICLE 14
ENVIRONMENT AND CONSERVATION

§14.1 Environmental Leadership. The City and the Company agree that sustainable development, environmental excellence and innovation shall form the foundation of the Utility Service provided by the Company under this Franchise. The Company agrees to continue to actively pursue reduction of carbon emissions attributable to its electric generation facilities with a rigorous combination of Energy Conservation and Energy Efficiency measures, Clean Energy measures, and promoting and implementing the use of Renewable Energy Resources on both a distributed and centralized basis. The Company shall continue to cost-effectively monitor its operations to mitigate environmental impacts; shall meet the requirements of environmental laws, regulations and permits; shall invest in cost-effective, environmentally sound technologies; shall consider environmental issues in its planning and decision making; and shall support environmental research and development projects and partnerships in our communities through various means, including but not limited to corporate giving and employee involvement. The Company shall continue to explore ways to reduce water consumption at its facilities and to use recycled water where feasible. The Company shall continue to work with the U.S. Fish and Wildlife Service to develop and implement avian protection plans to reduce electrocution and collision risks by eagles, raptors and other migratory birds with transmission and distribution lines. On or before December 1 of each year, the Company shall provide the City a written report describing its progress in carbon reduction and other environmental efforts, and the parties shall meet at a mutually convenient time and place for a discussion of such. In meeting its obligation under this Section, the Company is not precluded from providing existing internal and external reports that may be used for other reporting requirements.

§14.2 Conservation. The City and the Company recognize and agree that Energy Conservation programs offer opportunities for the efficient use of energy and possible reduction of energy costs. The City and the Company further recognize that creative and effective

Energy Conservation solutions are crucial to sustainable development. The Company recognizes and shares the City's stated objectives to advance the implementation of cost-effective Energy Efficiency and Energy Conservation programs that direct opportunities to Residents to manage more efficiently their use of energy and thereby create the opportunity to reduce their energy bills. The Company commits to offer programs that attempt to capture market opportunities for cost-effective Energy Efficiency improvements such as municipal specific programs that provide cash rebates for efficient lighting, energy design programs to assist architects and engineers to incorporate Energy Efficiency in new construction projects, and recommissioning programs to analyze existing systems to optimize performance and conserve energy according to current and future demand side management ("DSM") programs. In doing so, the Company recognizes the importance of (i) implementing cost-effective programs the benefits of which would otherwise be lost if not pursued in a timely fashion; and (ii) developing cost-effective programs for the various classes of the Company's customers, including low-income customers. The Company shall advise the City and its Residents of the availability of assistance that the Company makes available for investments in Energy Conservation through newspaper advertisements, bill inserts and Energy Efficiency workshops and by maintaining information about these programs on the Company's website. Further, the Company will designate a conservation representative to act as the primary liaison with the City who will provide the City with information on how the City may take advantage of reducing energy consumption in City facilities and how the City may participate in Energy Conservation and Energy Efficiency programs sponsored by the Company. As such, the Company and the City commit to work cooperatively and collaboratively to identify, develop, implement and support programs offering creative and sustainable opportunities to Company customers and Residents, including low-income customers. The Company agrees to help the City participate in Company programs and, when opportunities exist to partner with others, such as the State of Colorado, the Company will help the City pursue those opportunities. In addition, and in order to assist the City and its Residents' participation in Renewable Energy Resource programs, the Company shall: notify the City regarding eligible Renewable Energy Resource programs; provide the City with technical support regarding how the City may participate in Renewable Energy Resource programs; and advise Residents regarding eligible Renewable Energy Resource programs. Notwithstanding the foregoing, to the extent that any Company assistance is needed to support Renewable Energy Resource Programs that are solely for the benefit of Company customers located within the City, the Company retains the sole discretion as to whether to incur such costs.

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

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

ARTICLE 15
TRANSFER OF FRANCHISE

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

§15.2 Transfer Fee. In order that the City may share in the value this Franchise adds to the Company's operations, any transfer or assignment of rights granted under this Franchise requiring City approval, as set forth herein, shall be subject to the condition that the Company shall promptly pay to the City a transfer fee in an amount equal to the proportion of the City's then-population provided Utility Service by the Company to the then-population of the City and County of Denver provided Utility Service by the Company multiplied by one million dollars ($1,000,000.00). Except as otherwise required by law, such transfer fee shall not be recovered from a surcharge placed only on the rates of Residents.

ARTICLE 16
CONTINUATION OF UTILITY SERVICE

§16.1 Continuation of Utility Service. In the event this Franchise 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 or obligation to discontinue providing Utility Service within the City as required by the Public Utilities Law unless otherwise ordered by the PUC, and shall continue to provide Utility Service within the City until the City arranges for utility service from another provider. The City acknowledges and agrees that the Company has the right to use Streets, Other City Property and Public Utility Easements during any such period subject to City Code and regulations as set forth in Section 3.3. The Company further agrees that it will not withhold any temporary Utility Services necessary to protect the public. The City agrees that in the circumstances of this Article, the Company shall be entitled to monetary compensation as provided in the Tariffs and the Company shall be entitled to collect from Residents and, upon the City's compliance with applicable provisions of law, shall be obligated to pay the City, at the same times and in the same manner as provided in this Franchise, an aggregate amount equal to the amount which the Company would have paid as a franchise fee as consideration for use of the City's Streets, Other City Property and Public Utility Easements. Only upon receipt of written notice from the City stating that the City has adequate alternative utility service for Residents and upon order of the PUC shall the Company be allowed to discontinue the provision of Utility Service to the City and its Residents.

ARTICLE 17
INDEMNIFICATION AND IMMUNITY

§17.1 City Held Harmless. The Company shall indemnify, defend and hold the City harmless from and against claims, demands, liens and all liability or damage of whatsoever kind on account of or directly arising from the grant of this Franchise, and the exercise by the Company of the related rights, or from the operations of the Company in 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 reasonably satisfactory to the City. If such defense is assumed by the Company, the Company shall not be subject to liability for any settlement made without its consent. If such defense is not assumed by the Company or if the City determines that a conflict of interest exists, the parties reserve all rights to seek all remedies available in this Franchise against each other. Notwithstanding any provision hereof to the contrary, the Company shall not be obligated to indemnify, defend or hold the City harmless to the extent any claim, demand or lien arises out of or in connection with any negligent or intentional act or failure to act of the City or any of its officers or employees or to the extent that the claim, demand or lien arises out of the City's status as a customer of record.

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

ARTICLE 18
BREACH

§18.1 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. The Company reserves the right to seek a change in its Tariffs, including but not limited to the rates, charges, terms, and conditions of providing Utility Service to the City and its Residents, and the City retains all rights that it may have to intervene and participate in any such proceedings.

§18.2 Breach.

A. Notice/Cure/Remedies. Except as otherwise provided in this Franchise, if a party (the "Breaching Party") to this Franchise fails or refuses to perform any of the terms or conditions of this Franchise (a "Breach"), the other party (the "Non-Breaching Party") may provide written notice to the Breaching Party of such Breach. Upon receipt of such notice, the Breaching Party shall be given a reasonable time, not to exceed thirty (30) days in which to remedy the Breach or, if such Breach cannot be remedied in thirty

(30) days, such additional time as reasonably needed to remedy the Breach, but not exceeding an additional thirty (30) day period, or such other time as the parties may agree. If the Breaching Party does not remedy the Breach within the time allowed in the notice, the Non-Breaching Party may exercise the following remedies for such Breach:

(1) specific performance of the applicable term or condition as allowed by law; and

(2) recovery of actual damages from the date of such Breach incurred by the Non-Breaching Party in connection with the Breach, but excluding any special, punitive or consequential damages.

B. Termination of Franchise by City. In addition to the foregoing remedies, if the Company fails or refuses to perform any material term or condition of this Franchise (a "Material Breach"), the City may provide written notice to the Company of such Material Breach. Upon receipt of such notice, the Company shall be given a reasonable time, not to exceed ninety (90) days if the Material Breach can be cured within that time period, in which to remedy the Material Breach or, if such Material Breach cannot be remedied in ninety (90) days, such additional time as reasonably needed to remedy the Material Breach, but not exceeding an additional ninety (90) day period, or such other time as the parties may agree. If the Company does not remedy the Material Breach within the time allowed in the notice, the City may, 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 (and shall continue to have associated rights and grants needed to provide such service) until the City makes alternative arrangements for such service and until otherwise ordered by the PUC. In addition, unless otherwise prohibited by law, after termination of this Franchise and upon the City complying with applicable provisions of law, 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 this Franchise, an aggregate amount equal to the amount which the Company would have paid as a franchise fee as consideration for use of the City Streets and Other City Property.

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

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

ARTICLE 19
AMENDMENTS

§19.1 Proposed Amendments. At any time during the term of this Franchise, the City or the Company may propose amendments to this Franchise by giving thirty (30) days written notice to the other of the proposed amendment(s) desired, and both parties thereafter,

through their designated representatives, will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s). However, nothing contained in this Section shall be deemed to require either party to consent to any amendment proposed by the other party.

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

ARTICLE 20
EQUAL OPPORTUNITY

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

§20.2 Employment.

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

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

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

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

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

F. Board of Directors. The Company shall identify and consider women, persons of color and other under-represented groups to recommend for its Board of Directors, consistent with the responsibility of boards to represent the interests of the Shareholders, customers and employees of the Company.

§20.3 Contracting.

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

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

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

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

ARTICLE 21
MISCELLANEOUS

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

§21.2 Successors and Assigns. The rights, privileges, and obligations, in whole or in part, granted and contained in this Franchise shall inure to the benefit of and be binding upon the Company, its successors and assigns, to the extent that such successors or assigns have succeeded to or been assigned the rights of the Company pursuant to Article 15 of this Franchise. Upon a transfer or assignment pursuant to Article 15, the Company shall be relieved from all liability from and after the date of such transfer, except as otherwise provided in the conditions imposed by the City in authorizing the transfer or assignment.

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

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

To the City:

City Manager
City of Englewood
Englewood Civic Center
1000 Englewood Parkway
Englewood, Colorado 80110

With a copy to:

City Attorney
City of Englewood
Englewood Civic Center
1000 Englewood Parkway
Englewood, Colorado 80110

To the Company:

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

With a copy to:

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

and

Area Manager
2070 South Valentia Street
Denver, Colorado 80231

§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 within thirty (30) days of any written request. Any books, documents, papers, and records of the Company in any form that are requested by the City, that contain confidential information shall be conspicuously identified as "confidential" or "proprietary" by the Company. In no case shall any privileged communication be subject to examination by the City pursuant to the terms of this Section. "Privileged communication" means any communication that would not be discoverable due to the attorney client privilege or any other privilege that is generally recognized in Colorado, including but not limited to the work product privilege. The work product privilege shall include information developed by the Company in preparation for PUC proceedings.

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

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

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

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

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

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

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

§21.6 List of Utility Property. The Company shall provide the City, upon request not more than once every two (2) years, a list of electric utility-related real property owned in fee by the Company within the County in which the City is located. At a minimum, the list shall

include the legal description of the real property, and where available on the deed, the physical street address. If the physical address is not available on the deed, if the City requests the physical address of the real property described in this Section 21.6, to the extent that such physical street address is readily available to the Company, the Company shall provide such address to the City. All such records must be kept for a minimum of three (3) years or such shorter duration if required by Company policy.

§21.7 PUC Filings. Upon written request by the City, the Company shall provide the City non-confidential copies of all applications, advice letters and periodic reports, together with any accompanying non-confidential testimony and exhibits, filed by the Company with the Colorado Public Utilities Commission. Notwithstanding the foregoing, notice regarding any gas and electric filings that may affect Utility Service rates in the City shall be sent to the City upon filing.

§21.8 Information. Upon written request, the Company shall provide the City Clerk or the City Clerk's designee with:

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

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

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

§21.9 Payment of Taxes and Fees.

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

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

§21.10 Conflict of Interest. The parties agree that no official, officer or employee of the City shall have any personal or beneficial interest whatsoever in the services or property

described herein and the Company further agrees not to hire or contract for services any official, officer or employee of the City to the extent prohibited by law, including ordinances and regulations of the City.

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

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

§21.13 Severability. Should any one or more provisions of this Franchise be determined to be unconstitutional, illegal, unenforceable or otherwise void, all other provisions nevertheless shall remain effective; provided, however, to the extent allowed by law, the parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft one or more substitute provisions that will achieve the original intent of the parties hereunder.

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

§21.15 Earlier Franchises Superseded. This Franchise shall constitute the only franchise between the City and the Company related to the furnishing of Utility Service, and it supersedes and cancels all former franchises between the parties hereto.

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

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

§21.18 Payment of Expenses Incurred by City in Relation to Franchise Agreement. The Company shall pay for expenses reasonably incurred by the City for the adoption of this Franchise, including any Franchise election, the publication of notices, publication of ordinances, and photocopying of documents.

§21.19 Incremental Costs. The parties acknowledge that PUC rules, regulations and final decisions may require that incremental costs of complying with certain provisions of this Franchise be borne by customers of the Company who are located within the City.

§21.20 Conveyance of City Streets, Public Utility Easements or Other City Property. In the event the City vacates, releases or sells, conveys, transfers or otherwise disposes of a City Street, or any portion of a Public Utility Easement or Other City Property in which Company Facilities are located, the City shall reserve an easement in favor of the Company over that portion of the Street, Public Utility Easement or Other City Property in which such Company Facilities are located. The Company and the City shall work together to prepare the necessary legal description to effectuate such reservation. For the purposes of Section 6.8.A of this Franchise, the land vacated, released, sold, conveyed, transferred or otherwise disposed of by the City shall no longer be deemed to be a Street or Other City Property from which the City may demand the Company temporarily or permanently Relocate Company Facilities at the Company's expense.

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

CITY OF ENGLEWOOD

ATTEST:

_____
Randy P. Penn, Mayor

_____
Loucrishia A. Ellis, City Clerk

"COMPANY"

PUBLIC SERVICE COMPANY OF COLORADO, a Colorado corporation

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

Attest: _____
Secretary

COUNCIL COMMUNICATION

Date:	Agenda Item:	Subject:
May 20, 2013	11 c i	Resolution for a year-end supplemental appropriation to the 2012 Budget

Initiated By:	Staff Source:
Finance and Administrative Services Department	Frank Gryglewicz, Director

COUNCIL GOAL AND PREVIOUS COUNCIL ACTION

City Council has not discussed this supplemental or transfer specifically but approved the 2012 Budget and Appropriations Ordinances on final reading on October 17, 2011. Council is scheduled to discuss the audit and Comprehensive Annual Financial Report at the Study Session held May 20, 2013.

RECOMMENDED ACTION

Staff recommends City Council approve the attached resolution for a supplemental appropriation to the 2012 Budget for the following funds:

SOURCES AND USES OF FUNDS:

GENERAL FUND:

SOURCE OF FUNDS:

Reimbursement from State – Wildland Fires	$141,000
Unreserved/Undesignated Fund Balance	$914,000
Total Sources of Funds	**$1,055,000**

USE OF FUNDS:

Fire Department -Unanticipated Overtime/Professional Services	$245,000
Information Technology – Unanticipated IT Support Costs	$15,000
Transfer Out to Risk Management Fund	$715,000
Transfer Out to Employee Benefits Fund	$80,000
Total Usesof Funds	**$1,055,000**

RISK MANAGEMENT FUND:

SOURCE OF FUNDS:

Transfer In From the General Fund	$715,000
Fund Revenues	$215,000
Total	$930,000

USE OF FUNDS:

Higher Than Anticipated Claims	$930,000

EMPLOYEE BENEFITS FUND:

SOURCE OF FUNDS:

Transfer In From the General Fund	$80,000

USE OF FUNDS:

Higher Than Anticipated Claims	$80,000

BACKGROUND, ANALYSIS, AND ALTERNATIVES IDENTIFIED

The supplemental appropriations for 2012 are presented for Council's consideration at this time because total expenditures for the year are often not fully known until all expenditures are paid, which is often months after year-end.

The Risk Management Fund was hit with a number of unanticipated claims in 2012 necessitating the $715,000 transfer. The City participates in the Colorado Intergovernmental Risk Sharing Agency (CIRSA). CIRSA is a joint self-insurance pool created by intergovernmental agreement to provide a variety of insurance coverages to its members, including workers' compensation. CIRSA provided the City with anticipated claim information which indicated an unusually large number of outstanding claims incurred in 2012. Since the report provided an estimated *liability*, an expenditure and liability were recognized in 2012. The Risk Management Fund had transferred $920,000 to the General Fund in 2012; leaving it with adequate funds for a "normal" amount of claim activity. Without the transfer of $715,000 the Risk Management Fund would have shown negative funds available at year-end.

FINANCIAL IMPACT

The General Fund's Unassigned Reserve will decrease $914,000.

LIST OF ATTACHMENTS

Proposed Resolution

RESOLUTION NO. _____
SERIES OF 2013

A RESOLUTION APPROVING A SUPPLEMENTAL APPROPRIATION TO THE 2012 BUDGET AND TRANSFER BETWEEN FUNDS.

WHEREAS, the City of Englewood is required by City Charter to ensure that expenditures do not exceed legally adopted appropriations; and

WHEREAS, the 2012 Budget was submitted and approved by the Englewood City Council on October 17, 2011; and

WHEREAS, this supplemental appropriation to the 2012 Budget is due to total expenditures for the year not being fully known until all expenditures are paid, which is often months after year-end and therefore not anticipated or appropriated at the time the 2012 Budget was prepared;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO, AS FOLLOWS:

Section 1. The Budget for the City of Englewood, Colorado, is hereby amended for the year ending 2012, as follows:

2012 SUPPLEMENTAL APPROPRIATION

GENERAL FUND

SOURCE OF FUNDS:	
Reimbursement from State – Wildland Fires	$ 141,000
Unreserved/Undesignated Fund Balance	$ 914,000
Total Sources of Funds	$1,055,000
USE OF FUNDS:	
Fire Department Unanticipated Overtime/Professional Services	$ 245,000
Information Technology-Unanticipated IT Support Costs	$ 15,000
Transfer Out to Risk Management Fund	$ 715,000
Transfer Out to Employee Benefits Fund	$ 80,000
Total Use of funds	$1,055,000

RISK MANAGEMENT FUND

SOURCE OF FUNDS:	
Transfer In From the General Fund	$ 715,000
Fund Revenues	$ 215,000
Total	$ 930,000
USE OF FUNDS:	
Higher Than Anticipated Claims	$ 930,000

EMPLOYEE BENEFITS FUND

SOURCE OF FUNDS:

Transfer In From the General Fund	$ 80,000

USE OF FUNDS:

Higher Than Anticipated Claims	$ 80,000

Section 2. The City Manager and the Director of Finance and Administrative Services are hereby authorized to make the above changes to the 2011 Budget for the City of Englewood.

ADOPTED AND APPROVED this 20th day of May, 2013.

ATTEST:

_____
Randy P. Penn, Mayor

_____
Loucrishia A. Ellis, City Clerk

I, Loucrishia A. Ellis, City Clerk for the City of Englewood, Colorado, hereby certify the above is a true copy of Resolution No. _____, Series of 2013.

_____
Loucrishia A. Ellis, City Clerk