

TOWN OF TIMNATH

ORDINANCE NO. 13, SERIES 2013-2

AN ORDINANCE AMENDING ORDINANCE NO. 4-1988 BY  
EXTENDING THE TERM OF THE UTILITY FRANCHISE  
GRANTED TO PUBLIC SERVICE COMPANY OF  
COLORADO

WHEREAS, by Ordinance No. 4-1988, the Town Council of the Town of Timnath granted to Public Service Company of Colorado (now known as Public Service Company of Colorado d/b/a Xcel Energy) ("Xcel") a non-exclusive franchise to furnish, sell and distribute gas and electricity to the Town and to all persons, businesses, and industry within the Town subject to certain terms and conditions as described in such ordinance ("PSCo Franchise"); and

WHEREAS, the PSCo Franchise expires October 15, 2013; and

WHEREAS, the Town and Public Service Company of Colorado d/b/a Xcel Energy have agreed to extend the PSCo Franchise for a period of four months, through February 15, 2014, while they attempt to conclude negotiations for a new franchise agreement.

WHEREAS, attached hereto as Exhibit A is an Amendment to the Franchise Agreement between the Town and Xcel (the "Agreement"); and

WHEREAS, the Town Council is familiar with the Agreement and finds it to be in the best interest of the Town, its residents, and the general public.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Timnath, Colorado, that:

**Section 1.** Sections 2.3 and 3.3 of Ordinance No. 4-1988 are hereby amended so as to Section 2.3 read in its entirety as follows:

§2.3 Term of Franchise. This franchise shall take effect on October 16, 1988. The term of this franchise shall ~~be for 25 years, beginning with said effective date of this franchise and expiring on October 15, 2013~~ expire on February 15, 2014.

and Section 3.3 shall be deleted in its entirety.

**Section 2.** Except as specifically amended, Ordinance No. 4-1988 and the PSCo Franchise shall continue in full force and effect.

**Section 3.** The Agreement is approved, and the Town Mayor and Town Manager are authorized to execute and deliver the Agreement to Xcel and to take incidental actions, including the approval of minor revisions to the Agreement in consultation with the town attorney, in order

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to carry out the Town Council's intent of extending of the PSCo Franchise.

**Section 4.** The Town Council hereby finds, determines and declares that it has the power to adopt this ordinance pursuant to the authority granted to home rule municipalities by Article XX of the Colorado Constitution, the powers contained in the home rule charter for the Town ("Charter") and the Timnath Municipal Code (the "Code");

**Section 5. Effective Date.** This Ordinance shall take effect upon adoption at second reading, as provided by Section 3.5.5 of the Charter.

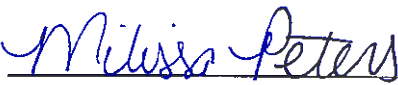
**INTRODUCED, MOVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH ON FIRST READING, ON SEPTEMBER 24, 2013, AND SET FOR PUBLIC HEARING AND SECOND READING AT 6:00 P.M. ON OCTOBER 8, 2013 AT THE TIMNATH ADMINISTRATION BUILDING, 4800 GOODMAN STREET, TIMNATH COLORADO AND ORDERED PUBLISHED BY TITLE THIS 8TH DAY OF OCTOBER, 2013.**

**MOVED, SECONDED AND FINALLY ADOPTED ON SECOND READING FOLLOWING PUBLIC HEARING BY THE TIMNATH TOWN COUNCIL ON OCTOBER 8, 2013.**

**TOWN OF TIMNATH, COLORADO**

  
\_\_\_\_\_  
Jill Grossman-Belisle, Mayor

**ATTEST:**

  
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Milissa Peters, Town Clerk



**EXHIBIT A**  
The Amendment to Franchise Agreement

## AMENDMENT TO FRANCHISE AGREEMENT

This AMENDMENT TO FRANCHISE AGREEMENT (the "Amendment") is made and entered into this 8th day of October, 2013, by and between the Town of Timnath, Colorado ("Town"), a Colorado home rule municipality located in Larimer County, Colorado, and Public Service Company of Colorado ("Public Service") whose principal business address is 1800 Larimer Street, Denver, Colorado 80202.;

**WHEREAS**, by Ordinance No. 4 – 1988 the Town granted a gas and electric franchise (the "Current Franchise"); and

**WHEREAS**, the Current Franchise expires on October 15, 2013; and

**WHEREAS**, the Town and Public Service have entered into negotiations for a renewal franchise that would replace the Current Franchise; and

**WHEREAS**, the parties agree that they will not be able to complete negotiation and adoption of a renewal franchise before the expiration date of the Current Franchise; and

**WHEREAS**, Public Service and the Town have mutually agreed that their respective interests will be served by amending section 2.3 of the Current Franchise and extending the term of the Current Franchise to and including February 15, 2014 and deleting certain provisions; and

**WHEREAS**, the parties agree that extending the Current Franchise and deleting certain provisions in the Current Franchise is in the public interest; and

**WHEREAS**, both parties agree that their respective interests will be served by amending the Current Franchise to extend its term and delete certain requirements;

**WHEREAS**, the Town Council finds that such an extension of the Current Franchise will allow for adequate consideration of proposed changes to the franchise and will allow time for completion of franchise negotiations and review, discussion, examination and inquiry by Town Council members; and

**WHEREAS**, the Town Council finds that such an extension of the Current Franchise as well as deletion of a portion of Section 3.3 of the Current Franchise is appropriate in the circumstances; and

**WHEREAS**, this Amendment is contemplated and authorized by section 17.1 of the Current Franchise; and

**WHEREAS**, all other terms of the Current Franchise will remain unchanged unless expressly amended herein;

**WHEREAS**, the purpose of this Amendment is for the parties to rescind and delete from the Current Franchise the provisions of section 3.3 described below, and extend the term of the Franchise Agreement as set forth by separate agreement.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and adequacy of which the parties hereto acknowledge, the parties hereby agree as follows:

1. Section 3.3 currently reads as follows:

§3.3 Change of Franchise Fee. Once during each calendar year of the franchise term the Town Board of Trustees, upon giving 30 days notice to the Company of its intention so to do, may review and change the consideration the Town may be entitled to receive as a part of the franchise; provided, however, the Board of Trustees may only change the consideration to be received by the Town under the terms of this franchise to the equivalent of the consideration paid by the Company to any city or town in the State of Colorado in which the Company supplies gas and/or electric service under franchise.

2. Section 3.3 of the Current Franchise (“Change of Franchise Fee and Other Franchise Terms”) is hereby deleted in its entirety.

3. Section 2.3 of the Current Franchise is amended to read as follows:

§2.3 Term of Franchise. This franchise shall take effect on October 16, 1988. The term of this franchise shall ~~be for 25 years, beginning with said effective date of this franchise and expiring on October 15, 2013~~ expire on February 15, 2014.

4. This Amendment shall be of no force or effect unless it is duly executed by Public Service and the Town Council.

5. Subject to the foregoing paragraph, the effective date of this Amendment shall be October 15, 2013.

6. Except as expressly amended herein, the Franchise Agreement shall remain in full force and effect.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first written above.

TOWN OF TIMNATH

By: April Deitchman

Approved as to form:

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Kenneth S. Fellman, Esq.

PUBLIC SERVICE COMPANY OF COLORADO


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

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IN WITNESS WHEREOF, the parties have executed this Amendment as  
of the date first written above.


TOWN OF TIMNATH

By: 

Approved as to form:

  
Kenneth S. Fellman, Esq.

PUBLIC SERVICE COMPANY OF COLORADO

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

**Reviewed  
Legal**

