



*All Attachments can be obtained at the Town Administration Building, 4800 Goodman Street*

**TOWN OF TIMNATH  
TOWN COUNCIL**

**Tuesday, March 11, 2014, at 6:00 p.m.**

**Meeting will be held at *Timnath Administration Building,*  
*4800 Goodman Street, Timnath, Colorado***

**1. CALL TO ORDER AND ROLL CALL**

Mayor	Jill Grossman-Belisle
Councilmember	Marty Chiamonte
Councilmember	Bill Neal
Councilmember	Paul Steinway
Councilmember	Bryan Voronin

**2. AMENDMENTS TO THE AGENDA** *Note: The Council may add to this agenda, any item for discussion or action.*

**3. PUBLIC COMMENT:** *Note: It is requested that public comments be limited to three minutes. When several people wish to speak with the same position on a given item, they are requested to select a spokesperson to state that position.*

**4. CONSENT AGENDA**

- a. Approval of the February 25, 2014, Town Council Meeting Minutes
- b. Approval of the Check Register

**5. REPORTS**

- a. Mayor and Council

**6. ORDER OF BUSINESS:**

- a. **ORDINANCE NO. 4, SERIES 2014, SECOND READING, PUBLIC HEARING**, An Ordinance Approving a Franchise Agreement Between the Town of Timnath and Public Service Company of Colorado  
Presented by Gary White, Contracted Town Attorney
- b. **RESOLUTION NO. 19, SERIES 2014**, A Resolution Approving the Timnath IGA with the Colorado Information Sharing Consortium  
Presented by Sherri Wagner, Police Chief
- c. **EXECUTIVE SESSION:** "For the purposes of discussion concerning the purchase, acquisition, lease, transfer, or sale of real, personal, or other property interests under Section §24-6-402(a), C.R.S.; discussion concerning personnel matters under §24-6-402(4)(f), C.R.S.; discussion regarding positions relative to matters that may be subject to negotiations and development of a strategy for negotiations under §24-6-402(4)(e), C.R.S.; and conferences with the Town's attorney for purposes of receiving legal advice on specific legal questions under §24-6-402(4)(b), C.R.S."  
Presented by the Contracted Town Attorney

**7. ADJOURNMENT**



**Town of Timnath  
Regular Meeting Minutes  
Tuesday, February 25, 2014**

**IMMEDIATELY FOLLOWED THE TIMNATH LIQUOR LICENSE MEETING AND  
THE TIMNATH DEVELOPMENT AUTHORITY MEETING AT 6:00 P.M.**

**Meeting was held at Timnath Administration Building,  
4800 Goodman Street, Timnath, Colorado**

**1. CALL TO ORDER AND ROLL CALL:**

Mayor Pro Tem Voronin called to order the meeting of the Town Council on Tuesday, February 25, 2014 at 6:07 p.m.

**Present:**

- a. Mayor Pro Tem Bryan Voronin
- b. Councilmember Bill Neal
- c. Councilmember Paul Steinway

**Absent:**

- a. Mayor Jill Grossman-Belisle
- b. Councilmember Marty Chiaramonte

**Also Present:**

- a. April Getchius, Town Manager
- b. Milissa Peters, Town Clerk
- c. Robert Rogers, Contracted Town Attorney
- d. Don Taranto, Contracted Town Engineer
- e. Matt Blakely, Contracted Town Planner
- f. Brian Williamson, Contracted Town Planner
- g. Dino Ditullio
- h. Mike Ditullio
- i. Charlie Johnson
- j. Phil Goldstein

**2. AMENDMENTS TO THE AGENDA:**

- a. Item K was removed.

**3. PUBLIC COMMENT ON NON-AGENDA ITEMS:**

- a. NONE

**4. CONSENT AGENDA:**

- a. Approval of the January 28, 2014, Town Council Meeting Minutes



**Councilmember Steinway moved to approve** the January 28, 2014, Town Council Meeting Minutes. **Councilmember Neal seconded the motion. The motion passed unanimously by voice vote.**

b. Approval of the Check Registers

**Councilmember Steinway moved to approve** the Check Registers as amended. **Councilmember Neal seconded the motion. The motion passed unanimously by voice vote.**

**5. REPORTS:**

- a. Mayor/Council – NONE
- b. Staff – Included in the packet

**6. ORDER OF BUSINESS:**

- a. **ORDINANCE NO. 1, SERIES 2014, SECOND READING, PUBLIC HEARING**, An Ordinance Approving the Annexation of Certain Real Property to be Known as the Brunner Farms Annexation to the Town of Timnath, Colorado, Generally Located South of and Adjacent to CR 36/River Pass Road, and West of and Adjacent t Three Bell Parkway

Mayor Pro Tem Voronin opened the public hearing at 6:12 p.m.

Staff Comments:

- Mr. Blakely spoke to Council about the proposed Ordinance.

Public Comments:

- Charlie Johnson spoke about his support for the project.

Town Council Questions and Comments:

- NONE

Mayor Pro Tem Voronin closed the public hearing at 6:13 p.m.

**Councilmember Neal moved to approve ORDINANCE NO. 1, SERIES 2014**, An Ordinance Approving the Annexation of Certain Real Property to be Known as the Brunner Farms Annexation to the Town of Timnath, Colorado, Generally Located South of and Adjacent to CR 36/River Pass Road, and West of and Adjacent to Three Bell Parkway. **Councilmember - Steinway seconded the motion. The motion passed unanimously by voice vote.**

- b. **ORDINANCE NO. 2, SERIES 2014, SECOND READING, PUBLIC HEARING**, An Ordinance Amending the Official Zoning Map of the Town of Timnath for the Purpose of Zoning Certain Real Property to be Known as the Brunner Farms Annexation, Generally Located South of and Adjacent to CR 36/River Pass Road, and West of and Adjacent to Three Bell Parkway.

Mayor Pro Tem Voronin opened the public hearing at 6:14 p.m.



Staff Comments:

- Mr. Blakely spoke to Council about the proposed Ordinance.

Public Comments:

- NONE

Town Council Questions and Comments:

- NONE

Mayor Pro Tem Voronin closed the public hearing at 6:14 p.m.

**Councilmember Steinway moved to approve ORDINANCE NO. 2, SERIES 2014, Ordinance Amending the Official Zoning Map of the Town of Timnath for the Purpose of Zoning Certain Real Property to be Known as the Brunner Farms Annexation, Generally Located South of and Adjacent to CR 36/River Pass Road, and West of and Adjacent to Three Bell Parkway. Councilmember Neal seconded the motion. The motion passed unanimously by voice vote.**

- c. ORDINANCE NO. 3, SERIES 2014, SECOND READING, PUBLIC HEARING, An Ordinance Ratifying Conveyances of Real Property Interests by Resolution.**

Mayor Pro Tem Voronin opened the public hearing at 6:16 p.m.

Staff Comments:

- Mr. Rogers spoke to Council about the proposed Ordinance.

Public Comments:

- NONE

Town Council Questions and Comments:

- NONE

Mayor Pro Tem Voronin closed the public hearing at 6:16 p.m.

**Councilmember Steinway moved to approve ORDINANCE NO. 3, SERIES 2014, An Ordinance Ratifying Conveyances of Real Property Interests by Resolution. Councilmember - Neal seconded the motion. The motion passed unanimously by voice vote.**

- d. ORDINANCE NO. 4, SERIES 2014, FIRST READING, An Ordinance Approving a Franchise Agreement Between the Town of Timnath and Public Service Company of Colorado and Setting a Public Hearing for March 11, 2014 at 6:00 p.m.**

Staff Comments:

- Ms. Getchius spoke to Council about the proposed ordinance.



**Councilmember Neal moved to approve ORDINANCE NO. 4, SERIES 2014, FIRST READING,** An Ordinance Approving a Franchise Agreement Between the Town of Timnath and Public Service Company of Colorado and Setting a Public Hearing for March 11, 2014 at 6:00 p.m. **Councilmember Steinway seconded the motion. The motion passed unanimously by voice vote.**

**e. RESOLUTION NO. 13, SERIES 2014,** A Resolution Approving The Brunner Farms Annexation Sketch Plan

Staff Comments:

- Mr. Blakely spoke to Council about the proposed resolution.

**Councilmember Neal moved to approve RESOLUTION NO. 13, SERIES 2014,** A Resolution Approving The Brunner Farms Annexation Sketch Plan. **Councilmember Steinway seconded the motion. The motion passed unanimously by voice vote.**

**f. RESOLUTION NO. 14, SERIES 2014,** A Resolution Approving the Brunner Farms Annexation Preliminary Plat

Staff Comments:

- Mr. Blakely spoke to Council about the proposed resolution.

Town Council Questions and Comments:

- Councilmember Neal asked if the south west section of the property was in the floodplain area and it was explained that the lots were not in the floodplain area.

**Councilmember Neal moved to approve RESOLUTION NO. 14, SERIES 2014,** A Resolution Approving the Brunner Farms Annexation Preliminary Plat. **Councilmember - Steinway seconded the motion. The motion passed unanimously by voice vote.**

**g. RESOLUTION NO. 15, SERIES 2014,** A Resolution Approving the Brunner Farms Annexation Final Plat

Staff Comments:

- Mr. Blakely spoke to Council about the proposed resolution.

**Councilmember Steinway moved to approve RESOLUTION NO. 15, SERIES 2014,** A Resolution Approving the Brunner Farms Annexation Final Plat. **Councilmember Neal seconded the motion. The motion passed unanimously by voice vote.**

**h. RESOLUTION NO. 16, SERIES 2014,** A Resolution Regarding the Fishing is Fun Grant application

Staff Comments:

- Mr. Blakely spoke to Council about the proposed resolution.

**Councilmember Steinway moved to approve RESOLUTION NO. 16, SERIES 2014,** A Resolution Regarding the Fishing is Fun Grant application. **Councilmember Neal seconded the motion. The motion passed unanimously by voice vote.**



**i. RESOLUTION NO. 17, SERIES 2014, A Resolution Approving the Boxelder Ditch Maintenance Agreement**

Staff Comments:

- Ms. Getchius spoke to Council about the proposed resolution.

**Councilmember Steinway moved to approve RESOLUTION NO. 17, SERIES 2014, A Resolution Approving the Boxelder Ditch Maintenance Agreement. Councilmember Neal seconded the motion. The motion passed unanimously by voice vote.**

**j. RESOLUTION NO. 18, SERIES 2014, A Resolution Approving the Amended and Restated Cooperation Agreement Between the Town of Timnath and the Timnath Development Authority**

Staff Comments:

- Mr. Rogers spoke to Council about the proposed resolution.

**Councilmember Neal moved to approve RESOLUTION NO. 18, SERIES 2014, A Resolution Approving the Amended and Restated Cooperation Agreement Between the Town of Timnath and the Timnath Development Authority. Councilmember Steinway seconded the motion. The motion passed unanimously by voice vote.**

- k. REMOVED - EXECUTIVE SESSION:** “For the purposes of discussion concerning the purchase, acquisition, lease, transfer, or sale of real, personal, or other property interests under Section §24-6-402(a), C.R.S.; discussion concerning personnel matters under §24-6-402(4)(f), C.R.S.; discussion regarding positions relative to matters that may be subject to negotiations and development of a strategy for negotiations under §24-6-402(4)(e), C.R.S.; and conferences with the Town’s attorney for purposes of receiving legal advice on specific legal questions under §24-6-402(4)(b), C.R.S.”

**7. ADJOURNMENT:**

Mayor Pro Tem Voronin adjourned the meeting 6:33 p.m.

**Town Council approved the February 25, 2014, Town Council Meeting Minutes on March 11, 2014.**

**TOWN OF TIMNATH**

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Jill Grossman-Belisle, Mayor

**ATTEST:**

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Milissa Peters, Town Clerk

## Report Criteria:

Invoices with totals above \$0.00 included.  
Only unpaid invoices included.

Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount
<b>Accuracy Enterprises</b>					
<b>02222014</b>					
413	Accuracy Enterprises	02222014	2/22/2014 Pistol Training and Qua	02/22/2014	210.00
Total Accuracy Enterprises:					210.00
<b>ALL COPY PRODUCTS, INC</b>					
<b>AR1304700</b>					
435	ALL COPY PRODUCTS, INC	AR1304700	2014 IT Contract	02/17/2014	400.00
Total ALL COPY PRODUCTS, INC:					400.00
<b>Alsco</b>					
<b>LLAR915657</b>					
272	Alsco	LLAR915657	02/27/2014 Mat Service	02/27/2014	41.78
Total Alsco:					41.78
<b>April Getchius</b>					
<b>02242014</b>					
669	April Getchius	02242014	2014 CCCMA Conference travel r	02/24/2014	337.20
<b>MARCH 2014</b>					
669	April Getchius	MARCH 2014	March 2014 mileage	03/01/2014	400.00
Total April Getchius:					737.20
<b>AT&amp;T MOBILITY</b>					
<b>02252014</b>					
269	AT&T MOBILITY	02252014	February 2014 Cell Phones	02/25/2014	107.47
269	AT&T MOBILITY	02252014	February 2014 Cell Phones	02/25/2014	40.29
269	AT&T MOBILITY	02252014	February 2014 Cell Phones	02/25/2014	188.01
269	AT&T MOBILITY	02252014	February 2014 Cell Phones	02/25/2014	114.82
269	AT&T MOBILITY	02252014	February 2014 Cell Phones	02/25/2014	28.37
Total AT&T MOBILITY:					478.96
<b>CASELLE, INC</b>					
<b>55467</b>					
582	CASELLE, INC	55467	March 2014 support	02/01/2014	545.00
Total CASELLE, INC:					545.00
<b>City of Fort Collins</b>					
<b>63629</b>					
667	City of Fort Collins	63629	January 2014 Ice Buster	02/11/2014	2,002.73
Total City of Fort Collins:					2,002.73
<b>COLORADO NETWORK MANAGEMENT, INC</b>					
<b>5037</b>					
551	COLORADO NETWORK MANAG	5037	February 2014 IT Services	02/28/2014	2,115.00
Total COLORADO NETWORK MANAGEMENT, INC:					2,115.00

Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount
<b>Coren Printing, Inc.</b>					
<b>16015</b>					
9	Coren Printing, Inc.	16015	Business Cards Slugs	02/21/2014	525.00
Total Coren Printing, Inc.:					525.00
<b>CORKAT DATA SOLUTIONS, LLC</b>					
<b>1871</b>					
579	CORKAT DATA SOLUTIONS, LL	1871	February 2014 Virtual Server Host	03/01/2014	1,907.39
Total CORKAT DATA SOLUTIONS, LLC:					1,907.39
<b>DE LAGE LANDEN FINANCIAL SERVI</b>					
<b>40097479</b>					
439	DE LAGE LANDEN FINANCIAL S	40097479	February 2014 Copier Rental	01/25/2014	404.01
<b>40460370</b>					
439	DE LAGE LANDEN FINANCIAL S	40460370	February 2014 Copier Rental	02/22/2014	396.43
Total DE LAGE LANDEN FINANCIAL SERVI:					800.44
<b>Delich Associates</b>					
<b>02222014</b>					
710	Delich Associates	02222014	Costco Development Review	02/22/2014	2,370.00
Total Delich Associates:					2,370.00
<b>DEZIRE SANCHEZ</b>					
<b>02282014</b>					
334	DEZIRE SANCHEZ	02282014	Feb 2014 mileage	02/28/2014	215.60
Total DEZIRE SANCHEZ:					215.60
<b>FT COLLINS LOVELAND WATER DIST</b>					
<b>02142014A</b>					
14	FT COLLINS LOVELAND WATE	02142014A	February 2014 4800 Goodman Str	02/14/2014	57.88
<b>02142014B</b>					
14	FT COLLINS LOVELAND WATE	02142014B	February 2014 3930 Main Street	02/14/2014	13.40
Total FT COLLINS LOVELAND WATER DIST:					71.28
<b>INTEGRA TELECOM</b>					
<b>11760227</b>					
576	INTEGRA TELECOM	11760227	February 2014 Phone Service	02/21/2014	632.57
Total INTEGRA TELECOM:					632.57
<b>J&amp;S CONTRACTOR SUPPLY CO</b>					
<b>48387-IN</b>					
426	J&S CONTRACTOR SUPPLY CO	48387-IN	Snow Plow Blade	02/19/2014	374.86
Total J&S CONTRACTOR SUPPLY CO:					374.86
<b>JOHN DEERE GOVERNMENT &amp; NATION</b>					
<b>1437515</b>					
517	JOHN DEERE GOVERNMENT &	1437515	January 2014 John Deere Lease	01/29/2014	1,176.34
<b>1444478</b>					
517	JOHN DEERE GOVERNMENT &	1444478	February 2014 lease payment	02/26/2014	1,176.34



Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount
Total JOHN DEERE GOVERNMENT & NATION:					2,352.68
<b>Kissinger &amp; Fellman, P.C.</b>					
<b>19273</b>					
685	Kissinger & Fellman, P.C.	19273	February 2014 Xcel Franchise agr	02/20/2014	45.00
Total Kissinger & Fellman, P.C.:					45.00
<b>Larimer County Clerk/Recorder</b>					
<b>02212014</b>					
23	Larimer County Clerk/Recorder	02212014	voter registration list	02/21/2014	25.00
Total Larimer County Clerk/Recorder:					25.00
<b>LOWE'S</b>					
<b>09602</b>					
409	LOWE'S	09602	2014 PW-Tarp for Salt	01/30/2014	145.41
<b>10075</b>					
409	LOWE'S	10075	2014 PW-Paint	01/24/2014	64.56
<b>72988</b>					
409	LOWE'S	72988	2014 PW- Asphalt Patch	01/17/2014	670.07
Total LOWE'S:					880.04
<b>Mail N Copy</b>					
<b>397084</b>					
29	Mail N Copy	397084	Return product to amazon	02/03/2014	13.34
29	Mail N Copy	397084	Send code book to White, Bear	02/03/2014	9.98
Total Mail N Copy:					23.32
<b>MOBILE LAB</b>					
<b>S60163</b>					
534	MOBILE LAB	S60163	Annual CDL Membership Renewa	03/01/2014	200.00
Total MOBILE LAB:					200.00
<b>Neopost USA Inc</b>					
<b>51388575</b>					
302	Neopost USA Inc	51388575	March 2014 Postage Meter Lease	02/09/2014	40.58
Total Neopost USA Inc:					40.58
<b>North American Salt Company</b>					
<b>71134668</b>					
721	North American Salt Company	71134668	25 ton of De-Icing Salt	02/24/2014	2,650.00
Total North American Salt Company:					2,650.00
<b>North Weld County Water District</b>					
<b>02212014A</b>					
709	North Weld County Water District	02212014A	February 2014 Water services at	02/21/2014	18.30
<b>02212014B</b>					
709	North Weld County Water District	02212014B	February 2014 Water services at	02/21/2014	18.30
Total North Weld County Water District:					36.60

Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount
<b>Northern Colorado Air, Inc</b>					
<b>109430</b>					
654	Northern Colorado Air, Inc	109430	2014 Annual Service Plan	02/27/2014	1,270.00
Total Northern Colorado Air, Inc:					1,270.00
<b>OFFICE DEPOT</b>					
<b>700182139001</b>					
419	OFFICE DEPOT	700182139001	2014 Office Supplies	02/13/2014	127.08
<b>700182182001</b>					
419	OFFICE DEPOT	700182182001	2014 Office Supplies	02/13/2014	158.62
<b>700182399001</b>					
419	OFFICE DEPOT	700182399001	2014 Office supplies	02/15/2014	6.99
<b>700183089001</b>					
419	OFFICE DEPOT	700183089001	2014 Office Supplies	02/13/2014	23.36
<b>700231601001</b>					
419	OFFICE DEPOT	700231601001	Refund of 2014 Office Supplies	02/13/2014	6.99-
<b>700256448001</b>					
419	OFFICE DEPOT	700256448001	Refund of 2014 Office Supplies	02/13/2014	11.68-
Total OFFICE DEPOT:					297.38
<b>ORION PLANNING GROUP</b>					
<b>LUC7</b>					
581	ORION PLANNING GROUP	LUC7	February 2014 Land Use Code	03/01/2014	670.00
Total ORION PLANNING GROUP:					670.00
<b>Paychex of New York LLC</b>					
<b>11265411</b>					
617	Paychex of New York LLC	11265411	February 2014 Administration	02/04/2014	438.75
Total Paychex of New York LLC:					438.75
<b>PORTABLE RENTAL SYSTEMS</b>					
<b>47430</b>					
143	PORTABLE RENTAL SYSTEMS	47430	February 2014 Porta-Potty Rental	02/20/2014	106.00
Total PORTABLE RENTAL SYSTEMS:					106.00
<b>RAM WASTE SYSTEMS, INC</b>					
<b>03012014</b>					
344	RAM WASTE SYSTEMS, INC	03012014	March 2014 waste removal servic	03/01/2014	208.00
Total RAM WASTE SYSTEMS, INC:					208.00
<b>Robert Bishop</b>					
<b>02192014</b>					
715	Robert Bishop	02192014	February 2014 Mileage Reimburs	02/19/2014	250.86
Total Robert Bishop:					250.86
<b>ServiceMaster Clean</b>					
<b>3703-CS</b>					
646	ServiceMaster Clean	3703-CS	March 2014 Janitorial Services	03/01/2014	397.00
Total ServiceMaster Clean:					397.00

Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount
<b>Smart Document Management LLC</b>					
<b>313023</b>					
724	Smart Document Management LL	313023	Shredding	02/20/2014	168.00
Total Smart Document Management LLC:					168.00
<b>Stephanie Price</b>					
<b>02282014</b>					
717	Stephanie Price	02282014	February 2014 Mileage	02/28/2014	32.77
Total Stephanie Price:					32.77
<b>TST, INC CONSULTING ENGINEERS</b>					
<b>27602</b>					
406	TST, INC CONSULTING ENGINE	27602	February 2014 General Consultati	02/28/2014	11,448.51
<b>27603</b>					
406	TST, INC CONSULTING ENGINE	27603	February 2014 Boxelder	02/28/2014	563.63
<b>27604</b>					
406	TST, INC CONSULTING ENGINE	27604	February 2014 FCLWD/SFCSD	02/28/2014	150.00
<b>27605</b>					
406	TST, INC CONSULTING ENGINE	27605	February 2014 Riverbend Entry R	02/28/2014	645.75
<b>27606</b>					
406	TST, INC CONSULTING ENGINE	27606	February 2014 Community Develo	02/28/2014	18,517.90
<b>27607</b>					
406	TST, INC CONSULTING ENGINE	27607	February 2014 PW/TE	02/28/2014	10,365.97
<b>27608</b>					
406	TST, INC CONSULTING ENGINE	27608	February 2014 Harmony Road Ph	02/28/2014	449.00
<b>27609</b>					
406	TST, INC CONSULTING ENGINE	27609	February 2014 Poudre Trail	02/28/2014	800.00
<b>27610</b>					
406	TST, INC CONSULTING ENGINE	27610	February 2014 Wildwing Park	02/28/2014	430.00
<b>27611</b>					
406	TST, INC CONSULTING ENGINE	27611	February 2014 Offsite Sewer	02/28/2014	4,734.59
<b>27612</b>					
406	TST, INC CONSULTING ENGINE	27612	February 2014 Reservoir Improve	02/28/2014	2,139.00
<b>27613</b>					
406	TST, INC CONSULTING ENGINE	27613	February 2014 Costco Offsite	02/28/2014	10,043.87
<b>27614</b>					
406	TST, INC CONSULTING ENGINE	27614	February 2014 Community Park	02/28/2014	104.50
<b>27615</b>					
406	TST, INC CONSULTING ENGINE	27615	February 2014 Riverbend	02/28/2014	128.00
<b>27616</b>					
406	TST, INC CONSULTING ENGINE	27616	February 2014 Timnath Farms No	02/28/2014	1,126.78
406	TST, INC CONSULTING ENGINE	27616	February 2014 Timnath Farms No	02/28/2014	3.20
<b>27617</b>					
406	TST, INC CONSULTING ENGINE	27617	February 2014 Timnath Ranch	02/28/2014	460.26
406	TST, INC CONSULTING ENGINE	27617	February 2014 Timnath Ranch	02/28/2014	256.00
<b>27618</b>					
406	TST, INC CONSULTING ENGINE	27618	February 2014 Timnath South 1st	02/28/2014	300.00
<b>27619</b>					
406	TST, INC CONSULTING ENGINE	27619	February 2014 Harmony 4th Filing	02/28/2014	450.00
<b>27620</b>					
406	TST, INC CONSULTING ENGINE	27620	February 2014 Village Homes	02/28/2014	288.00
<b>27621</b>					
406	TST, INC CONSULTING ENGINE	27621	February 2014 4801 Goodman	02/28/2014	300.00
406	TST, INC CONSULTING ENGINE	27621	February 2014 4801 Goodman	02/28/2014	445.13
<b>27622</b>					
406	TST, INC CONSULTING ENGINE	27622	February 2014 Brunner Farm	02/28/2014	456.00

Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount
<b>27623</b>					
406	TST, INC CONSULTING ENGINE	27623	February 2014 Costco	02/28/2014	4,491.54
406	TST, INC CONSULTING ENGINE	27623	February 2014 Costco	02/28/2014	3,525.58
<b>27624</b>					
406	TST, INC CONSULTING ENGINE	27624	February 2014 Brunner annexatio	02/28/2014	1,500.00
406	TST, INC CONSULTING ENGINE	27624	February 2014 Brunner annexatio	02/28/2014	8,683.20
<b>27625</b>					
406	TST, INC CONSULTING ENGINE	27625	February 2014 NOCO Storage	02/28/2014	40.00
<b>27626</b>					
406	TST, INC CONSULTING ENGINE	27626	February 2014 Burton	02/28/2014	75.00
406	TST, INC CONSULTING ENGINE	27626	February 2014 Burton	02/28/2014	240.00
<b>27627</b>					
406	TST, INC CONSULTING ENGINE	27627	February 2014 Wildwing Replat E	02/28/2014	150.00
406	TST, INC CONSULTING ENGINE	27627	February 2014 Wildwing Replat E	02/28/2014	140.00
<b>27628</b>					
406	TST, INC CONSULTING ENGINE	27628	February 2014 General Developm	02/28/2014	2,175.00
Total TST, INC CONSULTING ENGINEERS:					85,626.41
<b>UNIVERSITY OF COLORADO BOULDER</b>					
<b>COLORADO LTAP 3/17</b>					
476	UNIVERSITY OF COLORADO B	COLORADO L	3/17/2014 Road Scholar Courses	02/27/2014	100.00
Total UNIVERSITY OF COLORADO BOULDER:					100.00
<b>W L Contractors Inc.</b>					
<b>23054</b>					
177	W L Contractors Inc.	23054	January 2014 work on Harmony &	02/18/2014	1,700.82
Total W L Contractors Inc.:					1,700.82
<b>WHITE, BEAR, ANKELE, PC, ATTORNEYS AT LA</b>					
<b>02252014</b>					
543	WHITE, BEAR, ANKELE, PC, AT	02252014	February 2014 Admin Legal	02/25/2014	20,785.73
543	WHITE, BEAR, ANKELE, PC, AT	02252014	February 2014 Admin Legal	02/25/2014	156.80
543	WHITE, BEAR, ANKELE, PC, AT	02252014	February 2014 TDA	02/25/2014	18,714.00
543	WHITE, BEAR, ANKELE, PC, AT	02252014	February 2014 costco credit	02/25/2014	2,853.00-
543	WHITE, BEAR, ANKELE, PC, AT	02252014	February 2014 Serratoga	02/25/2014	480.00
543	WHITE, BEAR, ANKELE, PC, AT	02252014	February 2014 Riverbend	02/25/2014	2,970.00
543	WHITE, BEAR, ANKELE, PC, AT	02252014	February 2014 Timnath Ranch	02/25/2014	2,190.00
543	WHITE, BEAR, ANKELE, PC, AT	02252014	February 2014 costco	02/25/2014	22,028.00
543	WHITE, BEAR, ANKELE, PC, AT	02252014	February 2014 costco credit	02/25/2014	22,028.00-
543	WHITE, BEAR, ANKELE, PC, AT	02252014	February 2014 Brunner	02/25/2014	3,946.00
543	WHITE, BEAR, ANKELE, PC, AT	02252014	February 2014 connell	02/25/2014	60.00
Total WHITE, BEAR, ANKELE, PC, ATTORNEYS AT LA:					46,449.53
<b>WildWing Development</b>					
<b>02282014</b>					
725	WildWing Development	02282014	34 Permits at \$3,500 for dedicatio	02/28/2014	119,000.00
Total WildWing Development:					119,000.00
<b>Xcel Energy</b>					
<b>39749566</b>					
47	Xcel Energy	39749566	January 2013 3909 Main Street	01/31/2014	19.30
<b>398154395</b>					
47	Xcel Energy	398154395	January 2014 Main Street Lights	01/17/2014	306.71

Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount
398270180					
47	Xcel Energy	398270180	January 2014 5096 CTY Rd 38	01/17/2014	98.34
<b>398369576</b>					
47	Xcel Energy	398369576	January 2014 Area Lights	01/20/2014	38.76
<b>398980372</b>					
47	Xcel Energy	398980372	January 2014 2221 S Cty Line Rd	01/24/2014	27.63
<b>399559281</b>					
47	Xcel Energy	399559281	January 2014 Goodman Street	01/29/2014	1,047.67
<b>400050597</b>					
47	Xcel Energy	400050597	January 2014 Street Lights	02/03/2014	3,093.53
<b>401446522</b>					
47	Xcel Energy	401446522	February 2013 3909 Main Street	02/13/2014	19.39
<b>401805804</b>					
47	Xcel Energy	401805804	February 2014 4100 Main Street	02/18/2014	267.16
<b>401917819</b>					
47	Xcel Energy	401917819	February 2014 5096 CTY Rd 38	02/18/2014	96.04
<b>402193003</b>					
47	Xcel Energy	402193003	February 2014 Area Lights	02/20/2014	38.76
<b>402462399</b>					
47	Xcel Energy	402462399	February 2014 2221 S Cty Line R	02/24/2014	27.37
Total Xcel Energy:					5,080.66
Grand Totals:					281,477.21

Dated: \_\_\_\_\_

Mayor: \_\_\_\_\_

City Council: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

City Recorder: \_\_\_\_\_

Report Criteria:

Invoices with totals above \$0.00 included.

Only unpaid invoices included.



## TIMNATH COUNCIL COMMUNICATION

<b>Meeting Date:</b> 3/11/14	<b>Item:</b> An Ordinance Approving a Franchise Agreement Between the Town of Timnath and Public Service Company of Colorado	<b>Ordinance</b> <input checked="" type="checkbox"/> <b>Resolution</b> <input type="checkbox"/> <b>Discussion</b> <input type="checkbox"/> <b>For Information</b> <input type="checkbox"/>
<b>Presented by:</b> April D. Getchius, AICP Town Manager		
<b>EXECUTIVE SUMMARY:</b> The attached ordinance approves a franchise agreement with Public Service Company of Colorado (Xcel Energy) governing the use of Town right of ways, paying of franchise fee and other terms and conditions.		
<b>STAFF RECOMMENDATION:</b> Staff recommends Town Council approve the ordinance.		
<b>KEY POINTS/SUPPORTING INFORMATION:</b> <ul style="list-style-type: none"> <li>The agreement requires the payment of 3%.</li> <li>The term of the agreement if for 20 years.</li> <li>The agreement authorizes the Public Service Company to use the Town’s right of ways for their utility installation and governs the terms of undergrounding lines when necessary.</li> </ul>		
<b>ADVANTAGES:</b> The agreement will clarify the terms under which the Public Service Company may install and operate lines within the town right of way. It will also generate income from the franchise fee over the long term.		
<b>DISADVANTAGES:</b> None.		
<b>FINANCIAL IMPACT:</b> The Town will continue to receive a 3% franchise fee from utility bills within the town of Timnath. Our total franchise fee revenues are approximately \$66,000 per year but are expected to grow with our continued development.		
<b>RECOMMENDED MOTION:</b> I move approval of Ordinance No 4, Series 2014 entitled “An Ordinance Approving a Franchise Agreement Between the Town of Timnath, Colorado and Public Service Company of Colorado.”		
<b>ATTACHMENTS:</b> <ol style="list-style-type: none"> <li>1. Ordinance</li> <li>2. Franchise Agreement</li> </ol>		

**TOWN OF TIMNATH  
ORDINANCE NO. 4, SERIES 2014**

**AN ORDINANCE APPROVING A FRANCHISE  
AGREEMENT BETWEEN THE TOWN OF TIMNATH,  
COLORADO AND PUBLIC SERVICE COMPANY OF  
COLORADO**

**WHEREAS**, The Town of Timnath (the "Town") is a home rule municipality operating under the Timnath Home Rule Charter (the "Charter") adopted on November 7, 2006 and the Town's Municipal Code (the "Code"). Pursuant to the Charter, the Code, and the authority given home rule municipalities under the Colorado Constitution, the Town may adopt and amend ordinances; and

**WHEREAS**, pursuant to Section 12.1 of the Charter, franchise agreements shall be approved by the Town Council by ordinance; and

**WHEREAS**, the Town Council previously approved a franchise agreement with the Public Service Company of Colorado on September 8, 1988; and

**WHEREAS**, the Town and the Public Service Company of Colorado have reached new agreement for the payment of franchise fees, use of public right of ways and property and additional terms and conditions; and

**WHEREAS**, the Town Council finds it is in the public's best interest to renew and establish a franchise agreement with the Public Service Company subject to the terms and conditions attached.

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

**Section 1.** The Town Council hereby approves the Franchise Agreement between the Town of Timnath, Colorado and Public Service Company of Colorado.

**Section 2.** 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 3. Effective Date.** This Ordinance shall take effect upon adoption at second reading, as provided by Section 3.5.5 of the Charter. The Town Clerk shall certify to the passage of this ordinance and make not less than one copy of the Ordinance available for inspection by the public during regular business hours.

**INTRODUCED, MOVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH ON FIRST READING ON FEBRUARY 25, 2014, AND SET FOR PUBLIC HEARING AND SECOND READING AT 6:00 P.M. ON MARCH 11, 2014 AT THE TIMNATH ADMINISTRATION BUILDING, 4800 GOODMAN STREET, TIMNATH COLORADO, AND ORDERED PUBLISHED BY TITLE THIS 25TH DAY OF FEBRUARY.**

**MOVED, SECONDED AND FINALLY ADOPTED ON SECOND READING FOLLOWING PUBLIC HEARING BY THE TIMNATH TOWN COUNCIL ON MARCH 11, 2014.**

**TOWN OF TIMNATH, COLORADO**

---

Jill Grossman-Belisle, Mayor

**ATTEST:**

---

Milissa Peters, Town Clerk



**FRANCHISE AGREEMENT BETWEEN THE TOWN OF TIMNATH, 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 “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.
- §1.2 “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.
- §1.3 “Company Facilities” refer to all facilities of the Company reasonably necessary or desirable to provide gas and electric service into, within and through the Town, 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.
- §1.4 “Council” or “Town Council” refers to and is the legislative body of the Town.
- §1.5 “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.
- §1.6 “Electric Gross Revenues” refers to those amounts of money that the Company receives from the sale or delivery of electricity in the Town, 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 Town as a customer of the Company.
- §1.7 “Energy Conservation” means the decrease in energy requirements of specific customers during any selected time period, resulting in a reduction in end-use services.

- §1.8 “Energy Efficiency” means the decrease in energy requirements of specific customers during any selected period with end-use services of such customers held constant.
- §1.9 “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 Town nor the Company shall be in breach of this Franchise if a failure to perform any of the duties under this Franchise is due to a Force Majeure condition.
- §1.10 “Gross Revenues” refers to those amounts of money that the Company receives from the sale of gas and electricity within the Town under rates authorized by the Public Utilities Commission, as well as from the transportation of gas to its customers within the Town 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 Town or the transportation of gas to the Town.
- §1.11 “Other Town Property” refers to the surface, the air space above the surface and the area below the surface of any property owned by the Town or directly controlled by the Town due to the Town’s real property interest in the same or hereafter owned by the Town, that would not otherwise fall under the definition of “Streets,” but which provides a suitable location for the placement of Company Facilities as specifically approved in writing by the Town as set forth in Section 2.1 of this Franchise. Other Town Property includes Parks but does not include Public Utility Easements.
- §1.12 “Park” refers to any area used as a park, reservation, playground, trail, beach, or any other open area in the Town, owned or used by the Town and devoted or designated to active or passive recreation, either on a temporary or permanent basis.
- §1.13 “Private Project” refers to any project which is not covered by the definition of Public Project.
- §1.14 “Public Project” refers to (1) any public work or improvement within the Town that is wholly or beneficially owned by the Town; or (2) any public work or improvement within the Town where fifty percent (50%) or more of the funding is provided by any combination of the Town, the federal government, the State of Colorado, any Colorado county, but excluding all entities established under Title 32 of the Colorado Revised Statutes.

- §1.15 “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.
- §1.16 “Public Utility Easement” refers to any platted easement over, under, or above public or private property, expressly dedicated to, and accepted by the Town 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.
- §1.17 “Relocate,” “Relocation,” or “Relocated” refers to the definition assigned such terms in Section 6.8.A of this Franchise.
- §1.18 “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.
- §1.19 “Residents” refers to all persons, businesses, industries, governmental agencies, including the Town, and any other entity whatsoever, presently located or to be hereinafter located, in whole or in part, within the territorial boundaries of the Town.
- §1.20 “Streets” or “Town Streets” refers to the surface, the air space above the surface and the area below the surface of any Town-dedicated or Town-maintained streets, alleys, bridges, roads, lanes, access easements, and other public rights-of-way within the Town, which are primarily used for vehicle traffic. Streets shall not include Public Utility Easements and Other Town Property.
- §1.21 “Supporting Documentation” refers to all information reasonably required or needed in order to allow the Company to design and construct any work performed under the provisions of this Franchise. Supporting Documentation may include, but is not limited to, construction plans, a description of known environmental issues, the identification of critical right of way or easement issues, the final recorded plat for the property, the date the site will be ready for the Company to begin construction, the date gas service and meter set are needed, and the name and contact information for the Town’s project manager.



- §1.22 “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.
- §1.23 “Town” refers to the Town of Timnath, a municipal corporation of the State of Colorado.
- §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 Town hereby grants to the Company, subject to all conditions, limitations, terms, and provisions contained in this Franchise, the non-exclusive right to make reasonable use of Town Streets, Public Utility Easements (as applicable) and Other Town Property:

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

B. 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 Town, 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 Town shall be governed by the Tariffs.

C. New Company Facilities in Other Town Property, Excluding Parks. For all Other Town Property that is not a Park, the Town’s grant to the Company of the right to locate Company Facilities in, on, over or across such Other Town Property shall be subject to the Company’s already having or first receiving from the Town approval of the

location of such Company Facilities, in the Town's reasonable discretion; and (2) the terms and conditions of the use of such Other Town Property shall be governed by this Franchise as may be reasonably supplemented to account for the unique nature of such Other Town Property. 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 Town license agreement, permit or other agreement that granted the Company the right to use such Other Town Property or, if there is no such license agreement, permit or other agreement, in accordance with this Franchise.

D. New Company Facilities in Other Town Property that are Parks. The Town's grant to the Company of the right to locate Company Facilities in, on, over or across Other Town Property that is a Park shall be subject to (1) the Company's already having or first receiving from the Town a revocable license, permit or other agreement approving the location of such Company Facilities, which the Town may grant or deny in its sole discretion; and (2) the terms and conditions of such revocable license agreement, permit or other written agreement. Nothing in this subsection 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 Town 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 Town as it is now or hereafter constituted that are within the Company's PUC-certificated service territory; however, nothing contained in this Franchise shall be construed to authorize the Company to engage in activities other than the provision of Utility Service, 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 Town Usage. The right to make reasonable use of Town Streets to provide Utility Service to the Town and its Residents under this Franchise is subject to and subordinate to any Town usage of said Streets.

C. Prior Grants not Revoked. This grant and Franchise does not, and is not intended to revoke any prior license, grant, or right to use the Streets, Other Town 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 Town reserves the right to make or grant a franchise to any other person, firm, or corporation.

§2.3 Effective Date and Term.

A. Term. This Franchise shall take effect on February 16, 2014, and shall supersede any prior franchise grants to the Company by the Town. This Franchise shall terminate on February 15, 2034, unless extended by mutual consent.

**ARTICLE 3  
TOWN POLICE POWERS**

§3.1 Police Powers. The Company expressly acknowledges the Town's right to adopt, from time to time, in addition to the provisions contained herein, such laws, including ordinances and regulations, as it may deem necessary in the exercise of its governmental powers. If the Town considers making any substantive changes in its local codes or regulations that in the Town's reasonable opinion will significantly impact the Company's operations in the Town's Streets 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 Town Property. The Company expressly acknowledges the Town'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 Town. Nothing herein provided shall prevent the Company from legally challenging or appealing the enactment of any laws, regulations, permits and orders enacted by the Town.

**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 Town Streets, Public Utility Easements and Other Town Property, which are valuable public properties acquired and maintained by the Town 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 Town 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 Town 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 Town, at the same times and in the same manner as provided in this Franchise, an aggregate amount equal to the amount that the Company would have paid as a franchise fee as partial consideration for use of the Town Streets, Public Utility Easements and Other Town Property. Such

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 Town Residents who are customers of the Company.

C. Changes in Utility Service Industries. The Town and the Company recognize that utility service industries are the subject of restructuring initiatives by legislative and regulatory authorities, and are also experiencing other changes as a result of mergers, acquisitions, and reorganizations. Some of such initiatives and changes 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 Town, the Company will cooperate with and assist the Town in modifying this Franchise in an effort to provide that the Town receives an amount in franchise fees or some other form of compensation that is the same amount of franchise fees paid to the Town as of the date that such initiatives and changes adversely impact franchise fee revenues.

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

#### §4.2 Remittance of Franchise Fee.

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

B. Correction of Franchise Fee Payments. In the event that either the Town or the Company discovers that there has been an error in the calculation of the franchise fee payment to the Town, either party shall provide written notice of the error to the other party. Subject to the following sentence, if the party receiving written notice of the error does not agree with the written notice of error, that party may challenge the written notice of error pursuant to Section 4.2.D of this Franchise; otherwise, the error shall be corrected in the next monthly payment. However, subject to the terms of the Tariff, if the error results in an overpayment of the franchise fee to the Town, and said overpayment is in excess of Five Thousand Dollars (\$5,000.00), 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 Town to provide it with a refund instead of a credit, with such refund to be spread over the same period the error was undiscovered, even if the refund will be paid after the termination date of this Franchise. All franchise fee underpayments shall be corrected in the next monthly payment, together with interest computed at the rate set by the PUC for customer security deposits held by the Company, from the date when due until the date paid. Subject to the terms of the 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 in accordance with generally accepted audit practices for auditing public utilities similar to the Company, to investigate and determine the correctness of the franchise fee paid to the Town. Such audit shall be limited to the previous three (3) calendar years. The Company shall provide a written report to the Town Clerk containing the audit findings.

(2) If the Town disagrees with the results of the audit, and if the parties are not able to informally resolve their differences, the Town may conduct its own audit at its own expense in accordance with generally accepted audit practices for auditing public utilities similar to the Company, and the Company shall cooperate, including but not necessarily limited to, providing the Town's auditor with all information reasonably necessary to complete the audit.

(3) If the results of a Town audit conducted pursuant to subsection C(2) concludes that the Company has underpaid the Town by three percent (3%) or more, in addition to the obligation to pay such amounts to the Town, the Company shall also pay all reasonable costs of the Town's audit.

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

E. Reports. To the extent allowed by law, upon written request by the Town, but not more than once per year, the Company shall supply the Town with the names and addresses of all registered gas marketers or brokers that utilize Company Facilities to sell or distribute natural gas. The Company shall not be required to disclose any confidential or proprietary information. Additionally, and at the request of the Town no more than once each year, the Company shall provide the Town access to the Company's 10-K report, which may be provided in electronic format.

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

and Other Town 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 Town Designee. The Town Manager shall designate in writing to the Company an official having full power and authority to administer this Franchise. The Town Clerk may also designate one or more Town 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 Town representatives. The Town Clerk may change these designations by providing written notice to the Company. The Town's designee shall have the right, at all reasonable times, to inspect any Company Facilities in Town Streets and Other Town Property.

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

§5.3 Coordination of Work.

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

B. In addition to the foregoing meetings, the Company agrees to use good faith efforts to provide sufficient notice to the Town whenever the Company initiates plans to significantly upgrade its infrastructure within the Town, including without limitation the replacement of utility poles and overhead lines, in order to allow for Town 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.

**ARTICLE 6**  
**SUPPLY, CONSTRUCTION, AND DESIGN**

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

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

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

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

§6.4 Restoration of Service.

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

B. Restoration. In the event the Company's gas system or electric system within the Town, or any part thereof, is partially or wholly destroyed or incapacitated so as to impact the provision of Utility Service within the Town, 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 Town Streets and Other Town Property shall be maintained in good repair and condition.

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

- (1) in a high-quality manner that is in accordance with general utility practice, 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 Town permits.

C. No Interference with Town Facilities. Company Facilities shall not unreasonably interfere with any Town facilities, including water facilities, sanitary or storm sewer facilities, communications facilities, or other Town uses of the Streets, Public Utility Easements or Other Town Property. Company Facilities shall be installed and maintained in Town Streets, Public Utility Easements and Other Town Property so as to reasonably minimize interference with other property, trees, and other improvements and natural features in and adjoining the Streets, Public Utility Easements and Other Town 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 Town Streets or Other Town Property by or on behalf of the Company shall be subject to permit, inspection and approval by the Town. Such permitting, inspection and approval may include, but shall not be limited to, the following matters: location of Company Facilities, cutting and pruning of trees and shrubs; and disturbance of pavement, sidewalks and surfaces of Town Streets or Other Town Property; provided, however, Company shall have the right to cut, prune, and/or remove vegetation in accordance with its standard vegetation management requirements and procedures. The Company agrees to cooperate with the Town in conducting inspections and shall promptly perform any remedial action required by the Town pursuant to any such inspection.

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

F. Increase in Voltage. Unless otherwise provided by law, the Company shall reimburse the Town for the cost of upgrading the electrical system or facility of any Town 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 Town.

G. As-Built Drawings. Within thirty (30) days after written request of the Town designee, but no sooner than fourteen (14) days after project completion, the Company shall commence its internal process to permit Company to provide, on a project by project basis, as-built drawings of any Company Facility installed within the Town Streets or contiguous to the Town Streets. If the requested information must be limited or cannot be provided pursuant to regulatory requirements or Company data privacy policies, Company shall promptly notify Town of such restrictions. All confidential or proprietary information shall be handled in accordance with the provisions of Section 21.5 herein. Town acknowledges that the requested information is confidential information of Company and the Company represents that disclosure to members of the public would be contrary to the public interest. Accordingly, to the extent that the Company marks such information as confidential when delivered to the Town, the information shall be treated as provided in Section 21.5 herein. As used in this Section, as-built drawings refers to hard copies of the facility drawings as maintained in the Company's business records and shall not include information maintained in the Company's geographical information system. The Company shall not be required to create drawings 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 Town. Although the Company shall be responsible for obtaining and complying with the terms of such permits when performing relocations requested by the Town under Section 6.8 of this Franchise and undergrounding requested by the Town under Article 11 of this Franchise, the Town will not require the Company to pay the fees charged for such permits. Upon the Company submitting a construction design plan, the Town shall promptly and fully advise the Company in writing of all requirements for restoration of Town Streets in advance of Company excavation projects in Town Streets, based upon the design submitted, if the Town's restoration requirements are not addressed in publicly-available standards.

§6.7 Restoration. When the Company does any work in or affecting the Town Streets, Public Utility Easements or Other Town Property, it shall, at its own expense, promptly remove any obstructions placed thereon or therein by the Company and restore such Town Streets, Public Utility Easements or Other Town Property to a condition that is substantially the same as existed before the work, and that meets applicable Town 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 Town, temporarily restore the affected Town Streets, Public Utility Easements or Other Town Property, provided that such temporary restoration is not at the Town's expense and provided further that the Company promptly undertakes and completes the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Upon the request of the Town, the Company shall restore the Streets, Public Utility Easements or Other Town Property to a better condition than existed before the Company work was undertaken, provided that the Town shall be responsible for any

incremental costs of such restoration not required by then-current Town standards, and provided the Town seeks and/or grants, as applicable, any additional required approvals. If the Company fails to promptly restore the Town Streets, Public Utility Easements or Other Town Property as required by this Section, and if, in the reasonable discretion of the Town immediate action is required for the protection of public health, safety or welfare, the Town may restore such Streets, Public Utility Easements or Other Town Property or remove the obstruction therefrom; provided however, Town actions do not interfere with Company Facilities. The Company shall be responsible for the actual cost incurred by the Town to restore such Town Streets, Public Utility Easements or Other Town Property or to remove any obstructions therefrom. In the course of its restoration of Town Streets, Public Utility Easements or Other Town Property under this Section, the Town shall not perform work on Company Facilities unless specifically authorized by the Company in writing on a project by project basis and subject to the terms and conditions agreed to in such authorization.

§6.8 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 Town Streets or in Other Town Property at no cost or expense to the Town 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 Town 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 Town agree to cooperate on the location and Relocation of the Company Facilities in the Town Streets or Other Town Property in order to achieve Relocation in the most efficient and cost-effective manner possible. Notwithstanding the foregoing, once the Company has Relocated any Company Facility at the Town’s direction, if the Town requests that the same Company Facility be Relocated within two (2) years, the subsequent Relocation shall not be at the Company’s expense. Nothing provided herein shall prevent the Company from obtaining reimbursement of its Relocation costs 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 Town designee requests, in writing, that the Relocation commence, or the date when the Company is provided all Supporting Documentation. The Company shall notify the Town 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 Town to provide adequate Supporting Documentation. The Company has the burden of

presenting evidence to reasonably demonstrate the basis for the delay. Upon written request of the Company, the Town may also grant the Company reasonable extensions of time for good cause shown and the Town shall not unreasonably withhold or condition any such extension.

D. Town Revision of Supporting Documentation. Any revision by the Town of Supporting Documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding 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 Town, 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 Town Streets or Other Town 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 Town 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 Town designee or the Company, representatives of the Town and the Company shall meet to share information regarding anticipated projects which will require Relocation of Company Facilities in the Town. Such meetings shall be for the purpose of minimizing conflicts where possible and to facilitate coordination with any reasonable timetable established by the Town for any Public Project.

(2) The Town shall make reasonable best efforts to provide the Company with two (2) years advance notice of any planned Street repaving, to the extent the Town 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 Town 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 Town. In the event the Town accepts the proposed alternative or modification, the Company agrees to promptly compensate the Town for all additional costs, expenses or delay that the Town reasonably determines resulted from the implementation of the proposed alternative.

- §6.9 Service to New Areas. If the territorial boundaries of the Town are expanded during the term of this Franchise, the Company shall, to the extent permitted by law, extend service to Residents in the expanded area at the earliest practicable time if the expanded area is within the Company's PUC-certificated service territory. Service to the expanded area shall be in accordance with the terms of the Tariffs and this Franchise, including the payment of franchise fees.
- §6.10 Company Facilities to Serve Town as Customer. Subject to the terms of the Tariff, upon receipt of the Town's authorization for billing and construction, the Company shall install Company Facilities to provide Utility Service to the Town as a customer, without requiring the Town to advance funds prior to construction. The Town shall pay for the installation of Company Facilities once completed in accordance with the Tariffs.
- §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 Town when such advances are technically and economically feasible and are safe and beneficial to the Town and its Residents.

## **ARTICLE 7 RELIABILITY**

- §7.1 Reliability. The Company shall operate and maintain Company Facilities efficiently and economically 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 Town with a report regarding the reliability of Company Facilities and Utility Service.

## **ARTICLE 8 COMPANY PERFORMANCE OBLIGATIONS**

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

A. Performance. The Company shall complete each project requested by the Town within a reasonable time. 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 Town designee makes a written request and provides the required Supporting Documentation for all Company Facilities. The Company shall notify the Town 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 Town designee may also grant the Company reasonable extensions of time for good cause shown and the Town shall not unreasonably withhold any such extension.

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

C. Completion/Restoration. Each such project shall be complete only when the Company actually provides the service installation or modification required, restores the project site in accordance with the terms of this Franchise or as otherwise agreed with the Town and 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 Town Property, to accommodate Town Street maintenance, repair and paving operations at no cost to the Town. In providing such adjustments to Company Facilities, the Company agrees to perform as follows:

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

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

C. Coordination. As requested by the Town or the Company, representatives of the Town and the Company shall meet regarding anticipated Street maintenance

operations which will require such adjustments to Company Facilities in Streets or Other Town Property. Such meetings shall be for the purpose of coordinating and facilitating performance under this Section.

§8.3 Third Party Damage Recovery.

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

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

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

**ARTICLE 9  
BILLING AND PAYMENT**

§9.1 Billing for Utility Services.

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

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

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

D. Annual Meetings. The Company agrees to meet with the Town designee on a reasonable basis for the purpose of developing, implementing, reviewing, and/or modifying mutually beneficial and acceptable billing procedures, methods, and formats

which may include, without limitation, electronic billing and upgrades or beneficial alternatives to the Company's current most advanced billing technology, for the efficient and cost effective rendering and processing of such billings submitted by the Company to the Town.

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

## **ARTICLE 10 USE OF COMPANY FACILITIES**

- §10.1 Town Use of Company Electric Distribution Poles. The Town shall be permitted to make use of Company electric distribution poles in the Town, subject to the Tariff, without a use fee for the placement of Town equipment or facilities necessary to serve a legitimate police, fire, emergency, public safety or traffic control purpose. The Town 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 Town will provide such notice as soon as practicable. The Town shall be responsible for costs associated with modifications to Company electric distribution poles to accommodate the Town'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 Town 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 Town, the Company may allow other companies who hold franchises, or otherwise have obtained consent from the Town to use the Streets, to utilize Company electric distribution poles in Town Streets and Other Town 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 Town Use of Company Street Lighting Poles. The Town 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 Town Use of Company Transmission Rights-of-Way. The Company shall offer to grant to the Town use of transmission rights-of-way which it now, or in the future, owns in fee within the Town 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 Town 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 Town in developing an emergency management plan that is consistent with Company policies. The Town 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 Town underground in accordance with laws, regulations and orders of the Town.

§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 Town Streets, or Other Town Property within the Town, as may be requested by the Town Designee. If the City requires Relocation of overhead electric facilities in the Streets and Other City Property and there is no room to relocate the Facilities overhead, the Company may relocate the Facilities underground, and may charge the cost of undergrounding to the Fund.

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

§11.3 Undergrounding Performance. Upon receipt of a written request from the Town, 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 Town 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 Town to review and, if acceptable to the Town, the Town will issue a project authorization. The Company shall notify the Town within twenty (20) days of receipt of the request if the Supporting Documentation is insufficient to prepare the cost estimate for the project. The Town and the Company agree to meet at the Town's request 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 Town'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 Town has provided a written acceptance of the Company estimate.

B. Performance. The Company shall complete each undergrounding project requested by the Town 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 Town designee makes a written request or the date the Town provides to the Company all Supporting Documentation. The Company shall have one hundred twenty (120) days after receiving the Town's written request to design project plans, prepare the good faith estimate, and transmit same to the Town designee for review. If Town 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 Town designee. If the plans and estimate are approved by the Town, the Company shall have one hundred twenty (120) days to complete the project, from the date of the Town

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

C. Town Revision of Supporting Documentation. Any revision by the Town of Supporting Documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding 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 Town, 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 Town 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 Town.

F. Audit of Underground Projects. The Town 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 Town 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 Town, 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 Town. Such audits shall be limited to the previous three (3) calendar years. The Company shall provide the audit report to the Town and shall reconcile the Fund consistent with the findings contained in the audit report. If the Town 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 Town'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 Town 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 balance.

§11.5 Cooperation with Other Utilities. When undertaking an undergrounding project the Town 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 Town.

§11.6 Planning and Coordination of Undergrounding Projects. The Town 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 Town and Company construction projects. The Town 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 Town and the Company in order to achieve the orderly undergrounding of Company Facilities. Representatives of both the Town 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 Town.

## **ARTICLE 12 PURCHASE OR CONDEMNATION**

§12.1 Municipal Right to Purchase or Condemn.

A. Right and Privilege of Town. The right and privilege of the Town to construct, own and operate a municipal utility, and to purchase pursuant to a mutually

acceptable agreement or condemn any Company Facilities located within the territorial boundaries of the Town, and the Company's rights in connection therewith, as set forth in applicable provisions of the constitution, statutes and case law of the State of Colorado relating to the acquisition of public utilities, are expressly recognized. The Town shall have the right, within the time frames and in accordance with the procedures set forth in such provisions, to condemn Company Facilities, land, rights-of-way and easements now owned or to be owned by the Company located within the territorial boundaries of the Town. In the event of any such 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 Town shall provide the Company no less than one (1) year's prior written notice of its intent to purchase or condemn Company Facilities. Nothing in this Section shall be deemed or construed to constitute a consent by the Company to the Town's purchase or condemnation of Company Facilities, nor a waiver of any Company defenses or challenges related thereto.

### **ARTICLE 13 MUNICIPALLY PRODUCED UTILITY SERVICE**

#### §13.1 Municipally Produced Utility Service.

A. Town Reservation. The Town expressly reserves the right to engage in the production of utility service to the extent permitted by law. The Company agrees to negotiate in good faith long term contracts to purchase Town-generated power made available for sale, consistent with PUC requirements, other applicable legal requirements, and standards generally applicable to the electric utility, gas utility or pipeline industries. The Company further agrees to offer transmission and delivery services to the Town 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 Town's Rights. Nothing in this Franchise prohibits the Town from becoming an aggregator of utility service or from selling utility service to customers should it be permissible under law, nor does it affect the Company's rights and obligations pursuant to any Certificate of Public Convenience and Necessity issued by the PUC.

### **ARTICLE 14 ENVIRONMENT AND CONSERVATION**

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

environmental impacts; shall meet the requirements of environmental laws, regulations and permits; shall invest in cost-effective, environmentally sound technologies; shall consider environmental issues in its planning and decision making; and shall support environmental research and development projects and partnerships in our communities through various means, including but not limited to corporate giving and employee involvement. The Company shall continue to explore ways to reduce water consumption at its facilities and to use recycled water where feasible. The Company shall continue to work with the U.S. Fish and Wildlife Service to develop and implement avian protection plans to reduce electrocution and collision risks by eagles, raptors and other migratory birds with transmission and distribution lines. On or before December 1 of each year, the Company shall provide the Town 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 Town and the Company recognize and agree that Energy Conservation programs offer opportunities for the efficient use of energy and possible reduction of energy costs. The Town and the Company further recognize that creative and effective Energy Conservation solutions are crucial to sustainable development. The Company recognizes and shares the Town's stated objectives to advance the implementation of cost-effective Energy Efficiency and Energy Conservation programs that direct opportunities to Residents to manage more efficiently their use of energy and thereby create the opportunity to reduce their energy bills. The Company commits to offer programs that attempt to capture market opportunities for cost-effective Energy Efficiency improvements such as municipal specific programs that provide cash rebates for efficient lighting, energy design programs to assist architects and engineers to incorporate Energy Efficiency in new construction projects, and recommissioning programs to analyze existing systems to optimize performance and conserve energy according to current and future demand side management ("DSM") programs. In doing so, the Company recognizes the importance of (i) implementing cost-effective programs the benefits of which would otherwise be lost if not pursued in a timely fashion; and (ii) developing cost-effective programs for the various classes of the Company's customers, including low-income customers. The Company shall advise the Town and its Residents of the availability of assistance that the Company makes available for investments in Energy Conservation through newspaper advertisements, bill inserts and Energy Efficiency workshops and by maintaining information about these programs on the Company's website. Further, the Company will designate a conservation representative to act as the primary liaison with the Town who will provide the Town with information on how the Town may take advantage of reducing energy consumption in Town facilities and how the Town may participate in Energy Conservation and Energy Efficiency programs sponsored by the Company. As such, the Company and the Town commit to work cooperatively and collaboratively to identify, develop, implement and support programs offering creative and sustainable opportunities to Company customers and Residents, including low-income customers. The Company agrees to help the Town participate in Company programs and, when opportunities exist to partner with others,

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

§14.3 Continuing Commitment. It is the express intention of the Town and the Company that the collaborative effort provided for in this Article continue for the entire term of this Franchise. The Town and the Company also recognize, however, that the programs identified in this Article may be for a limited duration and that the regulations and technologies associated with Energy Conservation are subject to change. Given this variability, the Company agrees to maintain its commitment to sustainable development and Energy Conservation for the term of this Franchise by continuing to provide leadership, support and assistance, in collaboration with the Town, to identify, develop, implement and maintain new and creative programs similar to the programs identified in this Franchise in order to help the Town 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 Town Required. The Company shall not transfer or assign any rights under this Franchise to an unaffiliated third party, except by merger with such third party, or, except when the transfer is made in response to legislation or regulatory requirements, unless the Town approves such transfer or assignment in writing. Approval of the transfer or assignment shall not be unreasonably withheld, conditioned or delayed.

§15.2 Transfer Fee. In order that the Town may share in the value this Franchise adds to the Company's operations, any transfer or assignment of rights granted under this Franchise requiring Town approval, as set forth herein, shall be subject to the condition that the Company shall promptly pay to the Town a transfer fee in an amount equal to the proportion of the Town's then-population provided Utility Service by the Company to the then-population of the Town 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 Town has not provided for alternative utility service, the Company shall have no right or obligation to discontinue providing Utility Service within the Town as required by the Public Utilities Law unless otherwise ordered by the PUC, and shall continue to provide Utility Service within the Town until the Town arranges for utility service from another provider. The Town acknowledges and agrees that the Company has the right to use Streets, Other Town Property and Public Utility Easements during any such period subject to Town 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 Town agrees that in the circumstances of this Article, the Company shall be entitled to monetary compensation as provided in the Tariffs and the Company shall be entitled to collect from Residents and, upon the Town's compliance with applicable provisions of law, shall be obligated to pay the Town, at the same times and in the same manner as provided in this Franchise, an aggregate amount equal to the amount which the Company would have paid as a franchise fee as consideration for use of the Town's Streets, Other Town Property and Public Utility Easements. Only upon receipt of written notice from the Town stating that the Town has adequate alternative utility service for Residents and upon order of the PUC shall the Company be allowed to discontinue the provision of Utility Service to the Town and its Residents.

**ARTICLE 17**  
**INDEMNIFICATION AND IMMUNITY**

§17.1 Town Held Harmless. The Company shall indemnify, defend and hold the Town harmless from and against claims, demands, liens and all liability or damage of whatsoever kind on account of or directly arising from the grant of this Franchise, and the exercise by the Company of the related rights, or from the operations of the Company within the Town, and shall pay the costs of defense plus reasonable attorneys' fees. The Town shall (a) give prompt written notice to the Company of any claim, demand or lien with respect to which the Town seeks indemnification hereunder; and, (b) unless in the Town's judgment a conflict of interest may exist between the Town and the Company with respect to such claim, demand or lien, shall permit the Company to assume the defense of such claim, demand, or lien with counsel reasonably satisfactory to the Town. If such defense is assumed by the Company, the Company shall not be subject to liability for any settlement made without its consent. If such defense is not assumed by the Company or if the Town determines that a conflict of interest exists, the parties reserve all rights to seek all remedies available in this Franchise against each other. Notwithstanding any provision hereof to the contrary, the Company shall not be obligated to indemnify, defend or hold the Town harmless to the extent any claim, demand or lien arises out of or in connection with any negligent or intentional act or failure to act of the Town or any of its officers or employees or to the extent that the claim, demand or lien arises out of the Town'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 Town may have under the Colorado Governmental Immunity Act (§24-10-101, C.R. S., *et. seq.*) or of any other defenses, immunities, or limitations of liability available to the Town by law.

## **ARTICLE 18 BREACH**

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

§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 Town. In addition to the foregoing remedies, if the Company fails or refuses to perform any material term or condition of this Franchise (a “Material Breach”), the Town may provide written notice to the Company of such Material Breach. Upon receipt of such notice, the Company shall be given a reasonable time, not to exceed ninety (90) days in which to remedy the Material Breach if the Material Breach can be cured within that time period, 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 Town may, at its sole option, terminate this Franchise. This remedy shall be in addition to the Town’s right to exercise any of the



remedies provided for elsewhere in this Franchise. Upon such termination, the Company shall continue to provide Utility Service to the Town and its Residents (and shall continue to have associated rights and grants needed to provide such service) until the Town makes alternative arrangements for such service and until otherwise ordered by the PUC. In addition, unless otherwise prohibited by law, after termination of this Franchise and upon the Town complying with applicable provisions of law, the Company shall be entitled to collect from Residents, and shall be obligated to pay the Town, at the same times and in the same manner as provided in this Franchise, an aggregate amount equal to the amount which the Company would have paid as a franchise fee as consideration for use of the Town Streets and Other Town Property.

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

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

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

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

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

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 Town regularly advised of the Company's programs.

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

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

## **ARTICLE 21 MISCELLANEOUS**

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

§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 Town 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 Town who will be the persons to whom notices shall be sent regarding any action to be taken under this Franchise. Notice shall be in writing and forwarded by certified mail, reputable overnight courier or hand delivery to the persons and addresses as hereinafter stated, unless the persons and addresses are changed at the written request of either party, delivered in person or by certified mail. Notice shall be deemed received (a) three (3) days after being mailed via the 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 Town:

Town Manager  
Town of Timnath  
4800 Goodman Street  
Timnath, Colorado 8054

With a copy to:

Town Attorney  
Town of Timnath  
4800 Goodman Street  
Timnath, Colorado 8054

To the Company:

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

With a copy to:

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

and

Area Manager  
Public Service Company of Colorado  
2655 North 63<sup>rd</sup> Street  
Boulder, CO 80301

§21.5 Examination of Records.

A. The parties agree that a duly authorized representative of the Town 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 Town, that contain confidential information shall be conspicuously identified as "confidential" or "proprietary" by the Company. In no case shall any privileged communication be subject to examination by the Town pursuant to the terms of this Section. "Privileged communication" means any communication that would not be discoverable due to the attorney client privilege or any other privilege that is generally recognized in Colorado, including but 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 Town which the Company identifies as "Confidential" or "Proprietary":

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

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 Town pursuant to this Franchise, the Town will promptly notify the Company of the request and shall allow the Company to defend such request at its sole expense, including filing a legal action in any court of competent jurisdiction to prevent disclosure of such information. In any such legal action the Company shall join the person requesting the information and the Town.

In no circumstance shall the Town provide to any third party confidential information provided by the Company pursuant to this Franchise without first conferring with the Company. The Company shall defend, indemnify and hold the Town harmless from any claim, judgment, costs or attorney fees incurred in participating in such proceeding.

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 Town, 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 Town is located, including the physical address of the property if readily available on the deed at the time of the request. 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 Town, the Company shall provide the Town non-confidential copies of all applications, advice letters and periodic reports, together with any accompanying non-confidential testimony and exhibits, filed by the Company with the Colorado Public Utilities Commission. Notwithstanding the foregoing, notice regarding any gas and electric filings that may affect Utility Service rates in the Town shall be sent to the Town upon filing.

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

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

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

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

§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. Town Liability. The Town 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 Town shall have any personal or beneficial interest whatsoever in the services or property described herein and the Company further agrees not to hire or contract for services any official, officer or employee of the Town to the extent prohibited by law, including ordinances and regulations of the Town.

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

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

§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 Town nor the Company shall be in breach of this Franchise if a failure to perform any of the duties under this Franchise is due to Force Majeure, as defined herein.

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

§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 Larimer County, State of Colorado.

§21.18 Payment of Expenses Incurred by Town in Relation to Franchise Agreement. The Company shall pay for expenses reasonably incurred by the Town for the adoption of this Franchise, 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 Town.

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

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

ATTEST:

TOWN OF TIMNATH

\_\_\_\_\_  
Melissa Peters, Town Clerk

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







## TOWN COUNCIL COMMUNICATION

<b>Meeting Date:</b> March 11, 2014	<b>Item: A Resolution Approving an Intergovernmental Agreement Between Timnath and the Colorado Information Sharing Consortium (CISC)</b>	<b>Ordinance</b> <input type="checkbox"/> <b>Resolution</b> X <b>Discussion</b> <input type="checkbox"/>
<b>Presented by:</b> Sherri Wagner		

**EXECUTIVE SUMMARY:**

The Colorado Information Sharing Consortium was established in 2007 to enhance the ability for multiple agencies to share police records through “Coplink”. Coplink is a software product that provides an interface between numerous disparate police records and data management systems. Coplink allows the Timnath Police Department to look at information from other jurisdictions providing us with leads and information that can assist in solving crimes.

Coplink has been used by Timnath PD to develop suspects and the information was used to clear a theft case and fraud case. Both cases were transferred to larger agencies for filing because the agencies had numerous crimes associated with the suspects.

Prior to Coplink we would have needed to call individual agencies if we suspected the suspect was in the individual databases. The process was time consuming. We can access the system and search for information on suspects or crimes and then contact agencies to gain detailed information for investigations and identification of individuals.

Coplink was purchased by eight law enforcement agencies in 2007 and through numerous funding sources ( federal grants, E-911 boards and funding from cities and counties) there are currently over 90 law enforcement agencies in Colorado participating in the information sharing. Timnath PD entered into a Memorandum of Understanding with CISC in 2009. Our records are managed by County Sheriff’s Office Records Division and our cases are included in the information sharing.

The CISC is asking to take the organization from a consortium to a governmental authority so they are able to enter into contracts and have legal authority to purchase and upgrade products and pursue grant opportunities.

The Larimer Emergency Telephone Authority assisted with initial fees and Timnath is responsible for \$35.00 per user/per year. The amount is budgeted yearly and the agreement provides the clause for right to terminate if we wish.



The Inter-Governmental Agreement (IGA) was drafted by an attorney hired by the Consortium to provide the needed governmental authority. Our legal counsel, WHITE, BEAR & ANKELE PROFESSIONAL CORPORATION has approved the document for content and form.

**STAFF RECOMMENDATION:** Staff recommends approval of this resolution.

**KEY POINTS/SUPPORTING INFORMATION:**

- Allows sharing of important information between law enforcement agencies within the state
- Provides ability to link suspects, information and cases with other agencies to increase our ability to solve cases.

**ADVANTAGES:** Minimal cost for yearly use fee

**DISADVANTAGES:** None.

**FINANCIAL IMPACT:** \$35 per year/per officer

**RECOMMENDED MOTION:**

I move to approve Resolution No. 19, Series 2014.

**ATTACHMENTS:** 1. Intergovernmental Agreement

**TOWN OF TIMNATH, COLORADO  
RESOLUTION NO. 19, SERIES 2014**

**A RESOLUTION APPROVING AN INTERGOVERNMENTAL  
AGREEMENT OF THE COLORADO INFORMATION SHARING  
CONSORTIUM**

**WHEREAS**, the Town Council of the Town of Timnath (“Town”) pursuant to C.R.S. § 31-15-103, has the power to pass resolutions; and

**WHEREAS**, attached hereto as Exhibit A is the Intergovernmental Agreement of the Colorado Information Sharing Consortium (the “Agreement”) by and between numerous Colorado municipalities, counties, municipal and county sheriff’s offices, and the Colorado Department of Public Safety of the State of Colorado; and

**WHEREAS**, the Colorado Information Sharing Consortium (the “CISC”) was created in 2007 to further the sharing of information between and among law enforcement agencies within the state of Colorado through the use of “Coplink,” a software product that connects disparate police records management systems; and

**WHEREAS**, the purpose of the Agreement is to make the CISC a governmental authority under to the Colorado Revised Statutes, allowing it to enter into contracts, to pursue grant opportunities, and to provide governmental immunity; and

**WHEREAS**, the Timnath Police Department is currently a participating agency to the Coplink database and a signatory to a Memorandum of Understanding utilizing the CISC database, and its continued access to Coplink is dependent upon the Town’s acknowledgement of 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 RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, COLORADO as follows:**

**Section 1. Approval**

The Agreement is hereby approved in substantially the form as attached hereto, subject to technical or otherwise non-substantive modifications as deemed necessary by the Town Manager in consultation with the Police Chief and Legal Counsel.

INTRODUCED, MOVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF  
TIMNATH, ON MARCH 11, 2014,

**TOWN OF TIMNATH, COLORADO**

---

Jill Grossman-Belisle, Mayor

**ATTEST:**

---

Milissa Peters, Town Clerk

**EXHIBIT A**  
AGREEMENT

**INTERGOVERNMENTAL AGREEMENT  
OF THE  
COLORADO INFORMATION SHARING CONSORTIUM**

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**INTERGOVERNMENTAL AGREEMENT  
OF THE  
COLORADO INFORMATION SHARING CONSORTIUM**

THIS INTERGOVERNMENTAL AGREEMENT (the “Agreement”) is effective as of the [\_\_\_\_\_] day of [\_\_\_\_\_], 2014 (the “Effective Date,” as further defined below) by and between the Adams County Sheriff’s Office, the Arapahoe County Sheriff’s Office, the City of Aurora, the Colorado Department of Public Safety of the State of Colorado, the City of Colorado Springs, the City of Commerce City, the City and County of Denver, the Douglas County Sheriff’s Office, the City of Grand Junction, the Board of County Commissioners of the County of Jefferson, the Board of County Commissioners of the County of Mesa, and all other entities or agencies that sign this Agreement consistent with the requirements herein (individually a “Party” and collectively the “Parties”).

**RECITALS**

WHEREAS, the Parties are each authorized to lawfully provide, establish, maintain, and operate law enforcement services;

WHEREAS, Part 2 of Article 1, Title 29 of the Colorado Revised Statutes (the “C.R.S.”) encourages and authorizes intergovernmental agreements for the joint and cooperative provision of public services;

WHEREAS, C.R.S. § 29-1-203 authorizes governments to cooperate and contract with one another to provide any function, service, or facility lawfully authorized to each and to establish a separate legal entity to do so;

WHEREAS, 21 U.S.C. § 873 and regulations promulgated thereunder authorize certain agencies within the Federal government to cooperate with local, state, tribal, and Federal agencies for the purpose of exchanging certain information;

WHEREAS, the Parties, along with other Colorado law enforcement entities, have previously entered into a nonbinding and voluntary memorandum of understanding (the “MOU”) to jointly develop the statewide Colorado Information Sharing Consortium (the “CISC”) with the purpose and intent of sharing law enforcement information, primarily through a software product known as COPLINK;

WHEREAS, the Parties, along with the other signatories of the MOU, have determined that it is in the public’s best interest to formalize the CISC into a legal entity in order to permit the CISC to enter into contracts and utilize economies of scale for the purchase of future services, products, and maintenance and to enter into information sharing agreements with jurisdictions outside the State of Colorado;

WHEREAS, the Parties and other signatories of the MOU have agreed to organize and operate a separate legal entity pursuant to C.R.S. § 29-1-203(4), which shall be known as the Colorado Information Sharing Consortium; and

WHEREAS, the Parties intend for other entities or agencies to join as Parties to this Agreement by signing a separate signature page to this Agreement consistent with the requirements herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

#### **DEFINITIONS**

1. **Definitions.** In addition to the above defined terms, the following terms shall have the meaning ascribed to them.

a. “Assigned Employee” shall mean a Party’s employee assigned to work full- or part-time on behalf of the CISC.

b. “Board” shall mean the Board of Directors of the CISC.

c. “Data” shall mean facts, detailed information, police report narratives, supplemental report narratives, other text-related information as determined and released by each Party’s internal information sharing policy, and other materials provided by a Party to the CISC. “Data” shall not mean Intelligence Information (defined below).

d. “Director” shall mean a director on the Board of the CISC.

e. “Effective Date” shall be the date written in the preamble, which shall be the date on which the sixth Party signed this Agreement.

f. “Intelligence Information” shall mean evaluated data relevant to the identification of criminal activity engaged in by an individual or organization reasonably suspected of involvement in criminal activity that meets criminal intelligence system submission criteria as set forth in Part 23 of Title 28 of the Code of Federal Regulations. Intelligence Information is a criminal justice record pursuant to C.R.S. § 24-72-302(4).

g. “Manager” shall mean a person who is assigned to manage the day-to-day operations of the CISC.

h. “Representative” shall mean the chief law enforcement officer of each Party or the person designated by the chief law enforcement officer of each Party.

#### **CREATION OF THE COLORADO INFORMATION SHARING CONSORTIUM**

2. **Creation of the CISC.** Pursuant to C.R.S. § 29-1-203(4), the Parties hereby create a separate legal entity known as the Colorado Information Sharing Consortium, or CISC, which shall have the powers, authorities, duties, privileges, immunities, rights, and responsibilities as set forth herein.

3. **Principal Place of Business.** The principal place of business of the CISC shall be 15001 East Alameda Parkway, Aurora, CO 80012, unless and until otherwise established from time to time by the Board.

4. CISC Purpose. The purpose of the CISC is to facilitate the sharing of Data and Intelligence Information between the Parties and non-Party governmental entities and agencies authorized by the Board.

#### **DATA SHARING AGREEMENT**

5. Data Sharing. Each Party shall share Data with the Parties and with non-Party governmental entities or agencies authorized by the Board.

6. Data Use. Shared Data shall only be used for law enforcement purposes consistent with the welfare and protection of the general public.

7. Personnel Authorized to Access Data. Only the Parties' employees and employees of non-Party governmental entities or agencies authorized by the Board shall be allowed to access the Data. All persons with access to the Data must first pass an adequate background screen. The Board shall determine what constitutes an adequate background screen for the purpose of access to Data.

8. Data Security. The Parties and any non-Party governmental entities or agencies authorized by the Board shall maintain, enforce, and follow security requirements for the Data as specified by the Board, including requirements on network configuration and network access.

9. Data Custody and Control. Each Party shall retain custody and control and shall remain the official custodian of any Data shared by that Party. The CISC shall not have custody and control and shall not be the official custodian of any Data. The CISC shall not release any Data pursuant to a request under Part 2 or Part 3 of Article 72, Title 24, C.R.S. or pursuant to a subpoena unless specifically ordered to do so by a court of competent jurisdiction.

10. Data Accuracy. The Parties understand that the Data shared by the Parties may not be accurate. The Board may set standards and requirements for Parties to correct inaccurate Data.

11. Intelligence Information.

a. No Obligation to Share. No Party shall be required to share Intelligence Information and may deny a request to share Intelligence Information for any reason.

b. Standard for Sharing. When Intelligence Information is disseminated through the CISC, it shall be disseminated consistent with Part 23 of Title 28 of the Code of Federal Regulations.

c. Policies and Procedures. The Board may set policies and procedures regarding Intelligence Information use, receipt, maintenance, security, and dissemination not inconsistent with Part 23 of Title 28 of the Code of Federal Regulations.

d. Intelligence Information Custody and Control. All Intelligence Information shall remain the sole proprietary information of the Party contributing that Intelligence Information. Each Party shall retain custody and control and shall remain the official custodian of any Intelligence Information shared by that Party. The CISC shall not have custody and control and shall not be the official custodian of any Intelligence Information. The CISC shall not release any Intelligence Information pursuant to a

request under Part 2 or Part 3 of Article 72, Title 24, C.R.S. or pursuant to a subpoena unless specifically ordered to do so by a court of competent jurisdiction.

#### **POWERS OF THE COLORADO INFORMATION SHARING CONSORTIUM**

**12.** Powers of the CISC. In order to enable the CISC to carry out its functions and provide the services described herein, the CISC shall have the power:

- a.** Acquire Property. To acquire, hold, lease (as lessor or lessee), sell, or otherwise dispose of any legal or equitable interest in real or personal property;
- b.** Add Parties. To approve other governmental entities or agencies authorized to lawfully provide, establish, maintain, or operate law enforcement services to join the CISC on the conditions determined by the Board;
- c.** Adopt Rules and Regulations. To adopt rules and regulations regarding the exercise of its powers and the carrying out of its purposes;
- d.** Apply for Grants. To apply for and receive grants in its own name;
- e.** Conduct Business. To conduct its business and affairs for the benefit of the Parties and their residents;
- f.** Contract. To enter into, make, and perform contracts of every kind;
- g.** Engage Agents. To engage, employ, or appoint agents, including but not limited to accountants, architects, attorneys, consultants, employees, engineers, and managers and to pay the direct and indirect reasonable costs of such agents for services rendered to the CISC;
- h.** Fees and Charges. To assess, fix, maintain, and revise fees and charges for functions, services, or facilities provided by the CISC or to cover the cost of operating and managing the CISC; however, pursuant to paragraph 28, neither the CISC nor any Party shall have the power to compel a Party to pay any fees, rates, or charges;
- i.** Incur Debt. To incur debts and obligations, deliver bonds or notes for monies borrowed or other obligations of the CISC, and to secure the payment of such bonds or obligations, except that no party shall be liable for any debts or obligations of the CISC;
- j.** Legal Process. To litigate, arbitrate, or mediate in its own name;
- k.** Receive Contributions. To receive contributions of gifts, grants, or services; and
- l.** Terminate a Party's Participation in this Agreement. To terminate or limit a Party's participation in this Agreement.

**13.** Restrictions on Powers of the CISC. The CISC shall not have the power:

- a.** Eminent Domain. To take property by eminent domain;

- b. Obligate Payment. To obligate a Party to pay any money to the CISC or to another Party, except that the CISC may enter into contracts with Parties for the payment of money; or
- c. Tax. To impose taxes.

#### **BOARD OF DIRECTORS**

**14. Board of Directors.** The governing body of the CISC shall be the Board, in which all administrative and legislative power of the CISC is vested. The purpose of the Board is to set policy for the CISC and decide important issues of the CISC.

**15. Number of Directors, Term, and Term Limits.** There shall be eleven (11) Directors on the Board. Six (6) Directors shall have terms that expire on March 31 of every even numbered year. Five (5) Directors shall have terms that expire on March 31 of every odd numbered year. There shall be no limit to the number of terms an individual may serve as a Director.

**16. Eligibility, Appointment, Removal, and Vacancies.** Each Director must be an employee of a Party. If a Director is no longer employed by a Party, the Director shall no longer be a Director. A Director may resign at any time and for any reason by giving two weeks prior written notice to the Board. A vacant Director position shall be filled by majority vote of the Representatives as soon as practicable.

- a. Initial Appointment. The initial Directors shall be appointed by the Representatives of the eleven named Parties listed in the preamble of this Agreement. The Representatives of the first six (6) named Parties that agree to and sign this Agreement shall each appoint one Director, whose terms shall expire on March 31, 2016. The Representatives of the next five (5) named Parties that agree to and sign this Agreement shall each appoint one Director, whose terms shall expire on March 31, 2015.

- b. Subsequent Appointment. After the initial Directors' terms expire, all subsequent Directors shall be appointed by a majority vote of the Representatives.

**17. Compensation.** A Director shall not receive compensation for the Director's service to the CISC. The Board may provide for reimbursement to a Director, Representative, or other person for actual and reasonable expenses incurred while performing duties for the CISC. At no time shall a Director or a Representative be considered an employee of the CISC.

**18. Action by the Board at a Meeting.** Meetings of the Board may be held at any place that a majority of the Directors on the Board may determine. Directors may attend the meeting in person or by conference telephone or similar communications equipment, and such participation at a meeting shall constitute attendance. The following rules shall apply.

- a. Quorum. The attendance of at least a majority of the Directors of the Board shall constitute a quorum for the transaction of business.

- b. Voting. The affirmative vote of a majority of the Directors on the Board that are present at any meeting at which there is a quorum shall be an act of the Board, unless a supermajority is specified herein or by rules adopted by the Board.

c. Minutes. Minutes of each meeting and a record of each decision shall be kept by the Board.

19. Committees. The Board may designate one or more committees that shall serve at the pleasure of the Board. Any committees shall have the powers and responsibilities granted by the Board to that committee.

20. Alternates and Absentee Voting. A Director may appoint an alternate who will have the same voting rights as the Director when participating in Board meetings in the absence of the Director. Alternates must be employed by a Party. Absentee voting, where a Director votes without attending a meeting (whether in person or by other communications equipment) or without appointing an alternate, is not allowed.

21. Representative's Right to Attend Meetings. Each Representative, or an alternate, shall have the right to attend, whether in person or by conference telephone or similar communications equipment, any meeting of the Board and to voice opinions on any matter concerning the CISC.

#### MANAGEMENT OF THE CISC

22. CISC Manager.

a. Appointment. Upon request from the Board, the Representatives shall jointly nominate one or more persons to be the Manager and submit those persons' names to the Board. Based on those nominations, the Board shall select one or more persons to be the Manager. The appointment of a Manager shall be contingent upon the approval of the Representative of the Party employing the Manager.

b. CISC Manager. The Manager shall manage the day-to-day operations of the CISC and undertake and execute the Board's instructions and directions. The Manager shall have the administrative authority necessary to perform the tasks and responsibilities assigned pursuant to this Agreement. The Board may grant to the Manager any additional administrative authority as the Board deems necessary. The Manager shall attend all meetings of the Board and follow the Board's instructions and directions.

c. Eligibility and Employment. The person(s) serving as the Manager must be an employee of a Party at all times during that person's tenure as the Manager. The Manager shall not be considered an employee of the CISC. The Board may hire an employee of the CISC under terms written and negotiated by the Board to perform the duties of the Manager under the supervision and direction of the Board.

d. Term. The Manager's term is expected to last for two (2) years, but the actual length (whether longer or shorter) shall be determined by agreement between the Board and the Representative of the Party employing the Manager. Whether the Manager works full- or part-time on CISC matters shall be determined by agreement between the Board and the Representative of the Party employing the Manager. The Board may remove the Manager at any time and for any reason. The Representative of the Party employing the Manager may recall the Manager at any time and for any reason by giving sixty (60) days prior written notice to the Board, unless the Representative and the Board agree to other notification requirements.

e. Compensation. The Party employing the Manager shall bear the full cost of the Manager. The CISC shall not be obligated to reimburse the Party employing the Manager for the cost of the Manager. However, the Board may assess an annual fee on the Parties to reimburse the Party employing the Manager (or the CISC, if the CISC hires an employee to perform the duties of the Manager) for all or part of the costs associated with employing the Manager. As is stated in paragraph 28 of this Agreement, and consistent with that paragraph, no Party is obligated to pay any annual fees but may be denied access to the CISC or face other non-monetary penalties.

**23. Additional Assistance from Assigned Employees.**

a. Appointment. The Board may seek an Assigned Employee from the Parties. Upon request from the Board, any Representative may volunteer one or more Assigned Employees to work full- or part-time on behalf of the CISC. The Board may accept or decline the person volunteered to become an Assigned Employee.

b. Assigned Employees. Each Assigned Employee shall work under the supervision and direction of the Manager. Each Assigned Employee shall have the administrative authority necessary to undertake and execute the tasks and responsibilities assigned by the Manager and the Board. The Board may grant to any Assigned Employee any additional administrative authority as the Board deems necessary. An Assigned Employee shall attend meetings of the Board if and when the Board or the Manager requests that Assigned Employee's presence.

c. Eligibility and Employment. Any person serving as an Assigned Employee must be an employee of a Party at all times during that person's tenure as an Assigned Employee. The Assigned Employee shall not be considered an employee of the CISC. The Board may hire one or more full- or part-time employees of the CISC under terms written and negotiated by the Board to work under the supervision and direction of the Manager and the Board.

d. Term. The Assigned Employee's term shall be determined by agreement between the Board and the Representative of the Party employing the Assigned Employee. Whether the Assigned Employee works full- or part-time on CISC matters shall be determined by agreement between the Board and the Representative of the Party employing the Assigned Employee. The Board may remove the Assigned Employee at any time and for any reason. The Representative of the Party employing the Assigned Employee may recall the Assigned Employee at any time and for any reason by giving thirty (30) days prior written notice to the Board, unless the Representative and the Board agree to other notification requirements.

e. Compensation. The Party employing an Assigned Employee shall bear the full cost of that Assigned Employee. The CISC shall not be obligated to reimburse the Party employing the Assigned Employee for the cost of the Assigned Employee. However, the Board may assess an annual fee on the Parties to reimburse the Party employing the Assigned Employee (or the CISC, if the CISC employs an employee to perform the duties of the Assigned Employee) for all or part of the costs associated with employing the Assigned Employee. As is stated in paragraph 28 of this Agreement, and consistent



with that paragraph, no Party is obligated to pay any annual fees but may be denied access to the CISC or face other non-monetary penalties.

#### **FINANCIAL**

- 24.** Deposits and Expenditures. All funds of the CISC shall be deposited to the credit of the CISC in an interest bearing account. No payments or withdrawals of such funds in an amount over five hundred dollars (\$500) shall be allowed without prior approval of the Board and the written authorization of two (2) Directors. Payments or withdrawals of such funds in amounts up to and including five hundred dollars (\$500) may be authorized by the Manager.
- 25.** Fiscal Agent. The Board may request that a Party or other entity be the fiscal agent for the CISC.
- 26.** Fiscal Year. The fiscal year of the CISC shall be January 1 through December 31 of each year.
- 27.** No Multiple Year Fiscal Obligations. The Parties do not intend to create a multiple year fiscal obligation for any Party by virtue of this Agreement. The Parties acknowledge that any future monetary obligations of any Party are subject to sufficient appropriations by each Party and such appropriations are not guaranteed to be made.

#### **RIGHTS OF PARTIES**

- 28.** No Duty to Pay Membership, Annual, or Other Fees. No Party shall be required by this Agreement to pay any membership, annual, or other fees or charges imposed by the Board. The sole remedy for the failure of a Party to pay any fees or charges shall be, at the Board's discretion, (a) exclusion from the CISC, (b) denial of Data and Intelligence Information sharing with other Parties through the CISC, (c) loss of any or all of the privileges and rights of a Party, (d) termination of the non-paying Party's participation in this Agreement, or (e) any combination of the foregoing as determined by the Board.
- 29.** Voluntary Assumption of Debts. A Party may voluntarily elect to be liable, in whole or in part, for any or all of the debts, liabilities, or obligations of the CISC at the sole discretion of that Party.
- 30.** Financial Responsibility. The CISC shall not be required to pay any Party's costs associated with acquiring or maintaining any hardware or licensed software necessary for that Party to participate in the CISC. The Board may agree to pay for expenses incurred by a Party that, in furtherance of the CISC's purposes, (a) maintains goods for use by other Parties or (b) provides services to other Parties.
- 31.** Examination of Records. Any authorized agent of a Party, including an authorized auditor or his or her representative, has the right to access and the right to examine any pertinent fiscal books, documents, papers, and records of the CISC involving fiscal transactions for three (3) years after the date of the fiscal transaction.

**32. Addition of New Parties.**

**a. Law Enforcement Requirement.** All Parties, and any entity or agency that becomes a Party, must be governmental entities or agencies that are authorized to lawfully provide, establish, maintain, and operate law enforcement services.

**b. Signatories of the MOU.** All entities and agencies that signed the MOU prior to the Effective Date are vested with approval to become Parties by signing a separate signature page to this Agreement that states that the new Party agrees to the terms and conditions of this Agreement. Upon delivery of the signed signature page to the Manager, satisfaction of any conditions imposed by the Board, and payment of any CISC membership fees, if applicable, such entity or agency shall be a Party.

**c. Non-Signatories of the MOU.** Any entity or agency that did not sign the MOU prior to the Effective Date may become a Party by (i) gaining approval of the Board and (ii) signing a separate signature page to this Agreement that states that the new Party agrees to the terms and conditions of this Agreement. Upon delivery of the signed signature page to the Manager, satisfaction of any conditions imposed by the Board, and payment of any CISC membership fees, if applicable, such entity or agency shall be a Party.

**d. CISC Membership Fee.** Any entity or agency that signed the MOU prior to the Effective Date and paid a CISC membership fee at that time shall not be required to pay an additional membership fee in order to join the CISC. Any entity or agency that (i) signed the MOU prior to the Effective Date but did not pay a CISC membership fee at the time or (ii) did not sign the MOU prior to the Effective Date may be required to pay a CISC membership fee in an amount determined by the Board as a condition of becoming a Party.

**33. Right to Terminate Participation.** A Party may terminate its participation in this Agreement by giving written notice to the Board at least sixty (60) days prior to the date of termination, unless the Board and a specific Party have agreed on a different notice period.

**GENERAL PROVISIONS**

**34. Amendments.** This Agreement shall not be amended unless seventy-five percent (75%) of the Representatives approve such amendment in writing. The sole remedy for any Party that disagrees with any amendments is to terminate its participation in this Agreement.

**35. Construction and Interpretation.** The table of contents and the section and other headings and subheadings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the Parties, and shall not in any way affect the meaning or interpretation of this Agreement.

**36. Duplicate Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be considered an original. The signature of any Party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

- 37. Entire Agreement.** This Agreement embodies the entire understanding and agreement among the Parties concerning the CISC and supersedes any and all prior negotiations, understandings, or agreements, including the MOU.
- 38. Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Colorado to the extent not inconsistent with Federal law.
- 39. Indemnification.** Without waiving the protections, limitations, and requirements of the Colorado Governmental Immunity Act in Article 10, Title 24, C.R.S., each Director, Representative, Manager, Assigned Employee, officer, agent, and volunteer shall be provided with a legal defense and indemnification as provided by that person's employer to the extent not inconsistent with Federal law.
- 40. Mediation.** In the event of a dispute between the Parties regarding the interpretation of this Agreement or regarding any issue arising under this Agreement, the Parties hereby agree to the following mediation procedure. First, the disagreeing Parties will submit the issue to the Representatives, who will mediate the disagreement and try to devise an acceptable solution. If that process fails, the disagreeing Parties will submit the issue to the highest elected officials of each Party (*e.g.*, the Mayor of a city or the County Commissioners of a county) who will mediate the disagreement and try to devise an acceptable solution. The highest elected official of each Party may approve a designee to mediate on behalf of that Party. The Parties agree to mediate in good faith. If any disagreeing Party requests a mediator, the disagreeing Parties shall jointly select a mediator and share the cost of the mediator equally. Decisions by the Board are not subject to mediation. This paragraph shall apply to the extent not inconsistent with Federal law.
- 41. No Third-Party Beneficiaries.** Nothing in this Agreement shall be deemed to create any third-party benefits or beneficiaries or create a right or cause of action for the enforcement of this Agreement's terms in any entity or person not a Party to this Agreement including any agents, employees, officers, or volunteers of any Party or any entity with whom the CISC contracts.
- 42. Severability.** In the event that any of the terms, covenants, or conditions of this Agreement or their application shall be held invalid as to any Party, entity, or person by a court of competent jurisdiction, (a) the remainder of this Agreement shall not be affected thereby, (b) such determination shall not affect or impair the validity or enforceability of any other provision, and (c) the remaining provisions shall be interpreted and applied so far as possible to reflect the original intent and purpose of this Agreement.
- 43. Term.** The term of this Agreement shall be unlimited and shall extend until terminated as provided herein.
- 44. Termination.** This Agreement may be terminated upon agreement in writing of seventy-five percent (75%) of the Representatives. Upon termination of the CISC, any monetary funds held by the CISC shall be distributed, after paying the debts and obligations of the CISC, to the Parties proportionate with the number of sworn law enforcement officers employed by each Party. Additionally, upon termination of the CISC, any non-monetary assets shall become the property of the Party in possession of those assets.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the Effective Date.

**The Adams County Sheriff's Office**

By: \_\_\_\_\_

Name: Doug Darr  
\_\_\_\_\_

Title: Adams County Sheriff  
\_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

Name: \_\_\_\_\_

**The Arapahoe County Sheriff's Office**

By: \_\_\_\_\_

Name: David C. Walcher  
\_\_\_\_\_

Title: Arapahoe County Sheriff  
\_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

Name: \_\_\_\_\_

**The City of Aurora**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

Name: \_\_\_\_\_

**The Colorado Department of Public Safety**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

Name: \_\_\_\_\_

**The City of Colorado Springs**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

Name: \_\_\_\_\_

**The City of Commerce City**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

Name: \_\_\_\_\_

**The City and County of Denver**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

Name: \_\_\_\_\_

**The Douglas County Sheriff's Office**

By: \_\_\_\_\_

Name: David Weaver \_\_\_\_\_

Title: Douglas County Sheriff \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

Name: \_\_\_\_\_

**The City of Grand Junction**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

Name: \_\_\_\_\_

**The Board of County Commissioners of the County of Jefferson**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

Name: \_\_\_\_\_



**The Board of County Commissioners of the County of Mesa**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

Name: \_\_\_\_\_

**SEPARATE SIGNATURE PAGE  
TO THE  
INTERGOVERNMENTAL AGREEMENT  
OF THE  
COLORADO INFORMATION SHARING CONSORTIUM**

By signing this separate signature page to the Intergovernmental Agreement of the Colorado Information Sharing Consortium (the “Agreement”), the undersigned agrees to be bound by the terms and conditions of the Agreement. Consistent with paragraph 32 of the Agreement, upon delivery of this signed signature page to the Manager of the CISC, satisfaction of any conditions imposed by the Board, if applicable, and payment of any CISC membership fees, if applicable, the undersigned shall be a Party to the Agreement with all the rights and responsibilities thereunder. This signature page shall be appended to the Agreement and shall become part of the Agreement as of the date listed below.

**Name of Entity:** [Click here to enter text.](#)

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**By:**

---

**Name:** [Click here to enter text.](#)

---

**Title:** [Click here to enter text.](#)

---

**Date:** [Click here to enter text.](#)

---

**Attest:**

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**Name:** [Click here to enter text.](#)

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## TOWN COUNCIL COMMUNICATION

<b>Meeting Date:</b> March 11, 2014	<b>Item: EXECUTIVE SESSION:</b> “For the purposes of discussion concerning the purchase, acquisition, lease, transfer, or sale of real, personal, or other property interests under Section §24-6-402(a), C.R.S.; discussion concerning personnel matters under §24-6-402(4)(f), C.R.S.; discussion regarding positions relative to matters that may be subject to negotiations and development of a strategy for negotiations under §24-6-402(4)(e), C.R.S.; and conferences with the Town’s attorney for purposes of receiving legal advice on specific legal questions under §24-6-402(4)(b), C.R.S.”	<b>Ordinance</b> <input type="checkbox"/> <b>Resolution</b> <input type="checkbox"/> <b>Discussion</b> <input checked="" type="checkbox"/>
<b>Presented by:</b> Gary White	<b>KEY POINTS/SUPPORTING INFORMATION:</b>  <p><b>EXECUTIVE SESSION:</b> “For the purposes of discussion concerning the purchase, acquisition, lease, transfer, or sale of real, personal, or other property interests under Section §24-6-402(a), C.R.S.; discussion concerning personnel matters under §24-6-402(4)(f), C.R.S.; discussion regarding positions relative to matters that may be subject to negotiations and development of a strategy for negotiations under §24-6-402(4)(e), C.R.S.; and conferences with the Town’s attorney for purposes of receiving legal advice on specific legal questions under §24-6-402(4)(b), C.R.S.”</p>	
<b>ADVANTAGES:</b> N/A		
<b>DISADVANTAGES:</b> N/A		
<b>FINANCIAL IMPACT:</b> N/A		
<b>RECOMMENDATIONS:</b> I move to enter into Executive Session “For _____.”		
<b>ATTACHMENTS:</b> N/A		