## AGENDA
### CARBONDALE BOARD OF TRUSTEES
#### WORK SESSION
### CARBONDALE TOWN HALL
### JANUARY 21, 2020
### 6:00 P.M.

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<td>2. Outdoor Dining in the ROW</td>
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* Please Note Times Are Approximate
TOWN OF CARBONDALE  
511 COLORADO AVENUE  
CARBONDALE, CO 81623  

Board of Trustees Agenda Memorandum  

Item No: 1  
Attachment: A  
Meeting Date: January 21, 2020  

TITLE: Xcel Energy Franchise Agreement  
SUBMITTING DEPARTMENT: Manager  
ATTACHMENTS: Draft Franchise Agreement Between the Town of Carbondale and Public Service Company of Colorado  

BACKGROUND:  

Xcel Energy provides electric service to that portion of the Town south of the RFTA trail. The existing franchise agreement, Carbondale Ordinance No. 4, Series of 2005, was approved by the Board of Trustees on March 8, 2005. The current franchise has a duration of fifteen years and expires on April 16, 2020. The proposed franchise agreement is set to expire on April 11, 2035.  

DISCUSSION:  

The Town Manager and Attorney have been negotiating the draft franchise agreement since July of 2019. The overall approach was to examine recent franchise agreements that Xcel had entered into with Colorado municipalities and assure that Carbondale was receiving similar treatment. The agreement was also customized to the Town’s permitting process and the unique situation where the Town is serviced by two power suppliers. A representative of Xcel Energy will be at the work session. 

It is anticipated that an ordinance adopting the franchise agreement would be considered at the February 25th Board Meeting.  

RECOMMENDATION:  

Town Staff recommends the Board of Trustees provide input on the draft franchise agreement.  

Prepared By: Jay Harrington  

__________________________  
Town Manager
FRANCHISE AGREEMENT

BETWEEN

THE TOWN OF CARBONDALE, COLORADO

AND

PUBLIC SERVICE COMPANY OF COLORADO

ARTICLE 1  DEFINITIONS
ARTICLE 2  GRANT OF FRANCHISE
ARTICLE 3  TOWN POLICE POWERS
ARTICLE 4  FRANCHISE FEE
ARTICLE 5  ADMINISTRATION OF FRANCHISE
ARTICLE 6  SUPPLY, CONSTRUCTION, AND DESIGN
ARTICLE 7  RELIABILITY
ARTICLE 8  COMPANY PERFORMANCE OBLIGATIONS
ARTICLE 9  BILLING AND PAYMENT
ARTICLE 10 USE OF COMPANY ELECTRIC DISTRIBUTION POLES
ARTICLE 11 UNDERGROUNDING OF OVERHEAD ELECTRIC DISTRIBUTION LINES
ARTICLE 12 PURCHASE OR CONDEMNATION
ARTICLE 13 MUNICIPALLY PRODUCED UTILITY SERVICE
ARTICLE 14 ENVIRONMENT AND CONSERVATION
ARTICLE 15 TRANSFER OF FRANCHISE
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ARTICLE 1
DEFINITIONS

For the purpose of this franchise agreement ("Franchise" or "Franchise Agreement"), the following words and phrases shall have the meaning given in this Article or elsewhere in this Agreement. 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 or in this Agreement shall be given their common and ordinary meaning.

§ 1.1 "Town" refers to the Town of Carbondale, a municipal corporation of the State of Colorado.

§ 1.2 "Clean Energy" means energy produced from Renewable Energy Resources (as defined below), 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 Public Utilities Commission of the State of Colorado ("PUC").

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

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

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

§ 1.6 "Electric Gross Revenues" refers to those amounts of money that the Company receives from the sale and/or delivery of electricity in the Town, after adjusting for refunds, net write-offs of accounts, corrections, or Regulatory Adjustments (as defined below). "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 and/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 Event" means the inability to undertake an obligation of this Franchise Agreement due to a cause, condition or event that could not be reasonably anticipated by a
party or is beyond a party’s reasonable control after exercise of best efforts to perform. Such cause, condition or event includes but is 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 Event.

§1.10 “Industry Standards” refers to standards developed by government agencies and generally recognized organizations that engage in the business of developing utility industry standards for materials, specifications, testing, construction, repair, maintenance, manufacturing, and other facets of the electric utility industries. Such agencies and organizations include, but are not limited to the U.S. Department of Transportation, the Federal Energy Regulatory Commission (FERC), the Colorado Public Utilities Commission, the American National Standards Institute (ANSI), the American Society for Testing and Materials (ASTM), the American Society of Mechanical Engineers (ASME), the Institute of Electric and Electronic Engineers (IEEE), the Electric Power Research Institute (EPRI), the National Fire Protection Association (NFPA), and specifically includes the National Electric Safety Code (NESC).

§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. Other Town Property does not include Public Utility Easements.

§1.12 “Private Project” refers to any project not included in the definition of Public Project.

§1.13 “Public Project” refers to (1) any public work or improvement within the Town that is wholly owned by the Town; or (2) any public work or improvement within the Town where at least fifty percent (50%) or more of the funding is provided by any combination of the Town, the federal government, the State of Colorado, or any Colorado county, but excluding all entities established under Title 32 of the Colorado Revised Statutes.

§1.14 “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.

§1.15 “Public Utility Easement” refers to any platted easement over, under, or above public or private property, expressly dedicated to, and accepted by, the Town for the use of public utility companies for the placement of utility facilities, including but not limited to Company Facilities.

§1.16 “Relocate,” “Relocation,” or “Relocated” refers to the definition assigned such terms in Section 6.9.A of this Franchise.
§1.17 "Renewable Energy Resources" means wind, solar, and geothermal resources; energy produced from 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; 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; 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 may be amended from time to time.

§1.18 "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.

§1.19 "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 motorized vehicle traffic. Streets shall not include Public Utility Easements and Other Town Property.

§1.20 “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 and the name and contact information for the Town’s project manager.

§1.21 “Tariffs” refer to those tariffs of the Company on file and in effect with the PUC or other governing jurisdiction, as amended from time to time.

§1.22 “Utility Service” refers to the sale of electricity to Residents by the Company under Tariffs approved by the PUC.

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, transmission and distribution of Utility Service within and through the Town.

B. **Street Lighting and Traffic Signal Lighting Service.** Street lighting service and traffic signal lighting service within the Town shall be governed by Tariffs on file with the PUC.

§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.

B. **Subject to Town Usage.** The Company’s right to make reasonable use of Town Streets and Other Town Property 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 is not intended to and does not revoke any prior license, grant, or right to use the Streets, Other Town Property or Public Utility Easements, and such licenses, grants or rights of use are hereby affirmed.

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. The parties acknowledge that the Town has granted a similar franchise to Holy Cross Energy, which provides electricity as an electric utility to customers within its service area in the Town of Carbondale.

§2.3 **Effective Date and Term.** This Franchise shall take effect on April 12, 2020 (the “Effective Date”) and shall supersede any prior franchise grants to the Company by the Town. This Franchise shall terminate on April 11, 2035 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 but not limited to 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, Public Utility Easements and Other Town Property, 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 and 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 and/or Other Town Property, 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 that are consistent with Industry Standards. Nothing herein provided shall prevent the Company from legally challenging or appealing the enactment or applicability of any laws, regulations, permits and orders enacted by the Town. To the extent that the Company believes that any Town regulations, permits, or orders are inconsistent with Industry Standards, the Town agrees to meet with the Company upon the Company's written request for consideration of the matters at issue within a reasonable period of time.

§3.4 Industry Standards. In enacting laws and regulations and issuing permits that affect the Company's access to or use of the Streets, Other Town Property and Public Utility Easements, the Town agrees, without limiting the Town's police powers, to make good faith efforts to make its regulations and permit conditions consistent with Industry Standards to the extent practicable, and the Company agrees to make good faith efforts to advise the Town of Industry Standards that affect the Company's operations within the Town. In addition, without limiting the Town's police powers, the Town will take into consideration any input from the Company on new regulations and permit conditions that the Company believes unnecessarily increase its cost of operations within the Town.

ARTICLE 4
FRANCHISE FEE

§4.1 Franchise Fee.

A. Fee. In consideration for this Franchise Agreement, which provides the certain terms related to the Company's use of Town Streets, Public Utility Easements (as applicable), and Other Town Property, which are valuable public properties acquired and maintained by the Town at the expense of its Residents, and in recognition 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 (the "Franchise Fee"). To the extent required by law, the Company shall collect the Franchise Fee from a surcharge upon Town Residents who are customers of the Company.

B. Obligation in Lieu of Franchise 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 and Other Town Property. Such payments shall be made in accordance with 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 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 reasonably modifying this Franchise Agreement in an effort to ensure 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 in writing and in a manner consistent with Company Tariffs.

§4.2 Remittance of Franchise Fee.

A. Remittance Schedule. Franchise Fees 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. 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, 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), correction of the overpayment by the Town shall take the form of a credit against future Franchise Fees and shall be spread over the same period the error was undiscovered or the Town may make a full refund payment to the Company. If such period would extend beyond the term of this Franchise, the Company may elect to require the Town to provide it with a full 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 Tariffs, 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) **Company Audit.** At the request of the Town, every three (3) years commencing at the end of the third calendar year of the Term of this Franchise, the Company shall conduct an internal audit, in accordance with the Company’s auditing principles and policies that are applicable to electric utilities that are developed in accordance with the Institute of Internal Auditors, to investigate and determine the correctness of the Franchise Fees paid to the Town. Such audit shall be limited to the previous three (3) calendar years. Within a reasonable period of time after the audit, the Company shall provide a written report to the Town Manager or the Manager’s designee containing the audit findings and summarizing the audit procedures.

(2) **Town Audit.** If the Town disagrees with the results of the Company’s 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 auditing principles applicable to electric utilities that are developed in accordance with Institute of Internal Auditors, and the Company shall cooperate fully by providing the Town’s auditor with non-confidential information that would be required to be disclosed under applicable state sales and use tax laws.

(3) **Underpayments.** If the results of a Town audit conducted pursuant to Subsection 4.2.C(2) concludes that the Company has underpaid the Town by two percent (2%) 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. The Company shall not be required to pay the costs of the Town’s audit when the underpayment is caused by errors in information provided by an entity certified by the Colorado Department of Revenue as a “hold harmless entity” or other similar entity recognized by the Colorado Department of Revenue.

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.

§4.3 Franchise Fee Payment Not in Lieu of Permit or Other Fees. Payment of the Franchise Fee by Company to the Town does not exempt the Company from any other lawful tax or fee imposed generally upon persons doing business within the Town, except that the Franchise Fee provided for herein shall be in lieu of any occupation, occupancy or similar tax or fee for the Company’s use of Town Streets, Public Utility Easements or Other Town Property under the terms set forth in this Franchise.

**ARTICLE 5**
**ADMINISTRATION OF FRANCHISE**

§5.1 **Town Designee.** The Town Manager shall designate in writing to the Company an official or officials having full power and authority to administer this Franchise (“Town Designee”
or "Town Designees"). 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 names and telephone numbers of said Town Designees. The Town Clerk may change these designations by providing written notice to the Company. The Town’s Designees shall have the right, at all reasonable times and with reasonable notice to the Company, 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 ("Company Designee"). The Company may change its designation by providing written notice to the Town. The Town shall use the Company Designee 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 with the Town its activities in Town Streets and Other Town Property located within the Town. The Town and the Company will meet up to twice 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 projects. The Town and Company shall hold such additional 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 and the Town agree to use good-faith efforts to provide notice to one another whenever: (a) the Company initiates plans to significantly upgrade its infrastructure within the Town, including the replacement of utility poles and overhead lines; (b) third party applicants within the Town initiate private land uses and projects requiring a significant installation of utility infrastructure; or (c) the Town initiates a Project that requires significant upgrades to future electric utility development by the Company, in order to allow for mutual Town and Company input and consultation for beneficial coordination of activities.

**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 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 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 rates. All charges to the Town shall be in accord with the Tariffs.

§6.4 Restoration of Service.

A. Notification. The Company shall provide to the Town daytime and nighttime
telephone numbers of a Company Designee from whom the Town 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 electric system within the Town, or any
part thereof, is partially or wholly destroyed or incapacitated, the Company shall use due
diligence to restore such systems to satisfactory service within the shortest practicable time,
or provide a reasonable alternative to such system if the Company elects not to restore such
system.

§6.5 Obligations Regarding Company Facilities.

A. Company Facilities. All Company Facilities within 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 performed:

(1) in a high-quality manner that is in accordance with Industry Standards;

(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 applicable Town laws, ordinances and regulations.

C. No Interference with Town Facilities. Company Facilities shall not unreasonably
interfere with any Town facilities, including without limitation 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 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 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 in accordance with applicable Town laws. 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, the 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 pursuant to any such inspection shall promptly perform any remedial action lawfully required by the Town that is consistent with Industry Standards.

E. Compliance. Subject to the provisions of Section 3.3 above, the Company and all of its contractors shall comply with the requirements of all applicable municipal laws, ordinances, regulations, rules, permits, and standards lawfully adopted, 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 use commercially reasonable efforts to require that its contractors working in Town Streets and Other Town Property hold the necessary licenses and permits required by law.

§6.6 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 the 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. The Company shall provide the requested documents no later than forty-five (45) days after it commences its internal process. If the requested information must be limited or cannot be provided pursuant to regulatory requirements or Company data privacy policies, the Company shall promptly notify the Town of such restrictions. The Town reserves the right to challenge the Company's position. The Town acknowledges that the requested as-built drawings are confidential information of the Company and the Company asserts that disclosure to members of the public would be contrary to the public interest. Accordingly, the Town shall deny the right of inspection of the Company's confidential information as set forth in §24-72-204(3)(a)(IV) C.R.S., as may be amended from time to time (the "Open Records Act"). If an Open Records Act request is made by any third party for as-built drawings that the Company has provided to the Town pursuant to this Franchise, the Town will immediately 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 as-built drawings provided by the Company pursuant to this Franchise without first conferring with the Company. Provided the Town complies with the terms of this Section, the Company shall
defend, indemnify and hold the Town harmless from any claim, judgment, costs or attorney fees incurred in participating in such proceeding. As used in this Section, as-built drawings refers to 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 or data that do not exist at the time of the request.

§6.7 Excavation and Construction. Subject to Section 3.3, the Company shall be responsible for obtaining, paying for (if applicable), 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 6.9 of this Franchise Agreement, 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 the 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.

§6.8 Restoration. Subject to the provisions of Section 6.5.D of this Franchise Agreement, when the Company performs any work in or affecting the Town Streets or Other Town Property, it shall, at its own expense, promptly remove any obstructions placed thereon or therein by the Company and within a reasonable period of time restore at the Company’s expense such Town Streets or Other Town Property to a condition that is substantially the same as existed before the work, and that meets applicable Town 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 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 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 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 or Other Town Property or remove the obstruction therefrom; provided however, Town actions do not interfere with the operation, safety and integrity of Company Facilities. The Company shall be responsible for the actual cost incurred by the Town to restore such Town Streets or Other Town Property or to remove any obstructions therefrom. In the course of its restoration of Town Streets 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.
§6.9 Relocation of Company Facilities.

A. Relocation Obligation. The Company shall temporarily or permanently 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 in a Town Street or Other Town Property, the Company shall not be responsible for any Relocation costs. In the event of any Relocation contemplated pursuant to this Section 6.9.A, 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 recovering its Relocation costs from third parties.

B. Private Projects. Subject to Section 6.9.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 6.9.A of this Franchise shall be completed within a reasonable time, not to exceed one hundred twenty (120) 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 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 a Force Majeure Event 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 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 Company 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 6.9.A of this Franchise or as otherwise agreed with the Town, and removes from the site or properly abandons on site all unused Company Facilities, equipment, material and other impediments. “Unused” for the purposes of this Franchise shall mean that the Company is no longer using the Company Facilities in question and has no plans to use the
Company Facilities in the foreseeable future. Any abandonment of Company Facilities as contemplated in this section shall comply with Industry Standards.

F. **Scope of Obligation.** 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, which are addressed in Section 6.9.A.

G. **Underground Relocation.** Underground Company Facilities shall be Relocated underground. Above ground Company 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 Town Streets and Other Town Property. 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 one (1) years advance notice of any planned Street repaving. The Company shall make reasonable best efforts to complete any necessary or anticipated repairs or upgrades to Company Facilities that are located in the Streets within the one-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 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.

§6.10 New or Modified Service Requested by Town. The conditions under which the Company shall install new or modified Utility Service or Company Facilities to the Town as a customer shall be governed by the Company's Tariffs.

§6.11 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 provided 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.

§6.12 **Town Not Required to Advance Funds if Permitted by Tariffs.** 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. Notwithstanding anything to the contrary, the provisions of this Section allowing the Town to not advance funds prior to construction shall only apply to the extent permitted by the Tariffs. The parties agree that as of the date of execution of this Agreement, Company Electric Tariff Sheet R120, R167 and R175 governs the terms of installation of Company Facilities for the Town and allows installation of Company Facilities without the Town advancing funds prior to construction.

§6.13 **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, in accordance with Industry Standards, and in accordance with the standards, 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. 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 other than traffic facilities. The Company shall be entitled to an extension of time to complete a project where the Company’s performance was delayed due to a Force Majeure Event. 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 substantially 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 Company Facilities, equipment, material and other impediments.

§8.2 **Adjustments to Company Facilities.** The Company shall perform adjustments to Company Facilities that are consistent with Industry Standards, including manhole rings and other appurtenances in Streets 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 a Force Majeure Event. 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 street maintenance, repair, or 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 Facilities.** 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 Facilities 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 of the damaged facility, 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 Utilities 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 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 at least annually 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 the Town pursuant to the Tariffs until the challenge has been finally resolved.

**ARTICLE 10**

**USE OF COMPANY ELECTRIC DISTRIBUTION POLES**

§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 Tariffs, 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 shall notify the Company in advance and in writing of its intent to use Company’s electric 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 shall 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, Industry Standards, 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 Tariffs, for the placement of their facilities upon approval by the Company and agreement upon reasonable terms and conditions, including the 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 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 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, parks and open space 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.

§10.4 **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 ELECTRIC DISTRIBUTION LINES

§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 applicable laws, regulations and orders of the Town. Such underground construction shall be consistent with Industry Standards.

§11.2 Underground Conversion at Expense of Company.

A. Underground Conversion Program. The Company shall budget and allocate an annual amount, equivalent to one percent (1%) of the preceding year’s Electric Gross Revenues, for the purpose of undergrounding its existing overhead electric distribution lines located in Town Streets (excluding alleys and access easements) and Other Town Property within the Town, as may be requested by the Town Designee (the “Underground Program”), so long as the underground conversion does not result in end use customers of the Company incurring any costs related to the conversion and does not require the Company to obtain any additional land use rights. If the Town requires Relocation of overhead electric distribution lines in the Streets and Other Town Property and the Company determines that there is not adequate room within the Streets and Other Town Property to relocate the distribution lines overhead, the Company may relocate the lines underground and may charge the cost of undergrounding to the Underground Program.

B. Unexpended Portion and Advances. Any unexpended portion of the Underground Program fund that is unused within a calendar year shall be carried over to succeeding years within the term of the Franchise Agreement 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 at least three (3) years remain before the expiration or termination of this Franchise Agreement. During the last three (3) years of this Franchise Agreement, upon request by the Town, the Company may advance and expend amounts anticipated to be available during the remaining term of this Franchise Agreement under the preceding paragraph on a project by project basis in the Company’s sole discretion. Any amounts so advanced shall be credited against amounts to be expended in succeeding years. Any funds left accumulated in the Underground Program 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 Underground Program and any monies in the Underground Program 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 electric distribution lines pursuant to this Article, but may do so in its sole discretion.

C. System-wide Undergrounding. If, during the term of this Franchise, the Company should receive authority from the PUC to undertake a system-wide program or programs of undergrounding its electric distribution lines system wide, 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 electric distribution lines in Streets and Other Town Property 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 electric distribution lines 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. At the Town’s request, the Company will provide all documentation that forms the basis of the estimate that is not confidential or proprietary. The Company will not proceed with any requested project until the Town has provided a written acceptance of the Company’s 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 required Supporting Documentation. The Company shall have one hundred twenty (120) days after receiving the Town’s written request or Supporting Documentation (whichever is later received) 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 twenty (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 Event. 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 electric distribution lines and restores the undergrounding site in accordance with Section 6.7 of this Franchise, or as otherwise agreed with the Town. When performing underground conversions of overhead distribution lines, 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 Town shall make any such request in writing within one hundred twenty (120) days of receipt of the report of actual costs, as referenced in Section 11.3.E of this Franchise Agreement. Such audits shall be limited to projects completed within the twelve (12) month period before the date when the audit is requested. The cost of any such independent audit shall reduce the amount of the Underground Program balance. The Company shall cooperate fully 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 reasonable and necessary to complete the project shall be charged against the Underground Program balance.

§11.4 **Audit of Underground Program.** Upon written request, every three (3) years commencing at the end of the third calendar year of this Franchise, the Company shall cause an independent auditor to investigate and determine the correctness of the charges to the Underground Program. Such audits shall be limited to the previous three (3) calendar years. Audits performed pursuant to this Section shall be limited to charges to the Underground Program and shall not include an audit of individual underground projects. The independent auditor shall provide to the Town and the Company a written report containing its findings. The Company shall reconcile the Underground Program balance consistent with the findings contained in the independent auditor’s written report. The costs of the audit and investigation shall be charged against the Underground Program 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 condemnation, no value shall be ascribed or given to the right to use Town Streets or Other Town Property granted under this Franchise in the valuation of the property thus condemned.

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


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 and other applicable requirements. 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 or Company’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 granted 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. If requested in writing by the Town on or before December 1st 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, at the Town’s request, the Company’s Area Manager shall 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 Article 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.

§14.5 **Sustainability Committee.** Any Company representative may participate in the Town’s Environmental Board or other sustainability committee by becoming a board or committee member, through the regular processes for appointment to the Town’s advisory boards and commissions, as such may be amended from time to time, or by attending its meetings for the purpose of providing information on Company programs and offerings.

**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. The Town may impose reasonable conditions upon the transfer, but 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 City and County of Denver provided Utility Service by the Company multiplied by one million dollars ($1,000,000.00). Except as otherwise required by law, such transfer fee shall not be recovered from a surcharge placed only on the rates of Residents.

**ARTICLE 16**

**CONTINUATION OF UTILITY SERVICE**

§16.1 **Continuation of Utility Service.** In the event this Franchise Agreement is not renewed or extended 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 obligation to remove any Company Facilities from Streets, Public Utility Easements or Other Town Property or discontinue providing Utility Service 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. 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 and Other Town Property. 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, the exercise by the Company of the related rights, but in both instances only to the extent caused by the Company, 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, agents or employees or to the extent that the Town is acting in its capacity as a customer of record of the Company.

§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 of liability 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 **Change of Tariffs.** 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 to the extent 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 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, in its sole discretion, 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 and the Company shall be entitled to collect from Residents and, upon the Town complying 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 Streets and Other Town Property. Unless otherwise provided by law, the Company shall be entitled to collect such amount from Residents.

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 herein, 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. Any amendment of the Franchise shall become effective only upon the approval of the PUC, if such PUC approval is required.

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, gender, sexual orientation, marital status, age, military status, national origin, ancestry, or physical or mental disability, 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 and under state and federal law.

§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 U.S. 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
511 Colorado Avenue
Carbondale, CO 81623

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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
P.O. Box 840
Denver, Colorado 80201

Any request involving any audit specifically allowed under this Franchise Agreement shall also be sent to:

Audit Services
Public Service Company of Colorado
P.O. Box 840
Denver, Colorado 80201

§21.5 Examination of Records. The parties agree that any duly authorized representative of the Town and the Company shall have access to and 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 limited to the work product doctrine. The work product doctrine shall include information developed by the Company in preparation for PUC proceedings.

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

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

(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.

§21.6 Confidential or Proprietary Information. If an Open Records Act (§24-72-201 et seq. C.R.S.) 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. 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. The list shall include the legal description of the real property, and where available on the deed, the physical street address. If the physical address is not available on the deed, if the Town requests the physical address of the real property described in this Section 21.6, to the extent that such physical street address is readily available to the Company, the Company shall provide such address to the Town. 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 Public Utilities Commission. Notwithstanding the foregoing, notice regarding any 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 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. Except as otherwise provided herein, 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"), provided that the Company shall have the right to contest any such Impositions and shall not be in breach of this Section so long as it is actively contesting such Impositions.

B. 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 Agreement 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 a Force Majeure Event, 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 Garfield 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, limited to the publication of notices, publication of ordinances, and photocopying of documents and other similar expenses.

§21.19 *Costs of Compliance with Franchise.* The parties acknowledge that PUC rules, regulations and final decisions may require that 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, 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 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 6.9.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.
§21.21 Audit. For any audits not related to franchise fees and otherwise specifically allowed under this Franchise, such audits shall be consistent with PUC rules and regulations to the extent PUC rules and regulations govern a particular type of audit. Audits in which the auditor is compensated on the basis of a contingency fee arrangement shall not be permitted.

§21.22 Land Use Coordination. The Town shall use reasonable efforts to coordinate with the Company regarding its land use planning within the Company’s PUC-certificated service territory or affecting the Company’s property. This coordination shall include meeting with the Company and identifying areas for future utility development.

(Signature page follows.)
IN WITNESS WHEREOF, the parties have caused this Franchise to be executed as of the dates of the signatures below, effective as of the Effective Date.

ATTEST:

__________________________
Clerk, Town of Carbondale

Approved as to form:
(if applicable)

__________________________
Town Attorney, Town of Carbondale

TOWN OF CARBONDALE

Mayor, Town of Carbondale

Date: _______________________

PUBLIC SERVICE COMPANY OF COLORADO, a Colorado corporation

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

STATE OF COLORADO  )
 ) ss.
COUNTY OF DENVER     )

The foregoing instrument was acknowledged before me this _____ day of __________________, 2020 by Jerome Davis, Regional Vice President, Customer and Community Relations of Public Service Company of Colorado, a Colorado corporation.

WITNESS MY HAND AND OFFICIAL SEAL.

__________________________
Notary Public
My Commission expires:

(SEAL.)
Board of Trustees Agenda Memorandum

Item No: 2
Attachment: B

Meeting Date: January 21, 2020

TITLE: Discussion on Outdoor Dining in the ROW

SUBMITTING DEPARTMENT: Managers
Attachments: Resolution No. 5, Series 2014

BACKGROUND:

The Town Board approved Resolution No. 5, Series 2014 in March of 2014, a copy is attached. It established a policy to permit outdoor dining in Town ROW’s. The Town has issued between 2-5 revocable license agreements for dining decks in the ROW on an annual basis since 2014.

DISCUSSION:

When approving license agreements in 2019, the Board requested a discussion in early 2020 on the current program to evaluate if it needs any modifications. The approved policy is specific for dining and we have included liquor license holders as qualifying for deck license agreements. In recent years, we have received requests for license agreements for other uses in the ROW, such as small parklets. Town staff has also heard concerns about downtown parking spaces being used for decks and bike parking.

We currently anticipate three applications for license agreements for 2020. The Town Clerk has notified those with license agreements in 2019 of this discussion and the agenda topic was included in the Chamber’s weekly newsletter on 1/16. Overall, the existing dining decks have been well received and have added to downtown’s vibrancy.

RECOMMENDATION:

Provide input to staff on the Board’s desire to make any modifications to the current program.

Prepared By: Jay Harrington

JH
Town Manager
RESOLUTION NO. 5
Series of 2014

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF CARBONDALE, COLORADO, ESTABLISHING POLICIES FOR OUTDOOR DINING AND EXECUTION OF LICENSES AGREEMENTS THAT ALLOW SUCH OUTDOOR DINING IN THE TOWN OF CARBONDALE.

WHEREAS, the Board of Trustees of the Town of Carbondale may have occasion to allow outdoor dining in the Town's Right-of-Ways given that it may bring a new element of vitality to the Town;

WHEREAS, it is appropriate to establish policies for outdoor dining and execution of license agreements for such outdoor dining in the Town of Carbondale Right-of-Ways; and

WHEREAS, the Board of Trustees finds, determines, and declares that, pursuant to Article XX of the Colorado Constitution and the Home Rule Charter of the Town of Carbondale, the Board of Trustees has the power to adopt policies regarding outdoor dining and enter into license agreements authorizing outdoor dining consistent with said policies.

NOW THEREFORE, be it resolved by the Board of Trustees of the Town of Carbondale, Colorado that the attached policy shall be adopted for outdoor dining within the Town of Carbondale and entering into license agreements authorizing such outdoor dining.

INTRODUCED, READ, AND POSTED this 16th day of March, 2014.

Town of Carbondale, Colorado

By: Stacey Bremot, Mayor

ATTEST:

Cathy Derby, Town Clerk

[Seal]
POLICY FOR OUTDOOR DINING WITHIN THE TOWN OF CARBONDALE
AND EXECUTION OF LICENSE AGREEMENTS
AUTHORIZING SUCH OUTDOOR DINING

General Policy. The Town of Carbondale may allow outdoor, curbside dining within the Town of Carbondale right-of-way from May 1st through October 15th of each year. Any applicant for outdoor, curbside dining must pay an application fee set by Town Staff, conform to this Policy, and execute a Revocable License Agreement that has been previously approved by the Town Attorney and the Board of Trustees (sample attached), subject to annual review.

Standards:

1. All outdoor dining areas must be fully accessible to the physically handicapped.

2. The outdoor dining area must be visually cohesive and well integrated with the rest of the Town’s right-of-ways.

3. In order to promote safety in outdoor dining in the Town right-of-way, the outdoor dining area must at all times include a passageway and emergency exit. To the extent the Town requires semi-permanent barriers around the perimeter of any outdoor dining area, such barriers must be able to withstand inclement outdoor weather and a prescribed amount of lineal force per square foot.

4. The applicant must provide required indemnifications and meet all insurance requirements as prescribed by the Town.

5. In addition to executing an outdoor dining revocable license agreement, the applicant must procure any other required permits, licensing, or approvals from the State of Colorado and the Town in order to lawfully serve food and alcohol.
SAMPLE REVOCABLE LICENSE AGREEMENT

1. THIS REVOCABLE LICENSE AGREEMENT (hereinafter "Agreement") is made and entered into this ___ day of ____________, 20___, by and between the Town of Carbondale, Colorado, a Colorado home rule municipal corporation (hereinafter "Town") and ____________________ [legal name of licensee], a ____________________ [type of entity; e.g., "a Colorado limited liability company"] (hereinafter "Licensee").

2. WHEREAS, Licensee desires to obtain a revocable and non-exclusive license from the Town to use and occupy a portion of the Main Street right-of-way for temporary patio improvements for food and beverage service; and

3. WHEREAS, the Town is willing to grant Licensee a revocable license for such purpose, upon the terms and conditions of this Agreement.

4. NOW, THEREFORE, the Town and Licensee agree as follows:

1. Licensed Premises. The Town hereby grants to Licensee a revocable and non-exclusive license to occupy and use, subject to all of the terms and conditions of this Agreement, the following described premises (the “Premises”): that portion of the Main Street right-of-way and sidewalk lying within the Main Street right-of-way that is located adjacent to _________________, as more particularly described and depicted in Exhibit “A”, attached to this Agreement and incorporated into this Agreement by reference.

2. Term; Payment. The license herein granted shall be effective upon the date of Town execution of this Agreement and shall continue until _____________, 20___ unless this Agreement is sooner terminated as provided herein. Licensee shall pay for the license granted herein a non-refundable license fee of $__________, which fee shall be paid by Licensee within 15 days of receipt of a Town invoice for same.

3. Purpose and Conduct of Use. The Premises may be occupied and used by Licensee during the term of this Agreement for the sole purpose of constructing, installing, operating, maintaining and repairing a temporary patio for food and beverage service. In its use and occupancy of the Premises, Licensee shall strictly comply with the following standards and requirements:

a. Service shall commence no earlier than ___ a.m. and end no later than ___ a.m.

b. Alcohol service on the patio shall be limited to retail sales of alcohol beverages by the drink. No alcohol tastings or private parties with alcohol service shall be permitted on the patio. Alcohol service requires and is subject to appropriate State of Colorado and Town permits and/or licenses. Licensee acknowledges no assurance of any such approval has been made or relied upon.

c. No chairs, tables or any other Licensee improvements, equipment or facilities shall be placed within the sidewalk corridor depicted on Exhibit “A,” which corridor shall remain open at all times for pedestrian passage.
d. No amplified sound, signs, banners, utility connections, or hazardous materials shall be permitted or installed on the Premises.

e. Licensee shall at its sole expense promptly remove from the Premises and any adjacent areas all trash generated by its operation of the patio facilities.

f. Licensee shall avoid any damage or interference with any Town installations, structures, utilities, or improvements on, under, or adjacent to the Premises.

4. **Improvements.** Licensee shall have the right to install on the Premises improvements consisting of decking, fencing, tables, chairs and other necessary facilities as described and depicted in Exhibit "B," collectively, the "Improvements." Licensee shall be responsible at its sole expense for the construction, installation, operation, maintenance, repair and removal of the Improvements. All Improvements installed by the Licensee shall be completed in accordance with plans and specifications approved in advance by the Town. Any changes shall require additional advance approval by the Town. All work shall be completed in compliance with all codes, ordinances, rules and regulations of the Town. Except for the Improvements specifically authorized by the Town on Exhibit "B," Licensee shall not place, build, expand, or add to any structures or other items on the Premises.

5. **General Use and Care of Premises.** Licensee shall take such actions as are necessary to maintain the Improvements and Premises in good and safe condition at all times. Licensee further agrees to comply at all times with the ordinances, resolutions, rules, and regulations of the Town in Licensee’s use and occupancy of the Premises.

6. **No Estate in Premises.** Licensee agrees that it does not have or claim, and shall not at any time in the future have or claim, any ownership interest or estate in the Premises, or any other interest in real property included in the Premises, by virtue of this Agreement or by virtue of Licensee’s occupancy or use of the Premises.

7. **Termination.** The license granted by this Agreement may be suspended or terminated at any time for any reason. Licensee’s consent shall not be required to suspend or terminate the license. To the extent practicable, the Town shall provide written notice at least 45 days in advance of the termination date.

8. **Compliance.** If Licensee fails to comply with its obligations under this Agreement, the Town may, at its sole option, terminate the license or take such measures as it determines necessary to bring the Premises into compliance with the terms of the Agreement. The cost of termination or compliance measures shall be paid by Licensee.

9. **Acknowledgment of General Condition.** Licensee acknowledges that its use and occupancy hereunder is of the Premises in its present, as-is condition with all faults, whether patent or latent, and without warranties or covenants, express or implied. Licensee acknowledges the Town shall have no obligation to repair, replace or improve any portion of the Premises in order to make such Premises suitable for Licensee’s intended uses.
10. **Acknowledgment and Acceptance of Specific Matters.** Licensee specifically acknowledges that the Premises may not currently meet standards under federal, state or local law for Licensee's intended use, including but not limited to accessibility standards under the Americans with Disabilities Act and Uniform Building Code and adopted and in force in the Town. Compliance with such standards, if required for Licensee's use, shall be at the sole cost and expense of Licensee. If Licensee determines that compliance with such standards for Licensee's use is not feasible or economical, then Licensee may terminate this Agreement and the parties shall be released from any further obligations hereunder.

11. **Taxes.** The Premises are presently exempt from any real property taxation. In the event the County Assessor determines that the Premises are subject to the lien of general property taxes due to Licensee's use or occupancy, Licensee shall be responsible for the payment of taxes.

12. **Liens.** Licensee shall be solely responsible for and shall promptly pay for all services, labor or materials furnished to the Premises at the instance of Licensee. The Town may at Licensee's expense discharge any liens or claims arising from the same.

13. **Personal Property.** The Town shall have no responsibility, liability, or obligation with respect to the safety or security of any personal property of Licensee placed or located on, at, or in the Premises, it being acknowledged and understood by Licensee that the safety and security of any such property is the sole responsibility and risk of Licensee.

14. **Right of Entry.**

   a. Notwithstanding any other provisions of this Agreement to the contrary, the Town shall at all times have the right to enter the Premises to inspect, improve, maintain, alter, or utilize the Premises or an adjacent premises.

   b. In the case of an emergency, including but not limited to street repairs, water main breaks, and other utility problems, no notice shall be required, and the Town may suspend or terminate the license and utilize the Premises as long as necessary, in the Town's sole discretion, to adequately respond to such emergency. If such entry requires disturbance of any items placed upon the Premises under this Agreement, the Town shall not be required to repair or replace any such disturbance.

   c. In the case of non-emergency situations, including but not limited to Town special events, the shall provide one week notice of any temporary suspension of the license.

15. **Indemnity and Release.** Licensee shall be solely responsible for any damages suffered by the Town or others as a result of Licensee's use and occupancy of the Premises. Licensee agrees to indemnify and hold harmless the Town, its elected and appointed officers, agents, employees and insurers harmless from and against all liability, claims, damages, losses, and expenses arising out of, resulting from, or in any way connected with Licensee's use and occupancy of the Premises, the conduct of Licensee's operations or activities on the Premises, liens or other claims made, asserted or recorded against the Premises as a result of Licensee's use or occupancy thereof, or the rights and obligations of Licensee under this Agreement, including but not limited to any attorneys' fees, costs, or expert witness fees incurred by the Town in
defense of any claim. Licensee hereby further expressly, releases and discharges the Town, its elected and appointed officers, agents, employees and insurers, from any and all liabilities for any loss, injury, death or damages or any person or property that may be sustained by reason of the use or occupancy of the Premises under this Agreement, excepting only those arising solely from willful and wanton conduct of the Town’s officers or employees.

16. Insurance. Licensee shall at its expense obtain, carry and maintain at all times, and shall require each contractor or subcontractor of Licensee performing work on the Premises to obtain, carry and maintain, a policy of comprehensive general liability insurance insuring the Town and Licensee against any liability arising out of or in connection with Licensee’s use, occupancy or maintenance of the Premises or the condition thereof. Such insurance shall be at all times in an amount of not less than $1,000,000 combined single limit for bodily injury and property damage per occurrence. If Licensee serves liquor on the Premises, Licensee shall also at its expense obtain, carry and maintain at all times host and general liquor liability insurance in the same amount. Such policies shall include coverage for liquor liability and such other endorsements and coverage as the Town may reasonably require. The Town, its elected and appointed officers, agents and employees shall be named as additional insureds on such policies. The policies required above shall be primary insurance, and any insurance carried by the Town shall be excess and not contributory insurance. Such policies shall contain a severability of interests provision. Licensee shall be solely responsible for any deductible losses under each of the policies required above. A certificate of insurance shall be completed by Licensee’s insurance agent(s) as evidence that a policy or policies providing the coverages, conditions, and minimum limits required herein are in full force and effect, and shall be subject to review and approval by the Town prior to commencement of Licensee’s occupancy of the Premises. As between the parties hereto, the limits of such insurance shall not limit the liability of Licensee. No required coverage shall be cancelled, terminated or materially changed until at least 30 days prior written notice has been given to the Town. The Town reserves the right to request and receive a certified copy of any policy and any endorsement thereto. Failure on the part of Licensee to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach hereof upon which the Town may immediately terminate this Agreement.

17. No Waiver of Immunity or Impairment of Other Obligations. The Town does not waive or intend to waive by any provision of this Agreement the monetary limitations (presently $150,000 per person and $600,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. §24-10-101 et seq., as from time to time amended, or otherwise available to the Town, and its officers and employees.

18. Restoration of Premises. At the termination of this Agreement by lapse of time or otherwise, Licensee shall deliver up the Premises in as good a condition as when Licensee took possession, excepting only ordinary wear and tear. At the time of such termination, Licensee at its sole expense shall remove from the Premises all Improvements and other items placed on the Premises. If any such Improvements or items are not removed at the termination of this Agreement, the Town may remove them at Licensee’s sole expense, and Licensee shall reimburse the Town for all costs incurred, including but not limited to staff time and administrative overhead, within 15 days of receipt of a Town invoice for the same.
19. **Notices.** Any notices or communication required or permitted hereunder shall be given in writing and shall be personally delivered, or sent by facsimile transmission or by United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed as follows:

**TOWN:**

Town of Carbondale  
c/o Town Manager  
511 Colorado Avenue  
Carbondale, CO 81601

**LICENSEE:**

or to such other address or the attention of such other person(s) as hereafter designated in writing by the parties. Notices given in the manner described above shall be effective, respectively, upon personal delivery, upon facsimile receipt, or upon mailing.

20. **Existing Rights.** Licensee understands that the license granted hereunder is granted subject to prior agreements and subject to all easements and other interests of record applicable to the Premises. Licensee shall be solely responsible for coordinating its activities hereunder with the holders of such agreements or of such easements or other interests of record, and for obtaining any required permission for such activities from such holders if required by the terms of such agreements or easements or other interests.

21. **No Waiver.** Waiver by the Town of any breach of any term of this Agreement shall not be deemed a waiver of any subsequent breach of the same or any other term or provision thereof.

22. **Successors & Assigns.** This Agreement is personal to the parties hereto. Licensee shall not transfer or assign any rights hereunder without the prior written approval of the Town, which approval shall be at the Town's sole option and discretion. The sale or transfer of Licensee's business shall result in automatic termination of this Agreement.

23. **Entire Agreement; Authority.** This Agreement is the entire agreement between the Town and Licensee and may be amended only by written instrument subsequently executed by the Town and Licensee. The undersigned signatory of Licensee represents that he or she has been duly authorized to execute this Agreement on behalf of Licensee and has full power and authority to bind Licensee to the terms and conditions hereof.

24. **Survival.** All of the terms and conditions of this Agreement concerning release, indemnification, termination, remedies and enforcement shall survive termination of this Agreement.

25. **No Third Party Beneficiaries.** The Parties expressly agree that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties. The Parties expressly intend that any person other than the Parties who receives services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.
5. **IN WITNESS WHEREOF**, the parties have entered into this Agreement on the date first above written.

**TOWN OF CARBONDALE**, a Colorado home rule municipal corporation

By: ____________________________
Title: Town Manager

**ATTEST:**

______________________________
Town Clerk

**LICENSEE:** ____________________

By: ____________________________
Title: __________________________

**ACKNOWLEDGEMENT**

**STATE OF COLORADO**

) ss

**COUNTY OF GARFIELD**

The above and foregoing signature of ____________________________, as ____________________________, was subscribed and sworn to before me this ___ day of ________________, 20__.

Witness my hand and official seal.

My commission expires on: ____________________________

______________________________
Notary Public
Board of Trustees Memorandum

Item No: 3
Attachment: C
Meeting Date: 1-21-2020

TITLE: Marijuana Ordinance Changes and State Statute Update

SUBMITTING DEPARTMENT: Town Clerk and Planning

ATTACHMENTS: Delivery comments from Renee Grossman

BACKGROUND

The Board annually revisits the Town’s marijuana regulations to see if additions, deletions or amendments should be made to the Town’s marijuana ordinances based on staff’s licensing experience in the past year.

Staff is respectfully requesting that the Board make one amendment to Ordinance No. 15, Series of 2016.

Currently the ordinance reads: “the Town Clerk shall deny an application for license renewal if the Town Clerk determines that the application concerns a licensed premises that was non-operational, not open for business, and did not sell marijuana products or services from its license premises during the immediately preceding license year. This subsection (e) shall only apply to applications for license renewal for which the underlying license, duly issued by the Town of Carbondale, stated the requirements of this sub-section (e).

RECOMMENDATION

Staff recommends the Board amend the ordinance (at a future meeting) by striking the last sentence: This subsection (e) shall only apply to applications for license renewal for which the underlying license, duly issued by the Town of Carbondale, stated the requirements of this sub-section (e).

Staff thought it would be informative to list Carbondale’s marijuana establishments and their current status.
<table>
<thead>
<tr>
<th>Retail Stores (No Cap)</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rocky Mountain High (CMED)</td>
<td>Producing</td>
</tr>
<tr>
<td>Dr.’s Garden</td>
<td>Producing</td>
</tr>
<tr>
<td>Tumbleweed Carbondale</td>
<td>Producing</td>
</tr>
<tr>
<td>High Q</td>
<td>Producing</td>
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<table>
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<th>Medical Dispensary (Cap of 5)</th>
<th>Status</th>
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</thead>
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</table>

<table>
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<th>Retail Manufactured Infused Product (MIP) (Cap of 5)</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dr.’s Garden</td>
<td>Producing</td>
</tr>
<tr>
<td>S.P. Manufacturing</td>
<td>Non-producing</td>
</tr>
<tr>
<td>Sopris Verde</td>
<td>Producing</td>
</tr>
<tr>
<td>Laughing Dog</td>
<td>Non-producing</td>
</tr>
<tr>
<td>Sopris Lab</td>
<td>Non-producing</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Medical Manufactured Infused Product (MIP) (Cap of 5)</th>
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<td>S.P. Manufacturing</td>
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<td>Laughing Dog</td>
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<td>Sopris Lab</td>
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<table>
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<td>Dr.’s Garden</td>
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<tr>
<td>Happy Farmer</td>
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<table>
<thead>
<tr>
<th>Medical Cultivation (Cap of 3)</th>
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<tbody>
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<td>P&amp;C Express (CMED)</td>
<td>Non-producing</td>
</tr>
<tr>
<td>Durango Alternatives (CMED)</td>
<td>Non-producing</td>
</tr>
</tbody>
</table>
**State Marijuana Changes**

Last May, the Colorado State Legislature made changes to the Retail and Medical Marijuana Statutes. Several of these changes went into effect on January 2, 2020. Staff does not propose any changes to the current Town regulations and are providing the State changes for informational purposes. The Police Department have not commented on the State changes as of this memo.

Below is a brief summary of the changes:

### Licensed Hospitality Businesses

Local licensing is required. If the municipality does not have a resolution or ordinance allowing the operation of a hospitality business, mobile premises then it is prohibited. The Town currently does not allow this type of establishment.

State law now allows for a hospitality establishment license for the onsite consumption of marijuana. Some of the rules for this type of establishment include that the consumption cannot be visible from outside the establishment, an outdoor consumption area is allowable as long as the consumption area is surrounded by a sight obscuring wall, fence, hedge or other opaque or translucent barrier. The establishment may not serve alcohol nor can alcohol or tobacco to be consumed in the establishment. No one under 21 years of age may enter the establishment and the consumption area is to be monitored to ensure that no one under 21 may enter. Marijuana products to be consumed must be purchased on site if not consumed must be disposed of on site.

A Mobile Premises is also now allowed under a separate license. This type of use also has very specific operational requirements under state statute such as no consumption in the driver or front passenger area of the vehicle. The Vehicle must meet all registration and insurance requirements. No consumption may take place outside of the vehicle. If smoking of Marijuana is to occur then the air/smoke cannot be allowed to reach the driver. The vehicle must have a GPS tracking system.

### Regulated Marijuana Delivery Permits

Local licensing is required. If the municipality does not have a resolution or ordinance allowing delivery then it is prohibited. The Town currently does not allow deliveries. Retail delivery permits go into effect January 2, 2021 at the State level.

Medical Marijuana dispensaries can be licensed to make deliveries to customers. The delivery may be to a private residence or a hotel/motel. Deliveries are not allowed between midnight and 8AM. Multiple deliveries to the same residence in the same business day are not allowed to the same consumer. Medical Marijuana may only be delivered to persons 18 years of age or older and age must be verified.

Specific delivery vehicle requirements include, video surveillance of the storage compartment and forward view of the vehicle. Marijuana may not be visible from outside the vehicle. The vehicle must be GPS tracked while making deliveries and may not have any markings indicating the vehicle is making marijuana deliveries.

Renee Grossman of High Q has submitted comments on this type license and they are attached.
**Vape Regulations**

Vitamin E acetate, polyethylene glycol (PEG) and medium chain triglycerides (MCT oil) are now prohibited as ingredients in marijuana products meant for inhalation.

**Hemp**

Products derived from industrial hemp may now be sold at marijuana dispensaries. Previously any CBD product sold at a marijuana dispensary had to be derived from marijuana.

**RECOMMENDATION**

Staff recommends that the Board review the changes to the State Statues.

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MARIJUANA HOME DELIVERY RULES

In May 2019 the Colorado legislature signed into law, House Bill 19-1234, which allows for home delivery of marijuana and marijuana products. Medical Marijuana Stores are allowed to begin home delivery as of January 1, 2020 and Retail Marijuana Stores are allowed as of January 2, 2021. I would like to summarize the rules governing home delivery and my opinions about the issues facing local municipalities as they look to draft their local ordinances to govern home delivery.

I am very concerned about the state regulations for home delivery and do not believe they adequately protect public safety and the safety of the delivery people and the customers, do not adequately ensure compliance and thus have substantial potential for under-age sales, divergence to the black and gray markets, robberies and violence. Local municipalities should take great care in crafting their regulations for home delivery.

The bill and rules are summarized below.

- Licensed Marijuana Stores that have valid delivery permits may take orders for sales that are to be delivered to customers. There is no requirement that the licensed Marijuana Store be a store that is operating a brick-and-mortar business only that the entity holds a Marijuana Store license.

- Licensed Marijuana Stores and Marijuana Transporters with valid delivery permits may transport the marijuana and marijuana products to the private residences. Hotels are considered private residences and the private residence does not need to be the residence of the customer placing the order.

- Orders for product may be placed on-line or by telephone. Orders may be placed 24 hours a day but deliveries are not allowed between midnight and 8AM. If the order is placed online, the Marijuana Store or Marijuana Transporter must receive verification that there was not another delivery to that person at that private residence the same day.

- A Marijuana Store or Marijuana Transporter must not deliver to a consumer or Private Residence where the Licensee knows or reasonably should know that the consumer or Private Residence has already received a delivery during that same business day. This does not prohibit delivery to more than one consumer at the same time and private residence.

- Licensed Marijuana Stores that take the orders may transfer products from their store, from a store with the same Controlling Beneficial Owners or from the store’s licensed Off-Premise Storage Facility.

- Deliveries may not be made to persons under the age of 21 for retail or 18 for medical. The driver must check the ID but there is no surveillance on the transaction to ensure that the driver checks the ID, that the ID is valid, or that the person accepting the delivery is the same person that placed the order.

- Payment can be made by any legal method of payment, including cash. Local municipalities may further restrict the methods of payment.
• An enclosed delivery vehicle can’t carry more than $10,000 in marijuana and marijuana products at one time; $2,000 for a non-enclosed vehicle.

• The delivery must be made in a vehicle that is owned by the Marijuana Store or Marijuana Transporter. The vehicle must have GPS tracking that is recorded and saved. There may be no external markings on the vehicle, marijuana may not be visible from outside the vehicle and the vehicle must have an alarm system. The marijuana must be in a locked, opaque container affixed to the vehicle.

• The delivery vehicle must have video surveillance that records the storage compartment containing the marijuana and the front view of the vehicle (e.g. dash camera). There is no surveillance on the actual delivery transaction.

• The delivery must be pursuant to a manifest that is tracked in METRC. The manifest must state the name, date of birth and address of the customer and the time and date of the delivery. There are several companies that are creating software to take orders and provide digital manifests.

• The delivery driver must hold a valid employee license and only the licensed person on the manifest may be in the vehicle during the delivery.

• Those with delivery permits must complete Responsible Vendor Training. Training must also include identification of customers, maintaining customer privacy, methods for delivery persons to identify themselves and verify the permits to customers and strategies to de-escalate potentially dangerous situations.

• Prior to the State Licensing Authority issuing an Applicant a delivery permit, the Applicant must establish the Local Licensing Authority and/or Local Jurisdiction where the Applicant is located: a. By ordinance or resolution has permitted delivery of Regulated Marijuana in the jurisdiction, and b. Is currently accepting applications for delivery permits in the jurisdiction, if required.

I am against the bill for many reasons, including:

1. On the surface this Bills seems like it will help those who have limited mobility to access much needed marijuana, however the real intention of those sponsoring the bill is to bypass the brick-and-mortar stores and sell direct from the manufacturers to the consumers. This has the potential to result in an Amazon-type monopoly and put the retailers out of business. And that means many people working in the industry will lose their jobs. The rules allow a person to get a Marijuana Store license and operate as an on-line/telephone order center where they can delivery direct to customers throughout the state from commonly owned off-site storage facilities. This model has a substantial cost advantage over traditional brick-and-mortar stores, which will cause many to close and their employees to lost jobs.

2. It is not consistent with the will of the voters, which stated they wanted marijuana regulated like alcohol. The home delivery proposed in the bill is not the same as the regulations for alcohol home delivery. In alcohol, retail stores may delivery to customers but they may only have 50% or less of their sales delivered.
3. It’s fraught with potential public safety issues.

   a) There’s no video surveillance on the actual transaction. No surveillance on the customer. There is no means to ensure that the delivery driver checked the customer’s ID, that the ID is valid, that the customer is over the age of 21, that the person answering the door is the customer who placed the order, etc. The video surveillance in the Marijuana Stores is what ensures that all customers have valid identification and are over the age of 21 and that the budtenders do in fact check the IDs.

   b) Online sales cannot verify the age of a consumer. What’s to stop children from going online and ordering product. Then the transporter shows up with it, there’s no video surveillance, so they give it to them. Or they use a fake ID, there’s again no one watching. High Schoolers will figure this out very fast and be able to purchase product online.

   c) It’s very unsafe. You will have folks driving out to homes, late at night with marijuana and cash. What’s to stop a customer from pulling out a gun and taking the product and cash from the transporter and god forbid killing them. Or a group of people could loiter outside a “private residence” and order from 5 stores for delivery at the same time and ambush the drivers and rob them. Video surveillance in stores is what keeps everyone safe.

   d) The technology companies developing online ordering platforms with virtual manifests rely on mobile phone service, which is often not available in rural Colorado. That means there’s no GPS tracking and no manifest working, which has the potential to lead to diversion to the black market.

**Things to consider:**

1. Only allow Marijuana Stores that are licensed in your municipality and operate brick-and-mortar stores in your municipality to deliver within your municipality. This will keep the front range operators from taking over and will provide protections for your local workers.

2. Work on regulations with unincorporated county because drivers may not know what is county and what is town.

3. Shorten the hours allowed for order taking and deliveries.

4. Require additional video surveillance or some technology to ensure the ID is checked, valid and the person is of age to purchase marijuana.

5. Lower the dollar amount of product that may be in any vehicle at one time.

6. Don’t allow cash transactions.