

ORDINANCE NO. 1044

AN ORDINANCE REPEALING AND RE-ENACTING CHAPTER 11.28 OF THE GOLDEN REVISED ORDINANCES OF 1965 AND GRANTING A FRANCHISE BY THE CITY OF GOLDEN TO PUBLIC SERVICE COMPANY OF COLORADO, ITS SUCCESSORS AND ASSIGNS, FOR THE RIGHT TO FURNISH, SELL AND DISTRIBUTE GAS AND ELECTRICITY TO THE CITY AND TO ALL PERSONS, BUSINESSES, AND INDUSTRY WITHIN THE CITY AND THE RIGHT TO ACQUIRE, CONSTRUCT, INSTALL, LOCATE, MAINTAIN, OPERATE AND EXTEND INTO, WITHIN AND THROUGH SAID CITY ALL FACILITIES REASONABLY NECESSARY TO FURNISH, SELL AND DISTRIBUTE GAS AND ELECTRICITY WITHIN THE CITY AND THE RIGHT TO MAKE REASONABLE USE OF ALL STREETS AND OTHER PUBLIC PLACES AS HEREIN DEFINED AS MAY BE NECESSARY; AND FIXING THE TERMS AND CONDITIONS THEREOF

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GOLDEN, COLORADO:

Section 1. The Golden Revised Ordinances of 1965 are hereby amended by the repeal of Chapter 11.28 and the re-enactment of Chapter 11.28, as follows:

CHAPTER 11.28

Gas and Electric Franchise

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 - b. Company Approval
- 11.28.180 EFFECTIVE DATE OF ORDINANCE
 - a. Effective Date of Ordinance

11.28.010 Definitions. For the purpose of this franchise, the following words and phrases shall have the meaning given in this article. When not inconsistent with the context, words used in the present tense include the future tense words in the plural number include the singular number, and words in the singular

number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined in this article shall be given their common and ordinary meaning.

a. "City" refers to and is the municipal corporation designated as the City of Golden, located in the County of Jefferson, State of Colorado, and includes the territory as currently is or may in the future be included within the boundaries of the City of Golden.

b. "Company" refers to and is Public Service Company of Colorado, and its successors and assigns, but does not include its affiliates, subsidiaries or any other entity in which it has an ownership interest.

c. "Council" or "City Council" refers to and is the legislative body of the City of Golden.

d. "Distribution Facilities" refers to and is only that portion of the Company's electric system which delivers electric energy from the substation breakers to the point of delivery of the customer, including all devices connected to that system, as well as that portion of the Company's gas system which delivers gas from the downside of the regulator station to the point of delivery of the customer, including all devices connected to that system.

e. "Facilities" refer to and are all facilities reasonably necessary to provide gas and electricity into, within and through the City and include plants, works, systems, substations, transmission and distribution structures, lines, equipment, pipes, mains, conduit, transformers, underground lines, gas compressors, meters, wires, cables and poles.

f. "Gas" or "Natural Gas" refers to and is such gaseous fuels as natural, artificial, synthetic, liquefied natural, liquefied petroleum, manufactured, or any mixture thereof.

g. "Public Utilities Commission" refers to and is the Public Utilities Commission of the State of Colorado or other authority succeeding to the regulatory powers of the Public Utilities Commission of the State of Colorado.

h. "Residents" refers to and includes all persons, businesses, industry, governmental agencies, and any other entity whatsoever, presently located or to be hereinafter located, in whole or in part, within the territorial boundaries of the City of Golden.

i. "Revenues" refer to and are those amounts of money which the Company receives from its customers within the City for use of its facilities including the sale of gas and electricity under rates, temporary or permanent, authorized by the Public Utilities Commission of the State of Colorado and represents amounts billed under such rates as adjusted for refunds, the net write-off of uncollectible accounts, corrections or other regulatory adjustments.

j. "Streets and Other Public Places" refer to and are streets, alleys, viaducts, bridges, roads, lanes, and public and dedicated easements in said City.

k. "Public Easements" refer to and are public and dedicated easements created and available for use by investor-owned, or other public utilities for their facilities.

11.28.020 Grant of Franchise.

a. Grant of Franchise. The City of Golden hereby grants to Public Service Company, for the period specified in and subject to the conditions, terms and provisions contained in this franchise, a non-exclusive right to furnish, sell and distribute gas and electricity to the City and to all residents of the City. Subject to the conditions terms and provisions contained in this franchise, the City also hereby grants to the Company a non-exclusive right to acquire, construct, install, locate, maintain, operate and extend into, within and through the City all facilities reasonably necessary to furnish, sell and distribute gas and electricity within the City and a non-exclusive right to make reasonable use of the public streets, public easements and other public places as may be necessary to carry out the terms of this franchise. These rights shall extend to all areas of the City as it is now constituted, and to additional areas as the City may increase in size by annexation or otherwise.

b. Street Lighting Service. The rights granted in this franchise encompass the non-exclusive right duty, and franchise to provide street lighting service to the City and the provisions of this franchise apply with full and equal force to the street lighting service provided by the Company. Wherever reference is made to the sale of electricity or to the provision of electric service in this franchise, these references shall be deemed to include the provision of street lighting service. Wherever reference is made to Company facilities, equipment, system, or plant in this franchise, this reference shall be deemed to include Company-owned street light facilities, equipment, system, and plant.

c. Term of Franchise. This franchise shall take effect on July 1, 1988, provided it has been approved by majority vote of the registered electors and provided further that the Company has filed with the City Clerk a written acceptance of the terms in a form approved by the City Attorney. If the franchise is not so approved nor so accepted by the Company it shall be null and void. The term of this franchise shall be for 20 years, beginning said effective date of this franchise and expiring on June 30, 2008.

11.28.030 Franchise Fee.

a. Franchise Fee. In consideration for the grant of this franchise, the Company shall pay the City a sum equal to three percent (3%) of all revenues received from the sale of gas and electricity within the City and from revenues accruing to the Company from the joint use of Company's facilities within the City of Golden; provided, however, revenues received from joint use of Company's facilities shall be paid only if said 3% of such revenues received by the Company is greater than the amount of \$500 per year.

b. Payment Schedule. For the franchise fee owed on revenues received after the effective date of this franchise, payment shall be made in monthly installments not more than thirty days following the close of the month for which payment is to be made; provided, however, payment for the franchise fee revenues received from joint use of Company's facilities shall be made within 45 days of the close of each calendar year. Initial and final payments shall be prorated for the portions of the months at the beginning and end of the term of this ordinance. All payments shall be made to the City Director of Finance. The City Manager, or his authorized representatives, shall have access to the books of the Company for the purpose of auditing or checking to insure that the franchise fee has been correctly computed and paid.

In the event an error by the Company results in an overpayment of the Franchise Fee to the City and said overpayment is in excess of \$5,000, credit for the overpayment shall be spread over the payment schedule for the same period it took to discover the error. If the overpayment is \$5,000 or less, credit shall be taken against the next payment.

c. Change of Franchise Fee and Other Franchise Terms. Once during each calendar year of the franchise term the City Council, upon giving 30 days notice to the Company of its intention so to do, may review and change the franchise fee paid by the Company under this ordinance or other significant financial benefit the City may be entitled to receive as a part

of the franchise. The Council may change the franchise fee payments, or change any other significant financial term hereof, to cause the City to receive a franchise fee, or other significant financial benefit, under this franchise equivalent to the franchise fee or other significant financial benefit that the Company may pay, or obligate itself for, to any other city, city and county, or town in any other franchise under which the Company renders gas and/or electric service in Colorado.

The Company shall report to the City within 60 days of execution of a franchise or of any change in a franchise in other municipalities that could have a significant financial impact on the consideration to be paid by the Company to the City hereunder. If the City Council decides the franchise fee or other significant financial term shall be so changed, it shall provide for such change by ordinance; provided, however, that any changed franchise fee is then allowed to be surcharged by the Company and such changed franchise fee is not higher than the highest franchise fee paid by the Company to any municipality within the State of Colorado.

d. Franchise Fee Payment in Lieu of Other Fees. Payment of the franchise fee by the Company is accepted by the city in lieu of any occupancy tax, license tax, permit charge, inspection fee, or similar tax on the privilege of doing business or in connection with the physical operation thereof, but does not exempt the Company from any lawful taxation upon its property or any other tax not related to the franchise or the physical operation thereof and does not exempt the Company from payment of head taxes, sales or use taxes, or other fees or taxes assessed generally upon businesses.

e. Contract Obligation. This franchise ordinance constitutes a valid and binding contract between the Company and the City. In the event that the franchise fee specified in this ordinance is declared illegal, unconstitutional or void for any reason by any court or other proper authority, the Company shall be contractually bound to pay an occupation tax to the City that would be, as near as practicable, equivalent to the amount which would have been paid by the Company as a franchise fee hereunder.

11.28.040 Supply, Construction and Design.

a. Supply of Electricity. The Company shall at all times take all reasonable and necessary steps to assure an adequate supply of electricity to its customers at the lowest reasonable cost consistent with long term reliable supplies. Should electric power or energy be made available to the Company, from whatever source, including any agency or instrumentality of the United States of America, at less total cost than the total

cost which would be incurred by the Company to supply such power from its own systems and under circumstances which will not adversely affect the Company or its operations, the Company will attempt to purchase such lower cost power or energy and to pass on to its customers any savings resulting from the purchase. If the supply of electricity to its customers should be interrupted, the Company shall take all necessary and reasonable actions to restore such supply within the shortest practicable time.

b. City Review of Construction and Design.

(1) Except in emergency circumstances, prior to construction of any significant gas facilities above ground or, for electrical energy, any transmission lines or generating plant, building, substation, or similar structure within the City, the Company shall furnish to the City the plans for such facilities. In addition, upon request following reasonable prior notice by the Company, the Company shall assess and report on the impact of its proposed construction on the City environment. Such plans and reports may be reviewed by the City to ensure, inter alia, (1) that all applicable laws including building and zoning codes and air and water pollution regulations are complied with, (2) that aesthetic and good planning principles have been given due consideration, and (3) that adverse impact on the environment has been minimized. The Company shall comply with all regulatory requirements of the City and shall incorporate all other reasonable changes requested by the City.

(2) The Company shall maintain a copy of "as built" maps delineating all gas and electrical facilities within the City. Copies of the same shall be made available to the City upon request.

c. Excavation and Construction. All construction, excavation, maintenance and repair work done by the Company shall be done in a timely and expeditious manner which minimizes the inconvenience to the public and individuals. All such construction, excavation, maintenance and repair work done by the Company shall comply with all applicable codes of the City. All public and private property whose use conforms to restrictions in public easements disturbed by Company construction or excavation activities shall be restored by the Company at its expense to substantially its former condition subject to inspection by the City Director of Public Works and compliance by the Company with reasonable remedial action required by the said Director pursuant to said inspection. The Company shall comply with the City's requests for reasonable and prompt action to remedy all damage to private property adjacent to streets or public easements where the Company is performing excavation or construction work.

d. Installation and Maintenance of Company Facilities.

The installation, maintenance, renovation and replacement of any facilities by the Company shall be subject to inspection and approval of location by the City's Director of Public Works. Such regulation shall include, but not be limited to, the following matters: location of facilities in the streets, alleys and public easements; cutting and trimming of trees and shrubs; disturbance of pavement, sidewalks and surfaces of streets, alleys, public easements and driveways. All Company facilities shall be installed in public easements so as to cause a minimal amount of interference with such property. Location of all lamps and overhead wires shall be subject to the inspection and approval by the City Director of Public Works. Company facilities shall not interfere with City water mains, sewer mains or any other municipal use of City streets and rights-of-way. The Company shall erect and maintain its facilities in such a way so as to minimize interference with trees and other natural features. The Company shall keep in good working order all facilities constructed, erected or used within the City. The Company and all sub-contractors shall comply with all local regulations and ordinances.

e. Obligations Regarding Company Facilities.

The Company shall install, repair, renovate and replace its facilities with due diligence in a good and workmanlike manner and the Company's facilities will be of sufficient quality and durability to provide adequate and efficient gas and electric service to the City and its residents.

f. Compliance with City Requirements.

The Company will comply with all City requirements regarding curb cuts, excavating, digging and related construction activities. The Company shall submit, in advance, reports of annual and long-term planning for capital improvement projects with descriptions of required street cuts, excavation, digging and related construction activities. Except for emergencies, the City will require that all installations be coordinated with the City's street improvement programs. The City Director of Public Works shall be the city agent for inspection and for compliance with City ordinances and regulations on any such projects.

g. Continued Compliance with Air and Water Pollution

Laws. The Company shall continue to use its best efforts to take measures which will result in its facilities meeting the standards required by applicable Federal and State air and water pollution laws. Upon the City's request, the Company will provide the City with a status report of such measures.

h. Relocation of Company Facilities. If at any time the City requests the Company to relocate any facility installed or maintained in streets, alleys, public rights-of-way or public easements, pursuant to this franchise or previous franchise, in order to permit the City to make any public use of rights-of-way, easements or streets, to construct any public improvement, or to build any public project, or for any municipal purpose in which the City has a financial or ownership interest, such relocation shall be made by the Company at its expense. Such relocation shall be completed within a reasonable time from the date when the City makes its request; provided, however, the Company shall be granted an extension of time of completion equivalent to any delay caused by conditions not under its control and provided further that the Company proceed with due diligence at all times. Following relocation, all property shall be restored to substantially its former condition by the Company at its expense. Nothing herein contained shall be construed to impose any obligation upon the City to make any payment for any relocation of Company's facilities whether located within, or without, said designated areas. Relocated underground facilities shall be underground. Relocated aboveground facilities shall be above ground unless the City either agrees to pay the additional cost of moving them underground or requests that such additional costs be paid out of available funds under Section 11.28.080(b).

i. Technological Improvements. The Company shall generally introduce and install, as soon as practicable, gas and electrical energy technological advances in its equipment and service within the City when such advances are technically and economically feasible and are safe and beneficial to the City and its residents. Upon request by the City, the Company shall review and promptly report advances which have occurred in the gas or electric utility industry that have been incorporated into the Company's operations in the City in the previous year or will be so incorporated in the six months following the City's request. The Company shall report in advance to the City any plans to include technological advances relating to communications systems such as fiber optics which may utilize electric facilities already in place for the transmission of communication signals, which facilities may be installed by the Company for its use, the use of the City, or for use of others as the Company may license. The City may use said facilities for its own use without cost, except such additional expense which may be incurred by the Company as a result of the City's use. The City shall not use said facilities for commercial purposes unless it reaches prior agreement with the Company regarding consideration for the use of said facilities. In no event shall the City's use impair the Company's ability to use its own facilities. Upon request of the City, the Company will provide a detailed report for the use of such communications systems

subject to protecting confidential information. Nothing contained herein shall be construed to authorize the Company to engage in communications activities for sale or lease, nor shall this ordinance be construed as a franchise for said telecommunications activities within the City of Golden.

j. Service to New Areas. If, during the term of this franchise the boundaries of the City are expanded, the Company shall extend service to residents of the newly incorporated areas in accordance with the Company extension policy at the earliest practicable time. Service to annexed areas shall be in accordance with the terms of this franchise agreement, including payment of franchise fees.

k. City Not Required to Advance Funds. Upon receipt of the City's authorization for billing and construction, the Company shall extend its facilities to provide gas and electric service to the City for municipal uses within the City limits or for any major municipal facility outside the City limits, and within the Company certificated service area, without requiring the City to advance funds prior to construction.

l. Non-Interference with Public Works. The Company's facilities shall not interfere with the City's water mains, sewer mains or other municipal use of streets and rights-of-way. All such facilities shall be installed on both City and private property so as to cause a minimal amount of interference with same.

m. City Regulation. The City expressly reserves, and the Company expressly recognizes, the City's right and duty to adopt, from time to time, in addition to the provisions herein contained, such charter provisions, ordinances and rules and regulations as may by the City be deemed necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties.

n. Compliance with PUC Regulations. The Company shall assure that the gas and electrical energy it distributes meets with the standards promulgated by the Colorado Public Utilities Commission and the Company shall keep on file with the City copies of P.U.C. Rules Regulating the Service of Gas and Electric Utilities, and tariff provisions of the Company setting standards, as the same may be amended from time to time, and the City shall have access to all records of the Company monitoring compliance with such standards. Prior to final adoption by the City of this franchise ordinance the Company shall file with the PUC such amendments to its tariffs as may be necessary to make

its tariff provisions compatible with the provisions of this ordinance, and shall report to the City any changes that have been made for this purpose.

o. Restoration of Service. In the event the Company's electric or gas system, or any part thereof, is partially or wholly destroyed or incapacitated, the Company shall use due diligence to restore its system to satisfactory service within the shortest practicable time.

p. Inspection, Audit and Quality Control. The City shall have the right to inspect at all reasonable times any portion of the Company's system used to serve the City and its residents. The City shall also have the right to inspect and conduct an audit of this ordinance at all reasonable times. The Company agrees to cooperate fully with the City in conducting the inspection and/or audit and to correct any discrepancy affecting the City's interest in a prompt and efficient manner.

11.28.050 Reports to City.

a. Reports of Company Operations. The Company shall submit reasonable financial and necessary reports containing or based on information from the Company's books and records as the City may from time to time request with respect to the operations of the Company under this franchise, provided that such information can be provided at reasonable cost. Such reports may be changed from time to time as may be mutually agreeable between the City and the Company. Initially the city requests the following reports:

(1) On an annual basis the return earned by the Company on operations and the rate base used for calculation of such return as is currently provided or as may in the future be provided to the Public Utilities Commission in conjunction with various adjustment clause provisions.

(2) On an annual basis a list of all real property and leasehold interests in real property owned by the Company in Golden, excepting public and other easements.

(3) On an annual basis short term (less than three years) and long range (over three years) plans for all capital improvements, construction and excavation within the City or affecting service to the City and its residents.

b. Copies of Tariffs, All PUC Filings. The Company shall file with the City all tariffs, rules, regulations and policies approved by the Colorado Public Utilities Commission ("PUC") relating to service by the Company to the City and its

residents. Upon request by the City, the Company shall provide the City with copies of filings affecting said service which it makes with the Colorado PUC.

c. Bills. On request by the City, the Company shall provide a list of account numbers and items metered and shall specify the type of account for which charges are made, i.e., gas service, street lighting, traffic signal, general office, spot lighting, etc., and the Company shall provide the City every two years with a complete listing of all the City's accounts.

11.28.060 City Use of Company Facilities.

a. City Use. The City shall have the right to use, for the purpose of stringing wires, all poles and suitable overhead structures constructed by the Company within the City, provided such use does not unreasonably interfere with the use of such facilities by the Company or create an unreasonable hazard and, provided further, there is space available on said facilities. The Company shall not be responsible for any modifications to the system or for payment of any costs necessitated by such use. Such use by the City shall not include the distribution or transmission of electricity to residents of the City.

b. Underground Conduit. In addition to the rights given the City in 11.28.060(a), in the event the Company installs new electrical conduits or opens a trench or replaces existing said conduits or cable, the Company shall provide adequate advance notice to permit additional installation by the City of similar conduit and pull-wire. If the City wants additional similar conduit and pull-wire installed, it will so notify the Company and in a timely manner provide similar conduit and pull-wire at its expense to the Company which will install it without further cost to the City. The City and the Company shall cooperate to minimize installation costs of underground conduit and cable and to minimize cutting the streets.

c. Use of Company Facilities. The Company will offer to grant to the City use of transmission right-of-way which it now, or in the future, owns or has an interest in within the City for the purposes set forth in and pursuant to the provisions of the Park and Open Space Act of 1984, provided that the Company shall not be required to make such an offer in any circumstance where such offer would interfere with the Company's use of the transmission right-of-way. If the Company's offer is accepted by the City, then any improvements deemed appropriate by the City and consistent with the purpose of the Park and Open Space Act of 1984 shall be made by the City at its expense.

d. Joint Use. The Company shall permit use of Company facilities so long as such grantees are not in competition with the Company and so long as such grantees obtain the permission of the City and pay to the City its appropriate fees, if any; provided such joint use does not unreasonably interfere with the Company's use of these facilities, and provided also that said use: (i) Does not create a safety hazard; and (ii) That the Company shall assume no liability nor shall it be put to any additional expense in connection therewith.

e. Right of First Purchase. In the event the Company at any time during the term of this franchise proposes to sell or dispose of any of its real property located within the City, it shall grant to the City the right of first purchase of same. The Company shall obtain a qualified appraisal on any such property and the City shall have sixty days in which to exercise the right of first purchase by giving written notice to the Company. Should the City not provide the required written notice, the Company may proceed to negotiate with others for the sale of such property provided that the Company may not sell such property for an amount less than 90 percent of the appraised value without first providing the City an opportunity to purchase such property at such lesser price, in which event the City must notify the Company in writing within 30 days if it wishes to purchase such property. It is understood that nothing in this paragraph shall preclude the Company from transferring real property to a subsidiary or affiliate without first according the City the rights referred to above, provided that if the transferee proposes to sell or dispose of such property within one year, it shall not do so without first affording the City the rights referred to above.

11.28.070 Indemnification of the City.

a. City Held Harmless. The Company shall construct, maintain and operate its plant, equipment, pipelines, poles, wires, mains, pipes, structures and other facilities in a manner which provides reasonable protection against injury or damage to persons or property; provided, however, said obligation of the Company hereunder shall not increase or decrease its liability on third party claims; and provided further that the Company's obligation to the City hereunder shall not be diminished by said exception. The Company shall save the City harmless and indemnify the City from and against all liability or damage and all claims or demands whatsoever in nature, and reimburse the City for all its reasonable expenses, arising out of the operations of the Company within the City and the securing of and the exercise by the Company of the franchise rights granted in this ordinance including any third party claims, administrative hearings and litigation. None of the City expenses reimbursed by

the Company under this section shall be surcharged. In the event the City institutes litigation against the Company for a breach of this ordinance or for an interpretation of the ordinance, and the City is the prevailing party, the Company shall reimburse the City for all costs related thereto, including reasonable attorneys' fees. Notwithstanding any provision hereof to the contrary, the Company shall not be obligated to indemnify, defend or hold the City harmless to the extent any claim, demand or lien arises out of or in connection with any negligent act or failure to act of the City or any of its officers or employees.

b. Notice to Company. Within 60 days after receipt of the same by the City Attorney the City will provide notice to the Company of the pendency of any claim or action against the City arising out of the exercise by the Company of its franchise rights. The Company will be permitted, at its own expense, to appear and defend or to assist in defense of such claim.

c. Financial Responsibility. At the time of the execution of this ordinance, and from time to time at the City's request, not more frequently than annually, the Company shall submit to the City Attorney as a confidential document, proof of its ability to meet its obligations under this ordinance, including its ability to indemnify the City as required by this section. This proof may take the form of insurance coverage, adequate funding of self-insurance, or the provision of a bond. The Company shall supply the City with a list of its insurance companies with the types of coverage, but not levels of insurance. Said list shall be kept current by annual revisions as of January 1 during the term of the franchise. The City may require, from time to time, and the Company agrees to provide, additional reasonable funding of the Company's indemnification obligations as a self insured, if Company is acting as a self-insurer.

d. Payment of Expenses Incurred by City in Relation to Franchise. The Company shall pay in advance or reimburse the City for the election expenses and for expenses incurred in publication of notices and ordinances, and for photocopying of documents arising from the franchising process. The expenses reimbursed by the Company under this section shall not be surcharged against Golden rate payers. The Company shall reimburse the City therefor on acceptance of this franchise. Nothing contained in this section shall limit the Company indemnification obligation to the City under Section 11.28.070(a).

e. Breach of Contract. In the event the Company fails to fulfill a substantial obligation under this ordinance, the city will have a breach of contract claim against the Company, in addition to any other remedy provided by law.

11.28.080 Underground Construction and Overhead Conversion.

a. Underground Electrical Distribution Lines in New Areas. The Company will place newly constructed electrical distribution lines to serve new subdivisions underground. These electric distribution lines will be placed underground in accordance with the Company's tariffs and other City regulations. These facilities shall be placed within the rear lot and/or side lot easements. If at the Company's option these facilities are placed in the front lot easement, they will be installed below ground or will be screened to the City's satisfaction.

b. Overhead Conversion at Expense of Company. There is hereby created an overhead conversion fund. The Company agrees to allocate an annual amount, equivalent to one percent (1%) of the preceding calendar year's electric revenues derived from customers within the City for the purpose of undergrounding its existing overhead distribution facilities in the City, at the expense of the Company, in connection with the public projects to be undertaken by the City. Public projects shall be those public improvement programs of 750 feet or one block in length, whichever is less, undertaken where the replacement of the Company's existing overhead distribution lines (including feeder lines) with underground distribution facilities is determined by the City to be in the general public interest.

Any unexpended portion of the one percent (1%) of electric revenue may be carried over to succeeding years and, in addition, upon request by the City, the Company agrees to anticipate amounts to be available for up to 3 years in advance to be used to underground its overhead distribution facilities in such public projects mutually agreeable with the City. Any amounts so advanced shall be credited against amounts to be expended in succeeding years until such advance is eliminated.

Except in cases of emergency the City and Company shall mutually plan in advance the projects which shall be so financed. Company shall not unreasonably withhold approval of plans of the City.

Funds to be expended pursuant to this section 11.28.080(b) shall not be used in any project or situation for which and to such extent there are funds otherwise available to the City but shall be used instead in projects and situations for

which no federal or state funds are available; provided, however, there shall be no limitation on the use of funds for "matching" purposes with state or federal monies.

If, during the term of this franchise, the Company should receive the authority of the Public Utilities Commission to undertake a system-wide program or programs of undergrounding its electric distribution facilities, the Company will budget and allocate to the program of undergrounding in the City such amount as may be determined and approved by the Public Utilities Commission, but in no case shall such amount be less than one percent (1%) of annual electric revenues as hereinabove provided.

c. Review of Undergrounding Program. Representatives of both the City and the Company shall meet periodically to review the Company's undergrounding program. This review shall include:

(1) Undergrounding programs, including conversions, public projects and replacements, which have been accomplished or are underway by the Company, together with the Company's plans for additional undergrounding.

(2) The status of technology in the field of electric undergrounding.

(3) Construction and operation and maintenance costs of underground lines versus overhead lines.

(4) Public projects anticipated by the City.

Such meetings shall be held to achieve a continuing program for the orderly undergrounding of electrical lines in the City.

d. Cooperation with Other Utilities. The City and Company shall, when undertaking a project of undergrounding, work with other utilities or companies which have their lines overhead to have all lines undergrounded as part of the same project. When other utilities or companies are placing their lines underground, the Company shall cooperate with these utilities and companies and undertake to underground Company facilities as part of the same project where feasible; provided, however, the Company shall not be required to pay the costs of any other utility.

11.28.090 Transfer of Franchise.

a. Consent of City Required. The Company shall not sell or transfer or assign any rights under this franchise to another, by stock exchange or otherwise excepting only corporate reorganization of the Company not involving a third party, unless the City shall approve in writing such sale, transfer or assignment. Approval of the sale, transfer, or assignment shall not be unreasonably withheld. The charging or collection of a transfer fee is conclusively deemed reasonable. No transfer or assignment shall be effective until the transferee has filed in the office of the City Clerk an instrument duly executed reciting the fact of such transfer, accepting the terms of this franchise, and agreeing to perform all conditions thereof.

b. Transfer Fee. In order that the City may share in the value this franchise adds to the Company's operation, any such transfer or assignment of rights under this franchise by the Company shall be subject to the conditions that the transferee shall promptly pay to Golden a prorata share of one million dollars, which pro rata amount of one million dollars shall be calculated by multiplying one million dollars times a fraction of which the then population of Golden is the numerator and the then population of the City and County of Denver is the denominator. Such transfer fee shall not be recovered from the City or from the City residents or property owners through electric or gas rates of consumers in Golden or surcharge by the transferee or the Company.

11.28.100 Transportation of Gas. The Company shall transport natural gas purchased by the City for use in City facilities pursuant to separate contracts with the City.

No charges to the City by the Company for any service to transport gas shall exceed the lowest charge for similar or identical service for transportation of gas provided by the Company to any other similarly situated customer or consumer of the Company.

11.28.110 Purchase or Condemnation.

a. City's Right to Purchase or Condemn. The right of the City to construct, purchase or condemn any public utility works or ways, and the rights of the Company in connection therewith, as provided by the Colorado constitution and statutes, is hereby expressly reserved.

b. Negotiated Purchase Price or Condemnation Award. Upon the exercise of the City's option to purchase, the parties shall negotiate in good faith to determine a mutually acceptable

purchase price. No value shall be given to the franchise or to rights-of-way. If the City and Company cannot reach agreement as to the purchase price or acceptable payments terms within 90 days after commencement of negotiation the City may commence condemnation proceedings, and each party shall have the rights provided by law relating to condemnation; provided, however, no award shall be made for the value of the franchise or right-of-way.

c. Continued Cooperation by Company. In the event the City exercises its option to purchase or condemn, the Company agrees that it will continue to supply any service it supplies under this ordinance, in whole or in part, at the City's request, for the duration for the term of this ordinance. The Company's facilities shall be available for continued service until nine months after final order is entered into a condemnation proceeding or the effective date of a purchase agreement between the parties; provided, however, said obligation to maintain the facilities shall not exceed a 24 month period after the termination for the franchise. The Company shall continue to provide service pursuant to the terms of this ordinance for said 24 months until the City has either purchased or condemned the Company's facilities or alternative arrangements have been made to supply gas or electric power to the City and its residents, whichever date shall earlier occur. The City shall not pay for any services no longer required. The Company shall cooperate with the City by making available then existing pertinent Company records which are not privileged to enable the City to evaluate the feasibility of acquisition by the City of Company facilities. The Company shall not be obligated to conduct studies or accrued data without reimbursement by the City, but will make such studies if reimbursed its costs for same. The Company shall take no action which could inhibit the City's ability to effectively or efficiently use the acquired systems. At the City's request, the Company shall supply gas and electric power for use by the City in the City owned system.

11.28.120 Removal of Company Facilities at End of Franchise. If at the time of termination of the franchise granted under this ordinance no renewal has been negotiated between the City and the Company, the Company shall not be required to remove its distribution facilities immediately from the streets, public ways and public easements. At the City's request and within a reasonable time not to exceed 9 months, the Company shall remove at the Company's expense from the public streets, public ways and public easements all overhead distribution facilities belonging to the Company which are not purchased by the City at the termination of the franchise. Further, the Company, at the request of the City, shall remove at the Company's expense all underground distribution facilities

which are not purchased by the City within nine months after the receipt by the Company of a written notice from the Director of Public Works that said underground distribution facilities constitute a hazardous condition or interfere with a municipal use of the subsurface of said streets, public ways and public easements. All public property shall be restored by the Company to substantially its former condition after said removal. The Company need not remove any property from said public streets, ways and public easements which it shall continue to use and maintain pursuant to contractual arrangements with the City.

11.28.130 Small Power Production and Cogeneration.

a. Company to Purchase. The City expressly reserves the right to engage in the production of electricity. The Company agrees to purchase City generated power pursuant to separate contracts negotiated with the City. Payment for generated power and energy actually purchased shall be guaranteed over the term of the purchase contract.

11.28.140 Forfeiture.

a. Forfeiture. If the Company fails to perform any of the terms and conditions of this franchise and such failure is within the Company's control, the City, acting by and through its Council, may determine, after hearing, that such failure is of a substantial nature. Upon receiving notice of such determination, the Company shall have a reasonable time in which to remedy the violations. If during said reasonable time corrective actions have not been successfully taken, the City, acting by and through its Council, shall determine whether any or all rights and privileges granted the Company under this ordinance shall be forfeited.

b. Judicial Review. Any such declaration of forfeiture shall be subject to judicial review as provided by law.

c. Other Legal Remedies. Nothing herein contained shall limit or restrict any legal rights that the City or the Company may possess arising from any such alleged violations.

d. Continued Obligations. Upon forfeiture, the Company shall continue to provide service to the City and its residents until the City makes alternative arrangements for such service. If the Company fails to provide continued service, it shall be liable for all damages as provided by law.

11.28.150 Amendment to Franchise. At any time during the term of this franchise, the City, through its City Council, or the Company may propose amendments to this franchise by giving 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 on mutually satisfactory amendment(s). The word "amendment" as used in this section does not include a change in franchise fee or other franchise term authorized in Section 11.28.030(c).

11.28.160 Miscellaneous.

a. Successors and Assigns. The rights, privileges, franchise and obligations granted and contained in this ordinance shall inure to the benefit of and be binding upon Public Service Company, its successors and assigns. Whenever in this ordinance the word "Company" is used, it shall be deemed to refer and apply to Public Service Company, its successors and assigns.

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

For the City of Golden: Glenn E. Hill, City Manager
City of Golden
911 Tenth Street
Golden, CO 80401

For the Company: Lawrence F. Petrini, Manager
North Metropolitan Region
5460 W. 60th Avenue
Arvada, CO 80003

c. Severability. Should any one or more provisions of this franchise be determined to be illegal or unenforceable, all other provisions nevertheless shall remain effective; provided, however, the parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft a term that will achieve the original intent of the parties hereunder.

d. Entire Agreement. This franchise constitutes the entire agreement of the parties. There have been no representations made other than those contained in this franchise.

e. Third Parties. Nothing contained in this franchise shall be construed to provide rights to third parties.

11.28.170 Effective Date and Approval.

a. Voter Approval. This grant of franchise shall become effective the 1st day of July, 1988 upon the majority vote in favor thereof by the registered electors of the City voting thereon at a special municipal election to be held on Tuesday, the 14th day of June, 1988.

b. Company Approval. The Company shall file with the City Clerk its written approval of this franchise and of all of its terms and provisions at least ten days prior to the special municipal election. The Company shall file with the City Clerk its written ratification thereof within ten days after the approval of this franchise by the qualified electors of the City at said special municipal election. The acceptance and ratification shall be in form and content approved by the City Attorney. If the Company shall fail to timely file its written acceptance or ratification as herein provided, this franchise shall be and become null and void.

Section 2. Any ordinances or portions of ordinances in conflict herewith are hereby repealed.

Introduced, read and ordered published this 14th day of April, 1988.

Adopted, approved and ordered published this 12th day of May, 1988.

Marvin L. Kay
Mayor

ATTEST:

Sharon L. Bennetts
City Clerk

Approved as to form:

Russell J. Sindt
City Attorney

I, Sharon L. Bennetts, City Clerk of the City of Golden, Colorado, do hereby certify that the foregoing ordinance was introduced on first reading and read at a regular meeting of the City Council of said city, held on the 14th day of April, 1988 and was published as a proposed ordinance in the Golden Transcript, legal newspaper, as the law directs seven days or more prior to its passage. A public hearing was held and on the 12th day of May, 1988, the said proposed ordinance was read on second reading and passed by the City Council and ordered published in the aforesaid newspaper as the law directs.

Witness my hand and official seal of the City of Golden, Colorado, this 13th day of May, 1988.

(SEAL)

Attest: _____
Sharon L. Bennetts, City Clerk
of the City of Golden, Colorado