

## **CHAPTER 5 Franchises and Communication Systems**

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### **ARTICLE 1 Electric Franchise**

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#### **Division 1 General Provisions**

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#### **Sec. 5-1-10. Definitions.**

For the purpose of this Article, the following words and phrases shall have the meanings given in this Article. When not inconsistent with context, words used in the present tense include the future tense; words in the plural include the singular; and words in the singular include the plural. The word shall is mandatory and the word may is permissive. Words not defined in this Article shall be given their common and ordinary meanings.

Board of Trustees or Board refers to the legislative body of the Town.

## CHAPTER 5 Franchises and Communication Systems

Company means Public Service Company of Colorado, d/b/a Xcel Energy, and its successors and assigns, including affiliates or subsidiaries that undertake to perform any of the obligations under this Article.

Company facilities means all facilities of the Company reasonably necessary to provide electric service into, within and through the Town, including but not limited to plants, works, systems, substations, transmission and distribution structures, lines, equipment, pipes, conduit, transformers, underground lines, meters, meter-reading devices, communication and data transfer equipment, control equipment, streetlights, wire, cables and poles.

Electric gross revenues means those amounts of money which the Company receives from the sale or delivery of electricity in the Town, after adjusting for refunds, net write-offs of uncollectible accounts, corrections or regulatory adjustments. Regulatory adjustments include, but are not limited to, credits, surcharges, refunds and pro-forma adjustments pursuant to federal or state regulation. Electric gross revenues shall exclude any revenue for the sale or delivery of electricity to the Town.

Private project means any project which is not covered by the definition of public project.

Public project means:

- a. Any public work or improvement within the Town that is wholly owned or wholly funded by the Town; or
- b. Any public work or improvement within the Town where fifty percent (50%) or more of the funding is provided by any combination of the Town, the federal government, the State of Colorado, the Regional Transportation District or any Colorado county.

Public Utilities Commission or PUC means the Public Utilities Commission of the State of Colorado or other state agency succeeding to the regulatory powers of the Public Utilities Commission.

Public utility easement means any easement over, under or above public or private property, lawfully acquired by or dedicated to the use of the Company, its predecessors in interest or other public utility companies for the placement of public utility facilities, including but not limited to Company facilities.

Residents means 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.

Streets or Town streets means the surface, the air space above the surface and the area below the surface of any Town-dedicated streets, alleys, bridges, roads, lanes, public easements and other public rights-of-way within the Town. Streets shall also include other public places within the Town that are suitable locations for the placement of Company facilities as specifically approved in writing by the Town. Streets shall not include public utility easements.

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

Tariffs means those tariffs of the Company on file and in effect with the PUC.

Town means the Town of Alma, a municipal corporation of the State of Colorado.

Utility service means the sale of electricity to residents by the Company under rates approved by the PUC.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-20. 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 nonexclusive right to make reasonable use of Town streets:
  - (1) To provide utility service to the Town and to its residents under tariffs on file with the PUC; and
  - (2) To acquire, purchase, construct, install, locate, maintain, operate and extend into, within and through the Town all Company facilities reasonably necessary for the generation, production, manufacture, sale, purchase, exchange, transmission and distribution of utility service within and through the Town.
- (b) Street lighting and traffic signal lighting service. The rights granted by this franchise encompass the nonexclusive right to provide street lighting service and traffic signal lighting service as directed by the Town, and the provisions of this franchise shall apply with full and equal force to street lighting service and traffic signal lighting service provided by the Company. Wherever reference is made in this franchise to the sale or provision of utility service, these references shall be deemed to include the provision of street lighting service and traffic signal lighting service. Street lighting service and traffic signal lighting service within the Town shall be governed by tariffs on file with the PUC.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-30. 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; 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 right to make reasonable use of Town streets under the franchise is subject to and subordinate to any Town usage of said streets.
- (c) Prior grants not revoked. This grant is not intended to revoke any prior license, grant or right to use the streets, and such licenses, grants or rights of use are hereby affirmed. Such rights shall, however, be governed by the terms of this franchise.
- (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.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-40. Effective date and term.**

This franchise shall take effect on August 1, 2007, and shall supersede any prior franchise grants to the Company by the Town. This franchise shall terminate on July 31, 2027, unless extended by mutual consent.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-50. Police powers.**

The Company expressly acknowledges the Town's right to adopt, from time to time, in addition to the provisions contained herein, such laws, including ordinances and regulations, as it may deem necessary in the exercise of its governmental powers.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-60. Regulation of streets or other Town property.**

The Company expressly acknowledges the Town's right to enforce regulations concerning the Company's access to or use of the streets, including requirements for permits.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-70. Compliance with laws.**

The Company shall promptly and fully comply with all laws, regulations, permits and orders enacted by the Town that are applicable to the Company's provision of utility service within the Town.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-80. Franchise fee.**

- (a) Fee. In consideration for the franchise, which provides for the Company's use of Town streets which are valuable public properties acquired and maintained by the Town at great expense to its residents, and in recognition that the grant to the Company of the use of Town streets is a valuable right, the Company shall pay the Town a sum equal to three percent (3%) of all electric gross revenues. The Company shall collect this fee from a surcharge upon Town residents who are customers of the Company.
- (b) Obligation in lieu of fee. In the event that the franchise fee specified herein is declared void for any reason by a court of competent jurisdiction, unless prohibited by law, the Company shall be obligated to pay the Town, at the same times and in the same manner as provided in the 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. The Company shall collect the amounts agreed upon through a surcharge upon utility service provided to Town residents.
- (c) Changes in utility service industries. The Town and the Company recognize that utility service industries are the subject of restructuring initiatives by legislative and regulatory authorities and are also experiencing other changes as a result of mergers, acquisitions and reorganizations. Some of such initiatives and changes have or may have an adverse impact upon the franchise fee revenues provided for herein. In recognition of the length of the term of this franchise, the Company agrees that, in the event of any such initiatives or changes and to the extent permitted by law, upon receiving a written request from the Town, the Company will cooperate with and assist the Town in modifying this franchise to assure 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; provided, however, that the Company shall be entitled to collect such amounts from Town residents in conjunction with the provision of utility service.
- (d) Utility service provided to the Town. No franchise fee shall be charged to the Town for utility service provided to the Town for its own consumption, including street lighting service and traffic signal lighting service.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-90. Remittance of franchise fee.**

- (a) Remittance schedule. Franchise fee revenues shall be remitted by the Company to the Town as directed by the Town in monthly installments not more than thirty (30) days following the close of each month.
- (b) Correction of franchise fee payments. In the event that either the Town or the Company discovers that there has been an error in the calculation of the franchise fee payment to the Town, it shall provide written notice to the other party of the error. If the party receiving the written notice of error does not agree with the written notice of error, that party may challenge the written notice of error pursuant to Subsection (c) below; 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), credit for the overpayment shall be spread over the same period the error was undiscovered. 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. 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 three (3) years prior to the discovery of the Company error.
- (c) Fee disputes. Either party may challenge any written notification of error as provided for in Subsection (b) above 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.
- (d) Reports. Upon written request by the Town, but not more than once per year, the Company shall supply the Town with reports, in such formats and providing such details as reasonably requested by the Town, of all suppliers of utility service that utilize Company facilities to sell or distribute utility service to residents and the names and addresses of each such supplier.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-100. Franchise fee payment not in lieu of permit or other fees.**

Payment of the franchise fee does not exempt the Company from any other lawful tax or fee imposed generally upon persons doing business within the Town, including any fee for a street closure permit, an excavation permit, a street cut permit or other lawful permits hereafter required by the Town, except that the franchise fee provided for herein shall be in lieu of any occupancy tax, occupation tax or other fee for the use of Town streets.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-110. Town designee.**

The Town shall designate in writing to the Company an official having full power and authority to administer the franchise. The Town may also designate one (1) 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 representatives. The Town may change these designations by providing written notice to the Company. The Town's designee shall have the right, at all reasonable times, to inspect any Company facilities in Town streets.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-120. Company designee.**

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

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-130. Coordination of work.**

- (a) The Company agrees to meet with the Town's designee upon written request for the purpose of reviewing, implementing or modifying mutually beneficial procedures for the efficient processing of Company bills, invoices and other requests for payment.
- (b) The Company agrees to coordinate its activities in Town streets with the Town. The Town and the Company will meet annually upon the written request of the Town designee to exchange their respective short-term and long-term forecasts and/or work plans for construction and other similar work which may affect Town streets. The Town and the Company shall hold such meetings as either deems necessary to exchange additional information with a view towards coordinating their respective activities in those areas where such coordination may prove beneficial and so that the Town will be assured that all provisions of this franchise, building and zoning codes and air and water pollution regulations are complied with, and that aesthetic and other relevant planning principles have been given due consideration.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Division 2 Supply, Construction and Design**

[Sec. 5-1-210. Purpose.](#)

[Sec. 5-1-220. Supply.](#)

[Sec. 5-1-230. Service to Town facilities.](#)

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[Sec. 5-1-300. Service to new areas.](#)

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**Sec. 5-1-210. Purpose.**

The Company acknowledges the critical nature of the municipal services performed or provided by the Town to the residents which 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.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-220. Supply.**

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.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-230. 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.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-240. Restoration of service.**

- (a) Notification. The Company shall provide to the Town daytime and nighttime telephone numbers of a designated Company representative from whom the Town designee may obtain status information from the Company on a twenty-four-hour basis concerning interruptions of utility service in any part of the Town.
- (b) Restoration. In the event the Company's electric system, 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.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-250. Obligations regarding Company facilities.**

- (a) Company facilities. All Company facilities within Town streets shall be maintained in good repair and condition.
- (b) Company work within the Town. All work within Town streets performed or caused to be performed by the Company shall be done:
  - (1) In a high-quality manner;
  - (2) In a timely and expeditious manner;
  - (3) In a manner which 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 laws, ordinances and regulations.

- (c) No interference with Town facilities. Company facilities shall not interfere with any Town facilities, including water facilities, sanitary or storm sewer facilities, communications facilities or other Town uses of the streets. Company facilities shall be installed and maintained in Town streets so as to minimize interference with other property, trees and other improvements and natural features in and adjoining the streets.
- (d) Permit and inspection. The installation, renovation and replacement of any Company facilities in the Town streets by or on behalf of the Company shall be subject to permit, inspection and approval by the Town. Such inspection and approval may include, but not be limited to, the following matters: location of Company facilities, cutting and trimming of trees and shrubs and disturbance of pavement, sidewalks and surfaces of Town streets. The Company agrees to cooperate with the Town in conducting inspections and shall promptly perform any remedial action lawfully required by the Town pursuant to any such inspection.
- (e) Compliance. The Company and all of its contractors shall comply with the requirements of all municipal laws, ordinances, regulations, permits and standards, including but not limited to requirements of all building and zoning codes, and requirements regarding curb and pavement cuts, excavating, digging and other construction activities. The Company shall assure that its contractors working in Town streets hold the necessary licenses and permits required by law.
- (f) As-built drawings. Upon reasonable written request of the Town designee, the Company shall provide, if available, on a project-by-project basis, as-built drawings of any Company facility installed within the Town streets or contiguous to the Town streets.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-260. Excavation and construction.**

The Company shall be responsible for obtaining, paying for and complying with all applicable permits, including but not limited to excavation, street closure and street cut permits, in the manner required by the laws, ordinances and regulations of the Town. Although the Company shall be responsible for obtaining and complying with the terms of such permits when performing relocations requested by the Town under Section 5-1-280 below and undergrounding requested by the Town under Sections 5-1-490 through 5-1-540 of this Article, the Town will not require the Company to pay the fees charged for such permits.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-270. Restoration of streets.**

To the extent practicable, when the Company does any work in or affecting the Town streets, it shall, at its own expense, promptly remove any obstructions therefrom and restore such Town streets to a condition 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, provided that such temporary restoration is at the Company's sole 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. If the Company fails to promptly restore the Town streets as required by this Section, the Town may, upon giving fourteen (14) days' written notice to the Company, restore such Town streets or remove the obstruction therefrom; provided, however, that Town actions do not interfere with Company facilities. The Company shall be responsible for the actual cost incurred by the Town to restore such Town streets or to remove any obstructions therefrom. The Town shall not perform work on Company facilities.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-280. Relocation of Company facilities.**

- (a) Relocation obligation. The Company shall, at its sole cost and expense, temporarily or permanently remove, relocate, change or alter the position of any Company facility in Town streets whenever such removal, relocation, change or alteration is necessary for the completion of any public project. For all relocations, the Company and the Town agree to cooperate on the location and relocation of the Company facilities in the Town streets 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 three (3) years, the subsequent relocation shall not be at the Company's expense.
- (b) Private projects. The Company shall not be responsible for the expenses of any relocation required by any private projects or for the expenses of any required relocation where the Town has directly or indirectly assisted any private projects, and the Company has the right to require the payment of estimated relocation expenses from the affected private party before undertaking such relocation.
- (c) Relocation performance. The relocations set forth in Subsection (a) above 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 with all supporting documentation. The Company shall be entitled to an extension of time to complete a relocation where the Company's performance was delayed due to a cause that could not be reasonably anticipated by the Company or is beyond its reasonable control, after exercise of best efforts to perform, including, without limitation, fire, strike, war, riots, acts of governmental authority, acts of God, forces of nature, judicial action, unavailability or shortages of labor, materials or equipment and failures or delays in delivery of materials. 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.
- (d) Town revision of supporting documentation. Any revision by the Town of supporting documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding facility relocation shall be deemed good cause for a reasonable extension of time to complete the relocation under the franchise.
- (e) Completion. Each such relocation shall be deemed complete only when the Company actually relocates the Company facilities, restores the relocation site in accordance with Section 5-1-270 of this Article or as otherwise agreed with the Town, and removes from the site or properly abandons on site all unused facilities, equipment, material and other impediments.
- (f) Scope of obligation. The relocation obligation set forth in this Section shall only apply to Company facilities located in Town streets. The obligation shall not apply to Company facilities located on property owned by the Company in fee, or to Company facilities located in privately owned easements or public utility easements.
- (g) Underground relocation. Underground facilities shall be relocated underground. Aboveground facilities shall be placed 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 Sections 5-1-490 through 5-1-540 of this Article.
- (h) Coordination. 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. Such meetings shall be for the purpose of minimizing conflicts where possible and to facilitate coordination with any timetable established by the Town for any public project.
- (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 Town shall not unreasonably withhold its approval of the proposed alternative or modification. In the event the Town designee

accepts the proposed alternative or modification, the Company agrees to promptly compensate the Town for all additional costs, expenses or delay that resulted from the implementation of the proposed alternative.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-290. New or modified service requested by Town.**

The conditions under which the Company shall install new or modified utility service to the Town as a customer shall be governed by this franchise and the Company's PUC tariffs.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-300. 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. Service to the expanded area shall be in accordance with the terms of the Company's PUC tariffs and this franchise, including the payment of franchise fees.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-310. Town not required to advance funds.**

Upon receipt of the Town's authorization for billing and construction, the Company shall extend 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 extension of Company facilities once completed in accordance with the Company's extension policy on file with the PUC.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Division 3 Company Facilities**

[Sec. 5-1-410. Reliability.](#)

[Sec. 5-1-420. Franchise performance obligations.](#)

[Sec. 5-1-430. New or modified service to Town facilities.](#)

[Sec. 5-1-440. Third-party damage recovery.](#)

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[Sec. 5-1-500. Underground conversion at expense of Company.](#)

[Sec. 5-1-510. Undergrounding performance.](#)

[Sec. 5-1-520. Audit of Underground Fund.](#)

[Sec. 5-1-530. Cooperation with other utilities.](#)

[Sec. 5-1-540. Planning and coordination of undergrounding projects.](#)

[Sec. 5-1-550. Municipal right to purchase or condemn.](#)

**Sec. 5-1-410. Reliability.**

The Company shall operate and maintain Company facilities efficiently and economically and in accordance with the standards, systems, methods and skills consistent with the provision of adequate, safe and reliable utility service.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-420. 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.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-430. New or modified service to Town facilities.**

In providing new or modified utility service to Town facilities, the Company agrees to perform as follows:

- (1) 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 as described in this Section. The Company shall be entitled to an extension of time to complete a project where the Company's performance was delayed due to a cause that could not be reasonably anticipated by the Company or is beyond its reasonable control, after exercise of best efforts to perform, including but not limited to fire, strike, war, riots, acts of governmental authority, acts of God, forces of nature, judicial action, unavailability or shortages of materials or equipment and failures or delays in delivery of materials. 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.
- (2) Town revision of supporting documentation. Any revision by the Town of supporting documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding new or modified service to Town facilities shall be deemed good cause for a reasonable extension of time to complete the relocation under the franchise.
- (3) 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 the franchise or as otherwise agreed with the Town and removes from the site or properly abandons on site any unused facilities, equipment, material and other impediments.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-440. Third-party damage recovery.**

- (a) Damage to Company interests. If, by violation of any traffic or other ordinance of the Town or in any other unlawful manner, any individual or entity damages any Company facilities that the Company is responsible to repair or replace, the Town will notify the Company of any such incident 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 Town interests. If, by violation of any traffic or other ordinance of the Town or in any other unlawful manner, 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, the Company will notify the Town of any such incident 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.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-450. Town use of Company facilities.**

The Town shall be permitted to make use of Company facilities in the Town streets at no cost to the Town for the placement of Town equipment or facilities necessary to serve a legitimate police, fire, emergency, public safety or traffic control purpose. In addition, the Town shall also be permitted to make use of Company facilities in the Town streets at no cost to the Town for the placement of Town-owned and Town-operated communication, cable television or internet access systems which are solely used for the Town's internal communications purposes. If the Town operates such communication, cable television or internet access systems for any commercial purpose, the Town shall be required to pay the Company a reasonable fee for such placement. The Town will notify the Company in writing in advance of its intent to use Company facilities and the nature of such use. The Town shall be responsible for costs associated with modifications to Company facilities to accommodate the Town's use of such Company facilities and for any electricity used. No such use of Company facilities shall be required if it would constitute a safety hazard or would interfere with the Company's use of Company facilities. Any such Town use must comply with the National Electric Safety Code and all other applicable laws, rules and regulations.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-460. Third-party use of Company facilities.**

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 facilities for the placement of their facilities upon approval by the Company and agreement upon reasonable terms and conditions, including payment of fees established by the Company. No such use shall be permitted if it would constitute a safety hazard or would interfere with the Company's use of Company facilities. The Company shall not be required to permit the use of Company facilities for the provision of utility service by the Town or by third parties.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-470. Town use of Company transmission rights-of-way.**

The Company shall, upon written request, grant to the Town use of transmission rights-of-way which it now, or in the future, owns in fee within the Town for parks and open space; provided, however, that the Company shall not be required to make such an offer in any circumstance where such offer would constitute a safety hazard or would interfere with the Company's use of the transmission right-of-way.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-480. Emergencies.**

Upon written request, the Company shall assist the Town in developing an emergency management plan. In the case of any emergency or disaster, the Company shall, upon verbal request of the Town, make available Company facilities for emergency use during the emergency or the disaster period. Such use of Company facilities shall be of a limited duration and will only be allowed if the use does not interfere with the Company's own use of Company facilities.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-490. Underground electrical lines in new areas.**

The Company shall place all newly constructed electrical distribution lines in newly developed areas underground in accordance with applicable laws, regulations and orders, and upon payment to the Company of the charges provided in the Company's tariffs by the person requesting the underground placement.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-500. Underground conversion at expense of Company.**

- (a) **Underground Fund.** The Company shall budget and allocate an annual amount, equivalent to one percent (1%) of the preceding year's electric gross revenues (the "Fund"), for the purpose of undergrounding existing overhead distribution facilities in the Town, as may be requested by the Town; provided that the undergrounding shall extend for a minimum distance of one (1) block or seven hundred fifty (750) feet, whichever is less, or as may be mutually agreed by the parties. Except as provided in Subsection 5-1-280(f) of this Article, no relocation expenses which the Company would be required to expend pursuant to Division 2 of this Article shall be charged to this allocation.
- (b) **Unexpended portion and advances.** Any unexpended portion of the Fund shall be carried over to succeeding years, and, in addition, upon request by the Town designee, the Company agrees to expend amounts anticipated to be available under Subsection (a) above for up to three (3) years in advance. Any amounts so expended shall be credited against amounts to be expended in succeeding years. Any funds accumulated under any prior franchise shall be carried over to this Fund balance. The Town shall have no vested interest in the Fund, and any monies in the Fund not expended at the expiration or termination of this Agreement shall remain the property of the Company.
- (c) **Systemwide undergrounding.** If, during the term of this franchise, the Company should receive authority from the PUC to undertake a systemwide program of undergrounding its electric distribution facilities, 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 aboveground Company facilities to be moved underground at the Town's expense except as

otherwise provided by applicable law. Nothing provided herein shall prevent the Town from financing the underground conversion of aboveground Company facilities through any means provided by law.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-510. Undergrounding performance.**

- (a) Upon receipt of a written request from the Town, the Company shall, to the extent of monies available in the Fund and as otherwise provided herein, underground Company facilities in accordance with the procedures set forth in this Section.
- (b) Performance. The Company shall complete each undergrounding project requested by the Town within a reasonable time, not to exceed one hundred eighty (180) days from the later of the date upon which the Town designee makes a written request and the date the Town provides to the Company all supporting documentation. 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 cause that could not be reasonably anticipated by the Company or is beyond its reasonable control, after exercise of best efforts to perform, including but not limited to fire, strike, war, riots, acts of governmental authority, acts of God, forces of nature, judicial action, unavailability or shortages of materials or equipment and failures or delays in delivery of materials. 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.
- (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 the franchise.
- (d) Completion/restoration. Each such undergrounding project shall be deemed complete only when the Company actually undergrounds the designated Company facilities, restores the undergrounding site in accordance with Section 5-1-270 of this Article or as otherwise agreed with the Town designee and removes from the site or properly abandons on site any unused facilities, equipment, material and other impediments.
- (e) 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, issue a project authorization. The Company will not proceed with any requested project until the Town has provided a written acceptance of the Company estimate.
- (f) Report of actual costs. Upon completion of each undergrounding project, 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.
- (g) Audit of underground projects. The Town may require that the Company undertake an independent audit of any undergrounding project for five hundred thousand dollars (\$500,000.00) or greater. The cost of any such independent audit shall reduce the amount of the Fund. 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 incurred by the Company to complete the particular Town undergrounding project shall reduce the Fund.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-520. Audit of Underground Fund.**

Upon written request of the Town, but no more frequently than once every three (3) years, the Company shall audit the Fund for the Town. Such audits shall be limited to the previous three (3) calendar years. The Company shall provide the audit report to the Town and shall reconcile the Fund consistent with the findings contained in the audit report.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-530. 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, the Town shall provide to the Company written notice of the specific undergrounding project. 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 the cost of undergrounding the facilities of other companies or the Town.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-540. 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. In addition, the Town and the Company agree to meet, as required, to review the progress of then-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 to achieve the orderly undergrounding of Company facilities. At such meetings, the parties shall review:

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

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-550. Municipal right to purchase or condemn.**

- (a) Right and privilege of Town. The right and privilege of the Town to construct, purchase 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 and statutes of the State relating to the acquisition of public utilities, are expressly recognized. The Town shall have the right, within the time frames and using the procedures set forth in such provisions, to purchase Company facilities, land, rights-of-way and easements now owned or to be owned by the Company located within the territorial boundaries of the Town. In the event of any such purchase, no value shall be ascribed or given to the rights granted under this franchise in the valuation of the property thus taken.
- (b) Notice of intent to purchase or condemn. The Town shall provide the Company with 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.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Division 4 Franchise Terms**

[Sec. 5-1-610. Consent of Town required.](#)

[Sec. 5-1-620. Transfer fee.](#)

[Sec. 5-1-630. Continuation of utility service.](#)

[Sec. 5-1-640. Town held harmless.](#)

[Sec. 5-1-650. Immunity.](#)

[Sec. 5-1-660. Non-contestability.](#)

[Sec. 5-1-670. Breach.](#)

[Sec. 5-1-680. Proposed amendments.](#)

[Sec. 5-1-690. Effective amendments.](#)

[Sec. 5-1-700. Economic development.](#)

[Sec. 5-1-710. Employment.](#)

[Sec. 5-1-720. Contracting.](#)

**Sec. 5-1-610. Consent of Town required.**

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

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-620. 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.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-630. Continuation of utility service.**

In the event this franchise is not renewed at the expiration of its term or is terminated for any reason, and the Town has not provided for alternative utility service, the Company shall continue to provide utility service within the Town until the Town arranges for utility service from another provider. 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 Company's tariffs on file with the Public Utilities Commission, and the Company shall be entitled to collect from residents and shall be obligated to pay the Town, at the same times and in the same manner as provided in the 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. 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.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-640. 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 arising from the grant of this franchise, the exercise by the Company of the related rights or from the operations of the Company within the Town, and shall pay the costs of defense plus reasonable attorneys' fees. The Town: (1) shall give prompt written notice to the Company of any claim, demand or lien with respect to which the Town seeks indemnification hereunder; and (2) 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 satisfactory to the Town. If such defense is assumed by the Company, the Company shall not be subject to any liability for any settlement made without its consent. If such defense is not assumed by the Company or if the Town determines that a conflict of interest exists, the parties reserve all rights to seek all remedies available in this franchise against each other. Notwithstanding any provision hereof to the contrary, the Company shall not be obligated to indemnify, defend or hold the Town harmless to the extent any claim, demand or lien arises out of or in connection with any negligent or intentional act or failure to act of the Town or any of its officers or employees.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-650. Immunity.**

Nothing in this Section or any other provision of this franchise shall be construed as a waiver of the notice requirements, defenses, immunities and limitations the Town may have under the Colorado Governmental Immunity Act (Section 4-10-101, et seq., C.R.S.) or of any other defenses, immunities or limitations of liability available to the Town by law.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-660. Non-contestability.**

The Town and the Company agree to take all reasonable and necessary actions to assure that the terms of this franchise are performed.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-670. 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. 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; 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 consequential damages.
- (b) Termination of franchise by Town. In addition to the foregoing remedies, if the Company fails or refuses to perform any material term or condition of this franchise (a "material breach"), the Town may provide written notice to the Company of such material breach. Upon receipt of such notice, the Company shall be given a reasonable time, not to exceed ninety (90) days, in which to remedy the material breach. If the Company does not remedy the material breach within the time allowed in the notice, the Town may, at its sole option, terminate this franchise. This remedy shall be in addition to the Town's right to exercise any of the remedies provided for elsewhere in this franchise. Upon such termination, the Company shall continue to provide utility service to the Town and its residents 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 shall be obligated to pay the Town, at the same times and in the same manner as provided in the 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.
- (c) 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.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-680. 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 amendments.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-690. Effective amendments.**

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

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-700. 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 also committed 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.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-710. Employment.**

- (a) 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) 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 to the Town a copy of the Company's annual affirmative action report upon the Town's written request.
- (c) 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) 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) 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, physical or mental disability or any other protected status in accordance with all federal, state or local laws. The Company shall not, solely because of race, creed, color, religion, sex, age, national origin or ancestry or handicap, refuse to hire, discharge, promote, demote or discriminate in matters of compensation against any person otherwise qualified, and further agrees to insert the foregoing provision or its equivalent in all agreements the Company enters into in connection with this franchise.
- (f) 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.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-720. Contracting.**

- (a) 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) 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) 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.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Division 5 Miscellaneous Provisions**

[Sec. 5-1-810. No waiver.](#)

[Sec. 5-1-820. Successors and assigns.](#)

[Sec. 5-1-830. Third parties.](#)

[Sec. 5-1-840. Notice.](#)

[Sec. 5-1-850. Examination of records.](#)

[Sec. 5-1-860. Payment of taxes and fees.](#)

[Sec. 5-1-870. Conflict of interest.](#)

[Sec. 5-1-880. Certificate of convenience and necessity.](#)

[Sec. 5-1-890. Authority.](#)

[Sec. 5-1-900. Severability.](#)

[Sec. 5-1-910. Force majeure.](#)

[Sec. 5-1-920. Earlier franchises superseded.](#)

[Sec. 5-1-930. Titles not controlling.](#)

[Sec. 5-1-940. Applicable law.](#)

**Sec. 5-1-810. 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 (1) or more occasions, to insist upon or to seek compliance with any such terms and conditions.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-820. 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 Section 5-1-630 of this Article.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-830. Third parties.**

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

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-840. 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 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. Until any such change shall hereafter be made, notices shall be sent as follows:

To the Town:

Mayor of Alma  
PO Box 1050  
Alma, CO 80420

Manager of Public Works  
PO Box 1050  
Alma, CO 80420

With a copy to:

Town Attorney  
Town of Alma  
PO Box 1050  
Alma, CO 80420

To the Company:

Vice President of Customer and Local Government Affairs  
Public Service Company of Colorado  
P.O. Box 840  
Denver, Colorado 80201

With a copy to:

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

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-850. 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 directly pertinent nonconfidential books, documents, papers and records of the other party involving any activities related to this franchise. All such records must be kept for a minimum of four (4) years.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-860. Payment of taxes and fees.**

- (a) 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) 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 on file and in effect from time to time with the PUC.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-870. 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.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-880. Certificate of convenience and necessity.**

The Town agrees to support any application the Company may file with the PUC to obtain a certificate of public convenience and necessity to exercise the rights and obligations granted under this franchise.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-890. 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 signatories to execute this agreement on behalf of the parties and to bind the parties to its terms. The persons executing this agreement on behalf of each of the parties warrant that they have full authorization to execute this agreement. 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.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-900. Severability.**

Should any one (1) 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, that the parties shall forthwith enter into good-faith negotiations and proceed with due diligence to draft one (1) or more substitute provisions that will achieve the original intent of the parties hereunder.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-910. 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 uncontrollable forces, which shall include, but not be limited to, accidents, breakdown of equipment, shortage of materials, shortage of labor, acts of God, floods, storms, fires, sabotage, terrorist attack, strikes, riots, war, labor disputes, forces of nature, the authority and orders of government and other causes or contingencies of whatever nature beyond the reasonable control of the party affected, which could not reasonably have been anticipated and avoided.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-920. Earlier franchises superseded.**

This franchise shall constitute the only franchise between the Town and the Company for the furnishing of utility service, street lighting service and traffic signal lighting service, and it supersedes and cancels all former franchises between the parties hereto.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-930. Titles not controlling.**

Titles of the sections herein are for reference only and shall not be used to construe the language of this franchise.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**Sec. 5-1-940. 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 Park County, State of Colorado.

(Ord. 2008-3 §1; Ord. 2011-18 §1)

**ARTICLE 2 Gas Franchise**

[Sec. 5-2-10. Definitions.](#)

[Sec. 5-2-20. Grant of franchise.](#)

[Sec. 5-2-30. Compliance with ordinances.](#)

[Sec. 5-2-40. Equal protection.](#)

[Sec. 5-2-50. Term.](#)

[Sec. 5-2-60. Service by Grantee.](#)

[Sec. 5-2-70. Expense of installation.](#)

[Sec. 5-2-80. Eminent domain.](#)

[Sec. 5-2-90. Conditions of occupancy.](#)

## CHAPTER 5 Franchises and Communication Systems

- [Sec. 5-2-100. Work in and restoration of public ways.](#)
- [Sec. 5-2-110. Relocation at request of Franchising Authority.](#)
- [Sec. 5-2-120. Relocation at request of third party.](#)
- [Sec. 5-2-130. Trimming of trees and shrubbery.](#)
- [Sec. 5-2-140. Safety requirements.](#)
- [Sec. 5-2-150. Access to open trenches.](#)
- [Sec. 5-2-160. Required extensions of natural gas distribution system.](#)
- [Sec. 5-2-170. Customer charges for extensions of natural gas distribution system.](#)
- [Sec. 5-2-180. Natural gas distribution service to public buildings.](#)
- [Sec. 5-2-190. Reimbursement of costs.](#)
- [Sec. 5-2-200. Use of gas mains.](#)
- [Sec. 5-2-210. Build-out of initial system.](#)
- [Sec. 5-2-220. Franchise fee.](#)
- [Sec. 5-2-230. Renewal of franchise.](#)
- [Sec. 5-2-240. Conditions of sale.](#)
- [Sec. 5-2-250. Transfer of franchise.](#)
- [Sec. 5-2-260. Customer service.](#)
- [Sec. 5-2-270. Books and records.](#)
- [Sec. 5-2-280. Insurance requirements.](#)
- [Sec. 5-2-290. Indemnification.](#)
- [Sec. 5-2-300. Notice of violation.](#)
- [Sec. 5-2-310. Grantee's right to cure or respond.](#)
- [Sec. 5-2-320. Public hearing.](#)
- [Sec. 5-2-330. Enforcement.](#)
- [Sec. 5-2-340. Revocation.](#)
- [Sec. 5-2-350. Force majeure.](#)
- [Sec. 5-2-360. Actions of parties.](#)
- [Sec. 5-2-370. Entire agreement.](#)
- [Sec. 5-2-380. Notice.](#)
- [Sec. 5-2-390. Descriptive headings.](#)
- [Sec. 5-2-400. Severability.](#)
- [Sec. 5-2-410. Miscellaneous.](#)
- [Sec. 5-2-420. Effective date.](#)

**Sec. 5-2-10. Definitions.**

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. For the purpose of this franchise, the following terms, phrases, words and abbreviations shall have the meanings ascribed to them below:

Customer means a person who lawfully receives natural gas service from the Grantee with the Grantee's express permission.

Franchising Authority or Town means the Town of Alma or the lawful successor, transferee or assignee thereof.

Grantee means Colorado Natural Gas, Inc., or the lawful successor, transferee or assignee thereof.

Gross revenues means any revenue received by the Grantee from the operation of the natural gas distribution system to provide natural gas service in the service area. Gross revenues shall not include: any tax, fee or assessment of general applicability collected by the Grantee from customers for pass-through to a government agency, including franchise fees, refundable deposits, bad debt, late fees, investment income or unrecovered bad debt.

Natural gas distribution system means the Grantee's facility, consisting of buried main and service pipelines made of steel and/or Polyethylene pipe in mid and high densities, and aboveground facilities such as regulator stations or other appurtenances, all constructed to DOT OPS part 191 & 192 specifications, with natural gas meters installed at each customer location above ground.

Person means an individual, partnership, limited liability company, association, joint stock company, trust, corporation or governmental entity.

Public way means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle or other public right-of-way, including but not limited to public utility easements, dedicated utility strips or rights-of-way dedicated for compatible uses, and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchising Authority in the service area which shall entitle the Franchising Authority and the Grantee to the use thereof for the purpose of installing, operating, repairing and maintaining the natural gas distribution system, Public way shall also mean any easement now or hereafter held by the Franchising Authority within the service area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Franchising Authority and the Grantee to the use thereof for the purposes of installing and operating the Grantee's natural gas distribution system and other property as may be ordinarily necessary and pertinent to the natural gas distribution system.

PUC means the Colorado Public Utilities Commission.

Service area means the present boundaries of the Franchising Authority and shall include any additions thereto by annexation or other legal means, subject to the exceptions in Section 5-2-160 of this Article.

(Ord. 2007-7 §1; Ord. 2011-18 §1)

**Sec. 5-2-20. Grant of franchise.**

The Franchising Authority hereby grants to the Grantee a nonexclusive franchise which authorizes the Grantee to construct and operate a natural gas distribution system in, along, among, upon, across, above, over, under or in any manner connected with public ways within the service area and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain or retain in, on, over, under, upon, across or

along any public way such facilities and equipment as may be necessary or appurtenant to the natural gas distribution system.

(Ord. 2007-7 §1; Ord. 2011-18 §1)

**Sec. 5-2-30. Compliance with ordinances.**

The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this franchise. Neither party may unilaterally alter the material rights and obligations set forth in this franchise. The Grantee reserves the right to challenge the provisions of any ordinance which conflict with its contractual rights, either now or in the future. In the event of a conflict between any ordinance and this franchise, the franchise shall control; provided, however, that the Grantee agrees that it is subject to the lawful exercise of the police power of the Franchising Authority.

(Ord. 2007-7 §1; Ord. 2011-18 §1)

**Sec. 5-2-40. Equal protection.**

The Franchising Authority shall not authorize or permit any person to enter into the Franchising Authority's public ways for the purpose of constructing or operating a natural gas distribution system or providing natural gas services to any part of the service area on terms or conditions more favorable or less burdensome to such person than those applied to the Grantee pursuant to this franchise, in order that one (1) operator not be granted an unfair competitive advantage over another and to provide all parties equal protection under the law.

(Ord. 2007-7 §1; Ord. 2011-18 §1)

**Sec. 5-2-50. Term.**

The franchise granted hereunder shall be for an initial term of twenty five (25) years, commencing on the effective date of the franchise as set forth in Section 5-2-420 of this Article, unless otherwise lawfully terminated in accordance with the terms of this franchise.

(Ord. 2007-7 §1; Ord. 2011-18 §1)

**Sec. 5-2-60. Service by Grantee.**

- (a) The Grantee shall at all times during the term hereof make such reasonable extension of its gas mains, from time to time, and install such service connections to the curb lines in streets and to property lines as may be reasonably required in order to furnish gas service to applicants located within the corporate limits of the Franchising Authority, and all under such reasonable rules, regulations and conditions as the governing body of said Franchise Authority may from time to time prescribe. These extensions shall be provided in accordance with the tariffs of the Grantee on file with the PUC.
- (b) The Grantee shall supply to the Franchising Authority and the inhabitants thereof, in accordance with the accepted standard of the industry, gas service to provide for their needs during the term of this franchise, unavoidable accidents, delays and other causes beyond the control of the Grantee excepted. In the event that such service is not given by the Grantee, all rights under this franchise may be terminated and be forfeited. This service shall be provided in accordance with the tariffs of the Grantee, on file with the PUC.

- (c) The rates that shall be charged by the Grantee for gas shall be fair and reasonable and such as may from time to time hereafter be lawfully fixed by the PUC, all in accordance with law.

(Ord. 2007-7 §1; Ord. 2011-18 §1)

**Sec. 5-2-70. Expense of installation.**

The Grantee agrees that it will, at its expense, furnish, install, maintain and keep in proper adjustment and repair meters of modern approved type upon the property of each consumer of gas, that the same shall be read regularly at intervals of approximately monthly, and the Grantee shall render statements to each consumer based upon such meter readings in accordance with the Grantee's filed tariffs. The Grantee shall, upon request of the Franchising Authority, cooperate in the study of establishment of joint meter reading and billing with the utility department of the Town upon reasonable terms and conditions. The Grantee shall maintain at its office accurate, complete and detailed records of such meter readings for a period of at least five (5) years. The Grantee, at its own expense, shall make careful and accurate tests of each meter at reasonable intervals, or as may otherwise be required by the PUC, at specific instances, and shall keep accurate records of the result of such tests. The Franchising Authority, by its authorized agents and representatives, shall have the right and authority to make tests of such gas meters and other equipment and to check the Grantee's tests and readings of meters at such times as it may see fit and, without charge, use the Grantee's equipment to make such tests.

(Ord. 2007-7 §1; Ord. 2011-18 §1)

**Sec. 5-2-80. Eminent domain.**

The Grantee shall have powers of eminent domain and regulation of the method of doing business by the Grantee as may from time to time be provided for by law, as permitted by Colorado law.

(Ord. 2007-7 §1; Ord. 2011-18 §1)

**Sec. 5-2-90. Conditions of occupancy.**

The natural gas distribution system installed by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of public ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such public ways.

(Ord. 2007-7 §1; Ord. 2011-18 §1)

**Sec. 5-2-100. Work in and restoration of public ways.**

All work in public ways, including restoration thereof, shall be undertaken pursuant to the Franchising Authority's generally applicable regulations or any replacement regulations thereto, provided that any such amendment or replacement regulation shall be reasonable and not destructive of the rights granted in this franchise and shall be consistent with the Franchising Authority's lawful police powers. The Grantee reserves the right to challenge the provisions or any such regulation that it believes is inconsistent with the applicable law or its contractual rights under this franchise either now or in the future. If, during the course of the Grantee's construction, operation or maintenance of the natural gas distribution system, there occurs a disturbance of any public way by the Grantee, at its expense the Grantee shall replace and restore such public way to a condition reasonably comparable to the condition of the public way existing immediately prior to such disturbance. The Grantee's restoration shall be guaranteed for one (1) year.

(Ord. 2007-7 §1; Ord. 2011-18 §1)

**Sec. 5-2-110. Relocation at request of Franchising Authority.**

Upon its receipt of reasonable advance written notice, to be not less than thirty (30) business days, the Grantee, at its own expense, shall protect, support, temporarily disconnect, relocate in or remove from the public way, any property of the Grantee when lawfully required by the Franchising Authority by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes or any other type of structures or improvements by the Franchising Authority which are not used to compete with the Grantee's services and consistent with Section 29-8-101, et seq., C.R.S. The Grantee shall in all cases have the right of abandonment of its property. If funds are available to any person using such public way for the purpose of defraying the cost of any of the foregoing, the Franchising Authority shall make application for such funds on behalf of the Grantee.

(Ord. 2007-7 §1; Ord. 2011-18 §1)

**Sec. 5-2-120. Relocation at request of third party.**

The Grantee shall, on the request of any person holding a building permit issued by the Franchising Authority, temporarily or permanently relocate a portion of the natural gas distribution system, provided that: (1) the reasonable expense of such temporary or permanently relocating such portion of the gas pipes, meters and/or valves is paid by said person, including, if required by the Grantee, making such payment in advance; and (2) the Grantee is given reasonable advance written notice to prepare for such changes. For purposes of this Section, reasonable advance written notice shall be no less than thirty (30) business days in the event of a temporary relocation, and no less than one hundred twenty (120) days for a permanent relocation.

(Ord. 2007-7 §1; Ord. 2011-18 §1)

**Sec. 5-2-130. Trimming of trees and shrubbery.**

The Grantee shall have the authority to trim trees or other natural growth in order to access and maintain the natural gas distribution system.

(Ord. 2007-7 §1; Ord. 2011-18 §1)

**Sec. 5-2-140. Safety requirements.**

Construction, operation and maintenance of the natural gas distribution system shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with generally applicable federal, state and local regulations. The natural gas distribution system shall not endanger or unreasonably interfere with the safety of persons or property in the service area.

(Ord. 2007-7 §1; Ord. 2011-18 §1)

**Sec. 5-2-150. Access to open trenches.**

The Franchising Authority agrees to include the Grantee in the platting process for any new subdivision. At a minimum, the Franchising Authority agrees to require as a condition of issuing a permit

for open trenching to any utility or developer that: (a) the utility or developer give the Grantee at least ten (10) days' advance written notice of the availability of the open trench; and (b) that the utility or developer provide the Grantee with reasonable access to the open trench.

(Ord. 2007-7 §1; Ord. 2011-18 §1)

**Sec. 5-2-160. Required extensions of natural gas distribution system.**

The Grantee agrees to provide natural gas service to all residences in the service area subject to the density requirements specified in this Subsection. Whenever the Grantee receives a request for natural gas distribution service from a customer in a contiguous unnerved area where there are at least ten (10) residences within one-quarter (¼) mile from the portion of the Grantee's system which is to be extended, the Grantee shall then extend its natural gas distribution system to such customers. Notwithstanding the foregoing, the Grantee shall have the right, but not the obligation, to extend the natural gas distribution system into any portion of the service area where another operator is providing natural gas service; into any annexed area which is not immediately adjacent to the present service area of the Grantee; or into any area which is financially or technically not feasible due to extraordinary circumstances, such as a river, mountain, runway or highway crossing.

(Ord. 2007-7 §1; Ord. 2011-18 §1)

**Sec. 5-2-170. Customer charges for extensions of natural gas distribution system.**

No customer shall be refused service arbitrarily; however, if an area does not meet the density requirements of Section 5-2-160 above, the Grantee shall only be required to extend the natural gas distribution system to customers in that area if the customers are willing to share the capital costs of extending the natural gas distribution system. The Grantee may require that payment of the capital contribution in aid of construction borne by such potential customers be paid in advance. Customers shall also be responsible for any standard/nonstandard installation charges to extend the natural gas distribution system from the tap to the residence.

(Ord. 2007-7 §1; Ord. 2011-18 §1)

**Sec. 5-2-180. Natural gas distribution service to public buildings.**

The Grantee, upon written request, shall provide without charge a standard installation and one (1) outlet of natural gas service to those Franchise Authority's administrative buildings owned and occupied by the Franchise Authority's fire stations, police stations and state-accredited K-12 public schools that are passed by its natural gas distribution system. Only the installation shall be without charge. The Franchising Authority shall be liable for gas consumed at the tariffs established by the PUC. The natural gas distribution service provided shall not be distributed beyond the originally installed walls without authorization from the Grantee. The Franchising Authority shall take reasonable precautions to prevent any use of the Grantee's natural gas distribution system in any manner that results in the inappropriate use thereof or any loss or damage to the natural gas distribution system. The Franchising Authority shall hold the Grantee harmless from any and all liability or claims arising out of the provision and use of natural gas distribution service required by this Section. The Grantee shall not be required to provide natural gas to such buildings where a nonstandard installation is required, unless the Franchising Authority or building owner/occupant agrees to pay the incremental cost of any necessary natural gas distribution system extension and/or nonstandard installation. If additional natural gas lines are provided to such buildings, the building owner/occupant shall pay the usual installation and service fees associated therewith.

(Ord. 2007-7 §1; Ord. 2011-18 §1)

**Sec. 5-2-190. Reimbursement of costs.**

If funds are available to any person using the public way for the purpose of defraying the cost of any of the foregoing, the Franchising Authority shall reimburse the Grantee in the same manner in which other persons affected by the requirement are to be reimbursed. If the funds are controlled by another governmental entity, the Franchising Authority shall make application for such funds on behalf of the Grantee.

(Ord. 2007-7 §1; Ord. 2011-18 §1)

**Sec. 5-2-200. Use of gas mains.**

The Grantee may distribute gas to other persons or corporations beyond the corporate limits of the Franchising Authority by and through gas mains and pipes within the boundaries thereof, subject, however, at all times, to priority of right to continued satisfactory and adequate supply of gas to users and customers within the Franchising Authority.

(Ord. 2007-7 §1; Ord. 2011-18 §1)

**Sec. 5-2-210. Build-out of initial system.**

The Grantee will use its best efforts to complete the construction of the initial distribution system within the corporate limits by December 1, 2009. Such completion of the initial construction is subject to delays beyond the control of the Grantee, such as but not limited to weather, Public Utilities Commission approval and forest service access permits.

(Ord. 2007-7 §1; Ord. 2011-18 §1)

**Sec. 5-2-220. Franchise fee.**

- (a) The Grantee shall pay to the Franchising Authority a franchise fee equal to five percent (5%) of the annual gross revenues (as defined in Section 5-2-10 of this Article) of the natural gas purchased. The twelve-month period applicable under the Franchise for the computation of the franchise fee shall be a calendar year. The franchise fee payment shall be due quarterly and payable within forty-five (45) days after the close of the preceding calendar quarter. Each payment shall be accompanied by a brief report prepared by a representative of the Grantee showing the basis for the computation. The Grantee shall not be liable for any local sales tax or other taxes or fees.
- (b) Such franchise fee may be assessed and charged by the Grantee to the customer.
- (c) The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Grantee is due.
- (d) The Grantee shall pay interest on late payments at the rate of eight percent (8%) per annum.

(Ord. 2007-7 §1; Ord. 2011-18 §1)

**Sec. 5-2-230. Renewal of franchise.**

- (a) The Franchising Authority and the Grantee agree that any proceedings undertaken by the Franchising Authority that relate to the renewal of this franchise shall be initiated at least twelve (12) months prior to the termination of this franchise. If, within twelve (12) months of the termination date, neither party

elects to terminate or modify this franchise agreement, then it shall be automatically extended annually until such notice to extend or modify is made.

- (b) Notwithstanding anything to the contrary set forth in this Section, the Grantee and the Franchising Authority agree that, at any time during the term of the then-current franchise, while affording the public appropriate notice and opportunity to comment, the Franchising Authority and the Grantee may agree to undertake and finalize informal negotiations regarding renewal of the then-current franchise, and the Franchising Authority may grant a renewal thereof.

(Ord. 2007-7 §1; Ord. 2011-18 §1)

**Sec. 5-2-240. Conditions of sale.**

If a renewal or extension of this franchise is denied or the franchise is lawfully terminated, and the Franchising Authority either lawfully acquires ownership of the natural gas distribution system or by its actions lawfully effects a transfer of ownership of the natural gas distribution system to another party, any such acquisition or transfer shall be at the price determined pursuant to the usual and customary fair market value for such a system if the buyer was an operating natural gas utility that is not municipally owned. The Grantee and the Franchising Authority agree that, in the case of a final determination of a lawful revocation of the franchise, the Grantee shall be given at least twelve (12) months to effectuate a transfer of its natural gas distribution system to a qualified third party. Furthermore, the Grantee shall be authorized to continue to operate pursuant to the terms of its prior franchise during this period. If, at the end of that time, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its natural gas distribution system which is reasonably acceptable to the Franchising Authority, the Grantee and the Franchising Authority may avail themselves of any rights they may have pursuant to federal or state law. It is further agreed that the Grantee's continued operation of the natural gas distribution system during the twelve-month period shall not be deemed to be a waiver or an extinguishment of any rights of either the Franchising Authority or the Grantee.

(Ord. 2007-7 §1; Ord. 2011-18 §1)

**Sec. 5-2-250. Transfer of franchise.**

The Grantee's right, title or interest in the franchise shall not be sold, transferred, assigned or otherwise encumbered, other than to an entity controlling, controlled by or under common control with the Grantee, without the prior consent of the Franchising Authority, such consent not to be unreasonably withheld. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation or by assignment of any rights, title or interest of the Grantee in the franchise or natural gas distribution system in order to secure indebtedness. Within thirty (30) days of receiving a request for transfer, the Franchising Authority shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If the Franchising Authority has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request, consent by the Franchising Authority shall be deemed given.

(Ord. 2007-7 §1; Ord. 2011-18 §1)

**Sec. 5-2-260. Customer service.**

- (a) Customer service standards. The Grantee shall comply with customer service standards as set forth by the PUC.
- (b) Customer privacy. The Grantee shall fully comply with any provisions regarding the privacy rights of customers contained in federal or state law.

- (c) Customer contracts. The Grantee shall not enter into a contract with any customer that is in conflict with the terms of this franchise. Upon written request, the Grantee will provide to the Franchising Authority a sample of the customer contract or service agreement then in use.

(Ord. 2007-7 §1; Ord. 2011-18 §1)

**Sec. 5-2-270. Books and records.**

The Grantee agrees that the Franchising Authority, upon thirty (30) days' written notice to the Grantee, may review such of its books and records at the Grantee's business office, during normal business hours and on a nondisruptive basis, as is reasonably necessary to ensure compliance with the terms of this franchise. Such notice shall specifically reference the section of the franchise that is under review, so that the Grantee may organize the necessary books and records for easy access by the Franchising Authority. The Grantee shall not be required to maintain any books and records for franchise compliance purposes longer than three (3) years. Notwithstanding anything to the contrary set forth herein, the Grantee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature. To the extent allowed by law, the Franchising Authority agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to employees, representatives and agents thereof that have a need to know, and in order to enforce the provisions hereof. The Grantee shall not be required to provide customer information in violation of any law or rule or regulation of the PUC.

(Ord. 2007-7 §1; Ord. 2011-18 §1)

**Sec. 5-2-280. Insurance requirements.**

The Grantee shall maintain in full force and effect, at its own cost and expense, during the term of the franchise, commercial general liability insurance in the amount of one million dollars (\$1,000,000.00) combined single limit for bodily injury and property damage, or the liability limits established by the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S., as it may be amended from time to time, whichever is greater. Such insurance shall be non-cancellable except upon thirty (30) days' prior written notice to the Franchising Authority. Upon written request, the Grantee shall provide a certificate of insurance showing evidence of the coverage required by this Section and listing the Franchising Authority as an additional named insured.

(Ord. 2007-7 §1; Ord. 2011-18 §1)

**Sec. 5-2-290. Indemnification.**

The Grantee agrees to indemnify, save and hold harmless and defend the Franchising Authority, its officers, boards and employees from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of the Grantee's construction, operation or maintenance of its natural gas distribution system; provided that the Franchising Authority shall give the Grantee written notice of its obligation to indemnify the Franchising Authority within ten (10) days of receipt of a claim or action pursuant to this Section. If the Franchising Authority determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Franchising Authority. Notwithstanding the foregoing, the Grantee shall not indemnify the Franchising Authority for any damages, liability or claims resulting from the willful misconduct or negligence of the Franchising Authority.

(Ord. 2007-7 §1; Ord. 2011-18 §1)

**Sec. 5-2-300. Notice of violation.**

In the event that the Franchising Authority believes that the Grantee has not complied with the terms of this franchise, the Franchising Authority shall informally discuss the matter with the Grantee. If these discussions do not lead to resolution of the problem, the Franchising Authority shall notify the Grantee in writing of the exact nature of the alleged noncompliance.

(Ord. 2007-7 §1; Ord. 2011-18 §1)

**Sec. 5-2-310. Grantee's right to cure or respond.**

The Grantee shall have forty-five (45) days from receipt of the notice described in Section 5-2-300 above:

- (1) To respond to the Franchising Authority contesting the assertion of noncompliance;
- (2) To cure such default; or
- (3) In the event that, by the nature of default, such default cannot be cured within the forty-five-day period, to initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed.

(Ord. 2007-7 §1; Ord. 2011-18 §1)

**Sec. 5-2-320. Public hearing.**

In the event that the Grantee fails to respond to the notice described in Section 5-2-300 above pursuant to the procedures set forth in Section 5-2-310 above, or in the event that the alleged default is not remedied within forty-five (45) days or the date projected pursuant to Paragraph 5-2-310(3) above, if it intends to continue its investigation into the default, then the Franchising Authority shall schedule a public hearing. The Franchising Authority shall provide to the Grantee at least fifteen (15) days' prior written notice of such hearing, which specifies the time, place and purpose of such hearing, and provide the Grantee the opportunity to be heard.

(Ord. 2007-7 §1; Ord. 2011-18 §1)

**Sec. 5-2-330. Enforcement.**

Subject to applicable federal and state law, in the event the Franchising Authority, after the hearing set forth in Section 5-2-320 above, determines that the Grantee is in default of any provision of the franchise, the Franchising Authority may:

- (1) Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages;
- (2) Commence an action at law for monetary damages or seek other equitable relief; or
- (3) In the case of a substantial default of a material provision of the franchise, seek to revoke the franchise in accordance with Section 5-2-340 below.

(Ord. 2007-7 §1; Ord. 2011-18 §1)

**Sec. 5-2-340. Revocation.**

- (a) Should the Franchising Authority seek to revoke the franchise after following the procedures set forth in Sections 5-2-300 through 5-2-330 above, the Franchising Authority shall give written notice to the Grantee of its intent. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a satisfactory response from the Grantee, it may then seek termination of the franchise at a public hearing. The Franchising Authority shall cause to be served upon the Grantee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the franchise.
- (b) At the designated hearing, the Franchising Authority shall give the Grantee an opportunity to state its position on the matter, after which it shall determine whether or not the franchise shall be revoked. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Franchising Authority de novo. Such appeal to the appropriate court must be taken within sixty (60) days of the issuance of the determination of the Franchising Authority.
- (c) The Franchising Authority may, at its sole discretion, take any lawful action that it deems appropriate to enforce the Franchising Authority's rights under this franchise in lieu of revocation of the franchise.

(Ord. 2007-7 §1; Ord. 2011-18 §1)

**Sec. 5-2-350. Force majeure.**

- (a) The Grantee shall not be held in default under, or in noncompliance with, the provisions of the franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, forest fires, civil disturbances, power outages, labor disputes, terrorist activities, telephone network outages and severe or unusual weather conditions which have a direct and substantial impact on the Grantee's ability to provide natural gas in the Franchising Authority and which was not caused and could not have been avoided by the Grantee using reasonable efforts in its operations to avoid such results. This provision includes, but is not limited to, work delays caused by waiting for utility providers to service or monitor their meters to which the Grantee's natural gas distribution system is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.
- (b) Furthermore, the parties hereby agree that it is not the Franchising Authority's intention to subject the Grantee to penalties, fines, forfeitures or revocation of the franchise for violations of the franchise where the violation was a good-faith error that resulted in no or minimal negative impact on the customers within the service area or where strict performance would result in practical difficulties and hardship to the Grantee which outweigh the benefit to be derived by the Franchising Authority and/or customers.

(Ord. 2007-7 §1; Ord. 2011-18 §1)

**Sec. 5-2-360. Actions of parties.**

In any action by the Franchising Authority or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

(Ord. 2007-7 §1; Ord. 2011-18 §1)

**Sec. 5-2-370. Entire agreement.**

This franchise constitutes the entire agreement between the Grantee and the Franchising Authority. Amendments to this franchise shall be mutually agreed to in writing by the parties.

(Ord. 2007-7 §1; Ord. 2011-18 §1)

**Sec. 5-2-380. Notice.**

(a) Unless expressly otherwise agreed between the parties, every notice or response required by this franchise to be served upon the Franchising Authority or the Grantee shall be in writing and shall be deemed to have been duly given to the required party when placed in a properly sealed and correctly addressed envelope:

- (1) Upon receipt when hand-delivered with receipt/acknowledgement;
- (2) Upon receipt when sent by certified mail; or
- (3) Within five (5) business days after having been posted in the regular mail.

(b) The notices or responses to the Franchising Authority shall be addressed as follows:

Town of Alma  
Attn: Town Clerk  
59 E. Buckskin Road  
Alma, CO 80420

(c) The notices or responses to the Grantee shall be addressed as follows:

Colorado Natural Gas, Inc.  
Attn: Shaffer Parkway, Suite President  
7810 Littleton, CO 80127 120

With a copy to:

Colorado Natural Gas, Inc.  
Attention: Shaffer General Parkway, Suite Counsel  
7810 Littleton, CO 80127 120

(d) The Franchising Authority and the Grantee may designate such other address or addresses from time to time by giving notice to the other in the manner provided for in this Section to the last known address of the Franchising Authority or the Grantee.

(Ord. 2007-7 §1; Ord. 2011-18 §1)

**Sec. 5-2-390. Descriptive headings.**

The captions to sections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

(Ord. 2007-7 §1; Ord. 2011-18 §1)

**Sec. 5-2-400. Severability.**

If any section, sentence, paragraph, term or provision hereof is determined to be illegal, invalid or unconstitutional by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the franchise or any renewal thereof.

(Ord. 2007-7 §1; Ord. 2011-18 §1)

**Sec. 5-2-410. Miscellaneous.**

- (a) The Town, by entering into this agreement, does not waive any rights or protections it may have under the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S.
- (b) The parties enter into this agreement as separate, independent entities and shall maintain such status throughout.
- (c) The provisions of this agreement shall only become effective upon execution of the agreement by both parties.
- (d) Neither party may assign its rights or obligations under this agreement without the prior written notice to the other party.
- (e) This agreement shall be governed by the laws of the State of Colorado.
- (f) No third parties are intended to be beneficiaries of this agreement.
- (g) This agreement is intended to be fully integrated.
- (h) As required by Article X, Section 20 of the Colorado Constitution, any obligation of the Town not performed in the current fiscal year shall be subject to annual appropriation of funds by the Town's governing body. Should sufficient funds not be appropriated for the Town's performance in future fiscal years, this agreement shall terminate and be of no further force or effect.
- (i) Venue and jurisdiction for any dispute arising under this agreement shall be in the District Court for the County of Park, State of Colorado.

(Ord. 2007-7 §1; Ord. 2011-18 §1)

**Sec. 5-2-420. Effective date.**

The effective date of this franchise is December 4, 2007, pursuant to the provisions of applicable law. This franchise shall expire on December 3, 2032, unless extended by the mutual agreement of the parties.

(Ord. 2007-7 §1; Ord. 2011-18 §1)