

**CITY OF LAFAYETTE
RESOLUTION NO. 2013-50**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
LAFAYETTE, COLORADO, PERTAINING TO BALLOT
QUESTION 2A APPEARING ON THE NOVEMBER 5, 2013
MUNICIPAL ELECTION BALLOT RELATING TO THE
RENEWAL OF THE PUBLIC SERVICE COMPANY OF
COLORADO (XCEL ENERGY) FRANCHISE**

WHEREAS, virtually all of the residents, and businesses within the City of Lafayette receive their electrical and natural gas service from the Public Service Company of Colorado, d/b/a Xcel Energy (“Xcel”); and

WHEREAS, Xcel delivers natural gas and electricity to City of Lafayette residents and businesses through infrastructure owned by Xcel, most of which is located within the streets and utility easements that are owned and controlled by the City of Lafayette; and

WHEREAS, for at least the last twenty years the use of the City’s streets and utility easements by Xcel to deliver electricity and natural gas to its customers has been governed by a franchise agreement; and

WHEREAS, the current twenty year Franchise Agreement between the City and Xcel pertaining to the use of the City’s streets and utility easements will expire in November of 2013. The City’s Charter requires a vote of the electorate in order to authorize the renewal of franchise and the Franchise Agreement, with a vote of “Yes” on Ballot Question 2A on the November 5, 2013 municipal election constituting a vote to authorize the extension of the franchise and the Franchise Agreement; and

WHEREAS, Xcel will continue to provide natural gas and electricity to the residents and businesses of Lafayette using the city streets and easements even if the franchise is not authorized by the electorate; however, the City will no longer receive many of the benefits that are provided for in the proposed Franchise Agreement; and

WHEREAS, the proposed franchise with Xcel is a “non-exclusive” franchise, meaning that the City is free to grant similar franchises to other utility companies wishing to provide alternative utilities within the City. Although Lafayette has no plans to create its own municipal electrical or natural gas utility, granting the franchise to Xcel does not prevent Lafayette from doing so if Lafayette should choose to do so; and

WHEREAS, the Franchise Agreement with Xcel, both past and proposed, provides for the payment to the City’s general fund of a franchise fee equal to 3% of the sales of natural gas and electricity within the City, which most recently equaled approximately \$720,000.00 on an annual basis. This \$720,000.00 in annual revenue to the City’s general fund is used to partially fund significant amenities and services to the residents of Lafayette, such as police and fire protection, library services, parks and

recreation, and municipal street maintenance, including snow plowing. If the franchise is not renewed, the loss of \$720,000 annually to the City's general fund will make a significant impact on the ability of the City to continue these general services at the level currently enjoyed by Lafayette residents and businesses; and

WHEREAS, the Franchise Agreement, both past and proposed, requires that Xcel will contribute approximately 1% of gas and electric revenues (approximately \$180,000 annually in addition to the \$720,000 annual fee) to the utility undergrounding fund, which may be utilized by Lafayette to fund projects that provide for the undergrounding of electrical utilities. At the current time, approximately \$1.2 million has accumulated in the City's undergrounding fund. If the Franchise Agreement is not renewed, the City's ability to access the \$1.2 million in the undergrounding fund will cease and there will be no future contributions by Xcel for that purpose; and

WHEREAS, Xcel provides the City with many benefits such as incentives for solar energy production, and various other energy efficiency programs, all of which will be in jeopardy should the City not have a contractual relationship with Xcel through the Franchise Agreement; and

WHEREAS, the Franchise Agreement has proven to be an effective and efficient means to coordinate between the City and Xcel regarding repairs of facilities located within municipal streets. Without the Franchise Agreement it will be necessary for the City to coordinate with Xcel, on a case-by-case basis, whenever it is necessary for Xcel to access its facilities in the streets. This is inefficient and expensive for both the City and Xcel, and will ultimately be reflected in the operational costs of the City and Xcel; and

WHEREAS, the stability of a long-term franchise for gas and electric utility will enhance and encourage new business development in Lafayette; and the uncertainty associated with the lack of a franchise will discourage business development; and

WHEREAS, because Xcel is a regulated monopoly, the manner by which it conducts business (such as establishing utility rates and addressing the source of its production of utilities) is subject to regulation at the state level by the Colorado Public Utilities Commission. Neither the grant of a franchise nor the Franchise Agreement with Lafayette can or will have any impact on the operational aspects of the Public Service Company, which is a matter exclusively controlled by the state; and

WHEREAS, there appear to be no tangible benefits to the City of Lafayette, its residents or businesses if the franchise terminates or is not renewed; and

WHEREAS, City Council believes renewing the franchise and Franchise Agreement will only result in preserving the City's revenues, as well as continuing energy efficiency programs administered through Xcel. City Council believes that the franchise with Xcel should be renewed for an additional twenty years.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lafayette, Colorado as follows:

City Council hereby declares its full support of, and urges a “YES” vote for, Ballot Question 2A at the November 5, 2013 municipal election, which would authorize a new franchise to Public Service Company of Colorado (Xcel) pertaining to use of the City’s streets and utility easements.

RESOLVED AND PASSED THIS 1st DAY OF OCTOBER, 2013.

CITY OF LAFAYETTE, COLORADO

ATTEST:

Carolyn D. Cutler, Mayor

Susan Koster, CMC
City Clerk

APPROVED AS TO FORM:

David S. Williamson, City Attorney