

## AMENDMENT TO STEAM SERVICE AGREEMENT

THIS AMENDMENT TO STEAM SERVICE AGREEMENT is made and entered into this \_\_\_ day of \_\_\_\_\_, 2010, by and between **Public Service Company of Colorado**, a Colorado corporation ("Supplier"), and **The City and County of Denver**, a municipal corporation of the State of Colorado ("Customer"), each of which may be referred to herein individually as a "Party" or collectively as the "Parties."

### WITNESSETH:

WHEREAS, the Parties hereto have entered into a Steam Service Agreement dated January 2, 2001 (the "Agreement"), under which Supplier has agreed to provide, and Customer has agreed to purchase, steam service to multiple facilities of Customer from Supplier's district steam plant and steam distribution system in downtown Denver, Colorado;

WHEREAS, contemporaneous with the execution of this Amendment, Supplier and Customer are entering into a new Steam Service Agreement ("Justice Center Agreement"), with an Initial Term expiring on December 31, 2034, pursuant to which Supplier has agreed to provide to Customer, and Customer has agreed to purchase from Supplier, steam service for Customer's space heating, humidification and hot water needs in the planned Justice Center, which is bounded by Colfax Avenue on the north, 14th Avenue on the south, Delaware Street on the east and Fox Street on the west; and

WHEREAS, in conjunction with new steam service under the Justice Center Agreement, Customer and Supplier mutually desire to change the term and pricing provisions applicable under the Agreement to be the same as the that applicable to steam service under the Justice Center Agreement.

NOW WHEREFORE, in consideration of the premises and mutual covenants herein contained, the parties hereby agree to amend the Agreement as follows:

1. Section 2.2, Charges, shall be deleted in its entirety and replaced and superseded by the following new Section 2.2:

2.2 Charges. Subject to Sections 2.3 and 2.4, Customer shall pay Supplier each month 96% of the effective base tariff rates for steam service under the applicable rate schedule, plus any and all applicable franchise fees, surcharges or taxes, subject to Section 2.7 below, and the Steam Cost Adjustment and any other applicable rate adjustments, as authorized by the PUC and set forth from time to time in Supplier's effective Colorado PUC steam tariff. For any partial month in which steam service is rendered hereunder, all such rates and charges shall be prorated for the number of days in the month in which service was made available and rendered. In the event steam service provided by Supplier in Colorado is deregulated such that Supplier's Colorado PUC steam tariff is

no longer applicable to Supplier's steam service provided in Colorado, Supplier and Customer shall promptly meet to determine mutually agreeable charges for steam service to be rendered thereafter. If the parties are unable to reach an agreement as to such charges, then the applicable rates and charges that were effective hereunder on the date of deregulation (including annual adjustments to reflect steam production and fuel costs calculated in accordance with the applicable procedures and terms of the effective Steam Cost Adjustment clause in Supplier's Colorado PUC steam tariff on the day immediately preceding the effective date of such deregulation) shall continue in effect for a period of five years thereafter, after which either party shall have the right to terminate this agreement upon six months written notice to the other effective on or after the expiration of such five-year period.

2. Section 2.5, Annual Adjustments, and Section 2.7, Change of Law, shall be deleted in their entirety.
3. Section 2.3, Service Invoices, shall be renumbered and hereafter shall be Section 2.5.
4. Section 2.6, Taxes, Fees and Surcharges, shall be renumbered and hereafter shall be Section 2.7.
5. Section 2.4, Payment, shall be renumbered and hereafter shall be Section 2.6.
6. The following new Section 2.3, Minimum Rate Under C.R.S. § 40-3-104.3, shall be inserted in the Agreement and hereafter shall be the effective Section 2.3:

2.3 Minimum Rate Under C.R.S. § 40-3-104.3. For so long as steam service provided by Supplier in Colorado is subject to regulation by the PUC under the Colorado Public Utilities Law, at no time shall the charges payable by Customer hereunder ever be less than Supplier's variable cost for steam service. For the purpose of enforcing this provision, each Calendar Year during the term of this Agreement, the variable cost of providing steam service shall be calculated in accordance with Supplier's Colorado PUC steam tariff and the principles and methodologies common in the public utility industry and, if applicable, accepted by the PUC. For any year in which the aggregate amount of charges billed hereunder is less than the variable cost of steam service as so calculated, Customer shall pay Supplier any such shortfall. Any such shortfall will be billed to Customer in a separate invoice prior to June 30 of the following year.

7. The following new Section 2.4, Most Favored Nations, shall be inserted in the Agreement and hereafter shall be the effective Section 2.4:

2.4 Most Favored Nations. If, during the term of this Agreement, Supplier provides steam service to any other customer located in

downtown Denver similarly situated to Customer hereunder, for which the average price per Mlb for steam service thereunder (taking into account all applicable charges for such steam service) during the prior twelve (12) months is less than the average price per Mlb (taking into account all applicable charges) under this Agreement for the same period, then the charges applicable hereunder shall automatically be reduced to equal ninety-nine and one-half percent (99.5%) of the average price per Mlb charged to such other customer. Supplier shall be required to notify Customer of any such agreement with another customer for which the annualized charge per Mlb is less than the annualized charge under this Agreement.

8. Section 9.1, Term shall be deleted in its entirety and replaced and superseded by the following new Section 9.1:

9.1. Term. This Agreement will be effective when executed by both parties and the necessary PUC approval referenced in Section 10.5 is obtained (“Effective Date”) and, unless sooner terminated as provided in Section 9.3, will remain in effect for an Initial Term ending on December 31, 2034. This Agreement will become automatically renewable for ten (10) year periods unless either party gives written notice of termination at least one year prior to expiration of the Initial Term or subsequent renewal term. Supplier will notify Customer by letter of the upcoming expiration of the Initial Term between December 1, 2032 and May 31, 2033, and between 18 and 24 months prior to the expiration of all subsequent renewal terms thereafter.

9. Section 9.3, Early Termination, shall be deleted in its entirety and replaced and superseded by the following new Section 9.3:

9.3. Early Termination. In addition to the termination rights of either party under applicable law following a default, Supplier may terminate this Agreement if a withdrawal, cancellation or lapse of any right, permit or authorization of any governmental authority necessary to allow Supplier to operate its steam district energy system or to provide steam service to Customer.

10. Schedule A shall be deleted in its entirety.

11. All other provisions of the Agreement shall remain the same.

12. This Amendment shall be effective the day and year above first written, subject to the following conditions concerning PUC approval. It is specifically understood and agreed by the Parties hereto that this Amendment to Steam Service Agreement shall not become effective, and shall be null and void, unless and until the PUC issues a final order authorizing Supplier to

provide steam service to Customer pursuant to the terms and conditions of the Agreement, as amended hereby, and the Justice Center Agreement, without regard to its steam tariff and without condition; provided, however, that if the PUC attaches a condition to its authorization of Supplier to provide such service and such condition materially and adversely affects either Customer or Supplier, such affected party must give notice to the other party within 10 days of the mailing date of such final order or such Party shall be deemed to have accepted such condition.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to Steam Service Agreement to be executed the day and year first written above.

**CUSTOMER:**

**CITY AND COUNTY OF DENVER**

ATTEST:

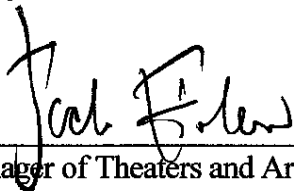
By: \_\_\_\_\_  
Stephanie Y. O'Malley  
Clerk and Recorder, Ex-Officio Clerk  
of the City and County of Denver

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

RECOMMENDED AND APPROVED:

By:   
Manager of General Services

APPROVED AS TO FORM:  
David Fine  
Attorney for the City and County of Denver

By:   
Manager of Theaters and Arenas

By: \_\_\_\_\_  
Assistant City Attorney

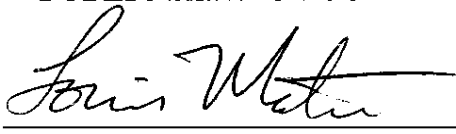
REGISTERED AND COUNTERSIGNED

By: \_\_\_\_\_  
Manager of Finance  
Contract Control No: CE0Y098-1

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

**SUPPLIER:**

**PUBLIC SERVICE COMPANY OF COLORADO**

By:   
Louis Matis  
Vice President

REVIEWED  
LEGAL

4-20-10 LMC