

DENVER INTERNATIONAL AIRPORT OPERATING AGREEMENT

THIS DENVER INTERNATIONAL AIRPORT OPERATING AGREEMENT (“**Operating Agreement**”) is made and entered into as of the effective date of the Franchise Agreement as defined below, by and between **PUBLIC SERVICE COMPANY OF COLORADO**, a corporation duly organized and existing under the laws of the State of Colorado, an **XCEL ENERGY** company (hereinafter referred to as the “**Company**”), and the **CITY AND COUNTY OF DENVER**, a municipal corporation existing under Article XX of the Constitution of the State of Colorado and the Home Rule Charter of the City and County of Denver (hereinafter referred to as “**City**”), through and on behalf of its Department of Aviation (“**DEN**”).

WITNESSETH:

WHEREAS, the City owns and operates the Denver International Airport (the “**Airport**”); and

WHEREAS, prior to the completion of the Airport, the City and the Company entered into several agreements which provide for the construction of utility infrastructure for the Airport and for certain responsibilities and obligations of the Company and DEN with respect to the operation and maintenance of that infrastructure (collectively, the “**DIA Agreements**” as defined below), and to the extent that the DIA Agreements still govern aspects of the Company’s and DEN’s activities at the Airport the same are incorporated herein by this reference; and

WHEREAS, the City and the Company are parties to that certain Franchise Agreement between the City and the Company dated effective January 1, 2027 (the “**Franchise Agreement**”); and

WHEREAS, as part of City, DEN operates and manages the Airport on Aviation Property; and

WHEREAS, Article 13 of the Franchise Agreement, among other provisions therein, contemplates additional regulation of Aviation Property by and in coordination with DEN and the Manager of Aviation through an operating agreement;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and promises of the parties hereto, it is hereby agreed as follows:

ARTICLE 1 DEFINITIONS

Capitalized terms not otherwise defined herein shall have the meanings ascribed in the Franchise Agreement. For purposes of this Operating Agreement, the following additional words and phrases shall have the meaning 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 “may” is permissive. Words not defined in this Article shall be given their common and ordinary meaning.

§ 1.1 “**Airfield Operation Area**” or “**AOA**” refers to fenced-in portions of the Airport where aircraft land, take off, and maneuver on the ground. It includes all runways, taxiways, aprons, and other areas where aircraft support operations occur. The AOA is a restricted area and not open to the public; badged or escorted access is required.

§ 1.2 “**Airport Operations**” means (i) the movement of passengers, vehicles, and freight into, on and out of Aviation Property, and (ii) aircraft operations into, on and out of the Airport, (iii) all other activities, services and equipment needed to ensure the safety and security of the traveling public and to operate aircraft (including but not limited to, fueling, repairing, deicing, baggage services, and food services, cargo handling, snow removal, aircraft rescue and firefighting (ARFF), security, emergency medical services, emergency dispatch call centers; airfield lighting, radio communications, ramp tower ground control, air traffic control, FAA infrastructure including the control tower, radar, communications and navigation aids).

§ 1.3 “**Aviation Facilities**” refer to any City-owned, operated, or leased public work, building, equipment, or facility, or any other improvement to or fixture located on Aviation Property.

§ 1.4 “**Aviation Property**” refers to all land comprising Denver International Airport described and depicted in **Exhibit A** attached hereto.

§ 1.5 “**DIA Agreements**” refers to the agreements by and between the City and the Company identified on **Exhibit B**.

§ 1.6 “**Electrical Vault Environmental Process**” refers to the process and procedures for electrical vault dewatering and cleaning set forth in that certain DEN/XCEL Energy Environmental Process Letter Agreement dated November 30, 2021, as was amended by Amendment 1 dated July 15, 2022.

§ 1.7 “**FAA**” refers to the Federal Aviation Administration, an agency of the United States Department of Transportation, or any successor in function.

§ 1.8 “**Manager of Aviation**” refers to the Manager of Aviation for the City or their designee. Additionally, such other official of the City who shall succeed to the duties and responsibilities of said Manager as set forth in the Charter of the City. The Manager of Aviation is sometimes referred to as the “Chief Executive Officer” or “CEO” of the Airport.

§ 1.9 “**TSA**” refers to the Transportation Security Administration, an agency of the United States Department of Transportation, or any successor in function.

ARTICLE 2 CONDITIONS AND LIMITATIONS

§ 2.1 Purpose. As more fully set forth in Article 2 of the Franchise Agreement, the Franchise Agreement grants the Company the non-exclusive right to use Aviation Property to provide Utility Service to Aviation Property. This Operating Agreement provides for processes and procedures related to the Company's activities on Aviation Property under the Franchise Agreement and, where applicable, the incorporated DIA Agreements, for providing Utility Service to Aviation Property.

§ 2.2 Term. This Operating Agreement shall be effective for a period coincident with the term of the Franchise Agreement subject to the terms and conditions of the Franchise Agreement.

§ 2.3 Scope. This Operating Agreement shall extend to the provision of Utility Service in all areas of Aviation Property, as it is now or hereafter constituted. The portion of Company Facilities on Aviation Property must primarily provide service to Aviation Facilities. Exceptions for de-minimus uses of Aviation Property to provide service only to non-Aviation Facilities may be made with DEN's permission on a case-by-case basis, which permission shall not be unreasonably denied.

§ 2.4 Regulation Of Aviation Property. The Franchise Agreement requires the parties' compliance with Applicable Laws. The Company understands that the Airport is subject to regulation by the FAA and the TSA. DEN and the Company agree to comply with all applicable regulations, guidelines, grant assurances, and protocols that are imposed on the Airport or users of Aviation Property by the DEN Rules and Regulations and referenced Federal authorities, including as such may be added to or amended in future, and including orders or requirements issued during any emergency. The Appendices attached are FAA required terms and conditions which are hereby incorporated by reference.

§ 2.5 Subject To City Usage. The Company's right to make reasonable use of Aviation Property to provide Utility Service is subject to and subordinate to any City usage of said Aviation Property including any limitations on Aviation Property imposed by the Manager of Aviation, such as security requirements, bond ordinance limitations, FAA requirements, and other DEN operational requirements and the DEN Rules and Regulations.

ARTICLE 3 ADMINISTRATION

§ 3.1 Authority. The Manager of Aviation may exercise the same authority under this Agreement as is exercised by the Manager of DOTI in the Franchise Agreement, as to Aviation Property.

§ 3.2 Emergency Contacts. In recognition of the critical nature of the Aviation Facilities, DEN and the Company agree to use, for the purposes of communicating emergency failures relating to Aviation Facilities, the DIA Outage Protocol attached as Exhibit C, as the same may be updated from time to time. The Company shall provide the City with twenty four (24) hour a day, seven (7) day a week telephone or other mutually agreed upon communications access to the Company's

local service dispatch center for the City's use in communicating emergency failures relating to Aviation Facilities.

§ 3.3 Representatives. DEN shall designate a “**City Representative**” to act as the primary liaison with the Company and provide the Company with the name, location, and telephone number of said City Representative. DEN may change this designation by providing written notice to the Company. The Company shall designate a “**Local Representative**” based in Denver, Colorado to act as the primary liaison with DEN, and shall provide DEN with the name, location of the Denver office, and the Denver telephone number for the Company’s designated Local Representative. The Company may change this designation by providing written notice to the CEO.

ARTICLE 4 **AIRPORT SECURITY AND CONSTRUCTION**

§ 4.1 FAA and TSA Regulations. Company, its officers, authorized officials, employees, agents, subcontractors, and those under its control, shall comply with safety, operational, or security measures required of Company or the City by the FAA or TSA. If Company, its officers, authorized officials, employees, agents, subcontractors or those under its control, fail or refuse to comply with said measures and such non-compliance results in a monetary penalty being assessed against the City, then, in addition to any other remedies available to the City, Company shall fully reimburse the City any fines or penalties levied against the City, and any attorney fees or related costs paid by the City as a result of any such violation. Company will reimburse the City for the penalties, fees and costs set forth in the paragraph within thirty (30) days of receipt of invoice and written notice (including documentation of monetary penalty) from the City.

§ 4.2 Security and Operations. Company is responsible for compliance with Airport security regulations at 49 C.F.R. Parts 1542 (Airport Security) and 14 C.F.R. Parts 139 (Airport Certification and Operations). Any and all violations pertaining to Parts 1542 and 139 resulting in a fine will be passed on to and borne by Company. Company will reimburse the City for the penalties, fees and costs set forth in the paragraph within thirty (30) days of receipt of invoice and written notice (including documentation of monetary penalty) from the City.

§ 4.3 Construction. The Company shall follow all applicable FAA construction requirements and guidelines, including applicable advisory circulars and C.F.R. Parts 139 and 107.

§ 4.4 Sensitive Security Information. Company acknowledges that, in the course of performing its work, Company may be given access to Sensitive Security Information (“**SSI**”), as such material is described in the Code of Federal Regulations, 49 C.F.R. Part 1520. Company specifically agrees to comply with all requirements of the applicable federal regulations, including but not limited to, 49 C.F.R. Parts 15 and 1520. Company understands any questions it may have regarding its obligations with respect to SSI must be referred to the Airport’s Security Office.

ARTICLE 5 **COMPANY FACILITIES**

§ 5.1 Installation Of Company Facilities. Company Facilities supporting Aviation Facilities will be installed and constructed when requested and authorized by the Manager of Aviation in accordance with the applicable Tariffs and Industry Standards.

§ 5.2 Notice of Work.

- A. Requests by DEN. DEN or its tenants shall submit requests for new or modified Utility Service or for Relocation of Company Facilities on Aviation Property to the Company in accordance with the Tariffs and the Franchise Agreement. When submitting a request to the Company for new or modified Utility Services or for Relocation of Company Facilities on Aviation Property, DEN or its tenants will include a Letter of Authorization signed by DEN substantially in the form of **Exhibit D**, as the same may be updated from time to time.
- B. Customer Agreements. Company acknowledges that:
 - (1) Per FAA regulations, DEN may not grant any form of permanent property rights in Aviation Property and the Company waives any requirement in the Company's customer agreements requiring a permanent property right on Aviation Property; and
 - (2) DEN is not required to advance funds prior to construction, subject to the terms and conditions of Section 5.10.D. of the Franchise Agreement.

§ 5.3 As-Built Drawings. Notwithstanding anything to the contrary in the Franchise, within thirty (30) days of the completion of on-site work on Aviation Property, the Company shall submit an As-Built Drawing of any Company Facilities installed, modified, Relocated, or demolished For Company Facilities installed on Aviation Property, "As-Built Drawings" as defined in the Franchise Agreement must comply with FAA advisory circulars, including AC150/5300-16, 17, and 18 in effect at the time of the work request.

§ 5.4 Repair, Replacement, And Maintenance. The Company acknowledges the critical nature of Airport Operations and the City and the Company agree that reliable Utility Service at the Airport may require increased inspection of Company Facilities to prevent the interruption of Airport Operations. The Company and DEN shall continue to collaborate in good faith on how best to complete the outstanding repairs to be made by the Company, as previously identified in the 2021-2023 IMCORP partial discharge cable assessment.

- A. Proactive Repair and Replacement. Company shall repair or replace components found to be compromised, degraded, or at risk of failure in a timely manner, taking into consideration the timing of repair or replacement and Airport Operations.
- B. Company Staffing. Company shall assign adequate, qualified, staff and resources or contractors to maintain Company Facilities critical to Airport Operations. On a regular basis, Company shall coordinate with DEN staff regarding staffing plans, phasing of long-term projects, and completion of Company Facilities.

C. Testing. The Company shall continue to maintain, repair and replace Company Facilities in accordance with the requirements set forth in the Company's Tariffs, Industry Standards, and standard utility practices. The Company and DEN shall collaborate in good faith how to incorporate technological advances to reduce the risk of outages to Airport Operations. This may include conducting ongoing testing and assessment of Company Facilities to proactively identify Company Facilities for repair or replacement prior to failure. The frequency of inspection and testing, and cost allocation for the same, shall be determined by the parties following completion of outstanding repairs to be made by the Company as previously identified by the 2021-2023 IMCORP partial discharge cable assessment, which will take into consideration Applicable Law, Industry Standards, manufacturer's recommendations for the applicable equipment/facilities, age of the applicable equipment/facilities, operating environment and hazards to which the Company Facilities are exposed, consequences of Company Facilities failure to Airport Operations, and results of previous inspections and tests.

D. Assessment. The Company and DEN shall review the results of any testing at least once annually and the non-confidential results of such inspections and tests shall be made available to DEN. DEN and the Company agree to collaborate on prioritizing and scheduling repairs and replacement of Company Facilities, which will take into consideration how issues identified in the testing impact system reliability, the lifespan of Company Facilities, and Airport Operations.

ARTICLE 6 COORDINATION

§ 6.1 Coordination of Work. To further the purposes of the Franchise Agreement, the Company and Manager of Aviation agree to coordinate on the location and Relocation of Company Facilities on Aviation Property in order to avoid interference with the operation or use of Aviation Facilities. On a regular basis, Company shall coordinate with Manager of Aviation regarding phasing of long-term projects and installation of Company Facilities. Non-emergency work must be scheduled in advance and, if performed in the Airfield Operation Area, follow all airfield shutdown procedures. DEN and the Company agree to follow the Procedure for Planning and Coordination of Work, substantially in the form of Exhibit E, as the same may be updated from time to time.

ARTICLE 7 REPORTING

§ 7.1 Annual Distribution Capacity Report. The Company shall annually provide the Manager of Aviation with a report of remaining distribution system capacity for the 25kV facilities. DEN acknowledges that the report is not a guarantee or a reservation of system capacity.

§ 7.2 Annual Record. The Company shall annually provide the Manager of Aviation a record of all substations, distribution feeders, switch cabinets, transformers, utility vaults, and associated Company Facilities located on Aviation Property in the format such information is maintained as part of the Company's business records. Information provided in accordance with this paragraph constitutes confidential or proprietary information of the Company subject to the protections of

CORA and the Company asserts that disclosure to members of the public would be contrary to the public interest.

§ 7.3 Reliability Reports. The Company shall, when the Company generates the same, provide the Manager of Aviation with a report regarding the reliability of Company Facilities and Utility Service. In addition, the Company shall provide the following regarding service outages impacting Aviation Facilities; the report shall include, on an annual basis:

- (i) the date, time and duration of the outage;
- (ii) the weather at the time of outage;
- (iii) the location, device and feeder affected;
- (iv) the outage level;
- (v) the cause of outage; and
- (vi) five years of history of outages affecting Aviation Property.

Company shall provide the report in an editable and manipulatable electronic format that is acceptable to the Company and the City.

§ 7.4 Annual Billing and Usage Reports. The Company shall annually provide the City Representative with a report of monthly, meter-level Utility Service usage and billing history for all Aviation Facilities. The report shall be in an editable and manipulatable electronic format that is acceptable to the Company and the City.

ARTICLE 8 **AIRPORT ENVIRONMENTAL MATTERS**

§ 8.1 Electrical Vaults. The parties acknowledge that Airport Operations may impact electrical vaults located on the Aviation Property. In order to manage such environmental impacts and allow the Company to safely access certain Company Facilities, DEN and the Company have entered into the Electrical Vault Environmental Process which is attached hereto as Exhibit F and incorporated herein by this reference.

§ 8.2 Potential Adjustment to Company Facilities. The parties agree to work together to investigate options to adjust the location of Company Facilities on Aviation Property to avoid potential adverse environmental impacts that may arise from Airport Operations. Any such adjustments shall be mutually agreeable, and take into consideration the cost, regulatory requirements, and impacts to Airport Operations and the Company's utility system.

§ 8.3 Damage to Company Facilities. Electric Tariff Sheet R87 allocates responsibility for damage or loss to Company Facilities. DEN agrees to comply with the Tariffs.

ARTICLE 9 **DISPUTE RESOLUTION**

§ 9.1 Dispute Resolution. It is the express intention of the parties to this agreement that all disputes of any nature whatsoever regarding the agreement, including but not limited to, any claims for compensation or damages arising out of breach or default under this agreement shall be resolved by administrative hearing pursuant to the provisions of Section 5-17 of the Denver

Revised Municipal Code (D.R.M.C.). For purposes of this agreement, the Manager of Aviation will designate the hearing officer to conduct each required D.R.M.C. 5-17 hearing that the Manager and the Company jointly select. The City and the Company agree that such selection by the parties shall not be unreasonably delayed. Upon selection, the City and the Company shall equally share the costs associated with retaining the designated hearing officer. The Company expressly agrees that this dispute resolution process is the sole and only dispute resolution mechanism that will be recognized and employed by the parties for any disputes, claims or defenses, notwithstanding the claimed theory of entitlement. Neither DEN nor Company will declare a breach of this Agreement until invoking and following this dispute resolution process.

ARTICLE 10 **MISCELLANEOUS**

§ 10.1 Franchise Agreement Miscellaneous Terms. Although this Operating Agreement is provided subject to the Franchise Agreement, the terms and provisions of the following articles or sections contained in the Franchise Agreement are specifically incorporated:

- A. Any alleged Breach of this Operating Agreement must be resolved in accordance with Article 17 of the Franchise Agreement, though only after completing dispute resolution in accordance with Article 9 above.
- B. Any amendment of this Operating Agreement must meet the requirements of Article 18 of the Franchise Agreement.
- C. Any notice under this Operating Agreement must be tendered in accordance with Section 20.5 of the Franchise Agreement.

§ 10.2 Federal Provisions. This Operating Agreement is subject and subordinate to the terms, reservations, restrictions, and conditions of any existing or future agreements between City and United States, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to City for Airport purposes and the expenditure of federal funds for the extension, expansion or development of the Airport. The provisions of the attached Appendices are incorporated herein by reference.

§ 10.3 Taxes and Fees. The City 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.

§ 10.4 Governing Law. Colorado law shall apply to the construction and enforcement of this Operating Agreement. The parties agree that venue for any litigation arising out of this Operating Agreement shall be in the District Court for the City and County of Denver, State of Colorado

§ 10.5 No Third Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Company and City; and nothing contained in this agreement shall give or allow any such claim or right of action by any other or third person on such agreements.

§ 10.6 Conflict Of Interest. The parties agree that no official, officer or employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein and the Company further agrees not to hire or agree to services any official, officer or employee of the City or any other person which would be in violation of the Denver's Charter or Municipal Code.

§ 10.7 Entire Agreement. This Operating Agreement shall constitute the only operating agreement concerning Aviation Property between the City and the Company and supersedes and cancels all former operating agreements concerning Aviation Facilities between the parties hereto.

§ 10.8 Paragraph Headings. The captions and headings set forth herein are for convenience of reference only, and shall not be construed so as to define or limit the terms and provisions hereof.

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

§ 10.10 Authority. Each party represents and warrants that except as set forth below, it has taken all actions that are necessary or that are required by its ordinances, regulations, procedures, bylaws, or applicable law, to legally authorize the undersigned signatories to execute this Operating Agreement on behalf of the parties and to bind the parties to its terms. The persons executing this Operating Agreement on behalf of each of the parties warrant that they have full authorization to execute this Operating Agreement. DEN acknowledges that notwithstanding the foregoing, the Company requires a Certificate of Public Convenience and Necessity from the PUC, if applicable, in order to operate under the terms of the Franchise Agreement.

§ 10.11 Contract Execution. The parties' consent to the use of electronic signatures by the parties. This Operating Agreement, and any other documents requiring a signature hereunder, may be signed electronically by either party. The parties agree not to deny the legal effect or enforceability of this Operating Agreement solely because it is in electronic form or because an electronic record was used in its formation. The parties agree not to object to the admissibility of this Operating Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

§ 10.12 Attachments.

- Exhibit A: Aviation Property
- Exhibit B: DIA Agreements
- Exhibit C: DIA Outage Protocol
- Exhibit D: Letter of Authorization
- Exhibit E: Procedure for Planning and Coordination of Work
- Exhibit F: Electrical Vault Environmental Process
- Appendix

To the extent that the attachments attached hereto are forms, procedures, process related to operations on the Aviation Property, the same may be modified from time to time, in a writing signed by both parties, to reflect changes in technology or internal processing procedures, without such modification being deemed an amendment of this Agreement, *excepting that* such modifications must be procedural only, and may not change, alter, or amend any other aspect of the Franchise Agreement or Operating Agreement.

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