

ACCESS & USE PERMIT AGREEMENT

This **ACCESS & USE PERMIT AGREEMENT** (“Agreement”) is entered, as the date set forth on the City and County of Denver’s signature page below (the “Effective Date”), by and between the **CITY AND COUNTY OF DENVER** (the “City”) and **PUBLIC SERVICE COMPANY OF COLORADO**, a Colorado corporation, doing business at 1800 Larimer Street, Ste. 1100, Denver, Colorado 80202 (“PSCo”).

RECITALS

- A. PSCo, as the natural gas service provider within the Denver metropolitan area, has requested that the City authorize the installation of a utility facility within City-owned property located at 1348 Cherokee Street of the City and County of Denver (the “City Property”).
- B. In order to provide improved service to the community, PSCo needs to install a new Electric Switch Panel, Electric Meter and Power Pole with Light and related equipment (collectively, the “Project”) by means of overhead and directional bore (“Installation”). The Project is located as shown in the attached **Exhibit A & B** which is incorporated in this Agreement by this reference.
- C. The Project will be installed by PSCo as prescribed in this Agreement.
- D. The City concurs with this proposed Installation of the Project provided that the Installation can be performed with minimal inconvenience to the users of the City Property, including but not limited to the parking lot, and the City Property is satisfactorily restored or repaired, as set forth herein, following the Installation (“Restoration”).
- D. The area on the City Property where the Project may be located is as stated in the legal description and corresponding drawing attached to this Agreement as **Exhibit A & B** which is incorporated in this Agreement by this reference (the “Permitted Area”).
- E. By this Agreement, the City grants a permit for the access and use of the Permitted Area for the Project Installation and Restoration and the long-term access and use of the Permitted Area, as approved by the City, for maintenance, repair, upgrade, replacement and operation of the Project in the Permitted Area (collectively, the “Operation” or “Operations”).

NOW, THEREFORE, in consideration of the above premises and the terms and conditions of this Agreement as set out below, the City and PSCo agree as follows:

1. **PERMIT.** PSCo and its officers, directors, employees, representatives, agents, consultants and contractors (hereinafter referred to collectively as “PSCo”) are hereby permitted a non-exclusive right of access onto, and the use of, the Permitted Area, as described in **Exhibit A & B**, for:

- A. the Installation of the Project, as depicted in **Exhibit B**, which must be completed within a period of **ninety (90) calendar days** from the date that PSCo notifies the City Representative (as defined below) that earth-disturbing work will immediately commence (“Effective Date”); provided, however, that in the event delays are caused by the discovery, handling, and removal of Hazardous Materials (as defined in Section 4 (k) below), such ninety (90) calendar days shall be extended one day for each day of Hazardous Materials related delay (provided the notice provisions set forth in Section 4(k)(5) below have been satisfied); and
- B. the Restoration, at PSCo’s sole expense, of any City property affected by the Installation or Operation by promptly removing any obstructions placed by PSCo and restoring the City Property to a condition that meets applicable City standards, as approved by the Executive Director (as hereinafter defined). If weather or other conditions do not permit the complete Restoration required by this Section, PSCo may, with the prior written approval of the City, temporarily restore the affected City Property, provided such temporary Restoration is at PSCo’s sole expense and provided further, PSCo promptly undertakes and completes the required permanent Restoration when the weather or other conditions no longer prevent such permanent Restoration; and
- C. the Operation of the Project in the Permitted Area after Installation and Restoration, which permitted access and use shall continue until revoked as provided in this Agreement (jointly, the “Permitted Rights”).

PSCO acknowledges, concedes and agrees that the exercise of these Permitted Rights by PSCo shall be in accordance with, and subject to, the terms and conditions set forth in this Agreement. This Agreement does not authorize PSCo to enter upon, or make any use of, any property other than the Permitted Area and for only those purposes identified as the Permitted Rights. The Permitted Rights are not transferable and are non-exclusive.

- 2. **CITY RETAINED RIGHTS.** The City retains the right to use, occupy, enjoy, grant other interests, and in all other ways govern and control the Permitted Area and any adjacent City Property and other City-owned property and right-of-way so long as such City activity does not substantially impair the Permitted Rights as granted herein. Notwithstanding the foregoing, the City, acting through the City’s Executive Director of the Department of Transportation and Infrastructure (the “Executive Director”), retains the right, at the Executive Director’s sole discretion, to require PSCo to remove the Project from the Permitted Area and/or to relocate the Project or otherwise modify, reconfigure, or change the Project within the Permitted Area at no cost to the City. The City retains the right to control, monitor, and establish procedures applicable to PSCo’s use of the Permitted Area. The City retains the right, at the Executive Director’s sole discretion, to impose and require additional terms or conditions, including charging to PSCo costs or expenses incurred by the City, should PSCo fail to comply with this Agreement and the Executive Director does not elect to revoke the Permitted Rights as provided below.

3. **FEE; COSTS.** There is no fee for the Permit. PSCo or such other party as determined by PSCo, but not the City, shall be liable for all costs and expenses associated with the Installation, Restoration, and other Operations permitted under this Agreement.

4. **BASIC TERMS & CONDITIONS.**

A. Compliance with Laws. PSCo shall obtain, keep in effect, comply with, and provide copies to the City Representative (as defined below) as directed by the City Representative, all notices, permits, licenses, consents, permissions, and approvals required by any governmental or quasi-governmental entity prior to commencing the Installation or any other Operations within the Permitted Area. PSCo hereby acknowledges that, if required by the City Representative (as defined below) and before conducting any and all activity on or about the Permitted Area, PSCo shall obtain in advance and comply with a Temporary Construction and Access Permit (“TCAP”). Any required manifest, approval, license or permit related to PSCo’s activities under this Agreement shall be issued in PSCo’s name. PSCo hereby acknowledges and agrees that it is bound by and shall comply with all applicable federal, state, and local laws, rules, regulations, ordinances, and policies, and the terms and conditions set forth in any plans the City may require and approve, and all other applicable plans, specifications, permits, permissions, consents, and approvals required for or applicable to the Operations within the Permitted Area.

B. No Property Interest. Nothing in this Permit creates or recognizes a property interest on the part of PSCo in or to the Permitted Area, the City Property or any other City-owned property.

C. Revocation. The Executive Director shall have the right, at the Executive Director’s sole discretion, to revoke or suspend the Permitted Rights granted under this Agreement at any time and for any reason. The Executive Director will give Permittee a Notice of Revocation (“Notice”). If the reason for the Notice is a curable violation of this Agreement, as reasonably determined by the Executive Director, upon receipt of such Notice, PSCo shall have thirty (30) calendar days, or such longer time as specified by the Executive Director, to cure the violation and to demonstrate to the satisfaction of the Executive Director that the violation has been cured. If the violation is not curable, as determined by the Executive Director, PSCo shall have ninety (90) calendar days to remove the Project and all its appurtenances from the Permitted Area and restore the Permitted Area as required herein.

D. City Representative. A City employee, a City representative, or a private contractor (“City Representative”) will be assigned by the Executive Director to be PSCo’s contact for coordination and oversight of the Installation and Restoration work and related activities of PSCo under this Agreement, notifications under this Agreement, and in the event of an emergency. The City Representative may be changed or other City Representatives added at any time upon written notice to PSCo. Any future Operations work, after completion of the Installation and

Restoration, shall also be subject to coordination with and oversight by a City Representative assigned by the Executive Director.

- E. Direction by City Representative. PSCo shall develop and implement appropriate schedules, plans and protocols necessary for the Installation and Restoration work and any future Operations within the Permitted Area and provide the City Representative with said schedules, plans and protocols. PSCo shall provide prior written notice to the City Representative before accessing the City Property to start the Installation and Restoration work or to conduct any future Operations within the Permitted Area. PSCo shall take all reasonable measures to keep the City Representative informed of the progress of the Installation, Restoration, and other Operations work and related activities, and any emergencies, in accordance with this Agreement and to comply with the directions and requirements of the City Representative, including any order to suspend work or to cease and desist in any unauthorized activities. All Installation, Restoration or Operations work shall be performed to the reasonable satisfaction of the City Representative.
- F. Contractors. All contractors, subcontractors, consultants, suppliers, laborers and agents retained or authorized by PSCo to perform some portion of the Installation, Restoration, or other Operations or to undertake any activities on or about the Permitted Area or the City Property shall be regarded as being “PSCo” under this Agreement, shall be subject to the terms and conditions of this Agreement, and shall be identified (by name, address, telephone number, and email address) in a prior written notice to the City Representative, and this contact list shall be updated as needed. At no time shall PSCo, its officials, employees, contractors, subcontractors, consultants, suppliers, laborers or agents be regarded as working for the City in any capacity nor shall they be regarded in any manner as being employees or contractors of the City.
- G. Liability for Damages. PSCo shall be solely responsible for all compensation or restitution for injuries to persons or damage to or loss of property belonging to persons arising from, or related to, any of the Installation, Restoration or Operations work or other actions of PSCo involving the Project, the Permitted Area, the City Property, or other City-owned property. The term “persons” shall include, without limitation, City officials, employees, volunteers, consultants, contractors, tenants and agents.
- H. Restoration. PSCo shall not damage, destroy or harm any improvements on or about the Permitted Area, City Property, or other City-owned property and shall promptly repair, replace or restore said damaged, destroyed or harmed improvements, to the satisfaction of the City Representative, to a condition similar to or better than that which existed prior to the commencement of the Installation, Restoration, or Operations work.
- I. Utilities. PSCo shall be solely responsible for locating and taking appropriate measures to protect all overhead, above ground and underground utilities, including

without limitation gas, electrical, sewer, water, telephone, and cable, during the Installation, Restoration, or Operations work and any related activities on or about the Permitted Area, the City Property, or other City-owned property arising under this Agreement. PSCo shall arrange for the timely and complete location of all utilities in accordance with law; shall take all necessary precautions to avoid damage to, or injury from, such utilities; and shall be liable for all damages resulting from any contact with or destruction of such utilities. The City Representative will provide, upon request, any drawings or other documents the City may have regarding the existence of such utilities on or about the Permitted Area or the City Property, but the City expressly disclaims the reliability or accuracy of any such drawings or documents it may provide to PSCo.

J. Emergency. Written notice requirements are waived in the event of any emergency situation requiring immediate access or activities on or about the Permitted Area or the City Property, such as a major on-site accident, contamination exposure, utility damage, and security breaches. In the event of such an emergency, PSCo shall provide verbal notice to the City Representative as soon as feasible (or, if the City Representative is not available after three tries within eight (8) hours, call 311 and leave a message regarding the nature of the emergency and contact information) and then follow up with written notice to the City Representative within twenty-four hours of such emergency. PSCo shall be responsible for timely notifying and cooperating with the appropriate governmental authorities, as required by law, in the event of an emergency. PSCo shall comply with all emergency response personnel instructions regarding PSCo's actions being taken or intended to be taken on the City Property relating to any emergency response on the City Property.

K. Personal Property. No equipment, vehicles, temporary structures, road base, excess soil and rocks, chemicals, signs, barriers, materials, supplies, construction debris and waste brought on site or generated by PSCo on site ("Personal Property") shall be stored outside of the Permitted Area. PSCo shall take reasonable measures to secure its Personal Property from public access or tampering and for the protection of public health and environment. The City assumes no liability for public misconduct, theft or vandalism of the Personal Property. Upon the completion of any work, PSCo shall promptly remove from the Permitted Area all Personal Property and shall do so in compliance with federal, state and local regulatory requirements, standards, and guidelines. Alternatively, if PSCo should fail to remove the Personal Property as provided herein, and such failure continues for a period of thirty (30) days following notice to PSCo by the City, the City may perform such removal and PSCo shall promptly reimburse the City for all reasonable costs incurred ~~by the City.~~

L. Environmental Requirements.

(1) Hazardous Materials. With respect to PSCo's use of the Permitted Area under this Agreement, PSCo accepts the Permitted Area "as is," with all existing physical and environmental conditions. PSCo shall be solely liable for all

costs and expenses associated with any Hazardous Materials, as defined below, that PSCo brings onto the Permitted Area or that are exposed or otherwise requiring remedial action as a consequence of the Installation, Restoration or Operations. PSCo shall comply with all applicable local, state, and federal environmental guidelines, rules, regulations, statutes, laws, and orders applicable to the work (collectively, “**Environmental Requirements**”), including but not limited to Environmental Requirements regarding the storage, use, transportation, and disposal of Hazardous Materials and regarding releases or threatened releases of Hazardous Materials to the environment. The term “**Hazardous Materials**” shall mean asbestos, asbestos-contaminated soils, and asbestos-containing materials, special wastes, polychlorinated biphenyls (PCBs), any petroleum products, natural gas, radioactive source material, pesticides, any hazardous waste as defined at 42 U.S.C. § 6903(5) of the Solid Waste Disposal Act, any hazardous substance as defined at 42 U.S.C. § 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act, and chemical substance as defined at 15 U.S.C. § 2602(2) of the Toxic Substances Control Act, and any guidelines issued and rules or regulations promulgated pursuant to such statutes, or any other applicable federal or state statute. The obligations set out in this paragraph shall survive the expiration or revocation of this Agreement.

(2) PSCo’s Responsibility and Liability. PSCo shall (i) assume all liability for proper manifesting and management of all waste and, in particular, Hazardous Materials generated or uncovered by PSCo in the course of the work or related activities; (ii) use best efforts to minimize the volume of Hazardous Materials associated with the work or related activities on or about the Permitted Area, and shall properly and lawfully handle, containerize, manage and lawfully dispose of all such Hazardous Materials and other waste; (iii) will not take any action with respect to such Hazardous Materials that may cause any alteration in the chemical, physical or biologic nature or characteristics of the Hazardous Materials while the Hazardous Materials are on or about the Permitted Area; and (iv) remove all Hazardous Materials and other waste associated with the work or related activities from the Permitted Area. All such environmental obligations stated above for the Installation and Restoration work shall be completed prior to the expiration of the 90-day term for this work and for the Operation work promptly upon completion of the work. The City shall not own or be responsible for and does not take legal title to any of the Hazardous Materials and other waste associated with the work.

(3) Soils Management. Soil excavated during the Installation or Restoration which contains Hazardous Materials must be removed from the City Property and legally disposed specified above. Excavated soil which does not contain Hazardous Materials or other waste may be reused as backfill or re-grading on the City Property provided there are no field indications of contamination such as odors, staining, or organic vapor meter readings above background. Otherwise, any soil brought on the City Property by PSCo for fill or grading purposes must be free of Hazardous Materials and other waste. Determinations as to the existence of

Hazardous Materials and other waste shall be made by the City Representative in consultation with the City's Department of Public Health and Environment.

(4) City Property and Other City-Owned Property. PSCo is prohibited from bringing or exposing Hazardous Materials on the City Property (outside of the Permitted Area) and other City-owned Property during the Installation, Restoration, or Operations, or any other activity associated with this Agreement, but if PSCo should violate this prohibition, PSCo shall be subject to the provisions of this subsection 4.K. and any requirements and directives of the City's Department of Public Health and Environment and other federal and state agencies and shall be solely liable for any costs and expenses for remedial actions and damages related to such Hazardous Materials.

(5) Notice of Environmental Condition delay. In the event PSCo encounters Hazardous Materials which negatively impact the Installation schedule, PSCo shall notify the City in writing within fifteen (15) days of the discovery of the Hazardous Materials creating the delay ("Delay Notice"). The Delay Notice shall include the type of Hazardous Materials and the estimated delay expected in order to comply with the terms of this Section 4(k).

5. SPECIAL CONDITIONS OF ACCESS & USE. In addition to all other general terms and conditions set forth in this Agreement, the following terms and conditions are established.

A. Access/Traffic Control. In the event that the Installation, Restoration or Operation work shall require that portions of any bike/pedestrian trail or access to any facility or parking lot be closed for more than twenty-four (24) continuous hours, PSCo shall prepare a detour plan which must be approved by the City Representative prior to PSCo implementing the detour plan ("Traffic Control"). All Traffic Control measures, including barricades, signs, and flagging, are subject to changes required by the City Representative if the City Representative finds any of them to be inadequate.

B. Trees. Any trees located within or in the vicinity of the Permitted Area must be appropriately and sufficiently protected by PSCo from the Installation, Restoration, and Operation work to be performed within the Permitted Area. Protection, which may include fencing or barriers around the trees, must be approved by the City Representative and installed prior to the start of the Installation, Restoration or Operation work. PSCo shall be liable for the loss of or damage to any trees and/or costs of replacing any damaged trees resulting from PSCo's Installation, Restoration, or Operations.

6. INSURANCE:

A. General Conditions: PSCo shall secure, on or before the commencement of any Installation of the Project or any access on the City Property, the following

insurance covering all work and related activities under this Agreement. PSCo shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, and for three (3) years after termination of the Agreement. The required insurance shall be underwritten by an insurer permitted or authorized to do business in Colorado and rated by A.M. Best Company as “A-VIII” or better. Each policy shall contain a valid provision or endorsement stating “Should any of the above-described policies be canceled or non-renewed before the expiration date thereof, the issuing company shall send written notice to Denver Risk Management, 201 West Colfax Avenue, Dept. 1105, Denver, Colorado 80202. Such written notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior.” Additionally, PSCo shall provide written notice of cancellation, non-renewal and any reduction in coverage to the address above by certified mail, return receipt requested. If any policy is in excess of a deductible or self-insured retention, the City must be notified by PSCo. PSCo shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of PSCo. PSCo shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

- B. **Proof of Insurance:** PSCo shall provide a copy of this Agreement to its insurance agent or broker. Except as authorized by a permit previously issued to PSCo, PSCo may not commence work under this Agreement prior to placement of coverage. PSCo has delivered a certificate of insurance, in the form as set forth in **Exhibit C** to this Agreement (an ACORD certificate), and hereby certifies that said certificate complies with all insurance requirements of this Agreement. The City’s acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of any of the City’s rights under this Agreement. The City’s Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.
- C. **Additional Insureds:** For Commercial General Liability, Business Auto Liability, and Contractors Pollution Liability, PSCo’s insurer(s), and any insurer of any subcontractors performing work under the authority of, or at the direction of PSCo, shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.
- D. **Waiver of Subrogation:** For all coverages, PSCo’s insurer shall waive subrogation rights against the City.
- E. **Subcontractors and Subconsultants:** All subcontractors and subconsultants (including independent contractors, suppliers or other entities performing work under this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of PSCo. PSCo shall include all

such subcontractors and subconsultants as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. PSCo shall provide proof of insurance for all such subcontractors and subconsultants upon request by the City.

- F. Workers' Compensation/Employer's Liability Insurance: PSCo shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of at least \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. PSCo expressly represents to the City, as a material representation upon which the City is relying upon in issuing this Agreement, that none of the Contractor's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date the PSCo signs this Agreement.
- G. Commercial General Liability: PSCo shall maintain a Commercial General Liability insurance policy with limits of at least \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.
- H. Business Automobile Liability: PSCo shall maintain Business Automobile Liability with limits of at least \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing the work under this Agreement. If transporting hazardous material or regulated substances, Contractor shall carry a pollution coverage endorsement and an MCS 90 endorsement on their policy. Transportation coverage under the Contractors Pollution Liability policy shall be an acceptable replacement for a pollution endorsement to the Business Automobile Liability policy.
- I. Contractors Pollution Liability Including Errors and Omissions: If the transportation of hazardous material or regulated substances is not covered under the Business Automobile Liability above, PSCo shall maintain limits of \$1,000,000 per occurrence and \$2,000,000 policy aggregate. Policy to include coverage for errors and omissions, bodily injury, property damage, defense costs, cleanup costs, and completed operations.
- J. Excess Liability: PSCo shall maintain Excess Liability coverage as specified in the Certificate of Insurance attached as **Exhibit C**
- K. Additional Provisions:
 - (1) For Commercial General Liability and Contractors Pollution Liability, the policies must provide the following:

- (a) That this Agreement is an Insured Contract under the policy;
 - (b) Defense costs are outside the limits of liability;
 - (c) A severability of interests or separation of insureds provision (no insured v. insured exclusion); and
 - (d) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.
- (2) For claims-made coverage, the retroactive date must be on or before the contract date or the first date when any goods or services required under this Agreement were provided to the City, whichever is earlier.
- (3) PSCo shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At the PSCo's own expense, where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, PSCo shall procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

7. DEFENSE & INDEMNIFICATION.

- A. Indemnification: PSCo shall defend, indemnify, and hold harmless the City, their appointed and elected officials, employees and agents, against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from or relating to the exercise of this Agreement, any work performed or activities undertaken, or financial liability incurred by PSCo in relation to this Agreement, and the occupancy or use of any portion of the Permitted Area, the City Property or any other City-owned property ("Claims"), unless and until such Claims have been specifically determined by the trier of fact to be due to the negligence or willful misconduct of the City. This indemnity and duty to defend shall be interpreted in the broadest possible manner to indemnify and protect the City for any acts or omissions of the PSCo, either passive or active, irrespective of fault, including the City's or the City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of the City.
- B. Duty to Defend. PSCo's duty to defend and indemnify the City shall arise (i) at the time written notice of the Claim is first provided to the City regardless of whether Claimant has filed suit on the Claim; and (ii) even if the City is the only party sued by claimant and/or claimant alleges that City's negligence or willful misconduct was the sole cause of claimant's damages.
- C. Payment of Costs and Expenses. PSCo will defend any and all Claims which may be brought or threatened against the City and will pay on behalf of the City any

reasonable expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of the City shall be in addition to any other legal remedies available to the City and shall not be considered City's exclusive remedy.

D. Not Limited by Insurance Coverage. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of PSCo under the terms of this indemnification obligation. PSCo shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

E. Survival. This defense and indemnification obligation shall survive the expiration or revocation of this Agreement.

8. REMEDIES AND VENUE. In addition to revocation of the Agreement and other remedies and rights to relief set forth in this Agreement, the City shall have all remedies available at law or in equity against PSCo. Permittee's exclusive remedy against the City shall be for specific performance, and PSCo does hereby waive all other remedies at law or in equity including damages. Venue for any action under this Agreement shall be in the District Court for the City and County of Denver.

9. GOVERNMENTAL APPROVALS AND CHARGES. PSCo shall obtain and maintain, at its sole cost, and comply with all permits or licenses (federal, state, or local) required for the work to be performed under this Agreement. PSCo shall pay promptly all taxes, excises, license fees, and permit fees and charges of whatever nature applicable to the work and shall not permit any of said taxes, excises or license or permit fees to become delinquent or to fail to pay any penalties or fines assessed with respect to the work. The City shall not be liable for the payment of fees, charges, taxes, late charges, penalties or fines of any nature related to the work. PSCo hereby indemnifies and saves harmless the City for the extent of any and all liability for fees, charges, taxes, late charges, penalties or fines resulting from PSCo's failure to comply with this paragraph. This indemnification obligation shall survive the expiration or revocation of the Agreement.

10. LIENS & OTHER ENCUMBRANCES. PSCo shall not permit any mechanic's or materialman's liens or any other liens to be imposed upon City Property due any worker for labor performed or materials or equipment furnished by any person or legal entity to or on behalf of PSCo, either pursuant to C.R.S. § 38-26-107 or by any other authority, or due to any other claim with respect to the work. PSCo shall promptly pay when due all bills, debts and obligations incurred in connection with the work performed under this Agreement and shall not permit the same to become delinquent. PSCo shall not permit any lien, judgment, execution or adjudication of bankruptcy which will in any way impair the rights of the City Property. PSCo hereby indemnifies and saves harmless the City for the extent of any and all liability for payments, expenses, interests, and penalties resulting from PSCo's failure to comply with this paragraph. This indemnification obligation shall survive the expiration or revocation of the Agreement.

- 11. GOVERNMENTAL IMMUNITY.** Nothing in any other provision of this Agreement shall be construed as a waiver of the notice requirements, defenses, immunities and limitations on behalf of the City may have under the Colorado Governmental Immunity Act (§24-10-101, C.R. S., et. seq.) or to any other defenses, immunities, or limitations of liability available to the City against third parties by law.
- 12. NO DISCRIMINATION IN EMPLOYMENT.** In connection with the performance of the work under this Agreement, PSCo agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender variance, marital status, or physical or mental disability; and PSCo further agrees to insert the foregoing provision in all approved contracts and subcontracts hereunder.
- 13. NOTICES.** All notices required to be given to the City or PSCo hereunder shall be in writing and provided by personal delivery or sent by certified mail, return receipt requested, to:

City/ City Representative: City and County of Denver
Attn: City Attorney's Office
201 W. Colfax Ave.
Denver, CO 80202

Department of Transportation Infrastructure
201 W. Colfax Ave., Dept. 506
Denver, CO 80202

and

Director of Real Estate
201 West Colfax Ave., Dept. 1010
Denver, Colorado 80202

PSCo: as noted in the first paragraph of this Agreement above.

Either party hereto may designate in writing from time to time the address of substitute or supplementary persons within the State of Colorado to receive such notices. The effective date of service of any such notice shall be the date such notice is mailed or delivered to PSCo, the City. Daily communications and coordination between the City Representative and the representative of PSCo and its contractor may be telephone or email, if and as agreed by these representatives in writing.

- 14. ENTIRE AGREEMENT.** This Agreement, including the exhibits which are hereby incorporated into this Agreement by reference, constitutes the entire agreement of the parties. The parties agree there have been no representations, oral or written, other than those contained herein and that the various promises and covenants contained herein are

mutually agreed upon and are in consideration for one another.

15. **SEVERABILITY.** If any term or provision of this Agreement is held by a court of law (following all legal rights of appeal or the expiration of time therefore) to be illegal or unenforceable or in conflict with any law of the State of Colorado or the City Charter or City ordinance, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid; provided, however, if the invalidated term or provision was a critical or material consideration of either Party in entering this Agreement, the Parties shall work together, in good faith, to come up with an amendment to this Agreement that substantially satisfies the previously intended consideration while being in compliance with applicable law and the judgment of the court.
16. **AMENDMENT.** Except as otherwise expressly provided in this Agreement, this Agreement may be amended, modified, or changed, in whole or in part, only by written agreement executed by the parties in the same manner as this Agreement.
17. **NO ASSIGNMENT.** PSCo shall not assign its rights or delegate its duties hereunder, with the exception of contracting and subcontracting as provided in this Agreement, without the prior written consent of the City.
18. **AUTHORITY TO EXECUTE.** The person signing for PSCo warrants that he or she has the complete authority to sign on behalf of and bind PSCo.
19. **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS.** PSCo consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the 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 the 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.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed the ACCESS & USE PERMIT AGREEMENT as of:

_____.

ATTEST:

CITY AND COUNTY OF DENVER

By: _____
Paul D. Lopez,
Clerk and Recorder, Ex-Officio Clerk
of the City and County of Denver

By: _____
Michael B. Hancock, MAYOR

APPROVED AS TO FORM:

Kristin M. Bronson
Attorney for the City and County of Denver

REGISTERED AND COUNTERSIGNED:

By: _____
Assistant City Attorney

By: _____
Brendan J. Hanlon – CFO

By: _____
Timothy O'Brien, Auditor

“CITY”

PSCo:

Public Service Company of Colorado, a Colorado corporation

By: _____

Name: _____

Its: _____

Date: _____

STATE OF COLORADO)

)

COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by _____, as _____ of Public Service Company of Colorado, a Colorado corporation.

Witness my hand and seal.

My commission expires:

Notary Public

Contract Control Number: FINAN-202158237-[[This Amendment Number]]
Contractor Name: PUBLIC SERVICE COMPANY OF COLORADO

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of:

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

By:

By:

By:

Contract Control Number:
Contractor Name:

FINAN-202158237-[[This Amendment Number]]
PUBLIC SERVICE COMPANY OF COLORADO

By: _____

Name: _____
(please print)

Title: _____
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

PSCo:

Public Service Company of Colorado, a Colorado corporation

By: Richard J. Grady ,

Name: Richard J. Grady
Manager, Siting and Land Rights,
Right of Way & Permits Department

Its: Public Service Company of Colorado ,

Date: 3/25/2021

STATE OF COLORADO)

JEFFERSON)

COUNTY OF ~~DENVER~~)

The foregoing instrument was acknowledged before me this 25th day of March, 2021, by Richard J. Grady, as Manager, Row + Permits Dept. of Public Service Company of Colorado, a Colorado corporation.

Witness my hand and seal.

My commission expires:

DARREL C VANHOOSER
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 19984001284
MY COMMISSION EXPIRES SEPTEMBER 8, 2022

Darrel C. Vanhooser
Notary Public

Job No.: 65319838-AC
FILE: Y:\Survey\65319838-PSCo Denver Electric Distribution\AC-DED-14th Avenue &
Cherokee Street Easement\Office Data\DWGS\Exhibits & Property Descriptions\1348
Cherokee_Description.docx
Date: April 13, 2021

EXHIBIT A
PROPERTY DESCRIPTION

Access & Use Permit
1348 Cherokee Street
Sheet 1 of 3

A portion of that parcel of land shown on ALTA/ACSM Land Title Survey deposited with the City and County of Denver Surveyor December 2, 2010 in Book 83 at Page 138 of the County Surveyor's Land Survey/Right-of-Way Surveys at Reception No. L012699, also being Lots 31, 32, 33, and 34, Block 22 of Evans Addition to the City of Denver recorded June 29, 1868 in the Arapahoe County Clerk and Recorder's Office in Book of Plats at Page 4, and also being in the Northwest Quarter of Section 3, Township 4 South, Range 68 West of the 6th Principal Meridian, City of Denver, County of Denver, State of Colorado, being more particularly described as follows:


COMMENCING at a Denver Range Point at the intersection of Cherokee Street and West 14th Avenue, being monumented with a found 1-1/2" diameter aluminum cap in a range box, 0.2' below the road surface, stamped "DEA PLS 26600", whence a Denver Range Point at the intersection of Bannock Street and West 14th Avenue, being monumented with a found 1" diameter brass plug in concrete, stamped "PLS 37973 RP", bears N89°46'44"E a distance of 389.28 feet;

THENCE S13°32'05"E a distance of 215.74 feet to the Northwest corner of said ALTA/ACSM Land Title Survey, also being the Northwest corner of said Lot 34 and a point on the easterly right-of-way line of Cherokee Street, and the **POINT OF BEGINNING**;

THENCE along the northerly and easterly lines of said ALTA/ACSM Land Title Survey, also being the northerly and easterly lines of said Lot 34, the following two (2) courses:

1. N89°47'09"E a distance of 150.16 feet;
2. THENCE S00°19'02"E a distance of 8.29 feet;

THENCE S89°40'58"W a distance of 2.00 feet to a line 2.00 feet westerly of and parallel with said easterly lines;



Todd G. Beers, PLS 30822
Date: April 13, 2021
Job No. 65319838-AC
For and on Behalf of
Merrick & Company

EXHIBIT A
PROPERTY DESCRIPTION

Access & Use Permit
1348 Cherokee Street
Sheet 2 of 3

THENCE N00°19'02"W along said parallel line a distance of 6.29 feet to a line 2.00 feet southerly of and parallel with said northly lines;
THENCE S89°47'09"W along said parallel line a distance of 148.16 feet to the westerly line of said ALTA/ACSM Land Title Survey, also being the westerly line of said Lot 34 and the easterly right-of-way line of said Cherokee Street;
THENCE N00°12'10"W along said westerly lines and said easterly right-of-way line of Cherokee Street, a distance of 2.00 feet to the **POINT OF BEGINNING**.

Containing 313 square feet (0.007 Acres), more or less.



Todd G. Beers, P.S. 30822
Date: 11/11/2011
Job No.: 65319838-AC
For and on Behalf of
Merrick & Company

POINT OF COMMENCEMENT

DENVER RANGE POINT
FOUND 1-1/2" DIA.
ALUMINUM CAP IN
RANGE BOX, 0.2' BELOW
THE ROAD SURFACE
STAMPED "DEA PLS 26600"

EXHIBIT B

SHEET 3 OF 3

DENVER RANGE POINT
FOUND 1" DIA.
BRASS PLUG IN
CONCRETE, STAMPED
"PLS 37973 RP"

**BANNOCK
STREET**

BASIS OF BEARINGS: N89°46'44"E 389.28'

**WEST 14TH AVENUE
(80' ROW)**

POINT OF BEGINNING

NW CORNER OF ALTA
NW CORNER OF LOT 34
FOUND 1" DIA.
BRASS PLUG
IN ASPHALT
STAMPED "LS 33200"

NE CORNER OF ALTA
NE CORNER OF LOT 34
CALCULATED POSITION
NOTHING FOUND, NOTHING SET

LOT 35

N'LY LINE OF ALTA
N'LY LINE OF LOT 34

N89°47'09"E 150.16'

S89°47'09"W 148.16'

2.00'

2.00'

**N00°12'10"W
2.00'**

**1348 CHEROKEE ST.
AREA=313 SQ FT
(0.007 ACRES) ±**

LOT 34

N00°19'02"W 6.29'

S89°40'58"W 2.00'

S00°19'02"E 8.29'

CHEROKEE STREET (70' ROW)

E'LY ROW LINE OF CHEROKEE ST.

W'LY LINE OF ALTA
W'LY LINES OF LOTS 31 THROUGH 34

**NW1/4 SECTION 3
TOWNSHIP 4 SOUTH
RANGE 68 WEST
6TH P.M.**

1348 CHEROKEE ST.

LOT 33

ALTA/ACSM LAND TITLE SURVEY
DEPOSITED 12/2/2010
BOOK 83, PAGE 138 OF THE
COUNTY SURVEYOR'S LAND
SURVEY/RIGHT-OF-WAY SURVEYS
AT RECEPTION# L012699

LOT 32



EVANS ADDITION TO THE
CITY OF DENVER
BLOCK 22
RECORDED 6/29/1868
BOOK OF PLATS, PAGE 4
ARAPAHOE COUNTY

LOT 31

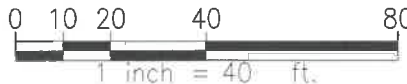
TODD G. BEERS, No. 30822
PROFESSIONAL LAND SURVEYOR
STATE OF COLORADO, 2021
Job No.: 65319838-AC
For and on behalf of
Merrick & Company

E'LY LINE OF ALTA
E'LY LINES OF LOTS 31 THROUGH 34

FOUND 1-1/2" DIA.
ALUMINUM CAP
IN ASPHALT, STAMPED
"MERRICK & CO LS 33200"

LOT 30

FOUND 1" DIA.
BRASS PLUG
IN CONCRETE
STAMPED "LS 33200"



NOTE:

This exhibit does not represent a monumented survey.
It is intended only to depict the attached description.

Prepared by Merrick & Company

C:\Users\bloomfield\Desktop\Current Projects\Surveying\65319838AC - 14th And Cherokee\65319838AC-14th & Cherokee_CO83-CF-{mod}_r1.dwg

**ACCESS & USE PERMIT
1348 CHEROKEE STREET**



**PUBLIC SERVICE
COMPANY OF COLORADOSM**

SECTION 3 , TOWNSHIP 4 SOUTH RANGE 68 WEST
6TH PRINCIPAL MERIDIAN, DENVER COUNTY, STATE OF COLORADO
DOCUMENT NO. AGENT:

SCALE: 1"=40'
DRAWN BY: SCB
DATE: 4/13/21

1348 Cherokee St.
Denver, CO



Exhibit "C"

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
10/06/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).


PRODUCER Hays Companies 80 South 8th Street Suite 700 Minneapolis, MN 55402	1-612-333-3323 CONTACT NAME: Matt Christensen or Dawn Heinemann PHONE (A/C, No. Ext): 612-333-3323 FAX (A/C, No): 612-373-7270 E-MAIL ADDRESS: dheinemann@hayscompanies.com														
INSURED Xcel Energy, Inc. Northern State Power Company; Public Service Company of CO and Southwestern Public Service Co. 414 Nicollet Mall, 401-4 Minneapolis, MN 55401	<table border="1"> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A: OLD REPUBLIC INS CO</td> <td>24147</td> </tr> <tr> <td>INSURER B:</td> <td></td> </tr> <tr> <td>INSURER C:</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: OLD REPUBLIC INS CO	24147	INSURER B:		INSURER C:		INSURER D:		INSURER E:		INSURER F:	
INSURER(S) AFFORDING COVERAGE	NAIC #														
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INSURER B:															
INSURER C:															
INSURER D:															
INSURER E:															
INSURER F:															

COVERAGES **CERTIFICATE NUMBER:** 60469688 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Subject to 2MM SIR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	X	MWZY5934720	11/01/20	11/01/21	EACH OCCURRENCE \$ 3,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 3,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 3,000,000 GENERAL AGGREGATE \$ N/A PRODUCTS - COMP/OP AGG \$ 3,000,000 \$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY <input type="checkbox"/> OTHER:		MWTB2140620	11/01/20	11/01/21	COMBINED SINGLE LIMIT (Ea accident) \$ 5,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$ \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	MWC11718820	11/01/20	11/01/21	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 2,000,000 E.L. DISEASE - EA EMPLOYEE \$ 2,000,000 E.L. DISEASE - POLICY LIMIT \$ 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Certificate holder is additional insured as respects general liability policy where required by written contract subject to the policy terms and conditions.

CERTIFICATE HOLDER City and County of Denver 8500 Pena Blvd Denver, CO 80249 USA	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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