
CRIME LAB
CHILLED WATER SERVICE AGREEMENT

Between

The City and County of Denver

and

Public Service Company of Colorado

PSCo Document No. _____

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CHILLED WATER SERVICE AGREEMENT

THIS CHILLED WATER SERVICE AGREEMENT ("**Agreement**") is dated as of the Effective Date (as defined in Section 12.15 below), by and between Public Service Company of Colorado, a Colorado corporation ("**Supplier**"), and the City and County of Denver ("**Customer**" or the "**City**"), a home rule city and municipal corporation of the State of Colorado. As used herein, the term "**Parties**" shall mean Supplier and Customer.

RECITALS:

A. Supplier operates a district chilled water system in downtown Denver to generate and distribute chilled water service to owners and operators of buildings and other facilities within the downtown Denver area ("**Supplier's District Chilled Water System**," as further defined herein);

B. Customer plans to construct, own and operate a new Police Crime Laboratory Building ("**Crime Lab Building**" as further defined herein) on the north half of the city block bounded by 13th Avenue on the south, 14th Avenue on the north, Delaware Street on the west and Cherokee Street on the east (the "**City Police Services Block**" or "**CPS Block**" as further defined herein) in downtown Denver;

C. The construction of the Crime Lab Building is currently underway and is planned to be constructed by April 30, 2012;

D. Customer and Supplier are parties to other existing chilled water service agreements, pursuant to which Supplier has agreed to provide chilled water service to Customer from Supplier's District Chilled Water System and Customer has agreed to purchase such chilled water service from Supplier to cool space within numerous buildings of Customer located in Denver, Colorado, including the Denver Police Administration Building ("**PAB**") and the Denver Pre-Arrestment Detention Facility ("**PADF**") on the CPS Block;

E. Pursuant to that certain Lease Buyout Agreement between Supplier and Customer dated February 25, 2011 ("**Lease Buyout Agreement**"), the Parties have terminated Supplier's leasehold interest in the City's Chiller Plant previously located on the CPS Block and to the relocation, construction and conveyance by Customer of certain chilled water facilities on the CPS Block, collectively referred to under the Lease Buyout Agreement as the "**CPS Block Facilities**," including: (a) Customer's installation of 8-inch chilled water supply and return pipelines, control fiber cable and conduits, and appurtenances running approximately Two Hundred (200) feet along the east side of the CPS Block, from and including the interconnection to the existing 12-inch chilled water lines extending from a point on the north side of the CPS Block to and including the interconnection facilities located within the existing parking structure on the CPS Block ("**CPS Block Chilled Water Mains**"); (b) Customer's installation of 8-inch chilled water supply and return service laterals, control fiber cable and conduit, and associated equipment and facilities from the west side of the 8-inch control valves on the CPS Block Chilled Water Mains located in the existing parking structure, and extending to the new PAB and PADF Energy Transfer Station ("**CPS Block Chilled Water Laterals**"); (c) Customer's

installation and interconnection of a new heat exchanger, valves, meters, control equipment, piping and all related appurtenances to connect such equipment to the CPS Block Chilled Water Laterals and Customer's chilled water facilities serving the PAB and the PADF, within an enclosed area immediately adjacent to the underground parking structure serving the PAB and the PADF ("**PAB and PADF ETS**"); and (d) Customer's removal of the existing heat exchanger, valves, meters, control equipment, piping and all appurtenances from the existing energy transfer station in Customer's Chiller Plant and relocating it to the PAB and PADF ETS room ("**Spare ETS**") all as described in the Lease Buyout Agreement;

F. The Lease Buyout Agreement also provides that the City will transfer by Assignment and Bill of Sale to Supplier who will own and operate the CPS Block Chilled Water Mains, the CPS Block Chilled Water Laterals, the PAB and PADF ETS, the Spare ETS and the City's 12-inch Chilled Water Lines (as such terms are defined in the Lease Buyout Agreement);

G. Rather than making substantial capital investments to install new chiller facilities for space cooling and other purposes within the new Crime Lab Building, Customer desires, in conjunction with its construction of the CPS Block Facilities under the Lease Buyout Agreement, to install on Supplier's behalf a new energy transfer station and interconnection facilities in addition to its own chilled water supply and return facilities necessary to connect the new Crime Lab Building to the CPS Block Facilities, and thereafter to purchase chilled water service provided by Supplier from Supplier's District Chilled Water System; and

H. Customer desires to purchase from Supplier, and Supplier desires to provide to Customer, chilled water service to cool space within the Crime Lab Building.

NOW THEREFORE, in consideration of the premises and of the mutual covenants herein contained, Supplier and Customer agree as follows:

ARTICLE I **DEFINITIONS**

As used herein, the following terms shall have the meanings specified or referred to below which shall apply equally to single and plural forms. As to those terms which are defined in the Recitals and in Sections 1.13, 1.14, 1.24 and 1.25 below, in the event of any inconsistency between the meaning of the term as defined in this Agreement and the meaning of the same term under the Lease Buyout Agreement, the Lease Buyout Agreement shall control.

1.1. "**Actual Monthly Consumption**" means the quantity in Ton-Hours of chilled water service metered by Supplier and used by Customer for the Crime Lab Building during a calendar month.

1.2. "**Actual Capacity Requirement**" means, for the period beginning on the Commencement Date and continuing through the remaining term of the Agreement, the maximum integrated demand for chilled water service for the Crime Lab Building over a 15-minute period; provided, however, that non-recurring short term peaks that are the result of

operating error, accident or other similar circumstances shall not be taken into account for purposes of determining Actual Capacity Requirement.

1.3. "Business Day" means a day on which commercial banks generally are open for business in the city of Denver, Colorado.

1.4. "Calendar Year" means each full period of twelve consecutive months during the Term hereof which begins on January 1 and ends on the following January 1.

1.5. "Capacity Charge Index" means the index for determining Capacity Charges as set forth in Schedule A.

1.6. "City Police Services Block" or "CPS Block" means Customer's real property located within the city block in downtown Denver where the PAB and PADF are currently situated and the Crime Lab Building is to be constructed, bounded by Cherokee and Delaware Streets on the east and west, respectively, and 14th and 13th Avenues on the north and south, respectively, as generally depicted on Exhibit A to the Lease Buyout Agreement.

1.7. "Commencement Date" means the later of: (a) November 1, 2011; (b) the day when the facilities necessary for Supplier to commence providing chilled water service to the Delivery Point hereunder have been constructed by Customer and acceptable by Supplier in accordance with Article III hereof, and such facilities are made operational using commercially-reasonable efforts; or (c) such other date mutually agreeable to Customer and Supplier.

1.8. "Commercial In-service Date" means the day following the Commencement Date when the Crime Lab Building first opens to the public for regular operations, or such other date mutually agreeable to Customer and Supplier, but in no event later than May 30, 2012.

1.9. "Consumption Charge" means the annual charge payable by the Customer to Supplier for Estimated Annual Consumption of Ton-Hours of chilled water service metered by Supplier and used by Customer for the Crime Lab Building during each year of the Term of this Agreement, plus an adjustment for any difference between the prior Calendar Year's Consumption Charge and the sum of the twelve monthly products determined by multiplying the Consumption Charge Rate in effect for each month of the preceding Calendar Year times the Actual Monthly Consumption for such month.

1.10. "Consumption Charge Rate" means \$0.1132 per Ton-Hour effective as of August 1, 2011, as adjusted effective October 1, 2011 and each month thereafter in accordance with Section 2.5 hereof.

1.11. "Contract Capacity" means the Tons of chilled water service which Supplier is obligated by this Agreement to make available to Customer, subject to the provisions of Section 2.1(b) hereof.

1.12. "Contract Capacity Charge Rate" means \$74.616 per Ton (annual) during the Calendar Year 2011, as adjusted from year to year thereafter in accordance with Section 2.5 hereof.

1.13. "CPS Block Chilled Water Mains" means the facilities described in Recital E, including the 8-inch chilled water supply and return pipelines, control fiber cable and conduits, and appurtenances running approximately Two Hundred (200) feet along the east side of the CPS Block, from and including the interconnection to the existing 12-inch chilled water lines extending from a point on the north side of the CPS Block to and including the interconnection facilities located within the existing parking structure on the CPS Block, all as more specifically described in Section 2.1(a) and Exhibit F-2 of the Lease Buyout Agreement.

1.14. "CPS Block Chilled Water Laterals" means the facilities described in Recital E, including the 8-inch chilled water supply and return service laterals, control fiber cable and conduit, and associated equipment and facilities from the west side of the 8-inch control valves on the CPS Block Chilled Water Mains located in the existing parking structure, and extending to the new PAB and PADF_ETS, all as more specifically described in Section 2.1(b) and Exhibit F-3 of the Lease Buyout Agreement.

1.15. "Crime Lab Building" means the physical structure and improvements of the new Police Crime Laboratory Building to be constructed, owned and operated by Customer on the CPS Block.

1.16. "Customer's Crime Lab Chilled Water Facilities" means the return and supply piping located on the CPS Block between the Crime Lab Building and the output side of the Crime Lab ETS, and the internal piping, circulation pumps and other equipment located within the Crime Lab Building, which will be owned, furnished, installed and used by Customer to cool space within the Crime Lab Building after the Commencement Date.

1.17. "Delivery Point" means the output flange of the Crime Lab Energy Transfer Station where chilled water service is delivered to Customer and metered hereunder.

1.18. "Crime Lab Energy Transfer Station" or "Crime Lab ETS" means the equipment between the CPS Block Chilled Water Laterals and Customer's Crime Lab Chilled Water Facilities, including, without limitation, one new 250 ton plate frame heat exchanger, piping, valves, metering and control equipment as more specifically described in Schedules B and C herein, installed by Customer on the CPS Block pursuant to Section 3.1(a), to be owned and operated by Supplier for use in providing chilled water service to Customer hereunder.

1.19. "Estimated Annual Consumption" means the quantity in Ton-Hours of chilled water service estimated to be provided by Supplier and used by Customer for the Crime Lab Building during a Calendar Year, which shall be equal to the average Actual Monthly Consumption for the three years immediately preceding such Calendar Year multiplied by 12, or as otherwise mutually agreed to in writing between Customer and Supplier prior to such year. For purposes of the Calendar Year ending December 31, 2012, the Parties hereby mutually agree that the Estimated Annual Consumption shall be equal to the Contract Capacity in effect on December 1, 2012, multiplied by 1200 equivalent full load hours.

1.20. "Expense" means for purposes of Sections 8.1 and 8.2, any and all expenses incurred in connection with investigating, defending or asserting any claim, action, suit or proceeding incident to any matter indemnified against hereunder (including, without limitation, court filing fees, court costs, arbitration fees or costs, witness fees, and reasonable fees and disbursements of legal counsel, investigators, expert witnesses, consultants, accountants and other professionals).

1.21. "Force Majeure Event" means acts of God, war, civil commotion, embargoes, epidemics, fires, cyclones, hurricanes, tornadoes, droughts or floods, earthquakes, strikes, acts of terrorism, unauthorized acts of third parties, or any governmental law, regulation, order, request, instruction or injunction, or failure to provide or cancellation of rights-of-way, permits, licenses or other authorization, whether valid or invalid, or any other cause, whether or not similar to the foregoing, beyond the reasonable control of a party hereto.

1.22. "Loss" for purposes of Sections 8.1 and 8.2, shall include any and all losses, costs, obligations, liabilities, settlement payments, awards, judgments, fines, penalties, damages, expenses, deficiencies or other charges.

1.23. "Metering Charge" means the charges payable by the Customer pursuant to Section 2.2(a)(iii).

1.24. "PAB and PADF Energy Transfer Station" or "PAB and PADF ETS" means the facilities described in Recital E, including the new heat exchanger, valves, meters, control equipment, piping and all related appurtenances to connect such equipment to the CPS Block Chilled Water Laterals and Customer's chilled water facilities serving the PAB and the PADF, within an enclosed area immediately adjacent to the underground parking structure serving the PAB and the PADF, all as more specifically described in Section 2.1(c) and Exhibit F-4 of the Lease Buyout Agreement.

1.25. "Spare Energy Transfer Station" or "Spare ETS" means the facilities described in Recital E, including the existing heat exchanger, valves, meters, control equipment, piping and all appurtenances in the energy transfer station in Customer's Chiller Plant after removal and relocation by Customer to the PAB and PADF ETS room, all as more specifically described in Section 2.1(d) and Exhibit F-5 of the Lease Buyout Agreement.

1.26. "Special Credits" means any monies or other remuneration received by or credited to the benefit of Customer or Supplier from any program issued, authorized or sponsored by any governmental body as a direct result of the installation of chilled water facilities or the provision of chilled water service hereunder including, without limitation, public utility demand side energy management programs.

1.27. "Supplier's District Chilled Water System" means as defined in Recital A, including Supplier's district cooling chiller and ice storage plant located at 500 15th Street and all of Supplier's chilled water mains, leased chiller facilities, and appurtenant facilities used by Supplier to provide chilled water service to its existing customers in the downtown Denver business district.

1.28. "Term" shall mean the Initial Term and all renewal terms for which this Agreement continues in effect as provided in Article IX hereof.

1.29. "Ton" means cooling service equivalent to 12,000 BTUs, measured as a function of the gallons of chilled water which pass through the Crime Lab Energy Transfer Station and the temperature differential between the chilled water supply and return pipes at the Delivery Point.

1.30. "Ton-Hour" means 12,000 BTUs per hour of cooling.

ARTICLE II

CHILLED WATER SERVICE

2.1. Purchase. (a) Commencing on the Commencement Date and continuing until the Commercial In-service Date, Supplier shall use commercially reasonable efforts to supply, and Customer agrees to purchase, at the Delivery Point, chilled water service to meet the variable cooling needs of the Crime Lab during its construction and pre-commissioning, to the extent chilled water capacity is available considering the requirements of existing contracted chilled water service to other buildings being served from Supplier's District Chilled Water System. Commencing on the Commercial In-service Date and continuing until the second anniversary thereof, Supplier agrees to supply, and Customer agrees to purchase, at the Delivery Point, chilled water service to meet Customer's cooling needs in the Crime Lab Building, up to the Contract Capacity, and Supplier further agrees to make additional capacity available in excess of the Contract Capacity in order to meet Customer's Actual Capacity Requirement, but in no event to exceed a Contract Capacity of 240 Tons. Commencing on the second anniversary of the Commercial In-service Date and during the remaining Term of this Agreement, Supplier agrees to supply, and Customer agrees to purchase, at the Delivery Point, chilled water service to meet the Customer's cooling needs in the Premises, up to the Contract Capacity, and Supplier further agrees to use commercially reasonable efforts to make additional capacity available in excess of the Contract Capacity in order to meet Customer's Actual Capacity Requirement, but in no event to exceed a Contract Capacity of 240 Tons. Upon the Commencement Date, billing for the charges set forth in Section 2.2 will begin.

(b) Contract Capacity.

(i) Prior to the Commercial In-service Date, the Contract Capacity shall be zero.

(ii) Effective upon the Commercial In-service Date, the Contract Capacity shall be set equal to 150 Tons, unless Customer provides written notice to Supplier on or before the Commencement Date designating its revised capacity needs for the Crime Lab Building (in Tons of chilled water capacity), in which case the Contract Capacity shall be equal to the revised capacity so designated by Customer; provided, however, in no event shall such revised capacity be less than 135 Tons or greater than 240 Tons.

(iii) Increases After the Commercial In-service Date. Commencing upon the Commercial In-service Date (after the Contract Capacity has been established as provided in the foregoing subsection), the Contract Capacity shall be subject to adjustment from time to time in accordance with the following subsections (A) through (D) below; provided, however, that Supplier shall not be obligated to increase the Contract Capacity hereunder to the extent Customer's cooling needs in the Crime Lab Building increase as a result of future expansion of the Crime Lab Building, unless otherwise agreed to in writing between Supplier and Customer.

(A) If, during the twelve-month period commencing upon the Commercial In-service Date, the Actual Capacity Requirement exceeds the Contract Capacity six (6) times, the Contract Capacity shall be automatically increased to be equal to the arithmetic mean of the six highest Actual Capacity Requirement values measured during such twelve-month period, effective for the 12-month period commencing as of the first day of the month in which the Actual Capacity Requirement exceeded the Contract Capacity for the sixth time, but in no event to exceed a Contract Capacity of 240 Tons. At the expiration of such 12-month period, the Contract Capacity shall revert to the Contract Capacity in effect immediately prior to the application of this Section 2.1(b)(iii)(A), subject to continuing adjustment as otherwise provided in this Article II.

(B) If, at any time after the first anniversary of the Commercial In-Service Date and before the second anniversary of the Commercial In-Service Date, Customer's Actual Capacity Requirement exceeds the Contract Capacity then in effect, except in the case of any non-recurring short-term accident involving the Premises (including the breakdown of any equipment or mechanical, electrical or other system located therein), then for the next 12 months the Contract Capacity shall be increased to equal Customer's Actual Capacity Requirement, but in no event to exceed a Contract Capacity of 240 Tons. At the expiration of such 12-month period, the Contract Capacity shall revert to the Contract Capacity in effect immediately prior to the application of this Section 2.1(b)(iii)(B), subject to continuing adjustment as otherwise provided in this Article II.

(C) If, at any time after the second anniversary of the Commercial In-Service Date, Customer's Actual Capacity Requirement exceeds the Contract Capacity then in effect, except in the case of any non-recurring short-term accident involving the Premises (including the breakdown of any equipment or mechanical, electrical or other system located therein), and to the extent Supplier determines, in its sole discretion, that sufficient system capacity is available, Supplier shall adjust Customer's Contract Capacity under this Agreement to reflect Customer's Actual Capacity Requirement and the Contract Capacity Charge shall be adjusted as provided for herein for the remaining term of this Agreement.

(D) At any time during the Term of this Agreement, Supplier may, but shall not be obligated to, provide chilled water service to the Crime Lab Building in excess of 240 Tons.

(iv) Reductions After the Commercial In-service Date. In the event Customer determines that the Contract Capacity exceeds its needs at any time during the Term of

this Agreement after the Commercial In-service Date hereunder, then Customer and Supplier agree to negotiate in good faith a reasonable reduction in Customer's Contract Capacity to reflect Customer's Actual Capacity Requirements, provided, however, that in no event shall any reduction hereunder result in a Contract Capacity that is less than 135 Tons.

(c) Supplier will ensure that the chilled water entering Customer's Crime Lab Chilled Water Facilities at the Delivery Point for the purpose of cooling the Crime Lab Building will be in accordance with the Operation and Maintenance Specifications set forth in Schedule B attached hereto and incorporated herein. Customer will be responsible for temperature comfort levels of all space within the Crime Lab Building.

2.2. Charges. Customer agrees to pay to Supplier the following charges, as adjusted pursuant to Sections 2.5 and 2.7 hereof, for services provided by Supplier pursuant to this Agreement:

(a) Basic Charges.

(i) Contract Capacity Charge.

(A) Prior to the Commercial In-service Date, the Contract Capacity Charge shall be a monthly charge equal to the Contract Capacity Charge Rate multiplied by the Actual Capacity Requirement measured for the Crime Lab Building during such month.

(B) Effective upon the Commercial In-service Date, the Contract Capacity Charge shall be an annual charge which, for each Calendar Year or a portion thereof during the Term, shall be equal to the Capacity Charge Rate multiplied by the Contract Capacity in effect on December 1 of the preceding Calendar Year, multiplied by twelve months, plus an adjustment equal to the difference that results (whether positive or negative) from subtracting the preceding Calendar Year's Contract Capacity Charge from the sum of the twelve monthly products determined by multiplying the preceding Calendar Year's Contract Capacity Charge Rate times the Contract Capacity in effect for such month.

(ii) Consumption Charge - an annual charge which, for each Calendar Year or a portion thereof during the Term, shall be equal to the Consumption Charge Rate in effect on December 1 of the preceding Calendar Year multiplied by the Estimated Annual Consumption for the Calendar Year, plus an adjustment equal to the difference that results (whether positive or negative) from subtracting the preceding Calendar Year's Consumption Charge from the sum of the twelve monthly products determined by multiplying the Capacity Charge Rate in effect for each month of the preceding Calendar Year times the Actual Monthly Consumption during such month.

(iii) Metering Charge - an annual metering charge of \$5000 per year per meter.

The Contract Capacity Charge, the Consumption Charge and the Metering Charge will be payable for the first Calendar Year or portion thereof on the day after the Commercial In-service Date and will be payable by Customer on the first day of each Calendar Year thereafter, except as provided in Section 6.1(b).

(b) Adjustments to Charges.

(i) Service Quality Adjustments. The Consumption Charge shall be decreased by a percentage, in accordance with the following schedule, if the return water temperature in Customer's Crime Lab Chilled Water Facilities at the Crime Lab ETS is in excess of the design temperature of 56°F ("Design Temperature") by 1°F:

(A) if for any 15 minute interval, the average return water temperature in Customer's Crime Lab Chilled Water Facilities at the Crime Lab ETS is between 1°F and 2°F above the Design Temperature, then for the Ton-Hours consumed during that interval, the Consumption Charge will be decreased by 1.0%;

(B) if for any 15 minute interval, the average return water temperature in Customer's Crime Lab Chilled Water Facilities at the Crime Lab ETS is between 2°F and 4°F above the Design Temperature, then for the Ton-Hours consumed during that interval, the Consumption Charge will be decreased by 2.0%;

(C) if for any 15 minute interval, the average return water temperature in Customer's Crime Chilled Water Lab Facilities at the Crime Lab ETS is between 4°F and 6°F above the Design Temperature, then for the Ton-Hours consumed during that interval, the Consumption Charge will be decreased by 3.0%; or

(D) if for any 15 minute interval, the average return water temperature in Customer's Crime Lab Chilled Water Facilities at the Crime Lab ETS is more than 6°F above the Design Temperature, then for the Ton-Hours consumed during that interval, the Consumption Charge will be decreased by 3.5%.

(ii) Most Favored Nations Status. The Contract Capacity Charge and Consumption Charge shall be subject to annual adjustment as provided in Section 2.5 below. In addition, in the event Supplier enters into an agreement during the Term of this Agreement to provide chilled water service to any other customer located in downtown Denver similarly situated to Customer considering the terms and conditions contained herein, for which the annualized charge per Ton-Hour is less than the annualized charge per Ton-Hour under this Agreement, then the Contract Capacity Charge and/or Consumption Charge applicable hereunder shall automatically be reduced to equal such annualized charge per Ton-Hour. All provisions providing for adjustments for return water temperatures, or other incentives, shall continue to apply to any new rate or charge resulting from the operation of this paragraph.

2.3. Service Invoices.

(a) For chilled water service provided on and after the Commencement Date and prior to the Commercial In-service Date, Supplier will provide an invoice to Customer, with a copy to Customer's designated agent or contractor, following the end of each calendar month listing and setting forth in reasonable detail the Consumption Charge for such month, the Contract Capacity Charge for the then current month (prorated in the case of partial months), and any taxes, fees and surcharges payable by Customer pursuant to Section 2.6 or Section 2.7.

(b) For chilled water service provided on and after the Commercial In-service Date, Supplier will provide an annual invoice to Customer on the Commencement Date and following the end of each Calendar Year or partial Calendar Year ending after the Commencement Date, and at the end of the Term of this Agreement, listing and setting forth in reasonable detail the basic charges applicable under Section 2.2 for the next Calendar Year or partial Calendar Year and any taxes, fees and surcharges payable by Customer pursuant to Section 2.6 or Section 2.7. These basic charges shall include the Consumption Charge, including any true up adjustment for the prior Calendar Year, the Contract Capacity Charge, including any true up adjustment for the prior Calendar Year, and the Metering Charge, both of which shall be prorated in the case of a partial Calendar Year. Each such invoice will reflect a reduction in the total amount of such basic charges as consideration for Customer's advance payment of Calendar Year charges. Such reduction shall be equal to one-half of the difference, if any, obtained by subtracting the net present value as of the following January 1 of twelve (12) equal monthly installments (equal to 1/12th of the total invoice amount before the reduction for any prepayment discount) over the next Calendar Year, discounted based on the interest rate equal to the current return for the General Fund within Customer's Investment Portfolio, as most recently reported on or before December 1 of the year the invoice is prepared, and the identical net present value calculation using the 12-month, weighted average interest rate applicable to Supplier's short-term borrowings on December 1 of the year the invoice is prepared. Supplier and Customer agree to notify each other during the first week in December each year of their respective interest rates applicable on December 1 of such year.

2.4. Payment. An invoice delivered under Section 2.3, and any other invoice delivered by Supplier under this Agreement, will be due and payable upon delivery to Customer and Customer will pay, or will cause its designated agent or contractor to pay, the total amount of such invoice (except to the extent disputed by Customer in good faith) to Supplier at the place of payment specified in such invoice within 30 days after the date of such invoice, without any further notice or demand. In addition to any actions which Supplier may take during the continuance of a default by Customer, Customer will pay interest on the balance of each invoice which remains unpaid pursuant to the provisions of the Denver Revised Municipal Code.

2.5. Periodic Adjustments. During the term of this Agreement, the Contract Capacity Charge Rate and the Consumption Charge Rate will each be adjusted periodically by Supplier as follows:

(a) Effective on January 1 of each year, the Contract Capacity Charge Rate in effect on the last day of the immediately preceding Calendar Year will be multiplied by the Capacity Charge Index, as determined in accordance with Schedule A attached hereto and

incorporated herein, and the Contract Capacity Charge Rate as so adjusted shall remain in effect until further adjusted under this Agreement; and

(b) Effective on the first day of each calendar month, the Consumption Charge Rate in effect on the last day of the immediately preceding calendar month (before the application of any service quality adjustments provided for in Section 2.2(b)(i)) will be multiplied by the Consumption Charge Index, as determined in accordance with Schedule "A" hereto, and the Consumption Charge Rate as so adjusted shall remain in effect until further adjusted under this Agreement.

2.6. Taxes, Fees and Surcharges. Customer is exempt from payment of taxes. Customer will pay all applicable fees and surcharges from which Customer is not exempt, including without limitation, any present or future charge, assessment, franchise fee or fee of any other nature (including interest, penalties and additions thereto) that is imposed by any federal, state or local taxing authority on chilled water service provided by Supplier or any aspect of such service, or on any payments made by Customer, under this Agreement, excluding Supplier's income tax.

2.7. Change of Law. Supplier will adjust the Contract Capacity Charge and Consumption Charge to reflect any increases in Supplier's labor, fuel, operating, maintenance, environmental or other costs of providing chilled water service (including capital expenditures) which result from the adoption of, or any change in, any applicable laws or rules or regulations of any governmental authority after the date hereof, or from any change in the interpretation by any court, tribunal or regulatory authority of any applicable law or rule or regulation after such date, other than changes relating to the use of refrigerants used by Supplier in the Leased Facilities. In determining the amount of any increase permitted under this Section 2.7, any capital expenditure made by Supplier to comply with any adoption of, or change in, applicable laws or regulations shall be amortized on a straight line over the useful life of the item in question, as determined by Supplier. All costs passed through to Customer under this Section 2.7 shall be allocated among all of Supplier's customers (including Customer) during the year in question based on each customer's proportionate Contract Capacity of the aggregate chilled water production of Supplier during the year in question.

ARTICLE III

INSTALLATION OF CRIME LAB ENERGY TRANSFER STATION AND INTERCONNECTION

3.1. Work to be Performed by Customer. Customer shall perform, at Customer's sole expense, the work on the CPS Block as set forth in the Lease Buyout Agreement, except the Crime Lab Energy Transfer Station shall be installed by Customer as set forth herein. The parties intend that Customer's work to install the Crime Lab ETS shall be performed in conjunction with Customer's work on the CPS Block as set forth in the Lease Buyout Agreement and that the following provisions effectively allow for installation of the Crime Lab ETS in the same manner, and under the same procedures and time frames, as if originally included within the scope of work set forth in the Lease Buyout Agreement. Consistent with such intent, to the extent there is

any conflict between Sections 3.1 through 3.5 of this Agreement with regard to work relating to the Crime Lab ETS, and Article II of the Lease Buyout Agreement with regard to work relating to the CPS Block Facilities, the terms of the Lease Buyout Agreement shall apply to the Crime Lab ETS and be controlling.

(a) The Crime Lab Energy Transfer Station shall be installed in accordance with the technical designs and specifications in Schedule B and Schedule C attached hereto and incorporated herein;

(b) Unless already provided for in the Lease Buyout Agreement, the interconnections between the Crime Lab ETS and the CPS Block Chilled Water Laterals and between the Crime Lab ETS and Customer's Crime Lab Chilled Water Facilities, as necessary to establish chilled water service from the CPS Block Facilities and the Crime Lab ETS to the Crime Lab Building, shall be installed in accordance with the technical designs and specifications in Schedule B and Schedule C hereto; and

3.2. Project Management Plan. The Parties agree that the procedures and provisions regarding project documentation, inspections, procedures, start-up responsibilities, commissioning, and final acceptance with respect to all of the work to be performed pursuant to this Article III shall be as set forth in the Project Management Plan for the Crime Lab ETS, attached as Schedule D hereto and incorporated herein, and the Project Management Plan set forth in the Lease Buyout Agreement.

3.3. Coordination and Start-up of Facilities. In addition to the applicable provisions of the Project Management Plan, the coordination and start-up of the Crime Lab ETS shall be handled in the same manner as for the CPS Block Facilities as set forth in the Lease Buyout Agreement, as if the work described in Section 3.1 above were originally included in the work described in Section 2.1 of the Lease Buyout Agreement, with the additional acknowledgement that the Crime Lab ETS cannot be placed into operation before both the CPS Block Chilled Water Mains and CPS Block Chilled Water Laterals are placed into operation. The Company will notify the Manager of General Services in writing upon successful completion of all testing and final acceptance of the Crime Lab ETS.

3.4. Warranty. Warranty matters for the Crime Lab ETS shall be handled in the same manner as for the CPS Block Facilities as set forth in the Lease Buyout Agreement, as if the work described in Section 3.1 above were originally included in the work described in Section 2.1 of the Lease Buyout Agreement.

3.5. Assignment and Bill of Sale. The City shall transfer the Crime Lab ETS and related improvements to Supplier by Assignment and Bill of Sale in the same manner and form as for the Transferred Facilities under the Lease Buyout Agreement, as if the Crime Lab ETS were originally included as part of the Transferred Facilities under the Lease Buyout Agreement.

3.6. Operation and Maintenance of Crime Lab Chilled Water Facilities. (a) Customer, at its expense, will maintain Customer's Crime Lab Chilled Water Facilities during the term of this Agreement in accordance with the Operation and Maintenance Specifications set forth in

Schedule B hereto. Customer will maintain the quality of water in Customer's Crime Lab Chilled Water Facilities in accordance with the Operation and Maintenance Specifications set forth in Schedule B hereto. At frequent intervals, Supplier will take a test sample of the water flowing through Customer's Crime Lab Chilled Water Facilities in accordance with the Operation and Maintenance Specifications set forth in Schedule B hereto, and will report results of such tests to Customer. Customer agrees to provide Supplier at least 30 days prior written notice prior to commencing any modification to Customer's Crime Lab Chilled Water Facilities after the date hereof that may affect Supplier's operations in providing chilled water service hereunder. If Customer's operations or equipment adversely affect Supplier's metering of chilled water service, Customer will, at its expense, make such reasonable changes in its operations or equipment as will be necessary to allow accurate metering of such service. Supplier will also regularly test the quality of water in its own system and report the results to the Customer.

(b) The service stop valves and meter stop valves and other equipment on Supplier's side of the Delivery Point will be operated only by authorized personnel of Supplier, except that Customer may close the service stop valves when necessary due to emergency circumstances which require immediate cessation of chilled water supply, and Customer will give Supplier immediate notice of any such cessation. Supplier will close the service stop valves on the heat exchangers to allow Customer to repair or perform maintenance on Customer's Crime Lab Chilled Water Facilities upon reasonable advance request therefor; provided, that in emergency circumstances if Customer is unable to close the service stop valves, Supplier will use all reasonable efforts to close such valves as soon as practicable.

(c) The service stop valves on Customer's Crime Chilled Water Lab Facilities will be operated only by authorized personnel of Customer, except that Supplier may close the service stop valves when necessary due to emergency circumstances which require immediate cessation of the operation of Customer's Crime Lab Chilled Water Facilities, and Supplier will give Customer immediate notice of any such cessation.

(d) Supplier, at its expense, will maintain the Crime Lab ETS during the Term of this Agreement in accordance with Schedule B attached hereto.

(e) The Crime Lab ETS will become the property of Supplier in accordance with Section 3.5 above, after which the Crime Lab ETS, including all components thereof, will be personal property and no item thereof will become a fixture of the CPS Block, notwithstanding its installation on or attachment to real property or any improvement located thereon. Plates or markings may be affixed to the Crime Lab ETS and related piping by Supplier to indicate its ownership thereof.

(f) Customer will provide, without charge, adequate space within the same structure in which the PAB and PADF ETS and Spare ETS are to be located on the CPS Block for the housing and maintenance of the Crime Lab ETS and all metering and related equipment which Supplier will provide to comply with its obligations hereunder. Supplier shall have routine access to restricted areas, with an escort provided by Customer, only after providing four-hour advance notice to Customer.

(g) Metering.

(i) Supplier will test its metering equipment within the Crime Lab ETS every two years, or more frequently, if required, in accordance with the manufacturer's recommendations and, if requested by Customer, will conduct such tests in the presence of a representative of Customer. The Supplier will provide the test results to Customer. If requested by Customer, Supplier will conduct such testing on additional occasions; provided, that unless such testing indicates that the tested equipment provides metering results which are inaccurate by 2% or more in a manner which is adverse to Customer, Customer will pay all costs (including labor costs) and expenses incurred by Supplier in conducting such additional tests, as such costs and expenses are reasonably determined by Supplier. Supplier will maintain an accurate log or record of all such tests. In the event that any measuring equipment is found to be inaccurate by 2% or more and the error is not determinable by test or other recording device, then an appropriate correction to the consumption of Customer hereunder shall be made if the percentage of error is ascertainable by calibration, special test or mathematical calculation or, if not available, by estimating the quantity of chilled water service provided during preceding periods under similar conditions when the measurement equipment was registering accurately. Such adjustment shall be made effective as of the midpoint in time between the date of the previous test and the date of repair or replacement of the measurement equipment.

(ii) Supplier will repair or replace any materially defective metering equipment within a reasonable period after receiving notice of any material defect to such equipment.

(iii) The regular meter reading and billing period will be monthly.

(iv) If Supplier's metering record is interrupted at any time for any reason, the measurement of chilled water service to be billed for such period of interruption will be estimated by Supplier based, at its option, upon (i) Supplier's meter record immediately before and after the period of interruption, (ii) past Customer consumption during a similar period and under similar conditions, or (iii) some reasonable combination of these methods, and Customer will pay invoices during such period based on the estimated measurement. All billings based on estimated consumption will indicate the method of estimation employed.

ARTICLE IV
ACCESS

4.1. License and Related Rights. Customer hereby grants Supplier the right and license to maintain sufficient space on the CPS Block for the purposes of inspecting, testing, operating, protecting, servicing, maintaining, replacing and removing any component of the Crime Lab ETS, including any metering and other service equipment located within the enclosed area immediately adjacent to the underground parking structure serving the PAB and the PADF, as reflected on Exhibit A to the Lease Buyout Agreement. The location of Supplier's equipment necessary for Supplier's operation and maintenance of its facilities on the CPS Block, and the manner and location of Supplier's storage of materials, shall be subject to advance approval by Customer. Customer hereby grants to Supplier the right and license to install, operate, maintain

and repair equipment on the CPS Block. Supplier shall have access to and from its facilities on the CPS Block necessary for Supplier to perform any one or more of the activities, rights and obligations contemplated by or in connection with this Agreement, with an escort provided by Customer, if Customer deems such escort necessary; provided, however, that Supplier shall have routine access to restricted areas, with an escort provided by Customer, after providing four-hour advance notice to Customer, and emergency access to restricted areas upon expedited notice, with an escort provided by Customer. All space, licenses and rights-of-access will be in the location designated by Supplier and approved by Customer's Manager of General Services, such approval not to be unreasonably withheld, delayed or conditioned. Supplier's obligations under this Agreement are conditioned upon the grant, and undisturbed enjoyment of, the licenses and rights-of-access granted under this Section.

ARTICLE V

ADDITIONAL AGREEMENTS

5.1. Customer Reporting. Customer will give immediate notice to Supplier of (a) any leaks of Supplier's pipes, pumps, and other equipment located on the CPS Block or (b) any mixing of Customer's water passing through the Crime Lab Energy Transfer Station with Supplier's chilled water which passes through the Crime Lab Energy Transfer Station.

5.2. Resale of Chilled Water Service. Chilled water service supplied by Supplier hereunder may be resold by Customer; provided, that such resale does not subject Supplier to any governmental rules, regulation, taxes or laws to which it was not theretofore subject. Regardless of any such resale, Customer will remain primarily liable to Supplier for all costs and charges payable hereunder. Customer will be responsible for any taxes or other governmental charges arising from or in connection with any such resale.

5.3. Non-Exclusive Cooling. While it is anticipated that Supplier will be the sole provider of services to meet the space cooling needs of the Crime Lab Building, Customer reserves the right to provide additional ancillary space cooling at its discretion.

5.4. Engineering Assistance. Supplier agrees, without additional cost to Customer, to coordinate with Customer and provide engineering assistance to Customer in optimizing the design and ongoing operations of Customer's Crime Lab Chilled Water Facilities.

5.5. Pursuit of Special Credits. Supplier and Customer, both individually and collectively, pledge to pursue any Special Credits reasonably obtainable by either of them and to share equally in the benefit of any such Special Credits under this Agreement in a manner that is mutually acceptable.

5.6. Examination of Records. Customer, through any duly authorized representative, including the Denver Auditor or his designee, shall have access to and the right to examine any directly pertinent books, documents, papers, and records of Supplier involving activities under this Agreement. All such records must be kept for a minimum of four (4) years.

5.7. Maximum Amount. The maximum aggregate amount to be paid by Customer to Supplier for chilled water service supplied under this Agreement shall in no event exceed the sum of \$1,700,000, unless this Agreement is modified to increase said maximum aggregate amount by a duly authorized, written amendment to this Agreement mutually agreed to and executed by the Parties hereto. If the aggregate amount payable by Customer to Supplier for chilled water service supplied under this Agreement ever exceeds the applicable maximum aggregate amount payable hereunder pursuant to this Section 5.7, as may be amended from time to time, this Agreement shall automatically terminate effective upon the day immediately preceding the date upon which such applicable maximum aggregate amount is exceeded.

ARTICLE VI

INTERRUPTION OF SERVICES

6.1. Performance Generally. (a) Supplier will use all reasonable efforts to make chilled water service available to Customer regularly and without interruption up to the Contract Capacity, but Supplier does not guarantee a constant supply of such chilled water service hereunder. Supplier will be liable to Customer for 125% of any direct costs of Customer reasonably incurred by Customer as a direct result of Supplier's failure to provide chilled water service, or any substitute service reasonably acceptable to Customer. Supplier shall not be responsible for any percentage of Customer's direct costs, as provided in the foregoing sentence, to the extent electrical service is not available at the Crime Lab Building to power Customer's fans, pumps, controls and other equipment necessary to receive substitute service. Except as specifically provided in this Section 6.1(a), Supplier will not be liable to Customer or any other person under any circumstances for any interruptions of the supply of, or failure to provide, chilled water service under this Agreement. In no event shall Supplier have any liability under this Section 6.1(a) for special, exemplary or consequential damages, including without limitation, loss of profit or revenue or interference with operations, or have any liability under this Section 6.1(a) to any person other than Customer. Any liability of Supplier under this Section 6.1(a) shall be reduced by the amount of any insurance recovery of Customer.

(b) In the event that, after the Commercial In-service Date, Supplier fails to provide chilled water service for Customer's needs up to Customer's Contract Capacity, or any substitute service reasonably acceptable to Customer for a period exceeding 24 consecutive hours due to a service interruption described in item (i) of Section 6.2 (which are not the result of Customer's actions or omissions) or Supplier's negligence, then Supplier will subtract from the Contract Capacity Charge payable for any calendar month in which such period occurs, a pro rata amount attributable to the number of days of such period occurring during such month.

6.2. Service Interruption. Supplier will have the right at any time and from time to time to interrupt chilled water service: (i) for a reasonable duration, upon providing such notice to Customer as is reasonably practicable, for the purpose of performing maintenance, repairs, replacements connections or changes (on or off the CPS Block) for the purpose of complying with any order or request of any governmental authority; provided, that Supplier will exercise due diligence and will act with reasonable dispatch in restoring service and, to the extent practicable, will schedule such interruptions during non-business hours, or (ii) for a duration

determined by Supplier in its sole discretion, with notice, if, in Supplier's judgment, Customer's Crime Lab Chilled Water Facilities or the Crime Lab Building has become dangerous or defective, or if Supplier has received a notice from any governmental authority that Customer's Crime Lab Chilled Water Facilities or the Crime Lab Building is dangerous or defective, so as to in any manner endanger any person, any component of the Crime Lab Energy Transfer Station or Supplier's other equipment and piping or Supplier's service to other customers.

6.3. Force Majeure. (a) Notwithstanding any other provision of this Agreement, if either party hereto is prevented from performing any of its obligations hereunder by reason of an event of Force Majeure, such party will notify the other party in writing as soon as practicable and thereafter will be excused from its obligations hereunder to the extent of such interference; provided, that no payment obligation hereunder will be excused or delayed as the result of Force Majeure.

(b) The party whose performance hereunder is prevented as the result of an event of Force Majeure, will use reasonable efforts to remedy its inability to perform; provided, however, nothing in this Section 6.3(b) will be construed to require the settlement of any strike, walkout or other labor dispute on terms which, in the reasonable judgment of the affected party, are contrary to its interest. It is understood that the settlement of a strike, walkout or other labor dispute will be entirely within the discretion of the affected party.

(c) If, as a result of an event of Force Majeure, Supplier is prevented wholly from rendering, or Customer is prevented wholly from receiving and using, chilled water service hereunder for a period of thirty (30) consecutive days, then the party not prevented from so performing due to such event of Force Majeure shall have the right to terminate this Agreement as to the Crime Lab Building upon one day's written notice to the other party. This subsection (c) shall not apply to give either party the right to terminate this Agreement in the event the Crime Lab Building is rendered untenable by damage from fire or other casualty.

ARTICLE VII **DEFAULT**

7.1. Defaults. (a) Except as related to the construction of the Crime Lab ETS, in the event either party fails to perform any material obligation of such party under the terms of this Agreement, such failure shall constitute a default under this Agreement. Upon the occurrence of a default, the non-defaulting party shall be entitled to terminate this Agreement if such default is not cured, to the reasonable satisfaction of such non-defaulting party, within thirty (30) days after notice has been given to the defaulting party. In addition to said 30-day period, a defaulting party shall have, with respect to curable defaults only, that number of additional days which is equal in number to the number of days which the defaulting party is prevented from curing such default solely by reasons or causes beyond its reasonable control, provided the defaulting party has commenced curing such default within such 30-day period, is proceeding diligently and continuously, and is using all reasonable efforts to cure the default. If the default is not cured as provided for herein, the non-defaulting party may terminate this Agreement under Section 9.3

hereof. Nothing in this section shall compromise Customer's rights in the event of interruption of service pursuant to Article VI hereof.

(b) In the event of a default related to the construction of the Crime Lab ETS, the remedies set forth with respect to the construction of the CPS Block Facilities in the Lease Buyout Agreement shall apply, as if the work described in Section 3.1 above were originally included in the work described in Section 2.1 of the Lease Buyout Agreement.

ARTICLE VIII **INDEMNIFICATION**

8.1. Indemnification by Supplier. In addition to any rights Customer may have at law or in equity against Supplier with respect to any default by Supplier under this Agreement, Supplier agrees to defend, indemnify and hold harmless Customer from and against any and all Loss and Expense incurred by Customer in connection with or arising from any acts or omissions of Supplier's agents and employees or others under its control in connection with any accident, injury or death to any person or damage to property (including damage to any component of the Customer's Crime Lab Chilled Water Facilities or Customer's other chilled water equipment and piping) occurring on the CPS Block related to this Agreement, except to the extent such Loss or Expense results from any negligent or intentional conduct of Customer or its agents or employees or others under its control. This Section shall survive the termination of this Agreement.

8.2. Indemnification by Customer. Customer believes that it is legally prohibited from pledging its credit, indemnifying or otherwise contractually incurring obligations with respect to claims or damages for injury to persons or property which may impose financial consequences on Customer for which Customer would not otherwise be legally responsible. To the extent permitted by law and without waiving Customer's position regarding such prohibitions and the provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, *et seq.*, Customer shall defend, indemnify and hold harmless Supplier, its officers, employees and agents from and against any and all Loss and Expense incurred by Supplier in connection with any liability, loss, property damage or personal injury arising from this Agreement or from Supplier's presence on the CPS Block related to this Agreement and caused by any negligent or intentional conduct of Customer, its employees or agents; provided, however, that Customer shall not indemnify, defend or hold harmless Supplier, its officers, agents and employees, from damages or liability to the extent resulting from the negligence or intentional conduct of Supplier's officers, agents and employees. This Section shall survive the termination of this Agreement.

8.3. Notice of Claims. (a) Any party seeking indemnification hereunder will give to the other party a claim notice describing the facts underlying, and the amount of, its indemnification claim. A notice in respect of any action at law or suit in equity by or against a third person as to which indemnification will be sought will be given promptly after the party seeking indemnification has notice that such action or suit has commenced; provided, that failure to give such notice will not relieve the party from whom indemnification is sought of its obligations hereunder except to the extent it will have been prejudiced by such failure.

(b) In calculating any loss or expense, there will be deducted (i) any insurance recovery by the party seeking indemnification in respect thereof (and no right of subrogation will accrue hereunder to any insurer) and (ii) the amount of any tax benefit to the party seeking indemnification with respect to such loss or expense (after giving effect to the tax effect of receipt of the indemnification payments).

(c) After any claim notice has been given pursuant hereto, the amount of indemnification to which an party seeking indemnification will be entitled under this Article VIII will be determined: (i) by the written agreement between the party seeking indemnification and the other party; (ii) by a final judgment or decree of any court of competent jurisdiction; or (iii) by any other means to which the party seeking indemnification and the other party will agree.

ARTICLE IX

TERM

9.1. Term. This Agreement will be effective as of the Effective Date and, unless sooner terminated as provided in Section 9.3, will remain in effect for an Initial Term ending on June 30, 2026. This Agreement will become automatically renewable for successive ten (10) year periods after the Initial Term unless either party gives written notice of termination at least one year prior to the expiration of the Initial Term or any successive renewal term, to be effective at the end of such Initial Term or renewal term.

9.2. Government Appropriations. It is understood and acknowledged by the Parties that the financial obligations of Customer are contingent upon funds for that purpose being appropriated, budgeted, encumbered, and otherwise made available for the purposes of this Agreement.

9.3. Early Termination. In addition to the termination rights of either party under applicable law following a default, Supplier may terminate this Agreement as of the effective date of the withdrawal, cancellation or lapse of any right, permit or authorization of any governmental authority necessary to allow Supplier to operate Supplier's District Chilled Water System or to provide chilled water service to Customer.

9.4. Effect of Termination. Upon the expiration, termination, or earlier termination of this Agreement:

(a) Supplier may choose, in its sole discretion, upon providing notice to Customer within 30 days after such expiration or termination, (i) to remove any or all of the components of the Crime Lab ETS or its other equipment, piping and other of Supplier's property installed or otherwise located on the CPS Block, in which case Customer will provide Supplier access to the Supplier's property on the CPS Block reasonably requested by Supplier to allow Supplier to remove such property in a timely fashion and Supplier will have no obligation to restore the CPS Block to its original condition, or (ii) to abandon any or all of such property located on the CPS Block, in which case such property will be the responsibility of Customer and Supplier will have no obligation or liability with respect to such abandoned property.

(b) Customer will pay Supplier all amounts then payable to Supplier hereunder; and

(c) Customer and Supplier will have no further obligations hereunder other than (i) obligations accruing prior to the date of such expiration, termination, or earlier termination; (ii) Customer's obligations to provide access rights pursuant to Section 9.4(a); and (iii) obligations under Article VIII, all which will survive the expiration, termination, or earlier termination of this Agreement.

ARTICLE X

LAWS AND REGULATORY BODIES

10.1. Agreement Subject to Laws and Regulations. This Agreement and the rights and obligations of the Parties hereunder shall be subject to all valid applicable state, local and federal laws, rules, regulations, ordinances, orders and decisions issued or promulgated for or by any court or regulatory agency having or asserting jurisdiction over this Agreement, the services to be performed hereunder or either of the Parties hereto.

10.2. Rights Upon Regulatory Agency or Court Action. Except as may be otherwise provided herein, in the event that any court or regulatory agency having or asserting jurisdiction over these premises takes any action or issues any determination that directly or indirectly prohibits performance to a material extent under this Agreement by either or both Parties or otherwise makes such performance illegal or impossible, such action or determination will be considered to be an event of Force Majeure. In the event that any such court or regulatory agency takes any action or issues any determination that directly or indirectly effects a material adverse change to any substantive provision of this Agreement, in the terms of performance or with respect to the rights or obligations of either party hereto (in that party's reasonable good faith opinion), then the party materially adversely affected may: (i) continue to perform its obligations under the Agreement as changed, (ii) seek to renegotiate the terms of this Agreement by providing written notice to the other party of its desire to renegotiate, or (iii) at any time during a period of ninety (90) days next following receipt by the other party of written notice of any such action by any such court or regulatory agency, terminate this Agreement by providing written notice to the other party hereto on or before the end of such ninety (90) day period, such termination to be effective on the first day of the month next following ninety (90) days after the receipt of such notice of termination; provided however that, if such action or determination is rescinded prior to the effectiveness of such notice, such notice will be deemed invalid. In the event the Agreement terminates under this provision, all further rights and obligations of Supplier and Customer under this Agreement will be null and void. Each party hereto shall provide reasonable and prompt notice to the other party hereto as to any regulatory proceedings or actions described herein that could affect the rights and obligations of the Parties hereto.

10.3. Performance Pending Renegotiation or Termination. Irrespective of any action by any court or regulatory agency as contemplated by Sections 10.1 or 10.2, above, each of the Parties hereto shall continue to honor and perform all of their respective warranties, representations and obligations under this Agreement including, but not limited to, the obligations of Supplier to provide chilled water service and the obligations of Customer to accept and pay Supplier for chilled

water service as provided herein, until the Parties either mutually renegotiate the terms of this Agreement or until this Agreement terminates pursuant to the provisions of Section 10.2 above.

10.4. Governing Law. This Agreement will be governed by and construed in accordance with the internal laws (as opposed to the conflicts of law provisions) of the State of Colorado.

ARTICLE XI **INSURANCE**

11.1. Commercial General Liability Insurance. During the Term of this Agreement, Supplier shall maintain at its own expense a commercial general liability insurance policy with coverage in amounts not less than those which are from time to time acceptable to a prudent service provider in the same business as Supplier and in the area in which the Crime Lab Building is located, but in any event not less than \$5,000,000 policy aggregate. Policies for such insurance shall waive any right of subrogation against Customer, except for claims Customer has agreed to indemnify Supplier against pursuant to Section 8.2 hereof. Supplier shall provide a certificate of such insurance policies which meets the foregoing requirements, and which also names Customer as an additional insured. Except as otherwise provided in Section 8.2, Supplier shall be responsible for any and all claims, associated costs and expenses which fall within the deductible or self insured retention for insurance as required in the first sentence of this section. Such policy shall provide: (i) that this Agreement is an insured contract under the policy; (ii) defense costs in excess of policy limits; (iii) a severability of interests, (iv) separation of insureds or cross liability provision; and (v) a provision that coverage is primary and non-contributory with any other coverage or self-insurance maintained by the Customer.

11.2. Workers Compensation and Employers' Liability Insurance. Customer and Supplier shall maintain their own respective worker's compensation/employers' liability insurance policies insuring their respective employees, as required in the State of Colorado. Except as otherwise provided in Section 8.2, Supplier's Worker's Compensation insurance program and policy shall waive any right of subrogation against Customer.

11.3. Business Automobile Insurance. Supplier shall maintain a business automobile policy with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.

11.4. Insurance Underwriter. Required insurance shall be maintained during the Initial Term or Renewal Term of this Agreement and any extension thereof. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-" "VII" or better.

ARTICLE XII
GENERAL PROVISIONS

12.1. Notices. All notices or other communications required or permitted hereunder will be in writing and will be deemed given or delivered (i) the day delivered when delivered personally, (ii) 3 days after mailing when sent by registered or certified mail or by private courier and (iii) 1 day after sending when sent by courier via commercial overnight delivery service, addressed as follows:

If to Customer, to:

City and County of Denver
Manager of General Services
Attention: Director of Energy Management
201 W. Colfax Ave., Dept. 11 H 5
Denver, CO 80202

Office of the Mayor
1437 Bannock St., Room 350
Denver, CO 80202

and

Denver City Attorney
1437 Bannock St., Room 353
Denver, CO 80202

If to Supplier, to:

Public Service Company of Colorado
Attention: Director of Thermal Energy
P.O. Box 840
1875 Delgany Street
Denver, CO 80201

or to such other address as such party may indicate by a notice delivered to the other party hereto.

12.2. Successors and Assigns. (a) All of the terms, covenants, representations, warranties, and conditions of this Agreement shall be binding upon, and inure to the benefit of and be enforceable by, the Parties hereto and their respective successors, but neither this Agreement nor the rights and obligations of the Parties may be assigned without the prior written consent of the other party; provided, however, that a party shall have the right to assign its rights hereunder to one or more entities which are either wholly owned (directly or indirectly) by such party, or are under common ownership with such party. Consent of the City shall be by the Mayor. Either party may mortgage, pledge, or otherwise encumber its rights under this Agreement or its assets located on the CPS Block to secure any obligations of such party, and in connection therewith, upon the request of the other party hereto from time to time, Supplier or

Customer, as the case may be, will provide one or more estoppel certificates in form and substance satisfactory to the requesting party.

(b) Nothing in this Agreement, expressed or implied, is intended or will be construed to confer upon any person (other than the parties and successors and assigns permitted by this Section 12.2) any right, remedy or claim under or by reason of this Agreement.

12.3. Entire Agreement; Amendments. This Agreement and the Schedules referred to herein and the documents delivered pursuant hereto and the Lease Buyout Agreement contain the entire understanding of the Parties hereto with regard to the subject matter contained herein or therein, and supersede all prior agreements or understandings between the Parties hereto. This Agreement will not be amended, modified or supplemented except by a written instrument signed by an authorized representative of each of the Parties hereto. City Council approval of such amendments are not needed unless required by the City's Charter. In the event terms or provisions in the proposal, the letter of intent, the schedules, or documents delivered pursuant to this Agreement conflict with this Agreement, this Agreement will control.

12.4. Interpretation. Article titles and headings to sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

12.5. Reasonableness of Consent or Approval. Whenever under this Agreement "reasonableness" is the standard for the granting or denial of the consent or approval of either party hereto, such party shall be entitled to consider public and governmental policy, moral and ethical standards, as well as business and economic considerations.

12.6. Waivers. Any term or provision of this Agreement may be waived, or the time for its performance may be extended, by the party or parties entitled to the benefit thereof. Any such waiver will be validly and sufficiently authorized for the purposes of this Agreement if, as to any party, it is authorized in writing by an authorized representative of such party. The failure of any party hereto to enforce at any time any provision of this Agreement will not be construed to be a waiver of such provision, nor in any way to affect the validity of this Agreement or any part hereof or the right of any party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement will be held to constitute a waiver of any other or subsequent breach. Any waiver or extension under this Section 12.6 may be given by Customer's Manager of General Services.

12.7. Expenses. Each party hereto will pay all its own costs and expenses incident to its negotiation and preparation of this Agreement and, except as set forth herein, to its performance and compliance with all agreements and conditions contained herein on its part to be performed or complied with, including the fees, expenses and disbursements of its counsel and accountants.

12.8. Partial Invalidity. Wherever possible, each provision hereof will be interpreted in such manner as to be effective and valid under applicable law, but in case any one or more of the provisions contained herein will, for any reason, be held to be invalid, illegal or unenforceable in any respect, such provision will be ineffective to the extent, but only to the extent, of such

invalidity, illegality or unenforceability without invalidating the remainder of such invalid, illegal or unenforceable provision or provisions or any other provisions hereof, unless such a construction would be unreasonable.

12.9. Execution in Counterparts. This Agreement may be executed in one or more counterparts, each of which will be considered an original instrument, but all of which will be considered one and the same agreement, and will become binding when one or more counterparts have been signed by each of the Parties hereto and delivered to Supplier and Customer.

12.10. No Discrimination In Employment. In connection with the performance of work under this Agreement, Supplier 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, marital status, or physical or mental disability; and Supplier further agrees to insert the foregoing provision in all subcontracts hereunder.

12.11. No Third Party Rights. This Agreement is exclusively for the benefit of the Parties to this Agreement, their successors and permitted assigns and persons benefited by the indemnification provisions of this Agreement. No other person (including, without limitation, tenants of the Crime Lab Building or the CPS Block) shall be entitled to rely on any matter set forth in, or shall have any rights on account of the performance or non-performance by any party of its obligations under, this Agreement and no third party shall have the right to claim that they are a third party beneficiary and this paragraph shall be strictly construed.

12.12. Authority to Execute. The Parties represent that the persons who have affixed their signatures hereto have all necessary and sufficient authority to bind the respective parties.

12.13. Conflict of Interest by City Officers. Supplier represents that to its actual knowledge no officer or employee of Customer is either directly or indirectly a party to or in any manner interested in this Agreement except as such interest may arise as a result of the lawful discharge of the responsibilities of such elected official or employee.

12.14. No Personal Liability. No elected official, director, officer, agent or employee of Customer or the Supplier, as applicable, shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or because of any breach thereof or because of its or their execution approval or attempted execution of this Agreement.

12.15. Effective Date. This Agreement shall become effective as of October 1, 2011 ("Effective Date").

12.16. Electronic Signatures and Electronic Records. Supplier 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.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the Effective Date.

CUSTOMER:

CITY AND COUNTY OF DENVER

ATTEST:

By: _____
Debra Johnson
Clerk and Recorder, Ex-Officio Clerk
of the City and County of Denver

By: _____
MAYOR

APPROVED AS TO FORM:
Douglas J. Friednash
Attorney for the City and County of Denver

By: _____
Assistant City Attorney

REGISTERED AND COUNTERSIGNED

By: _____
Manager of Finance

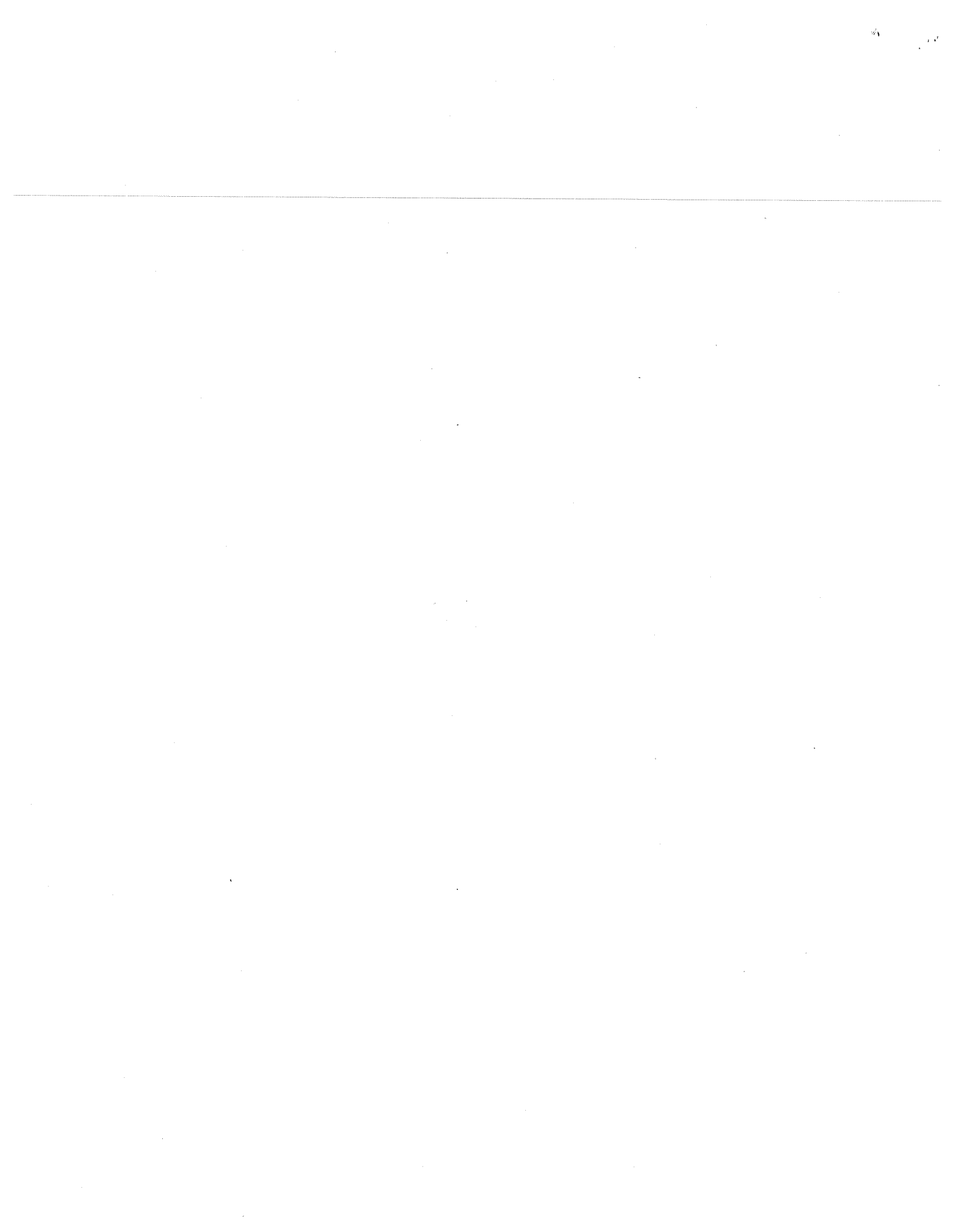
By: _____
Auditor

SUPPLIER:

PUBLIC SERVICE COMPANY OF COLORADO

By: _____
David L. Eves
President and Chief Executive Officer

DO NOT DELETE THIS PAGE



SCHEDULE A

A. Capacity Charge Index:

The capacity charge index will be determined on each January 1 in the following manner:

- (i) The index value for Current Dollar, NAICS, Employment Cost Index for Total Compensation, Seasonally Adjusted, Private Industry Workers (ECI), as published by the U.S. Department of Labor, Bureau of Labor Statistics, will be determined as of September 30 of the year immediately preceding such January 1.
- (ii) The index value for the ECI for the corresponding date one year prior to the date referred to above shall be determined.
- (iii) The value in (i) above shall be divided by the value in (ii) above and the result shall be the Capacity Charge Index for the current time period.
- (iv) In the event the ECI is no longer published or otherwise readily available, the parties shall negotiate a mutually agreeable replacement index to apply hereunder for the remainder of the Term. Such replacement index shall match, as closely as reasonably possible, the criteria used in developing the ECI. Pending the parties' agreement of a permanent replacement index, Supplier shall be entitled to use, for the purpose of calculating applicable charges under this Agreement, a temporary replacement index that Supplier reasonably believes, in its sole opinion, most closely reflects the criteria used in developing the ECI. Upon the parties' agreement or a final judicial determination of a permanent replacement index, such permanent replacement index shall replace retroactively any temporary replacement index previously used to calculate applicable charges hereunder and all such previous charges shall be recalculated based on the permanent replacement index and all appropriate billing adjustments made.

B. Consumption Charge Index:

The consumption charge index will be determined for each calendar month in the following manner:

- (i) The value for each of the three factors (Expendables Factor, Energy Demand Factor and Energy Usage Factor) as specified in subsection (v) below will be determined as of the last calendar day of the month immediately preceding the month for which it will apply.
- (ii) The value for each of the three factors (Expendables Factor, Energy Demand Factor and Energy Usage Factor) specified in subsection (v) below for the preceding calendar month shall be determined.

- (iii) The value for each factor for the current month from (i) above shall be divided by the corresponding value for each factor for the preceding month from (ii) above and the result shall be multiplied by the relative weight of such factor, as follows:
 - (a) Twenty percent, or a factor of 0.200, in the case of the Expendables Factor.
 - (b) 46.8 percent, or a factor of 0.468, in the case of the Energy Demand Factor; and
 - (c) 33.2 percent, or a factor of 0.332, in the case of the Energy Usage Factor.
- (iv) The sum of the three resulting figures from subsection (iii) will be the value of the Consumption Charge Index for the current month.
- (v) The following definitions and calculations will apply to determine the monthly value of each of the three factors, prior to the weighting applied in subsection (iii) above, for purposes of determining the Consumption Charge Index:
 - (a) The value of the Expendables Factor, for all months except January, shall be equal to 1.000. For each January, the Expendables Factor shall be equal to the Producer Price Index – Commodities, for Chemicals and Allied Products, Not Seasonally Adjusted, WPU06 as it appears in the Producer Price Index, as published by the U.S. Department of Labor, Bureau of Labor Statistics for the most recent September, divided by the value of the same index published for the previous September one year prior. In the event the referenced Producer Price Index is no longer published or otherwise readily available, the parties shall negotiate a mutually agreeable replacement index to apply hereunder for the remainder of the Term. Such replacement index shall match, as closely as reasonably possible, the criteria used in developing the referenced Producer Price Index. Pending the parties' agreement of a permanent replacement index, Supplier shall be entitled to use, for the purpose of calculating applicable charges under this Agreement, a temporary replacement index that Supplier reasonably believes, in its sole opinion, most closely reflects the criteria used in developing the referenced Producer Price Index. Upon the parties' agreement or a final judicial determination of a permanent replacement index, such permanent replacement index shall replace retroactively any temporary replacement index previously used to calculate applicable charges hereunder and all such previous charges shall be recalculated based on the permanent replacement index and all appropriate billing adjustments made.
 - (b) The Energy Demand Factor will be calculated as follows:
 - (1) The total rate for demand (in \$ per the maximum fifteen (15) minute integrated kilowatt demand used during the month), as set

forth in Public Service Company of Colorado's Colorado PUC electric tariff, for electricity service under Rate Schedule SG or successor rate schedule applicable to commercial facilities in downtown Denver, as adjusted to include all applicable riders, rate adjustments, franchise fees and sales taxes, in effect for the applicable month shall be determined. If such demand rate was not in effect for the entire calendar month, the total rate shall be determined by pro-rating the demand rates according to the number of days within the month that they were in effect.

- (2) The corresponding total rate for demand (in \$ per the maximum fifteen (15) minute integrated kilowatt demand used during the month), as set forth in Public Service Company of Colorado's Colorado PUC electric tariff, for electricity service under Rate Schedule SG or successor rate schedule applicable to commercial facilities in downtown Denver, as adjusted to include all applicable riders, rate adjustments, franchise fees and sales taxes, in effect for the previous month shall be determined. If such demand rate was not in effect for the entire calendar month, the total rate shall be determined by pro-rating the demand rates according to the number of days within the month that they were in effect.
 - (3) The demand rate determined in (1) above will be divided by the demand rate determined in (2) above. The quotient will be the Energy Demand Factor.
- (c) The Energy Usage Factor will be calculated as follows:
- (1) The total rate for energy usage (in \$ per kilowatt-hour) as set forth in Public Service Company of Colorado's Colorado PUC electric tariff, for electricity service under Rate Schedule SG or successor rate schedule applicable to commercial facilities in downtown Denver, as adjusted to include all applicable riders, rate adjustments, franchise fees and sales taxes in effect for the applicable month shall be determined. If such energy usage rate was not in effect for the entire calendar month, the total rate shall be determined by pro-rating the energy usage rates according to the number of days within the month that they were in effect.
 - (2) The corresponding total rate for energy usage (in \$ per kilowatt-hour) as set forth in Public Service Company of Colorado's Colorado PUC electric tariff, for electricity service under Rate Schedule SG or successor rate schedule applicable to commercial facilities in downtown Denver, as adjusted to include all applicable riders, rate adjustments, franchise fees and sales taxes in effect for the previous month shall be determined.

- (3) The energy usage rate determined in (1) above will be divided by the energy usage rate determined in (2) above. The quotient will be the Energy Usage Factor.
- (d) In the event Rate Schedule SG or applicable successor rate schedule under Public Service Company of Colorado's Colorado PUC electric tariff is revised in a manner that materially changes how billing determinants are determined under such rate schedule, Supplier and Customer shall each have the right to request a redetermination of the weighting factors set forth in subsection (iii) above, or replacement thereof, applicable in accordance with this section. Such request shall be in writing and received by the other party no later than sixty (60) days after the effective date of said tariff change. Upon receipt of such written notice, the parties shall meet to negotiate in good faith a mutually acceptable replacement to the then-effective weighting factors which more accurately measures the expected future relationship between the billing determinants and average actual energy demand and energy usage for commercial facilities in downtown Denver, taking into account the applicable changes to Public Service Company of Colorado's Colorado PUC electric tariff. Unless otherwise mutually agreed, any such replacement to the then-effective weighting factors agreed to by the parties shall be used in calculating the Consumption Charge Index that is scheduled to be determined for the calendar month immediately following the date which is ninety (90) days after the date of the aforementioned written notice. Pending the parties' agreement of redetermined weighting factors, Supplier shall be entitled to use, for the purpose of calculating applicable charges under this Agreement, temporary weighting factors that Supplier reasonably believes, in its sole opinion, more accurately measures the expected future relationship between the billing determinants and average actual energy demand and energy usage for commercial facilities in downtown Denver, taking into account the applicable changes to Public Service Company of Colorado's Colorado PUC electric tariff. Upon the parties' agreement or a final judicial determination of redetermined weighting factors, such redetermined weighting factors shall replace retroactively any temporary weighting factors previously used to calculate applicable charges hereunder and all such previous charges shall be recalculated based on the redetermined replacement weighting factors and all appropriate billing adjustments made.

C. Replacement of Index/Redetermination of Weighting Factors.

In the event the parties are unable to reach agreement on a suitable replacement index in accordance with subsections A(iv) or B(v)(a) above or redetermined weighting factors in accordance with subsection B(v)(d) above within ninety (90) days after notice is provided that a replacement index or redetermined weighting factors will be required, the Parties may seek a determination in Denver District Court.

SCHEDULE B

Operation and Maintenance Specifications

For

City and County of Denver – Crime Lab ETS

A. GENERAL

1. This specification describes the interconnection between the Crime Lab ETS and the CPS Block Chilled Water Laterals and between the Crime Lab ETS and Customer's Crime Lab Chilled Water Facilities. It includes the (1) design parameters, (2) materials to be used, and (3) work to be performed by Supplier and Customer to complete the interconnection to the CPS Block Chilled Water Laterals.
2. Supplier will provide chilled water service to the Crime Lab Building from Supplier's District Chilled Water System. The chilled water will be distributed to the Crime Lab Building from Supplier's District Chilled Water System through a direct supply and return piping system that includes the CPS Chilled Water Mains and CPS Chilled Water Laterals on the CPS Block. A variable flow pumping system will provide the chilled water flow requirement at the incoming service to the Crime Lab Building.

B. BASIC SYSTEM

1. Mechanical: Supplier's incoming service will interconnect with the Customer's Crime Lab Building through the Crime Lab ETS installed in a suitable space provided by the Customer and agreed to by Supplier.
2. Electrical: Electrical service to the interconnection control panel will be provided by the Customer.
3. System Design Temperatures

<u>Description</u>	<u>Temperature</u>
District Cooling Supply	40°F
District Cooling Return	54°F
Building Supply	42°F
Building Return	56°F

C. SUPPLIER'S RESPONSIBILITIES

1. **Metering Information:** Supplier will provide the following metering information through isolation devices for use by the Customer in their Building Automation System: Building Supply Temperature (degree F), and Building Return Temperature (degree F). Unless otherwise requested by Customer, the signals will be a 0 – 10 volt DC signal.
2. **Operational, Metering and Control Circuits:** Supplier will terminate all interconnections from the operating, metering, and control wiring inside its control panel.
3. **Commissioning:** In cooperation with the City, Supplier will commission the control equipment.
4. **Make-up Water:** Supplier will provide the make-up water for the primary/district side of the system. Any required water treatment will be accomplished on Supplier's District Chilled Water System.
5. **Primary/District Side Service:** Once commissioned, the strainer in the primary service line will be operated and maintained by Supplier. Supplier will also maintain the metering equipment.
6. **Water Treatment:** Supplier will test without charge to Customer the water in Customer's Crime Lab Chilled Water Facilities and report the results to Customer. Such tests will be performed periodically in accordance with Supplier's standard maintenance practices.

D. CUSTOMER'S RESPONSIBILITIES

1. **Interconnection:** As described in Schedule C of this Agreement, Customer will furnish, install, and commission all interconnections, including pipe, heat exchanger, operating, control, and auxiliary devices and material between the CPS Block Chilled Water Laterals and the Crime Lab ETS located immediately adjacent to the first level of the parking garage on the CPS Block as defined in the Agreement.
2. **Equipment:** Customer will also provide the controls and temperature sensor equipment for the control of the secondary loop of the Customer's Crime Lab Chilled Water Facilities.
3. **Space: Base System Operation Requirements:** Customer shall provide, at no cost to Supplier, suitable space for the Crime Lab ETS and other required equipment to complete the interconnection with the the CPS Block Chilled Water Laterals. This will include space for the (1) supply and return primary lines, (2) heat exchangers, (3) supply and return connections to Customer's Crime Lab Chilled Water Facilities, and (4) all required auxiliary equipment. Supplier and Customer shall agree on the routing of the pipes on the CPS Block and the location of the heat exchangers to determine the most effective solution from a cost and performance standpoint.

4. Electric: Customer will be responsible for providing two dedicated, locked 120 volt AC, 20 amp circuits from Customer's emergency power bus with breaker for Supplier's control equipment.
5. Operational, Metering and Control Circuits: Customer will provide all necessary wiring and conduit to Supplier's control panel to receive and transmit all operating, metering and control signals between the devices included in Schedule C and Suppliers control system as shown on drawings E1.3 and E2.1.
6. Commissioning: During commissioning, Customer shall be responsible for Customer's Crime Lab Chilled Water Facilities.
7. Changes to the System: Any changes to Customer's Crime Lab Chilled Water Facilities that will impact the Supplier's District Chilled Water System, including but not limited to the Crime Lab ETS, shall be reported to Supplier. When applicable, these changes shall not be made unless approved by Supplier.
8. Make-up Water: Customer's Crime Lab Chilled Water Facilities will be drained and filled as required by the work. The filling and draining of the Customer's Crime Lab Customer's Crime Lab Chilled Water Facilities will be the responsibility of Customer.
9. Water Treatment: Customer will maintain the water in the Customer's Crime Lab Chilled Water Facilities. The pH level will be maintained between 9.0 and 10.0 and the total bacteria count will be maintained at less than 100 cfu/ml. Makeup water chloride level shall not exceed 300 ppm at 60°F. Maximum particle size shall be 0.10 inches. Maximum concentration of solids shall be 10%.
10. Connection Equipment: Customer will maintain Customer's Crime Lab Chilled Water Facilities .

E. CODES AND STANDARDS

1. Denver Building Code / Uniform Building Code.
2. Latest issue of American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE) Handbooks on "Fundamentals" and "Systems".
3. ASHRAE Energy Standard 90-80.
4. National Fire Protection Association (NFPA).
5. Underwriters' Laboratories (UL).
6. Air Conditioning and Refrigeration Institute (ARI).
7. American National Standards Institute (ANSI).
8. American Society of Mechanical Engineers (ASME).

9. American Society of Testing and Materials (ASTM).
10. National Electrical Manufacturer's Association (NEMA).
11. ANSI-MSS SP-58-1983, Pipe Hangers and Supports - Materials, Design and Manufacturer.
12. Standards of Tubular Heat Exchanger Manufacturers Association (TEMA).

F. CONTROL System Configuration/Overview

The heat transfer from primary to secondary will be made utilizing a plate and frame heat exchanger to maintain separation between the two closed loop systems. In general, Customer will control and operate Customer's Crime Lab Chilled Water Facilities, with the ability to regulate cooling set points across the heat exchanger when permitted by Supplier.

A control valve shall modulate based on load demand and signal from the local controller. The control valve will be sized to optimize load control. The flow meter generally runs one size below line size. The valve will normally be controlled from the local controller via the primary/district side outlet temperature (District Return Temperature). When control is transferred to Customer (upon request), the valve position will be controlled via the secondary side outlet temperature (Building Supply Temperature).

The control algorithm will transfer the controlling set-point and process variable to Customer's Crime Lab Chilled Water Facilities. The control loop shall then operate from the Customer's internal set-point and temperatures. The control shall remain transferred until the Customer's required secondary chilled water supply temperature returns to within its set point parameters, at which time the control will revert back to the primary side control variables. Should the primary side chilled water return temperature at any time fall below 54°F, and control resides with the Customer variables, the control shall automatically transfer back to the primary side control in order to maintain the return water temperature at a minimum of 54°F. Should the minimum 54°F return water temperature be met, the system will again allow the transfer option for the Customer's internal set-point.

The controller shall be used to calculate the Customer consumption utilizing primary side differential temperature and flow. Capacity shall be calculated in tons with 15-minute block averages on the hour and calculations at each minute. Each 15 minute integrated demand value will be time stamped and stored. Sufficient data storage at a minimum to hold 15 minute integrated demand values for one month is required.

The position of the control valve must be indicated on the controller display and capable of reading and control from the central plant. This, along with the primary side differential pressure, will allow the plant to reset distribution pumps differential pressure set-points depending on the valve position.

The controller must be capable of automatic local control as well as remote control via communication with the central plant. This communication link may be accomplished utilizing twisted pair wire.

Multiple buildings are cooled using Supplier's chilled water system in the morning at approximately the same time. As a result, the controller will be required to ramp the valve position from closed to full open over a minimum of a 10-minute time frame.

A differential pressure (DP) transmitter is installed to provide continuous measurement across the Distributed Cooling Supply (DCS) and Distributed Cooling Return (DCR) lines for each customer. This DP reading is critical to control Supplier's plant distribution pump speed. As the pressure drops below set points, pump speed will be increased to meet system demands. This is especially important for locations farthest from Supplier's main plant.

A demand limiter shall be configured (as a part of the control software) to prevent overshooting of the Contract Capacity (as defined in the Agreement). The controller must limit flow as determined from system inputs and internal calculations. This set point must be compatible of remote and override changes from the central plant located at 15th and Tremont.

To prevent water from freezing in low flow winter conditions and to allow for some flow during low flow month to insure proper chemicals are maintained, a manual bypass valve will be opened. A small percentage of water will bypass from the DCS to DCR piping as long as the control valve is open. This will be monitored based on the primary supply and return temperatures.

SCHEDULE C

Interconnection Specification

For

City and County of Denver – Crime Lab ETS

A. General

1. Customer will provide engineering, design, detailed fabrication drawings, purchase equipment, and material, specifications, construction documents and implement construction of the interconnection between the CPS Block Chilled Water Laterals and the Crime Lab ETS located immediate adjacent to the first level of the parking garage on the CPS Block. All activities will be coordinated with the Supplier.
2. Sections B, C, D, and E of this Schedule detail the design parameters, piping, heat exchanger, operating, metering, control and auxiliary devices, materials to be used to complete the interconnection between Supplier's District Chilled Water System and Customer's Crime Lab Chilled Water Facilities.
3. All construction activities impacting Supplier's District Chilled Water System shall be scheduled in conjunction with Supplier's plant maintenance activities, and other work being performed on Supplier's District Chilled Water System.

B. Crime Lab Energy Transfer Station

1. Install heat exchanger for the Crime Lab ETS.
2. Installation of 8" and 6" district supply and return service lines as part of the CPS Block Chilled Water Laterals from the entry point of the structure in which the PAB and PADF ETS and Crime Lab ETS will be housed and maintained to the new Crime Lab ETS.
3. Install all necessary valves, vents and drains, meters, sensors required in order to maintain the Crime Lab ETS.
4. Install all necessary pipe supports

C. Fiber / Conduit Installation

1. Install complete automation as defined in Division 17, Section 17010 Basic Automation Requirements, and Division 17500 Automation Control Devices, Wiring and Piping.
-

D. Reference Drawings

The following drawings are being attached as a part of the Crime Lab ETS installation.

1. 52-11.075 Sheet 1 – Plan View
2. 52-545.09 Sheet 1 – Piping Schematic
3. 52-545.09 Sheet 5 – Piping Details
4. 52-545.09 Sheet 6 – Piping Schematic Crime Lab
5. 52-645.09 Sheet 1 – Standards & References
6. 52-645.09 Sheet 3 – Control Diagram
7. 52-645.09 Sheet 4 – Control Device Details

E. Specifications

The following attached Specifications are part of the Crime Lab ETS installation.

1. Section - 09900 Painting
2. Section – 15050 Basic Material and Methods
3. Section – 15190 Mechanical Identification
4. Section – 15250 Insulation
5. Section - 15600 Heat Generation, Refrigeration, and Liquid Heat Transfer
6. Section – 16100 Basic Material and Methods
7. Section – 17010 Basic Automation Requirements

8. Section - 17500 Automation Control Devices, Wiring, and Piping
 9. Section – 17700 Data Cabling System
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Schedule D

Project Management Plan

For

City and County of Denver – Crime Lab Building

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1.0 PURPOSE OF PROJECT

1.1.Description

- a. This project provides for the construction and interconnection of the Crime Lab ETS.

2.0 PROJECT DOCUMENTS

2.1.Fabrication Documents

- a. The City shall prepare and furnish necessary fabrication and erection drawings to properly execute the scope of Work, which shall include but not be limited to:
 - 1. All structural design, detail, shop, fabrication, and erection drawings.
 - 2. All structural design calculations.
 - 3. All piping and construction drawings.
 - 4. All instrument and controls Drawings
 - 5. All manufacture detailed drawings, and cut sheets.
 - 6. All concrete vault design and construction drawings.
 - 7. All City equipment submittals.
- b. Drawings shall be detailed dimensioned fabrication drawings depicting in plan and elevation of the mains and interconnections, piping, equipment, structural & architectural and all the accessories which are to be installed
- c. As-builts drawings shall be submitted to PSCo electronically and compatible with AutoDesk's AutoCAD, one of the following versions: 2007or 2010.

2.2.Project Review

- a. All piping and accessory installation shall undergo fabrication drawing review by PSCo.
- b. Each review shall ensure that the component fabrication continues to match the project design and objective. If it is deemed that the design and objective is not being meet then corrective actions shall be implemented.
- c. All drawings shall be submitted to PSCo in electronic PDF format.
- d. PSCo shall have minimum of five working days to review the fabrication documents and shall submit comments in writing to the City.
- e. Drawings will be issued to the various PSCo team members by PSCo's point of contact and examined promptly for general arrangement and conformance to design requirements.

- f. Comments will be returned to the City in written format with the redlined drawings in electronic PDF format.

2.3. Material and Equipment Orders

- a. For record, the City shall submit to PSCo a copy of all material product / equipment prior to the time of order.

2.4. Project Changes

- a. Any project change requests shall be submitted to PSCo in writing for review and approval to ensure the change does not alter the system design.
- b. The project change requests must be approved by PSCo prior to implementation of the work.

2.5. Field Changes or Corrections To Drawings

- a. The City shall maintain in its possession an up-to-date set of drawings clearly and legibly marked to show all field changes and corrections and elevations of main installed. Copies of these drawings shall be delivered to PSCo at the completion of the work to provide "as built" information and record.
- b. All drawings which are changed in the field shall be submitted to PSCo for a design review and approval.

3.0 INSTALLATION INSPECTIONS

3.1. Piping

- a. All welds shall be inspected by a certified weld inspector as defining in section 6.0 quality assurance and Quality Control

4.0 PROCEDURES

4.1. Clearance Procedure –Lock Out Tag Out (LOTO)

- a. All work shall be performed under PSCo's Lockout Tagout Procedure, PSCo will take the leadership role in this requirement.

4.2. Pipe Testing

- a. Test piping systems prior to concealment.
- b. Ensure that the test pressure which might damage fixtures, existing piping or equipment does not reach such units by valving them off or otherwise isolating them during the test.

- c. Keep written field records of all tests. Each record shall contain, as a minimum, the date of the test, system or subsystem tested, test medium and pressure, duration of test, test results, name and signature of individual performing test, and the name and signature of witness to the test who is not an employee of the firm performing the test. Submit copies of all tests to the PSCo.
- d. All tests must be done to the satisfaction of PSCo and local authorities having jurisdiction, before covering.
- e. Furnish all instruments required for testing.
- f. All hydrostatic tests shall be a pressure test of 150 psi to be held for a minimum of six (6) hours without loss of pressure. Any visible leakage or appreciable pressure drop during the test will be cause for rejecting the test. Additional tests will be required after corrective measures have been taken until satisfactory results are obtained.
- g. There shall be a gauge and valve on the system to be tested and the test pump shall be completely disconnected from the system for the duration of the test. After acceptance by PSCo, all water shall be removed from the piping.
- h. City shall be responsible for furnishing all plugs, piping, valves, hoses and pumps necessary for the required tests and for proper disposal of the water upon completion of the tests.

4.3. Pipe Cleaning

- a. During installation, the City shall keep covered open ends of pipe and protect interior from rust and scale.
- b. Before placing large section of piping into service pre-treatment and flushing of the lines shall take place. PSCo shall review flushing and pre-treatment procedures with the City at least 48 hours prior to the City carrying out any flushing.
- c. The City shall allow for any necessary phasing or staging of the construction process. Circulation of the system, cleaning access and testing shall be considered and allowed for in the City's schedule.

4.4. Pipe Flushing

- a. Primary piping shall be flushed with potable water to remove all foreign material from the inside of all piping to PSCo's approval.
- b. Flushing velocity shall be a minimum of 5 ft/s.
- c. On turnover, the City shall ensure that the system is drained down and clear of all water used in pre-commissioning operations.

- d. The City shall obtain permission from the local authority to discharge water used in the pre-commissioning processes.
- e. As each major section of piping is installed, the ends shall be blanked off after the isolation valve and the system will be filled with treated water, using the nearest vent valve to eliminate air from the system.
- f. A temporary by-pass from supply to return line may be installed. The piping installation will then continue on with the next major section.
- g. Prior to initial full circulation and used of the system, the pipe must again be vented at all locations to eliminate air from the system.
- h. All new piping shall have a temporary "jumper" installed for the purpose of flushing and passivating. Jumper shall be 2" or larger. Upon completion of flushing and passivation, jumper pipe and valves shall be removed and thread-lets are to be plugged with 300 psi rated plug.

4.5.Pipe Passivation

- a. Before final connections are made in the piping systems, all piping shall be blown out with air and then completely washed out with cleaning compounds compatible with final fluid to avoid contamination.
- b. The systems shall then be flushed for the complete removal of all foreign materials. Furnish all temporary connections, valves, etc., required for this purpose.
- c. A 2% Feriquest (FQ 7103) solution shall then be added to the system and circulated for a period of not less than 24 hours with a pump provided by the City.
- d. Upon completion of the 24 hour circulation period, the system shall be flushed again and then finally filled.
- e. While the Cleaning and Passivating chemical are circulating PSCo shall check for pH and conductivity.
- f. 24 hours after discharge PSCo shall again check for pH and conductivity.
- g. The final fill of the district side shall be coordinated closely with the operation of the chilled water plant.
- h. Chemicals and supervision of fill-flush-passivate-flush-fill procedure shall be provided by the City.
- i. City shall purchase all chemicals from Betz-Dearborn.

- j. City shall be given a copy of the waste water permit, procured by PSCo for disposal of all cleaning and passivation compounds.

4.6.Start-Up Responsibilities and Procedures

- a. All Work Shall be performed under the PSCo's Lockout Tagout Clearance Procedure, Start-Up Responsibilities and Procedures
- b. The start-up, initial operation and adjustments of the Project equipment will involve personnel of PSCo, and the City. The general policy and procedure governing the activities of all equipment start-up personnel and the duties and responsibilities of the participating parties shall be as follows:
 - 1. PSCo
The entire responsibility for placing any and all equipment or apparatus in service rests with the Company. PSCo shall be the head of all start-up operations.
 - 2. City
City shall have an appropriate personal present at the initial start-up of each unit of equipment, shall have craftsman and any necessary tools immediately available to correct any difficulties and shall furnish all labor required in placing equipment in correct and proper operation. This start-up supervision and craft labor may be required on a 24 hour a day basis during the initial operation of the equipment.
- c. City shall provide full and continuous supervision during the Start-Up process.
- d. Operation of all distribution valves shall be by PSCo. City shall not open any valve that is connected to the distribution system.

4.7.Commissioning

- a. City shall support PSCo in all startup and commissioning activity as requested by PSCo.
- b. PSCo shall stipulate that, upon completion of the Start-Up process, the City conducts full-scale tests on all systems at maximum design flow rates, operating temperatures and pressures for continuous consecutive period of 48 hours to demonstrate full compliance with design requirements.

4.8.Operation and Maintenance Manuals

- a. Upon completion of the project O & M manuals shall be submitted to PSCo.
- b. Electronic format of the manuals is preferred. If electronic format is not available then 3 sets is required.

- c. Manuals shall include data concerning all material and equipment installed including but not limited to all mechanical equipment, piping accessories, control and instrumentation equipment.

5.0 QUALITY ASSURANCE AND QUALITY CONTROL

5.1. Constructor's Responsibility

- a. City shall be responsible for the design, purchase, fabricate, assemble, install, and test equipment so that when operated in accordance with the manufacturer's recommended procedures it will conform to the applicable provisions of the American Standard of Mechanical Engineers (ASME): Boiler and Pressure Vessel Code, Sec. 1.
 - 1. American National Standards Institute (ANSI)
 - 2. B31.1 - Code for Pressure Piping.
 - 3. B16.25 - Buttweld Ends
 - 4. B16.9 - Buttweld Fittings
- b. All welders shall qualify per Section IX of the ASME Code.
- c. City shall be responsible for the construction of the project as per applicable codes and standards:
 - 1. Denver Building Code / Uniform Building Code
 - 2. Latest issue of American Society of Heating, Refrigeration and air Conditioning Engineers (ASHRAE) Handbooks on "Fundamentals" and "Systems".
 - 3. ASHRAE Energy Standard 90-80.
 - 4. National Fire Protection Association (NFPA)
 - 5. Underwriters' Laboratories (UL)
 - 6. Air Conditioning and Refrigeration Institute (ARI)
 - 7. American National Standards Institute (ANSI)
 - 8. American Society of Mechanical Engineers (ASME)
 - 9. American Society of Testing and Materials (ASTM)
 - 10. National Electrical Manufacturer's Association (NEMA)
 - 11. ANSI-MSS SP-58-1983, Pipe Hangers and Supports – Materials, Design and Manufacturer
 - 12. Standards of Tubular Heat Exchanger Manufacturers Association (TEMA)
 - 13. OSHA 1910 Occupational Safety & Health Standards

14. OSHA 1926 Safety & Health Regulations for Construction

5.2. Quality Assurance Requirements

- a. As a means of assuring that performance of the work fulfills the requirements of the documents, the City shall establish and implement a program for Quality Assurance and Quality Control. City shall :
 1. Allow unrestricted access for PSCo inspectors within the City's or subcontractor's - facilities. PSCo's inspectors shall be allowed to conduct audits which may include, but not be limited to, material inspections, fabrication drawings, purchase orders, specifications, NDE, and other data as deemed necessary by PSCo.
 2. Agree that the PSCo has final authority to reject materials and workmanship which are defective or not in accordance with this specification or codes and standards which have jurisdictional authority. Any material/workmanship found unacceptable which undergoes subsequent repairs shall not be shipped or placed into service until written approval is obtained from PSCo.
 3. Agree that PSCo review of the fabrication drawings shall not relieve the City from providing work that is in accordance with applicable codes and this specification.
 4. Submit all documentation as required by ASME Codes and the Authorized Inspection Agency.
 5. Submit a non-controlled copy of City's Quality Control Manual
 6. Copy of current ASME Code Stamp certification, as applicable.
 7. A non-controlled copy of City's QA Manual.
- b. City shall submit Certified Material Test Reports for all pipe and tube used for pressure parts prior to the start of fabrication.
- c. City shall submit all documentation as required by the applicable Codes, Authorized Inspection Agency, or this specification.

5.3. Applicable Codes and Standards

- a. The components shall be installed, tested and stamped, as appropriate, in accordance with the latest edition and applicable addenda of the ASME Boiler and Pressure Vessel Code, AWS Structural Welding Code, applicable standards, the requirements of this specification, and with the applicable laws, ordinances and regulations of the state and city in which the equipment is installed. If there is a

conflict between this specification and a referenced document, the matter shall be immediately referred to PSCo for resolution. A manufacturer's data report certified by the Authorized Inspector shall be required, as appropriate.

- b. Welders and weld procedures shall be qualified and certified in accordance with ASME Section IX.

5.4. Materials

- a. The City shall obtain Certified Mill Test Reports (CMTR's) for all pipe and tube to be used in installation. These shall be made available for review prior to the start of fabrication and shall be submitted as supporting documentation in the final package. CMTR's shall contain satisfactory evidence of completion of all tests, including supplementary requirements. All fittings shall be marked with the material and part identification and the name or trademark of the parts manufacturer. Only materials approved by the applicable code of construction shall be used.

- b. Weld materials shall be certified to be in accordance with ASME Section II, Part C requirements.

- c. All pipe and tube materials supplied by the City shall be seamless unless previously approved in writing by the Company.

- d. All pipe and tube materials supplied by the City shall be seamless unless previously approved in writing by PSCo.

5.5. Welding, Installation and Inspection Requirements

- a. City shall provide a Quality Control Inspector, certified for visual weld inspection of all welds under ASME B31.1, ASME Section I, and/or AWS D1.1, as applicable. All welds shall be inspected prior to insulation be installed. It is the Inspector's responsibility to assure that required inspections have been performed, that only qualified welders have been assigned and are performing the work, that welders are adhering to weld procedure specification requirements and that weld rod is being stored and controlled in accordance with the requirements of this specification. Visual inspection of all welds in accordance with the requirements of the appropriate Code is the responsibility of the City. All inspection reports shall be submitted to PSCo for final approval.

- b. All welding, welding procedure qualifications, and welder performance qualifications shall be in accordance with the requirements of the ASME BPVC and the additional requirements of this specification. All welders shall be fully qualified in accordance with ASME Section IX prior to performing any welding on this project. Certification for each welder shall be on file at the job site and shall be submitted to PSCo for review.

- c. All materials to be welded shall first be positively identified and a weld procedure shall be chosen by the Quality Control Inspector based on those materials. A listing of joint number, material, and WPS number shall be maintained. Carbon or alloy steel having a carbon content of more than 0.35% shall not be welded. Only materials approved by the applicable code of construction shall be used.
- d. Surfaces to be welded shall be free of moisture and contamination prior to welding. Preheat and interpass temperatures shall be verified and maintained for each weld. Welding through paint shall not be permitted other than through weldable prime coatings. Manufacturer's certification of weldability shall be provided for each prime coating that is to remain during installation.
- e. Circumferential welding or heating of tubes or pipes for the purpose of extending their lengths is not permitted.
- f. The use of backing rings in water circuits is prohibited.
- g. All welds shall receive a visual inspection by the Quality Control Inspector and shall meet the applicable inspection requirements of the BPVC. In addition, all arc strikes and spatter shall be completely removed. Areas of removal shall be visually inspected to verify complete removal, the absence of cracking, and that the remaining wall thickness is greater than or equal to the specified minimum. As applicable, fillet welds shall receive a dimensional inspection to assure that throat and length dimensions, and location, are in accordance with the design drawings.
- h. At the discretion of PSCo, all welds are subject to radiographic examination. PSCo shall have final authority for acceptance of technique, interpretation, and archive quality of all inspections and tests, including radiographs. City is responsible for repairing all welds that do not meet the radiographic acceptance criteria of the applicable Code at no additional cost to PSCo.
- i. City shall perform, as applicable, a pressure test in accordance with the applicable Code section or this specification. As applicable, the temperature of the component shall be measured and recorded immediately prior to the visual inspection portion of the test and shall meet the applicable requirements of the BPVC.
- j. Stress relieving, when required, shall be performed in accordance with the applicable code and approved weld procedure specification. Documentation in the form of strip charts shall be submitted with the documentation package. These records will contain identifying joint numbers, stress relieve temperature, and soak time. As a minimum, one thermocouple shall be attached to each weld during stress relieve. After removal of the thermocouple, the area shall be ground smooth and shall be visually inspected to verify complete removal, the absence of cracking, and that the remaining wall thickness is greater than or equal to the specified minimum.

- k. Only low-hydrogen type electrodes shall be used when the shielded metal arc welding (SMAW) process is selected for production of those items which employ carbon and low alloy steels. Low hydrogen electrodes shall be supplied in hermetically sealed containers and shall be stored and controlled in accordance with the requirements of AWS A5.1 or A5.5, as applicable.
- l. All installations shall be in accordance with an approved design drawing or instruction. If an item is identified as improper for installation, a revised drawing or instruction approved by the appropriate Engineering Department shall be obtained prior to installation. These changes do not require an immediate drawing reissue and can be accomplished on a one page sketch showing the new design with an approval signature. A record of such changes shall be maintained to be incorporated in the "As-Built" drawings. These records are subject to periodic audit by PSCo.

6.0 MAIN OUTAGES

- a. The construction shall be performed in a manner that minimizes inconvenience to the customers. This will require customer outage work to be completed in an 8 hour shift, and/or night work, or weekend work.
- b. Prior to construction, preliminary outage schedules will be planned between the City and PSCo.

7.0 FINAL OBSERVATION

- a. Prior to notifying PSCo that the project is ready for the final observation, the City must submit the O & M manuals 15 days prior.
- b. When the City notifies PSCo that the project is ready for a final observation, PSCo will visit the job site and will prepare a final punch list of all the items on the project that shall be finished or corrected before the project can be accepted.
- c. When the City notifies PSCo that all items on the above punch list have been completed and corrected, the Engineer will visit the project to ascertain that all the items on the punch list have been corrected and can be accepted.

8.0 ADDITIONAL PROJECT INFORMATION AND REQUIREMENTS

8.1. Reference Documents

- a. ANSI/IIAR2-1992 Equipment, Design and Installation of Ammonia Mechanical Refrigeration Systems
- b. ISO 5149-1993 Refrigeration Safety
- c. ISO 1662-1971 Refrigeration Plants
- d. CEN EN 378 Refrigeration Systems Safety and Environments Requirements.