

**LEASE BUYOUT AGREEMENT
(Crime Lab/City Chiller Plant)**

THIS LEASE BUYOUT AGREEMENT ("**Agreement**") is made this ____ day of _____, 2011 (the "**Effective Date**"), by and between PUBLIC SERVICE COMPANY OF COLORADO, a corporation duly organized and existing under the laws of the State of Colorado ("**Company**"), whose address is 1800 Larimer Street, Suite 1100, Denver, Colorado, 80202, and the CITY AND COUNTY OF DENVER, a home rule city and municipal corporation existing under Article XX of the Constitution of the State of Colorado and the Home Rule Charter of the City and County of Denver ("**City**"), whose address is 1437 Bannock Street, Denver, Colorado, 80202. As used herein, the term "**Parties**" shall mean the Company and City.

11-109

RECITALS

WHEREAS, the Company owns and operates a central chiller plant and chilled water circulation system in downtown Denver, Colorado, ("**District Chilled Water System**") and, through its operation of these facilities and facilities leased by Company from others including the City, Company provides chilled water service for space cooling and other needs to building owners and operators and other customers located in the downtown Denver area under long-term contracts;

WHEREAS, the City owns, operates and otherwise controls multiple buildings in downtown Denver and, as to certain of such buildings, has entered into long-term chilled water service agreements with Company in which Company has agreed to supply and the City has agreed to purchase chilled water services;

WHEREAS, the Company and the City are parties to a Lease of Facilities dated June 13, 2000 (City Contract Control No. RC0Y002 and Clerk File No. 00-414), as amended by that Amendment to Lease of Facilities dated December 12, 2001 (City Contract Control No. RC0Y002(1) and City Clerk File No. 00-414-A) (as amended, the "**Facilities Lease**"), which provides for Company, as "Lessee," to lease from the City, as "Lessor," certain of the City's chilled water generation and circulation facilities used to cool space within the City's buildings located in Denver, Colorado, all as more particularly described in the Facilities Lease (collectively, the "**Leased Facilities**"), including, without limitation, the City Chiller Plant located at 1331 Cherokee Street ("**City Chiller Plant**");

WHEREAS, Company and City are parties to a Chilled Water Service Agreement dated December 12, 2001 (City Contract Control No. CE2Y000 and City Clerk File No. 01-1213) as amended by that First Amendatory Agreement dated January 15, 2004 (City Contract Control No. CE2Y000(1) and City Clerk File No. 01-1213-A) (as amended, the "**South of Colfax CWSA**") under which Company, as "Supplier," agreed to provide chilled water services from the District Chilled Water System, including the Leased Facilities, and the City, as "Customer," agreed to purchase such chilled water services for use by the City at multiple facilities of the City, including the Denver Police Administration Building ("**PAB**") and the Denver Pre-Arrestment Detention Facility ("**PADF**"), also referred to in certain other agreements between the Parties as the Police Arrestment Detention Facility;

WHEREAS, City plans to construct within the next two years a new Police Crime Laboratory Building (“**Crime Lab Building**”) on the same city block in downtown Denver where the PAB and PADF are located, which is bounded by Cherokee and Delaware Streets on the east and west, respectively, and 14th and 13th Avenues on the north and south, respectively (“**City Police Services Block**” or “**CPS Block**”), as generally shown on **Exhibit A** attached hereto and incorporated herein;

WHEREAS, in order to make way for the planned construction of the Crime Lab Building, the City Chiller Plant, which is currently located on the site of the proposed Crime Lab Building on the CPS Block, will need to be retired, dismantled and removed;

WHEREAS, the construction of the Crime Lab Building will also require the installation of new chilled water mains and relocation of certain chilled water facilities of both the Company and the City within the CPS Block;

WHEREAS, the Company is willing to terminate its leasehold rights under the Facilities Lease only as it relates to the City Chiller Plant if the City satisfies certain conditions and otherwise complies with the terms and conditions of this Agreement, including, without limitation, paying the Company Eight Hundred Eighty Five Thousand Dollars (\$885,000) and the City’s installation of certain new facilities for the Company and relocation of certain existing chilled water facilities within the CPS Block, as set forth in this Agreement; and

WHEREAS, pursuant to the terms and conditions set forth in this Agreement, the Parties mutually desire, among other things, to provide for (1) the removal of the City Chiller Plant from the South of Colfax CWSA and from the Facilities Lease; (2) the relocation, construction and conveyance by the City of certain chilled water facilities on the CPS Block; (3) cash compensation to be paid by the City to Company in accordance with this Agreement, and (4) if the Company elects to have 16-inch chilled water mains installed, the City granting the Company a Permanent Easement to use City-owned land on the east side of the CPS Block.

NOW, THEREFORE, in consideration of the premises and of the mutual agreements set forth herein, the benefits of which will inure to each party and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1
TERMINATION OF LEASEHOLD INTEREST IN CITY CHILLER PLANT AND
PERMANENT REMOVAL FROM SERVICE

1.1 Termination of Company’s Leasehold Interest. The Parties agree that, subject to the terms and conditions of this Agreement, including the payment of Eight Hundred Eighty Five Thousand Dollars (\$885,000) to the Company as described in Section 1.3 herein and other consideration described herein, upon Closing (as defined in Section 4.1, below), the Company’s leasehold interest in the City Chiller Plant under the Facilities Lease shall be terminated and the Company shall relinquish to the City all rights of custody, possession and control of the City

Chiller Plant previously granted Company under the Facilities Lease and the City shall relinquish any rights and benefits under the Facilities Lease related to the City Chiller Plant. The termination of Company's leasehold interest shall be effected through the Parties' execution of a Second Amendment to the Facilities Lease in substantially the same form as **Exhibit C** attached hereto and incorporated herein.

1.2 Removal of City Chiller Plant from Service. The Parties agree that, subject to the terms and conditions of this Agreement, upon Closing, all of their respective rights and obligations with respect to chilled water service to be provided by the Company under the South of Colfax CWSA, either to the City Chiller Plant or from the City Chiller Plant to any building under the South of Colfax CWSA, shall terminate. The termination of the Parties' rights and obligations under the South of Colfax CWSA with regard to the City Chiller Plant shall be effected through the Parties' execution of a Second Amendment to Chilled Water Service Agreement in substantially the same form as **Exhibit D** attached hereto and incorporated herein.

1.3 Payment for Termination of Leasehold Interest. As partial consideration for the termination of the Company's leasehold interest described in Section 1.1 herein, the City shall pay the Company Eight Hundred Eighty Five Thousand Dollars (\$885,000) at Closing.

ARTICLE 2

INSTALLATION AND RELOCATION OF CPS BLOCK FACILITIES

2.1 Installation and Relocation of CPS Block Facilities on the CPS Block. The City will install, at the City's sole expense, the work on the CPS Block identified in Sections 2.1(a) through 2.1(d) (collectively, the "**CPS Block Facilities**"). The Parties agree that, except as otherwise expressly provided for herein, 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 2 shall be as set forth in the Project Management Plan, attached as **Exhibit E** hereto and incorporated herein, which Project Management Plan may be modified and finally set forth in the Final CPS Block Facilities Construction Documents (defined below).

(a) The CPS Block Chilled Water Mains.

(i) Except as provided for in Section 2.1(a)(ii) below, this project shall consist of the installation of 8-inch chilled water supply and return pipelines, control fiber cable and conduits, and appurtenances necessary to complete the work described in **Exhibit F-2** herein, 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**"). These interconnection facilities shall include the 8-inch control valves connected to the new CPS Block Chilled Water Laterals, as described in Section 2.1(b), and all pipes and related facilities between these two sets of control valves. Such work is described in the design specifications and work scope set forth in Exhibit F-2, attached hereto and incorporated herein, which Exhibit F-2 may be modified and finally set forth in the Final CPS Block Facilities Construction Documents.

The City shall complete the CPS Block Chilled Water Mains work in accordance with the Final CPS Block Facilities Construction Documents.

(ii) The City agrees to bid the CPS Block Chilled Water Mains as an 8-inch pipe as set forth in Exhibit F-2 (“F-2 Scope”) and in the alternative as an 16-inch pipe as set forth in Exhibit F-1, attached hereto and incorporated herein (“F-1 Scope”). Upon receipt of the bids, the City shall share the results with the Company as to the incremental cost difference between the F-2 Scope and the F-1 Scope reflected in such bids. The City shall provide the Company a reasonable opportunity, if the incremental cost difference between the F-2 Scope and the F-1 Scope reflected in the bids appear excessive to the Company, to assist the City in submitting questions and suggestions to the bidders to clarify or resubmit their bids as to such costs. When the City determines it has sufficient information to determine costs, the City shall notify the Company of the incremental cost difference between the F-2 Scope and the F-1 Scope, as reflected in the final evaluated bids without any markup or overheads added by the City (“**Incremental Cost**”). Upon receipt of the Incremental Cost from the City, the Company shall have seven (7) calendar days (“**Scope Election Period**”) to elect, in the Company’s sole discretion, either (A) to have the City construct the F-1 Scope in lieu of the F-2 Scope or (B) to have the City construct the F-2 Scope at the City’s sole cost; such election shall be in the form of a written notice (“**Pipeline Scope Election Notice**”). If the Company fails to deliver a Pipeline Scope Election Notice prior to the expiration of the Scope Election Period, the Company shall be deemed to have elected to have the City construct the F-2 Scope at no additional charge to the Company and the City shall construct the same pursuant to this Agreement. If the Company elects to have the F-1 Scope constructed, it shall pay the City the Incremental Cost within thirty (30) days of the Company’s receipt of an invoice from the City for such Incremental Cost. If the Company elects to have the F-1 Scope constructed, the City shall execute the permanent easement as provided in Section 2.10 below. If the Company elects to have the F-1 Scope constructed, the term “CPS Block Chilled Water Mains,” as used in this Agreement, shall be deemed to include the 16-inch pipe as set forth in the F-1 Scope and the Final CPS Block Facilities Construction Documents shall reflect such election. The City shall not be obligated to proceed with any work related to the F-1 Scope unless the Company makes the election within the Scope Election Period. The City shall not be obligated to sign the permanent easement until it receives payment of the Incremental Cost from the Company.

(b) CPS Block Chilled Water Laterals. This project shall consist of the installation of 8-inch chilled water supply and return service laterals, control fiber cable and conduit, and associated equipment and facilities necessary to complete the work described in Exhibit F-3 herein, 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 PAB and PADF Energy Transfer Station, as described in Section 2.1(c), and may incorporate the City’s existing chilled water supply and return lines, where appropriate (“**CPS Block Chilled Water Laterals**”). Such work is described in the design specifications and work scope set forth in Exhibit F-3, attached hereto and incorporated herein, which Exhibit F-3 may be modified and finally set forth in the Final CPS Block Facilities Construction Documents. The City shall complete the CPS Block Chilled Water Laterals work in accordance with the Final CPS Block Facilities Construction Documents.

(c) PAB and PADF Energy Transfer Station. This project shall consist of the installation and interconnection of a new heat exchanger, valves, meters, control equipment, piping and all related appurtenances necessary to complete the work described in Exhibit F-4 herein, to connect such equipment to the CPS Block Chilled Water Laterals and the City'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, as reflected on Exhibit A ("PAB and PADF ETS"). Such work is described in the design specifications and work scope set forth in Exhibit F-4, attached hereto and incorporated herein, which Exhibit F-4 may be modified and finally set forth in the Final CPS Block Facilities Construction Documents. The City shall complete the PAB and PADF Energy Transfer Station work in accordance with the Final CPS Block Facilities Construction Documents.

(d) Spare Energy Transfer Station. This project shall consist of removing the existing heat exchanger, valves, meters, control equipment, piping and all appurtenances necessary to complete the work described in Exhibit F-5 herein, from the existing energy transfer station in the City's Chiller Plant and relocating it to the PAB and PADF ETS room ("Spare ETS"). This Spare ETS shall be interconnected by the City with the PAB and PADF ETS to allow it to function fully as a back-up in place of the PAB and PADF ETS in the event the PAB and PADF ETS is out of service. This Spare ETS will also be installed by the City in such a manner as to allow it to function as a back-up ETS for a future ETS anticipated to be installed in order to serve the Crime Lab Building. Such work is described in the design specifications and work scope set forth in Exhibit F-5, attached hereto and incorporated herein, which Exhibit F-5 may be modified and finally set forth in the Final CPS Block Facilities Construction Documents. The City shall complete the Spare ETS work in accordance with the Final CPS Block Facilities Construction Documents.

2.2 Construction Documents. The City shall work diligently to complete all of the work described in Section 2.1 as shown in the Final CPS Block Facilities Construction Documents (defined below). Within twenty-one (21) days after Closing, the City shall provide the Company a detailed design and construction schedule, including, but not limited to, the dates that the City shall submit for the Company's review, comment and/or approval Interim CPS Block Facilities Construction Documents (as defined below) and 100% CPS Block Facilities Construction Documents (as defined below).

(a) Development of CPS Block Facilities Construction Documents. The City shall develop construction documents that implement and incorporate Exhibits E, F-1 or F-2 as applicable pursuant the Section 2.1(a)(ii) above, F-3, F-4 and F-5 ("Interim CPS Block Facilities Construction Documents"). During such development, the Company shall have the right to review the Interim CPS Block Facilities Construction Documents which may modify the design specifications and work scopes set forth in Exhibits E, F-1 or F-2 as applicable pursuant the Section 2.1(a)(ii) above, F-3, F-4 and F-5. The Company and the City agree to cooperate, including promptly reviewing, providing comments, and revising the Interim CPS Block Facilities Construction Documents. The City shall provide copies of the Interim CPS Block Facilities Construction Documents to: Stephen P. Kutska (Stephen.P.Kutska@xcelenergy.com), and Gary Hubel (Gary.Hubel@xcelenergy.com). The Company shall have ten (10) business days following the date it receives the Interim CPS Block Facilities Construction Documents to provide the City's Project Coordinator (defined herein) with comments and proposed revisions.

(b) Approval of 100% CPS Block Facilities Construction Documents. After the review and revisions to the Interim CPS Block Facilities Construction Documents described in Section 2.2(a), the City shall submit CPS Block Facilities Construction Documents that implement and incorporate the Interim CPS Block Facilities Construction Documents (“**100% CPS Block Facilities Construction Documents**”) to the Company for final review and approval. The Company shall within ten (10) business days following the date it receives 100% CPS Block Facilities Construction Documents either provide the City with its written approval or a list of any inconsistencies with the reviewed Interim CPS Block Facilities Construction Documents. The City and the Company will work together to resolve concerns in a reasonable, timely and cost effective manner that does not negatively impact the construction or operation of either Party’s current and future buildings and facilities. The Company’s approval of the 100% CPS Block Facilities Construction Documents shall not be unreasonably withheld. Upon approval, the 100% CPS Block Facilities Construction Documents shall be deemed the “Final CPS Block Facilities Construction Drawings” and shall supersede Exhibits E, F-1 or F-2 as applicable pursuant the Section 2.1(a)(ii) above, F-3, F-4 and F-5.

(c) Changes to Final CPS Block Facilities Construction Drawings. Changes to the Final CPS Block Facilities Construction Drawings shall be done in accordance with the Project Management Plan as it may be modified by the Final CPS Block Facilities Construction Drawings.

2.3 Coordination and Start-up of Facilities. In addition to the applicable provisions set forth in the Project Management Plan, scheduling of inspections, start-up, testing and commissioning shall be as mutually agreed upon between Company and City once a detailed design and construction schedule has been established. As to any of the projects for which the work described in Sections 2.1 (a) through (d) has been completed, the Company will not place the new chilled water facilities related to each such project into operation until all requirements under the Project Management Plan have been met for such project. With regard to the timing of the Company placing the new chilled water facilities into operation, the Parties acknowledge that (i) the CPS Block Chilled Water Laterals cannot be placed into operation before the CPS Block Chilled Water Mains are placed into operation, and (ii) neither the PAB and PADF ETS nor the Spare ETS can 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 City in writing upon successful completion of all testing and final acceptance of each of the projects individually described in Sections 2.1 (a) through (d).

2.4 Warranty. If, within one (1) year from the date of acceptance of the work under the procedures as set forth in the Project Management Plan, as modified by the Final CPS Block Construction Documents, the Company notifies the City in writing that any portion of the work performed in Section 2.1 is not performing in accordance with the final acceptance test described in the Project Management Plan, the City shall cause any non-compliance to be corrected within thirty (30) days thereafter, unless the non-compliance cannot be completed within thirty (30) days, in which case a reasonable time for such cure will be allowed, provided the City is diligently pursuing such cure to completion and such non-compliance is not unreasonably interfering with the Company’s ability to provide continuous and uninterrupted chilled water service to the PAB or the PADF in accordance with the terms of the South of Colfax CWSA. Thereafter, the City shall provide the Company with a written notice of correction (“**CPS Block**

Facilities Notice of Correction”). Within thirty (30) days after receiving the CPS Block Facilities Notice of Correction, the Company shall make an inspection of the CPS Block Facilities to determine if the non-compliance has been corrected and the Company shall notify the City in writing whether the non-compliance has been corrected. If the non-compliance has not been corrected, the City shall enforce any construction or design warranty and/or rights to correct the non-compliance (collectively, the “**CPS Block Facilities Warranty and Rights**”), or, at the election of the Company, assign the CPS Block Facilities Warranty and Rights to the Company, in which event the Company may enforce the CPS Block Facilities Warranty and Rights. The City agrees to use reasonable efforts to work with its contractors to obtain approval for any such assignment.

2.5 **Ownership of Chilled Water Facilities.** The 12-inch chilled water lines to which the CPS Block Chilled Water Mains, as described in Section 2.1(a) above, will interconnect are currently owned by the City, but used by the Company in conjunction with its provision of chilled water service to the PAB and PADF pursuant to the South of Colfax CWSA. These 12-inch chilled water lines consist of supply and return pipes extending from a point on the CPS Block located at approximately the Southwest corner of the intersection of 14th Avenue and Cherokee Street, through the Northeast corner of that same intersection (“**City’s 12-inch Chilled Water Lines**”). After all of the work described in Section 2.1 is completed, the Parties intend that the Company will own and operate the City’s 12-inch Chilled Water Lines, the CPS Block Chilled Water Mains, the CPS Block Chilled Water Laterals, the PAB and PADF ETS, and the Spare ETS (“**Transferred Facilities**”). The City shall sell and convey all such Transferred Facilities to the Company, as provided in Section 2.6 below. The Parties acknowledge that the Company currently owns and operates certain equipment located within the existing ETS on the CPS Block (“**Company-owned Equipment**”) and agree that, in conjunction with the work to be performed by the City, as described in Sections 2.1(c) and 2.1(d) above, such Company-owned Equipment may either be used and incorporated in such work, held for future use by the City, or discarded or otherwise disposed of by the City; provided, however, that the Company shall have the right of first refusal to retake permanent possession of any Company-owned Equipment, to the extent salvageable (including, but not limited to, any electronic instruments, operational devices, valves or other working equipment), before the City discards or otherwise disposes of such equipment. The City shall provide the Company a reasonable opportunity to reclaim any salvageable Company-owned Equipment before the City discards or otherwise disposes of it. With respect to all Company-owned Equipment, the Company shall relinquish all rights of ownership and quitclaims such equipment to the City effective upon the date such equipment is taken out of operation as part of the work described in Sections 2.1(c) and 2.1(d), subject to the Company’s right of refusal as set forth in this subsection.

2.6 **Assignment and Bill of Sale.** The City shall transfer the Transferred Facilities and related improvements to the Company by Assignment and Bill of Sale, in substantially the same form as **Exhibit G** attached hereto and incorporated herein, within thirty (30) days after the latest of the following: (i) acceptance by the Company of the CPS Block Facilities, as described herein; (ii) the date of any CPS Block Facilities Notice of Correction provided by the City, as described herein, or (iii) the expiration of any of the warranty periods described in Section 2.4. Notwithstanding the foregoing, if any non-compliance, as provided for in Section 2.4, has not been corrected prior to transfer, and the City is enforcing the CPS Block Facilities Warranty and Rights to correct the non-compliance, the Company may, in its sole discretion, elect to accept

transfer of the Transferred Facilities or may elect not to accept transfer of the Transferred Facilities, in which case the City shall continue enforcing the CPS Block Facilities Warranty and Rights in order to correct any non-compliance. If the Company elects to accept transfer of the Transferred Facilities and the City is enforcing the CPS Block Facilities Warranty and Rights to correct any non-compliance, the Company, in its sole discretion, may elect to accept assignment of the CPS Block Facilities Warranty and Rights. If the Company elects to accept assignment of the CPS Block Facilities Warranty and Rights, the City agrees to execute any documentation and take any action necessary to effectuate such assignment of the CPS Block Facilities Warranty and Rights and agrees to use reasonable efforts to have its contractors approve such assignment. If the Company does not elect to accept the City's assignment of the CPS Block Facilities Warranty and Rights, the City shall continue to enforce the CPS Block Facilities Warranty and Rights in order to correct any non-compliance.

2.7 Amendment to the South of Colfax CWSA. The result of the completed work described in Sections 2.1 (c) and 2.1(d) with regard to the PAB and PADF ETS and the Spare ETS shall be reflected in the South of Colfax CWSA through the Parties' execution of a Second Amendment to the South of Colfax CWSA in substantially the same form as Exhibit D attached hereto and incorporated herein.

2.8 Authorized Project Coordinator. The Parties shall provide each other with the name, phone number and email address of an employee who shall be responsible for coordinating completion of the CPS Block Facilities among the Parties.

2.9 Project Coordination. The Company and the City shall work together to produce a schedule for completing the CPS Block Facilities that is efficient and effective for both Parties, but in all events the CPS Block Facilities shall be completed on or before December 31, 2012.

2.10 Permanent Easement for CPS Block Chilled Water Mains. If the Company elects to have the F-1 Scope constructed as set forth in Section 2.1(a)(ii) above, upon the City's receipt of payment of the Incremental Cost from the Company, the City will execute a permanent easement in substantially the form set forth in Exhibit I. The Company will pay for the preparation of the legal description and any necessary surveys. The City agrees that the Company will have access to the CPS Block to perform necessary surveys.

**ARTICLE 3
[RESERVED]**

**ARTICLE 4
CLOSING**

4.1 So long as this Agreement has been approved by the City Council of the City and County of Denver and fully executed by both Parties, the date of closing shall be February 28, 2011, unless otherwise agreed to in writing by the Company and the City's Director of the Division of Real Estate ("Closing"). The hour and place of Closing shall be designated by the City.

4.2 At Closing, each of the following shall be delivered duly and fully executed by the Parties):

(a) Two originals of the Second Amendment to the Facilities Lease in substantially the same form as Exhibit C; and

(b) Two originals of the Second Amendment to Chilled Water Service Agreement in substantially the same form as Exhibit D;

4.3 At Closing, the City shall pay to the Company Eight Hundred Eighty Five Thousand Dollars (\$885,000) as partial consideration for termination of the Company's leasehold interest in the City Chiller Plant as provided in Section 1.1.

ARTICLE 5 BREACH/NOTICE/CURE/REMEDIES

5.1 Breach/Notice/Cure/Remedies. If a Party (the "**Breaching Party**") to this Agreement fails or refuses to perform any of the terms or conditions of this Agreement (a "**Breach**"), the other Party (the "**Non-Breaching Party**") may provide written notice to the Breaching Party of such breach. Upon receipt of such notice, the Breaching Party shall be given a reasonable time, not to exceed fifteen (15) days, in which to remedy the Breach. No act, event, or omission shall be a Breach hereunder if the Breaching Party's failure to perform is caused by Force Majeure as set forth in Section 7.17 herein. If the Breaching Party does not remedy the Breach within the time allowed in the notice, Non-Breaching Party may seek specific performance or an injunction. All other remedies, including damages, are specifically waived.

ARTICLE 6 [RESERVED]

ARTICLE 7 MISCELLANEOUS

7.1 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.

7.2 Approval by City Council. This Agreement and any documents attached hereto as exhibits, and each and every one of its provisions and terms, is expressly subject to, and shall not be or become effective or binding on the City or the Company until approval by the City Council under and in accordance with the Charter of the City.

7.3 Agreement as Complete Integration; Amendments. This Agreement with its exhibits, the Second Amendment to the Facilities Lease and the Second Amendment to Chilled Water Service Agreement are intended as the complete integration of all understandings between the Parties relating to the subject matter of this Agreement. No prior or contemporaneous addition, deletion or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. Except as expressly provided for by the terms hereof, or the terms

of the Second Amendment to the Facilities Lease or Second Amendment to Chilled Water Service Agreement, no subsequent notation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written amendatory or other agreement executed by the Parties. No City Council approval of amendments is necessary, unless required by the Charter of the City.

7.4 Cooperation of the Parties. In the event that any third party brings an action against the either party regarding the validity or operation of this Agreement, the other party will reasonably cooperate, at no additional cost to the other party, in any such litigation. If either party is named as a party by such third party, each shall bear their own legal costs.

7.5 Conflict of Interest by City Officer. The Company represents that to its Actual Knowledge no officer or employee of the City 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. As used herein, to the Company's "Actual Knowledge" means the actual knowledge, without investigation, of Jan Wagner, Director of Thermal Energy and Zuni Generating Station and Stephen P. Kutska, Development Manager – Thermal Energy.

7.6 Counterparts. This Agreement shall be executed in counterparts, each of which shall be deemed to be an original, but all of which shall together constitute one and the same document.

7.7 Merger. The Parties intend that the terms of this Agreement shall survive Closing and shall not be merged into the deeds and easements hereunder.

7.8 No Discrimination in Employment. In connection with the performance of work under this Agreement, the Company 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 further agrees to insert the foregoing provision in all subcontracts hereunder.

7.9 No Personal Liability. No elected official, director, officer, agent or employee of the City, or the Company, 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.

7.10 Notices. All notices provided for herein shall be in writing and shall be personally delivered or mailed by registered or certified United States mail, postage prepaid, return receipt requested, to the parties at the addresses given below or at such other address that may be specified by written notice in accordance with this section:

To the City:

Mayor
City and County of Denver
1437 Bannock Street, Room 350
Denver, Colorado 80202

With copies to:

Manager of Public Works
201 W. Colfax, Dept. 611
Denver, Colorado 80202

Denver City Attorney
Denver City Attorney's Office
1437 Bannock Street, Room 353
Denver, Colorado 80202

Manager of General Services
201 W. Colfax, Dept. 1110
Denver, Colorado 80202

Jeff Steinberg
Division of Real Estate
Department of Finance
201 W. Colfax, Dept. 904
Denver, Colorado 80202

To the Company:

President and Chief Executive Officer
Public Service Company of Colorado
1800 Larimer Street, Suite 1100
Denver, Colorado 80202

Director – Thermal Energy
Public Service Company of Colorado
1800 Larimer St., Suite 1100
Denver, Colorado 80202

With a copy to:

Legal Department
Public Service Company of Colorado
1800 Larimer Street, Suite 1100
Denver, Colorado 80202

James D. Albright
Squire, Sanders & Dempsey L.L.P.
1600 Stout Street, Suite 500
Denver, CO 80202

7.11 Section Headings. The section headings are inserted herein only as a matter of convenience and for reference and in no way are intended to be a part of this Agreement or to define, limit or describe the scope or intent of this Agreement or the particular sections hereof to which they refer.

7.12 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, the Parties may consider the effect of the Company’s status as a regulated public utility and the City’s status as a governmental entity, in addition to the common understanding of the term “reasonableness” in a business context.

7.13 Severability. The promises and covenants contained herein are several in nature. Should any one or more of the provisions of this Agreement be judicially adjudged invalid or unenforceable, such judgment shall not affect, impair, or invalidate the remaining provision of this Agreement.

7.14 Subject to Local Laws; Venue. Each and every term, provision, and condition herein is subject to the provisions of the laws of the United States, the State of Colorado, the Charter and Ordinances of the City and County of Denver, and regulations enacted pursuant thereto. The Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are hereby expressly incorporated into this Agreement as if fully set out herein by this reference. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver, Colorado.

7.15 Third Party Beneficiary. It is the intent of the Parties that no third party beneficiary interest is created in this Agreement. The Company does not have Actual Knowledge and the City’s Director of the Division of Real Estate does not have actual knowledge of any actions by either Party or any of the Parties’ authorized representatives which would form the basis for interpretation construing a different intent, and in any event both Parties expressly disclaim any such acts or actions, particularly in view of the integration of this Agreement.

7.16 When Rights and Remedies Not Waived. In no event shall any performance hereunder constitute or be construed to be a waiver by any Party of any breach of covenant or condition or of any default which may then exist. The rendering of any such performance when any such breach of default exists shall in no way impair or prejudice any right of remedy available with respect to such breach of default. Further, no assent, expressed or implied, to any breach of any one or more covenants, provisions, or conditions of the Agreement shall be deemed or taken to be a waiver or any other default or breach.

7.17 Force Majeure. If either Party to this Agreement is rendered unable, wholly or in part, to carry out any or all of its obligations under this Agreement, by acts of God, strikes, lockouts or other major industrial disturbances, acts of public enemies, wars, terrorism, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, unusual and severe weather conditions, delays in work to be performed by others, interruptions by government or utility providers not due to the fault of the Parties, civil disturbances, explosions, litigation initiated by third parties seeking to overturn or enjoin any approval granted by the City, or any other governmental or quasi-governmental agency relating to work under this Agreement, or other events beyond the reasonable control of the Parties (collectively referred to herein as "**Force Majeure**"), then the obligations of such Party, so far as it is affected by such Force Majeure, shall be suspended during the continuance of any inability so caused, but for no longer period, and such cause shall, so far as possible, be remedied within a reasonable time. In the event that any Party to this Agreement is forced to suspend its performance of any of its obligations hereunder due to Force Majeure, such Party shall notify in writing the other Party within three (3) business days of the occurrence of such Force Majeure.

7.18 Time is of the Essence. It is understood and agreed between the Parties that time is of the essence hereof.

7.19 Binding on Successors. All the agreements herein contained shall be binding upon and for the benefit of each Party's successors and assigns.

7.20 Appropriations. All obligations of the City under this Agreement are subject to the prior appropriations of monies expressly made by the City Council for the purposes of this Agreement and paid into the Treasury of the City.

7.21 Examination of Records. The Company agrees that any duly authorized representative of the City, including the City Auditor and his representatives, shall have access to and the right to examine, during normal business hours, any directly pertinent books, documents, papers, and records of the Company relating to this Agreement, subject to applicable laws.

7.22 Legal Descriptions. Any legal description contained in this Agreement or in documents attached hereto may be modified and the final legal descriptions substituted into the final documents upon the written approval of the Company and the City's Manager of Public Works prior to Closing. Notwithstanding anything in this Agreement, if the Parties are not able to agree on the legal descriptions prior to Closing, then either Party may terminate this Agreement by written notice and the Agreement will be of no force and effect.

7.23 No Additional Work. The Company shall only be responsible for work, payment, reimbursement or cost associated with the Crime Lab Building or the CPS Block Facilities as set forth in the Final CPS Block Facilities Construction Documents and for the payment of the Incremental Costs if the Company makes the election set forth in Section 2.1(a)(ii) above.

7.24 Electronic Signatures and Electronic Records. The parties hereto consent to the use of electronic signatures by the City. The Agreement, and any other contracts 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.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have here unto set their hand and affix their seals as of the day first above written.

PUBLIC SERVICE COMPANY OF COLORADO,
 a Colorado corporation

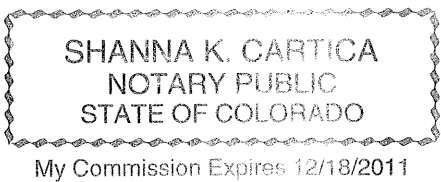
By: *David L. Eves*
 David L. Eves
 President and Chief Executive Officer

STATE OF COLORADO)
) ss.
 CITY AND COUNTY OF DENVER)

The foregoing instrument was acknowledged before me by David L. Eves as President and Chief Executive Officer for PUBLIC SERVICE COMPANY OF COLORADO, a Colorado corporation, this 8 day of February, 2011.

Witness my hand and official seal.

My commission expires: Dec. 18, 2011.



 Shanna K. Cartica
 Notary Public

ATTEST:

Denver Clerk and Recorder, *Ex-Officio Clerk* of the
City and County of Denver

**CITY AND COUNTY OF DENVER:
a Colorado Municipal Corporation**

Mayor

RECOMMENDED AND APPROVED:

Manager of Public Works

Manager of General Services

Director of the Division of Real Estate

APPROVED AS TO FORM:

Denver City Attorney, City Attorney for the City and
County of Denver

By: _____
Assistant City Attorney

REGISTERED AND COUNTERSIGNED:

By: _____
Manager of Finance

Contract Control No. _____

By: _____
Auditor

LIST OF EXHIBITS

Exhibit A - Map/Layout of CPS Block

Exhibit B - [RESERVED]

Exhibit C – Second Amendment to the Lease of Facilities

Exhibit D – Second Amendment to Chilled Water Service Agreement

Exhibit E – Project Management Plan – CPS Block Facilities

Exhibit F-1 – Design Specifications and Work Scope – 16-inch CPS Block Chilled Water Mains Alternative

Exhibit F-2 – Design Specifications and Work Scope – 8-inch CPS Block Chilled Water Mains

Exhibit F-3 Design Specifications and Work Scope - CPS Block Chilled Water Laterals

Exhibit F-4 – Design Specifications and Work Scope - PAB and PADF Energy Transfer Station

Exhibit F-5 – Design Specifications and Work Scope - Spare Energy Transfer Station

Exhibit G – Assignment and Bill of Sale covering the CPS Block Facilities

Exhibit H – [RESERVED]

Exhibit I – Permanent Easement to the Company