

**ACCESS & USE PERMIT AGREEMENT
(PSCo – Greenwood to Denver Terminal)**

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

RECITALS

- A. PSCo proposes to rebuild approximately 15.4 miles of existing 115 kilovolt (kV) transmission facilities to operate a 230 kV line together with other ancillary facilities associated therewith (collectively the “**Facilities**”) to connect the Greenwood Substation to its Denver Terminal Substation (collectively the “**Project**”).
- B. Part of the Facilities required for the Project will be installed within existing PSCo rights-of-way and easements, which expressly includes rights granted to PSCo under the Franchise (as defined below). For purposes of this Agreement, the “**Franchise**” shall mean that specific Ordinance No. 342, Series 2006 entered on or about June 5, 2006 by the City, as updated and amended from time-to-time, granting PSCo a franchise within the City of Denver for the provision of certain utility services.
- C. The remaining portion of the Facilities required for the Project will be installed by PSCo (the “**Installation**”) on certain parcels of City-owned property for which the City herein grants rights to PSCo as set forth in this Agreement (the “**Permitted Areas**”).
- D. The specific Permitted Areas are legally described (and depicted) on Exhibit A attached hereto and incorporated herein by this reference.
- E. By this Agreement, the City grants a permit (initially) for the access and use of the Permitted Areas for the Installation (defined above) and Restoration (defined below) of the Facilities and the Project, and thereafter for the long-term access and use of the Permitted Areas, for maintenance, repair, upgrade, replacement and operation of the Facilities and the Project in the Permitted Areas (collectively, the “**Operation**” or “**Operations**”).

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

- 1. **PERMIT.** The foregoing Recitals are hereby expressly incorporated herein by this reference. PSCo (as initially defined above) shall collectively mean PSCo and its officers, directors, employees, representatives, agents, consultants, and contractors, all of whom are hereby permitted a non-exclusive right of access onto, and the use of, the Permitted Areas for:
 - A. the Installation of the Project, which must be initially constructed within the Permitted Areas within a period of **six (6) calendar months** from the date that PSCo notifies the City Representative (as defined below) that earth-disturbing work will immediately commence (“**Effective Date**”); provided, however, that in the event delays are caused by the discovery, handling, and removal of Hazardous Materials (as defined in Section 4(L) below), such six (6) calendar month period shall be extended one day for each

day of Hazardous Materials related delay (provided the notice provisions set forth in Section 5(K)(4) below have been satisfied); and

- B. the Restoration, at PSCo's sole expense, of any Permitted Areas affected by the Installation or Operation by promptly removing any obstructions placed by PSCo and restoring the Permitted Areas to as near a condition as existed prior to such work as is reasonably practicable, taking into account, among other things, the existence of the Facilities and the restrictions stated herein, including prohibitions or limitations on structures, trees, shrubs, and other objects within the Permitted Areas (the "**Restoration**"). The Restoration shall meet applicable City standards, as approved by the Executive Director (as hereinafter defined). If weather or other conditions do not permit the complete Restoration required by this Section, PSCo may, with the prior written approval of the City, temporarily restore the affected Permitted Areas, provided such temporary Restoration is at PSCo's sole expense and provided further PSCo promptly undertakes and completes the required permanent Restoration when the weather or other conditions no longer prevent such permanent Restoration; and
- C. the Operation of the Project in the Permitted Areas after Installation and Restoration, which permitted access and use shall continue until revoked as provided in this Agreement (jointly, the "**Permitted Rights**").

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

- 2. **CITY RETAINED RIGHTS.** The City retains the right to use, occupy, enjoy, grant other interests, and in all other ways govern and control the Permitted Area and any adjacent City Property Areas (and other City-owned property and right-of-way) so long as such City activity does not substantially impair the Permitted Rights as granted herein. Notwithstanding the foregoing, the City, acting through the City's Executive Director of the Department of Transportation and Infrastructure (the "Executive Director"), retains the right, at the Executive Director's sole discretion, to require PSCo to remove the Project from the Permitted Area and/or to relocate the Project or otherwise modify, reconfigure, or change the Project within the Permitted Area at no cost to the City. The City retains the right to control, monitor, and establish procedures applicable to PSCo's use of the Permitted Area. The City retains the right, at the Executive Director's sole discretion, to impose and require additional terms or conditions, including charging to PSCo costs or expenses incurred by the City, should PSCo fail to comply with this Agreement and the Executive Director does not elect to revoke the Permitted Rights as provided below.
- 3. **FEE; COSTS.** There is no independent fee due or payable by PSCo to the City for this Agreement, except PSCo or such other party as determined by PSCo, but not the City, shall be liable for all costs and expenses associated with the Installation, Restoration, and other Operations permitted under this Agreement.
- 4. **BASIC TERMS & CONDITIONS.**

- A. Compliance with Laws. PSCo shall obtain, keep in effect, comply with, and provide copies to the City Representative (as defined below) as directed by the City Representative, all notices, permits, licenses, consents, permissions, and approvals required by any governmental or quasi-governmental entity prior to commencing the Installation or any other Operations within the Permitted Area. PSCo hereby acknowledges that, if required by the City Representative (as defined below) and before conducting any and all activity on or about the Permitted Area, PSCo shall obtain in advance and comply with a Temporary Construction and Access Permit (“TCAP”). Any required manifest, approval, license or permit related to PSCo’s activities under this Agreement shall be issued in PSCo’s name or an affiliate of PSCo as may be approved by the City. PSCo hereby acknowledges and agrees that it is bound by and shall comply with all applicable federal, state, and local laws, rules, regulations, ordinances, and policies, and the terms and conditions set forth in any plans the City may require and approve, and all other applicable plans, specifications, permits, permissions, consents, and approvals required for or applicable to the Operations within the Permitted Area.
- B. No Property Interest. Nothing in this Permit creates or recognizes a property interest on the part of PSCo in or to the Permitted Area, the City Property or any other City- owned property.
- C. Revocation. The Executive Director shall have the right, at the Executive Director’s sole discretion, to revoke or suspend the Permitted Rights granted under this Agreement at any time and for any reason. The Executive Director will give Permittee a Notice of Revocation (“Notice”). If the reason for the Notice is a curable violation of this Agreement, as reasonably determined by the Executive Director, upon receipt of such Notice, PSCo shall have thirty (30) calendar days, or such longer time as specified by the Executive Director, to cure the violation and to demonstrate to the satisfaction of the Executive Director that the violation has been cured. If the violation is not curable, as determined by the Executive Director, PSCo shall have ninety (90) calendar days to remove the Project and all its appurtenances from the Permitted Area and restore the Permitted Area as required herein.
- D. City Representative. A City employee, a City representative, or a private contractor (“**City Representative**”) will be assigned by the Executive Director to be PSCo’s contact for coordination and oversight of the Installation and Restoration work and related activities of PSCo under this Agreement, notifications under this Agreement, and in the event of an emergency. The City Representative may be changed or other City Representatives added at any time upon written notice to PSCo. Any future Operations work, after completion of the Installation and Restoration, shall also be subject to coordination with and oversight by a City Representative assigned by the Executive Director.
- E. Direction by City Representative. PSCo shall develop and implement appropriate schedules, plans and protocols necessary for the Installation and Restoration work and any future Operations within the Permitted Areas and provide the City Representative with said schedules, plans and protocols. PSCo shall provide prior written notice to the City Representative at least forty-eight (48) hours before accessing the Permitted Areas to start the Installation and Restoration work or to conduct any future Operations within

the Permitted Areas. PSCo shall take all reasonable measures to keep the City Representative informed of the progress of the Installation, Restoration, and other Operations work and related activities, and any emergencies, in accordance with this Agreement and to comply with the directions and requirements of the City Representative, including any order to suspend work or to cease and desist in any unauthorized activities. All Installation, Restoration or Operations work shall be performed to the reasonable satisfaction of the City Representative.

- F. Contractors. All contractors, subcontractors, consultants, suppliers, laborers and agents retained or authorized by PSCo to perform some portion of the Installation, Restoration, or other Operations or to undertake any activities on or about the Permitted Areas shall be regarded as being “PSCo” under this Agreement, shall be subject to the terms and conditions of this Agreement, and shall be identified (by name, address, telephone number, and email address) in a prior written notice to the City Representative, and this contact list shall be updated as needed. At no time shall PSCo, its officials, employees, contractors, subcontractors, consultants, suppliers, laborers or agents be regarded as working for the City in any capacity nor shall they be regarded in any manner as being employees or contractors of the City.
- G. Liability for Damages. PSCo shall be solely responsible for all compensation or restitution for injuries to persons or damage to or loss of property belonging to persons arising from, or related to, any of the Installation, Restoration or Operations work or other actions of PSCo involving the Project within the Permitted Areas. The term “persons” shall include, without limitation, City officials, employees, volunteers, consultants, contractors, tenants, and agents.
- H. Restoration. PSCo shall not damage, destroy or harm any improvements on or about the Permitted Areas, or other City-owned property and shall promptly repair, replace or restore said damaged, destroyed or harmed improvements, to the satisfaction of the City Representative, to a condition similar to or better than that which existed prior to the commencement of the Installation, Restoration, or Operations work.
- I. Utilities. PSCo shall be solely responsible for locating and taking appropriate measures to protect all overhead, above ground and underground utilities, including without limitation gas, electrical, sewer, water, telephone, and cable, during the Installation, Restoration, or Operations work and any related activities on or about the Permitted Areas, or other City-owned property arising under this Agreement. PSCo shall arrange for the timely and complete location of all utilities in accordance with law; shall take all necessary precautions to avoid damage to, or injury from, such utilities; and shall be liable for all damages resulting from any contact with or destruction of such utilities. The City Representative will provide, upon request, any drawings or other documents the City may have regarding the existence of such utilities on or about the Permitted Areas, but the City expressly disclaims the reliability or accuracy of any such drawings or documents it may provide to PSCo.
- J. Emergency. Written notice requirements are waived in the event of any emergency situation requiring immediate access or activities on or about the Permitted Areas, such as a major on-site accident, contamination exposure, utility damage, and security breaches. In the event of such an emergency, PSCo shall provide verbal notice to the

City Representative as soon as feasible (or, if the City Representative is not available after three tries within eight (8) hours, call 311 and leave a message regarding the nature of the emergency and contact information) and then follow up with written notice to the City Representative within twenty- four hours of such emergency. PSCo shall be responsible for timely notifying and cooperating with the appropriate governmental authorities, as required by law, in the event of an emergency. PSCo shall comply with all emergency response personnel instructions regarding PSCo's actions being taken or intended to be taken on the Permitted Areas relating to any emergency response on the Permitted Areas.

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

L. Environmental Requirements.

(1) Environmental Covenant. PSCo acknowledges that some or all of the Permitted Areas are or were the subject of a cleanup under the Colorado Voluntary Cleanup and Redevelopment Act, C.R.S. 25-16-301 et seq. Under Article 15, Title 25, of the Colorado Revised Statutes, certain controls and use restrictions have been recorded against the Permitted Areas through an environmental covenant, with a recording date of October 8, 2007, and amended with a recording date of July 21, 2009 ("**Environmental Covenant**"). A Materials Management Plan, dated August 13, 2008 (including all its attachments) ("**MMP**"), approved by the Colorado Department of Public Health and Environment ("**CDPHE**"), is incorporated as a provision of the Environmental Covenant; any reference herein to the "Environmental Covenant" shall include the MMP.

(2) Hazardous Materials. With respect to PSCo's use of the Permitted Areas under this Agreement, PSCo accepts the Permitted Areas "as is," with all existing physical and environmental conditions. PSCo shall be solely liable for all costs and expenses associated with any Hazardous Materials, as defined below, that PSCo brings onto the Permitted Areas or that are exposed or otherwise requiring remedial action as a consequence of the Installation, Restoration or Operations. PSCo shall comply with (a) all applicable local, state, and federal environmental guidelines, rules, regulations, statutes, laws, and orders applicable to the work, and (b) in consultation with the Denver Department of Public Health and Environment ("**DDPHE**"), all obligations, requirements, controls and use restrictions set forth in the Environmental Covenant (for any work conducted in portions of the Permitted Areas that are subject to the Environmental Covenant) (the foregoing (a) and (b), collectively, the

“**Environmental Requirements**”), including but not limited to Environmental Requirements regarding the storage, use, transportation, and disposal of Hazardous Materials and regarding releases or threatened releases of Hazardous Materials to the environment. The term “**Hazardous Materials**” shall mean asbestos, asbestos-contaminated soils, and asbestos-containing materials, special wastes, polychlorinated biphenyls (PCBs), any petroleum products, natural gas, radioactive source material, pesticides, any hazardous waste as defined at 42 U.S.C. § 6903(5) of the Solid Waste Disposal Act, any hazardous substance as defined at 42 U.S.C. § 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act, and chemical substance as defined at 15 U.S.C. § 2602(2) of the Toxic Substances Control Act, and any guidelines issued and rules or regulations promulgated pursuant to such statutes, or any other applicable federal or state statute. The obligations set out in this paragraph shall survive the expiration or revocation of this Agreement.

(3) PSCo’s Responsibility and Liability. PSCo shall, in accordance with applicable Environmental Requirements, (i) assume all liability for proper manifesting and management of all waste and, in particular, Hazardous Materials generated or uncovered by PSCo in the course of the work or related activities; (ii) use best efforts to minimize the volume of Hazardous Materials associated with the work or related activities on or about the Permitted Areas, and shall properly and lawfully handle, containerize, manage and lawfully dispose of all such Hazardous Materials and other waste; (iii) not take any action with respect to such Hazardous Materials that may cause any alteration in the chemical, physical or biologic nature or characteristics of the Hazardous Materials while the Hazardous Materials are on or about the Permitted Areas; and (iv) remove all Hazardous Materials and other waste associated with the work or related activities from the Permitted Areas. All such environmental obligations stated above for the Installation and Restoration work shall be completed prior to the expiration of the six (6) month term for this work and for the Operation work promptly upon completion of the work. City shall not own or be responsible for and does not take legal title to any of the Hazardous Materials and other waste associated with the work.

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

Hazardous Materials and other waste shall be made by the City Representative in consultation with DDPHE.

(5) City Property and Other City-Owned Property. PSCo is prohibited from bringing or exposing Hazardous Materials on any property outside of the Permitted Areas during the Installation, Restoration, or Operations, or any other activity associated with this Agreement, but if PSCo should violate this prohibition, PSCo shall be subject to the provisions of this Section 4(L) and any requirements and directives of DDPHE and other federal and state agencies and shall be solely liable for any costs and expenses for remedial actions and damages related to such Hazardous Materials.

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

(7) Final Report. Upon completion of the work, PSCo agrees to provide DDPHE with a final report of any construction or soil-disturbing activities conducted at the Permitted Areas that are subject to the Environmental Covenant. The report shall describe, at a minimum, a summary of such activities, including without limitation, documentation of any imported fill materials, a map and/or drawings of pole relocations, the contact information and certifications for the personnel and contractors that performed or supervised the work, any sampling events and the results thereof, disposal summaries and manifests, photographic logs, and any work plan or other documentation prepared pursuant to the MMP or otherwise as required by CDPHE or other environmental regulatory agencies.

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

- A. Access/Traffic Control. In the event that the Installation, Restoration or Operation work shall require that portions of any bike/pedestrian trail or access to any facility or parking lot be closed for more than twenty-four (24) continuous hours, PSCo shall prepare a detour plan which must be approved by the City Representative prior to PSCo implementing the detour plan ("**Traffic Control**"). All Traffic Control measures, including barricades, signs, and flagging, are subject to changes required by the City Representative if the City Representative finds any of them to be inadequate.
- B. Trees. Any trees located within or in the vicinity of the Permitted Areas must be appropriately and sufficiently protected by PSCo from the Installation, Restoration, and Operation work to be performed within the Permitted Areas. Protection, which may include fencing or barriers around the trees, must be approved by the City Representative and installed prior to the start of the Installation, Restoration or Operation work. PSCo shall be liable for the loss of or damage to any trees and/or costs of replacing any damaged trees resulting from PSCo's Installation, Restoration, or Operations.

- C. Franchise. Any provision of this Agreement to the contrary notwithstanding, nothing in this Agreement is intended to modify or replace the conditions of the Franchise and to the extent anything in this Agreement conflicts with the terms of the Franchise, the Franchise controls.

6. **INSURANCE:**

- A. General Conditions: PSCo shall secure, on or before the commencement of any Installation of the Project or any access on the Permitted Areas, the following insurance covering all work and related activities under this Agreement. PSCo shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, and for three (3) years after termination of the Agreement. The required insurance shall be underwritten by an insurer permitted or authorized to do business in Colorado and rated by A.M. Best Company as “A- VIII” or better. Each policy shall contain a valid provision or endorsement stating “Should any of the above-described policies be canceled or non-renewed before the expiration date thereof, the issuing company shall send written notice to Denver Risk Management, 201 West Colfax Avenue, Dept. 1105, Denver, Colorado 80202. Such written notice shall be sent thirty (30) days prior to such cancellation or non- renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior.” Additionally, PSCo shall provide written notice of cancellation, non-renewal and any reduction in coverage to the address above by certified mail, return receipt requested. If any policy is in excess of a deductible or self-insured retention, the City must be notified by PSCo. PSCo shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of PSCo. PSCo shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.
- B. Proof of Insurance: PSCo shall provide a copy of this Agreement to its insurance agent or broker. Except as authorized by a permit previously issued to PSCo, PSCo may not commence work under this Agreement prior to placement of coverage. PSCo has delivered a certificate of insurance, in the form as set forth in **Exhibit B** to this Agreement (an ACORD certificate), and hereby certifies that said certificate complies with all insurance requirements of this Agreement. The City’s acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of any of the City’s rights under this Agreement. The City’s Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.
- C. Additional Insureds: For Commercial General Liability, Business Auto Liability, and Contractors Pollution Liability, PSCo’s insurer(s), and any insurer of any subcontractors performing work under the authority of, or at the direction of PSCo, shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.
- D. Waiver of Subrogation: For all coverages, PSCo’s insurer shall waive subrogation rights against the City.

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

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

7. DEFENSE & INDEMNIFICATION.

- A. Indemnification: PSCo shall defend, indemnify, and hold harmless the City, their appointed and elected officials, employees and agents, against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from or relating to the exercise of this Agreement, any work performed or activities undertaken, or financial liability incurred by PSCo in relation to this Agreement, and the occupancy or use of any portion of the Permitted Area, the City Property or any other City-owned property ("Claims"), unless and until such Claims have been specifically determined by the trier of fact to be due to the negligence or willful misconduct of the City. This indemnity and duty to defend shall be interpreted in the broadest possible manner to indemnify and protect the City for any acts or omissions of the PSCo, either passive or active, irrespective of fault, including the City's or the City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of the City.
- B. Duty to Defend. PSCo's duty to defend and indemnify the City shall arise (i) at the time written notice of the Claim is first provided to the City regardless of whether Claimant has filed suit on the Claim; and (ii) even if the City is the only party sued by claimant and/or claimant alleges that City's negligence or willful misconduct was the sole cause of claimant's damages.
- C. Payment of Costs and Expenses. PSCo will defend any and all Claims which may be brought or threatened against the City and will pay on behalf of the City any reasonable expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of the City shall be in addition to any other legal remedies available to the City and shall not be considered City's exclusive remedy.

- D. Not Limited by Insurance Coverage. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of PSCo under the terms of this indemnification obligation. PSCo shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.
- E. Survival. This defense and indemnification obligation shall survive the expiration or revocation of this Agreement.
8. **REMEDIES AND VENUE.** In addition to revocation of the Agreement and other remedies and rights to relief set forth in this Agreement, the City shall have all remedies available at law or in equity against PSCo. Permittee's exclusive remedy against the City shall be for specific performance, and PSCo does hereby waive all other remedies at law or in equity including damages. Venue for any action under this Agreement shall be in the District Court for the City and County of Denver.
9. **GOVERNMENTAL APPROVALS AND CHARGES.** PSCo shall obtain and maintain, at its sole cost, and comply with all permits or licenses (federal, state, or local) required for the work to be performed under this Agreement. PSCo shall pay promptly all taxes, excises, license fees, and permit fees and charges of whatever nature applicable to the work and shall not permit any of said taxes, excises or license or permit fees to become delinquent or to fail to pay any penalties or fines assessed with respect to the work. The City shall not be liable for the payment of fees, charges, taxes, late charges, penalties or fines of any nature related to the work. PSCo hereby indemnifies and saves harmless the City for the extent of any and all liability for fees, charges, taxes, late charges, penalties or fines resulting from PSCo's failure to comply with this paragraph. This indemnification obligation shall survive the expiration or revocation of the Agreement.
10. **LIENS & OTHER ENCUMBRANCES.** PSCo shall not permit any mechanic's or materialman's liens or any other liens to be imposed upon the Permitted Areas due any worker for labor performed or materials or equipment furnished by any person or legal entity to or on behalf of PSCo, either pursuant to C.R.S. § 38-26-107 or by any other authority, or due to any other claim with respect to the work. PSCo shall promptly pay when due all bills, debts and obligations incurred in connection with the work performed under this Agreement and shall not permit the same to become delinquent. PSCo shall not permit any lien, judgment, execution or adjudication of bankruptcy which will in any way impair the rights of the City Property. PSCo hereby indemnifies and saves harmless the City for the extent of any and all liability for payments, expenses, interests, and penalties resulting from PSCo's failure to comply with this paragraph. This indemnification obligation shall survive the expiration or revocation of the Agreement.
11. **GOVERNMENTAL IMMUNITY.** Nothing in any other provision of this Agreement shall be construed as a waiver of the notice requirements, defenses, immunities and limitations on behalf of the City may have under the Colorado Governmental Immunity Act (§24-10-101, C.R. S., et. seq.) or to any other defenses, immunities, or limitations of liability available to the City against third parties by law.
12. **NO DISCRIMINATION IN EMPLOYMENT.** In connection with the performance of the

work under this Agreement, PSCo agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender variance, marital status, or physical or mental disability; and PSCo further agrees to insert the foregoing provision in all approved contracts and subcontracts hereunder.

13. **NOTICES.** All notices required to be given to the City or PSCo hereunder shall be in writing and provided by personal delivery or sent by certified mail, return receipt requested, to:

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

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

and

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

PSCo: Xcel Energy
Attn: Manager, Siting & Land Rights
1800 Larimer St, #400
Denver, CO 80202

and

Xcel Energy
Attn: Legal
1800 Larimer St, #400
Denver, CO 80202

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

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

15. **SEVERABILITY.** If any term or provision of this Agreement is held by a court of law

(following all legal rights of appeal or the expiration of time therefore) to be illegal or unenforceable or in conflict with any law of the State of Colorado or the City Charter or City ordinance, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid; provided, however, if the invalidated term or provision was a critical or material consideration of either Party in entering this Agreement, the Parties shall work together, in good faith, to come up with an amendment to this Agreement that substantially satisfies the previously intended consideration while being in compliance with applicable law and the judgment of the court.

16. **AMENDMENT.** Except as otherwise expressly provided in this Agreement, this Agreement may be amended, modified, or changed, in whole or in part, only by written agreement executed by the parties in the same manner as this Agreement.
17. **NO ASSIGNMENT.** PSCo shall not assign its rights or delegate its duties hereunder, with the exception of contracting and subcontracting as provided in this Agreement, without the prior written consent of the City.
18. **AUTHORITY TO EXECUTE.** The person signing for PSCo warrants that he or she has the complete authority to sign on behalf of and bind PSCo.
19. **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS.** PSCo consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

[SIGNATURE PAGE FOLLOWS]

Contract Control Number:
Contractor Name:

FINAN-202371137-00
PUBLIC SERVICE COMPANY OF COLORADO

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

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

By:

By:

By:

Contract Control Number:
Contractor Name:

FINAN-202371137-00
PUBLIC SERVICE COMPANY OF COLORADO

By: **SEE VENDOR SIGNATURE PAGE ATTACHED**

Name: _____
(please print)

Title: _____
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

**EXHIBIT A
(PERMITTED AREAS)**

EXHIBIT "A"

LAND DESCRIPTION

SHEET 1 OF 2

A PARCEL OF LAND LOCATED IN THE NORTHEAST QUARTER OF SECTION 5, TOWNSHIP 4 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF DENVER, STATE OF COLORADO, ALSO BEING A PORTION OF LANDS DESCRIBED IN BOOK 138 PAGE 439, CITY ORDINANCE NO. 411 SERIES 1991, FILED IN THE CITY AND COUNTY OF DENVER'S CLERK AND RECORDER'S OFFICE, SAID PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

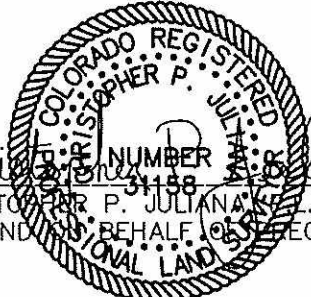
BASIS OF BEARING OF THIS DESCRIPTION IS ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 5, AND ASSUMED TO BEAR N01°07'03"W A DISTANCE OF 1,317.88 FEET FROM A CALCULATED POSITION PER MONUMENT TIES FOUND AT THE EAST QUARTER CORNER OF SAID SECTION 5 TO A CALCULATED POSITION PER MONUMENT TIES FOUND AT THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 5;

BEGINNING AT THE NORTHWEST CORNER OF A PARCEL OF LAND DESCRIBED AT BOOK 976 ON PAGE 38 FILED IN SAID CLERK AND RECORDER'S OFFICE AND ON THE SOUTHERLY RIGHT-OF-WAY OF WEST 13TH AVENUE, SAID POINT BEARS N85°35'47"W A DISTANCE OF 570.91 FEET FROM SAID NORTHEAST CORNER;

THENCE ALONG THE WEST LINE OF SAID LANDS DESCRIBED AT BOOK 976 ON PAGE 38 AND ALONG THE WESTERLY SIDE OF THE S. PLATTE RIVER PER ORDINANCE NO. 117 SERIES 1910 THE FOLLOWING TWO (2) COURSES: 1.) THENCE S18°54'40"E A DISTANCE OF 267.23 FEET; 2.) THENCE ALONG A CURVE TO THE RIGHT AN ARC LENGTH OF 315.62 FEET, HAVING A RADIUS OF 1,158.40 FEET, THROUGH A CENTRAL ANGLE OF 15°36'39" AND A CHORD WHICH BEARS S11°06'48"E A DISTANCE OF 314.64 FEET; THENCE S77°32'46"W A DISTANCE OF 38.00 FEET TO THE EASTERLY SIDE OF LANDS DESCRIBED AT RECEPTION NO. 2009156022 FILED IN SAID CLERK AND RECORDER'S OFFICE; THENCE ALONG SAID EASTERLY SIDE THE FOLLOWING TWO (2) COURSES: 1.) THENCE ALONG A NON-TANGENT CURVE TO THE LEFT AN ARC LENGTH OF 311.44 FEET, HAVING A RADIUS OF 1,121.38 FEET, THROUGH A CENTRAL ANGLE OF 15°54'46" AND A CHORD WHICH BEARS N10°57'34"W A DISTANCE OF 310.44 FEET; 2.) THENCE N18°54'40"W A DISTANCE OF 142.16 FEET TO THE EASTERLY SIDE OF LANDS DESCRIBED AT RECEPTION NO. 2021221286 FILED IN SAID CLERK AND RECORDER'S OFFICE; THENCE ALONG SAID EASTERLY SIDE THE FOLLOWING THREE (3) COURSES: 1.) THENCE N18°54'35"W A DISTANCE OF 89.05 FEET; 2.) THENCE N89°49'02"E A DISTANCE OF 12.64 FEET; 3.) THENCE N18°36'25"W A DISTANCE OF 40.21 FEET TO SAID SOUTHERLY RIGHT-OF-WAY; THENCE N71°22'10"E ALONG SAID SOUTHERLY RIGHT-OF-WAY A DISTANCE OF 25.31 FEET TO THE POINT OF BEGINNING, WHENCE SAID EAST QUARTER CORNER BEARS S23°36'15"E A DISTANCE OF 1,485.78 FEET.

SAID PARCEL CONTAINS 21,322 SQUARE FEET OF LAND OR 0.489 ACRES, MORE OR LESS.

I, THE UNDERSIGNED, A REGISTERED LAND SURVEYOR IN THE STATE OF COLORADO, DO HEREBY STATE THAT THIS EXHIBIT WAS PREPARED BY ME OR UNDER MY SUPERVISION AND IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE.



Christopher P. Juliana
 CHRISTOPHER P. JULIANA, L.S. 31158 07/17/23
 FOR AND ON BEHALF OF PRECISION SURVEY & MAPPING, INC.

 PRECISION SURVEY & MAPPING
PROFESSIONAL LAND SURVEYING CONSULTANTS

9025 E. Kenyon Ave., Suite 150, Denver, CO 80237
Tel:(303) 753-9799 Fax:(303) 753-4044

DRN. BY: RU
CHKD. BY: JL
DATE: 07/17/23

FILE: R13066
SHEET: 1 OF 2
SCALE: 1" = 100'

PE-27

EXHIBIT "A"
SHEET 2 OF 2

CURVE TABLE					
NO.	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	315.62'	1158.40'	15°36'39"	S11°06'48"E	314.64'
C2	311.44'	1121.38'	15°54'46"	N10°57'34"W	310.44'

N85°35'47"W
570.91'(TIE)

NW COR.
BK.976 PG.38

NE COR.
SE1/4, NE1/4
SECT. 5
PER MON. TIES

OWNER:
PUBLIC
SERVICE
COMPANY

PROPOSED
XCEL STRUCTURE

POINT OF
BEGINNING

OWNER:
CITY & COUNTY
OF DENVER
BK.976 PG.38

W 13TH AVENUE
(R.O.W. VARIES)

S'LY
R/W

OWNER:
CITY & COUNTY
OF DENVER
BK. 138 PG. 439
ORD. NO. 411
SERIES 1991

E'LY SIDE
REC. #2021221286

PE-27
AREA=21,322 S.F.±
OR 0.489 ACRES±

SOUTH PLATTE
RIVER
ORD. NO. 117
SERIES 1910

NE1/4 SEC. 5
T4S, R68W, 6TH P.M.
DENVER COUNTY

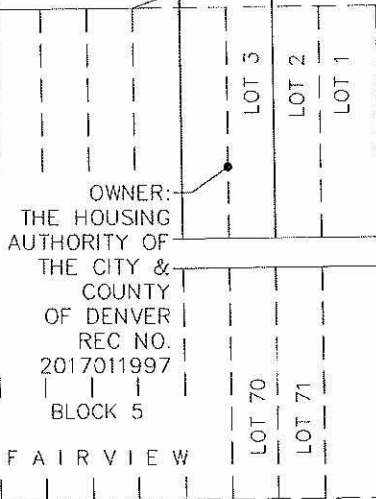
BASIS OF BEARING
E. LINE SE1/4 NE1/4 SECT.
5, T4S, R68W, 6TH P.M.
N01°07'03"W 1,317.88'

W'LY SIDE
S. PLATTE
RIVER

E1/4 COR.
SECT. 5
PER MON. TIES

OWNER: CITY & COUNTY
OF DENVER
REC. NO. 2009156022

OWNER:
SUN VALLEY ZUNI, LLC
REC. NO. 2021221286



ORD. 310-1968

LINE TABLE		
NO.	BEARING	DISTANCE
L1	S18°54'40"E	267.23'
L2	S77°32'46"W	38.00'
L3	N18°54'40"W	142.16'
L4	N18°54'35"W	89.05'
L5	N89°49'02"E	12.64'
L6	N18°36'25"W	40.21'
L7	N71°22'10"E	25.31'



EXHIBIT B
(FORM OF CERTIFICATE OF INSURANCE)

