



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: August 20, 2020

AGENDA TITLE

Second reading and consideration of a motion to adopt Ordinance 8410 submitting to the registered electors of the City of Boulder at the municipal coordinated election to be held on Tuesday, November 3, 2020, the question of a franchise by the City of Boulder, Colorado, being granted to Public Service Company of Colorado, its successors and assigns, to furnish, sell, and distribute gas and electricity to the city and to all persons, businesses, and industries within the city and the right to acquire, construct, install, locate, maintain, operate, and extend into, within, and through said city all facilities reasonably necessary to furnish, sell, and distribute gas and electricity within the city and the right to make reasonable use of all streets, public easements and other city property as herein defined as may be necessary, and fixing the terms and conditions thereof; setting forth the ballot title, specifying the form of the ballot and other election procedures; and setting forth related details.

AND

Introduction, first reading, and consideration of a motion to order published by title only Ordinance 8419 approving and granting a franchise between the City of Boulder, Colorado to Public Service Company of Colorado, its successors and assigns, to furnish, sell, and distribute gas and electricity to the city and to all persons, businesses, and industries within the city and the right to acquire, construct, install, locate, maintain, operate, and extend into, within, and through said city all facilities reasonably necessary to furnish, sell, and distribute gas and electricity within the city and the right to make reasonable use of all streets, public easements and other city property as herein defined as may be necessary; and setting forth related details.

PRESENTERS

Jane S. Brautigam, City Manager
Thomas A. Carr, City Attorney
David Gehr, Chief Deputy City Attorney
Kathy Haddock, Senior Counsel
Deb Kalish, Senior Counsel
Steve Catanach, Director of Climate Initiatives
Jonathan Koehn, Chief Resilience and Sustainability Officer
Matthew Lehrman, Energy Strategy Advisor
Lex Telischak, Electrical Engineer

EXECUTIVE SUMMARY

The purpose of this agenda item is for council to conduct a public hearing and consider adopting on second reading a ballot measure that will propose to the voters a ballot question of whether to approve a franchise with Public Service Company of Colorado (“Xcel Energy”). Council passed Ordinance 8410 (**Attachment A**) on first reading on August 4, 2020.

Staff also recommends that council pass Proposed Ordinance 8419 on first reading. This is the ordinance that would award the franchise. The charter requires that there be 60 days between first and second reading of an ordinance awarding a franchise. By passing Proposed Ordinance 8419 (**Attachment B**) on first reading, council will be able to consider the measure on second reading if the ballot measure passes on November 3, 2020.

The franchise is part of a comprehensive agreement with Xcel Energy that would suspend the city’s municipalization effort in return for assurance that Xcel Energy would meet its goal of 80 percent reduction in carbon emissions by 2030 and a partnership to help the city meet its goal of 100 percent renewable electricity by 2030. The agreement is structured to provide accountability and enforceability through the realistic possibility that the city could create a municipal electric utility if Xcel Energy does not meet specified carbon emission targets in specific years on its way to an 80 percent gross emissions reduction from 2005 levels by 2030. On August 6, 2020, staff released drafts of three associated agreements and three attachments. The documents released are as follows:

Settlement Agreement (**Attachment C**)
Energy Partnership Agreement with three attachments (**Attachment D**)
Load Interconnection Agreement (**Attachment E**)

The proposed schedule is as follows:

- August 4, 2020 First Reading Franchise
- August 20, 2020 Second Reading Public Hearing – First Reading Ordinance Awarding Franchise
- September 1, 2020 Deadline to place measures on the ballot
- November 3, 2020 Election Day
- January 1, 2021 Franchise effective if approved by the voters and PUC

STAFF RECOMMENDATION

Suggested Motion Language

Staff requests council consideration of this matter and action in the form of the following motion:

Motion to adopt Ordinance 8410 submitting to the registered electors of the City of Boulder at the municipal coordinated election to be held on Tuesday, November 3, 2020, the question of a franchise by the City of Boulder, Colorado, being granted to Public Service Company of Colorado, its successors and assigns, to furnish, sell, and distribute gas and electricity to the city and to all persons, businesses, and industries within the city and the right to acquire, construct, install, locate, maintain, operate, and extend into, within, and through said city all facilities reasonably necessary to furnish, sell, and distribute gas and electricity within the city and the right to make reasonable use of all streets, public easements and other city property as herein defined as may be necessary, and fixing the terms and conditions thereof; setting forth the ballot title, specifying the form of the ballot and other election procedures; and setting forth related details.

AND

Motion to introduce and order published by title only Ordinance 8419 approving and granting a franchise between the City of Boulder, Colorado to Public Service Company of Colorado, its successors and assigns, to furnish, sell, and distribute gas and electricity to the city and to all persons, businesses, and industries within the city and the right to acquire, construct, install, locate, maintain, operate, and extend into, within, and through said city all facilities reasonably necessary to furnish, sell, and distribute gas and electricity within the city and the right to make reasonable use of all streets, public easements and other city property as herein defined as may be necessary; and setting forth related details.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic – The opportunity exists for Boulder to transition to a new sustainable, low-carbon emission society, and it is coming much faster than anyone had

anticipated just a few years ago. The growing differential between the rising costs of fossil fuels and the declining costs of renewable energy technologies is setting the stage for the emergence of a new economic paradigm in electricity delivery for the next century. Boulder is poised to help accelerate this process to tackle climate change, secure energy independence, and grow a sustainable 21st century economy all at the same time.

- **Environmental** – The energy discussion in Boulder is driven by concerns about the environmental impact of our current energy system. The combustion of fossil fuels is warming earth’s atmosphere and changing our climate. Human activities are estimated to have caused approximately 1.0°C of global warming above pre-industrial levels, with a likely range of 0.8°C to 1.2°C. According to the IPCC¹, global warming is likely to reach 1.5°C between 2030 and 2052 if it continues to increase at the current rate. Such an increase in global temperatures will be catastrophic. To change this course, we must achieve dramatic near-term reductions in greenhouse gas emissions by rapidly transitioning from fossil fuels to renewable energy. There is growing agreement that the most viable path to deep emission reductions in the next 10 years is the conversion of 80 percent or more of all energy use—in buildings, transportation and business processes—to electricity generated from renewable energy sources. Any agreement between the Boulder community and Xcel Energy must enable Boulder to reduce fossil fuel demand from buildings and transportation; rapidly transition to an energy system and economy that is powered 100 percent or more by renewable electricity with 50 percent or more of that produced locally.
- **Social** – To reach our clean energy goals, we must build across an energy system that is accessible to every person equally regardless of race or income and support solutions that include all people. Despite emerging opportunities, many are left out of the new energy economy. For example, many energy efficiency and renewable energy efforts are supported by federal and state tax credits and grants that benefit higher-income homeowners and exclude tenants and lower-income households, who are more likely to be people of color. The partnership activities identified with Xcel Energy are intended to address the multiple challenges facing communities.

OTHER IMPACTS

- **Fiscal** – If the franchise is adopted the Utility Occupation Tax will end. The general fund portion of the tax will be replaced by a franchise fee.
- **Staff time** – Implementing the proposed partnership will require significant staff work and financial resources will be necessary to support this work.

¹ <https://www.ipcc.ch/sr15/>

PUBLIC FEEDBACK

A public hearing is scheduled tentatively for August 20, 2020. The agreement reflects several years of robust community conversation on the community's relationship with Xcel Energy, including settlement discussions in 2016 and 2017, and incorporates public input on the agreement from town halls conducted in June 2020 and dozens of emails received by city council and staff this summer.

ANALYSIS

In 2010, the City of Boulder embarked on a significant undertaking to change the future of electric service and energy management for its residents and businesses. As directed by council, city staff has been analyzing the viability of various options to help the community achieve its Energy Future goals. The process is grounded in commitments to be objective and to include as many viewpoints as possible. No matter which energy path the city chooses to take, it strives to be a leader in reducing the impact its electric use has on climate change and in providing equitable local energy services that meet the unique needs and community values of Boulder.

The community's Energy Future goals prioritize an emissions-free electricity supply; the ability to develop accessible and innovative energy efficiency and demand-side management programs that enhance customers' control; a structure that supports economic vitality through low costs and high reliability, as well as the creation of a high-tech test bed; and, the opportunity to work with energy consumers to meet their diverse needs. Boulder's vision, either in partnership with Xcel Energy or through a municipal utility, is to transform from a utility model centered on selling more electrons to a new business model in which the mission is to collaborate with customers to provide options to use fewer electrons and produce no carbon emissions.

Over the past several months, the city has been working closely with Xcel Energy to design a potential settlement agreement that will allow the Boulder community to make significant progress on its clean electricity and climate-related goals. The Franchise Agreement that is proposed is part of a larger effort that will result in the city and Xcel Energy developing a partnership that will result in the city suspending its efforts at municipalization. Ultimately, if council approves, the city will need to approve several agreements. The council will consider those agreements after a public hearing on August 20, with the second reading of the franchise ballot measure ordinance. Those agreements include a settlement agreement and a franchise agreement.

A franchise is a special right or privilege granted by a government to an individual or corporation that does not ordinarily belong to people in general. In the case of the Xcel Energy franchise, it is a grant from the city to Xcel Energy of the right to use city streets, alleys, rights-of-way, public easements and other public property for the purpose of providing electric and natural gas utility service to the residents and businesses within the city.

The Franchise Agreement also includes terms and conditions agreed to by the city and Xcel Energy regarding the use of the streets. The Franchise Agreement recently negotiated by city staff and Xcel Energy is as an attachment to Proposed Ordinance 8410, Attachment A, placing the franchise question on the ballot.

Among the objectives of the negotiations was to ensure that the city would have opportunities to opt out of the franchise if either the relationship was not satisfactory or Xcel Energy's failure to meet state wide objectives related to the reduction and ultimately the elimination of greenhouse gas emissions that result from electricity generation.

Key Terms and Conditions of the Franchise Agreement

The Franchise Agreement documents the rules that govern Xcel Energy's use of the city's streets, public easements, and other property owned by the city. This portion of the memorandum outlines some of the key terms and conditions of the Franchise Agreement and discusses them in greater detail.

- **Grant of Franchise.** The Franchise Agreement grants Xcel Energy a non-exclusive right to place its facilities in city streets, alleys, public easements and other city property in order to provide gas and electric service to the city, its residents, and businesses. The term "other city property" does not include property that meets the home rule charter definitions of "open space" or "park land." Any use of those lands will be required to use the disposition of land provisions in the charter.
- **Opt-out provisions.** The city has negotiated two sets of provisions that will allow it to terminate the franchise. State statute allows the city to opt out of a franchise at the 10- and 15-year anniversary of the franchise. This franchise will allow the city to opt out of the franchise at the five, 10 or 15 year anniversary of the franchise, for any reason, in the city's sole, absolute, and unconditional discretion by either a six person vote of city council or a majority vote of the residents of the city. There is a second set of opt-out provisions that allow the city to terminate the franchise in the years 2023, 2025, and 2028 if Excel Energy does not meet the gross carbon reduction goals expressly set forth in the Franchise Agreement and as further described below. Like the anniversary opt-out, the decision to terminate in these years can be made by a vote of six council members or the voters.
- **City Police Powers.** Xcel Energy expressly recognizes the city's right to adopt ordinances and regulations and Xcel Energy's obligation to comply, not only with city laws, regulations, permit requirements, and orders, but also with federal, state, and other local government laws and regulations that relate to the terms and conditions of the Franchise Agreement.

- **Franchise Fee.** In consideration of the right to use city streets, alleys, rights of way, public easements, and other city property, Xcel Energy will pay to the city an amount equal to three percent of the gross revenues the company collects from city residents and businesses. The franchise fee is paid to the city's General Fund. The franchise fee will replace the existing general fund portion of the Utility Occupation Tax that is presently set to expire at the end of 2022. The right to create an additional occupation tax for the purpose of funding energy related projects is expressly reserved in the Franchise Agreement. The franchise fee, like the Utility Occupation Tax, is passed through the company to Boulder residents and businesses as a surcharge on their energy use. The city will not be surcharged for the energy it uses.
- **Administration of Franchise.** This article concerns the coordination of work by the parties. Xcel Energy agrees to meet with the city on a semi-annual basis to discuss long-term and short-term work plans to avoid unnecessary interference with city streets, easements, and other city property. This is a very efficient approach for the city and Xcel Energy to use to coordinate construction projects and avoids unnecessary duplication of effort and destruction of new infrastructure.
- **Supply, Construction, and Design.** Article 6 is the regulatory portion of the Franchise Agreement. In this article, Xcel Energy agrees to provide reliable gas and electric service to city residents and businesses. Xcel Energy expressly agrees to perform work within the city in a timely, expeditious, high quality, cost effective manner, and to comply with all city laws licenses, permits, and written agreements. For public projects, Xcel Energy will continue to relocate facilities in public streets or other city property. To the extent that a public project requires the relocation of facilities in public easements, the city will cover that cost.
- **Reliability.** Xcel Energy is obligated to provide adequate, safe, and reliable utility service to the city. Its failure to do so would likely be a material breach of the Franchise Agreement.
- **Company Performance Obligations.** This Article includes requirements for the completion of projects requested by the city. The terms in this Article should provide greater certainty in determining when projects must be completed.
- **Billing and Payment.** Billing for utility service is a subject matter reserved for the PUC. This section largely references the requirements of the PUC regulations. There are additional provisions related to how the parties will cooperate on financial matters.

- **Use of Company Electric Distribution Poles.** The Franchise Agreement gives the city the right to use Xcel Energy distribution poles for police, fire, emergency, public safety, or traffic control purpose. Without this right, the city would be obligated to enter into pole attachment agreements for the use of these poles.
- **Undergrounding of Overhead Facilities.** Xcel Energy reserves one percent of the electric gross revenues received from city residents and businesses for the undergrounding of its facilities within the city. This amount is approximately \$1 million and is set aside each year for this purpose. It addresses how estimates are prepared, requires meetings throughout an undergrounding project and explains the time period allotted for each project. It also includes standards related to the planning, coordination and potential to audit projects after completion. In the settlement agreement with Xcel Energy, there are provisions that will allow the city to have access to the undergrounding funds from the time period that the city has been out of the franchise.
- **Purchase or Condemnation.** By entering into the Franchise Agreement, the city does not lose any of its rights to purchase or condemn Xcel Energy facilities in the future. There are also additional requirements related to purchase and condemnation in the settlement agreement.
- **Municipally Produced Utility Service.** The city reserved the right to engage in the production of utility service to the extent permitted by law and Excel Energy has agreed to enter into good faith negotiations to purchase city generated power. Importantly, Excel Energy has also agreed to offer transmission and delivery service to the city, comparable to the service it provides to other electric generators, when such services are permitted (not required) by law. The city and Xcel Energy have a significant history of working together regarding the sale and transmission of energy generated by the water utility's hydroelectric facilities.
- **Environment and Conservation.** The Franchise Agreement includes commitments to further programs and opportunities related to the responsibility to engage in beneficial environmental practices, energy conservation, energy efficiency, and renewable energy within the framework established by the PUC.
- **Transfer of Franchise.** Xcel Energy cannot transfer its rights under the Franchise Agreement to a non-Xcel affiliated company without the approval of the city. However, if Xcel Energy were to transfer its rights under the Franchise Agreement to another unaffiliated entity, Xcel Energy would be required to pay the city a portion of the \$1 million transfer fee it has agreed to pay the City and County of Denver under similar circumstances. The amount would be the proportion of the then number of city residents to the then number of Denver residents.

- **Continuation of Utility Service.** This provision says that if the Franchise Agreement terminates, Xcel Energy will continue to provide service, collect the equivalent of the franchise fee from residents and businesses, and pay that amount to the city. This means that if this Franchise Agreement is approved, the next franchise negotiations will not be held under the specter of the loss of significant revenue for the General Fund.
- **Indemnification and Immunity.** Xcel Energy will indemnify and defend the city from claims brought against the city as a result of Xcel Energy's operations within the city under the terms of the Franchise Agreement.
- **Miscellaneous.** The remainder of the franchise includes relatively standard provisions including breach of contract, amending the agreement, equal opportunity, and typical boiler plate provisions related to contract compliance, third-party beneficiaries, notice, the provision of information, payments of taxes and fees, conflicts of interest, and force majeure, to name a few.

Partnership with Xcel

The franchise is a part of a larger settlement effort that will result in the city suspending its municipalization efforts and creating a partnership with Xcel Energy. In addition to the franchise, the settlement will be embodied in a Settlement Agreement, an Energy Partnership Agreement and a Load Interconnection Agreement. Drafts of these additional agreements were made public on August 6, 2020.

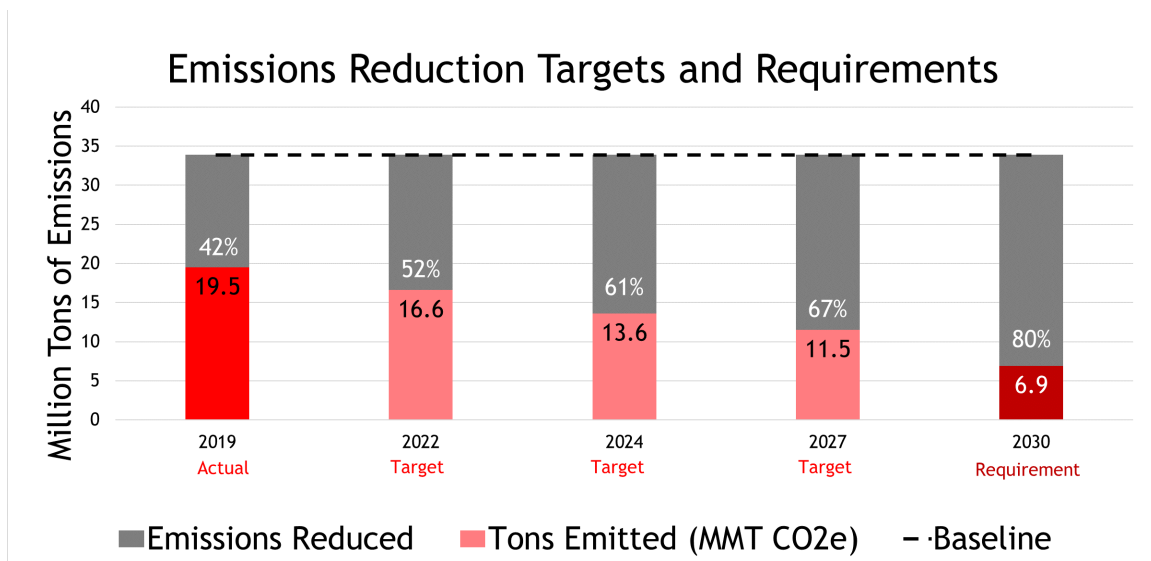
The goal of the settlement negotiations was to explore whether the city could reach an agreement that could satisfy the city's municipalization goals while remaining with Xcel as its electricity supplier. The city's goals can be summarized as the three "D's" and the three "R's." That is, Decarbonize, Decentralize, and Democratize the electricity supply system, subject to fair Rates, excellent Reliability and 100 percent Renewable electricity supply by 2030. The potential agreement addresses some, but not all of these goals. The main features of the settlement can be categorized into five "buckets" as follows:

- Assurance of 80 percent Carbon Reduction by 2030.
- Modern Grid Planning Partnership – Boulder 100 percent Renewable Electricity by 2030.
- Maintain Feasibility of Municipalization in the Future.
- Undergrounding catch-up - \$33 million – half in first five years.
- Passage of a Franchise Ballot Measure and Suspension of Municipalization Effort.

Assurance of 80 percent Carbon Reduction by 2030

One of the driving factors behind the city's effort to create a municipal electric utility was the urgent need to decarbonize the city's electrical supply. In 2019, Colorado passed and signed into law HB 1261, the Climate Action Plan to Reduce Pollution, setting ambitious greenhouse gas emissions reduction targets to combat climate change. HB 1261 codifies statewide emissions reduction goals of 26 percent by 2025, 50 percent by 2030, and 90 percent by 2050, relative to a 2005 baseline level. These targets are roughly consistent with the Intergovernmental Panel on Climate Change's recent call to limit worldwide temperature rise to 1.5°C above preindustrial levels. In a separate but related bill, Senate Bill 19-236 directs the Colorado Public Utilities Commission, which oversees investor-owned utilities such as Xcel Energy, to evaluate Clean Energy Plans submitted by utilities for their ability to reach the 2030 required emission reduction levels. During the course of the negotiations, staff heard from the community that these goals are only meaningful if Xcel actually meets them. Community members insisted that any agreement include provisions for accountability and enforceability. The potential settlement includes the potential for the city to cancel the franchise and to renew its municipalization efforts if Xcel Energy fails to meet specific carbon emission targets. These targets would be measured by actual emissions in specific years.

The Franchise Agreement includes the right for the city to cancel the franchise for any reason in 2026, 2031 and 2036. In addition, the city would be able to cancel the franchise in 2023, 2025 and 2028 if Xcel's emissions exceed specified carbon emission targets. The emission targets are in the years 2022, 2024 and 2027. The following chart summarizes the progression to 80 percent reduction and the specified targets.



The following table summarizes the years during which the city could cancel the franchise and resume municipalization.

Year	Reason to Cancel
2022	Failure to meet emission standard
2024	Failure to meet emission standard
2026	Any reason
2028	Failure to meet emission standard
2031	Any reason
2036	Any reason
2041	End of Franchise

Modern Grid Planning Partnership – Boulder 100 percent Renewable Electricity by 2030

Even if Xcel Energy successfully meets its carbon dioxide emissions reduction goals, the city will require additional effort to meet its goal of 100 percent renewable electricity by 2030. The city will need to devote substantial resources to the effort to decarbonize the electric supply completely. Under the agreement, the structure for this effort would be a partnership between Xcel Energy and the city to explore and pilot local efforts to create a more sustainable and 100 percent renewable electric supply, implement projects that support the transition to an equitable energy future, and result in a more resilient energy supply and system. The agreement does not require the city to expend any funds. It will allow the city and Xcel to look at the financial viability of projects, and to the extent the city decides, it will be able to decide if the project is worthy of city, company, or grant funding. The partnership would be governed by three bodies. One would be an executive team comprised of Xcel Energy and city leadership. A second would be an oversight team consisting of representatives of the operational levels of both organizations. The third group would be an advisory committee consisting of members of the community, representatives of local businesses and the University of Colorado.

The agreement defines a process for the identification of programs and projects that will drive forward bridging the gap between Xcel’s 80 percent emissions goal and the city’s 100 percent renewables goal by 2030. The vision and guiding principles that will guide the selection and design of projects and programs are:

Vision

- Boulder has long understood the importance of local climate action and has committed to rapidly transitioning to a clean energy economy and lifestyle through innovative strategies that dramatically reduce greenhouse gas emissions, enhance our community's resilience and support a vital and equitable economy. Boulder seeks to achieve its energy and climate related goals by reducing fossil fuel demand from buildings and transportation, rapidly transitioning to an energy system and economy that is powered 100 percent by renewable clean electricity with 50 percent or more of that produced locally, and prioritizing progress towards a resilient energy system that prioritizes the most vulnerable members of the community.
- Xcel Energy will be the preferred and trusted provider of the energy its customers need. As such, Xcel Energy wants to partner with Boulder to support the City of Boulder's and the community's energy vision, goals and objectives.
- City of Boulder and Xcel Energy will work to support and achieve each other's climate-stabilization visions, for the benefit of the overall City of Boulder community which includes residents and businesses. City of Boulder and Xcel Energy will separately and collaboratively pursue innovations in technology that accelerate achievement of the visions described above.
- Xcel Energy's ability to implement innovations rapidly may be constrained by regulatory requirements. Both parties will work toward identifying and minimizing and overcoming both external and internal barriers to the rapid implementation of agreed-upon projects.

Guiding Principles

- The goals of the agreement are to prioritize reducing greenhouse gas emissions associated with gas and electric consumption, electrification, resilience and equality within the City of Boulder.
- The city and Xcel Energy will work collaboratively to advance the vision and goals of both parties by sharing information, pushing innovation, and adhering to the governance structure set forth by this partnership.
- This partnership will strive to identify projects that meet Boulder's goals and could be scaled and replicated where appropriate in other Colorado communities served by Xcel Energy in the future.
- Pursuit and execution of this partnership will avoid shifting costs to other Xcel Energy customers outside of city limits, except to the extent approved and deemed reasonable, by the PUC.
- The parties further wish to utilize the partnership, where appropriate, to test and promote innovative low- and no-carbon technologies and strategies through partnerships with public and private-sector entities such as the University of Colorado and federal labs.
- Both parties agree to support efforts and collaborate when appropriate on federal and private grants and other funding models as available that help to achieve the goals and objectives set forth within the agreement.

- The city recognizes that Xcel Energy is subject to a state regulatory framework when it works to advance the goals set within the agreement. Both parties also recognize that Xcel Energy's efforts must continue to support a healthy utility company. The city plans to support related measures to the extent they are consistent with its energy future goals and Xcel Energy's efforts for regulatory change to advance the collaborative projects.

Additionally, the agreement identifies the first set of specific projects on which Xcel Energy has agreed to cooperate. These projects include developing microgrids in the city, undergrounding electrical lines and creating a net zero environment at Chautauqua, developing Alpine Balsam as a sustainable net zero community and a hydrogen energy storage project. The agreement calls for cost sharing for these efforts. It is important to note that these projects represent a beginning of the partnership activities. The near-term projects were selected and designed for their ability to unlock additional actions as they continue to be designed through the partnership structure. This "pipeline" of projects is guided by a process that begins with a visioning process and leads to ongoing execution. In this way, as projects are completed, new projects are added to the list.

Many of the potential solutions identified face statutory or regulatory barriers. The agreement would require Boulder and Xcel Energy to cooperate to seek approval for the following regulatory changes:

- Elimination or substantial increase of the state law 120 percent limitation on on-site generation.
- Develop a new tariff to effectuate the rapid conversion of bus fleets to electric buses.
- Allowance of cross-property energy sharing.
- Removal of barriers to large amounts of local distributed generation.
- Facilitation of microgrids in specific projects (Chautauqua and Alpine Balsam as the first sites selected).

Maintain Feasibility of Municipalization in the Future

The enforcement mechanism in the agreement is the city's right to cancel the franchise and resume municipalization. Stopping the effort now, after more than 10 years of effort, will inevitably set back the city's timetable. The agreement provides a structure to make resumption of the municipalization effort feasible. First, Xcel Energy agreed to a \$200 million cap which will be adjusted for inflation after year three. This cap includes acquisition of all assets and real property necessary for separation of the facilities from the Xcel system case as well as any damages for going concern and damages to the remainder. The cap also includes the price to purchase two of the six substations that serve Boulder. The cap does not include other substation assets, stranded costs, attorneys' fees, or other litigation costs. The agreement also resolves all issues with the remaining four substations. The parties have completed or are nearing completion on the

substation design engineering. It is possible that changes to the system or the substations that occur between the completion of the designs and any effort to create a municipal utility will require additional engineering work. Xcel Energy has agreed to pay the cost of any such work.

The agreement also recognizes that the September 14, 2017 and October 28, 2019 PUC orders will stand and apply to the separation of the system if the city pursues municipalization. The list of assets in the October 28, 2019 order may be used by the city in any future condemnation case, with modifications made necessary by system changes.

Undergrounding Catch-up

Under Xcel's franchises, cities are entitled to have one percent of revenues devoted to undergrounding overhead electrical lines. Xcel has made no new undergrounding payments since the city went out of franchise at the end of 2010, although there were several undergrounding projects completed after 2010 with funds accrued prior to December 2010. Under the previous franchise, the undergrounding generated over \$1 million annually. Under the potential settlement agreement, Xcel will agree to pay \$33 million for undergrounding during the 20-year franchise. To make up for the lost funds, \$16.5 million would be allocated in the first five years of the franchise.

Franchise Ballot Measure and Suspension of Municipalization Effort

To effectuate the terms of the agreement, the city will need to enter into the Franchise Agreement with Xcel. Under the city charter, a franchise requires voter approval. This agenda item is for first reading of an ordinance to place the franchise on the ballot. Second reading and public hearing is scheduled for August 20, 2020.

If the voters approve the franchise and the PUC approves it, the city will dismiss the pending actions before the Federal Energy Regulatory Commission and the Boulder District Court. There is a case in the Colorado Court of Appeals, which is fully briefed and awaiting scheduling of oral argument. That case will be dismissed. Xcel Energy will complete in-progress design work but stop all future work. Xcel Energy also will release Letters of Credit totaling \$4.3 million.

Comparison of the 2017 Settlement Proposal to the 2020 Settlement Proposal

The city and Xcel last tried to settle the municipalization efforts in 2017. City council did not accept this settlement offer. The table below offers a summary of the high points of these two proposals.

2017 Settlement Proposal	2020 Settlement Proposal
80 percent carbon reduction for the City of Boulder with city funding for generation improvements to meet the goal. No Xcel assurance.	Assurance of 80 percent carbon reduction by 2030. In both contracts and state law.

2017 Settlement Proposal	2020 Settlement Proposal
Partnership limited to a smaller number of projects between the city and Xcel.	Modern Grid Planning Partnership – Boulder 100 percent renewable electricity by 2030.
The undergrounding catch-up would be phased over the term of the 20-year franchise with much of the catch-up done at higher rates toward the end of the franchise.	Undergrounding catch-up - \$33 million - half in the first five years.
Passage of a Franchise Ballot Measure and suspension of municipalization effort.	Passage of a Franchise Ballot Measure and suspension of municipalization effort.
Opt-out of franchise at years 5, 10, and 15 for any reason.	Opt-out of franchise at years 5, 10, and 15 for any reason and, in addition, if Xcel does not meet its carbon targets in the years of 2022, 2024 and 2027.
Buyout offer - \$500 million to \$700 million.	Damages cap for assets - \$200 million for distribution system and the purchase of two substations.
Going Concern - city to pay Xcel a Going Concern payment of \$255 million to \$305 million based on time of separation.	Open issue to be negotiated or litigated in the event that the city opts out of the franchise and pursues municipalization. Would be included in the cap.
Power Purchase - after municipalization, the city would purchase power for 10 years and decline thereafter in exchange for now stranded cost.	City has the option to purchase power from Xcel to mitigate stranded costs. This issue is preserved for future negotiation or litigation if the city chooses to municipalize.
IBM allowed to stay with Xcel.	IBM will be a customer of the city utility.

Ordinance 8419 – Ordinance Approving the Granting of a Franchise

The Boulder home rule charter includes two specific requirements for the granting of a franchise. Charter Section 20 requires the city council to pass an ordinance adopting a franchise. There is a requirement that at least 60 days pass after its introduction and first reading. There is also a requirement that the ordinance has been published not less than once a week for two consecutive weeks in one daily newspaper of the city in general circulation. The city clerk will make sure the ordinance is published as anticipated by the charter. If the franchise passes at the November 3, 2020 election, staff will schedule the final reading of the ordinance granting the franchise. Proposed Ordinance 8419 can be found in **Attachment B**.

The other requirement of the Boulder home rule charter is that any franchise that is granted cannot be granted except upon the vote of the registered electors. The charter also requires that the franchisee bear the cost of the election. See Charter Section

108. The voter approval requirement will be implemented by approval of the ballot measure that is included in Ordinance 8410.

NEXT STEPS

The upcoming dates are: 1) September 1, 2020, deadline to place measures on the ballot; 2) November 3, 2020, Election Day; and 3) January 2021, the Franchise is effective if approved by the voters and PUC.

ATTACHMENTS

- A – Proposed Ordinance 8410 (with Exhibit A – Franchise Agreement)
- B – Proposed Ordinance 8419
- C – Draft Settlement Agreement
- D – Draft Energy Partnership Agreement with three attachments
- E – Draft Load Interconnection Agreement

ORDINANCE 8410

AN ORDINANCE SUBMITTING TO THE REGISTERED ELECTORS OF THE CITY OF BOULDER AT THE MUNICIPAL COORDINATED ELECTION TO BE HELD ON TUESDAY, NOVEMBER 3, 2020, THE QUESTION OF A FRANCHISE BY THE CITY OF BOULDER, COLORADO, BEING GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO, ITS SUCCESSORS AND ASSIGNS, TO FURNISH, SELL, AND DISTRIBUTE GAS AND ELECTRICITY TO THE CITY AND TO ALL PERSONS, BUSINESSES, AND INDUSTRIES WITHIN THE CITY AND THE RIGHT TO ACQUIRE, CONSTRUCT, INSTALL, LOCATE, MAINTAIN, OPERATE, AND EXTEND INTO, WITHIN, AND THROUGH SAID CITY ALL FACILITIES REASONABLY NECESSARY TO FURNISH, SELL, AND DISTRIBUTE GAS AND ELECTRICITY WITHIN THE CITY AND THE RIGHT TO MAKE REASONABLE USE OF ALL STREETS, PUBLIC EASEMENTS AND OTHER CITY PROPERTY AS HEREIN DEFINED AS MAY BE NECESSARY, AND FIXING THE TERMS AND CONDITIONS THEREOF; SETTING FORTH THE BALLOT TITLE, SPECIFYING THE FORM OF THE BALLOT AND OTHER ELECTION PROCEDURES; AND SETTING FORTH RELATED DETAILS.

THE CITY COUNCIL OF THE CITY OF BOULDER FINDS AND RECITES THE FOLLOWING:

A. Public Service Company of Colorado has applied to the city for the grant of a franchise to furnish, sell, and distribute gas and electricity to the city, its residents, businesses, and industries and to make reasonable use of the city streets, public easements, and other city property to do so.

B. Section 108 of the Boulder home rule charter provides that no franchise may be granted by the city except upon the vote of the qualified taxpaying electors.

1 C. Section 20 of the Boulder home rule charter provides that no proposed ordinance
2 granting any proposed franchise shall be put upon its final passage within 60 days after its
3 introduction, nor until it has been published not less than once a week for two consecutive weeks
4 in one daily newspaper of the city in general circulation.

5
6 D. If the qualified taxpaying electors pass the question of granting the franchise that is
7 associated with this ballot question, then the city council intends to subsequently pass an
8 ordinance meeting the requirements of Section 20 of the Boulder home rule charter to grant the
9 franchise to Public Service Company of Colorado.

10 NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY
11 OF BOULDER:
12

13 Section 1. A municipal coordinated election will be held in the City of Boulder, County
14 of Boulder and State of Colorado, on Tuesday, the 3rd day of November 2020.

15
16 Section 2. At that election there shall be submitted to the electors of the City of Boulder
17 entitled by law to vote thereon the question of whether or not a franchise shall be granted by the
18 City of Boulder to Public Service Company of Colorado, its successors and assigns, for the use
19 of city streets, public easements, and other city property to furnish, sell, and distribute gas and
20 electricity within the city under the terms and conditions of the Franchise Agreement attached
21 hereto as **Exhibit A.**

22
23 Section 3. The official ballot shall contain the following ballot title, which shall also be
24 the designation and submission clause for the question:
25

Ballot Question No. _____

PUBLIC SERVICE COMPANY FRANCHISE

SHALL THE CITY OF BOULDER GRANT A FRANCHISE TO PUBLIC SERVICE COMPANY OF COLORADO TO FURNISH, SELL, AND DISTRIBUTE GAS AND ELECTRICITY TO THE CITY AND TO ALL PERSONS, BUSINESSES, AND INDUSTRIES WITHIN THE CITY AND THE RIGHT TO MAKE REASONABLE USE OF ALL STREETS AND OTHER PUBLIC PLACES AND PUBLIC EASEMENTS AS MAY BE NECESSARY AS DESCRIBED IN ORDINANCE 8410?

For the Measure _____

Against the Measure _____

Section 4. If a majority of all the votes cast at the election on the question submitted shall be for the question, the question shall be deemed to have passed and meet the requirements for approval by the qualified registered electors in Section 108 of the Boulder home rule charter.

Section 5. After the election where the question has been deemed to have passed, city council will adopt an ordinance meeting the requirements of the Boulder home rule charter that grants the franchise to Public Service Company of Colorado.

Section 6. The city clerk of the City of Boulder shall give public notice of the election on such question as required by law.

Section 7. The officers of the city are authorized to take all action necessary or appropriate to effectuate the provisions of this ordinance.

Section 8. If any section, paragraph, clause, or provisions of this ordinance shall for any reason be held to be invalid or unenforceable, such decision shall not affect any of the remaining provisions of this ordinance.

1 Section 9. This ordinance is deemed necessary for the protection of the public health,
2 safety, and welfare of the residents of the city, and covers matters of local concern.

3 Section 10. The city council deems it appropriate that this ordinance be published by title
4 only and orders that copies of the text hereof be available in the office of the city clerk for public
5 inspection and acquisition.
6

7 INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY
8 TITLE ONLY, this 4th day of August 2020.
9

10 _____
11 Sam Weaver,
Mayor

12 Attest:
13
14

15 _____
Pamela Davis,
City Clerk
16
17
18
19
20
21
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23
24
25

1 READ ON SECOND READING, PASSED AND ADOPTED, this 20th day of
2 August 2020.

3
4 _____
5 Sam Weaver,
6 Mayor

7 Attest:

8 _____
9 Pamela Davis,
10 City Clerk
11
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FRANCHISE AGREEMENT

BETWEEN

THE CITY OF BOULDER, COLORADO

AND

PUBLIC SERVICE COMPANY OF COLORADO

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PUBLIC SERVICE COMPANY OF COLORADO

AND

THE CITY OF BOULDER, COLORADO

**ARTICLE 1
DEFINITIONS**

For the purpose of this franchise agreement (“Franchise” or “Franchise Agreement”), the following words and phrases shall have the meaning given in this Article or elsewhere in this Agreement. When not inconsistent with context, words used in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural. The word “shall” is mandatory and “may” is permissive. Words not defined in this Article or in this Franchise Agreement shall be given their common and ordinary meaning.

- §1.1 “City” refers to the City of Boulder, a Colorado home rule city .
- §1.2 “Clean Energy” means energy produced from Renewable Energy Resources (as defined below), eligible energy sources, and by means of advanced technologies that cost-effectively capture and sequester carbon emissions produced as a by-product of power generation. For purposes of this definition, “cost” means all those costs as determined by the Public Utilities Commission of the State of Colorado (“PUC”).
- §1.3 “Company” refers to Public Service Company of Colorado, a Colorado corporation, and an Xcel Energy company and its successors and assigns including affiliates or subsidiaries that undertake to perform any of the obligations under this Franchise.
- §1.4 “Company Facilities” refer to all facilities of the Company which are reasonably necessary or desirable to provide gas and/or electric service into, within and through the City, including but not limited to plants, works, systems, substations, transmission and distribution structures and systems, lines, equipment, pipes, mains, conduit, transformers, underground lines, gas compressors, meters, meter reading devices, communication and data transfer equipment, control equipment, gas regulator stations, street lights, wire, cables and poles as well as all associated appurtenances.
- §1.5 “Council” or “City Council” refers to and is the legislative body of the City.
- §1.6 “Electric Gross Revenues” refers to those amounts of money that the Company receives from the sale and/or delivery of electricity in the City, after adjusting for refunds, net write-offs of accounts, corrections, or Regulatory Adjustments (as defined below in this Article). Regulatory adjustments include, but are not limited to, credits, surcharges, refunds, and pro-forma adjustments pursuant to federal or state regulation. Electric Gross Revenues shall exclude any revenue for the sale and/or delivery of electricity to the City as a customer of the Company.
- §1.7 “Energy Conservation” means the decrease in energy requirements of specific customers during any selected time period, resulting in a reduction in end-use services.

- §1.8 “Energy Efficiency” means the decrease in energy requirements of specific customers during any selected period with end-use services of such customers held constant.
- §1.9 “Force Majeure Event” means the inability to undertake an obligation of this Franchise Agreement due to a cause, condition or event that could not be reasonably anticipated by a party, or is beyond a party’s reasonable control after exercise of best efforts to perform. Such cause, condition or event includes but is not limited to fire, strike, war, riots, terrorist acts, acts of governmental authority, acts of God, floods, epidemics, quarantines, labor disputes, unavailability or shortages of materials or equipment or failures or delays in the delivery of materials. Neither the City nor the Company shall be in breach of this Franchise if a failure to perform any of the duties under this Franchise is due to a Force Majeure Event.
- §1.10 “Gross Revenues” refers to those amounts of money the Company receives from the sale of gas and/or electricity within the City under rates authorized by the Public Utilities Commission, as well as from the transportation of gas to its customers within the City, as adjusted for refunds, net write-offs of uncollectible accounts, corrections, expense reimbursements or regulatory adjustments. Regulatory adjustments include, but are not limited to, credits, surcharges, refunds, and pro-forma adjustments pursuant to federal or state regulation. Gross Revenues shall exclude any revenues from the sale of gas or electricity to the City or the transportation of gas to the City.
- §1.11 “Industry Standards” refers to standards developed by government agencies and generally recognized organizations that engage in the business of developing utility industry standards for materials, specifications, testing, construction, repair, maintenance, manufacturing, and other facets of the electric and gas utility industries. Such agencies and organizations include, but are not limited to the U.S. Department of Transportation, the Federal Energy Regulatory Commission (FERC), the Colorado Public Utilities Commission, the American National Standards Institute (ANSI), the American Society for Testing and Materials (ASTM), the Pipeline Research Council International, Inc. (PRCI), the American Society of Mechanical Engineers (ASME), the Institute of Electric and Electronic Engineers (IEEE), the Electric Power Research Institute (EPRI), the Gas Technology Institute (GTI), the National Fire Protection Association (NFPA), and specifically includes the National Electric Safety Code (NESC).
- §1.12 “Other City Property” refers to the surface, the air space above the surface and the area below the surface of any property owned by the City or directly controlled by the City due to the City’s real property interest in the same or hereafter owned by the City, that would not otherwise fall under the definition of “Streets,” but which provides a suitable location for the placement of Company Facilities as specifically approved in writing by the City. Other City Property including Public Utility Easements. Other City Property does not include property that is defined in the Boulder City Charter as open space or park land.
- §1.13 “Private Project” refers to any project not included in the definition of Public Project.
- §1.14 “Public Project” refers to (1) any public work or improvement within the City that is wholly owned by the City; or (2) any public work or improvement within the City where at least 50 percent (50%) or more of the funding is provided by any combination of the City, the

federal government, the State of Colorado, or any Colorado county, but excluding all entities established under Title 32 of the Colorado Revised Statutes.

- §1.15 “Public Utilities Commission” or “PUC” refers to the Public Utilities Commission of the State of Colorado or other state agency succeeding to the regulatory powers of the Public Utilities Commission.
- §1.16 “Public Utility Easement” refers to any platted easement over, under, or above public or private property, expressly dedicated to, and accepted by, the City for the use of public utility companies for the placement of utility facilities, including but not limited to Company Facilities.
- §1.17 “Relocate,” “Relocation,” or “Relocated” refers to the definition assigned such terms in Section 6.9A. of this Franchise.
- §1.18 “Renewable Energy Resources” means wind, solar, and geothermal resources; energy produced from biomass from nontoxic plant matter consisting of agricultural crops or the by-products, urban wood waste, mill residue, slash, or brush, or from animal wastes and products of animal wastes, or from methane produced at landfills or as a by-product of the treatment of wastewater residuals; new hydroelectricity with a nameplate rating of 10 megawatts or less; hydroelectricity in existence on January 1, 2005 with a nameplate rating of 30 megawatts or less; fuel cells using hydrogen derived from a Renewable Energy Resource; recycled energy produced by a generation unit with a nameplate capacity of not more than 15 megawatts that converts the otherwise lost energy from the heat from exhaust stacks or pipes to electricity and that does not combust additional fossil fuel, and includes any eligible renewable energy resource as defined in § 40-2-124(1)(a), C.R.S., as the same may be amended from time to time.
- §1.19 “Residents” refers to all persons, businesses, industries, governmental agencies, including the City, and any other entity whatsoever presently located or to be hereinafter located, in whole or in part, within the territorial boundaries of the City.
- §1.20 “Streets” or “City Streets” refers to the surface, the air space above the surface and the area below the surface of any City-dedicated or City-maintained streets, alleys, bridges, roads, lanes, access easements, and other public rights-of-way within the City, which are primarily used for vehicle traffic. Streets shall not include Other City Property.
- §1.21 “Supporting Documentation” refers to all information reasonably required or needed in order to allow the Company to design and construct any work performed under the provisions of this Franchise. Supporting Documentation may include, but is not limited to, construction plans, a description of known environmental issues, the identification of critical right-of-way or easement issues, the final recorded plat for the property, the date the site will be ready for the Company to begin construction, the date gas service and meter set are needed, and the name and contact information for the City’s project manager.
- §1.22 “Tariffs” refer to those tariffs of the Company on file and in effect with the PUC or other governing jurisdiction, as amended from time to time.

§1.23 “Utility Service” refers to the sale of gas or electricity to Residents by the Company under Tariffs approved by the PUC, as well as the delivery of gas to Residents by the Company.

ARTICLE 2 GRANT OF FRANCHISE

§2.1 Grant of Franchise.

A. Grant. The City hereby grants to the Company, subject to all conditions, limitations, terms, and provisions contained in this Franchise, the non-exclusive right to make reasonable use of City Streets, Public Utility Easements (as applicable) and Other City Property:

(1) to provide Utility Service to the City and to its Residents under the Tariffs; and

(2) to acquire, purchase, construct, install, locate, maintain, operate, upgrade and extend into, within and through the City all Company Facilities reasonably necessary for the generation, production, manufacture, sale, storage, purchase, exchange, transportation, transmission and distribution of Utility Service within and through the City.

B. Street Lighting and Traffic Signal Lighting Service. Street lighting service and traffic signal lighting service within the City shall be governed by Tariffs on file with the PUC.

§2.2 Conditions and Limitations.

A. Scope of Franchise. The grant of this Franchise shall extend to all areas of the City as it is now or hereafter constituted that are within the Company’s PUC-certificated service territory; however, nothing contained in this Franchise shall be construed to authorize the Company to engage in activities other than the provision of Utility Service.

B. Subject to City Usage. The Company’s right to make reasonable use of City Streets to provide Utility Service to the City and its Residents under this Franchise is subject to and subordinate to any City usage of said Streets.

C. Prior Grants Not Revoked. This grant and Franchise is not intended to and does not revoke any prior license, grant, or right to use the Streets, Other City Property or Public Utility Easements, and such licenses, grants or rights of use are hereby affirmed.

D. Franchise Not Exclusive. The rights granted by this Franchise are not, and shall not be deemed to be, granted exclusively to the Company, and the City reserves the right to make or grant a franchise to any other person, firm, or corporation.

§2.3 Effective Date and Term. This Franchise shall take effect on January 1, 2021 (the “**Effective Date**”) and shall supersede any prior franchise grants to the Company by the City. This Franchise shall terminate on December 31, 2040, unless extended by mutual consent or as provided below.

§2.4 Opt-Out - Anniversary. –The City may, in its sole, absolute, and arbitrary discretion, without any condition, prerequisite, or qualification whatsoever, terminate this Franchise Agreement effective on each the fifth, tenth, and fifteenth anniversaries of the Effective Date (each a “Discretionary Termination Date”). The City may effect such termination by, on or before December 31 immediately before a Discretionary Termination Date, either (i) the Boulder City Council duly adopting an ordinance by affirmative vote of no less than two-thirds of its members approving such termination, or (ii) the passage, at a special or general election, by the electorate of the City of Boulder of a ballot measure authorizing an ordinance effecting such termination.~~is authorized to end this Franchise, by either a vote of six city council members or by a majority vote of the qualified electors of the City at the next available regular or special election. The City will notify the Company that it will end the franchise, if by vote of the city council or of its intent to refer the question to the voters at the next scheduled regular or special election, within 30 days after the five, 10, or 15-year anniversary of the date the PUC approves this Franchise.~~

§2.5 Opt-Out - GHG Progress. ~~The Company is required by C.R.S. §§ 25-7-105 and 40-2-125.5 to reduce the greenhouse gas emissions associated with electricity sales by 80 percent from 2005 levels. The Company will file a clean energy plan in 2021 with its electric resource plan to demonstrate its pathway to meet the 80 percent reduction in carbon dioxide emissions by 2030 and identify pathways to provide customers with energy generated from 100 percent clean energy sources by 2050.~~

(a) The “2030 Commitment” shall mean, collectively, (i) the filing by the Company with the Colorado Public Utilities Commission on or before March 31, 2021, and to thereafter diligently seek approval of, a clean energy plan pursuant to C.R.S. Section 25-7-105 and 40-2-125.5 to reduce greenhouse gas emissions associated with the generation of electricity sold to the Company’s Colorado electricity customers by 80 percent (from 2005 levels) by 2030 and which seeks to achieve providing its Colorado customers with energy generated from 100% percent (100%) clean energy sources by 2050; and (ii) following, approval thereof by the Colorado Public Utilities Commission, to thereafter diligently and consistently implement such clean energy plan, as approved.

(b) The “Benchmarks” shall mean greenhouse gas emissions directly associated with the generation of electricity sold to the Company’s Colorado electricity customers in each of the following calendar years, as reported to The Climate Registry through its Electric Power Sector Protocol and its Electric Power Sector Protocol, consistent with Environmental Protection Agency Greenhouse Gas Mandatory Reporting Rule in 40 CFR Part 98, in the following identified amounts for the following calendar years:

~~The City may end this Franchise if the Company does not meet the emission targets listed below. The Company agrees to meet the following system-wide emission reduction targets (measured in absolute greenhouse emissions from a 2005 baseline) associated with its Colorado-based generation and operations.~~

In the calendar year 2022: no more than 16.6 millionM short tons CO₂e

In the calendar year 2024: no more than 13.6 millionM short tons CO₂e

In the calendar year 2027: no more than 11.5 millionM short tons CO₂e

In the calendar year 2030: no more than 6.9 millionM short tons CO₂e

~~The Company's emissions will be verified on an annual basis through reporting outlets such as the Climate Registry, company reports, and state or federal regulatory filings. The decision to end the franchise will be made during the years 2023, 2025, and 2028 by the city council or by a vote of the people as describe in paragraph 2.4. above to take place within the same year. For good cause shown and with mutual agreement between the parties, these thresholds may be adjusted due to extraordinary circumstances~~

(c) . In the event of the failure of Company to either (i) comply with the 2030 Commitment, and to cure such non-compliance within 90 days after delivery of written notice thereof by the City to the Company; or (ii) meet any of the Benchmarks, then, in either event, the City may, at its option, terminate this Franchise Agreement. With mutual agreement between the parties, the Benchmarks may be adjusted due to extraordinary circumstances.

(d) The "Trigger Date" shall mean (i) in the case of a failure to comply with the 2030 Commitment, the date which is 90 days after the delivery of notice by the City contemplated by subsection (c)(i); and (ii) in the case of a failure to meet any of the Benchmarks, the date of publication of the relevant Benchmark.

(e) The termination contemplated by this section 2.5 may be effected by the City at any time during the 16-month period after the relevant Trigger Date by either (i) the Boulder City Council duly adopting an ordinance by affirmative vote of no less than two-thirds of its members approving such termination, or (ii) the passage, at a special or general election, by the electorate of the City of Boulder of a ballot measure authorizing an ordinance effecting such termination.

~~§2.5~~§2.6 Special Circumstances. The parties agree and acknowledge that there are special circumstances that warrant these and other provisions throughout this Franchise Agreement, and the City has provided valuable consideration for such.

ARTICLE 3 CITY POLICE POWERS

§3.1 Police Powers. The Company expressly acknowledges the City's right to adopt, from time to time, in addition to the provisions contained herein, such laws, including ordinances and regulations, as it may deem necessary in the exercise of its governmental powers. If the City considers making any substantive changes in its local codes or regulations that in the City's reasonable opinion will significantly impact the Company's operations in the City's Streets, Public Utility Easements and Other City Property, it will make a good faith effort to advise the Company of such consideration; provided, however, that lack of notice shall not be justification for the Company's non-compliance with any applicable local requirements.

- §3.2 Regulation of Streets and Other City Property. The Company expressly acknowledges the City's right to enforce regulations concerning the Company's access to or use of the Streets, Public Utility Easements, and/or Other City Property, including requirements for permits.
- §3.3 Compliance with Laws. The Company shall promptly and fully comply with all laws, regulations, permits and orders lawfully enacted by the City that are consistent with Industry Standards. Nothing herein provided shall prevent the Company from legally challenging or appealing the enactment of any laws, regulations, permits and orders enacted by the City.

ARTICLE 4 FRANCHISE FEE

§4.1 Franchise Fee.

A. Fee. In consideration for this Franchise Agreement, which provides the certain terms related to the Company's use of City Streets, Public Utility Easements and Other City Property, which are valuable public properties acquired and maintained by the City at the expense of its Residents, and in recognition of the fact that the grant to the Company of this Franchise is a valuable right, the Company shall pay the City a sum equal to three percent (3%) of Gross Revenues (the "Franchise Fee"). The Company shall collect the Franchise Fee from a surcharge upon City Residents who are customers of the Company.

B. Obligation in Lieu of Franchise Fee. In the event that the Franchise Fee specified herein is declared void for any reason by a court of competent jurisdiction, unless prohibited by law, the Company shall be obligated to pay the City, at the same times and in the same manner as provided in this Franchise, an aggregate amount equal to the amount that the Company would have paid as a Franchise Fee as partial consideration for use of the City Streets, Public Utility Easements and Other City Property. Such payments shall be made in accordance with applicable provisions of law. Further, to the extent required by law, the Company shall collect the amounts agreed upon through a surcharge upon Utility Service provided to City Residents who are customers of the Company.

C. Changes in Utility Service Industries. The City and the Company recognize that utility service industries are the subject of restructuring initiatives by legislative and regulatory authorities, and are also experiencing other changes as a result of mergers, acquisitions, and reorganizations. Some of such initiatives and changes may have an adverse impact upon the Franchise Fee revenues provided for herein. In recognition of the length of the term of this Franchise, the Company agrees that in the event of any such initiatives or changes and to the extent permitted by law, upon receiving a written request from the City, the Company will cooperate with and assist the City in making reasonable modifications of this Franchise Agreement in an effort to provide that the City receives an amount in Franchise Fees or some other form of compensation that is the same amount of Franchise fees paid to the City as of the date that such initiatives and changes adversely impact Franchise Fee revenues.

D. Utility Service Provided to the City. No Franchise Fee shall be charged to the City for Utility Service provided directly or indirectly to the City for its own consumption,

including street lighting service and traffic signal lighting service, unless otherwise directed by the City in writing and in a manner consistent with Company Tariffs.

§4.2 Remittance of Franchise Fee.

A. Remittance Schedule. Franchise Fees shall be remitted by the Company to the City as directed by the City in monthly installments not more than 30 days following the close of each calendar month.

B. Correction of Franchise Fee Payments. In the event that either the City or the Company discovers that there has been an error in the calculation of the Franchise Fee payment to the City, either party shall provide written notice of the error to the other party, subject to the following sentence: If the party receiving written notice of the error does not agree with the written notice of error, that party may challenge the written notice of error pursuant to Section 4.2D. of this Franchise; otherwise, the error shall be corrected in the next monthly payment. However, subject to the terms of the Tariff, if the error results in an overpayment of the Franchise Fee to the City, and said overpayment is in excess of ~~Five~~ ~~Thousand~~ ~~Dollars~~ (\$5,000.00), correction of the overpayment by the City shall take the form of a credit against future Franchise Fees and shall be spread over the same period the error was undiscovered or the City shall make a refund payment to the Company. If such period would extend beyond the term of this Franchise, the Company may elect to require the City to provide it with a refund instead of a credit, with such refund to be spread over the same period the error was undiscovered, even if the refund will be paid after the termination date of this Franchise. All Franchise Fee underpayments shall be corrected in the next monthly payment, together with interest computed at the rate set by the PUC for customer security deposits held by the Company, from the date when due until the date paid. Subject to the terms of the Tariffs, in no event shall either party be required to fund or refund any overpayment or underpayment made as a result of a Company error which occurred more than five (5) years prior to the discovery of the error.

C. Audit of Franchise Fee Payments.

(1) Company Audit. At the request of the City, every three (3) years commencing at the end of the third calendar year of the term of this Franchise, the Company shall conduct an internal audit, in accordance with the Company's auditing principles and policies that are applicable to electric and gas utilities that are developed in accordance with the Institute of Internal Auditors, to investigate and determine the correctness of the Franchise Fees paid to the City. Such audit shall be limited to the previous three (3) calendar years. Within a reasonable period of time after the audit, the Company shall provide a written report to the city clerk summarizing the testing procedures followed along with any potential findings.

(2) City Audit. If the City disagrees with the results of the Company's audit, and if the parties are not able to informally resolve their differences, the City may conduct its own audit at its own expense, in accordance with generally accepted auditing principles applicable to electric and gas utilities, and the Company shall cooperate by providing the City's auditor with non-confidential information that would be required to be disclosed under applicable state sales and use tax laws.

(3) Underpayments. If the results of a City audit conducted pursuant to Subsection 4.2C.(2) concludes that the Company has underpaid the City by five percent (5%) or more, in addition to the obligation to pay such amounts to the City, the Company shall also pay all reasonable costs of the City's audit. The Company shall not be responsible for any errors in third party data that is used in association with audits, including without limitation, Geotax data.

D. Fee Disputes. Either party may challenge any written notification of error as provided for in Section 4.2B. of this Franchise by filing a written notice to the other party within 30 days of receipt of the written notification of error. The written notice shall contain a summary of the facts and reasons for the party's notice. The parties shall make good faith efforts to resolve any such notice of error before initiating any formal legal proceedings for the resolution of such error.

E. Reports. To the extent allowed by law, upon written request by the City, but not more frequently than once each year, the Company shall supply the City with a list of the names and addresses of registered natural gas suppliers and brokers of natural gas that utilize Company Facilities to sell or distribute natural gas in the City during the preceding 12-month period. The Company shall not be required to disclose any confidential or proprietary information.

§4.3 Franchise Fee Payment Not in Lieu of Permit or Other Fees. Payment of the Franchise Fee by the Company to the City does not exempt the Company from any other lawful tax or fee imposed generally upon persons doing business within the City, except that the Franchise Fee provided for herein shall be in lieu of any occupation, occupancy or similar tax or fee for the Company's use of City Streets, Public Utility Easements or Other City Property under the terms set forth in this Franchise. Notwithstanding anything in this Section to the contrary, the City reserves the right to adopt and implement lawful taxes or fees to fund city energy related projects.

ARTICLE 5 ADMINISTRATION OF FRANCHISE

§5.1 City Designee. The City shall designate in writing to the Company an official or officials having full power and authority to administer this Franchise ("City Designee" or "City Designees"). The City may also designate one or more City representatives to act as the primary liaison with the Company as to particular matters addressed by this Franchise and shall provide the Company with the names and telephone numbers of said City Designees. The City may change these designations by providing written notice to the Company. The City's Designees shall have the right, at all reasonable times and with reasonable notice to the Company, to inspect any Company Facilities in City Streets, Public Utility Easements, and Other City Property.

§5.2 Company Designee. The Company shall designate a representative to act as the primary liaison with the City and shall provide the City with the name, address, and telephone number for the Company's representative under this Franchise ("Company Designee"). The Company may change its designation by providing written notice to the City. The

City shall use the Company Designee to communicate with the Company regarding Utility Service and related service needs for City facilities.

- §5.3 Coordination of Work. Company and City agree to coordinate their activities in City Streets, Public Utility Easements and Other City Property. The City and the Company will meet annually upon the written request of the City Designee to exchange their respective short-term and long-term forecasts and/or work plans for construction and other similar work which may affect City Streets, including but not limited to any planned City Streets paving projects. The City and Company shall hold such meetings as either deems necessary to exchange additional information with a view toward coordinating their respective activities in those areas where such coordination may prove beneficial and so that the City will be assured that all City laws, rules and regulations, as well as all applicable provisions of this Franchise, applicable building and zoning codes, and applicable City air and water pollution regulations are complied with, and that aesthetic and other relevant planning principles have been given due consideration.

ARTICLE 6 SUPPLY, CONSTRUCTION, AND DESIGN

- §6.1 Purpose. The Company acknowledges the critical nature of the municipal services performed or provided by the City to the Residents that require the Company to provide prompt and reliable Utility Service and the performance of related services for City facilities. The City and the Company wish to provide for certain terms and conditions under which the Company will provide Utility Service and perform related services for the City in order to facilitate and enhance the operation of City facilities. They also wish to provide for other processes and procedures related to the provision of Utility Service to the City.
- §6.2 Supply. Subject to the jurisdiction of the PUC, the Company shall take all reasonable and necessary steps to provide a sufficient supply of gas and electricity to Residents at the lowest reasonable cost consistent with reliable supplies.
- §6.3 Charges to the City for Service to City Facilities. No charges to the City by the Company for Utility Service (other than gas transportation which shall be subject to negotiated contracts) shall exceed the lowest charge for similar service or supplies provided by the Company to any other similarly situated customer of the Company. The parties acknowledge the jurisdiction of the PUC over the Company's regulated intrastate electric and gas rates. All charges to the City shall be in accord with the Tariffs.

§6.4 Restoration of Service.

A. Notification. The Company shall provide to the City daytime and nighttime telephone numbers of a Company Designee from whom the City may obtain status information from the Company on a 24-hour basis concerning interruptions of Utility Service in any part of the City.

B. Restoration. In the event the Company's gas system or electric system within the City, or any part thereof, is partially or wholly destroyed or incapacitated, the Company shall use due diligence to restore such system to satisfactory service within the shortest practicable period of time, or provide a reasonable alternative to such system if the Company elects not to restore such system.

§6.5 Obligations Regarding Company Facilities.

A. Company Facilities. All Company Facilities within City Streets and Other City Property shall be maintained in good repair and condition.

B. Company Work within the City. All work within City Streets and Other City Property performed or caused to be performed by the Company shall be performed:

- (1) in a high-quality manner that is in accordance with Industry Standards;
- (2) in a timely and expeditious manner;
- (3) in a manner that reasonably minimizes inconvenience to the public;
- (4) in a cost-effective manner, which may include the use of qualified contractors; and
- (5) in accordance with all applicable City laws, ordinances and regulations that are consistent with Industry Standards and the Tariffs.

C. No Interference with City Facilities. Company Facilities shall not unreasonably interfere with any City facilities, including water facilities, sanitary or storm sewer facilities, communications facilities, or other City uses of the Streets, Public Utility Easements or Other City Property. Company Facilities shall be installed and maintained in City Streets, Public Utility Easements, and Other City Property so as to reasonably minimize interference with other property, trees, and other improvements and natural features in and adjoining the Streets and Other City Property in light of the Company's obligation under Colorado law to provide safe and reliable utility facilities and services.

D. Permit and Inspection. The installation, renovation, and replacement of any Company Facilities in the City Streets, Public Utility Easements, or Other City Property by or on behalf of the Company shall be subject to permit, inspection and approval by the City in accordance with applicable City laws. Such permitting, inspection and approval may include, but shall not be limited to, the following matters: location of Company Facilities, cutting and pruning of trees and shrubs and disturbance of pavement, sidewalks and surfaces of City Streets, Public Utility Easements, or Other City Property; provided,

however, the Company shall have the right to cut, prune, and/or remove vegetation in accordance with its standard vegetation management requirements and procedures. The Company agrees to cooperate with the City in conducting inspections and shall promptly perform any remedial action lawfully required by the City pursuant to any such inspection that is consistent with Industry Standards.

E. Compliance. Subject to the provisions of Section 3.3 above, the Company and all of its contractors shall comply with the requirements of applicable municipal laws, ordinances, regulations, permits, and standards, including but not limited to requirements of all building and zoning codes, and requirements regarding curb and pavement cuts, excavating, digging, and other construction activities. The Company shall use commercially reasonable efforts to require that its contractors working in City Streets, Public Utility Easements, and Other City Property hold the necessary licenses and permits required by law.

F. Increase in Voltage. The Company shall reimburse the City for the cost of upgrading the electrical system or facility of any City building or facility that uses Utility Service where such upgrading is solely caused or occasioned by the Company's decision to increase the voltage of delivered electrical energy. This provision shall not apply to voltage increases required by law, including but not limited to a final order of the PUC, or voltage increases requested by the City.

§6.6 As-Built Drawings.

A. Within 30 days after written request of the City designee, but no sooner than 14 days after project completion, the Company shall commence its internal process to permit the Company to provide, on a project by project basis, as-built drawings of any Company Facility installed within the City Streets or contiguous to the City Streets.

B. If the requested information must be limited or cannot be provided pursuant to regulatory requirements, the Company shall promptly notify the City of such restrictions. The City acknowledges that the requested information is confidential information of the Company and the Company asserts that disclosure to members of the public would be contrary to the public interest. Accordingly, the City shall deny the right of inspection of the Company's confidential information as set forth in § 24-72-204(3)(a)(IV), C.R.S., as may be amended from time to time (the "Open Records Act"). If an Open Records Act request is made by any third party for confidential or proprietary information that the Company has provided to the City pursuant to this Franchise, the City will immediately notify the Company of the request and shall allow the Company to defend such request at its sole expense, including filing a legal action in any court of competent jurisdiction to prevent disclosure of such information. In any such legal action the Company shall join the person requesting the information and the City. In no circumstance shall the City provide to any third-party confidential information provided by the Company pursuant to this Franchise without first conferring with the Company. Provided the City complies with the terms of this Section, the Company shall defend, indemnify and hold the City harmless from any claim, judgment, costs or attorney fees incurred in participating in such proceeding.

C. As used in this Section, as-built drawings refers to hard copies of the facility drawings as maintained in the Company's business records and shall not include information maintained in the Company's geographical information system. The Company shall not be required to create drawings that do not exist at the time of the request.

§6.7 Excavation and Construction. The Company shall be responsible for obtaining, paying for, and complying with all applicable permits, in the manner required by the laws, ordinances, and regulations of the City, to the extent consistent with Industry Standards. Upon the Company submitting a construction design plan, the City shall promptly and fully advise the Company in writing of all requirements for the restoration of City Streets in advance of Company excavation projects in City Streets, based upon the design submitted.

§6.8 Restoration. Subject to the provisions of Section 6.5D. of this Franchise Agreement, when the Company performs any work in or affecting the City Streets, Public Utility Easement, or Other City Property, it shall, at its own expense, promptly remove any obstructions placed thereon or therein by the Company and restore such City Streets, Public Utility Easements, or Other City Property to a condition that is substantially the same as existed before the work and that meets applicable City standards. If weather or other conditions do not permit the complete restoration required by this Section, the Company may with the approval of the City, temporarily restore the affected City Streets, Public Utility Easements, or Other City Property, provided that such temporary restoration is not at the City's expense and provided further that the Company promptly undertakes and completes the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Upon the request of the City, the Company shall restore the Streets, Public Utility Easements, or Other City Property to a better condition than existed before the Company work was undertaken, provided that the City shall be responsible for any incremental costs of such restoration not required by then-current City standards, and provided the City seeks and/or grants, as applicable, any additional required approvals. If the Company fails to promptly restore the City Streets or Other City Property as required by this Section, and if, in the reasonable discretion of the City, immediate action is required for the protection of public health, safety or welfare, the City may restore such Streets, Public Utility Easements, or Other City Property or remove the obstruction therefrom; provided however, City actions do not interfere with Company Facilities. The Company shall be responsible for the actual cost incurred by the City to restore such City Streets or Other City Property or to remove any obstructions therefrom. In the course of its restoration of City Streets, Public Utility Easements or Other City Property under this Section, the City shall not perform work on Company Facilities unless specifically authorized by the Company in writing on a project-by-project basis and subject to the terms and conditions agreed to in such authorization.

§6.9 Relocation of Company Facilities.

A. Relocation Obligation. The Company shall temporarily or permanently relocate, change or alter the position of any Company Facility (collectively, "Relocate(s)," "Relocation(s)" or "Relocated") in City Streets or Other City Property at no cost or expense to the City whenever such Relocation is necessary for the completion of any Public Project. In the case of Relocation that is necessary for the completion of any Public Project in a Public Utility Easement, the Company shall not be responsible for any Relocation costs.

In the event of any Relocation contemplated pursuant to this Section 6.9A., the Company and the City agree to cooperate on the location and Relocation of the Company Facilities in the City Streets or Other City Property in order to achieve Relocation in the most efficient and cost-effective manner possible. Notwithstanding the foregoing, once the Company has Relocated any Company Facility at the City's direction, if the City requests that the same Company Facility be Relocated within two (2) years, the subsequent Relocation shall not be at the Company's expense. Nothing provided herein shall prevent the Company from obtaining reimbursement of its Relocation costs from third parties.

B. Private Projects. Subject to Section 6.9F., the Company shall not be responsible for the expenses of any Relocation required by Private Projects, and the Company has the right to require the payment of estimated Relocation expenses from the party causing, or responsible for, the Relocation before undertaking the Relocation.

C. Relocation Performance. The Relocations set forth in Section 6.9A. of this Franchise shall be completed within a reasonable time, not to exceed 120 days from the later of the date on which the City designee requests, in writing, that the Relocation commence, or the date when the Company is provided all Supporting Documentation. The Company shall receive an extension of time to complete a Relocation where the Company's performance was delayed due to a Force Majeure Event or the failure of the City to provide adequate Supporting Documentation. The Company has the burden of presenting evidence to reasonably demonstrate the basis for the delay. Upon written request of the Company, the City may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold or condition any such extension.

D. City Revision of Supporting Documentation. Any revision by the City of Supporting Documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding Company Facility Relocation shall be deemed good cause for a reasonable extension of time to complete the Relocation under this Franchise.

E. Completion. Each such Relocation shall be complete only when the Company actually Relocates the Company Facilities, restores the Relocation site in accordance with Section 6.9 of this Franchise or as otherwise agreed with the City, and properly removes or abandons on site all unused Company Facilities, equipment, material and other impediments. "Unused" for the purposes of this Franchise shall mean that the Company is no longer using the Company Facilities in question and has no plans to use the Company Facilities in the foreseeable future.

F. Scope of Obligation. Notwithstanding anything to the contrary in this Franchise, the Company shall not be required to Relocate any Company Facilities from property (a) owned by the Company in fee; or (b) in which the Company has a property right, grant or interest, including without limitation an easement.

G. Underground Relocation. Underground Company Facilities shall be Relocated underground. Above ground Company Facilities shall be Relocated above ground unless the Company is paid for the incremental amount by which the underground cost would

exceed the above ground cost of Relocation, or the City requests that such additional incremental cost be paid out of available funds under Article 11 of this Franchise.

H. Coordination.

(1) When requested in writing by the City Designee or the Company, representatives of the City and the Company shall meet to share information regarding anticipated projects which will require Relocation of Company Facilities in City Streets, Public Utility Easements, and/or Other City Property. Such meetings shall be for the purpose of minimizing conflicts where possible and to facilitate coordination with any reasonable timetable established by the City for any Public Project.

(2) The City shall make reasonable best efforts to provide the Company with two (2) years' advance notice of any planned Street repaving. The Company shall make reasonable best efforts to complete any necessary or anticipated repairs or upgrades to Company Facilities that are located in the Streets within the two-year period if practicable.

I. Proposed Alternatives or Modifications. Upon receipt of written notice of a required Relocation, the Company may propose an alternative to or modification of the Public Project requiring the Relocation in an effort to mitigate or avoid the impact of the required Relocation of Company Facilities. The City shall in good faith review the proposed alternative or modification. The acceptance of the proposed alternative or modification shall be at the discretion of the City. In the event the City accepts the proposed alternative or modification, the Company agrees to promptly compensate the City for all additional costs, expenses or delay that the City reasonably determines resulted from the implementation of the proposed alternative.

- §6.10 New or Modified Service Requested by City. The conditions under which the Company shall install new or modified Utility Service to the City as a customer shall be governed by this Franchise and the Company's Tariffs.
- §6.11 Service to New Areas. If the territorial boundaries of the City are expanded during the term of this Franchise, the Company shall, to the extent permitted by law, extend service to Residents in the expanded area at the earliest practicable time provided the expanded area is within the Company's PUC-certificated service territory. Service to the expanded area shall be in accordance with the terms of the Tariffs and this Franchise, including the payment of Franchise Fees.
- §6.12 City Not Required to Advance Funds if Permitted by Tariffs. Upon receipt of the City's authorization for billing and construction, the Company shall install Company Facilities to provide Utility Service to the City as a customer, without requiring the City to advance funds prior to construction. The City shall pay for the installation of Company Facilities once completed in accordance with the Tariffs. Notwithstanding anything to the contrary, the provisions of this Section allowing the City to not advance funds prior to construction shall only apply to the extent permitted by the Tariffs.

- §6.13 Technological Improvements. The Company shall use its best efforts to incorporate, as soon as practicable, technological advances in its equipment and service within the City when such advances are technically and economically feasible and are safe and beneficial to the City and its Residents.

ARTICLE 7 RELIABILITY

- §7.1 Reliability. The Company shall operate and maintain Company Facilities efficiently and economically, in accordance with Industry Standards, and in accordance with the standards, systems, methods and skills consistent with the provision of adequate, safe and reliable Utility Service.
- §7.2 Franchise Performance Obligations. The Company recognizes that, as part of its obligations and commitments under this Franchise, the Company shall carry out each of its performance obligations in a timely, expeditious, efficient, economical and workmanlike manner.
- §7.3 Reliability Reports. Upon written request, the Company shall provide the City with a report regarding the reliability of Company Facilities and Utility Service.

ARTICLE 8 COMPANY PERFORMANCE OBLIGATIONS

- §8.1 New or Modified Service to City Facilities. In providing new or modified Utility Service to City facilities, the Company agrees to perform as follows:
- A. Performance. The Company shall complete each project requested by the City within a reasonable time. The parties agree that a reasonable time shall not exceed 180 days from the date upon which the City Designee makes a written request and provides the required Supporting Documentation for all Company Facilities other than traffic facilities. The Company shall be entitled to an extension of time to complete a project where the Company's performance was delayed due to a Force Majeure Event. Upon request of the Company, the City Designee may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension.
- B. City Revision of Supporting Documentation. Any revision by the City of Supporting Documentation provided to the Company that causes the Company to substantially redesign and/or substantially change its plans regarding new or modified service to City facilities shall be deemed good cause for a reasonable extension of time to complete the Relocation under this Franchise.
- C. Completion/Restoration. Each such project shall be complete only when the Company actually provides the service installation or modification required, restores the project site in accordance with the terms of this Franchise or as otherwise agreed with the City and properly removes or abandons on site any unused Company Facilities, equipment, material and other impediments.

§8.2 Adjustments to Company Facilities. The Company shall perform adjustments to Company Facilities that are consistent with Industry Standards, including manhole rings and other appurtenances in Streets and Other City Property, to accommodate City Street maintenance, repair and paving operations at no cost to the City. In providing such adjustments to Company Facilities, the Company agrees to perform as follows:

A. Performance. The Company shall complete each requested adjustment within a reasonable time, not to exceed 30 days from the date upon which the City makes a written request and provides to the Company all information reasonably necessary to perform the adjustment. The Company shall be entitled to an extension of time to complete an adjustment where the Company's performance was delayed due to a Force Majeure Event. Upon request of the Company, the City may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension.

B. Completion/Restoration. Each such adjustment shall be complete only when the Company actually adjusts and, if required, readjusts, Company Facilities to accommodate City operations in accordance with City instructions following City paving operations.

C. Coordination. As requested by the City or the Company, representatives of the City and the Company shall meet regarding anticipated Street maintenance operations which will require such adjustments to Company Facilities in Streets or Other City Property. Such meetings shall be for the purpose of coordinating and facilitating performance under this Section.

§8.3 Third Party Damage Recovery.

A. Damage to Company Facilities. If any individual or entity damages any Company Facilities, to the extent permitted by law, the City will notify the Company of any such incident of which it has knowledge and will provide to the Company within a reasonable time all pertinent information within its possession regarding the incident and the damage, including the identity of the responsible individual or entity.

B. Damage to Company Facilities for which the City is Responsible. If any individual or entity damages any Company Facilities for which the City is obligated to reimburse the Company for the cost of the repair or replacement, to the extent permitted by law, the Company will notify the City of any such incident of which it has knowledge and will provide to the City within a reasonable time all pertinent information within its possession regarding the incident and the damage, including the identity of the responsible individual or entity.

C. Meeting. The Company and the City agree to meet periodically upon written request of either party for the purpose of developing, implementing, reviewing, improving and/or modifying mutually beneficial procedures and methods for the efficient gathering and transmittal of information useful in recovery efforts against third parties for damaging Company Facilities.

ARTICLE 9 BILLING AND PAYMENT

§9.1 Billing for Utility Services.

A. Monthly Billing. Unless otherwise provided in the Tariffs, the rules and regulations of the PUC, or the Public Utility Law, the Company shall render bills monthly to the offices of the City for Utility Service and other related services for which the Company is entitled to payment.

B. Address for Billing. Billings for service rendered during the preceding month shall be sent to the person(s) designated by the City and payment for same shall be made as prescribed in this Franchise and the applicable Tariffs.

C. Supporting Documents. To the extent requested by the City, the Company shall provide all billings and any underlying Supporting Documentation reasonably requested by the City in an editable and manipulatable electronic format that is acceptable to the Company and the City.

D. Annual Meetings. The Company agrees to meet with the City Designee on a reasonable basis at the City's request, but no more frequently than once a year, for the purpose of developing, implementing, reviewing, and/or modifying mutually beneficial and acceptable billing procedures, methods, and formats which may include, without limitation, electronic billing and upgrades or beneficial alternatives to the Company's current most advanced billing technology, for the efficient and cost-effective rendering and processing of such billings submitted by the Company to the City.

§9.2 Payment to City. In the event the City determines after written notice to the Company that the Company is liable to the City for payments, costs, expenses or damages of any nature, and subject to the Company's right to challenge such determination, the City may deduct all monies due and owing the City from any other amounts currently due and owing the Company. Upon receipt of such written notice, the Company may request a meeting between the Company's designee and a designee of the City to discuss such determination. The City agrees to attend such a meeting. As an alternative to such deduction and subject to the Company's right to challenge, the City may bill the Company for such assessment(s), in which case, the Company shall pay each such bill within 30 days of the date of receipt of such bill unless it challenges the validity of the charge. If the Company challenges the City determination of liability, the City shall make such payments to the Company for Utility Service received by City pursuant to the Tariffs until the challenge has been finally resolved.

ARTICLE 10 USE OF COMPANY FACILITIES

§10.1 City Use of Company Electric Distribution Poles. The City shall be permitted to make use of Company electric distribution poles in the City, without a use fee for the placement of City equipment or facilities necessary to serve a legitimate police, fire, emergency, public safety or traffic control purpose. The City shall notify the Company in advance and in

writing of its intent to use Company's electric distribution poles, and the nature of such use, unless it is impracticable to provide such advance notice because of emergency circumstances, in which event the City shall provide such notice as soon as practicable. The City shall be responsible for costs associated with modifications to Company electric distribution poles to accommodate the City's use of such Company electric distribution poles and for any electricity used. No such use of Company electric distribution poles may occur if it would constitute a safety hazard or would interfere with the Company's use of Company Facilities. Any such City use must comply with the National Electric Safety Code, Industry Standards, and all other applicable laws, rules and regulations.

- §10.2 Third Party Use of Company Electric Distribution Poles. If requested in writing by the City, the Company may allow other companies who hold franchises, or otherwise have obtained consent from the City to use the Streets, to utilize Company electric distribution poles in City Streets and Other City Property, subject to the Tariffs, for the placement of their facilities upon approval by the Company and agreement upon reasonable terms and conditions, including payment of fees established by the Company. No such use shall be permitted if it would constitute a safety hazard or would interfere with the Company's use of Company Facilities. The Company shall not be required to permit the use of Company electric distribution poles for the provision of utility service except as otherwise required by law.
- §10.3 City Use of Company Transmission Rights-of-Way. The Company shall offer to grant to the City use of transmission rights-of-way which it now, or in the future, owns in fee within the City for trails, parks and open space on terms comparable to those offered to other municipalities; provided, however, that the Company shall not be required to make such an offer in any circumstance where such use would constitute a safety hazard or would interfere with the Company's use of the transmission right-of-way. In order to exercise this right, the City must make specific, advance written request to the Company for any such use and must enter such written agreements as the Company may reasonably require.
- §10.4 Emergencies. Upon written request, the Company shall assist the City in developing an emergency management plan that is consistent with Company policies. The City and the Company shall work cooperatively with each other in any emergency or disaster situation to address the emergency or disaster.

ARTICLE 11

UNDERGROUNDING OF OVERHEAD FACILITIES

- §11.1 Underground Electrical Lines in New Areas. Upon payment to the Company of the charges provided in the Tariffs or the equivalent, the Company shall place all newly constructed electrical distribution lines in newly developed areas of the City underground in accordance with applicable laws, regulations and orders of the City. Such underground construction shall be consistent with Industry Standards.

§11.2 Underground Conversion at Expense of Company.

A. Underground Conversion Program. The Company shall budget and allocate an annual amount, equivalent to one percent (1%) of the preceding year's Electric Gross Revenues, for the purpose of undergrounding its existing overhead electric distribution facilities located in City Streets (excluding privately owned electrical equipment, Public Utility Easements, and Other City Property within the City, as may be requested by the City Designee (the "Underground Program"), so long as the underground conversion does not result in end use customers of the Company incurring any costs related to the conversion and does not require the Company to obtain any additional land use rights. If the City requires Relocation of overhead electric facilities in the Streets and Other City Property and the Company determines that there is not adequate room within the Streets and Other City Property to relocate the Facilities overhead, the Company may relocate the Facilities underground and may charge the cost of undergrounding to the Underground Program.

B. Unexpended Portion and Advances. Any unexpended portion of the Underground Program available for undergrounding Facilities within the City that is unused within a calendar year shall be carried over to succeeding years within the term of the Franchise Agreement and, in addition, upon request by the City, the Company agrees to advance and expend amounts anticipated to be available under the preceding paragraph for up to three (3) years in advance provided at least three (3) years remain under the term of this Franchise Agreement. Any amounts so advanced shall be credited against amounts to be expended in succeeding years. Any funds left accumulated in the Underground Program under any prior Franchise shall be carried over to this Franchise. Notwithstanding the foregoing, the City shall have no vested interest in monies allocated to the Underground Program and any monies in the Underground Program not expended at the expiration or termination of this Franchise shall remain the property of the Company. At the expiration or termination of this Franchise, the Company shall not be required to underground any existing overhead facilities pursuant to this Article but may do so in its sole discretion.

C. System-wide Undergrounding. If, during the term of this Franchise, the Company should receive authority from the PUC to undertake a system-wide program or programs of undergrounding its electric distribution facilities system wide, the Company will budget and allocate to the program of undergrounding in the City such amount as may be determined and approved by the PUC, but in no case shall such amount be less than the one percent (1%) of annual Electric Gross Revenues provided above.

D. City Requirement to Underground. In addition to the provisions of this Article and the Boulder Revised Code, 1981, the City may require any above-ground Company Facilities in Streets, Public Utility Easements, and Other City Property to be moved underground at the City's expense.

§11.3 Undergrounding Performance. Upon receipt of a written request from the City, the Company shall underground Company Facilities pursuant to the provisions of this Article, in accordance with the procedures set forth in this Section.

A. Estimates. Promptly upon receipt of an undergrounding request from the City and the Supporting Documentation necessary for the Company to design the undergrounding project, the Company shall prepare a detailed, good faith cost estimate of the anticipated actual cost of the requested project for the City to review and, if acceptable to the City, the City will issue a project authorization. At the City's request, the Company will provide all documentation that forms the basis of the estimate that is not proprietary. The Company will not proceed with any requested project until the City has provided a written acceptance of the Company's estimate.

B. Performance. The Company shall complete each undergrounding project requested by the City within a reasonable time considering the size and scope of each project, not to exceed 240 days from the later of the date upon which the City designee makes a written request or the date the City provides to the Company all required Supporting Documentation. The Company shall have 120 days after receiving the City's written request to design project plans, prepare the good faith estimate, and transmit same to the City Designee for review. If City approval of the plans and estimate has not been granted, the Company's good faith estimate will be void 60 days after delivery of the plans and estimate to the City designee. If the plans and estimate are approved by the City, the Company shall have 120 days to complete the project, from the date of the City Designee's authorization of the underground project, plus any of the 120 unused days in preparing the good faith estimate. At the Company's sole discretion, if the good faith estimate has expired because the City designee has not approved the same within 60 days, the Company may extend the good faith estimate or prepare a new estimate using current prices. The Company shall be entitled to an extension of time to complete each undergrounding project where the Company's performance was delayed due to a Force Majeure Event. Upon written request of the Company, the City may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension.

C. City Revision of Supporting Documentation. Any revision by the City of Supporting Documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding an undergrounding project shall be deemed good cause for a reasonable extension of time to complete the undergrounding project under this Franchise.

D. Completion/Restoration. Each such undergrounding project undertaken pursuant to this Article shall be complete only when the Company actually undergrounds the designated Company Facilities and restores the undergrounding site in accordance with Section 6.7 of this Franchise, or as otherwise agreed with the City. When performing underground conversions of overhead facilities, the Company shall make reasonable efforts consistent with its contractual obligations to persuade joint users of Company distribution poles to remove their facilities from such poles within the time allowed by this Article.

E. Report of Actual Costs. Upon completion of each undergrounding project undertaken pursuant to this Article, the Company shall submit to the City a detailed report of the Company's actual cost to complete the project and the Company shall reconcile this

total actual cost with the accepted cost estimate. The report shall be provided within 120 days after completion of the project and written request from the City.

F. Audit of Underground Projects. The City may require the Company to undertake an independent audit of up to two (2) undergrounding projects in any calendar year. The City shall make any such request in writing within 120 days of receipt of the report of actual costs, as referenced in Section 11.3E. of this Franchise Agreement. Such audits shall be limited to projects completed in the calendar year when the audit is requested. The cost of any such independent audit shall reduce the amount of the Underground Program balance. The Company shall cooperate with any audit and the independent auditor shall prepare and provide to the City and the Company a final audit report showing the actual costs associated with completion of the project. If a project audit is required by the City, only those actual project costs confirmed and verified by the independent auditor as reasonable and necessary to complete the project shall be charged against the Underground Program balance.

§11.4 Audit of Underground Program. Upon written request, every three (3) years commencing at the end of the third calendar year of this Franchise, the Company shall cause an independent auditor to investigate and determine the correctness of the charges to the Underground Program. Such audits shall be limited to the previous three (3) calendar years. Audits performed pursuant to this Section shall be limited to charges to the Underground Program and shall not include an audit of individual underground projects. The independent auditor shall provide to the City and the Company a written report containing its findings. The Company shall reconcile the Underground Program balance consistent with the findings contained in the independent auditor's written report. The costs of the audit and investigation shall be charged against the Underground Program balance.

§11.5 Cooperation with Other Utilities. When undertaking an undergrounding project, the City and the Company shall coordinate with other utilities or companies that have their facilities above ground to attempt to have all facilities undergrounded as part of the same project. When other utilities or companies are placing their facilities underground, to the extent the Company has received prior written notification, the Company shall cooperate with these utilities and companies and undertake to underground Company Facilities as part of the same project where financially, technically and operationally feasible. The Company shall not be required to pay for any costs of undergrounding the facilities of other companies or the City.

§11.6 Planning and Coordination of Undergrounding Projects. The City and the Company shall mutually plan in advance the scheduling of undergrounding projects to be undertaken according to this Article as a part of the review and planning for other City and Company construction projects. The City and the Company agree to meet, as required, to review the progress of the current undergrounding projects and to review planned future undergrounding projects. The purpose of such meetings shall be to further cooperation between the City and the Company in order to achieve the orderly undergrounding of Company Facilities. Representatives of both the City and the Company shall meet periodically to review the Company's undergrounding of Company Facilities and at such meetings shall review:

- A. Undergrounding, including conversions, Public Projects and replacements that have been accomplished or are underway, together with the Company's plans for additional undergrounding; and
- B. Public Projects anticipated by the City.

ARTICLE 12 PURCHASE OR CONDEMNATION

§12.1 Municipal Right to Purchase or Condemn.

A. Right and Privilege of City. The right and privilege of the City to construct, own and operate a municipal utility, and to purchase pursuant to a mutually acceptable agreement or condemn any Company Facilities located within the territorial boundaries of the City, and the Company's rights in connection therewith, as set forth in applicable provisions of the constitution, statutes and case law of the State of Colorado relating to the acquisition of public utilities, are expressly recognized. The City shall have the right, within the time frames and in accordance with the procedures set forth in such provisions, to condemn Company Facilities, land, rights-of-way and easements now owned or to be owned by the Company located within the territorial boundaries of the City. In the event of any such condemnation, no value shall be ascribed or given to the right to use City Streets, Public Utility Easements (unless specifically granted solely to the Company), or Other City Property granted under this Franchise in the valuation of the property thus sold. The rights and privileges set forth herein shall survive any exercise of the City's right to terminate pursuant to paragraphs 2.4 and 2.5 above.

B. Notice of Intent to Purchase or Condemn. The City shall provide the Company no less than one (1) year's prior written notice of its intent to purchase or condemn Company Facilities. Nothing in this Section shall be deemed or construed to constitute a consent by the Company to the City's purchase or condemnation of Company Facilities, nor a waiver of any Company defenses or challenges related thereto.

ARTICLE 13 MUNICIPALLY PRODUCED UTILITY SERVICE

§13.1 Municipally Produced Utility Service.

A. City Reservation. The City expressly reserves the right to engage in the production of utility service to the extent permitted by law. The Company agrees to negotiate in good faith long-term contracts to purchase City-generated power made available for sale, consistent with PUC requirements and other applicable requirements. The Company further agrees to offer transmission and delivery services to the City that are required by judicial, statutory and/or regulatory directive and that are comparable to the services offered to any other customer with similar generation facilities.

B. Franchise Not to Limit City's or Company's Rights. Nothing in this Franchise prohibits the City from becoming an aggregator of utility service or from selling utility service to customers should it be permissible under law, nor does it affect the Company's

rights and obligations pursuant to any Certificate of Public Convenience and Necessity granted by the PUC.

ARTICLE 14

ENVIRONMENT AND CONSERVATION

- §14.1 Environmental Leadership. The City and the Company agree that sustainable development, environmental excellence and innovation shall form the foundation of the Utility Service provided by the Company under this Franchise. The Company agrees to continue to actively pursue reduction of carbon emissions attributable to its electric generation facilities with a rigorous combination of Energy Conservation and Energy Efficiency measures, Clean Energy measures, and promoting and implementing the use of Renewable Energy Resources on both a distributed and centralized basis. The Company shall continue to cost-effectively monitor its operations to mitigate environmental impacts; shall meet the requirements of environmental laws, regulations and permits; shall invest in cost-effective, environmentally sound technologies; shall consider environmental issues in its planning and decision making; and shall support environmental research and development projects and partnerships in our communities through various means, including but not limited to corporate giving and employee involvement. The Company shall continue to explore ways to reduce water consumption at its facilities and to use recycled water where feasible. The Company shall continue to work with the U.S. Fish and Wildlife Service to develop and implement avian protection plans to reduce electrocution and collision risks by eagles, raptors and other migratory birds with transmission and distribution lines. If requested in writing by the City on or before December 1st of each year, the Company shall provide the City a written report describing its progress in carbon reduction and other environmental efforts, and the parties shall meet at a mutually convenient time and place for a discussion of such. In meeting its obligation under this Section, the Company is not precluded from providing existing internal and external reports that may be used for other reporting requirements.
- §14.2 Conservation. The City and the Company recognize and agree that Energy Conservation programs offer opportunities for the efficient use of energy and possible reduction of energy costs. The City and the Company further recognize that creative and effective Energy Conservation solutions are crucial to sustainable development. The Company recognizes and shares the City's stated objectives to advance the implementation of cost-effective Energy Efficiency and Energy Conservation programs that direct opportunities to Residents to manage more efficiently their use of energy and thereby create the opportunity to reduce their energy bills. The Company commits to offer programs that attempt to capture market opportunities for cost-effective Energy Efficiency improvements such as municipal specific programs that provide cash rebates for efficient lighting, energy design programs to assist architects and engineers to incorporate Energy Efficiency in new construction projects, and recommissioning programs to analyze existing systems to optimize performance and conserve energy according to current and future demand side management ("DSM") programs. In doing so, the Company recognizes the importance of (a) implementing cost-effective programs, the benefits of which would otherwise be lost if not pursued in a timely fashion; and (b) developing cost-effective programs for the various classes of the Company's customers, including low-income customers. The Company shall advise the City and its Residents of the availability of assistance that the Company makes

available for investments in Energy Conservation through newspaper advertisements, bill inserts and Energy Efficiency workshops and by maintaining information about these programs on the Company's website. Further, at the City's request, the Company's Area Manager shall act as the primary liaison with the City who will provide the City with information on how the City may take advantage of reducing energy consumption in City facilities and how the City may participate in Energy Conservation and Energy Efficiency programs sponsored by the Company. As such, the Company and the City commit to work cooperatively and collaboratively to identify, develop, implement and support programs offering creative and sustainable opportunities to Company customers and Residents, including low-income customers. The Company agrees to help the City participate in Company programs and, when opportunities exist to partner with others, such as the State of Colorado, the Company will help the City pursue those opportunities. In addition, and in order to assist the City and its Residents' participation in Renewable Energy Resource programs, the Company shall: notify the City regarding eligible Renewable Energy Resource programs; provide the City with technical support regarding how the City may participate in Renewable Energy Resource programs; and advise Residents regarding eligible Renewable Energy Resource programs. Notwithstanding the foregoing, to the extent that any Company assistance is needed to support Renewable Energy Resource Programs that are solely for the benefit of Company customers located within the City, the Company retains the sole discretion as to whether to incur such costs.

§14.3 Continuing Commitment. It is the express intention of the City and the Company that the collaborative effort provided for in this Article continue for the entire term of this Franchise. The City and the Company also recognize, however, that the programs identified in this Article may be for a limited duration and that the regulations and technologies associated with Energy Conservation are subject to change. Given this variability, the Company agrees to maintain its commitment to sustainable development and Energy Conservation for the term of this Franchise by continuing to provide leadership, support and assistance, in collaboration with the City, to identify, develop, implement and maintain new and creative programs similar to the programs identified in this Article in order to help the City achieve its environmental goals.

§14.4 PUC Approval. Nothing in this Article shall be deemed to require the Company to invest in technologies or to incur costs that it has a good faith belief the PUC will not allow the Company to recover through the ratemaking process.

ARTICLE 15 TRANSFER OF FRANCHISE

§15.1 Consent of City Required. The Company shall not transfer or assign any rights under this Franchise to an unaffiliated third party, except by merger with such third party, or, except when the transfer is made in response to legislation or regulatory requirements, unless the City approves such transfer or assignment in writing. Approval of the transfer or assignment shall not be unreasonably withheld, conditioned or delayed.

§15.2 Transfer Fee. In order that the City may share in the value this Franchise adds to the Company's operations, any transfer or assignment of rights granted under this Franchise requiring City approval, as set forth herein, shall be subject to the condition that the

Company shall promptly pay to the City a transfer fee in an amount equal to the proportion of the City's then-population provided Utility Service by the Company to the then-population of the City and County of Denver provided Utility Service by the Company multiplied by one million dollars (\$1,000,000.00). Except as otherwise required by law, such transfer fee shall not be recovered from a surcharge placed only on the rates of Residents.

ARTICLE 16 CONTINUATION OF UTILITY SERVICE

§16.1 Continuation of Utility Service. In the event this Franchise Agreement is not renewed or extended at the expiration of its term or is terminated for any reason, and the City has not provided for alternative utility service, the Company shall have no obligation to remove any Company Facilities from Streets, Public Utility Easements or Other City Property or discontinue providing Utility Service unless otherwise ordered by the PUC, and shall continue to provide Utility Service within the City until the City arranges for utility service from another provider. The City acknowledges and agrees that the Company has the right to use Streets, Other City Property and Public Utility Easements during any such period. The Company further agrees that it will not withhold any temporary Utility Services necessary to protect the public. The City agrees that in the circumstances of this Article, the Company shall be entitled to monetary compensation as provided in the Tariffs and the Company shall be entitled to collect from Residents and, upon the City's compliance with applicable provisions of law, shall be obligated to pay the City, at the same times and in the same manner as provided in this Franchise, an aggregate amount equal to the amount which the Company would have paid as a Franchise Fee as consideration for use of the City's Streets, Public Utility Easements, and Other City Property. Only upon receipt of written notice from the City stating that the City has adequate alternative utility service for Residents and upon order of the PUC shall the Company be allowed to discontinue the provision of Utility Service to the City and its Residents.

ARTICLE 17 INDEMNIFICATION AND IMMUNITY

§17.1 City Held Harmless. The Company shall indemnify, defend and hold the City harmless from and against claims, demands, liens and all liability or damage of whatsoever kind on account of or directly arising from the grant of this Franchise or the exercise by the Company of the related rights, but in both instances only to the extent caused by the Company, and shall pay the costs of defense plus reasonable attorneys' fees. The City shall (a) give prompt written notice to the Company of any claim, demand or lien with respect to which the City seeks indemnification hereunder; and (b) unless in the City's judgment a conflict of interest may exist between the City and the Company with respect to such claim, demand or lien, shall permit the Company to assume the defense of such claim, demand, or lien with counsel reasonably satisfactory to the City. If such defense is assumed by the Company, the Company shall not be subject to liability for any settlement made without its consent. If such defense is not assumed by the Company or if the City determines that a conflict of interest exists, the parties reserve all rights to seek all remedies available in this Franchise against each other. Notwithstanding any provision hereof to the contrary, the Company shall not be obligated to indemnify, defend or hold the City harmless to the

extent any claim, demand or lien arises out of or in connection with any negligent or intentional act or failure to act of the City or any of its officers, agents or employees or to the extent that the City is acting in its capacity as a customer of record of the Company.

§17.2 Immunity. Nothing in this Section or any other provision of this Franchise shall be construed as a waiver of the notice requirements, defenses, immunities and limitations the City may have under the Colorado Governmental Immunity Act (§ 24-10-101, C.R.S., *et. seq.*) or of any other defenses, immunities, or limitations of liability available to the City by law.

ARTICLE 18 BREACH

§18.1 Change of Tariffs. The City and the Company agree to take all reasonable and necessary actions to assure that the terms of this Franchise are performed. The Company reserves the right to seek a change in its Tariffs, including but not limited to the rates, charges, terms, and conditions of providing Utility Service to the City and its Residents, and the City retains all rights that it may have to intervene and participate in any such proceedings.

§18.2 Breach.

A. Notice/Cure/Remedies. Except as otherwise provided in this Franchise, if a party (the “Breaching Party”) to this Franchise fails or refuses to perform any of the terms or conditions of this Franchise (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 30 days in which to remedy the Breach or, if such Breach cannot be remedied in 30 days, such additional time as reasonably needed to remedy the Breach, but not exceeding an additional 30 day period, or such other time as the parties may agree. If the Breaching Party does not remedy the Breach within the time allowed in the notice, the Non-Breaching Party may exercise the following remedies for such Breach:

(1) specific performance of the applicable term or condition to the extent allowed by law; and

(2) recovery of actual damages from the date of such Breach incurred by the Non-Breaching Party in connection with the Breach, but excluding any special, punitive or consequential damages.

B. Termination of Franchise by City. In addition to the foregoing remedies, if the Company fails or refuses to perform any material term or condition of this Franchise (“Material Breach”), the City may provide written notice to the Company of such Material Breach. Upon receipt of such notice, the Company shall be given a reasonable time, not to exceed 90 days in which to remedy the Material Breach or, if such Material Breach cannot be remedied in 90 days, such additional time as reasonably needed to remedy the Material Breach, but not exceeding an additional 90 day period, or such other time as the parties may agree. If the Company does not remedy the Material Breach within the time allowed in the notice, the City may, in its sole discretion, terminate this Franchise. This remedy

shall be in addition to the City's right to exercise any of the remedies provided for elsewhere in this Franchise. Upon such termination, the Company shall continue to provide Utility Service to the City and its Residents (and shall continue to have associated rights and grants needed to provide such service) until the City makes alternative arrangements for such service and until otherwise ordered by the PUC and the Company shall be entitled to collect from Residents and, upon the City complying with applicable provisions of law, shall be obligated to pay the City, at the same times and in the same manner as provided in this Franchise, an aggregate amount equal to the amount which the Company would have paid as a Franchise Fee as consideration for use of the City Streets, Public Utility Easements, and Other City Property. Unless otherwise provided by law, the Company shall be entitled to collect such amount from Residents.

C. Company Shall Not Terminate Franchise. In no event does the Company have the right to terminate this Franchise.

D. No Limitation. Except as provided herein, nothing in this Franchise shall limit or restrict any legal rights or remedies that either party may possess arising from any alleged Breach of this Franchise.

ARTICLE 19 AMENDMENTS

§19.1 Proposed Amendments. At any time during the term of this Franchise, the City or the Company may propose amendments to this Franchise by giving 30 days' written notice to the other of the proposed amendment(s) desired and both parties thereafter, through their designated representatives, will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s). However, nothing contained in this Section shall be deemed to require either party to consent to any amendment proposed by the other party.

§19.2 Effective Amendments. No alterations, amendments or modifications to this Franchise shall be valid unless executed in writing by the parties, which alterations, amendments or modifications shall be adopted with the same formality used in adopting this Franchise, to the extent required by law. Neither this Franchise, nor any term herein, may be changed, modified or abandoned, in whole or in part, except by an instrument in writing, and no subsequent oral agreement shall have any validity whatsoever. Any amendment of the Franchise shall become effective only upon the approval of the PUC, if such PUC approval is required.

ARTICLE 20 EQUAL OPPORTUNITY

§20.1 Economic Development. The Company is committed to the principle of stimulating, cultivating and strengthening the participation and representation of persons of color, women and members of other under-represented groups within the Company and in the local business community. The Company believes that increased participation and representation of under-represented groups will lead to mutual and sustainable benefits for the local economy. The Company is committed also to the principle that the success and

economic well-being of the Company is closely tied to the economic strength and vitality of the diverse communities and people it serves. The Company believes that contributing to the development of a viable and sustainable economic base among all Company customers is in the best interests of the Company and its shareholders.

§20.2 Employment.

A. Programs. The Company is committed to undertaking programs that identify, consider and develop persons of color, women and members of other under-represented groups for positions at all skill and management levels within the Company.

B. Businesses. The Company recognizes that the City and the business community in the City, including women and minority owned businesses, provide a valuable resource in assisting the Company to develop programs to promote persons of color, women and members of under-represented communities into management positions, and agrees to keep the City regularly advised of the Company's progress by providing the City a copy of the Company's annual affirmative action report upon the City's written request.

C. Recruitment. In order to enhance the diversity of the employees of the Company, the Company is committed to recruiting diverse employees by strategies such as partnering with colleges, universities and technical schools with diverse student populations, utilizing diversity-specific media to advertise employment opportunities, internships, and engaging recruiting firms with diversity-specific expertise.

D. Advancement. The Company is committed to developing a world-class workforce through the advancement of its employees, including persons of color, women and members of under-represented groups. In order to enhance opportunities for advancement, the Company will offer training and development opportunities for its employees. Such programs may include mentoring programs, training programs, classroom training and leadership programs.

E. Non-Discrimination. The Company is committed to a workplace free of discrimination based on race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability or any other protected status in accordance with all federal, state or local laws. The Company shall not, solely because of race, creed, color, religion, gender, sexual orientation, marital status, age, military status, national origin, ancestry, or physical or mental disability, refuse to hire, discharge, promote, demote or discriminate in matters of compensation, against any person otherwise qualified.

F. Board of Directors. The Company shall identify and consider women, persons of color and other under-represented groups to recommend for its Board of Directors, consistent with the responsibility of boards to represent the interests of the Shareholders, customers and employees of the Company.

§20.3 Contracting.

A. Contracts. It is the Company's policy to make available to minority and women owned business enterprises and other small and/or disadvantaged business enterprises the maximum practical opportunity to compete with other service providers, contractors, vendors and suppliers in the marketplace. The Company is committed to increasing the proportion of Company contracts awarded to minority and women owned business enterprises and other small and/or disadvantaged business enterprises for services, construction, equipment and supplies to the maximum extent consistent with the efficient and economical operation of the Company.

B. Community Outreach. The Company agrees to maintain and continuously develop contracting and community outreach programs calculated to enhance opportunity and increase the participation of minority and women owned business enterprises and other small and/or disadvantaged business enterprises to encourage economic vitality. The Company agrees to keep the City regularly advised of the Company's programs.

C. Community Development. The Company shall maintain and support partnerships with local chambers of commerce and business organizations, including those representing predominately minority owned, women owned and disadvantaged businesses, to preserve and strengthen open communication channels and enhance opportunities for minority owned, women owned and disadvantaged businesses to contract with the Company.

§20.4 Coordination. City agencies provide collaborative leadership and mutual opportunities or programs relating to City based initiatives on economic development, employment and contracting opportunity. The Company agrees to review Company programs and mutual opportunities responsive to this Article with these agencies, upon their request, and to collaborate on best practices regarding such programs and coordinate and cooperate with the agencies in program implementation.

ARTICLE 21 MISCELLANEOUS

§21.1 No Waiver. Neither the City nor the Company shall be excused from complying with any of the terms and conditions of this Franchise by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions, to insist upon or to seek compliance with any such terms and conditions.

§21.2 Successors and Assigns. The rights, privileges, and obligations, in whole or in part, granted and contained in this Franchise shall inure to the benefit of and be binding upon the Company, its successors and assigns, to the extent that such successors or assigns have succeeded to or been assigned the rights of the Company pursuant to Article 15 of this Franchise. Upon a transfer or assignment pursuant to Article 15, the Company shall be relieved from all liability from and after the date of such transfer.

§21.3 Third Parties. Nothing contained in this Franchise shall be construed to provide rights to third parties.

§21.4 Notice. Both parties shall designate from time to time in writing representatives for the Company and the City who will be the persons to whom notices shall be sent regarding any action to be taken under this Franchise. Notice shall be in writing and forwarded by certified mail, reputable overnight courier or hand delivery to the persons and addresses as hereinafter stated, unless the persons and addresses are changed at the written request of either party, delivered in person or by certified mail. Notice shall be deemed received (a) three (3) days after being mailed via the U.S. Postal Service, (b) one (1) business day after mailed if via reputable overnight courier, or (c) upon hand delivery if delivered by courier. Until any such change shall hereafter be made, notices shall be sent as follows:

To the City:

City Manager
City of Boulder
P.O. Box 791
Boulder, Colorado 80306

With a copy to:

City Attorney
City of Boulder
P.O. Box 791
Boulder, Colorado 80306

To the Company:

Senior Director, State Affairs and Community Relations
Public Service Company of Colorado
P.O. Box 840
Denver, Colorado 80201

With a copy to:

Legal Department
Public Service Company of Colorado
P.O. Box 840
Denver, Colorado 80201

and

Area Manager
Public Service Company of Colorado
P.O. Box 840
Denver, Colorado 80201

Any request involving any audit specifically allowed under this Franchise shall also be sent to:

Audit Services
Public Service Company of Colorado
P.O. Box 840
Denver, Colorado 80201

- §21.5 Examination of Records. The parties agree that any duly authorized representative of the City and the Company shall have access to and the right to examine any directly pertinent non-confidential books, documents, papers, and records of the other party involving any activities related to this Franchise. All such records must be kept for a minimum of the lesser of three (3) years or the time period permitted by a party's record retention policy. To the extent that either party believes in good faith that it is necessary in order to monitor compliance with the terms of this Franchise to examine confidential books, documents, papers, and records of the other party, the parties agree to meet and discuss providing confidential materials, including but not limited to providing such materials subject to a reasonable confidentiality agreement that effectively protects the confidentiality of such materials and complies with PUC rules and regulations.
- §21.6 List of Utility Property. The Company shall provide the City, upon request not more than once every two (2) years, a list of electric utility-related real property owned in fee by the Company within the County in which the City is located. All such records must be kept for a minimum of three (3) years or such shorter duration if required by Company policy.
- §21.7 PUC Filings. Upon written request by the City, the Company shall provide the City non-confidential copies of all applications, advice letters and periodic reports, together with any accompanying non-confidential testimony and exhibits, filed by the Company with the PUC. Notwithstanding the foregoing, notice regarding any gas and electric filings that may affect Utility Service rates in the City shall be sent to the City upon filing.
- §21.8 Information. Upon written request, the Company shall provide the city clerk or the City Designee with:
- A. A copy of the Company's or its parent company's consolidated annual financial report, or alternatively, a URL link to a location where the same information is available on the Company's website;
 - B. Maps or schematics indicating the location of specific Company Facilities (subject to City executing a confidentiality agreement as required by Company policy), including gas or electric lines, located within the City, to the extent those maps or schematics are in existence at the time of the request and related to an ongoing project within the City. The Company does not represent or warrant the accuracy of any such maps or schematics; and
 - C. A copy of any report required to be prepared for a federal or state agency detailing the Company's efforts to comply with federal and state air and water pollution laws.

§21.9 Payment of Taxes and Fees.

A. Impositions. Except as otherwise provided herein, the Company shall pay and discharge as they become due, promptly and before delinquency, all taxes, assessments, rates, charges, license fees, municipal liens, levies, excises, or imposts, whether general or special, or ordinary or extraordinary, of every name, nature, and kind whatsoever, including all governmental charges of whatsoever name, nature, or kind, which may be levied, assessed, charged, or imposed, or which may become a lien or charge against this Franchise (“Impositions”), provided that the Company shall have the right to contest any such Impositions and shall not be in breach of this Section so long as it is actively contesting such Impositions.

B. City Liability. The City shall not be liable for the payment of late charges, interest or penalties of any nature other than pursuant to applicable Tariffs.

§21.10 Conflict of Interest. The parties agree that no official, officer or employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein and the Company further agrees not to hire or contract for services any official, officer or employee of the City to the extent prohibited by law, including ordinances and regulations of the City.

§21.11 Certificate of Public Convenience and Necessity. The City agrees to support the Company’s application to the PUC to obtain a Certificate of Public Convenience and Necessity to exercise its rights and obligations under this Franchise.

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

§21.13 Severability. Should any one or more provisions of this Franchise be determined to be unconstitutional, illegal, unenforceable or otherwise void, all other provisions nevertheless shall remain effective; provided, however, to the extent allowed by law, the parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft one or more substitute provisions that will achieve the original intent of the parties hereunder.

§21.14 Force Majeure. Neither the City nor the Company shall be in breach of this Franchise if a failure to perform any of the duties under this Franchise is due to a Force Majeure Event, as defined herein.

§21.15 Earlier Franchises Superseded. This Franchise shall constitute the only franchise between the City and the Company related to the furnishing of Utility Service, and it supersedes and cancels all former franchises between the parties hereto.

§21.16 Titles Not Controlling. Titles of the paragraphs herein are for reference only, and shall not be used to construe the language of this Franchise.

§21.17 Applicable Law. Colorado law shall apply to the construction and enforcement of this Franchise. The parties agree that venue for any litigation arising out of this Franchise shall be in the District Court for Boulder County, State of Colorado.

§21.18 Payment of Expenses Incurred by City in Relation to Franchise Agreement. The Company shall pay for expenses reasonably incurred by the City for the adoption of this Franchise, limited to the incremental cost of the franchise election, publication of notices, publication of ordinances, and photocopying of documents and other similar expenses.

§21.19 Costs of Compliance with Franchise. The parties acknowledge that PUC rules, regulations and final decisions may require that costs of complying with certain provisions of this Franchise be borne by customers of the Company who are located within the City.

§21.20 Conveyance of City Streets, Public Utility Easements or Other City Property. In the event the City vacates, releases, sells, conveys, transfers or otherwise disposes of a City Street, or any portion of a Public Utility Easement or Other City Property in which Company Facilities are located, the City shall reserve an easement in favor of the Company over that portion of the Street, Public Utility Easement or Other City Property in which such Company Facilities are located. The Company and the City shall work together to prepare the necessary legal description to effectuate such reservation. For the purposes of Section 6.9.A of this Franchise, the land vacated, released, sold, conveyed, transferred or otherwise disposed of by the City shall no longer be deemed to be a Street or Other City Property from which the City may demand the Company temporarily or permanently Relocate Company Facilities at the Company's expense.

§21.21 Audit. For any audits specifically allowed under this Franchise, such audits shall be subject to the Tariff and PUC rules and regulations. Audits in which the auditor is compensated on the basis of a contingency fee arrangement shall not be permitted.

§21.22 Land Use Coordination. The City shall coordinate with the Company regarding its land use planning. This coordination shall include meeting with the Company and identifying areas for future utility development.

(Signature page follows.)

IN WITNESS WHEREOF, the parties have caused this Franchise to be executed as of the day and year first above written.

CITY OF BOULDER,
a Colorado home rule city

ATTEST:

City Clerk

Mayor

APPROVED AS TO FORM:

City Attorney' Office

Dated: _____

**PUBLIC SERVICE COMPANY OF
COLORADO, a Colorado corporation**

Hollie Horvath Velasquez
Senior Director, State Affairs and
Community Relations

STATE OF COLORADO)
)SS.
COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this __ day of _____, 2020 by Hollie Horvath Velasquez, Senior Director, State Affairs and Community Relations of Public Service Company of Colorado, a Colorado corporation.

Witness my hand and official seal.

Notary Public

My Commission expires: _____.

(SEAL)

FRANCHISE AGREEMENT

BETWEEN

THE CITY OF BOULDER, COLORADO

AND

PUBLIC SERVICE COMPANY OF COLORADO

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PUBLIC SERVICE COMPANY OF COLORADO

AND

THE CITY OF BOULDER, COLORADO

**ARTICLE 1
DEFINITIONS**

For the purpose of this franchise agreement (“Franchise” or “Franchise Agreement”), the following words and phrases shall have the meaning given in this Article or elsewhere in this Agreement. When not inconsistent with context, words used in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural. The word “shall” is mandatory and “may” is permissive. Words not defined in this Article or in this Franchise Agreement shall be given their common and ordinary meaning.

- §1.1 “City” refers to the City of Boulder, a Colorado home rule city.
- §1.2 “Clean Energy” means energy produced from Renewable Energy Resources (as defined below), eligible energy sources, and by means of advanced technologies that cost-effectively capture and sequester carbon emissions produced as a by-product of power generation. For purposes of this definition, “cost” means all those costs as determined by the Public Utilities Commission of the State of Colorado (“PUC”).
- §1.3 “Company” refers to Public Service Company of Colorado, a Colorado corporation, and an Xcel Energy company and its successors and assigns including affiliates or subsidiaries that undertake to perform any of the obligations under this Franchise.
- §1.4 “Company Facilities” refer to all facilities of the Company which are reasonably necessary or desirable to provide gas and/or electric service into, within and through the City, including but not limited to plants, works, systems, substations, transmission and distribution structures and systems, lines, equipment, pipes, mains, conduit, transformers, underground lines, gas compressors, meters, meter reading devices, communication and data transfer equipment, control equipment, gas regulator stations, street lights, wire, cables and poles as well as all associated appurtenances.
- §1.5 “Council” or “City Council” refers to and is the legislative body of the City.
- §1.6 “Electric Gross Revenues” refers to those amounts of money that the Company receives from the sale and/or delivery of electricity in the City, after adjusting for refunds, net write-offs of accounts, corrections, or Regulatory Adjustments (as defined below in this Article). Regulatory adjustments include, but are not limited to, credits, surcharges, refunds, and pro-forma adjustments pursuant to federal or state regulation. Electric Gross Revenues shall exclude any revenue for the sale and/or delivery of electricity to the City as a customer of the Company.
- §1.7 “Energy Conservation” means the decrease in energy requirements of specific customers during any selected time period, resulting in a reduction in end-use services.

- §1.8 “Energy Efficiency” means the decrease in energy requirements of specific customers during any selected period with end-use services of such customers held constant.
- §1.9 “Force Majeure Event” means the inability to undertake an obligation of this Franchise Agreement due to a cause, condition or event that could not be reasonably anticipated by a party, or is beyond a party’s reasonable control after exercise of best efforts to perform. Such cause, condition or event includes but is not limited to fire, strike, war, riots, terrorist acts, acts of governmental authority, acts of God, floods, epidemics, quarantines, labor disputes, unavailability or shortages of materials or equipment or failures or delays in the delivery of materials. Neither the City nor the Company shall be in breach of this Franchise if a failure to perform any of the duties under this Franchise is due to a Force Majeure Event.
- §1.10 “Gross Revenues” refers to those amounts of money the Company receives from the sale of gas and/or electricity within the City under rates authorized by the Public Utilities Commission, as well as from the transportation of gas to its customers within the City, as adjusted for refunds, net write-offs of uncollectible accounts, corrections, expense reimbursements or regulatory adjustments. Regulatory adjustments include, but are not limited to, credits, surcharges, refunds, and pro-forma adjustments pursuant to federal or state regulation. Gross Revenues shall exclude any revenues from the sale of gas or electricity to the City or the transportation of gas to the City.
- §1.11 “Industry Standards” refers to standards developed by government agencies and generally recognized organizations that engage in the business of developing utility industry standards for materials, specifications, testing, construction, repair, maintenance, manufacturing, and other facets of the electric and gas utility industries. Such agencies and organizations include, but are not limited to the U.S. Department of Transportation, the Federal Energy Regulatory Commission (FERC), the Colorado Public Utilities Commission, the American National Standards Institute (ANSI), the American Society for Testing and Materials (ASTM), the Pipeline Research Council International, Inc. (PRCI), the American Society of Mechanical Engineers (ASME), the Institute of Electric and Electronic Engineers (IEEE), the Electric Power Research Institute (EPRI), the Gas Technology Institute (GTI), the National Fire Protection Association (NFPA), and specifically includes the National Electric Safety Code (NESC).
- §1.12 “Other City Property” refers to the surface, the air space above the surface and the area below the surface of any property owned by the City or directly controlled by the City due to the City’s real property interest in the same or hereafter owned by the City, that would not otherwise fall under the definition of “Streets,” but which provides a suitable location for the placement of Company Facilities as specifically approved in writing by the City. Other City Property including Public Utility Easements. Other City Property does not include property that is defined in the Boulder City Charter as open space or park land.
- §1.13 “Private Project” refers to any project not included in the definition of Public Project.
- §1.14 “Public Project” refers to (1) any public work or improvement within the City that is wholly owned by the City; or (2) any public work or improvement within the City where at least 50 percent (50%) or more of the funding is provided by any combination of the City, the

federal government, the State of Colorado, or any Colorado county, but excluding all entities established under Title 32 of the Colorado Revised Statutes.

- §1.15 “Public Utilities Commission” or “PUC” refers to the Public Utilities Commission of the State of Colorado or other state agency succeeding to the regulatory powers of the Public Utilities Commission.
- §1.16 “Public Utility Easement” refers to any platted easement over, under, or above public or private property, expressly dedicated to, and accepted by, the City for the use of public utility companies for the placement of utility facilities, including but not limited to Company Facilities.
- §1.17 “Relocate,” “Relocation,” or “Relocated” refers to the definition assigned such terms in Section 6.9A. of this Franchise.
- §1.18 “Renewable Energy Resources” means wind, solar, and geothermal resources; energy produced from biomass from nontoxic plant matter consisting of agricultural crops or the by-products, urban wood waste, mill residue, slash, or brush, or from animal wastes and products of animal wastes, or from methane produced at landfills or as a by-product of the treatment of wastewater residuals; new hydroelectricity with a nameplate rating of 10 megawatts or less; hydroelectricity in existence on January 1, 2005 with a nameplate rating of 30 megawatts or less; fuel cells using hydrogen derived from a Renewable Energy Resource; recycled energy produced by a generation unit with a nameplate capacity of not more than 15 megawatts that converts the otherwise lost energy from the heat from exhaust stacks or pipes to electricity and that does not combust additional fossil fuel, and includes any eligible renewable energy resource as defined in § 40-2-124(1)(a), C.R.S., as the same may be amended from time to time.
- §1.19 “Residents” refers to all persons, businesses, industries, governmental agencies, including the City, and any other entity whatsoever presently located or to be hereinafter located, in whole or in part, within the territorial boundaries of the City.
- §1.20 “Streets” or “City Streets” refers to the surface, the air space above the surface and the area below the surface of any City-dedicated or City-maintained streets, alleys, bridges, roads, lanes, access easements, and other public rights-of-way within the City, which are primarily used for vehicle traffic. Streets shall not include Other City Property.
- §1.21 “Supporting Documentation” refers to all information reasonably required or needed in order to allow the Company to design and construct any work performed under the provisions of this Franchise. Supporting Documentation may include, but is not limited to, construction plans, a description of known environmental issues, the identification of critical right-of-way or easement issues, the final recorded plat for the property, the date the site will be ready for the Company to begin construction, the date gas service and meter set are needed, and the name and contact information for the City’s project manager.
- §1.22 “Tariffs” refer to those tariffs of the Company on file and in effect with the PUC or other governing jurisdiction, as amended from time to time.

§1.23 “Utility Service” refers to the sale of gas or electricity to Residents by the Company under Tariffs approved by the PUC, as well as the delivery of gas to Residents by the Company.

ARTICLE 2 GRANT OF FRANCHISE

§2.1 Grant of Franchise.

A. Grant. The City hereby grants to the Company, subject to all conditions, limitations, terms, and provisions contained in this Franchise, the non-exclusive right to make reasonable use of City Streets, Public Utility Easements (as applicable) and Other City Property:

(1) to provide Utility Service to the City and to its Residents under the Tariffs; and

(2) to acquire, purchase, construct, install, locate, maintain, operate, upgrade and extend into, within and through the City all Company Facilities reasonably necessary for the generation, production, manufacture, sale, storage, purchase, exchange, transportation, transmission and distribution of Utility Service within and through the City.

B. Street Lighting and Traffic Signal Lighting Service. Street lighting service and traffic signal lighting service within the City shall be governed by Tariffs on file with the PUC.

§2.2 Conditions and Limitations.

A. Scope of Franchise. The grant of this Franchise shall extend to all areas of the City as it is now or hereafter constituted that are within the Company’s PUC-certificated service territory; however, nothing contained in this Franchise shall be construed to authorize the Company to engage in activities other than the provision of Utility Service.

B. Subject to City Usage. The Company’s right to make reasonable use of City Streets to provide Utility Service to the City and its Residents under this Franchise is subject to and subordinate to any City usage of said Streets.

C. Prior Grants Not Revoked. This grant and Franchise is not intended to and does not revoke any prior license, grant, or right to use the Streets, Other City Property or Public Utility Easements, and such licenses, grants or rights of use are hereby affirmed.

D. Franchise Not Exclusive. The rights granted by this Franchise are not, and shall not be deemed to be, granted exclusively to the Company, and the City reserves the right to make or grant a franchise to any other person, firm, or corporation.

§2.3 Effective Date and Term. This Franchise shall take effect on January 1, 2021 (the “Effective Date”) and shall supersede any prior franchise grants to the Company by the City. This Franchise shall terminate on December 31, 2040, unless extended by mutual consent or as provided below.

§2.4 Opt-Out - Anniversary. The City may, in its sole, absolute, and arbitrary discretion, without any condition, prerequisite, or qualification whatsoever, terminate this Franchise Agreement effective on each the 5th, 10th, and 15th anniversaries of the Effective Date (each a “Discretionary Termination Date”). The City may effect such termination by, on or before December 31 immediately before a Discretionary Termination Date, either (i) the Boulder City Council duly adopting an ordinance by affirmative vote of no less than two-thirds of its members approving such termination, or (ii) the passage, at a special or general election, by the electorate of the City of Boulder of a ballot measure authorizing an ordinance effecting such termination..

§2.5 Opt-Out - GHG Progress.

A. The “2030 Commitment” shall mean, collectively, (i) the filing by the Company with the Colorado Public Utilities Commission on or before March 31, 2021, and to thereafter diligently seek approval of, a clean energy plan pursuant to C.R.S. §§ 25-7-105 and 40-2-125.5 to reduce greenhouse gas emissions associated with the generation of electricity sold to the Company’s Colorado electricity customers by 80 percent (from 2005 levels) by 2030 and which seeks to achieve providing its Colorado customers with energy generated from 100 percent (100%) clean energy sources by 2050; and (ii) following, approval thereof by the Colorado Public Utilities Commission, to thereafter diligently and consistently implement such clean energy plan, as approved.

B. The “Benchmarks” shall mean greenhouse gas emissions directly associated with the generation of electricity sold to the Company’s Colorado electricity customers in each of the following calendar years, as reported to The Climate Registry through its Electric Power Sector Protocol, consistent with Environmental Protection Agency Greenhouse Gas Mandatory Reporting Rule in 40 CFR Part 98, in the identified amounts for the following calendar years:

In the calendar year 2022: no more than 16.6 million short tons CO₂e

In the calendar year 2024: no more than 13.6 million short tons CO₂e

In the calendar year 2027: no more than 11.5 million short tons CO₂e

In the calendar year 2030: no more than 6.9 million short tons CO₂e

C. In the event of the failure of Company to either (i) comply with the 2030 Commitment, and to cure such non-compliance within 90 days after delivery of written notice thereof by the City to the Company; or (ii) meet any of the Benchmarks, then, in either event, the City may, at its option, terminate this Franchise Agreement. With mutual agreement between the parties, the Benchmarks may be adjusted due to extraordinary circumstances.

D. The “Trigger Date” shall mean (i) in the case of a failure to comply with the 2030 Commitment, the date which is 90 days after the delivery of notice by the City contemplated by subsection C.(i); and (ii) in the case of a failure to meet any of the Benchmarks, the date of publication of the relevant Benchmark.

E. The termination contemplated by this section 2.5 may be effected by the City at any time during the 16-month period after the relevant Trigger Date by either (i) the Boulder City Council duly adopting an ordinance by affirmative vote of no less than two-thirds of its members approving such termination, or (ii) the passage, at a special or general election, by the electorate of the City of Boulder of a ballot measure authorizing an ordinance effecting such termination.

§2.6 Special Circumstances. The parties agree and acknowledge that there are special circumstances that warrant these and other provisions throughout this Franchise Agreement, and the City has provided valuable consideration for such.

ARTICLE 3 CITY POLICE POWERS

§3.1 Police Powers. The Company expressly acknowledges the City's right to adopt, from time to time, in addition to the provisions contained herein, such laws, including ordinances and regulations, as it may deem necessary in the exercise of its governmental powers. If the City considers making any substantive changes in its local codes or regulations that in the City's reasonable opinion will significantly impact the Company's operations in the City's Streets, Public Utility Easements and Other City Property, it will make a good faith effort to advise the Company of such consideration; provided, however, that lack of notice shall not be justification for the Company's non-compliance with any applicable local requirements.

§3.2 Regulation of Streets and Other City Property. The Company expressly acknowledges the City's right to enforce regulations concerning the Company's access to or use of the Streets, Public Utility Easements, and/or Other City Property, including requirements for permits.

§3.3 Compliance with Laws. The Company shall promptly and fully comply with all laws, regulations, permits and orders lawfully enacted by the City that are consistent with Industry Standards. Nothing herein provided shall prevent the Company from legally challenging or appealing the enactment of any laws, regulations, permits and orders enacted by the City.

ARTICLE 4 FRANCHISE FEE

§4.1 Franchise Fee.

A. Fee. In consideration for this Franchise Agreement, which provides the certain terms related to the Company's use of City Streets, Public Utility Easements and Other City Property, which are valuable public properties acquired and maintained by the City at the expense of its Residents, and in recognition of the fact that the grant to the Company of this Franchise is a valuable right, the Company shall pay the City a sum equal to three percent (3%) of Gross Revenues (the "Franchise Fee"). The Company shall collect the Franchise Fee from a surcharge upon City Residents who are customers of the Company.

B. Obligation in Lieu of Franchise Fee. In the event that the Franchise Fee specified herein is declared void for any reason by a court of competent jurisdiction, unless prohibited by law, the Company shall be obligated to pay the City, at the same times and in the same manner as provided in this Franchise, an aggregate amount equal to the amount that the Company would have paid as a Franchise Fee as partial consideration for use of the City Streets, Public Utility Easements and Other City Property. Such payments shall be made in accordance with applicable provisions of law. Further, to the extent required by law, the Company shall collect the amounts agreed upon through a surcharge upon Utility Service provided to City Residents who are customers of the Company.

C. Changes in Utility Service Industries. The City and the Company recognize that utility service industries are the subject of restructuring initiatives by legislative and regulatory authorities, and are also experiencing other changes as a result of mergers, acquisitions, and reorganizations. Some of such initiatives and changes may have an adverse impact upon the Franchise Fee revenues provided for herein. In recognition of the length of the term of this Franchise, the Company agrees that in the event of any such initiatives or changes and to the extent permitted by law, upon receiving a written request from the City, the Company will cooperate with and assist the City in making reasonable modifications of this Franchise Agreement in an effort to provide that the City receives an amount in Franchise Fees or some other form of compensation that is the same amount of Franchise fees paid to the City as of the date that such initiatives and changes adversely impact Franchise Fee revenues.

D. Utility Service Provided to the City. No Franchise Fee shall be charged to the City for Utility Service provided directly or indirectly to the City for its own consumption, including street lighting service and traffic signal lighting service, unless otherwise directed by the City in writing and in a manner consistent with Company Tariffs.

§4.2 Remittance of Franchise Fee.

A. Remittance Schedule. Franchise Fees shall be remitted by the Company to the City as directed by the City in monthly installments not more than 30 days following the close of each calendar month.

B. Correction of Franchise Fee Payments. In the event that either the City or the Company discovers that there has been an error in the calculation of the Franchise Fee payment to the City, either party shall provide written notice of the error to the other party, subject to the following sentence: If the party receiving written notice of the error does not agree with the written notice of error, that party may challenge the written notice of error pursuant to Section 4.2D. of this Franchise; otherwise, the error shall be corrected in the next monthly payment. However, subject to the terms of the Tariff, if the error results in an overpayment of the Franchise Fee to the City, and said overpayment is in excess of five thousand dollars (\$5,000.00), correction of the overpayment by the City shall take the form of a credit against future Franchise Fees and shall be spread over the same period the error was undiscovered or the City shall make a refund payment to the Company. If such period would extend beyond the term of this Franchise, the Company may elect to require the City to provide it with a refund instead of a credit, with such refund to be spread over the same period the error was undiscovered, even if the refund will be paid after the termination date

of this Franchise. All Franchise Fee underpayments shall be corrected in the next monthly payment, together with interest computed at the rate set by the PUC for customer security deposits held by the Company, from the date when due until the date paid. Subject to the terms of the Tariffs, in no event shall either party be required to fund or refund any overpayment or underpayment made as a result of a Company error which occurred more than five (5) years prior to the discovery of the error.

C. Audit of Franchise Fee Payments.

(1) Company Audit. At the request of the City, every three (3) years commencing at the end of the third calendar year of the term of this Franchise, the Company shall conduct an internal audit, in accordance with the Company's auditing principles and policies that are applicable to electric and gas utilities that are developed in accordance with the Institute of Internal Auditors, to investigate and determine the correctness of the Franchise Fees paid to the City. Such audit shall be limited to the previous three (3) calendar years. Within a reasonable period of time after the audit, the Company shall provide a written report to the city clerk summarizing the testing procedures followed along with any potential findings.

(2) City Audit. If the City disagrees with the results of the Company's audit, and if the parties are not able to informally resolve their differences, the City may conduct its own audit at its own expense, in accordance with generally accepted auditing principles applicable to electric and gas utilities, and the Company shall cooperate by providing the City's auditor with non-confidential information that would be required to be disclosed under applicable state sales and use tax laws.

(3) Underpayments. If the results of a City audit conducted pursuant to Subsection 4.2C.(2) concludes that the Company has underpaid the City by five percent (5%) or more, in addition to the obligation to pay such amounts to the City, the Company shall also pay all reasonable costs of the City's audit. The Company shall not be responsible for any errors in third party data that is used in association with audits, including without limitation, Geotax data.

D. Fee Disputes. Either party may challenge any written notification of error as provided for in Section 4.2B. of this Franchise by filing a written notice to the other party within 30 days of receipt of the written notification of error. The written notice shall contain a summary of the facts and reasons for the party's notice. The parties shall make good faith efforts to resolve any such notice of error before initiating any formal legal proceedings for the resolution of such error.

E. Reports. To the extent allowed by law, upon written request by the City, but not more frequently than once each year, the Company shall supply the City with a list of the names and addresses of registered natural gas suppliers and brokers of natural gas that utilize Company Facilities to sell or distribute natural gas in the City during the preceding 12-month period. The Company shall not be required to disclose any confidential or proprietary information.

- §4.3 Franchise Fee Payment Not in Lieu of Permit or Other Fees. Payment of the Franchise Fee by the Company to the City does not exempt the Company from any other lawful tax or fee imposed generally upon persons doing business within the City, except that the Franchise Fee provided for herein shall be in lieu of any occupation, occupancy or similar tax or fee for the Company's use of City Streets, Public Utility Easements or Other City Property under the terms set forth in this Franchise. Notwithstanding anything in this Section to the contrary, the City reserves the right to adopt and implement lawful taxes or fees to fund city energy related projects.

ARTICLE 5 ADMINISTRATION OF FRANCHISE

- §5.1 City Designee. The City shall designate in writing to the Company an official or officials having full power and authority to administer this Franchise ("City Designee" or "City Designees"). The City may also designate one or more City representatives to act as the primary liaison with the Company as to particular matters addressed by this Franchise and shall provide the Company with the names and telephone numbers of said City Designees. The City may change these designations by providing written notice to the Company. The City's Designees shall have the right, at all reasonable times and with reasonable notice to the Company, to inspect any Company Facilities in City Streets, Public Utility Easements, and Other City Property.
- §5.2 Company Designee. The Company shall designate a representative to act as the primary liaison with the City and shall provide the City with the name, address, and telephone number for the Company's representative under this Franchise ("Company Designee"). The Company may change its designation by providing written notice to the City. The City shall use the Company Designee to communicate with the Company regarding Utility Service and related service needs for City facilities.
- §5.3 Coordination of Work. Company and City agree to coordinate their activities in City Streets, Public Utility Easements and Other City Property. The City and the Company will meet annually upon the written request of the City Designee to exchange their respective short-term and long-term forecasts and/or work plans for construction and other similar work which may affect City Streets, including but not limited to any planned City Streets paving projects. The City and Company shall hold such meetings as either deems necessary to exchange additional information with a view toward coordinating their respective activities in those areas where such coordination may prove beneficial and so that the City will be assured that all City laws, rules and regulations, as well as all applicable provisions of this Franchise, applicable building and zoning codes, and applicable City air and water pollution regulations are complied with, and that aesthetic and other relevant planning principles have been given due consideration.

ARTICLE 6 SUPPLY, CONSTRUCTION, AND DESIGN

- §6.1 Purpose. The Company acknowledges the critical nature of the municipal services performed or provided by the City to the Residents that require the Company to provide prompt and reliable Utility Service and the performance of related services for City

facilities. The City and the Company wish to provide for certain terms and conditions under which the Company will provide Utility Service and perform related services for the City in order to facilitate and enhance the operation of City facilities. They also wish to provide for other processes and procedures related to the provision of Utility Service to the City.

§6.2 Supply. Subject to the jurisdiction of the PUC, the Company shall take all reasonable and necessary steps to provide a sufficient supply of gas and electricity to Residents at the lowest reasonable cost consistent with reliable supplies.

§6.3 Charges to the City for Service to City Facilities. No charges to the City by the Company for Utility Service (other than gas transportation which shall be subject to negotiated contracts) shall exceed the lowest charge for similar service or supplies provided by the Company to any other similarly situated customer of the Company. The parties acknowledge the jurisdiction of the PUC over the Company's regulated intrastate electric and gas rates. All charges to the City shall be in accord with the Tariffs.

§6.4 Restoration of Service.

A. Notification. The Company shall provide to the City daytime and nighttime telephone numbers of a Company Designee from whom the City may obtain status information from the Company on a 24-hour basis concerning interruptions of Utility Service in any part of the City.

B. Restoration. In the event the Company's gas system or electric system within the City, or any part thereof, is partially or wholly destroyed or incapacitated, the Company shall use due diligence to restore such system to satisfactory service within the shortest practicable period of time, or provide a reasonable alternative to such system if the Company elects not to restore such system.

§6.5 Obligations Regarding Company Facilities.

A. Company Facilities. All Company Facilities within City Streets and Other City Property shall be maintained in good repair and condition.

B. Company Work within the City. All work within City Streets and Other City Property performed or caused to be performed by the Company shall be performed:

- (1) in a high-quality manner that is in accordance with Industry Standards;
- (2) in a timely and expeditious manner;
- (3) in a manner that reasonably minimizes inconvenience to the public;
- (4) in a cost-effective manner, which may include the use of qualified contractors; and
- (5) in accordance with all applicable City laws, ordinances and regulations that are consistent with Industry Standards and the Tariffs.

C. No Interference with City Facilities. Company Facilities shall not unreasonably interfere with any City facilities, including water facilities, sanitary or storm sewer facilities, communications facilities, or other City uses of the Streets, Public Utility Easements or Other City Property. Company Facilities shall be installed and maintained in City Streets, Public Utility Easements, and Other City Property so as to reasonably minimize interference with other property, trees, and other improvements and natural features in and adjoining the Streets and Other City Property in light of the Company's obligation under Colorado law to provide safe and reliable utility facilities and services.

D. Permit and Inspection. The installation, renovation, and replacement of any Company Facilities in the City Streets, Public Utility Easements, or Other City Property by or on behalf of the Company shall be subject to permit, inspection and approval by the City in accordance with applicable City laws. Such permitting, inspection and approval may include, but shall not be limited to, the following matters: location of Company Facilities, cutting and pruning of trees and shrubs and disturbance of pavement, sidewalks and surfaces of City Streets, Public Utility Easements, or Other City Property; provided, however, the Company shall have the right to cut, prune, and/or remove vegetation in accordance with its standard vegetation management requirements and procedures. The Company agrees to cooperate with the City in conducting inspections and shall promptly perform any remedial action lawfully required by the City pursuant to any such inspection that is consistent with Industry Standards.

E. Compliance. Subject to the provisions of Section 3.3 above, the Company and all of its contractors shall comply with the requirements of applicable municipal laws, ordinances, regulations, permits, and standards, including but not limited to requirements of all building and zoning codes, and requirements regarding curb and pavement cuts, excavating, digging, and other construction activities. The Company shall use commercially reasonable efforts to require that its contractors working in City Streets, Public Utility Easements, and Other City Property hold the necessary licenses and permits required by law.

F. Increase in Voltage. The Company shall reimburse the City for the cost of upgrading the electrical system or facility of any City building or facility that uses Utility Service where such upgrading is solely caused or occasioned by the Company's decision to increase the voltage of delivered electrical energy. This provision shall not apply to voltage increases required by law, including but not limited to a final order of the PUC, or voltage increases requested by the City.

§6.6 As-Built Drawings.

A. Within 30 days after written request of the City designee, but no sooner than 14 days after project completion, the Company shall commence its internal process to permit the Company to provide, on a project by project basis, as-built drawings of any Company Facility installed within the City Streets or contiguous to the City Streets.

B. If the requested information must be limited or cannot be provided pursuant to regulatory requirements, the Company shall promptly notify the City of such restrictions. The City acknowledges that the requested information is confidential information of the

Company and the Company asserts that disclosure to members of the public would be contrary to the public interest. Accordingly, the City shall deny the right of inspection of the Company's confidential information as set forth in § 24-72-204(3)(a)(IV), C.R.S., as may be amended from time to time (the "Open Records Act"). If an Open Records Act request is made by any third party for confidential or proprietary information that the Company has provided to the City pursuant to this Franchise, the City will immediately notify the Company of the request and shall allow the Company to defend such request at its sole expense, including filing a legal action in any court of competent jurisdiction to prevent disclosure of such information. In any such legal action the Company shall join the person requesting the information and the City. In no circumstance shall the City provide to any third-party confidential information provided by the Company pursuant to this Franchise without first conferring with the Company. Provided the City complies with the terms of this Section, the Company shall defend, indemnify and hold the City harmless from any claim, judgment, costs or attorney fees incurred in participating in such proceeding.

C. As used in this Section, as-built drawings refers to hard copies of the facility drawings as maintained in the Company's business records and shall not include information maintained in the Company's geographical information system. The Company shall not be required to create drawings that do not exist at the time of the request.

§6.7 Excavation and Construction. The Company shall be responsible for obtaining, paying for, and complying with all applicable permits, in the manner required by the laws, ordinances, and regulations of the City, to the extent consistent with Industry Standards. Upon the Company submitting a construction design plan, the City shall promptly and fully advise the Company in writing of all requirements for the restoration of City Streets in advance of Company excavation projects in City Streets, based upon the design submitted.

§6.8 Restoration. Subject to the provisions of Section 6.5D. of this Franchise Agreement, when the Company performs any work in or affecting the City Streets, Public Utility Easement, or Other City Property, it shall, at its own expense, promptly remove any obstructions placed thereon or therein by the Company and restore such City Streets, Public Utility Easements, or Other City Property to a condition that is substantially the same as existed before the work and that meets applicable City standards. If weather or other conditions do not permit the complete restoration required by this Section, the Company may with the approval of the City, temporarily restore the affected City Streets, Public Utility Easements, or Other City Property, provided that such temporary restoration is not at the City's expense and provided further that the Company promptly undertakes and completes the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Upon the request of the City, the Company shall restore the Streets, Public Utility Easements, or Other City Property to a better condition than existed before the Company work was undertaken, provided that the City shall be responsible for any incremental costs of such restoration not required by then-current City standards, and provided the City seeks and/or grants, as applicable, any additional required approvals. If the Company fails to promptly restore the City Streets or Other City Property as required by this Section, and if, in the reasonable discretion of the City, immediate action is required for the protection of public health, safety or welfare, the City may restore such Streets,

Public Utility Easements, or Other City Property or remove the obstruction therefrom; provided however, City actions do not interfere with Company Facilities. The Company shall be responsible for the actual cost incurred by the City to restore such City Streets or Other City Property or to remove any obstructions therefrom. In the course of its restoration of City Streets, Public Utility Easements or Other City Property under this Section, the City shall not perform work on Company Facilities unless specifically authorized by the Company in writing on a project-by-project basis and subject to the terms and conditions agreed to in such authorization.

§6.9 Relocation of Company Facilities.

A. Relocation Obligation. The Company shall temporarily or permanently relocate, change or alter the position of any Company Facility (collectively, “Relocate(s),” “Relocation(s)” or “Relocated”) in City Streets or Other City Property at no cost or expense to the City whenever such Relocation is necessary for the completion of any Public Project. In the case of Relocation that is necessary for the completion of any Public Project in a Public Utility Easement, the Company shall not be responsible for any Relocation costs. In the event of any Relocation contemplated pursuant to this Section 6.9A., the Company and the City agree to cooperate on the location and Relocation of the Company Facilities in the City Streets or Other City Property in order to achieve Relocation in the most efficient and cost-effective manner possible. Notwithstanding the foregoing, once the Company has Relocated any Company Facility at the City’s direction, if the City requests that the same Company Facility be Relocated within two (2) years, the subsequent Relocation shall not be at the Company’s expense. Nothing provided herein shall prevent the Company from obtaining reimbursement of its Relocation costs from third parties.

B. Private Projects. Subject to Section 6.9F., the Company shall not be responsible for the expenses of any Relocation required by Private Projects, and the Company has the right to require the payment of estimated Relocation expenses from the party causing, or responsible for, the Relocation before undertaking the Relocation.

C. Relocation Performance. The Relocations set forth in Section 6.9A. of this Franchise shall be completed within a reasonable time, not to exceed 120 days from the later of the date on which the City designee requests, in writing, that the Relocation commence, or the date when the Company is provided all Supporting Documentation. The Company shall receive an extension of time to complete a Relocation where the Company’s performance was delayed due to a Force Majeure Event or the failure of the City to provide adequate Supporting Documentation. The Company has the burden of presenting evidence to reasonably demonstrate the basis for the delay. Upon written request of the Company, the City may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold or condition any such extension.

D. City Revision of Supporting Documentation. Any revision by the City of Supporting Documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding Company Facility Relocation shall be deemed good cause for a reasonable extension of time to complete the Relocation under this Franchise.

E. Completion. Each such Relocation shall be complete only when the Company actually Relocates the Company Facilities, restores the Relocation site in accordance with Section 6.9 of this Franchise or as otherwise agreed with the City, and properly removes or abandons on site all unused Company Facilities, equipment, material and other impediments. “Unused” for the purposes of this Franchise shall mean that the Company is no longer using the Company Facilities in question and has no plans to use the Company Facilities in the foreseeable future.

F. Scope of Obligation. Notwithstanding anything to the contrary in this Franchise, the Company shall not be required to Relocate any Company Facilities from property (a) owned by the Company in fee; or (b) in which the Company has a property right, grant or interest, including without limitation an easement.

G. Underground Relocation. Underground Company Facilities shall be Relocated underground. Above ground Company Facilities shall be Relocated above ground unless the Company is paid for the incremental amount by which the underground cost would exceed the above ground cost of Relocation, or the City requests that such additional incremental cost be paid out of available funds under Article 11 of this Franchise.

H. Coordination.

(1) When requested in writing by the City Designee or the Company, representatives of the City and the Company shall meet to share information regarding anticipated projects which will require Relocation of Company Facilities in City Streets, Public Utility Easements, and/or Other City Property. Such meetings shall be for the purpose of minimizing conflicts where possible and to facilitate coordination with any reasonable timetable established by the City for any Public Project.

(2) The City shall make reasonable best efforts to provide the Company with two (2) years’ advance notice of any planned Street repaving. The Company shall make reasonable best efforts to complete any necessary or anticipated repairs or upgrades to Company Facilities that are located in the Streets within the two-year period if practicable.

I. Proposed Alternatives or Modifications. Upon receipt of written notice of a required Relocation, the Company may propose an alternative to or modification of the Public Project requiring the Relocation in an effort to mitigate or avoid the impact of the required Relocation of Company Facilities. The City shall in good faith review the proposed alternative or modification. The acceptance of the proposed alternative or modification shall be at the discretion of the City. In the event the City accepts the proposed alternative or modification, the Company agrees to promptly compensate the City for all additional costs, expenses or delay that the City reasonably determines resulted from the implementation of the proposed alternative.

§6.10 New or Modified Service Requested by City. The conditions under which the Company shall install new or modified Utility Service to the City as a customer shall be governed by this Franchise and the Company’s Tariffs.

- §6.11 Service to New Areas. If the territorial boundaries of the City are expanded during the term of this Franchise, the Company shall, to the extent permitted by law, extend service to Residents in the expanded area at the earliest practicable time provided the expanded area is within the Company's PUC-certificated service territory. Service to the expanded area shall be in accordance with the terms of the Tariffs and this Franchise, including the payment of Franchise Fees.
- §6.12 City Not Required to Advance Funds if Permitted by Tariffs. Upon receipt of the City's authorization for billing and construction, the Company shall install Company Facilities to provide Utility Service to the City as a customer, without requiring the City to advance funds prior to construction. The City shall pay for the installation of Company Facilities once completed in accordance with the Tariffs. Notwithstanding anything to the contrary, the provisions of this Section allowing the City to not advance funds prior to construction shall only apply to the extent permitted by the Tariffs.
- §6.13 Technological Improvements. The Company shall use its best efforts to incorporate, as soon as practicable, technological advances in its equipment and service within the City when such advances are technically and economically feasible and are safe and beneficial to the City and its Residents.

ARTICLE 7 RELIABILITY

- §7.1 Reliability. The Company shall operate and maintain Company Facilities efficiently and economically, in accordance with Industry Standards, and in accordance with the standards, systems, methods and skills consistent with the provision of adequate, safe and reliable Utility Service.
- §7.2 Franchise Performance Obligations. The Company recognizes that, as part of its obligations and commitments under this Franchise, the Company shall carry out each of its performance obligations in a timely, expeditious, efficient, economical and workmanlike manner.
- §7.3 Reliability Reports. Upon written request, the Company shall provide the City with a report regarding the reliability of Company Facilities and Utility Service.

ARTICLE 8 COMPANY PERFORMANCE OBLIGATIONS

- §8.1 New or Modified Service to City Facilities. In providing new or modified Utility Service to City facilities, the Company agrees to perform as follows:
- A. Performance. The Company shall complete each project requested by the City within a reasonable time. The parties agree that a reasonable time shall not exceed 180 days from the date upon which the City Designee makes a written request and provides the required Supporting Documentation for all Company Facilities other than traffic facilities. The Company shall be entitled to an extension of time to complete a project where the Company's performance was delayed due to a Force Majeure Event. Upon request of the

Company, the City Designee may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension.

B. City Revision of Supporting Documentation. Any revision by the City of Supporting Documentation provided to the Company that causes the Company to substantially redesign and/or substantially change its plans regarding new or modified service to City facilities shall be deemed good cause for a reasonable extension of time to complete the Relocation under this Franchise.

C. Completion/Restoration. Each such project shall be complete only when the Company actually provides the service installation or modification required, restores the project site in accordance with the terms of this Franchise or as otherwise agreed with the City and properly removes or abandons on site any unused Company Facilities, equipment, material and other impediments.

§8.2 Adjustments to Company Facilities. The Company shall perform adjustments to Company Facilities that are consistent with Industry Standards, including manhole rings and other appurtenances in Streets and Other City Property, to accommodate City Street maintenance, repair and paving operations at no cost to the City. In providing such adjustments to Company Facilities, the Company agrees to perform as follows:

A. Performance. The Company shall complete each requested adjustment within a reasonable time, not to exceed 30 days from the date upon which the City makes a written request and provides to the Company all information reasonably necessary to perform the adjustment. The Company shall be entitled to an extension of time to complete an adjustment where the Company's performance was delayed due to a Force Majeure Event. Upon request of the Company, the City may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension.

B. Completion/Restoration. Each such adjustment shall be complete only when the Company actually adjusts and, if required, readjusts, Company Facilities to accommodate City operations in accordance with City instructions following City paving operations.

C. Coordination. As requested by the City or the Company, representatives of the City and the Company shall meet regarding anticipated Street maintenance operations which will require such adjustments to Company Facilities in Streets or Other City Property. Such meetings shall be for the purpose of coordinating and facilitating performance under this Section.

§8.3 Third Party Damage Recovery.

A. Damage to Company Facilities. If any individual or entity damages any Company Facilities, to the extent permitted by law, the City will notify the Company of any such incident of which it has knowledge and will provide to the Company within a reasonable time all pertinent information within its possession regarding the incident and the damage, including the identity of the responsible individual or entity.

B. Damage to Company Facilities for which the City is Responsible. If any individual or entity damages any Company Facilities for which the City is obligated to reimburse the Company for the cost of the repair or replacement, to the extent permitted by law, the Company will notify the City of any such incident of which it has knowledge and will provide to the City within a reasonable time all pertinent information within its possession regarding the incident and the damage, including the identity of the responsible individual or entity.

C. Meeting. The Company and the City agree to meet periodically upon written request of either party for the purpose of developing, implementing, reviewing, improving and/or modifying mutually beneficial procedures and methods for the efficient gathering and transmittal of information useful in recovery efforts against third parties for damaging Company Facilities.

ARTICLE 9 BILLING AND PAYMENT

§9.1 Billing for Utility Services.

A. Monthly Billing. Unless otherwise provided in the Tariffs, the rules and regulations of the PUC, or the Public Utility Law, the Company shall render bills monthly to the offices of the City for Utility Service and other related services for which the Company is entitled to payment.

B. Address for Billing. Billings for service rendered during the preceding month shall be sent to the person(s) designated by the City and payment for same shall be made as prescribed in this Franchise and the applicable Tariffs.

C. Supporting Documents. To the extent requested by the City, the Company shall provide all billings and any underlying Supporting Documentation reasonably requested by the City in an editable and manipulatable electronic format that is acceptable to the Company and the City.

D. Annual Meetings. The Company agrees to meet with the City Designee on a reasonable basis at the City's request, but no more frequently than once a year, for the purpose of developing, implementing, reviewing, and/or modifying mutually beneficial and acceptable billing procedures, methods, and formats which may include, without limitation, electronic billing and upgrades or beneficial alternatives to the Company's current most advanced billing technology, for the efficient and cost-effective rendering and processing of such billings submitted by the Company to the City.

§9.2 Payment to City. In the event the City determines after written notice to the Company that the Company is liable to the City for payments, costs, expenses or damages of any nature, and subject to the Company's right to challenge such determination, the City may deduct all monies due and owing the City from any other amounts currently due and owing the Company. Upon receipt of such written notice, the Company may request a meeting between the Company's designee and a designee of the City to discuss such determination. The City agrees to attend such a meeting. As an alternative to such deduction and subject

to the Company's right to challenge, the City may bill the Company for such assessment(s), in which case, the Company shall pay each such bill within 30 days of the date of receipt of such bill unless it challenges the validity of the charge. If the Company challenges the City determination of liability, the City shall make such payments to the Company for Utility Service received by City pursuant to the Tariffs until the challenge has been finally resolved.

ARTICLE 10 USE OF COMPANY FACILITIES

- §10.1 City Use of Company Electric Distribution Poles. The City shall be permitted to make use of Company electric distribution poles in the City, without a use fee for the placement of City equipment or facilities necessary to serve a legitimate police, fire, emergency, public safety or traffic control purpose. The City shall notify the Company in advance and in writing of its intent to use Company's electric distribution poles, and the nature of such use, unless it is impracticable to provide such advance notice because of emergency circumstances, in which event the City shall provide such notice as soon as practicable. The City shall be responsible for costs associated with modifications to Company electric distribution poles to accommodate the City's use of such Company electric distribution poles and for any electricity used. No such use of Company electric distribution poles may occur if it would constitute a safety hazard or would interfere with the Company's use of Company Facilities. Any such City use must comply with the National Electric Safety Code, Industry Standards, and all other applicable laws, rules and regulations.
- §10.2 Third Party Use of Company Electric Distribution Poles. If requested in writing by the City, the Company may allow other companies who hold franchises, or otherwise have obtained consent from the City to use the Streets, to utilize Company electric distribution poles in City Streets and Other City Property, subject to the Tariffs, for the placement of their facilities upon approval by the Company and agreement upon reasonable terms and conditions, including payment of fees established by the Company. No such use shall be permitted if it would constitute a safety hazard or would interfere with the Company's use of Company Facilities. The Company shall not be required to permit the use of Company electric distribution poles for the provision of utility service except as otherwise required by law.
- §10.3 City Use of Company Transmission Rights-of-Way. The Company shall offer to grant to the City use of transmission rights-of-way which it now, or in the future, owns in fee within the City for trails, parks and open space on terms comparable to those offered to other municipalities; provided, however, that the Company shall not be required to make such an offer in any circumstance where such use would constitute a safety hazard or would interfere with the Company's use of the transmission right-of-way. In order to exercise this right, the City must make specific, advance written request to the Company for any such use and must enter such written agreements as the Company may reasonably require.
- §10.4 Emergencies. Upon written request, the Company shall assist the City in developing an emergency management plan that is consistent with Company policies. The City and the Company shall work cooperatively with each other in any emergency or disaster situation to address the emergency or disaster.

ARTICLE 11

UNDERGROUNDING OF OVERHEAD FACILITIES

§11.1 Underground Electrical Lines in New Areas. Upon payment to the Company of the charges provided in the Tariffs or the equivalent, the Company shall place all newly constructed electrical distribution lines in newly developed areas of the City underground in accordance with applicable laws, regulations and orders of the City. Such underground construction shall be consistent with Industry Standards.

§11.2 Underground Conversion at Expense of Company.

A. Underground Conversion Program. The Company shall budget and allocate an annual amount, equivalent to one percent (1%) of the preceding year's Electric Gross Revenues, for the purpose of undergrounding its existing overhead electric distribution facilities located in City Streets (excluding privately owned electrical equipment, Public Utility Easements, and Other City Property within the City, as may be requested by the City Designee (the "Underground Program"), so long as the underground conversion does not result in end use customers of the Company incurring any costs related to the conversion and does not require the Company to obtain any additional land use rights. If the City requires Relocation of overhead electric facilities in the Streets and Other City Property and the Company determines that there is not adequate room within the Streets and Other City Property to relocate the Facilities overhead, the Company may relocate the Facilities underground and may charge the cost of undergrounding to the Underground Program.

B. Unexpended Portion and Advances. Any unexpended portion of the Underground Program available for undergrounding Facilities within the City that is unused within a calendar year shall be carried over to succeeding years within the term of the Franchise Agreement and, in addition, upon request by the City, the Company agrees to advance and expend amounts anticipated to be available under the preceding paragraph for up to three (3) years in advance provided at least three (3) years remain under the term of this Franchise Agreement. Any amounts so advanced shall be credited against amounts to be expended in succeeding years. Any funds left accumulated in the Underground Program under any prior Franchise shall be carried over to this Franchise. Notwithstanding the foregoing, the City shall have no vested interest in monies allocated to the Underground Program and any monies in the Underground Program not expended at the expiration or termination of this Franchise shall remain the property of the Company. At the expiration or termination of this Franchise, the Company shall not be required to underground any existing overhead facilities pursuant to this Article but may do so in its sole discretion.

C. System-wide Undergrounding. If, during the term of this Franchise, the Company should receive authority from the PUC to undertake a system-wide program or programs of undergrounding its electric distribution facilities system wide, the Company will budget and allocate to the program of undergrounding in the City such amount as may be determined and approved by the PUC, but in no case shall such amount be less than the one percent (1%) of annual Electric Gross Revenues provided above.

D. City Requirement to Underground. In addition to the provisions of this Article and the Boulder Revised Code, 1981, the City may require any above-ground Company Facilities in Streets, Public Utility Easements, and Other City Property to be moved underground at the City's expense.

§11.3 Undergrounding Performance. Upon receipt of a written request from the City, the Company shall underground Company Facilities pursuant to the provisions of this Article, in accordance with the procedures set forth in this Section.

A. Estimates. Promptly upon receipt of an undergrounding request from the City and the Supporting Documentation necessary for the Company to design the undergrounding project, the Company shall prepare a detailed, good faith cost estimate of the anticipated actual cost of the requested project for the City to review and, if acceptable to the City, the City will issue a project authorization. At the City's request, the Company will provide all documentation that forms the basis of the estimate that is not proprietary. The Company will not proceed with any requested project until the City has provided a written acceptance of the Company's estimate.

B. Performance. The Company shall complete each undergrounding project requested by the City within a reasonable time considering the size and scope of each project, not to exceed 240 days from the later of the date upon which the City designee makes a written request or the date the City provides to the Company all required Supporting Documentation. The Company shall have 120 days after receiving the City's written request to design project plans, prepare the good faith estimate, and transmit same to the City Designee for review. If City approval of the plans and estimate has not been granted, the Company's good faith estimate will be void 60 days after delivery of the plans and estimate to the City designee. If the plans and estimate are approved by the City, the Company shall have 120 days to complete the project, from the date of the City Designee's authorization of the underground project, plus any of the 120 unused days in preparing the good faith estimate. At the Company's sole discretion, if the good faith estimate has expired because the City designee has not approved the same within 60 days, the Company may extend the good faith estimate or prepare a new estimate using current prices. The Company shall be entitled to an extension of time to complete each undergrounding project where the Company's performance was delayed due to a Force Majeure Event. Upon written request of the Company, the City may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension.

C. City Revision of Supporting Documentation. Any revision by the City of Supporting Documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding an undergrounding project shall be deemed good cause for a reasonable extension of time to complete the undergrounding project under this Franchise.

D. Completion/Restoration. Each such undergrounding project undertaken pursuant to this Article shall be complete only when the Company actually undergrounds the designated Company Facilities and restores the undergrounding site in accordance with Section 6.7 of this Franchise, or as otherwise agreed with the City. When performing

underground conversions of overhead facilities, the Company shall make reasonable efforts consistent with its contractual obligations to persuade joint users of Company distribution poles to remove their facilities from such poles within the time allowed by this Article.

E. Report of Actual Costs. Upon completion of each undergrounding project undertaken pursuant to this Article, the Company shall submit to the City a detailed report of the Company's actual cost to complete the project and the Company shall reconcile this total actual cost with the accepted cost estimate. The report shall be provided within 120 days after completion of the project and written request from the City.

F. Audit of Underground Projects. The City may require the Company to undertake an independent audit of up to two (2) undergrounding projects in any calendar year. The City shall make any such request in writing within 120 days of receipt of the report of actual costs, as referenced in Section 11.3E. of this Franchise Agreement. Such audits shall be limited to projects completed in the calendar year when the audit is requested. The cost of any such independent audit shall reduce the amount of the Underground Program balance. The Company shall cooperate with any audit and the independent auditor shall prepare and provide to the City and the Company a final audit report showing the actual costs associated with completion of the project. If a project audit is required by the City, only those actual project costs confirmed and verified by the independent auditor as reasonable and necessary to complete the project shall be charged against the Underground Program balance.

§11.4 Audit of Underground Program. Upon written request, every three (3) years commencing at the end of the third calendar year of this Franchise, the Company shall cause an independent auditor to investigate and determine the correctness of the charges to the Underground Program. Such audits shall be limited to the previous three (3) calendar years. Audits performed pursuant to this Section shall be limited to charges to the Underground Program and shall not include an audit of individual underground projects. The independent auditor shall provide to the City and the Company a written report containing its findings. The Company shall reconcile the Underground Program balance consistent with the findings contained in the independent auditor's written report. The costs of the audit and investigation shall be charged against the Underground Program balance.

§11.5 Cooperation with Other Utilities. When undertaking an undergrounding project, the City and the Company shall coordinate with other utilities or companies that have their facilities above ground to attempt to have all facilities undergrounded as part of the same project. When other utilities or companies are placing their facilities underground, to the extent the Company has received prior written notification, the Company shall cooperate with these utilities and companies and undertake to underground Company Facilities as part of the same project where financially, technically and operationally feasible. The Company shall not be required to pay for any costs of undergrounding the facilities of other companies or the City.

§11.6 Planning and Coordination of Undergrounding Projects. The City and the Company shall mutually plan in advance the scheduling of undergrounding projects to be undertaken according to this Article as a part of the review and planning for other City and Company

construction projects. The City and the Company agree to meet, as required, to review the progress of the current undergrounding projects and to review planned future undergrounding projects. The purpose of such meetings shall be to further cooperation between the City and the Company in order to achieve the orderly undergrounding of Company Facilities. Representatives of both the City and the Company shall meet periodically to review the Company's undergrounding of Company Facilities and at such meetings shall review:

- A. Undergrounding, including conversions, Public Projects and replacements that have been accomplished or are underway, together with the Company's plans for additional undergrounding; and
- B. Public Projects anticipated by the City.

ARTICLE 12 PURCHASE OR CONDEMNATION

§12.1 Municipal Right to Purchase or Condemn.

A. Right and Privilege of City. The right and privilege of the City to construct, own and operate a municipal utility, and to purchase pursuant to a mutually acceptable agreement or condemn any Company Facilities located within the territorial boundaries of the City, and the Company's rights in connection therewith, as set forth in applicable provisions of the constitution, statutes and case law of the State of Colorado relating to the acquisition of public utilities, are expressly recognized. The City shall have the right, within the time frames and in accordance with the procedures set forth in such provisions, to condemn Company Facilities, land, rights-of-way and easements now owned or to be owned by the Company located within the territorial boundaries of the City. In the event of any such condemnation, no value shall be ascribed or given to the right to use City Streets, Public Utility Easements (unless specifically granted solely to the Company), or Other City Property granted under this Franchise in the valuation of the property thus sold. The rights and privileges set forth herein shall survive any exercise of the City's right to terminate pursuant to paragraphs 2.4 and 2.5 above.

B. Notice of Intent to Purchase or Condemn. The City shall provide the Company no less than one (1) year's prior written notice of its intent to purchase or condemn Company Facilities. Nothing in this Section shall be deemed or construed to constitute a consent by the Company to the City's purchase or condemnation of Company Facilities, nor a waiver of any Company defenses or challenges related thereto.

ARTICLE 13 MUNICIPALLY PRODUCED UTILITY SERVICE

§13.1 Municipally Produced Utility Service.

A. City Reservation. The City expressly reserves the right to engage in the production of utility service to the extent permitted by law. The Company agrees to negotiate in good faith long-term contracts to purchase City-generated power made available for sale,

consistent with PUC requirements and other applicable requirements. The Company further agrees to offer transmission and delivery services to the City that are required by judicial, statutory and/or regulatory directive and that are comparable to the services offered to any other customer with similar generation facilities.

B. Franchise Not to Limit City's or Company's Rights. Nothing in this Franchise prohibits the City from becoming an aggregator of utility service or from selling utility service to customers should it be permissible under law, nor does it affect the Company's rights and obligations pursuant to any Certificate of Public Convenience and Necessity granted by the PUC.

ARTICLE 14

ENVIRONMENT AND CONSERVATION

- §14.1 Environmental Leadership. The City and the Company agree that sustainable development, environmental excellence and innovation shall form the foundation of the Utility Service provided by the Company under this Franchise. The Company agrees to continue to actively pursue reduction of carbon emissions attributable to its electric generation facilities with a rigorous combination of Energy Conservation and Energy Efficiency measures, Clean Energy measures, and promoting and implementing the use of Renewable Energy Resources on both a distributed and centralized basis. The Company shall continue to cost-effectively monitor its operations to mitigate environmental impacts; shall meet the requirements of environmental laws, regulations and permits; shall invest in cost-effective, environmentally sound technologies; shall consider environmental issues in its planning and decision making; and shall support environmental research and development projects and partnerships in our communities through various means, including but not limited to corporate giving and employee involvement. The Company shall continue to explore ways to reduce water consumption at its facilities and to use recycled water where feasible. The Company shall continue to work with the U.S. Fish and Wildlife Service to develop and implement avian protection plans to reduce electrocution and collision risks by eagles, raptors and other migratory birds with transmission and distribution lines. If requested in writing by the City on or before December 1st of each year, the Company shall provide the City a written report describing its progress in carbon reduction and other environmental efforts, and the parties shall meet at a mutually convenient time and place for a discussion of such. In meeting its obligation under this Section, the Company is not precluded from providing existing internal and external reports that may be used for other reporting requirements.
- §14.2 Conservation. The City and the Company recognize and agree that Energy Conservation programs offer opportunities for the efficient use of energy and possible reduction of energy costs. The City and the Company further recognize that creative and effective Energy Conservation solutions are crucial to sustainable development. The Company recognizes and shares the City's stated objectives to advance the implementation of cost-effective Energy Efficiency and Energy Conservation programs that direct opportunities to Residents to manage more efficiently their use of energy and thereby create the opportunity to reduce their energy bills. The Company commits to offer programs that attempt to capture market opportunities for cost-effective Energy Efficiency improvements such as municipal specific programs that provide cash rebates for efficient lighting, energy design

programs to assist architects and engineers to incorporate Energy Efficiency in new construction projects, and recommissioning programs to analyze existing systems to optimize performance and conserve energy according to current and future demand side management (“DSM”) programs. In doing so, the Company recognizes the importance of (a) implementing cost-effective programs, the benefits of which would otherwise be lost if not pursued in a timely fashion; and (b) developing cost-effective programs for the various classes of the Company’s customers, including low-income customers. The Company shall advise the City and its Residents of the availability of assistance that the Company makes available for investments in Energy Conservation through newspaper advertisements, bill inserts and Energy Efficiency workshops and by maintaining information about these programs on the Company’s website. Further, at the City’s request, the Company’s Area Manager shall act as the primary liaison with the City who will provide the City with information on how the City may take advantage of reducing energy consumption in City facilities and how the City may participate in Energy Conservation and Energy Efficiency programs sponsored by the Company. As such, the Company and the City commit to work cooperatively and collaboratively to identify, develop, implement and support programs offering creative and sustainable opportunities to Company customers and Residents, including low-income customers. The Company agrees to help the City participate in Company programs and, when opportunities exist to partner with others, such as the State of Colorado, the Company will help the City pursue those opportunities. In addition, and in order to assist the City and its Residents’ participation in Renewable Energy Resource programs, the Company shall: notify the City regarding eligible Renewable Energy Resource programs; provide the City with technical support regarding how the City may participate in Renewable Energy Resource programs; and advise Residents regarding eligible Renewable Energy Resource programs. Notwithstanding the foregoing, to the extent that any Company assistance is needed to support Renewable Energy Resource Programs that are solely for the benefit of Company customers located within the City, the Company retains the sole discretion as to whether to incur such costs.

§14.3 Continuing Commitment. It is the express intention of the City and the Company that the collaborative effort provided for in this Article continue for the entire term of this Franchise. The City and the Company also recognize, however, that the programs identified in this Article may be for a limited duration and that the regulations and technologies associated with Energy Conservation are subject to change. Given this variability, the Company agrees to maintain its commitment to sustainable development and Energy Conservation for the term of this Franchise by continuing to provide leadership, support and assistance, in collaboration with the City, to identify, develop, implement and maintain new and creative programs similar to the programs identified in this Article in order to help the City achieve its environmental goals.

§14.4 PUC Approval. Nothing in this Article shall be deemed to require the Company to invest in technologies or to incur costs that it has a good faith belief the PUC will not allow the Company to recover through the ratemaking process.

ARTICLE 15 TRANSFER OF FRANCHISE

- §15.1 Consent of City Required. The Company shall not transfer or assign any rights under this Franchise to an unaffiliated third party, except by merger with such third party, or, except when the transfer is made in response to legislation or regulatory requirements, unless the City approves such transfer or assignment in writing. Approval of the transfer or assignment shall not be unreasonably withheld, conditioned or delayed.
- §15.2 Transfer Fee. In order that the City may share in the value this Franchise adds to the Company's operations, any transfer or assignment of rights granted under this Franchise requiring City approval, as set forth herein, shall be subject to the condition that the Company shall promptly pay to the City a transfer fee in an amount equal to the proportion of the City's then-population provided Utility Service by the Company to the then-population of the City and County of Denver provided Utility Service by the Company multiplied by one million dollars (\$1,000,000.00). Except as otherwise required by law, such transfer fee shall not be recovered from a surcharge placed only on the rates of Residents.

ARTICLE 16 CONTINUATION OF UTILITY SERVICE

- §16.1 Continuation of Utility Service. In the event this Franchise Agreement is not renewed or extended at the expiration of its term or is terminated for any reason, and the City has not provided for alternative utility service, the Company shall have no obligation to remove any Company Facilities from Streets, Public Utility Easements or Other City Property or discontinue providing Utility Service unless otherwise ordered by the PUC, and shall continue to provide Utility Service within the City until the City arranges for utility service from another provider. The City acknowledges and agrees that the Company has the right to use Streets, Other City Property and Public Utility Easements during any such period. The Company further agrees that it will not withhold any temporary Utility Services necessary to protect the public. The City agrees that in the circumstances of this Article, the Company shall be entitled to monetary compensation as provided in the Tariffs and the Company shall be entitled to collect from Residents and, upon the City's compliance with applicable provisions of law, shall be obligated to pay the City, at the same times and in the same manner as provided in this Franchise, an aggregate amount equal to the amount which the Company would have paid as a Franchise Fee as consideration for use of the City's Streets, Public Utility Easements, and Other City Property. Only upon receipt of written notice from the City stating that the City has adequate alternative utility service for Residents and upon order of the PUC shall the Company be allowed to discontinue the provision of Utility Service to the City and its Residents.

ARTICLE 17 INDEMNIFICATION AND IMMUNITY

- §17.1 City Held Harmless. The Company shall indemnify, defend and hold the City harmless from and against claims, demands, liens and all liability or damage of whatsoever kind on account of or directly arising from the grant of this Franchise or the exercise by the

Company of the related rights, but in both instances only to the extent caused by the Company, and shall pay the costs of defense plus reasonable attorneys' fees. The City shall (a) give prompt written notice to the Company of any claim, demand or lien with respect to which the City seeks indemnification hereunder; and (b) unless in the City's judgment a conflict of interest may exist between the City and the Company with respect to such claim, demand or lien, shall permit the Company to assume the defense of such claim, demand, or lien with counsel reasonably satisfactory to the City. If such defense is assumed by the Company, the Company shall not be subject to liability for any settlement made without its consent. If such defense is not assumed by the Company or if the City determines that a conflict of interest exists, the parties reserve all rights to seek all remedies available in this Franchise against each other. Notwithstanding any provision hereof to the contrary, the Company shall not be obligated to indemnify, defend or hold the City harmless to the extent any claim, demand or lien arises out of or in connection with any negligent or intentional act or failure to act of the City or any of its officers, agents or employees or to the extent that the City is acting in its capacity as a customer of record of the Company.

§17.2 Immunity. Nothing in this Section or any other provision of this Franchise shall be construed as a waiver of the notice requirements, defenses, immunities and limitations the City may have under the Colorado Governmental Immunity Act (§ 24-10-101, C.R.S., *et. seq.*) or of any other defenses, immunities, or limitations of liability available to the City by law.

ARTICLE 18 BREACH

§18.1 Change of Tariffs. The City and the Company agree to take all reasonable and necessary actions to assure that the terms of this Franchise are performed. The Company reserves the right to seek a change in its Tariffs, including but not limited to the rates, charges, terms, and conditions of providing Utility Service to the City and its Residents, and the City retains all rights that it may have to intervene and participate in any such proceedings.

§18.2 Breach.

A. Notice/Cure/Remedies. Except as otherwise provided in this Franchise, if a party (the "Breaching Party") to this Franchise fails or refuses to perform any of the terms or conditions of this Franchise (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 30 days in which to remedy the Breach or, if such Breach cannot be remedied in 30 days, such additional time as reasonably needed to remedy the Breach, but not exceeding an additional 30 day period, or such other time as the parties may agree. If the Breaching Party does not remedy the Breach within the time allowed in the notice, the Non-Breaching Party may exercise the following remedies for such Breach:

(1) specific performance of the applicable term or condition to the extent allowed by law; and

(2) recovery of actual damages from the date of such Breach incurred by the Non-Breaching Party in connection with the Breach, but excluding any special, punitive or consequential damages.

B. Termination of Franchise by City. In addition to the foregoing remedies, if the Company fails or refuses to perform any material term or condition of this Franchise (“Material Breach”), the City may provide written notice to the Company of such Material Breach. Upon receipt of such notice, the Company shall be given a reasonable time, not to exceed 90 days in which to remedy the Material Breach or, if such Material Breach cannot be remedied in 90 days, such additional time as reasonably needed to remedy the Material Breach, but not exceeding an additional 90 day period, or such other time as the parties may agree. If the Company does not remedy the Material Breach within the time allowed in the notice, the City may, in its sole discretion, terminate this Franchise. This remedy shall be in addition to the City’s right to exercise any of the remedies provided for elsewhere in this Franchise. Upon such termination, the Company shall continue to provide Utility Service to the City and its Residents (and shall continue to have associated rights and grants needed to provide such service) until the City makes alternative arrangements for such service and until otherwise ordered by the PUC and the Company shall be entitled to collect from Residents and, upon the City complying with applicable provisions of law, shall be obligated to pay the City, at the same times and in the same manner as provided in this Franchise, an aggregate amount equal to the amount which the Company would have paid as a Franchise Fee as consideration for use of the City Streets, Public Utility Easements, and Other City Property. Unless otherwise provided by law, the Company shall be entitled to collect such amount from Residents.

C. Company Shall Not Terminate Franchise. In no event does the Company have the right to terminate this Franchise.

D. No Limitation. Except as provided herein, nothing in this Franchise shall limit or restrict any legal rights or remedies that either party may possess arising from any alleged Breach of this Franchise.

ARTICLE 19 AMENDMENTS

§19.1 Proposed Amendments. At any time during the term of this Franchise, the City or the Company may propose amendments to this Franchise by giving 30 days’ written notice to the other of the proposed amendment(s) desired and both parties thereafter, through their designated representatives, will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s). However, nothing contained in this Section shall be deemed to require either party to consent to any amendment proposed by the other party.

§19.2 Effective Amendments. No alterations, amendments or modifications to this Franchise shall be valid unless executed in writing by the parties, which alterations, amendments or modifications shall be adopted with the same formality used in adopting this Franchise, to the extent required by law. Neither this Franchise, nor any term herein, may be changed, modified or abandoned, in whole or in part, except by an instrument in writing, and no

subsequent oral agreement shall have any validity whatsoever. Any amendment of the Franchise shall become effective only upon the approval of the PUC, if such PUC approval is required.

ARTICLE 20 EQUAL OPPORTUNITY

§20.1 Economic Development. The Company is committed to the principle of stimulating, cultivating and strengthening the participation and representation of persons of color, women and members of other under-represented groups within the Company and in the local business community. The Company believes that increased participation and representation of under-represented groups will lead to mutual and sustainable benefits for the local economy. The Company is committed also to the principle that the success and economic well-being of the Company is closely tied to the economic strength and vitality of the diverse communities and people it serves. The Company believes that contributing to the development of a viable and sustainable economic base among all Company customers is in the best interests of the Company and its shareholders.

§20.2 Employment.

A. Programs. The Company is committed to undertaking programs that identify, consider and develop persons of color, women and members of other under-represented groups for positions at all skill and management levels within the Company.

B. Businesses. The Company recognizes that the City and the business community in the City, including women and minority owned businesses, provide a valuable resource in assisting the Company to develop programs to promote persons of color, women and members of under-represented communities into management positions, and agrees to keep the City regularly advised of the Company's progress by providing the City a copy of the Company's annual affirmative action report upon the City's written request.

C. Recruitment. In order to enhance the diversity of the employees of the Company, the Company is committed to recruiting diverse employees by strategies such as partnering with colleges, universities and technical schools with diverse student populations, utilizing diversity-specific media to advertise employment opportunities, internships, and engaging recruiting firms with diversity-specific expertise.

D. Advancement. The Company is committed to developing a world-class workforce through the advancement of its employees, including persons of color, women and members of under-represented groups. In order to enhance opportunities for advancement, the Company will offer training and development opportunities for its employees. Such programs may include mentoring programs, training programs, classroom training and leadership programs.

E. Non-Discrimination. The Company is committed to a workplace free of discrimination based on race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability or any other protected status in accordance with all federal, state or local laws. The Company shall not, solely

because of race, creed, color, religion, gender, sexual orientation, marital status, age, military status, national origin, ancestry, or physical or mental disability, refuse to hire, discharge, promote, demote or discriminate in matters of compensation, against any person otherwise qualified.

F. Board of Directors. The Company shall identify and consider women, persons of color and other under-represented groups to recommend for its Board of Directors, consistent with the responsibility of boards to represent the interests of the Shareholders, customers and employees of the Company.

§20.3 Contracting.

A. Contracts. It is the Company's policy to make available to minority and women owned business enterprises and other small and/or disadvantaged business enterprises the maximum practical opportunity to compete with other service providers, contractors, vendors and suppliers in the marketplace. The Company is committed to increasing the proportion of Company contracts awarded to minority and women owned business enterprises and other small and/or disadvantaged business enterprises for services, construction, equipment and supplies to the maximum extent consistent with the efficient and economical operation of the Company.

B. Community Outreach. The Company agrees to maintain and continuously develop contracting and community outreach programs calculated to enhance opportunity and increase the participation of minority and women owned business enterprises and other small and/or disadvantaged business enterprises to encourage economic vitality. The Company agrees to keep the City regularly advised of the Company's programs.

C. Community Development. The Company shall maintain and support partnerships with local chambers of commerce and business organizations, including those representing predominately minority owned, women owned and disadvantaged businesses, to preserve and strengthen open communication channels and enhance opportunities for minority owned, women owned and disadvantaged businesses to contract with the Company.

§20.4 Coordination. City agencies provide collaborative leadership and mutual opportunities or programs relating to City based initiatives on economic development, employment and contracting opportunity. The Company agrees to review Company programs and mutual opportunities responsive to this Article with these agencies, upon their request, and to collaborate on best practices regarding such programs and coordinate and cooperate with the agencies in program implementation.

ARTICLE 21 MISCELLANEOUS

§21.1 No Waiver. Neither the City nor the Company shall be excused from complying with any of the terms and conditions of this Franchise by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions, to insist upon or to seek compliance with any such terms and conditions.

- §21.2 Successors and Assigns. The rights, privileges, and obligations, in whole or in part, granted and contained in this Franchise shall inure to the benefit of and be binding upon the Company, its successors and assigns, to the extent that such successors or assigns have succeeded to or been assigned the rights of the Company pursuant to Article 15 of this Franchise. Upon a transfer or assignment pursuant to Article 15, the Company shall be relieved from all liability from and after the date of such transfer.
- §21.3 Third Parties. Nothing contained in this Franchise shall be construed to provide rights to third parties.
- §21.4 Notice. Both parties shall designate from time to time in writing representatives for the Company and the City who will be the persons to whom notices shall be sent regarding any action to be taken under this Franchise. Notice shall be in writing and forwarded by certified mail, reputable overnight courier or hand delivery to the persons and addresses as hereinafter stated, unless the persons and addresses are changed at the written request of either party, delivered in person or by certified mail. Notice shall be deemed received (a) three (3) days after being mailed via the U.S. Postal Service, (b) one (1) business day after mailed if via reputable overnight courier, or (c) upon hand delivery if delivered by courier. Until any such change shall hereafter be made, notices shall be sent as follows:

To the City:

City Manager
City of Boulder
P.O. Box 791
Boulder, Colorado 80306

With a copy to:

City Attorney
City of Boulder
P.O. Box 791
Boulder, Colorado 80306

To the Company:

Senior Director, State Affairs and Community Relations
Public Service Company of Colorado
P.O. Box 840
Denver, Colorado 80201

With a copy to:

Legal Department
Public Service Company of Colorado
P.O. Box 840
Denver, Colorado 80201

and

Area Manager
Public Service Company of Colorado
P.O. Box 840
Denver, Colorado 80201

Any request involving any audit specifically allowed under this Franchise shall also be sent to:

Audit Services
Public Service Company of Colorado
P.O. Box 840
Denver, Colorado 80201

- §21.5 Examination of Records. The parties agree that any duly authorized representative of the City and the Company shall have access to and the right to examine any directly pertinent non-confidential books, documents, papers, and records of the other party involving any activities related to this Franchise. All such records must be kept for a minimum of the lesser of three (3) years or the time period permitted by a party's record retention policy. To the extent that either party believes in good faith that it is necessary in order to monitor compliance with the terms of this Franchise to examine confidential books, documents, papers, and records of the other party, the parties agree to meet and discuss providing confidential materials, including but not limited to providing such materials subject to a reasonable confidentiality agreement that effectively protects the confidentiality of such materials and complies with PUC rules and regulations.
- §21.6 List of Utility Property. The Company shall provide the City, upon request not more than once every two (2) years, a list of electric utility-related real property owned in fee by the Company within the County in which the City is located. All such records must be kept for a minimum of three (3) years or such shorter duration if required by Company policy.
- §21.7 PUC Filings. Upon written request by the City, the Company shall provide the City non-confidential copies of all applications, advice letters and periodic reports, together with any accompanying non-confidential testimony and exhibits, filed by the Company with the PUC. Notwithstanding the foregoing, notice regarding any gas and electric filings that may affect Utility Service rates in the City shall be sent to the City upon filing.
- §21.8 Information. Upon written request, the Company shall provide the city clerk or the City Designee with:
- A. A copy of the Company's or its parent company's consolidated annual financial report, or alternatively, a URL link to a location where the same information is available on the Company's website;
 - B. Maps or schematics indicating the location of specific Company Facilities (subject to City executing a confidentiality agreement as required by Company policy), including gas or electric lines, located within the City, to the extent those maps or schematics are in

existence at the time of the request and related to an ongoing project within the City. The Company does not represent or warrant the accuracy of any such maps or schematics; and

C. A copy of any report required to be prepared for a federal or state agency detailing the Company's efforts to comply with federal and state air and water pollution laws.

§21.9 Payment of Taxes and Fees.

A. Impositions. Except as otherwise provided herein, the Company shall pay and discharge as they become due, promptly and before delinquency, all taxes, assessments, rates, charges, license fees, municipal liens, levies, excises, or imposts, whether general or special, or ordinary or extraordinary, of every name, nature, and kind whatsoever, including all governmental charges of whatsoever name, nature, or kind, which may be levied, assessed, charged, or imposed, or which may become a lien or charge against this Franchise ("Impositions"), provided that the Company shall have the right to contest any such Impositions and shall not be in breach of this Section so long as it is actively contesting such Impositions.

B. City Liability. The City shall not be liable for the payment of late charges, interest or penalties of any nature other than pursuant to applicable Tariffs.

§21.10 Conflict of Interest. The parties agree that no official, officer or employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein and the Company further agrees not to hire or contract for services any official, officer or employee of the City to the extent prohibited by law, including ordinances and regulations of the City.

§21.11 Certificate of Public Convenience and Necessity. The City agrees to support the Company's application to the PUC to obtain a Certificate of Public Convenience and Necessity to exercise its rights and obligations under this Franchise.

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

§21.13 Severability. Should any one or more provisions of this Franchise be determined to be unconstitutional, illegal, unenforceable or otherwise void, all other provisions nevertheless shall remain effective; provided, however, to the extent allowed by law, the parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft one or more substitute provisions that will achieve the original intent of the parties hereunder.

- §21.14 Force Majeure. Neither the City nor the Company shall be in breach of this Franchise if a failure to perform any of the duties under this Franchise is due to a Force Majeure Event, as defined herein.
- §21.15 Earlier Franchises Superseded. This Franchise shall constitute the only franchise between the City and the Company related to the furnishing of Utility Service, and it supersedes and cancels all former franchises between the parties hereto.
- §21.16 Titles Not Controlling. Titles of the paragraphs herein are for reference only, and shall not be used to construe the language of this Franchise.
- §21.17 Applicable Law. Colorado law shall apply to the construction and enforcement of this Franchise. The parties agree that venue for any litigation arising out of this Franchise shall be in the District Court for Boulder County, State of Colorado.
- §21.18 Payment of Expenses Incurred by City in Relation to Franchise Agreement. The Company shall pay for expenses reasonably incurred by the City for the adoption of this Franchise, limited to the incremental cost of the franchise election, publication of notices, publication of ordinances, and photocopying of documents and other similar expenses.
- §21.19 Costs of Compliance with Franchise. The parties acknowledge that PUC rules, regulations and final decisions may require that costs of complying with certain provisions of this Franchise be borne by customers of the Company who are located within the City.
- §21.20 Conveyance of City Streets, Public Utility Easements or Other City Property. In the event the City vacates, releases, sells, conveys, transfers or otherwise disposes of a City Street, or any portion of a Public Utility Easement or Other City Property in which Company Facilities are located, the City shall reserve an easement in favor of the Company over that portion of the Street, Public Utility Easement or Other City Property in which such Company Facilities are located. The Company and the City shall work together to prepare the necessary legal description to effectuate such reservation. For the purposes of Section 6.9.A of this Franchise, the land vacated, released, sold, conveyed, transferred or otherwise disposed of by the City shall no longer be deemed to be a Street or Other City Property from which the City may demand the Company temporarily or permanently Relocate Company Facilities at the Company's expense.
- §21.21 Audit. For any audits specifically allowed under this Franchise, such audits shall be subject to the Tariff and PUC rules and regulations. Audits in which the auditor is compensated on the basis of a contingency fee arrangement shall not be permitted.
- §21.22 Land Use Coordination. The City shall coordinate with the Company regarding its land use planning. This coordination shall include meeting with the Company and identifying areas for future utility development.

(Signature page follows)

IN WITNESS WHEREOF, the parties have caused this Franchise to be executed as of the day and year first above written.

CITY OF BOULDER,
a Colorado home rule city

ATTEST:

City Clerk

Mayor

APPROVED AS TO FORM:

City Attorney' Office

Dated: _____

**PUBLIC SERVICE COMPANY OF
COLORADO, a Colorado corporation**

Hollie Horvath Velasquez
Senior Director, State Affairs and
Community Relations

STATE OF COLORADO)
)SS.
COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this __ day of _____, 2020 by Hollie Horvath Velasquez, Senior Director, State Affairs and Community Relations of Public Service Company of Colorado, a Colorado corporation.

Witness my hand and official seal.

Notary Public

My Commission expires: _____.

(SEAL)

ORDINANCE 8419

AN ORDINANCE APPROVING AND GRANTING A FRANCHISE BETWEEN THE CITY OF BOULDER, COLORADO TO PUBLIC SERVICE COMPANY OF COLORADO, ITS SUCCESSORS AND ASSIGNS, TO FURNISH, SELL, AND DISTRIBUTE GAS AND ELECTRICITY TO THE CITY AND TO ALL PERSONS, BUSINESSES, AND INDUSTRIES WITHIN THE CITY AND THE RIGHT TO ACQUIRE, CONSTRUCT, INSTALL, LOCATE, MAINTAIN, OPERATE, AND EXTEND INTO, WITHIN, AND THROUGH SAID CITY ALL FACILITIES REASONABLY NECESSARY TO FURNISH, SELL, AND DISTRIBUTE GAS AND ELECTRICITY WITHIN THE CITY AND THE RIGHT TO MAKE REASONABLE USE OF ALL STREETS, PUBLIC EASEMENTS AND OTHER CITY PROPERTY AS HEREIN DEFINED AS MAY BE NECESSARY; AND SETTING FORTH RELATED DETAILS.

THE CITY COUNCIL OF THE CITY OF BOULDER FINDS AND RECITES THE FOLLOWING:

A. Public Service Company of Colorado has applied to the city for the grant of a franchise to furnish, sell, and distribute gas and electricity to the city, its residents, businesses, and industries and to make reasonable use of the city streets, public easements, and other city property to do so.

B. Section 108 of the Boulder home rule charter provides that no franchise may be granted by the city except upon the vote of the registered electors.

C. Section 20 of the Boulder home rule charter provides that no proposed ordinance granting any proposed franchise shall be put upon its final passage within 60 days after its introduction, nor until it has been published not less than once a week for two consecutive weeks in one daily newspaper of the city in general circulation.

1 D. The final reading of this ordinance will occur only if at the November 3, 2020
2 election a majority of voters support a ballot measure relating to the proposed franchise that was
3 presented in Ordinance 8410, and the city council has certified the election results. This
4 ordinance meets the requirements of the Boulder home rule charter, including as required by the
5 Boulder home rule charter, including Charter Section 20, "Ordinances Granting Franchise,"
6 Charter Section 108, "Franchises Granted Upon Vote," and Charter Section 109, "No Exclusive
7 Grants-Ordinance in Plain Terms."
8

9 NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY
10 OF BOULDER:
11

12 Section 1. The City of Boulder grants a franchise to Public Service Company of
13 Colorado, its successors and assigns, a franchise to furnish, sell, and distribute gas and electricity
14 to the city, its residents, businesses, and industries and to make reasonable use of the city streets,
15 public easements, and other city property to do so as approved by the registered electors on
16 November 3, 2020 by the ballot measure presented in Ordinance 8410. The city council adopts
17 the franchise agreement that is attached to Ordinance 8410 and incorporates it into this ordinance
18 by this reference.

19 Section 2. The officers of the city are authorized to take all action necessary or
20 appropriate to effectuate the provisions of this ordinance.
21

22 Section 3. If any section, paragraph, clause, or provisions of this ordinance shall for any
23 reason be held to be invalid or unenforceable, such decision shall not affect any of the remaining
24 provisions of this ordinance.
25

Section 5. The city council deems it appropriate that this ordinance be published by title only and orders that copies of the text hereof be available in the office of the city clerk for public inspection and acquisition.

Sam Weaver,
Mayor

Pamela Davis,
City Clerk

1 READ ON SECOND READING, PASSED AND ADOPTED, this __ day of
2 _____, 2020.

3
4 _____
5 Sam Weaver,
6 Mayor

7 Attest:

8 _____
9 Pamela Davis,
10 City Clerk
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SETTLEMENT AGREEMENT

This Settlement Agreement (~~the~~ “**Settlement**”) is by and between, PUBLIC SERVICE COMPANY, a Colorado corporation (“**PSCo**”) and, the CITY OF BOULDER, a Colorado home rule municipality (“**Boulder**”). PSCo and Boulder shall be referred to collectively as the “**Parties**” and each individually as a “**Party**.” This Settlement is entered into on this ____ day of August, 2020 to be effective as provided herein.

RECITALS

A. On August 10, 2010, the Boulder City Council decided not to place a proposed PSCo franchise on the November 2010 ballot and to instead pursue municipalization for a municipal electric utility pursuant to Art XX, section 6 of the Colorado State Constitution. One of the primary motives for Boulder’s decision was to reduce Boulder’s carbon footprint in response to climate change. On December 31, 2010 the 1990 franchise issued to PSCo expired (“**1990 Franchise**”).

B. Since authorization by the voters of Boulder in November, 2011, Boulder has pursued municipalization which has resulted in litigation with PSCo before the Boulder District Court, the Court of Appeals, the Colorado Supreme Court, the Federal Energy Regulatory Commission (“**FERC**”), and the Colorado Public Utilities Commission (“**PUC**”), some of which remains pending.

C. In December 2016, Boulder City Council adopted the Climate Commitment and its associated goals of an 80 percent reduction in community greenhouse gas emissions below 2005 levels by 2050; 100 percent renewable electricity by 2030; and 80 percent reduction in organization greenhouse gas emissions below 2008 levels by 2030.

D. In December 2018, PSCo announced a goal of reaching zero-carbon electrical production by 2050 and a reduction of and to reduce carbon emissions 80% from 2005 levels by 2030.

E. In light of the importance of addressing climate change and the efforts both parties are making and plan to make, Boulder and PSCo agreed to enter into a settlement of the pending disputes and to address Boulder’s other goals related to emission reductions and 100% renewable energy without municipalization.

F. The Parties desire to settle the current litigation ~~except as specified below~~, in accordance with the provisions and upon the terms and conditions set forth below.

AGREEMENT

In consideration of the mutual promises and releases contained herein, the adequacy and sufficiency of which is mutually acknowledged, the Parties hereto agree as follows:

**I. FRANCHISE, SETTLEMENT AGREEMENT, AND ENERGY
PARTNERSHIP AGREEMENT**

- A. Franchise Agreement.** Except as provided otherwise in paragraph L and M below, all rights, obligations and conditions in this agreement are expressly conditioned upon the passage by the Boulder electorate at the November 3, 2020 election of a ballot measure approving the Franchise Agreement in substantially the form attached as **Exhibit A** to this agreement, and approval of the Franchise Agreement by the PUC. (**“2020 Franchise”**).
- B. Settlement Agreement.** This Agreement specifies the terms and conditions on which Boulder agrees to place the Franchise Agreement on the ballot for consideration by the voters. Two additional agreements (**“Associated Agreements”**) are attached hereto as **Exhibits B** and **C** and incorporated herein.
1. The **Energy Partnership Agreement** is **Exhibit B** hereto. This Agreement specifies how the Parties will coordinate the implementation of programs and projects in addition to those provided in the Franchise Agreement and consistent with the Purpose, Vision, and Guiding Principles stated therein. The Energy Partnership Agreement is to be effective and implemented during the time of the franchise.
 2. The **Load Interconnection Agreement** includes the terms for interconnection of the electric load from the Boulder System to the transmission at the six substations which will serve the Boulder System if Boulder opts-out of the franchise and pursues municipalization. While **Exhibit C** is the final form of the Interconnection Agreement, it will not be executed and filed with FERC for approval unless Boulder exercises an opt-out as described in the Franchise Agreement and pursues municipalization. Upon the occurrence of those two decisions in the sole discretion of Boulder, the Load Interconnection Agreement would become effective as described therein.
- C. Existing Conditions.** The following conditions exist at the time of this agreement:
1. The Colorado Public Utilities Commission issued decision C17-0750 on September 24, 2017 and decision C19-0874 on October 28, 2019 in proceeding no. 15A-0589E approving Boulder’s application for transfer of assets outside substations subject to future PUC proceedings and final approvals as contemplated in those and other PUC decisions.
 2. The PUC decisions generally establish a process for Boulder’s creation of a municipal electric utility through the transfer of service responsibilities from PSCo to Boulder (**“Cut-Over Date”**).
 3. The PUC decisions anticipate a vote by the Boulder electorate to make a final decision regarding the creation of a municipal electric utility (**“Go/No Go Decision”**).
 4. PSCo’s 2018 GIS system model provides the basis for separation of the systems.
 5. The PUC decisions approved a designated list of assets for transfer outside of the substations.

6. PSCo and Boulder have developed detailed distribution engineering plans sufficient for separation of a Boulder municipal system from PSCo's system. The distribution engineering plans include sufficient detail to provide the basis for construction bids.
7. PSCo has prepared and provided to Boulder, at Boulder's expense, System Impact and Facilities Studies for six substations to provide distribution service to electric customers in Boulder.
8. Boulder has posted and PSCo holds letters for credit in the amount of \$1.7 million for distribution engineering and \$2.6 million for engineering design.
9. To satisfy a condition imposed in decision C17-1750, Boulder and PSCo entered into an Agreement for Payment of Costs dated October 24, 2018 ("Cost Agreement"). The PUC approved the Cost Agreement.
10. Boulder has paid PSCo over \$3.6 million under the Cost Agreement for PSCo's costs to date. Boulder has also paid PSCo approximately \$300,000 for work related to substations, including system impact studies, facilities studies and design. There are additional amounts for which Boulder has not yet been billed. Boulder has paid every invoice in a timely manner.
11. The Cost Agreement provides a procedure for resolution of payment disputes at the time that a Boulder municipal utility begins providing electrical service to customers on the "Cut-Over Date."
12. On June 28, 2019, Boulder filed a petition in condemnation in the Boulder District Court.
13. On September 4, 2019, the Boulder District Court issued an order dismissing Boulder's petition in condemnation. On October 31, 2019, PSCo filed a motion for attorneys' fees. Boulder opposed the motion. The motion is fully briefed but has been stayed by the trial court pending outcome of Boulder's appeal.
14. On October 23, 2019, Boulder appealed the decision dismissing the petition in condemnation. The appeal is fully briefed. Oral argument has not been scheduled.
15. On November 20, 2019, Boulder sent PSCo a Notice of Intent and Final Offer to purchase certain assets necessary for the operation of a municipal electric utility.
16. On December 20, 2019, Boulder filed another petition in condemnation in the Boulder District court.
17. On April 14, 2020, the Boulder District Court issued an order staying Boulder's December 20, 2019 petition in condemnation pending resolution of the appeal for the previous condemnation.
18. On February 6, 2020, Boulder filed an Application for an Order Directing Interconnection of Facilities on Reasonable Terms and Conditions Pursuant to Sections 210 and 212 of the Federal Power Act ("210 Application") and PSCo has moved to intervene and filed Responses.
19. On March 17, 2020, Boulder filed an Offer of Settlement for Interconnection and PSCo has moved to intervene and filed Objections.

D. Cost Agreement. The Cost Agreement will be held in abeyance during the term of the franchise, and re-effective on the date of filing a condemnation petition if Boulder decides to

opt-out of the franchise as provided in the Franchise Agreement, with the following agreements related to incurrence of costs under the Cost Agreement:

1. Except as otherwise provided below or otherwise agreed by the parties, PSCo will perform no services or other work related to Boulder's municipalization while the Cost Agreement is held in abeyance.
2. Boulder will not be required to pay for any work performed by PSCo during the abeyance period, except as otherwise provided below or unless mutually agreed by the Parties or ordered by the PUC or court of competent jurisdiction.
3. The Parties will work in good faith to resolve any dispute under the Cost Agreement and return any overpayment prior to the effective date of the Franchise Agreement pursuant to the dispute resolution provisions of the Cost Agreement.

E. Facilities Study and Detailed Engineering Design Agreement. The Facilities Study and Detailed Engineering Design Agreement between the Parties dated May 6, 2019, ("Facilities Agreement") will be held in abeyance during the term of the franchise.

1. The detailed engineering designs for the Leggett, NCAR, Sunshine, and Wastewater Treatment Plant Substations will be completed by October 31, 2020, as provided in the Facility Study and Detailed Design Agreement dated May 6, 2019, between the Parties.
2. Boulder shall pay for the costs of the designs for the Leggett, NCAR, Sunshine and WWTP Substations as provided in the Facilities Agreement.

F. Litigation. Upon certification of election results showing voter approval of the 2020 Franchise:

1. The pending condemnation case in Boulder District Court Case 19CV31226 will be dismissed by the parties thereto without prejudice.
- 1-2. The appeal of Boulder District Court Case No. 19-CV-30637 currently pending before the Colorado Court of Appeals will be dismissed.
- 2-3. Boulder will withdraw the 210 Application and associated Offer of Settlement pending before FERC.
- 3-4. PSCo's pending award of attorneys' fees shall be dismissed without any payment by Boulder.
- 4-5. Neither PSCo or Boulder shall seek or receive any award of costs or attorneys' fees arising from any of the pending litigation.

G. Letters of Credit.

1. PSCo holds two Letters of Credit as security for Boulder's requirement to make payments under the Cost Agreement. Upon final passage of the ordinance placing the 2020 Franchise on the ballot, PSCo shall release a \$2.6 million letter of credit posted by Boulder for substation detailed design engineering, to the extent that all costs for

work related to the distribution detailed design engineering have been billed by PSCo and indefeasibly paid in full by Boulder and all disputes have been fully resolved. At such time, PSCo shall also release a \$1.7 million letter of credit posted by Boulder for distribution detailed design engineering, to the extent that all costs for work related to the distribution detailed design engineering have been billed by PSCo and indefeasibly paid in full by Boulder and all disputes have been fully resolved.

2. Nothing in this agreement shall alter any requirement that PSCo release a letter of credit at an earlier time as required by the terms of the Cost Agreement.

H. Undergrounding

1. The 1990 Franchise required PSCo to fund projects for the undergrounding of overhead electrical lines in an amount equal to 1% of annual gross electrical revenues generated by service to customers in Boulder. PSCo has not provided any new funding for undergrounding since the expiration of 1990 Franchise. As a one-time settlement accommodation and without setting any precedent PSCo shall provide funding for undergrounding in an amount equal to one percent of gross electrical revenues received by PSCo from customers in Boulder for the period between the date of expiration of the 1990 Franchise and the effective date of the 2020 Franchise.
2. The funds described in subparagraph (1) above shall be in addition to the funds to be provided pursuant to paragraph 11.2 of the 2020 Franchise.
3. All funds identified in subparagraph (2) above shall be available for undergrounding projects to be completed during the first three years following the effective date of the proposed franchise. Provided, however, any unspent funds shall be available for undergrounding projects in subsequent years. Failure to complete a project in the three-year time period shall not affect the availability of funding.
4. The prioritization and selection of the overhead facilities to be undergrounded shall be governed by the mutual agreement of the parties pursuant to the Distribution Partnership Agreement and the 2020 Franchise.

- I. Data Sharing** PSCo shall keep Boulder apprised of significant changes to the electric distribution system during the term of the 2020 Franchise, by providing data as provided in the Energy Partnership Agreement (“**Exhibit B**”) and as provided below:

1. An annual updated model of the electric distribution system in the Boulder Division from the 2018 GIS model in the same format as the 2018 GIS Model provided by PSCo in the PUC proceedings or an equivalent satisfactory to Boulder.
2. PSCo will charge Boulder no more than the actual costs, plus labor, of providing data.

- J. Boulder Option to Opt Out of Franchise.** Pursuant to sections 2.4 and 2.5 of the 2020 Franchise, Boulder has the option as provided therein to opt out of the 2020 Franchise at its

sole discretion under the terms and conditions provided in paragraphs 2.4 and 2.5 of the 2020 Franchise. If Boulder exercises its option to opt out of the 2020 Franchise, the following conditions shall apply:

1. PUC decisions C17-0750 and C19-0874 remain in full force and effect and no further approval is necessary for the transfer of assets outside of substations or the separation of those assets, except as set forth below. The parties will follow the process, insofar as they are described, in those decisions for separation of the distribution system through Cut-Over Date. Boulder may add assets which affect system engineering that are added to the system by PSCo after separation engineering work that has been completed to date, subject to approval from the PUC as provided in subsection (2) below.
2. PUC decision C19-0874 requires a joint application after the Go/No Go decision and prior to the Cut-Over Date seeking final PUC approval of transfer of assets.
3. No further PUC action is currently anticipated regarding Boulder's acquisition of the assets or separation until PSCo and Boulder jointly file C.R.S. § 40-5-105 request after separation construction and before Cut-Over Date. The following are additional matters identified in the May 1, 2020 Cost Estimates that may require PUC approval:
 - a. PSCo request for approval for modifications of the Advanced Grid Integration (AGIS) program per section II.K.4(c)(2) of the Cost Agreement;
 - b. Joint application for transfer approval for the agreed upon assets in conjunction with the Load Interconnection Agreement ("**Exhibit C**") Gunbarrel and NCAR substations; and
 - c. Application by PSCo for determination as to whether construction in PSCo retained substations is in the ordinary course or requires a CPCN.
4. PSCo and Boulder will stipulate to a case management order substantially similar to the case management ~~order~~ procedure stipulated to by the parties and approved by the Court in its February 27, 2020 Order: Joint Status Report in case number 2019CV31226 providing for discovery and a phase I hearing to consider legal challenges. Any such stipulation shall not preclude the Parties from also pursuing any other pleadings or motions that they deem appropriate in the new condemnation action.
5. The lists of assets in PUC decision C19-0874 may be used by the city as the lists of assets for the distribution system outside substations in any new condemnation action, including the following specific provisions:
 - a. Any future condemnation petition may be filed with the same List of Assets as in the current pending condemnation petition with additions or deletions of any assets necessary to reflect the changes in the distribution system and separation plan between the current and future condemnation cases as determined by the city from the information provided by PSCo under this Agreement.
 - b. PSCo asserts that it may reserves the right to request in condemnation to include assets that are different than the list of assets outside substations in

the future condemnation petition, and that it can object to the taking of any asset not approved by the PUC, and/or to file a Cross-Petition claiming additional property interests are being taken or damaged by Boulder for which just compensation is owed. Boulder disputes that PSCo has any right to identify any assets to be included or excluded in the condemnation. PSCo disputes that Boulder has any right to unilaterally identify what assets can be included or excluded in condemnation.

6. PSCo reserves all claims ~~the right~~ to object to any asset not on the list of assets approved by the PUC in decision C19-0874 except as otherwise provided herein.
7. Prior to filing a petition in condemnation Boulder will offer to pay PSCo for the assets to be acquired for at least the amount of a recent bone fide appraisal conducted by a mutually agreed-upon appraiser with MAI and utility valuation credentials using a mutually agreed-upon appraisal methodology that includes the assets the parties agree should be added or removed from the 2019 PUC List of Assets outside substations. The parties agree to search for a mutually agreeable appraiser for a ~~minimum of up to~~ 60 days. If the parties cannot agree upon an appraiser and appraisal methodology within 60 days, subsection (9) below shall not apply, and Boulder may select an appraiser of its choice but shall comply with subsection (8) below before proceeding to condemnation.
8. After Boulder makes an offer, whether based on a new appraisal contemplated in subparagraph 7 or otherwise, Boulder and PSCo will negotiate for a purchase price for no less than three months after Boulder's offer before the filing of a petition in condemnation.
9. If Boulder makes an offer pursuant to the terms and conditions of subparagraph (7) above, PSCo agrees not to seek attorneys' fees pursuant to C.R.S. § 38-1-122 unless the valuation award is in excess of 150% percent of Boulder's offer made pursuant to the terms and conditions of subparagraph (8) above.
10. If Boulder makes an offer for the assets based on a completed appraisal by a MAI appraiser identifying the property to be acquired, and provides the appraisal report to PSCo, PSCo will not object to a subsequent condemnation action based on the requirement that Boulder has negotiated a good faith offer to acquire the assets.
11. ~~PSCo reserves the right to request to include assets that are different than the list of assets outside substations in the future condemnation petition, object to the taking of any asset not approved by the PUC, and/or file a cross-petition asserting that Boulder would be taking or damaging additional property interests for which compensation would be owed.~~
12. For any capital or system improvements to the electric distribution system ~~that would otherwise be acquired by Boulder~~ not necessary for reliability or safety in excess of \$5,000,000 made by PSCo after the 2020 Franchise effective date that are not on the 2019 PUC List of Assets outside substations ~~current list of assets for acquisition in the pending condemnation case~~, PSCo will provide Boulder may with the opportunity to ~~opt out of~~ such improvements. This section shall not apply to any improvements that have been approved by the PUC prior to the franchise effective date. Boulder

- may not opt out of such improvements except to the extent provided in section II.K.4(c)(2) of the Cost Agreement.
13. Boulder shall not be required to post security for distribution detailed engineering design as provided in section IV.A.1 of the Cost Agreement unless Boulder fails to make a payment within thirty (30) days of receipt of an invoice or the estimated total for all work exceeds \$5 million. If Boulder fails to make a payment PSCo can stop work in accordance with the terms of the Cost Agreement.
 14. PSCo, at Boulder's cost, will work with Boulder to complete revisions to the Separation Plan and existing distribution detailed design drawings for separation of the distribution system necessary for changes made during the abeyance period. Completion of such revisions shall occur within six months of Boulder's decision to exercise its right to recommence creation of a municipal electric utility if the city requests the design work is done by PSCo personnel pursuant to a cost estimate from PSCo and nine months if the city wants PSCo to competitively bid the design work
 15. The maximum purchase price for the PSCo facilities and property interests necessary for the Boulder System including interconnection at six substations as provided herein is \$200 million ("**Maximum Purchase Price**"). Commencing January 1, 2024, the Maximum Purchase Price shall be recomputed by raising or lowering it in an amount equal to the percentage of change for the preceding year in the consumer price index (all items) of the U.S. Department of Labor, Bureau of Labor and Statistics for the statistical area which includes Boulder. The actual purchase amount may be less than the Maximum Purchase Price if the parties agree on a lower amount or a condemnation proceeding determines that the just compensation owed is less. The Maximum Purchase Price shall include acquisition costs for the list of assets outside substations approved by the PUC, going concern (if determined by the court to be compensable under Colorado law), if any, damages to the remainder, if any, and any agreed upon purchase price of the NCAR and Gunbarrel substations as described below. PSCo contends that Boulder does not have the right to condemn substation assets and Boulder reserves the right to assert that substation assets are subject to condemnation. The Maximum Purchase Price does not include any other substation assets, expert fees, attorneys' fees, interest or other litigation costs that may be awarded. Boulder reserves the right to contest any such award and both PSCo and Boulder reserve the right to appeal any condemnation court award or interlocutory rulings related to such proceedings. The Maximum Purchase Price does not include, nor does anything else in this Settlement Agreement include, any cap or restriction on any claim or award for stranded assets pursuant to Federal Energy Regulatory Commission Order No. 888. Boulder reserves the right to contest any claim for compensation for stranded assets and both PSCo and Boulder reserve the right to appeal any FERC rulings.
 16. If requested by Boulder, PSCo will work in good faith to negotiate a partial or full requirement contract for wholesale energy and capacity with Boulder.

17. Upon the execution of this settlement agreement, Boulder and PSCo will file a joint motion to stay the FERC section 210 proceeding pending the outcome of a city vote in November 2020.
18. Connection of the Boulder load to the PSCo transmission system shall be pursuant to the Load Interconnection Agreement (**Exhibit C**). The Load Interconnection Agreement (LIA) provides for interconnection at the Leggett, NCAR, Sunshine, Wastewater Treatment Plant, Boulder Terminal, and Gunbarrel Substations. The existing System Impact Study and Facility Study under PSCo's OATT will need to be updated to reflect any changes on the PSCo or Boulder Systems. PSCo shall be solely responsible for all costs associated with the restudy and for any costs associated with updating the existing detailed design drawings to reflect changes identified by the restudy. The terms of the restudy and any associated redesign work will be substantially similar to those in the Transmission to Load Interconnection Facilities Study and Detailed Engineering Design Agreement dated April 25, 2019.
19. Boulder and PSCo agree to amend the Load Interconnection Agreement as necessary to reflect any changes in the System Impact Studies, Facilities Studies or detailed engineering design.
20. The execution date of the LIA will be contingent on, among other things, (1) the completion of the restudy work discussed in subparagraph (19) and (2) the completion of the distribution interconnection study for Boulder Terminal discussed in subparagraph (246).
21. Boulder will construct a new, Boulder-owned Leggett Substation on land adjacent to PSCo's existing Leggett Substation currently owned by PSCo. PSCo will make modifications to the existing Leggett Substation to facilitate the interconnection of Boulder's substation to PSCo's. Each party will own its respective substation facilities. Boulder shall acquire the land for the facilities to be constructed by Boulder.
22. Boulder shall purchase and PSCo shall sell the electric distribution facilities, common facilities, and land at the NCAR substation. PSCo shall retain the transmission facilities associated with the NCAR substation. Boulder shall grant an access easement for PSCo transmission facilities. The total purchase price shall be three million, two hundred and forty thousand dollars (**\$3,240,000**). The purchase price would be increased as provided for in subparagraph 279.
23. Boulder will construct a new, Boulder-owned Sunshine Substation on City-owned land adjacent to PSCo's existing Sunshine Substation. Each party will own its respective substation facilities. PSCo shall grant an access easement in the existing PSCo substation. Boulder will acquire land adjacent to PSCo's substation from PSCo for the City's new substation.
24. Boulder will construct a new, Boulder-owned WWTP Substation on Boulder-owned land. PSCo will construct a new, PSCo-owned WWTP Substation adjacent to Boulder's substation. Each party will own its respective substation facilities. PSCo shall acquire an equipment and access easement for PSCo transmission facilities.

25. PSCo will provide distribution wheeling service across the distribution facilities in Boulder Terminal Substation to the Boulder distribution system. The wheeling rate is subject to approval by the Federal Energy Regulatory Commission (FERC). Distribution wheeling is typically metered on the high side of the distribution transformers; however, a distribution interconnection study will need to be performed prior to finalizing the metering point. PSCo and Boulder will amend the Transmission to Load Interconnection Facilities Study and Detailed Engineering Design Agreement dated April 25, 2019 to include this study work and the work to develop detailed design drawings for Boulder Terminal by PSCo at Boulder's expense. PSCo will provide distribution wheeling service at a facility-specific rate for wheeling across the three distribution transformers and switchgears in the Boulder Terminal Substation. The facility-specific rate is calculated by dividing the Revenue Requirement by the Monthly Demand. Based on 2020 data, the above formula yields a current distribution wheeling rate of \$17,370.33 per month. Boulder shall have the option of selecting a variable demand rate. The rate will be recalculated based on current data at the time a Distribution Wheeling Agreement (DWA) is executed and will not change for a period of 5 years from the effective date of the DWA. The terms of the DWA shall be substantially similar to those in other DWAs previously negotiated with the City and filed with FERC. The Point of Change of Ownership will be the point of attachment in the switchgear feeder breaker cubicles so that PSCo retains full ownership of all substation facilities up to the feeder attachment and Boulder would own the feeder cables and conduits from the point of attachment and exiting the Boulder Terminal Substation. To the extent Boulder plans to perform construction or maintenance work on the feeder cables or conduits within the Boulder Terminal Substation, Boulder will utilize PSCo personnel/contractors for the work at Boulder's expense. Boulder personnel will not have access inside the Boulder Terminal Substation, except for work on the City's RTU, as discussed below. The City will have the ability to remotely trip/close the switchgear feeder breakers. The City will install an RTU in Boulder Terminal substation, at a location acceptable to PSCo, for visibility and control of the switchgear feeder breakers. If the City's personnel need to physically access the RTU, access will require a PSCo escort. PSCo will have the ability to (1) disable the City's control of the switchgear feeder breakers and/or (2) trip the switchgear feeder breakers in accordance with good utility practice. Situations when PSCo may take such action include, but are not limited to: (1) load shedding as required by NERC reliability standards; (2) providing a safe work environment for PSCo personnel/contractors working within the substation; and/or (3) emergency situations for either utility. When practical, PSCo will provide the City with advance notice before disabling City's operation of the switchgear feeder breakers, but such advance notice is not always practicable. City will provide advance notice to PSCo's operations center prior to opening or closing any feeder breaker if such advance notice is practicable and will operate all feeder breakers consistent with good utility practice. City understands that if the distribution bus or transformer relaying trips, the switchgear feeder breakers may be locked out open. Prior to Cut-Over, Boulder and

- PSCo will develop a written operating procedure detailing how the City will operate the switchgear feeder breakers and how PSCo and the City will work together to address any operational issues. City and PSCo will work in good faith to develop procedures that minimize undo wear and tear on PSCo's equipment. The terms and conditions for the interconnection facilities at Boulder Terminal are included in the Load Interconnection Agreement ("**Exhibit C**").
26. Boulder shall purchase and PSCo shall sell the electric distribution facilities at Gunbarrel as shown in the Facility Study Report dated August 16, 2019 for seven million, seven hundred and twenty thousand dollars (**\$7,720,000**), contingent on Boulder developing an outage plan for the separation to occur at the substation. The purchase price would be updated as provided for in subparagraph 297. PSCo shall retain its transmission facilities and easements associated with the Gunbarrel substation. The City will acquire easement rights for the distribution facilities to be acquired. Tri-State Generation and Transmission Association, Inc. and Poudre Valley REA, Inc. will each retain their facilities. Design drawings for Gunbarrel, consistent with the results and conclusions of the Facility Study Report dated August 16, 2019, and consistent with the results of the updated System Impact Studies and Facilities Studies referenced in subparagraph (19) will be completed by PSCo at Boulder's expense. PSCo and Boulder will amend the Transmission to Load Interconnection Facilities Study and Detailed Engineering Design Agreement dated April 25, 2019 to include the detailed engineering design work for Gunbarrel.
 27. The purchase prices in subparagraphs (213) and (257) above and the manner in which they are calculated are non-precedential and non-binding in any future legal proceeding except for enforcement of the agreements associated with the 2020 Franchise.
 28. In the event PSCo replaces any distribution facilities at the NCAR or Gunbarrel substations, the purchase price in subparagraph (213) or (257) will be increased to include the depreciated actual costs incurred by PSCo to purchase and install such facilities. However, PSCo will not add to the purchase price of the new facilities any additional amount to reflect the return on investment for such additional facilities.
 29. PSCo and Boulder retain all rights, including any right to raise any defense, objection, ~~or legal challenge, or contest any claim of the other~~ in any future condemnation action, except as specifically stated otherwise in this modified by the Settlement Agreement, and nothing herein shall be construed as either Party conceding the validity of a claim of the other.

K. Streetlights Boulder may, at its option, purchase the streetlights from PSCo within the City of Boulder limits, by agreement from both parties and with PUC approval or condemnation, whether or not it exercises an opt-out of the franchise or municipalizes.

L. Broadband Boulder shall be permitted to use PSCo's Electric Distribution poles for the attachment of fiber necessary to build out a municipal broadband service. Such attachment

shall be subject to the same terms and conditions as set for in Paragraph 10.1 of the Franchise Agreement, provided, however, Boulder shall be responsible for any payment or other condition imposed by state or federal law or regulation. This provision shall be subject to additional terms and conditions as mutually agreed by PSCo and Boulder.

K.M. Additional Terms Upon signature of this settlement agreement:

1. PSCo shall not make any reportable campaign contributions to support or oppose any measure on the November 3, 2020 ballot in Boulder. ~~PSCo, its subsidiaries or affiliated corporations shall make no reportable contributions, either directly or indirectly through third party individuals, corporations or partnerships to support or oppose any ballot measure pursuant to which the voters of Boulder may elect to enter into the Franchise Agreement, as defined herein, or any vote on whether to exercise the city's right to terminate the Franchise Agreement in 2025 or any election pursuant to paragraph 2.5 of the Franchise Agreement triggered by a failure to meet the 2022 or 2024 targets.~~ Notwithstanding the foregoing, nothing herein shall restrict any individuals ~~subject to this provision~~ from written or oral advocacy of their views with respect to the Franchise Agreement, the Settlement Agreement or any associated agreement, provided that such advocacy does not constitute a reportable contribution.
2. Boulder and PSCo will work together with respect and transparency towards their shared goals and interests. This includes establishing open and effective channels of communication regarding policy positions relating to electricity generation, transmission, or distribution in Colorado taken at the local, state, and federal levels. To the extent practical, both parties agree to provide notice to the other of those public meetings where the specific policy positions relating to electricity generation, transmission, or distribution in Colorado before the Colorado General Assembly will be discussed. When possible, the parties, through either staff, elected officials, or committee meetings, will include an opportunity to educate each other on the implications and impacts of positions taken by either party. This agreement does not apply nor extend to the efforts of either party as members of trade organizations or advocacy coalitions. The parties acknowledge that the legislative process is often swift and not conducive for the notice and consultations anticipated by this agreement. The failure to meet any requirement described in this paragraph does not constitute a breach or default under this Agreement.
3. To the extent requested by Boulder, PSCo will participate in Boulder's community engagement process between the date of signature and September 4, 2020 which may alter or modify the terms of the final agreements and franchise related to the distribution partnership and grid planning and modernization.

L.N. General Provisions

1. **Representations and Warranties.** Each Party warrants and represents to the other Party that:
 - a. Such Party has taken all necessary corporate, municipal, and legal actions, to the extent required, to duly approve the making and performance of this Agreement and the Associated Agreements;

- b. Such Party has authority to enter into this Agreement and the Associated Agreements;
 - c. This Agreement has been validly executed and delivered by such Party and constitutes that Party's valid and binding obligation, enforceable against it in accordance with the terms hereof; and
 - d. Such Party has read this Agreement and fully understands all of its terms, covenants, conditions, provisions and obligations and such Party believes that this Agreement is a fair, just, and reasonable resolution of the disputes between the Parties.
 - e. Boulder additionally represents and warrants that execution of this Agreement complies with Boulder Municipal Code Section 2-2-14 (Initiation and Settlement of Claims and Suits).
2. **No Admissions.** This Agreement is being entered into solely for purposes of compromise and settlement. Each of the Parties expressly denies any wrongdoing or liability whatsoever. By entering into this Agreement, no Party is admitting any liability or wrongdoing, and nothing in this Agreement shall in any way be deemed or construed to constitute an admission of wrongdoing or liability by any Party or the waiver of any defense.
3. **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the Parties and their employees, predecessors, successors, directors, officers, administrators, assigns, agents, principals, subsidiaries, parent and affiliate companies, trustees, representatives, insurers, attorneys, and elected officials.
4. **Execution in Counterparts.** The Parties agree that this Agreement may be executed in counterparts and that when so executed by all Parties shall constitute one agreement binding on all Parties hereto. Thea facsimile or other electronically transmitted copy of this Agreement shall be deemed as binding and as valid as the original signatures to this Agreement, in which case the Party so executing this Agreement shall promptly thereafter deliver its originally executed signature page (but the failure to deliver an original shall not affect the binding nature of such person's signature).
5. **Governing Law.** The validity, construction, interpretation and administration of this Agreement shall be governed by the substantive laws of the State of Colorado.
6. **Amendment.** This Agreement shall not be modified or amended except by an instrument in writing signed by the Parties.
7. **Attorneys' Fees and Costs.** The Parties agree that, upon certification of election results showing voter approval of the 2020 Franchise, the obligations set forth in this Agreement include, and are in complete satisfaction of, any right that each Party, or any attorney employed by that Party, may have, or claim to have, to recover attorneys' or consultant/expert fees against any other Party in connection with any matter covered by this agreement. Each Party shall bear its own costs and shall waive and not make any claims against the other for any costs, expenses, fees or any other expenditure of monies incurred in any matter related to this agreement.

8. **Entire Agreement.** This Agreement constitutes the full and entire understanding and agreement between the Parties with regard to the subject hereof and supersedes any prior negotiations, representations or agreements, written or oral, with respect to such subject matter (none of which prior matters shall be binding upon the Parties).
9. **Party Communications.** Communications made in the negotiation or implementation of this Agreement are not intended as and will not be construed as waivers by any Party of any applicable privilege, protection, or immunity. All negotiations leading to this Agreement and all communications related thereto will be deemed to fall within the protection afforded compromises and offers to compromise by Rule 408 of the Colorado Rules of Evidence.
10. **Savings Clause.** If any term or provision of this Agreement is held to be invalid, illegal, or contrary to public policy, such term or provision shall be modified to the extent necessary to be valid and enforceable and shall be enforced as modified; provided, however, that if no modification is possible such provision shall be deemed stricken from this Agreement. In any case, the remaining provisions of this Agreement shall not be affected thereby.
11. **Waiver of Rights.** Any waiver of either Party's rights under this Agreement is only effective if in writing signed by the Party or its duly authorized representative, and any such waiver shall only be effective for the specific matter waived and shall not be deemed to apply to any other conduct, provision or other matter.
12. **Advice of Counsel.** The undersigned have carefully read this Agreement, fully understand it, and, upon advice of counsel, sign this Agreement as the free and voluntary acts of the undersigned. Boulder City Council has been fully advised of the terms of this Agreement and the condition that this Agreement is not effective unless the council places the Franchise Agreement on the November 3, 2020 ballot and the Boulder electorate approves the Franchise Agreement. Notwithstanding the foregoing, section LM(1) of this Agreement shall be binding upon PSCo for and in advance of the November 3, 2020, election in Boulder.
13. **Arm's Length.** This Agreement was jointly drafted and was negotiated between the Parties at arm's length. Each Party had the opportunity to consult with independent legal counsel. Neither Party will be entitled to have any language contained in this Agreement construed against the other because of the identity of the drafter.
14. **No Third-Party Beneficiary.** This Agreement is not intended to and shall not be construed to give any third party any interest or rights with respect to this Agreement or any of the provisions contained herein, except as otherwise expressly set forth in this Agreement.

[Signature Page Follows]

PUBLIC SERVICE COMPANY OF COLORADO, A COLORADO CORPORATION

Alice K. Jackson, President

Dated: _____

CITY OF BOULDER

Jane S. Brautigam,
City Manager

ATTEST:

Pam Davis
Acting City Clerk

APPROVED AS TO FORM:

City Attorney's Office

Date: _____

APPROVED AS TO COMPLIANCE WITH
B.M.C. § 2-2-14:

Thomas A. Carr,
City Attorney

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement”) is by and between, PUBLIC SERVICE COMPANY, a Colorado corporation (“PSCo”) and, the CITY OF BOULDER, a Colorado home rule city (“Boulder”). PSCo and Boulder shall be referred to collectively as the “Parties” and each individually as a “Party.” This Settlement is entered into on this ____ day of August 2020 to be effective as provided herein.

RECITALS

A. On August 10, 2010, the Boulder City Council decided not to place a proposed PSCo franchise on the November 2010 ballot and to instead pursue municipalization for a municipal electric utility pursuant to Art XX, section 6 of the Colorado State Constitution. One of the primary motives for Boulder’s decision was to reduce Boulder’s carbon footprint in response to climate change. On December 31, 2010 the 1990 franchise issued to PSCo expired (“1990 Franchise”).

B. Since authorization by the voters of Boulder in November, 2011, Boulder has pursued municipalization which has resulted in litigation with PSCo before the Boulder District Court, the Court of Appeals, the Colorado Supreme Court, the Federal Energy Regulatory Commission (“FERC”), and the Colorado Public Utilities Commission (“PUC”), some of which remain pending.

C. In December 2016, Boulder City Council adopted the Climate Commitment and its associated goals of an 80 percent reduction in community greenhouse gas emissions below 2005 levels by 2050; 100 percent renewable electricity by 2030; and 80 percent reduction in organization greenhouse gas emissions below 2008 levels by 2030.

D. In December 2018, PSCo announced a goal of reaching zero-carbon electrical production by 2050 and a reduction of and to reduce carbon emissions 80 percent from 2005 levels by 2030.

E. In light of the importance of addressing climate change and the efforts both Parties are making and plan to make, Boulder and PSCo agreed to enter into a settlement of the pending disputes and to address Boulder’s other goals related to emission reductions and 100 percent renewable energy without municipalization.

F. The Parties desire to settle the current litigation in accordance with the provisions and upon the terms and conditions set forth below.

AGREEMENT

In consideration of the mutual promises and releases contained herein, the adequacy and sufficiency of which is mutually acknowledged, the Parties hereto agree as follows:

FRANCHISE, SETTLEMENT AGREEMENT, AND ENERGY PARTNERSHIP AGREEMENT

- A. Franchise Agreement.** Except as provided otherwise in paragraph L. and M. below, all rights, obligations and conditions in this Agreement are expressly conditioned upon the passage by the Boulder electorate at the November 3, 2020 election of a ballot measure approving the Franchise Agreement in substantially the form attached as **Exhibit A** to this agreement, and approval of the Franchise Agreement by the PUC. (“2020 Franchise”).
- B. Settlement Agreement.** This Agreement specifies the terms and conditions on which Boulder agrees to place the Franchise Agreement on the ballot for consideration by the voters. Two additional agreements (“Associated Agreements”) are attached hereto as **Exhibits B** and **Exhibit C** and incorporated herein.
1. The Energy Partnership Agreement is **Exhibit B** hereto. This agreement specifies how the Parties will coordinate the implementation of programs and projects in addition to those provided in the Franchise Agreement and consistent with the Purpose, Vision, and Guiding Principles stated therein. The Energy Partnership Agreement is to be effective and implemented during the time of the franchise.
 2. The Load Interconnection Agreement includes the terms for interconnection of the electric load from the Boulder System to the transmission at the six substations which will serve the Boulder System if Boulder opts out of the franchise and pursues municipalization. While **Exhibit C** is the final form of the Interconnection Agreement, it will not be executed and filed with FERC for approval unless Boulder exercises an opt-out as described in the Franchise Agreement and pursues municipalization. Upon the occurrence of those two decisions in the sole discretion of Boulder, the Load Interconnection Agreement would become effective as described therein.
- C. Existing Conditions.** The following conditions exist at the time of this Agreement:
1. The Colorado Public Utilities Commission issued Decision C17-0750 on September 24, 2017 and Decision C19-0874 on October 28, 2019 in Proceeding No. 15A-0589E approving Boulder’s application for transfer of assets outside substations subject to future PUC proceedings and final approvals as contemplated in those and other PUC decisions.
 2. The PUC decisions generally establish a process for Boulder’s creation of a municipal electric utility through the transfer of service responsibilities from PSCo to Boulder (“Cut-Over Date”).
 3. The PUC decisions anticipate a vote by the Boulder electorate to make a final decision regarding the creation of a municipal electric utility (“Go/No Go Decision”).
 4. PSCo’s 2018 GIS system model provides the basis for separation of the systems.

5. The PUC decisions approved a designated list of assets for transfer outside of the substations.
6. PSCo and Boulder have developed detailed distribution engineering plans sufficient for separation of a Boulder municipal system from PSCo's system. The distribution engineering plans include sufficient detail to provide the basis for construction bids.
7. PSCo has prepared and provided to Boulder, at Boulder's expense, System Impact and Facilities Studies for six substations to provide distribution service to electric customers in Boulder.
8. Boulder has posted and PSCo holds Letters of Credit in the amount of \$1.7 million for distribution engineering and \$2.6 million for engineering design.
9. To satisfy a condition imposed in Decision C17-1750, Boulder and PSCo entered into an Agreement for Payment of Costs dated October 24, 2018 ("Cost Agreement"). The PUC approved the Cost Agreement.
10. Boulder has paid PSCo over \$3.6 million under the Cost Agreement for PSCo's costs to date. Boulder has also paid PSCo approximately \$300,000 for work related to substations, including system impact studies, facilities studies and design. There are additional amounts for which Boulder has not yet been billed. Boulder has paid every invoice in a timely manner.
11. The Cost Agreement provides a procedure for resolution of payment disputes at the time that a Boulder municipal utility begins providing electrical service to customers on the Cut-Over Date.
12. On June 28, 2019, Boulder filed a petition in condemnation in the Boulder District Court.
13. On September 4, 2019, the Boulder District Court issued an order dismissing Boulder's petition in condemnation. On October 31, 2019, PSCo filed a motion for attorneys' fees. Boulder opposed the motion. The motion is fully briefed but has been stayed by the trial court pending outcome of Boulder's appeal.
14. On October 23, 2019, Boulder appealed the decision dismissing the petition in condemnation. The appeal is fully briefed. Oral argument has not been scheduled.
15. On November 20, 2019, Boulder sent PSCo a Notice of Intent and Final Offer to purchase certain assets necessary for the operation of a municipal electric utility.
16. On December 20, 2019, Boulder filed another petition in condemnation in the Boulder District court.
17. On April 14, 2020, the Boulder District Court issued an order staying Boulder's December 20, 2019 petition in condemnation pending resolution of the appeal for the previous condemnation.
18. On February 6, 2020, Boulder filed an Application for an Order Directing Interconnection of Facilities on Reasonable Terms and Conditions Pursuant to Sections 210 and 212 of the Federal Power Act ("210 Application") and PSCo has moved to intervene and filed responses.
19. On March 17, 2020, Boulder filed an Offer of Settlement for Interconnection and PSCo has moved to intervene and filed objections.

D. Cost Agreement. The Cost Agreement will be held in abeyance during the term of the franchise, and re-effective on the date of filing a condemnation petition if Boulder decides to opt-out of the franchise as provided in the Franchise Agreement, with the following agreements related to incurrence of costs under the Cost Agreement:

1. Except as otherwise provided below or otherwise agreed by the Parties, PSCo will perform no services or other work related to Boulder's municipalization while the Cost Agreement is held in abeyance.
2. Boulder will not be required to pay for any work performed by PSCo during the abeyance period, except as otherwise provided below or unless mutually agreed upon by the Parties or ordered by the PUC or court of competent jurisdiction.
3. The Parties will work in good faith to resolve any dispute under the Cost Agreement and return any overpayment prior to the effective date of the Franchise Agreement pursuant to the dispute resolution provisions of the Cost Agreement.

E. Facilities Study and Detailed Engineering Design Agreement. The Facilities Study and Detailed Engineering Design Agreement between the Parties dated May 6, 2019, ("Facilities Agreement") will be held in abeyance during the term of the franchise.

1. The detailed engineering designs for the Leggett, NCAR, Sunshine, and Wastewater Treatment Plant (WWTP) substations will be completed by October 31, 2020, as provided in the Facility Study and Detailed Design Agreement dated May 6, 2019, between the Parties.
2. Boulder shall pay for the costs of the designs for the Leggett, NCAR, Sunshine and WWTP substations as provided in the Facilities Agreement.

F. Litigation. Upon certification of election results showing voter approval of the 2020 Franchise:

1. The pending condemnation case in Boulder District Court Case 19CV31226 will be dismissed by the parties thereto without prejudice.
2. The appeal of Boulder District Court Case No. 19-CV-30637 currently pending before the Colorado Court of Appeals will be dismissed.
3. Boulder will withdraw the 210 Application and associated Offer of Settlement pending before FERC.
4. PSCo's pending award of attorneys' fees shall be dismissed without any payment by Boulder.
5. Neither PSCo or Boulder shall seek or receive any award of costs or attorneys' fees arising from any of the pending litigation.

G. Letters of Credit.

1. PSCo holds two Letters of Credit as security for Boulder's requirement to make payments under the Cost Agreement. Upon final passage of the ordinance placing the 2020 Franchise on the ballot, PSCo shall release the \$2.6 million Letter of Credit posted by Boulder for substation detailed design engineering, to the extent that all costs for work related to the distribution detailed design engineering have been billed by PSCo and indefeasibly paid in full by Boulder and all disputes have been fully resolved. At such time, PSCo shall also release the \$1.7 million Letter of Credit posted by Boulder for distribution detailed design engineering, to the extent that all costs for work related to the distribution detailed design engineering have been billed by PSCo and indefeasibly paid in full by Boulder and all disputes have been fully resolved.
2. Nothing in this Agreement shall alter any requirement that PSCo release a letter of credit at an earlier time as required by the terms of the Cost Agreement.

H. Undergrounding.

1. The 1990 Franchise required PSCo to fund projects for the undergrounding of overhead electrical lines in an amount equal to one percent of annual gross electrical revenues generated by service to customers in Boulder. PSCo has not provided any new funding for undergrounding since the expiration of 1990 Franchise. As a one-time settlement accommodation and without setting any precedent PSCo shall provide funding for undergrounding in an amount equal to one percent of gross electrical revenues received by PSCo from customers in Boulder for the period between the date of expiration of the 1990 Franchise and the effective date of the 2020 Franchise.
2. The funds described in subparagraph 1. above shall be in addition to the funds to be provided pursuant to paragraph 11.2 of the 2020 Franchise.
3. All funds identified in subparagraph 2. above shall be available for undergrounding projects to be completed during the first three years following the effective date of the proposed franchise. Provided, however, any unspent funds shall be available for undergrounding projects in subsequent years. Failure to complete a project in the three-year time period shall not affect the availability of funding.
4. The prioritization and selection of the overhead facilities to be undergrounded shall be governed by the mutual agreement of the Parties pursuant to the Distribution Partnership Agreement and the 2020 Franchise.

I. Data Sharing. PSCo shall keep Boulder apprised of significant changes to the electric distribution system during the term of the 2020 Franchise, by providing data as provided in the Energy Partnership Agreement, **Exhibit B**, and as provided below:

1. An annual updated model of the electric distribution system in the Boulder Division from the 2018 GIS model in the same format as the 2018 GIS Model provided by PSCo in the PUC proceedings or an equivalent satisfactory to Boulder.

2. PSCo will charge Boulder no more than the actual costs, plus labor, of providing data.

J. Boulder Option to Opt Out of Franchise. Pursuant to sections 2.4 and 2.5 of the 2020 Franchise, Boulder has the option as provided therein to opt out of the 2020 Franchise at its sole discretion under the terms and conditions provided in paragraphs 2.4 and 2.5 of the 2020 Franchise. If Boulder exercises its option to opt out of the 2020 Franchise, the following conditions shall apply:

1. PUC decisions C17-0750 and C19-0874 remain in full force and effect and no further approval is necessary for the transfer of assets outside of substations or the separation of those assets, except as set forth below. The Parties will follow the process, insofar as they are described, in those decisions for separation of the distribution system through Cut-Over Date. Boulder may add assets which affect system engineering that are added to the system by PSCo after separation engineering work that has been completed to date, subject to approval from the PUC as provided in subsection 2. below.
2. PUC Decision C19-0874 requires a joint application after the Go/No Go Decision and prior to the Cut-Over Date seeking final PUC approval of transfer of assets.
3. No further PUC action is currently anticipated regarding Boulder's acquisition of the assets or separation until PSCo and Boulder jointly file C.R.S. § 40-5-105 request after separation construction and before Cut-Over Date. The following are additional matters identified in the May 1, 2020 Cost Estimates that may require PUC approval:
 - a. PSCo request for approval for modifications of the Advanced Grid Integration (AGIS) program per section II.K.4(c)(2) of the Cost Agreement;
 - b. Joint application for transfer approval for the agreed upon assets in conjunction with the Load Interconnection Agreement, **Exhibit C**, Gunbarrel and NCAR substations; and
 - c. Application by PSCo for determination as to whether construction in PSCo retained substations is in the ordinary course or requires a CPCN.
4. PSCo and Boulder will stipulate to a case management order substantially similar to the case management procedure stipulated to by the parties and approved by the Court in its February 27, 2020 Order: Joint Status Report in case number 2019CV31226 providing for discovery and a Phase I hearing to consider legal challenges. Any such stipulation shall not preclude the Parties from also pursuing any other pleadings or motions that they deem appropriate in the new condemnation action.
5. The lists of assets in PUC Decision C19-0874 may be used by the city as the lists of assets for the distribution system outside substations in any new condemnation action, including the following specific provisions:
 - a. Any future condemnation petition may be filed with the same list of assets as in the current pending condemnation petition with additions or deletions of any assets necessary to reflect the changes in the distribution system and separation plan between the current and future condemnation cases as determined by the city from the information provided by PSCo under this Agreement.
 - b. PSCo asserts that it may request in condemnation to include assets that are different than the list of assets outside substations in the future condemnation petition, and that it can object to the taking of any asset not approved by the PUC, and/or to file a

cross-petition claiming additional property interests are being taken or damaged by Boulder for which just compensation is owed. Boulder disputes that PSCo has any right to identify any assets to be included or excluded in the condemnation. PSCo disputes that Boulder has any right to unilaterally identify what assets can be included or excluded in condemnation.

6. PSCo reserves all claims to object to any asset not on the list of assets approved by the PUC in Decision C19-0874 except as otherwise provided herein.
7. Prior to filing a petition in condemnation Boulder will offer to pay PSCo for the assets to be acquired for at least the amount of a recent bone fide appraisal conducted by a mutually agreed-upon appraiser with MAI and utility valuation credentials using a mutually agreed-upon appraisal methodology that includes the assets the Parties agree should be added or removed from the 2019 PUC list of assets outside substations. The Parties agree to search for a mutually agreeable appraiser for up to 60 days. If the Parties cannot agree upon an appraiser and appraisal methodology within 60 days, subsection 9. below shall not apply, and Boulder may select an appraiser of its choice but shall comply with subsection 8. below before proceeding to condemnation.
8. After Boulder makes an offer, whether based on a new appraisal contemplated in subparagraph 7. above or otherwise, Boulder and PSCo will negotiate for a purchase price for no less than three months after Boulder's offer before the filing of a petition in condemnation.
9. If Boulder makes an offer pursuant to the terms and conditions of subparagraph 7. above, PSCo agrees not to seek attorneys' fees pursuant to C.R.S. § 38-1-122 unless the valuation award is in excess of 150 percent of Boulder's offer made pursuant to the terms and conditions of subparagraph 8. above.
10. If Boulder makes an offer for the assets based on a completed appraisal by a MAI appraiser identifying the property to be acquired, and provides the appraisal report to PSCo, PSCo will not object to a subsequent condemnation action based on the requirement that Boulder has negotiated a good faith offer to acquire the assets.
11. For any capital or system improvements to the electric distribution system not necessary for reliability or safety in excess of \$5 million made by PSCo after the 2020 Franchise effective date that are not on the 2019 PUC list of assets outside substations, Boulder may opt out of such improvements. This section shall not apply to any improvements that have been approved by the PUC prior to the franchise effective date. Boulder may not opt out of such improvements except to the extent provided in section II.K.4(c)(2) of the Cost Agreement.
12. Boulder shall not be required to post security for distribution detailed engineering design as provided in section IV.A.1 of the Cost Agreement unless Boulder fails to make a payment within 30 days of receipt of an invoice or the estimated total for all work exceeds \$5 million. If Boulder fails to make a payment PSCo can stop work in accordance with the terms of the Cost Agreement.
13. PSCo, at Boulder's cost, will work with Boulder to complete revisions to the Separation Plan and existing distribution detailed design drawings for separation of the distribution system necessary for changes made during the abeyance period. Completion of such

revisions shall occur within six months of Boulder's decision to exercise its right to recommence creation of a municipal electric utility if the city requests the design work be done by PSCo personnel pursuant to a cost estimate from PSCo and nine months if the city wants PSCo to competitively bid the design work.

14. The maximum purchase price for the PSCo facilities and property interests necessary for the Boulder System including interconnection at six substations as provided herein is \$200 million ("Maximum Purchase Price"). Commencing January 1, 2024, the Maximum Purchase Price shall be recomputed by raising or lowering it in an amount equal to the percentage of change for the preceding year in the consumer price index (all items) of the U.S. Department of Labor, Bureau of Labor and Statistics for the statistical area which includes Boulder. The actual purchase amount may be less than the Maximum Purchase Price if the Parties agree on a lower amount or a condemnation proceeding determines that the just compensation owed is less. The Maximum Purchase Price shall include acquisition costs for the list of assets outside substations approved by the PUC, going concern (if determined to be compensable) damages to the remainder, if any, and any agreed upon purchase price of the NCAR and Gunbarrel substations as described below. PSCo contends that Boulder does not have the right to condemn substation assets and Boulder reserves the right to assert that substation assets are subject to condemnation. The Maximum Purchase Price does not include any other substation assets, expert fees, attorneys' fees, interest or other litigation costs that may be awarded. Boulder reserves the right to contest any such award and both PSCo and Boulder reserve the right to appeal any condemnation court award or interlocutory rulings related to such proceedings. The Maximum Purchase Price does not include, nor does anything else in this Settlement Agreement include, any cap or restriction on any claim or award for stranded assets pursuant to Federal Energy Regulatory Commission Order No. 888. Boulder reserves the right to contest any claim for compensation for stranded assets and both PSCo and Boulder reserve the right to appeal any FERC rulings.
15. If requested by Boulder, PSCo will work in good faith to negotiate a partial or full requirement contract for wholesale energy and capacity with Boulder.
16. Upon the execution of this Settlement Agreement, Boulder and PSCo will file a joint motion to stay the FERC 210 Application proceeding pending the outcome of a city vote in November 2020.
17. Connection of the Boulder load to the PSCo transmission system shall be pursuant to the Load Interconnection Agreement, **Exhibit C**. The Load Interconnection Agreement (LIA) provides for interconnection at the Leggett, NCAR, Sunshine, WWTP, Boulder Terminal, and Gunbarrel substations. The existing System Impact Study and Facility Study under PSCo's OATT will need to be updated to reflect any changes on the PSCo or Boulder Systems. PSCo shall be solely responsible for all costs associated with the restudy and for any costs associated with updating the existing detailed design drawings to reflect changes identified by the restudy. The terms of the restudy and any associated redesign work will be substantially similar to those in the Transmission to Load Interconnection Facilities Study and Detailed Engineering Design Agreement dated April 25, 2019.

18. Boulder and PSCo agree to amend the LIA as necessary to reflect any changes in the System Impact Studies, Facilities Studies or detailed engineering design.
19. The execution date of the LIA will be contingent on, among other things, (a) the completion of the restudy work discussed in subparagraph 17.; and (b) the completion of the distribution interconnection study for Boulder Terminal discussed in subparagraph 24.
20. Boulder will construct a new, Boulder-owned Leggett Substation on land adjacent to PSCo's existing Leggett Substation currently owned by PSCo. PSCo will make modifications to the existing Leggett Substation to facilitate the interconnection of Boulder's substation to PSCo's. Each Party will own its respective substation facilities. Boulder shall acquire the land for the facilities to be constructed by Boulder.
21. Boulder shall purchase and PSCo shall sell the electric distribution facilities, common facilities, and land at the NCAR substation. PSCo shall retain the transmission facilities associated with the NCAR substation. Boulder shall grant an access easement for PSCo transmission facilities. The total purchase price shall be three million, two hundred and forty thousand dollars (\$3,240,000). The purchase price would be increased as provided for in subparagraph 27.
22. Boulder will construct a new, Boulder-owned Sunshine substation on city-owned land adjacent to PSCo's existing Sunshine substation. Each Party will own its respective substation facilities. PSCo shall grant an access easement in the existing PSCo substation. Boulder will acquire land adjacent to PSCo's substation from PSCo for the city's new substation.
23. Boulder will construct a new, Boulder-owned WWTP substation on Boulder-owned land. PSCo will construct a new, PSCo-owned WWTP substation adjacent to Boulder's substation. Each Party will own its respective substation facilities. PSCo shall acquire an equipment and access easement for PSCo transmission facilities.
24. PSCo will provide distribution wheeling service across the distribution facilities in Boulder Terminal substation to the Boulder distribution system. The wheeling rate is subject to approval by FERC. Distribution wheeling is typically metered on the high side of the distribution transformers; however, a distribution interconnection study will need to be performed prior to finalizing the metering point. PSCo and Boulder will amend the Transmission to Load Interconnection Facilities Study and Detailed Engineering Design Agreement dated April 25, 2019 to include this study work and the work to develop detailed design drawings for Boulder Terminal by PSCo at Boulder's expense. PSCo will provide distribution wheeling service at a facility-specific rate for wheeling across the three distribution transformers and switchgears in the Boulder Terminal Substation. The facility-specific rate is calculated by dividing the Revenue Requirement by the Monthly Demand. Based on 2020 data, the above formula yields a current distribution wheeling rate of \$17,370.33 per month. Boulder shall have the option of selecting a variable demand rate. The rate will be recalculated based on current data at the time a Distribution Wheeling Agreement (DWA) is executed and will not change for a period of five years from the effective date of the DWA. The terms of the DWA shall be substantially similar to those in other DWAs previously negotiated with the city and filed

with FERC. The Point of Change of Ownership will be the point of attachment in the switchgear feeder breaker cubicles so that PSCo retains full ownership of all substation facilities up to the feeder attachment and Boulder would own the feeder cables and conduits from the point of attachment and exiting the Boulder Terminal substation. To the extent Boulder plans to perform construction or maintenance work on the feeder cables or conduits within the Boulder Terminal substation, Boulder will utilize PSCo personnel/contractors for the work at Boulder's expense. Boulder personnel will not have access inside the Boulder Terminal substation, except for work on the city's RTU, as discussed below. The city will have the ability to remotely trip/close the switchgear feeder breakers. The city will install an RTU in Boulder Terminal substation, at a location acceptable to PSCo, for visibility and control of the switchgear feeder breakers. If the city's personnel need to physically access the RTU, access will require a PSCo escort. PSCo will have the ability to (a) disable the city's control of the switchgear feeder breakers; and/or (b) trip the switchgear feeder breakers in accordance with good utility practice. Situations when PSCo may take such action include, but are not limited to: (c) load shedding as required by NERC reliability standards; (d) providing a safe work environment for PSCo personnel/contractors working within the substation; and/or (e) emergency situations for either utility. When practical, PSCo will provide the city with advance notice before disabling the city's operation of the switchgear feeder breakers, but such advance notice is not always practicable. The city will provide advance notice to PSCo's operations center prior to opening or closing any feeder breaker if such advance notice is practicable and will operate all feeder breakers consistent with good utility practice. The city understands that if the distribution bus or transformer relaying trips, the switchgear feeder breakers may be locked out open. Prior to Cut-Over, Boulder and PSCo will develop a written operating procedure detailing how the city will operate the switchgear feeder breakers and how PSCo and the city will work together to address any operational issues. The city and PSCo will work in good faith to develop procedures that minimize undo wear and tear on PSCo's equipment. The terms and conditions for the interconnection facilities at Boulder Terminal are included in the LIA.

25. Boulder shall purchase and PSCo shall sell the electric distribution facilities at Gunbarrel as shown in the Facility Study Report dated August 16, 2019 for seven million, seven hundred and twenty thousand dollars (\$7,720,000), contingent on Boulder developing an outage plan for the separation to occur at the substation. The purchase price would be updated as provided for in subparagraph 27. PSCo shall retain its transmission facilities and easements associated with the Gunbarrel substation. The city will acquire easement rights for the distribution facilities to be acquired. Tri-State Generation and Transmission Association, Inc. and Poudre Valley REA, Inc. will each retain their facilities. Design drawings for Gunbarrel, consistent with the results and conclusions of the Facility Study Report dated August 16, 2019, and consistent with the results of the updated System Impact Studies and Facilities Studies referenced in subparagraph 17. will be completed by PSCo at Boulder's expense. PSCo and Boulder will amend the Transmission to Load Interconnection Facilities Study and Detailed Engineering Design Agreement dated April 25, 2019 to include the detailed engineering design work for Gunbarrel.

26. The purchase prices in subparagraphs 21. and 25. above and the manner in which they are calculated are non-precedential and non-binding in any future legal proceeding except for enforcement of the agreements associated with the 2020 Franchise.
27. In the event PSCo replaces any distribution facilities at the NCAR or Gunbarrel substations, the purchase price in subparagraph 21. or 25. will be increased to include the depreciated actual costs incurred by PSCo to purchase and install such facilities. However, PSCo will not add to the purchase price of the new facilities any additional amount to reflect the return on investment for such additional facilities.
28. PSCo and Boulder retain all rights, including any right to raise any defense, objection, legal challenge, or contest any claim of the other in any future condemnation action, except as specifically stated otherwise in this Settlement Agreement, and nothing herein shall be construed as either Party conceding the validity of a claim of the other.

K. Streetlights. Boulder may, at its option, purchase the streetlights from PSCo within the City of Boulder limits, by agreement from both Parties and with PUC approval or condemnation, whether or not it exercises an opt-out of the franchise or municipalizes.

L. Broadband. Boulder shall be permitted to use PSCo's Electric Distribution poles for the attachment of fiber necessary to build out a municipal broadband service. Such attachment shall be subject to the same terms and conditions as set forth in Paragraph 10.1 of the Franchise Agreement, provided, however, Boulder shall be responsible for any payment or other condition imposed by state or federal law or regulation. This provision shall be subject to additional terms and conditions as mutually agreed by PSCo and Boulder.

M. Additional Terms. Upon signature of this Settlement Agreement:

1. PSCo shall not make any reportable campaign contributions to support or oppose any measure on the November 3, 2020 ballot in Boulder or any vote on whether to exercise the city's right to terminate the Franchise Agreement pursuant to paragraph 2.5 of the Franchise Agreement triggered by a failure to meet the 2022 target. Notwithstanding the foregoing, nothing herein shall restrict any individuals from written or oral advocacy of their views with respect to the Franchise Agreement, this Settlement Agreement or any associated agreement, provided that such advocacy does not constitute a reportable contribution.
2. Boulder and PSCo will work together with respect and transparency towards their shared goals and interests. This includes establishing open and effective channels of communication regarding policy positions relating to electricity generation, transmission, or distribution in Colorado taken at the local, state, and federal levels. To the extent practical, both Parties agree to provide notice to the other of those public meetings where the specific policy positions relating to electricity generation, transmission, or distribution in Colorado before the Colorado General Assembly will be discussed. When possible, the Parties, through either staff, elected officials, or committee meetings, will include an opportunity to educate each other on the implications and impacts of positions taken by either Party. This Agreement does not apply nor extend to the efforts of either Party as

members of trade organizations or advocacy coalitions. The Parties acknowledge that the legislative process is often swift and not conducive for the notice and consultations anticipated by this Agreement. The failure to meet any requirement described in this paragraph does not constitute a breach or default under this Agreement.

3. To the extent requested by Boulder, PSCo will participate in Boulder's community engagement process between the date of signature and September 4, 2020 which may alter or modify the terms of the final agreements and franchise related to the distribution partnership and grid planning and modernization.

N. General Provisions.

1. Representations and Warranties. Each Party warrants and represents to the other Party that:
 - a. Such Party has taken all necessary corporate, municipal, and legal actions, to the extent required, to duly approve the making and performance of this Agreement and the Associated Agreements;
 - b. Such Party has authority to enter into this Agreement and the Associated Agreements;
 - c. This Agreement has been validly executed and delivered by such Party and constitutes that Party's valid and binding obligation, enforceable against it in accordance with the terms hereof; and
 - d. Such Party has read this Agreement and fully understands all of its terms, covenants, conditions, provisions and obligations and such Party believes that this Agreement is a fair, just, and reasonable resolution of the disputes between the Parties.
 - e. Boulder additionally represents and warrants that execution of this Agreement complies with Boulder Municipal Code Section 2-2-14 (Initiation and Settlement of Claims and Suits).
2. No Admissions. This Agreement is being entered into solely for purposes of compromise and settlement. Each of the Parties expressly denies any wrongdoing or liability whatsoever. By entering into this Agreement, no Party is admitting any liability or wrongdoing, and nothing in this Agreement shall in any way be deemed or construed to constitute an admission of wrongdoing or liability by any Party or the waiver of any defense.
3. Binding Effect. This Agreement shall inure to the benefit of and be binding upon the Parties and their employees, predecessors, successors, directors, officers, administrators, assigns, agents, principals, subsidiaries, parent and affiliate companies, trustees, representatives, insurers, attorneys, and elected officials.
4. Execution in Counterparts. The Parties agree that this Agreement may be executed in counterparts and that when so executed by all Parties shall constitute one agreement binding on all Parties hereto. The facsimile or other electronically transmitted copy of this Agreement shall be deemed as binding and as valid as the original signatures to this Agreement, in which case the Party so executing this Agreement shall promptly thereafter deliver its originally executed signature page (but the failure to deliver an original shall not affect the binding nature of such person's signature).

5. Governing Law. The validity, construction, interpretation and administration of this Agreement shall be governed by the substantive laws of the State of Colorado.
6. Amendment. This Agreement shall not be modified or amended except by an instrument in writing signed by the Parties.
7. Attorneys' Fees and Costs. The Parties agree that, upon certification of election results showing voter approval of the 2020 Franchise, the obligations set forth in this Agreement include, and are in complete satisfaction of, any right that each Party, or any attorney employed by that Party, may have, or claim to have, to recover attorneys' or consultant/expert fees against any other Party in connection with any matter covered by this Agreement. Each Party shall bear its own costs and shall waive and not make any claims against the other for any costs, expenses, fees or any other expenditure of monies incurred in any matter related to this Agreement.
8. Entire Agreement. This Agreement constitutes the full and entire understanding and agreement between the Parties with regard to the subject hereof and supersedes any prior negotiations, representations or agreements, written or oral, with respect to such subject matter (none of which prior matters shall be binding upon the Parties).
9. Party Communications. Communications made in the negotiation or implementation of this Agreement are not intended as and will not be construed as waivers by any Party of any applicable privilege, protection, or immunity. All negotiations leading to this Agreement and all communications related thereto will be deemed to fall within the protection afforded compromises and offers to compromise by Rule 408 of the Colorado Rules of Evidence.
10. Savings Clause. If any term or provision of this Agreement is held to be invalid, illegal, or contrary to public policy, such term or provision shall be modified to the extent necessary to be valid and enforceable and shall be enforced as modified; provided, however, that if no modification is possible such provision shall be deemed stricken from this Agreement. In any case, the remaining provisions of this Agreement shall not be affected thereby.
11. Waiver of Rights. Any waiver of either Party's rights under this Agreement is only effective if in writing signed by the Party or its duly authorized representative, and any such waiver shall only be effective for the specific matter waived and shall not be deemed to apply to any other conduct, provision or other matter.
12. Advice of Counsel. The undersigned have carefully read this Agreement, fully understand it, and, upon advice of counsel, sign this Agreement as the free and voluntary acts of the undersigned. Boulder City Council has been fully advised of the terms of this Agreement and the condition that this Agreement is not effective unless the council places the Franchise Agreement on the November 3, 2020 ballot and the Boulder electorate approves the Franchise Agreement. Notwithstanding the foregoing, section M 1. of this Agreement shall be binding upon PSCo for and in advance of the November 3, 2020, election in Boulder.
13. Arm's Length. This Agreement was jointly drafted and was negotiated between the Parties at arm's length. Each Party had the opportunity to consult with independent legal

counsel. Neither Party will be entitled to have any language contained in this Agreement construed against the other because of the identity of the drafter.

14. No Third-Party Beneficiary. This Agreement is not intended to and shall not be construed to give any third party any interest or rights with respect to this Agreement or any of the provisions contained herein, except as otherwise expressly set forth in this Agreement.

[Signature Page Follows]

PUBLIC SERVICE COMPANY OF COLORADO, A COLORADO CORPORATION

Alice K. Jackson, President

Dated: _____

**CITY OF BOULDER,
a Colorado home rule city**

Jane S. Brautigam,
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney's Office

Date: _____

APPROVED AS TO COMPLIANCE WITH
B.M.C. § 2-2-14:

Thomas A. Carr,
City Attorney

ENERGY PARTNERSHIP AGREEMENT

This Energy Partnership Agreement (this “Energy Partnership Agreement”) is by and between, PUBLIC SERVICE COMPANY, a Colorado corporation, doing business as Xcel Energy, (“PSCoXcel”) and, the CITY OF BOULDER, a Colorado home rule citymunicipality (“Boulder”). PSCoXcel and Boulder shall be referred to collectively as the “Parties” and each individually as a “Party.” This Energy Partnership is entered into on this _____ day of August, 2020 to be effective if the voters approve a The Franchise Agreement between the Parties at the November 3, 2020 election. will require approval by the voters of Boulder. This Energy Partnership Agreement and the Settlement Agreement will be additional documents supported by the overall settlement between Xcel Energy and the City of Boulder to be effective if the voters approve the Franchise Agreement.

SECTION I PURPOSE, INTENT

A. Purpose. The purposes of this Agreement are to:

1. ~~P~~provide a framework for collaborative distribution-level planning for local projects and initiatives that support a shared vision towards energy-related emissions reductions by increasing accessibility to local renewable energy, improving resilience and reliability and designing solutions that are accessible and equitable; and
2. ~~M~~memorialize the framework and process (the “~~p~~Partnership”) by which the ~~City of Boulder (“Boulder”)~~ and Xcel ~~Energy—Colorado (“Xcel”)~~ will work together to execute local programs, projects and initiatives and track progress towards specific energy and greenhouse gas emissions targets; and
3. ~~I~~identify specific ~~p~~Partnership options that address the gap between Xcel’s 80 percent carbon emissions reduction by 2030 and Boulder’s 2030 goal of 100 percent renewable electricity serving Boulder; and
4. ~~O~~utline the process of engaging representatives from the Boulder community and Xcel in ongoing and regular dialogue.

B. Vision.

1. Boulder has long understood the importance of local climate action and has committed to rapidly transitioning to a clean energy economy and lifestyle through innovative strategies that dramatically reduce greenhouse gas emissions, enhance our community’s resilience and support a vital and equitable economy. Boulder seeks to achieve its energy and climate related goals by reducing fossil fuel demand from buildings and transportation, rapidly transitioning to an energy system and economy that is powered 100 percent by renewable clean electricity with 50 percent or more of that produced locally, and prioritizing progress towards a resilient energy system that prioritizes the most vulnerable members of the community.

2. ~~Xcel Energy~~ will be the preferred and trusted provider of the energy its customers need. ~~As such, Xcel Energy~~ wants to partner with Boulder to support the City of Boulder's and the community's energy vision, goals and objectives.
3. ~~City of Boulder and Xcel Energy - Colorado~~ will work to support and achieve each other's vision, for the benefit of the overall ~~City of Boulder~~ community which includes residents and businesses. ~~City of Boulder and Xcel Energy - Colorado~~ will separately and ~~also~~ collaboratively pursue innovations in technology that accelerate achievement of the visions described above.
4. ~~Xcel Energy - Colorado's~~ ability to implement innovations rapidly may be constrained by regulatory requirements. Both Parties will work toward identifying and minimizing and overcoming both external and internal barriers to the rapid implementation of agreed-upon projects.

C. Guiding Principles.

1. The goals of this Agreement are to prioritize reducing greenhouse gas emissions associated with gas and electric consumption, electrification, resilience and ~~equality equity~~ within the ~~City of Boulder~~.
2. Such prioritization will necessitate working together to help Boulder add renewables in order to achieve its 100% percent renewables goal by 2030 to reach zero electricity sector emissions.
3. ~~City of Boulder and Xcel Energy - Colorado~~ will work collaboratively to advance the vision and goals of both ~~p~~Parties by sharing information, pushing innovation, and adhering to the governance structure set forth by this ~~p~~Partnership.
4. This ~~p~~Partnership will strive to identify projects that meet Boulder's goals and could be scaled and replicated where appropriate in other Colorado communities served by Xcel Energy - Colorado in the future.
5. Pursuit and execution of this Partnership will avoid shifting costs to other Xcel Energy - Colorado customers outside of city limits, except to the extent approved, and deemed reasonable, by the PUC.
6. The ~~p~~Parties further wish to utilize the ~~p~~Partnership, where appropriate, to test and promote innovative technologies and strategies through partnerships with public and private-sector entities such as the University of Colorado and federal labs.
7. Both ~~p~~Parties agree to support efforts and collaborate when appropriate on federal and private grants and other funding models as available that help to achieve the goals and objectives set forth within this ~~partnership a~~Partnership agreement.
8. Boulder recognizes that Xcel is subject to a state regulatory framework when it works to advance the goals set within this ~~partnership a~~Partnership agreement. ~~Both p~~Parties also recognize that Xcel ~~Energy's~~ efforts must continue to support a healthy utility company. ~~City of Boulder~~ plans to support to the extent appropriate for its goals and Xcel ~~Energy's~~ efforts for regulatory change to advance the projects.

D. Goals. The ~~p~~Parties have established qualitative and quantitative goals that will guide the actions of the ~~p~~Partnership. The ~~p~~Parties will work together collaboratively to achieve the goals of this Agreement and as those goals change over time. Goals of the ~~p~~Partnership include, but are not limited to:

1. ~~City of Boulder havings~~ set forth a goal to achieve 100 percent renewable electricity by 2030;
2. ~~Xcel Energy Colorado havings~~ set forth a goal to achieve 80 percent carbon reduction on the electric grid by 2030 and 100 percent carbon emission reduction on the electric grid by 2050; both from 2005 levels;
3. projects agreed to and pursued by both ~~p~~Parties will be specific and measurable in achieving Boulder's climate and energy related targets and goals;
4. ~~City of Boulder and Xcel Energy Colorado will working~~ together to ensure that the normal distribution system planning work planned by ~~Xcel Energy Colorado~~ includes engagement with the community and other stakeholders;-
5. ~~the p~~Parties ~~will identifying~~ local projects that support ~~the City Boulder's and Xcel's Energy Colorado's~~ goals related to carbon emissions, renewable energy, resilience, reliability, and equity;
6. projects, programs and or initiatives that seek to alleviate inequities among Boulder community members and create opportunities for those who are or have been underrepresented ~~will have provided~~ opportunitieses to participate, be heard and benefit from selected projects and programs;
7. safe, resilient, and reliable electricity being provided to Boulder customers ~~will be safe, resilient, and reliable~~ at fair and reasonable costs;
8. the ~~p~~Parties ~~will working~~ in collaboration to create and implement programs, services, and products that meet the needs and expectations of its diverse community, including demand-side management, transportation electrification, distributed generation, storage and resilience projects; and
9. projects that may be funded through a variety of sources, including, but not limited to private and public grants, industry partnerships and innovative financing mechanisms or payment.

SECTION II GOVERNANCE

A. Executive Team. The Executive Team is responsible for oversight of ~~this Partnership Agreement.~~ This includes communication and collaboration to achieve the programs, projects, initiatives and goals set forth in this ~~a~~Agreement. The Executive Team's guides is to ensure that ~~The City of Boulder's~~ goals are met and how best to remedy challenges either through adjustments or through execution of the opt-out provision of the Franchise Agreement. The Executive Team will meet quarterly for the first two years, then semiannuallyly at a minimum.

1. The Executive Team will consist of:-
 - a. The City of Boulder:
 - i. City Maanager; and

- ii. Executive Leadership Responsible for climate and city infrastructure.
- b. Xcel Energy – Colorado:
 - i. President of Xcel Energy – Colorado; and
 - ii. Executive Leadership that oversees Community Relations and Customer Accounts.

B. ~~Project Partnership Agreement Oversight Team.~~ The oversight of the Distribution System Planning Projects (“DSP Projects”), Community Grid Planning Projects (“CGP Projects”), Innovative Grid Planning Projects (“IGP Projects”) and Community Programs (“CPs”) will be provided by the ~~Project Partnership Agreement~~ Oversight Team. This team shall consist of a core and consistent team of representatives from Xcel Energy Colorado and ~~The City of Boulder~~ that have the expertise to evaluate the feasibility, value, and requirements of programs and projects. This oversight team will lead the process of appointing teams for projects on **Attachments A** and moving projects from **Attachment B** to **Attachment A**. The Project Oversight Team shall appoint a Project Management Team for each program and project. ~~The and~~ Project Management Teams will review and provide guidance towards the successful implementation of initiatives and to review and prioritize new projects and programs.

1. Additionally, members of the Project Oversight Team ~~is~~ team should have the organizational authority to authorize the implementation of programs and projects along with the ability to assign staff members. Implementation includes but is not limited to identifying the subject matter experts to support the project or program, evaluate the funding needed to implement the project or program, and authorize the project plan. This team will meet monthly unless the ~~p~~Parties agree that less frequently ~~meetings~~ meets the purposes of this Agreement.

At the core the ~~Project Partnership Agreement~~ Oversight ~~t~~Team includes:

- a. City of Boulder:
 - i. Director of Climate Initiatives;
 - ii. Chief Sustainability and Resilience Officer;
 - iii. Electrical Engineer;
 - iv. Energy Strategy Advisor;
 - v. Others as determined by the City; and
 - vi. The ~~C~~city ~~M~~anager may select alternates to any of the above that have equivalent positions or knowledge.
- b. Xcel Energy – Colorado:
 - i. Manager of Local Government Affairs;
 - ii. Manager of Key Accounts;
 - iii. Distribution Project Manager; and
 - iv. Others as determined by Xcel.
- c. At the direction of the Project Oversight Team, specific ~~P~~project ~~M~~anagement ~~T~~teams will be formed and made up of Subject Matter Experts (“SMEs”) and support staff from each organization involved in the project. The team will designate a lead project manager that will be responsible for the management of the project and reporting to the Project

Oversight Team and the Executive Team on the status of the project. Staff members of both ~~p~~Parties may assign an additional SME(s) to assist with a particular approved project(s).

- C. **Advisory Panel.** For purposes of ensuring that the activities being undertaken as part of this Agreement and supporting the vision, guiding principles, and goals of this ~~a~~Agreement, the ~~p~~Parties shall agree and establish an advisory panel, which shall include consistent designated representatives of both Xcel ~~Energy–Colorado~~ and the City of Boulder staff (the “Advisory Panel”) and the Boulder community, both business and residential. The makeup of the Advisory Panel shall consist of 6-15 representatives determined by ~~City of Boulder~~ and Xcel ~~Energy–Colorado~~ that representing the business community, the residential community and the University of Colorado. The Advisory Panel shall determine a Charter for the ~~P~~Panel. The Advisory Panel shall meet quarterly at a minimum for the term of the Franchise Agreement. The ~~a~~Advisory ~~p~~Panel shall regularly review and discuss energy-related issues of shared importance to Xcel ~~Energy–Colorado~~ and the City of Boulder, including but not limited to decarbonization of ~~The City of Boulder’s~~ electricity supply and use energy efficiency and demand-side management programs for customers, and overall local and state-wide initiatives that are related to the goals set forth within this ~~a~~Agreement.

SECTION III PROJECT AND PROGRAM PLANNING AND EVALUATION PROCESS

A. **The Comprehensive Community Grid Planning and Programs Process.**

1. In order to implement the projects and programs to meet the goals and grid modernization portion of the settlement, the ~~p~~Parties have established a Comprehensive Community Grid Planning and Programs process (“CCGPP”) for each of three components: (i) Distribution System Planning, (ii) Community Grid Planning, and (iii) Innovative Grid Planning. A fourth area, Community Programs, is established to encompass more general distribution programs that are focused on helping Boulder achieve its goals.
2. The development and adoption of each portion of the CCGPP is intended to be accomplished by a partnership between appropriate staff of both Xcel ~~Energy–Colorado~~ and the City of Boulder.
3. The CCGPP is to be implemented with (i) projects defined herein, (ii) projects to be developed during the term of this Agreement, (iii) programs, (iv) Xcel’s existing capital improvement program, (v) Xcel’s existing energy resource planning process, (vi) Boulder’s existing Capital Improvement Program, and (vii) Boulder’s budget process.
4. Xcel will work with Boulder to make the appropriate filings with the PUC when necessary to implement new products and services
5. The projects approved and implemented from the CCGPP are to:
 - a. result in use of energy resources to bridge the gap between Xcel ~~Energy’s~~ 2030 goal of an 80 percent reduction in carbon emissions from 2005

- levels, and Boulder's 2030 goal of 100 percent renewable electricity within the City of Boulder; and
- b. support the principles, priorities and goals as outlined above.
6. Programs are to recognize that the path to ~~The City of Boulder's~~ goals require the beneficial electrification of transportation and buildings. ~~†The CCGPP projects~~ can and should include projects and programs that support ~~that~~ the transition. Beneficial electrification projects, particularly when paired with renewable generation, can assist in closing the 2030 emissions gap and in meeting Boulder's building- and transportation-sector emissions reduction goals.
7. Each project approved and implemented is to be specific, measurable, and achievable.

B. Goals, Metrics, and Criteria for Projects and Programs.

1. The ~~p~~Parties agree that ~~they~~we will work off two documents, **Attachment A** and **B**, and, through the Project Oversight Team, will evaluate, identify, and move projects from **Attachment B** to **Attachment A**. The two documents can change, evolve, and adjust. Goals and criteria on how the listed projects should be prioritized include:
- a. Prioritized Project List – **Attachment A** ~~P~~projects:
- Attachment A** is a list of projects that ~~The City of Boulder and Xcel Energy Colorado have~~s identified that could be implemented within the first five years of the ~~p~~Partnership and will, go into 2021 planning rotations. This Prioritized Project List shall be populated from the evaluation of **Attachment B** ("Potential Project List") projects to determine which projects meet ~~The City of Boulder's~~ goals and agreed by both ~~p~~Parties are realistic and reasonable.
- b. Potential Project List – **Attachment B** ~~P~~projects:
- Attachment B**, the Potential Project List, shall be populated from community and staff ideas and screened to include only projects for which measured progress can be made and financially and technically reasonably feasible.
2. The following metrics shall be estimated in the evaluation of each project, as applicable, and will help close the gap between Xcel's goal of 80% percent emissions reduction by 2030 and Boulder's goal of 100% percent renewables by 2030. Unless the ~~p~~Parties agree on different metrics, projects shall be evaluated at least annually during implementation for:
- a. ~~C~~hange to building and transportation sector emission through beneficial electrification;:-
- b. ~~I~~ncrease in installed capacity of local renewable generation;:-
- c. ~~I~~mpact on overall system and site reliability resilience;:- and

- d. ~~F~~financial impact on Boulder residents and businesses.
3. The ~~p~~Parties ~~are~~ are to identify certain individual ~~p~~Party ~~ner~~ activities that clearly advance the goals and purposes of this Agreement. Specific projects shall be selected as part of the Partnership. These projects shall increase emissions reductions and renewables beyond that deployed as part of:
 - a. existing or proposed voluntary community projects;
 - b. renewable projects to be proposed in future Xcel ~~Energy~~ Colorado's Electric Resource Plans;
 - c. Boulder's existing funding by its CAP tax or part of CMAP; and
 - d. planned undergrounding - undergrounding fee settlement cannot be used for infrastructure that is required to be underground (e.g. new construction) that serves out of city customers or is part of Xcel's capital improvement plan.
 4. The projects approved must meet the following core criteria:
 - a. Projects that would not happen in the absence of ~~this~~ Partnership.
 - b. Be available to all ~~of~~ the relevant customers in Boulder or that are in a project's target area without excluding members.
 - c. Align with the ~~City~~ Boulder's commitment to racial equity and will include pathways for community members who typically do not have the opportunity to access programs or projects.
 - d. Be designed and structured to have the broadest impact to the most residences and/or businesses possible.
 - e. Include targets and metrics of this Agreement and others agreed upon by the Parties.
 5. Metrics for success. In order to clearly define the successes of a project ahead of time, a project Charter with specific metrics will be refined or developed on a per-project basis and agreed upon by both ~~p~~Parties prior to approval of the project.
 6. Specific to renewable energy goals, unbundled Renewable Energy Credits will not be used to meet Boulder's goals.

SECTION IV DATA SHARING

The ~~P~~Parties have agreed that data sharing by Xcel is necessary to implement the terms of this Agreement and the Settlement Agreement.

Except as is prohibited through regulation, Xcel ~~Energy~~ will provide complete and accurate data as outlined in **Attachment C** attached hereto and incorporated herein. If Boulder finds any deficiencies or errors in the data provided, it shall notify Xcel ~~Energy~~ in writing.- Xcel ~~Energy~~ will remedy any errors and provide ~~the City~~ Boulder corrected and any omitted information within 15 business days. Xcel ~~Energy~~ may request additional time if reasonably necessary to make corrections or locate information.-

Xcel Energy and the City of Boulder will collaborate to address data privacy barriers that prevent complete and accurate data sharing so long as the privacy of individual customers is protected from the public disclosure, which may include working with state regulators to provide interpretation and/or alteration to existing regulation.

SECTION V FUNDING

The Parties will work together to identify and utilize both existing and new funding sources that may be available for each project. To the extent Boulder financially funds 100% percent of a project or pilot program which are then offered by Xcel Energy, within the 10 years of project or pilot launch, to other Colorado Xcel Energy customers, Xcel shall reimburse Boulder as necessary. Such reimbursements may be subject to PUC approval. Examples of funding opportunities to be explored include but are not limited to DSMCA, RESA, CAP Tax, Participant Investment, Tariff-based Financing, Third-Party Grant Funds, Xcel funded projects-

SECTION VI GENERAL PROVISIONS

- A. The ~~p~~Parties may change the agreement upon the written agreement of the ~~p~~Parties. The ~~p~~Parties shall evaluate any necessary revisions annually.
- B. This Agreement shall be effective if the voters of Boulder approve the ~~a~~ franchise agreement at an election on November 3, 2020.

IN WITNESS WHEREOF, the parties have caused this Energy Partnership Franchise to be executed as of the day and year first above written to be effective of the voters approve the Franchise Agreement at the November 3, 2020 election.

CITY OF BOULDER,
a Colorado home rule city

ATTEST:

Mayor

City Clerk

APPROVED AS TO FORM:

Dated: _____

City Attorney' Office

**PUBLIC SERVICE COMPANY OF
COLORADO, a Colorado corporation**

Hollie Horvath Velasquez

Senior Director, State Affairs and
Community Relations

STATE OF COLORADO)
_____)SS.

COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2020
by Hollie Horvath Velasquez, Senior Director, State Affairs and Community Relations of Public
Service Company of Colorado, a Colorado corporation.

Witness my hand and official seal.

Notary Public

My Commission expires: _____.

(SEAL)

ENERGY PARTNERSHIP AGREEMENT

This Energy Partnership Agreement (this “Agreement”) is by and between PUBLIC SERVICE COMPANY, a Colorado corporation, doing business as Xcel Energy, (“Xcel”) and, the CITY OF BOULDER, a Colorado home rule city (“Boulder”). Xcel and Boulder shall be referred to collectively as the “Parties” and each individually as a “Party.” This Energy Partnership is entered into on this ____ day of August 2020 to be effective if the voters approve a Franchise Agreement between the Parties at the November 3, 2020 election. This Energy Partnership Agreement and the Settlement Agreement will be additional documents supported by the overall settlement between Xcel Energy and the City of Boulder to be effective if the voters approve the Franchise Agreement.

SECTION I PURPOSE, INTENT

A. Purpose. The purposes of this Agreement are to:

1. provide a framework for collaborative distribution-level planning for local projects and initiatives that support a shared vision towards energy-related emissions reductions by increasing accessibility to local renewable energy, improving resilience and reliability and designing solutions that are accessible and equitable; and
2. memorialize the framework and process (the “Partnership”) by which the Boulder and Xcel will work together to execute local programs, projects and initiatives and track progress towards specific energy and greenhouse gas emissions targets; and
3. identify specific Partnership options that address the gap between Xcel’s 80 percent carbon emissions reduction by 2030 and Boulder’s 2030 goal of 100 percent renewable electricity serving Boulder; and
4. outline the process of engaging representatives from the Boulder community and Xcel in ongoing and regular dialogue.

B. Vision.

1. Boulder has long understood the importance of local climate action and has committed to rapidly transitioning to a clean energy economy and lifestyle through innovative strategies that dramatically reduce greenhouse gas emissions, enhance our community’s resilience and support a vital and equitable economy. Boulder seeks to achieve its energy and climate related goals by reducing fossil fuel demand from buildings and transportation, rapidly transitioning to an energy system and economy that is powered 100 percent by renewable clean electricity with 50 percent or more of that produced locally, and prioritizing progress towards a resilient energy system that prioritizes the most vulnerable members of the community.
2. Xcel will be the preferred and trusted provider of the energy its customers need. As such, Xcel wants to partner with Boulder to support the City of Boulder’s and the community’s energy vision, goals and objectives.

3. Boulder and Xcel will work to support and achieve each other's vision, for the benefit of the overall Boulder community which includes residents and businesses. Boulder and Xcel will separately and collaboratively pursue innovations in technology that accelerate achievement of the visions described above.
4. Xcel's ability to implement innovations rapidly may be constrained by regulatory requirements. Both Parties will work toward identifying and minimizing and overcoming both external and internal barriers to the rapid implementation of agreed-upon projects.

C. Guiding Principles.

1. The goals of this Agreement are to prioritize reducing greenhouse gas emissions associated with gas and electric consumption, electrification, resilience and equity within Boulder.
2. Such prioritization will necessitate working together to help Boulder add renewables in order to achieve its 100 percent renewables goal by 2030 to reach zero electricity sector emissions.
3. Boulder and Xcel will work collaboratively to advance the vision and goals of both Parties by sharing information, pushing innovation, and adhering to the governance structure set forth by this Partnership.
4. This Partnership will strive to identify projects that meet Boulder's goals and could be scaled and replicated where appropriate in other Colorado communities served by Xcel Energy - Colorado in the future.
5. Pursuit and execution of this Partnership will avoid shifting costs to other Xcel Energy - Colorado customers outside of city limits, except to the extent approved, and deemed reasonable, by the PUC.
6. The Parties further wish to utilize the Partnership, where appropriate, to test and promote innovative technologies and strategies through partnerships with public and private-sector entities such as the University of Colorado and federal labs.
7. Both Parties agree to support efforts and collaborate when appropriate on federal and private grants and other funding models as available that help to achieve the goals and objectives set forth within this Agreement.
8. Boulder recognizes that Xcel is subject to a state regulatory framework when it works to advance the goals set within this Agreement. Both Parties also recognize that Xcel's efforts must continue to support a healthy utility company. Boulder plans to support to the extent appropriate for its goals and Xcel's efforts for regulatory change to advance the projects.

D. Goals. The Parties have established qualitative and quantitative goals that will guide the actions of the Partnership. The Parties will work together collaboratively to achieve the goals of this Agreement and as those goals change over time. Goals of the Partnership include, but are not limited to:

1. Boulder having set forth a goal to achieve 100 percent renewable electricity by 2030;

2. Xcel having set forth a goal to achieve 80 percent carbon reduction on the electric grid by 2030 and 100 percent carbon emission reduction on the electric grid by 2050; both from 2005 levels;
3. projects agreed to and pursued by both Parties will be specific and measurable in achieving Boulder's climate and energy related targets and goals;
4. Boulder and Xcel working together to ensure that the normal distribution system planning work planned by Xcel includes engagement with the community and other stakeholders;
5. the Parties identifying local projects that support Boulder's and Xcel's goals related to carbon emissions, renewable energy, resilience, reliability, and equity;
6. projects, programs and or initiatives that seek to alleviate inequities among Boulder community members and create opportunities for those who are or have been underrepresented provided opportunities to participate, be heard and benefit from selected projects and programs;
7. safe, resilient, and reliable electricity being provided to Boulder customers at fair and reasonable costs;
8. the Parties working in collaboration to create and implement programs, services, and products that meet the needs and expectations of its diverse community, including demand-side management, transportation electrification, distributed generation, storage and resilience projects; and
9. projects that may be funded through a variety of sources, including, but not limited to private and public grants, industry partnerships and innovative financing mechanisms or payment.

SECTION II GOVERNANCE

A. Executive Team. The Executive Team is responsible for oversight of this Agreement. This includes communication and collaboration to achieve the programs, projects, initiatives and goals set forth in this Agreement. The Executive Team's guide is to ensure that Boulder's goals are met and how best to remedy challenges either through adjustments or through execution of the opt-out provision of the Franchise Agreement. The Executive Team will meet quarterly for the first two years, then semiannually at a minimum.

1. The Executive Team will consist of:
 - a. The City of Boulder:
 - i. City manager; and
 - ii. Executive leadership responsible for climate and city infrastructure.
 - b. Xcel Energy – Colorado:
 - i. President of Xcel Energy – Colorado; and
 - ii. Executive leadership that oversees Community Relations and Customer Accounts.

B. Project Oversight Team. The oversight of the Distribution System Planning Projects ("DSP Projects"), Community Grid Planning Projects ("CGP Projects"), Innovative Grid

Planning Projects (“IGP Projects”) and Community Programs (“CPs”) will be provided by the Project Oversight Team. This team shall consist of a core and consistent team of representatives from Xcel and Boulder that have the expertise to evaluate the feasibility, value, and requirements of programs and projects. This oversight team will lead the process of appointing teams for projects on **Attachments A** and moving projects from **Attachment B** to **Attachment A**. The Project Oversight Team shall appoint a Project Management Team for each program and project. The Project Management Teams will review and provide guidance towards the successful implementation of initiatives and to review and prioritize new projects and programs.

1. Additionally, members of the Project Oversight Team should have the organizational authority to authorize the implementation of programs and projects along with the ability to assign staff members. Implementation includes but is not limited to identifying the subject matter experts to support the project or program, evaluate the funding needed to implement the project or program, and authorize the project plan. This team will meet monthly unless the Parties agree that less frequent meetings meet the purposes of this Agreement.

At the core the Project Oversight Team includes:

- a. City of Boulder:
 - i. Director of Climate Initiatives;
 - ii. Chief Sustainability and Resilience Officer;
 - iii. Electrical Engineer;
 - iv. Energy Strategy Advisor;
 - v. Others as determined by the City; and
 - vi. The city manager may select alternates to any of the above that have equivalent positions or knowledge.
- b. Xcel Energy – Colorado:
 - i. Manager of Local Government Affairs;
 - ii. Manager of Key Accounts;
 - iii. Distribution Project Manager; and
 - iv. Others as determined by Xcel.
- c. At the direction of the Project Oversight Team, specific project management teams will be formed and made up of Subject Matter Experts (“SMEs”) and support staff from each organization involved in the project. The team will designate a lead project manager that will be responsible for the management of the project and reporting to the Project Oversight Team and the Executive Team on the status of the project. Staff members of both Parties may assign an additional SMEs to assist with a particular approved project(s).

- C. **Advisory Panel.** For purposes of ensuring that the activities being undertaken as part of this Agreement and supporting the vision, guiding principles, and goals of this Agreement, the Parties shall agree and establish an advisory panel, which shall include consistent designated representatives of both Xcel and Boulder staff (the “Advisory Panel”) and the Boulder community, both business and residential. The makeup of the Advisory Panel shall consist of 6-15 representatives determined by Boulder and Xcel that

represent the business community, the residential community and the University of Colorado. The Advisory Panel shall determine a Charter for the panel. The Advisory Panel shall meet quarterly at a minimum for the term of the Franchise Agreement. The Advisory Panel shall regularly review and discuss energy-related issues of shared importance to Xcel and Boulder, including but not limited to decarbonization of Boulder's electricity supply and use energy efficiency and demand-side management programs for customers, and overall local and state-wide initiatives that are related to the goals set forth within this Agreement.

SECTION III PROJECT AND PROGRAM PLANNING AND EVALUATION PROCESS

A. The Comprehensive Community Grid Planning and Programs Process.

1. In order to implement the projects and programs to meet the goals and grid modernization portion of the settlement, the Parties have established a Comprehensive Community Grid Planning and Programs process ("CCGPP") for each of three components: (i) Distribution System Planning, (ii) Community Grid Planning, and (iii) Innovative Grid Planning. A fourth area, Community Programs, is established to encompass more general distribution programs that are focused on helping Boulder achieve its goals.
2. The development and adoption of each portion of the CCGPP is intended to be accomplished by a partnership between appropriate staff of both Xcel and Boulder.
3. The CCGPP is to be implemented with (i) projects defined herein, (ii) projects to be developed during the term of this Agreement, (iii) programs, (iv) Xcel's existing capital improvement program, (v) Xcel's existing energy resource planning process, (vi) Boulder's existing Capital Improvement Program, and (vii) Boulder's budget process.
4. Xcel will work with Boulder to make the appropriate filings with the PUC when necessary to implement new products and services
5. The projects approved and implemented from the CCGPP are to:
 - a. result in use of energy resources to bridge the gap between Xcel's 2030 goal of an 80 percent reduction in carbon emissions from 2005 levels, and Boulder's 2030 goal of 100 percent renewable electricity within the City of Boulder; and
 - b. support the principles, priorities and goals as outlined above.
6. Programs are to recognize that the path to Boulder's goals require the beneficial electrification of transportation and buildings. The CCGPP projects can and should include projects and programs that support that transition. Beneficial electrification projects, particularly when paired with renewable generation, can assist in closing the 2030 emissions gap and in meeting Boulder's building- and transportation-sector emissions reduction goals.
7. Each project approved and implemented is to be specific, measurable, and achievable.

B. Goals, Metrics, and Criteria for Projects and Programs.

1. The Parties agree that they will work off two documents, **Attachment A** and **B**, and, through the Project Oversight Team, will evaluate, identify, and move projects from **Attachment B** to **Attachment A**. The two documents can change, evolve, and adjust. Goals and criteria on how the listed projects should be prioritized include:

- a. Prioritized Project List – **Attachment A** projects:

Attachment A is a list of projects that Boulder and Xcel have identified that could be implemented within the first five years of the Partnership and will, go into 2021 planning rotations. This Prioritized Project List shall be populated from the evaluation of **Attachment B** (“Potential Project List”) projects to determine which projects meet Boulder’s goals and agreed by both Parties are realistic and reasonable.

- b. Potential Project List – **Attachment B** projects:

Attachment B, the Potential Project List, shall be populated from community and staff ideas and screened to include only projects for which measured progress can be made and financially and technically reasonably feasible.

2. The following metrics shall be estimated in the evaluation of each project, as applicable, and will help close the gap between Xcel’s goal of 80 percent emissions reduction by 2030 and Boulder’s goal of 100 percent renewables by 2030. Unless the Parties agree on different metrics, projects shall be evaluated at least annually during implementation for:
 - a. change to building and transportation sector emission through beneficial electrification;
 - b. increase in installed capacity of local renewable generation;
 - c. impact on overall system and site reliability resilience; and
 - d. financial impact on Boulder residents and businesses.
3. The Parties are to identify certain individual Party activities that clearly advance the goals and purposes of this Agreement. Specific projects shall be selected as part of the Partnership. These projects shall increase emissions reductions and renewables beyond that deployed as part of:
 - a. existing or proposed voluntary community projects;
 - b. renewable projects to be proposed in future Xcel Electric Resource Plans;
 - c. Boulder’s existing funding by its CAP tax or part of CMAP; and
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 - a. Projects that would not happen in the absence of this Partnership.
 - b. Be available to all the relevant customers in Boulder or that are in a project's target area without excluding members.
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The Parties have agreed that data sharing by Xcel is necessary to implement the terms of this Agreement and the Settlement Agreement.

Except as is prohibited through regulation, Xcel will provide complete and accurate data as outlined in **Attachment C** attached hereto and incorporated herein. If Boulder finds any deficiencies or errors in the data provided, it shall notify Xcel in writing. Xcel will remedy any errors and provide Boulder corrected and any omitted information within 15 business days. Xcel may request additional time if reasonably necessary to make corrections or locate information.

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The Parties will work together to identify and utilize both existing and new funding sources that may be available for each project. To the extent Boulder financially funds 100 percent of a project or pilot program which are then offered by Xcel Energy, within the 10 years of project or pilot launch, to other Colorado Xcel Energy customers, Xcel shall reimburse Boulder as necessary. Such reimbursements may be subject to PUC approval. Examples of

funding opportunities to be explored include but are not limited to DSMCA, RESA, CAP Tax, Participant Investment, Tariff-based Financing, Third-party Grant Funds, Xcel funded projects:-

**SECTION VI
GENERAL PROVISIONS**

- A.** The Parties may change the agreement upon the written agreement of the Parties. The Parties shall evaluate any necessary revisions annually.
- B.** This Agreement shall be effective if the voters of Boulder approve a franchise agreement at an election on November 3, 2020.

IN WITNESS WHEREOF, the parties have caused this Energy Partnership to be executed as of the day and year first above written to be effective of the voters approve the Franchise Agreement at the November 3, 2020 election.

**CITY OF BOULDER,
a Colorado home rule city**

City Manager,
Jane Brautigam

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney' Office

Date: _____

Category	Project Title	Project Objectives / Key Outcomes
Local Generation and Resilient Infrastructure	Demonstrate technical viability, customer and business benefits of eliminating or increasing the 120% or Rule limit.	100% Renewables, Local Generation, Emissions Reduction, Legislative, Regulatory
Local Generation and Resilient Infrastructure	Chautauqua Energy Plan	Improve Resilience and Reliability for Chatauqua
Microgrid demonstration and Resilience	Neighborhood Microgrid and Virtual Power Plant Pilot	Distribution System Planning, Resilience, Emissions Reduction, Innovative Customer Programs, Regulatory
Transportation	Transit / School Bus Electrification Tariff	Transportation Electrification, Emissions Reduction, Regulatory
Local Generation, Resilient Infrastructure	Hydrogen Electrolysis Pilot	100% Renewables, Innovative Customer Programs
Clean Energy Goals, RE integration, Resiliency	Residential Demand Response Battery Pilot	Build upon lessons learned from Stapleton and Panasonic pilots to expand energy storage technology integration and develop a process and plan to leverage this technology for benefit for customers, the city, and the utility.
Reliability, Aesthetics	Undergrounding	Utilize new backlog and new undergrounding funding from Xcel to improve reliability and aesthetics.

Transportation	Transportation	Identify potential fleet electrification opportunities. Identify barriers and how city and Xcel can remove barriers
Transportation	Transportation	Increase EV penetration and create system to handle increasing EV penetration
Wildfire Mitigation/ Resiliency	Wildfire Mitigation Plans	Projects to reduce risks to the area associated with wildfire
Clean energy goals, RE Integration, Resiliency	Increase customer participation in Xcel Energy RE and DSM programs	Utilize current and future data from new metering data to develop design and implement new renewable and DSM programs.
Clean energy goals, energy efficiency, aesthetics	Streetlighting Pilot	Explore streetlighting solutions that would satisfy the City's lighting goals and objectives.
Planning Process	Distribution and Construction Planning Coordination	Coordinate Distribution Planning & to minimize impacts to the community from City and Xcel projects.
Process	Joint Trench Standard	Minimize impacts to the community from City, Xcel, and other utilities' projects.

Potential Partners	Funding Options
Neighboring Utilities, OEMs, COSSA, Utilities Commission, legislator(s)	No direct funding. No material need.
Chautauqua	Xcel Energy Wildfire Mitigation Filing, 1% Underground Fund Other Funding needs to be explored
OEMs, Research	Innovative Clean Tech Tariff at PUC to be explored
RTD, Via Mobility	TEP Innovation Portion of Xcel Energy's Filing needs to be explored. Possible off-set by Boulder
Transportation Partners	Innovative Clean Tech Tariff at PUC to be explored
	1% Undergrounding Fund

Attachment A

	TEP Innovation Portion of Xcel Energy's Filing needs to be explored. Possible off-set by Boulder
	TEP Innovation Portion of Xcel Energy's Filing needs to be explored. Possible off-set by Boulder

Category	Project Title	Project Objectives / Key Outcomes
Accelerate carbon footprint reduction, reliability	Electric Vehicles	
Distribution System Planning	Non-wires alternative project	
Clean Energy Goals	High PV Integration/ Accelerated Solar Adoption	
Futuristic Ideas	Broad set of goals, need to prioritize.	
Grid Modernization	Distribution System Planning Coordination and Prioritization	Distribution System Planning, Performance, Reliability & Aesthetics What is the definition of aesthetics or what are the expectations around this?
Grid Modernization		Improve aesthetics to neighborhood, improve system resilience
Meeting Customer Needs	Flexible Service Offerings	
Reliability Equity	Identify and improve reliability and resilience equity	
Reliability Improvements	FLISR + targeted undergrounding	
Research and Demonstration	Alpine Balsam	
Research and Demonstration	Second-life battery storage	
Research and Demonstration	Solar Technology Acceleration Center (SolarTAC)	
Research and Demonstration	US DOE Funding Request	
Research and Demonstration	US DOE Funding Request	
Resiliency, Asset Health	Transmission Projects	
Resilient Infrastructure	Identify key customers requiring a more resilient infrastructure	Create a more resilient system for key customers to benefit community in times of system strain

Data Sharing - Attachment C

Attachment D - Draft Energy Partnership Agreement

Line No.	Data Name	To be provided by PSCo (Some data may be excluded from specific reporting items due to the application of customer data privacy rules)	Method of Reporting	Frequency	Notes:
1	System GIS Model	Static system model that includes all current distribution feeders and facilities served from Boulder Terminal, Leggett, NCAR, Niwot, and Sunshine Substations. Models shall include, but not be limited to: <ul style="list-style-type: none"> • Distribution feeder normal configurations • Protective devices (circuit breakers, reclosers, fuses) • Conductor sizes, types and section lengths • Conduit sizes and types • Pole-mount and pad-mount transformers • Secondary connections from distribution transformers to customer meters, including conductor size and length (for in-city customers only) • Peak annual demand data or energy (kWh) data. This data may be aggregated at the distribution transformers or by location. 	Data set delivered to the COB designated engineer	Annually and in the event of an Opt-Out	
2	System Power Flow Model (Synergi or current software)	Copies of any updated power flow models for all substation feeders that serve load within the City of Boulder.	Data set delivered to the COB designated engineer	Limited; only as updated by PSCo	
3	Substation Loading/Peak Annual Demand Data	8760 MVA and MW data per feeder to the extent that doing so does not violate individual customer confidentiality requirements. This data will show loading on an hourly basis (kW, kVAR, current, and voltage) for each phase of each feeder. PSCo will also provide the date of PSCo Transmission system peak for each year.	Data set delivered to the COB designated engineer	Annually and in the event of an Opt-Out	
4	Solar, Renewable, and DER Resources	Detailed information on solar or other energy generation and storage on the distribution system, including “behind-the-meter” customer installations and separate, larger scale installations. Information shall include: <ul style="list-style-type: none"> • Installed capacity at the feeder/distribution transformer connection. • Monthly peak generation and annual peak generation at the feeder/distribution connection. • Dedicated Electric Vehicle charging station infrastructure installations. 	As outlined in relevant Project Charter(s)	As outlined in relevant Project Charter(s)	Specific data sharing will be defined as part of the project charters.
5	Operations and Maintenance - Vegetation and Pole Testing	Routine reporting on vegetation management and pole testing.	Coordination meeting updates	Routine	
6	Operations and Maintenance Activity - Substations and Distribution System	Detailed cost and test reports for major system upgrades to the Boulder Terminal, Gunbarrel, Leggett, NCAR, Niwot and Sunshine Substations and associated distribution feeders.	Stand-alone report	Annually and in the event of an Opt-Out	
7	Planning Documents for Upcoming Two Years	Distribution, transmission and substation planning documents showing specific plans and budgets for new facilities, upgrades, replacements and retirements for the next two years.	Stand-alone report	Bi-annually	Format to follow that specified by the PUC for distribution system planning.
8	Undergrounding Planning and Prioritization	Detailed information on the locations and costs for undergrounding facilities specifically using the undergrounding portion of franchise fees. <ul style="list-style-type: none"> • Projects performed in the prior year, including schedule and budget performance versus planning. • Projects to be performed in the next year, including schedule and budget. 	Stand-alone report	Annually and in the event of an Opt-Out	
9	Reliability Data	Heat maps representing all reliability performance indices by substation (Boulder Terminal, Gunbarrel, Leggett, NCAR, Niwot and Sunshine) and by feeder. These will be provided with and without extraordinary events.	As outlined in relevant Project Charter(s)	As outlined in relevant Project Charter(s); Not less than annually	Specific data sharing will be defined as part of the project charters.

Data Sharing - Attachment C

Attachment D - Draft Energy Partnership Agreement

10	Boulder Usage Data	Electric and gas usage data for all rate schedules. Usage data includes customer counts, kWh/kW, dth and associated revenues.	Community Energy Report	Annually	To be presented in the same or comparable form as the usage data by rate class presented in PUC docket 14A-0102E.
11	Boulder Resident Utility Program Participation	<p>Customer participation in utility-based programs including EV Charging, battery storage, solar installations (solar-rewards/non-solar rewards), renewable connect and demand-side management. At a minimum, this will include:</p> <p>Community Solar Gardens: - Participant count and total subscribed capacity by major customer class</p> <p>On-Site Solar - Solar*Rewards and Net-Metering Only -Participant count and total installed capacity by rate schedule -Total. customer incentives by rate schedule (Solar*Rewards only) -Annual kWh production where production meter or AMI meter is installed. -Estimated kWh production where production meter is unavailable.</p> <p>Renewable*Connect: -Participant count and subscribed capacity and energy by contract term and major customer class.</p> <p>Demand-Side Management Programs: -Customer participation (number of customers), kWh and kW saved and incentives paid by DSM product.</p> <p>Transportation Electrification Plan: -Customer participation by product.</p>	Community Energy Report	Annually	<p>EV Program participation will begin following product implementation as outlined in the Transportation Electrification Plan.</p> <p>Solar generation kWh estimates will be developed using PVWatts and assuming a 0.5% annual degradation rate and 20-year lifetime.</p>
12	Certified Renewable Percentage (CRP) Report	Community Certified Renewable Percentage	See Notes	Annually	<p>CRP will be reported through a number of channels. Below is the list of places Xcel Energy has indicated the CRP will be reported. 2019 RES Report (link below – see pages 23-24, and Attachment B).</p> <p>The Company is currently determining the best set of reporting forums that would achieve these objectives. The information would be reported through some combination of the following forums:</p> <ul style="list-style-type: none"> • The annual Community Energy Reports; • The Company's annual Carbon and Energy Mix reporting; • The Company's annual Corporate Responsibility Report; • The annual Renewable Electricity Standard Compliance Report required by Rule 3662; or • A webpage on the Company's broader website that would explain the CRP. <p>https://www.xcelenergy.com/staticfiles/xcel-responsive/Company/Rates%20&%20Regulations/Regulatory%20Filings/2019%20RES%20Compliance%20Report.pdf</p>
13	Carbon Emissions from Electric	Annual carbon emissions associated with electric service by major customer class.	Community Energy Report	Annually	

Data Sharing - Attachment C

Attachment D - Draft Energy Partnership Agreement

14	Carbon Emissions from Gas	Annual carbon emissions associated with gas service by major customer class.	Community Energy Report	Annually	
15	Summary of Operations	Annual investment and estimated earnings for the Boulder Division.	Stand-alone report	Annually and in the event of an Opt-Out	Includes investments benefiting customers outside of the city boundaries.

Public Service Company of Colorado
FERC FPA Electric Tariff, Second Revised Volume No. 5
Service Agreement No. ###-PSCo
Proposed Effective Date:

Version 0.0.0

BOULDER TERMINAL, GUNBARREL, LEGGETT, NCAR, SUNSHINE, AND WASTEWATER TREATMENT PLANT -SUBSTATIONS

LOAD INTERCONNECTION AGREEMENT

BETWEEN

PUBLIC SERVICE COMPANY OF COLORADO

AND

CITY OF BOULDER, COLORADO

Dated: _____, _____

Version 0.0.0

Public Service Company of Colorado
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Version 0.0.0

PREAMBLE

This Load Interconnection Agreement (~~Agreement~~) Providing for Load Interconnection between Public Service Company of Colorado and the City of Boulder ("Interconnection Agreement") is made and entered into this ____ day of _____, _____, by and between CITY OF BOULDER, a Colorado home rule city, hereinafter referred to as "City" or "Boulder"; its successors and assigns, and PUBLIC SERVICE COMPANY OF COLORADO, a Colorado corporation, hereinafter referred to as "Public Service," -"PSCo" or "Transmission Provider"; Boulder and Public Service may be referred to individually as a "Party" or collectively as the "Parties".

EXPLANATORY RECITALS

WHEREAS, Boulder is a home rule city that plans to operate its own municipal electric distribution utility serving customers within the City and will be engaged in generating, purchasing, distributing, and selling retail electric power, energy, and electric service within the State of Colorado; and

WHEREAS, Public Service is engaged in, among other things, the business of generating, purchasing, transmitting, distributing, and selling at retail and wholesale, electric power, energy, and electric service within the State of Colorado; and

WHEREAS, Boulder and Public Service have entered into various agreements which provide, upon occurrence of certain circumstances, that the existing distribution system serving customers in Boulder will be divided into two separate operating systems; one serving PSCo customers and the other serving Boulder customers ("Separation"); and

WHEREAS, Public Service and Boulder have entered into a Facilities Study and Detailed Design Agreement dated May 6, 2019, PSCo Service Agreement No. 522-PSCO ("F&DED Agreement"); and

WHEREAS, the studies performed under the F&DED Agreement did not evaluate the distribution wheeling interconnection at Boulder Terminal Substation; and

WHEREAS, Boulder has served PSCo with formal written notice that its Go/No Go Decision is to proceed with Municipalization (i.e. the Proceed Date has occurred); and

WHEREAS, the Parties agree to enter into this Interconnection Agreement to provide the terms and conditions for interconnection of Boulder's facilities with Public Service's electrical system and to define the continuing rights, responsibilities, and obligations of the Parties with respect to the use of certain of their own and the other Party's property, assets and facilities; and

WHEREAS, the Parties desire to provide for several points of delivery and for the design, engineering, procurement, construction, ownership, operation, and maintenance of the facilities at these points of delivery; and

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WHEREAS, this Interconnection Agreement shall be the valid, binding obligation of each Party upon acceptance of the Federal Energy Regulatory Commission ("FERC"), subject to the satisfaction of the conditions precedent set forth in Section 3.1XX of this Interconnection Agreement.

AGREEMENT

NOW, THEREFORE, the Parties incorporate the above Recitals into this Interconnection Agreement, and in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1 DEFINITIONS

- 1.1** "Affiliate" shall have the meaning set forth in Section 1.1 of the Tariff.
- 1.2** "Applicable Law" shall mean all duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority having jurisdiction over a Party or the Parties, as applicable, their respective facilities and/or the respective services they provide.
- 1.3** "Boulder System" shall mean the electric distribution system to be created, including existing facilities and new construction, which will serve Boulder customers within the Boulder city limits separate from the PSCo Distribution System Public Service will use to serve its customers after the Cut-Over Date.
- 1.4** "Business Day" shall mean Monday through Friday, excluding U.S. federal holidays that fall on those days.
- 1.5** "Cut-Over Date" shall mean the date when the separation of the Boulder System from the PSCo Distribution System is complete, so that (1) PSCo's Distribution System has equivalent or better safety, reliability and effectiveness as it did prior to the commencement of Separation activities, (2) the PSCo Distribution System and the Boulder System can each be operated separately from the other, and (3) Boulder is willing and able to begin serving all of its customers.
- 1.6** "EEE" shall mean the Electrical Equipment Enclosure on the substation property.
- 1.7** "Effective Date" shall have the meaning set forth in Section 3.1.
- 1.8** "Emergency" shall mean a condition or situation that in the reasonably good faith determination by the Party affected by such ~~e~~Emergency and based on Good Utility Practice, contributes to an existing or imminent physical threat of danger to life or a significant threat to health, property or the environment.
- 1.9** "FERC" or "Commission" shall mean the Federal Energy Regulatory Commission or its successor.
- 1.10** "Financing Party" shall have the meaning set forth in Section 18.1(c).
- 1.11** "Force Majeure" shall have the meaning set forth in Section 1.1 and Article 16 of the Tariff.
- 1.12** "Forced Outage" shall mean taking Boulder's System, PSCo's Distribution System or the transmission system, in whole or in part, out of service by reason of an Emergency or Network Security condition, unanticipated failure or other cause beyond the reasonable control of either Party, when such removal from service was not scheduled in accordance with Section 8.2.

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1.13 "Go/No Go Decision" shall mean the pre-Separation decision by the City to move forward with Municipalization, and after the City otherwise has sufficient information, in its sole discretion, including cost information, to decide whether to move forward with Municipalization; and, if the City decides Municipalization should move forward, the term "Go/No Go Decision" also includes all necessary decisions by Boulder voters.

1.14 "Good Utility Practice" shall have the meaning set forth in Section 1.1 of the Tariff.

1.15 "Governmental Authority" shall mean any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over the Parties, their respective facilities, or the respective services that they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided, however, that such term does not include Transmission Provider or any Affiliate of Boulder or PSCo.

1.16 "Hazardous Materials" shall have the meaning set forth in Section 1.1 of the Tariff.

1.17 "Indemnified Party" shall have the meaning set forth in Section 17.2.

1.18 "Indemnifying Party" shall have the meaning set forth in Section 17.2.

1.19 "Interconnection Guidelines" shall mean Xcel Energy's Interconnection Guidelines For Transmission Interconnected Customer Loads, as they may be revised from time to time by Transmission Provider and posted on Transmission Provider's website (www.xcelenergy.com).

1.20 "Interconnection Service" shall mean the service Transmission Provider will provide to Boulder to interconnect Boulder's facilities to PSCo's electric system (such facilities being described more fully in attachments) and the ongoing operations and maintenance of such facilities.

1.21 "Municipalization" shall mean all activities required for Boulder to own and operate the Boulder System separately from the PSCo Distribution System.

1.22 "NERC" shall mean the North American Electric Reliability Corporation or its successor organization.

1.23 "Planned Outage" shall mean action by (a) Boulder to take its equipment, facilities or systems out of service, partially or completely, to perform work on specific components that is scheduled in advance and has a predetermined start date and duration pursuant to the procedures set forth in Section 8.2, or (b) Transmission Provider to take its equipment, facilities and systems out of service, partially or completely, to perform work on specific components that is scheduled in advance and has a predetermined start date and duration pursuant to the procedures set forth in Section 8.2.

1.24 "Point of Change of Ownership" shall mean the physical point or points at which Boulder's facilities interconnect with PSCo's facilities, as depicted in Attachments A-1, B-1, C-1, D-1, E-1 and F-1.

1.25 "Proceed Date" shall mean the date the City provides notice to PSCo that the City's Go/No-Go Decision is to proceed with Municipalization.

1.26 "Protection System" shall mean (1) for purposes of Reliability Standard Compliance Responsibility: (a) protective relays which respond to electrical quantities, (b) communications systems necessary for correct operation of protective functions, (c) voltage and current sensing devices providing inputs to protective relays, (d) station dc supply associated with protective functions (including station batteries, battery chargers, and non-battery-based dc supply), and (e) control circuitry associated with protective functions through the trip coil(s) of the circuit breakers or other interrupting devices, and (2) -for purposes other than Reliability Standard Compliance Responsibility: (a) protective relays which respond to electrical quantities, and (b)

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communications systems necessary for correct operation of protective functions, where the term “Reliability Standard Compliance Responsibility” means the column titled “Reliability Standard Compliance Responsibility” set forth in the Ownership, Construction, Operating, and Cost Responsibility Table for each substation attached hereto as Attachments A-3, B-3, C-3, D-3, E-3 and F-3~~XX through XX~~.

1.27 “PSCo Distribution System” shall mean the electric distribution system to be created, including existing facilities and new construction, that will serve PSCo customers, separate from the Boulder System.

1.28 “Reasonable Efforts” shall mean, with respect to an action required to be attempted or taken by a Party under the Interconnection Agreement, efforts that are timely and consistent with Good Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests.

1.29 “Reliability Standards” shall mean mandatory reliability standards adopted by NERC or WECC and approved by FERC, as amended from time to time, applicable to the facilities owned, and/or operated by Boulder and Transmission Provider, respectively.

1.30 “SCADA” shall have the meaning set forth in Section 7.78.

1.31 “Separation” shall mean the creation of the Boulder System and the PSCo Distribution System.

1.32 “Settlement Agreement” shall mean the Settlement Agreement between the Parties dated August ~~_____~~, 2020, which became effective by the decision of the voters of Boulder on November 3, 2020.

1.33 “Tariff” or “OATT” shall mean the Xcel Energy Operating Companies Open Access Transmission Tariff on file with FERC, as amended from time to time.

1.34 “Term” shall mean the period of time during which this Interconnection Agreement shall remain in force and effect.

ARTICLE 2 SCOPE AND OBLIGATIONS OF PARTIES

2.1 This Load Interconnection Agreement sets forth the terms and conditions of Interconnection Service provided by Transmission Provider to Boulder. Although the Transmission Provider intends this Interconnection Agreement to be a service agreement under the Tariff, the establishment of Interconnection Service under this Interconnection Agreement does not in itself entitle Boulder to receive any services under the Tariff other than the Interconnection Service, as provided for herein. Any other services that Boulder may require, such as transmission service, must be separately arranged under the Tariff in accordance with the terms and conditions of such tariff, and paid for by Boulder or other user of such services. Boulder is responsible for making arrangements for the power supply of its load requirements and delivery of capacity and energy to its system. The establishment of an interconnection under this Interconnection Agreement does not in itself entitle Boulder to obtain any services from the Transmission Provider that may be subject to the jurisdiction of FERC, or the State Regulatory Commission; Boulder must arrange for any such services in accordance with the applicable provider’s tariff or service requirements.

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2.2 The Parties have established conceptual designs for the separation of facilities, new facilities, equipment, and access easement locations within the Gunbarrel, NCAR, Leggett, Sunshine and Wastewater Treatment Plant (~~“WWTP”~~) substations for the respective facilities as depicted in the conceptual General Arrangements and Single Line diagrams attached to this ~~a~~Agreement as Attachments A-1, A-2, B-1, B-2, C-1, C-2, D-1, D-2, E-1, E-2, F-1 and F-2 ~~XX through XXX~~ and incorporated herein by this reference. The designs were completed based on the results of the System Impact and Facilities Studies and updates to the studies may require updates to the designs. To the extent the existing designs for PSCo-owned facilities require updates due to changes to the Separation as provided in the Settlement Agreement, PSCo will cover the costs of updating the existing designs. Detailed engineering design drawings for Boulder Terminal and Gunbarrel will be developed as described in the Settlement Agreement.

2.3 The Facilities Studies and System Impact Studies completed prior to execution of this Agreement may need to be updated as described in the Settlement Agreement.

2.4 The Parties will make Reasonable Efforts to coordinate activities performed in the execution of their respective responsibilities in order to provide for efficient and timely completion of the design.

2.5 Public Service shall provide Load Interconnection Service to the City as provided herein. The Interconnection Service will commence on the Cut-Over date, provided Boulder meets the obligations provided for in this Interconnection Agreement.

2.6 Ownership, Construction, Operation and Cost Responsibilities are as detailed in Attachments A-3, B-3, C-3, D-3, E-3 and F-3 attached to this Interconnection Agreement and incorporated herein by this reference.

2.7 Each Party shall have the right to have an authorized representative inspect the facilities of the other party at any time during construction. Appropriate advance notification of any inspection activities shall be provided.

2.8 The Parties will coordinate efforts in the execution of their respective responsibilities in order to provide for efficient and timely completion of the design, construction work, and obtaining required permits detailed in this Interconnection Agreement.

2.9 No Party will begin construction on its respective facilities at, or related to its respective facilities, until (1) the conditions set forth in Section 3.1 have been satisfied, (2) all necessary federal, state, and local permits and regulatory filings/approvals required to initiate construction have been secured, and (3) the Parties have agreed to a construction schedule. Permits or regulatory filings or approval necessary for project completion shall be secured or filed before the Cut-Over Date.

2.10 This Interconnection Agreement does not authorize the City to export power or constitute

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an agreement to purchase or wheel the City's capacity or energy. Such purchasing or wheeling services that the City may require from PSCo, or others, are provided under separate agreements.

2.11 This Interconnection Agreement does not constitute a request for, or the provision of, any transmission service or any local distribution delivery service. Distribution delivery service is being provided for under the terms and conditions of the DWA. Transmission service on the PSCo transmission system shall be arranged pursuant to the OATT.

2.12 Boulder Terminal Substation

(a) PSCo will design and construct modifications to the Boulder Terminal Substation to provide for the interconnection of Boulder load to PSCo's electric system, as shown in the Boulder Terminal General Arrangement and One-line Diagram attached to this Interconnection Agreement as Attachments A-1 and A-2.

(b) It is anticipated that no permits will be required for the modifications; however, to the extent permits are required, Boulder shall be responsible for all permitting in compliance with all state and federal environmental laws and regulations.

(c) The Point of Change of Ownership will be as shown in Attachment A-1.

(d) The responsibilities for construction, ownership, operations, maintenance, and replacement of any facilities at Boulder Terminal Substation will be as described in the Ownership, Construction, Operating and Cost Responsibility Table attached to this Interconnection Agreement as Attachment A-3.

(e) There will be no change in property interests as a result of the work at Boulder Terminal Substation.

(f) Boulder and PSCo will enter into a Distribution Wheeling Agreement ("DWA") for distribution wheeling service to commence as of the Cut-Over Date, which sets forth the terms, rates, and conditions under which PSCo will make available firm point-to-point service on the Boulder Terminal distribution facilities for the purpose of providing wheeling service for energy delivered from the transmission facilities owned and operated by PSCo to the Boulder System at Boulder Terminal Substation.

2.13 Gunbarrel Substation

(a) PSCo will design and construct modifications to the Gunbarrel Substation as shown in the Gunbarrel General Arrangement and One-line Diagram attached to this Interconnection Agreement as Attachments B-1 and B-2. The modifications will include a new EEE which will

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allow for the relocation of PSCo's protection, control and SCADA equipment from the existing EEE to the new EEE.

(b) PSCo shall coordinate with Tri-State Generation and Transmission Association ("Tri-State") to design modifications necessary to relocate any Tri-State protection and control system connections to PSCo's new EEE.

(c) Boulder shall be responsible for all permitting in compliance with all state and federal environmental laws and regulations. All other responsibilities shall be as provided for in Attachment B-3.

(d) The Point of Change of Ownership will be as shown in Attachment B-1.

(e) The property interests shall be as shown in Attachment B-4.

2.14 Leggett Substation

(a) The City will design, construct, operate and maintain a new Boulder Leggett Substation adjacent to the existing PSCo Leggett Substation. PSCo will design, construct, operate and maintain an expansion of the existing PSCo Leggett Substation on land owned by PSCo in order to interconnect the new Boulder Leggett Substation to PSCo's electric system as shown in the Leggett General Arrangement and One-line Diagram attached to this Interconnection Agreement as Attachments C-1 and C-2.

(b) For both the Boulder Leggett Substation (including the City's 13kV distribution feeders exiting the substation) and the expanded PSCo Leggett Substation, Boulder shall be responsible for all permitting in compliance with all state and federal environmental laws and regulations. Responsibilities for geotech, grading, drainage and constructing of common facilities shall be as provided in Attachment C-3. Each Party will be responsible for the siting of facilities at their respective substation sites.

(c) The new Boulder Leggett Substation will be constructed by the City on real property to be acquired by the City from PSCo adjacent to PSCo's expansion of the existing PSCo Leggett Substation. A common fence will be constructed inside or on the property line of the PSCo Leggett Substation to separate the Boulder Leggett Substation from the PSCo Leggett Substation. There will be a single ground grid for both the existing and new equipment in the PSCo Leggett Substation and the Boulder Leggett Substation. The Point of Change of Ownership will be as shown in Attachment C-1.

(d) The responsibilities for construction, ownership, operations, maintenance, and replacement of the expansion of the PSCo Leggett Substation and the Boulder Leggett Substation will be as described in the Ownership, Construction, Operating and Cost Responsibility Table attached to this Interconnection Agreement as Attachment C-3.

(e) The property interests shall be as shown in Attachment C-4.

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2.15 NCAR Substation

(a) The City will design and construct modifications to the existing NCAR Substation and operate and maintain the NCAR Substation once ownership is transferred pursuant to the Settlement Agreement. PSCo will design and construct modifications to the transmission facilities serving NCAR Substation and operate, maintain and own the transmission facilities serving NCAR Substation as shown in the NCAR General Arrangement and One-Line Diagram attached to this Interconnection Agreement as Attachments D-1 and D-2.

(b) For all the modifications to the NCAR Substation included in the scope of this Interconnection Agreement, Boulder shall be responsible for all permitting in compliance with all state and federal environmental laws and regulations. For the modifications to the NCAR Substation transmission facilities, Boulder shall be responsible for all permitting only for those modifications made as part of the Separation.

(c) As part of a purchase agreement, Boulder will own the real property for the NCAR Substation. PSCo will acquire an access and equipment easement from the City for PSCo's facilities. The Point of Change of Ownership will be as shown in Attachment D-1.

(d) The responsibilities for construction, ownership, operations, maintenance, and replacement of the NCAR Substation and any modifications to the NCAR Substation will be as described in the Ownership, Construction, Operating and Cost Responsibility Table attached to this Interconnection Agreement as Attachment D-3.

(e) The property interests shall be as shown in Attachment D-4.

2.16 Sunshine Substation

(a) The City will design, construct, operate and maintain a new Boulder Sunshine Substation adjacent to the existing PSCo Sunshine Substation. PSCo will design, construct, operate and maintain modifications to the existing PSCo Sunshine Substation in order to interconnect the new Boulder Sunshine Substation to PSCo's electric system as shown in the Sunshine General Arrangement and One-line Diagram attached to this Interconnection Agreement as Attachments E-1 and E-2.

(b) For both the Boulder Sunshine Substation (including the City's 13kV distribution feeders existing the substation) and, to the extent necessary, the PSCo Sunshine Substation, Boulder shall be responsible for all permitting in compliance with all state and federal environmental laws and regulations. Each Party will be responsible for the siting of facilities at their respective substation sites.

(c) The new Boulder Sunshine Substation will be constructed by the City on real property owned by the City. PSCo will continue to own the land for the existing PSCo Sunshine Substation. A portion of the existing PSCo Sunshine Substation fence will become a common fence between the two substations. PSCo will retain the existing PSCo Sunshine Substation and all facilities located therein, including the common fence. The ground grid between the two substations will be tied together. The two substations will be electrically tied by new bus work

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over the common fence. The Point of Change of Ownership will be as shown in Attachment E-1XX.

(d) The responsibilities for construction, ownership, operations, maintenance, and replacement of the new Boulder Sunshine Substation and any modifications to the existing PSCo Sunshine Substation will be as described in the Ownership, Construction, Operating and Cost Responsibility Table attached to this Interconnection Agreement as Attachment E-3.

(e) The property interests shall be as shown in Attachment E-4.

2.17 Wastewater Treatment Plant ("WWTP") Substation

(a) The City will design, construct, operate and maintain a new Boulder WWTP Substation at the City's Wastewater Treatment Plant Site on real property already owned by the City. PSCo will design, construct, operate and maintain a new 230kV PSCo WWTP Substation adjacent to the Boulder WWTP Substation and intercepting the Leggett to Niwot transmission line in order to interconnect the new Boulder WWTP Substation to PSCo's electric system as shown in the WWTP General Arrangement and One-line Diagram attached to this Interconnection Agreement as Attachments F-1 and F-2XXX.

(b) For both the Boulder WWTP Substation (including the City's 13kV distribution feeders existing the substation) and PSCo WWTP Substation (including PSCo's transmission line drops), Boulder shall be responsible for all permitting and siting in compliance with all state and federal environmental laws and regulations, and the responsibilities for geotech, grading, drainage and constructing of common facilities shall be as provided for in Attachment F-3.

(c) -The Boulder WWTP Substation will be physically separated from the PSCo WWTP Substation by a common fence. There will be a single ground grid for both the Boulder WWTP Substation and the PSCo WWTP Substation. The Point of Change of Ownership will be as shown in Attachment F-1.

(d) The responsibilities for construction, ownership, operations, maintenance, and replacement of the new Boulder WWTP Substation and the new PSCo WWTP Substation will be as described in the Ownership, Construction, Operating and Cost Responsibility Table attached to this Interconnection Agreement as Attachment F-3.

(e) The property interests shall be as shown in Attachment F-4.

ARTICLE 3 EFFECTIVE DATE AND TERM

3.1 Term and Filing. The Effective Date of this Interconnection Agreement shall be the effective date granted by FERC at the time that FERC accepts or approves this Interconnection Agreement. -This Interconnection aAgreement will be executed and filed after (1) the Proceed Date has occurred, and (2) Boulder requests Transmission Service and signs a Network Integrated Transmission Service Agreement and a Network Operating Agreement with PSCo for

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Transmission Service to the Boulder Terminal, Gunbarrel, Leggett, NCAR, Sunshine, and WWTP Substations. PSCo will request that FERC grants an effective date 60 days after filing.

Unless terminated earlier in accordance with Section 3.2 below, -this Interconnection Agreement shall remain in effect for an initial period of ~~ten~~ (10) years from the Approved Date ("Initial Period"), and from year to year thereafter, but shall be subject to termination by either Party at the end of the Initial Period or on any anniversary date thereof by such Party giving written notice of its intention to terminate not less than ~~twelve~~ (12) months prior to the end of the Initial Period and/or anniversary date.

In the event either Party provides notice of termination of this Interconnection Agreement under this Section 3.1, and Boulder still requires interconnection service to serve loads on the Boulder System, the Parties shall use commercially Reasonable Efforts to negotiate a replacement interconnection agreement. If Boulder no longer requires interconnection service, upon termination of this Interconnection Agreement, Transmission Provider may, at its sole discretion and at Boulder's expense, permanently disconnect or remove the PSCo facilities, provided such expense is just and reasonable and not unduly discriminatory.

3.2 Early Termination. Notwithstanding the term specified in Section 3.1, this Interconnection Agreement may be terminated early in the following circumstances: (a~~1~~) by mutual agreement among the Parties; or (b~~2~~) by either Party in the event of any material breach of this Interconnection Agreement by the other Party, provided, such termination shall be subject to FERC approval as set forth in Section 18.3 of this Interconnection Agreement.

The Parties shall use commercially Reasonable Efforts to mitigate the costs, damages and charges arising out of an early termination under this Section 3.2. In the event of a Dispute regarding the early termination fee, either Party may request dispute resolution pursuant to the procedures in Article 20.

3.3 Survival. Certain provisions of this Interconnection Agreement shall continue in effect after termination of this Interconnection Agreement to give full effect to its terms. Such provisions include, but are not necessarily limited to, those relating to early termination, Boulder's payment for installation, operation, and maintenance of PSCo's facilities, and, as applicable, to provide for disconnection of Boulder's facilities from PSCo's electric system, final billings and adjustments related to the period prior to termination, and a Party's right to terminate, indemnification, and payment of any money due and owing to either Party pursuant to this Interconnection Agreement.

ARTICLE 4 CONTROL & POSSESSION OF THE PARTIES' SYSTEMS

4.1 This Interconnection Agreement applies only to those facilities specifically described herein; each Party shall retain possession and control of its respective interconnected system and this Interconnection Agreement shall not be construed as providing any rights or controls beyond those specified and agreed to herein.

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4.2 The PSCo-owned substations covered by this Interconnection Agreement shall be operated by Public Service pursuant to its operating procedures. The Boulder-owned substations covered by this Interconnection Agreement shall be operated by Boulder pursuant to its operating procedures.

4.3 The 115kV or 230kV transmission line gang operated switches, bus and breakers will be Public Service's Network Facilities (as defined in the Tariff). Boulder's equipment will not be considered Public Service Network Facilities.

ARTICLE 5 ATTACHMENTS

5.1 The attachments referenced herein as summarized below, attached hereto and made a part hereof, represent the General Arrangements, Single Line Diagrams and Ownership, Construction, Operating and Cost Responsibility Tables from the Facilities Study that have been completed for the Gunbarrel, Leggett, NCAR, Sunshine and WWTP Substations and the Ownership, Construction, Operating and Cost Responsibility Table for Boulder Terminal. The attachments shall be in force and effect unless superseded by subsequent Attachments ~~XX~~ through ~~XX~~ approved by the Parties as provided herein.

A-1	Boulder Terminal Interconnection General Arrangement
A-2	Boulder Terminal Interconnection One-Line Diagram
A-3	Boulder Terminal Interconnection Responsibility Table
B-1	Gunbarrel Substation Interconnection General Arrangement
B-2	Gunbarrel Substation Interconnection One-Line Diagram
B-3	Gunbarrel Substation Interconnection Responsibility Table
B-4	Gunbarrel Substation Property Interests
C-1	Leggett Substation Interconnection General Arrangement
C-2	Leggett Substation Interconnection One-Line Diagram
C-3	Leggett Substation Interconnection Responsibility Table
C-4	Leggett Substation Property Interests
D-1	NCAR Substation Interconnection General Arrangement
D-2	NCAR Substation Interconnection One-Line Diagram
D-3	NCAR Substation Interconnection Responsibility Table
D-4	NCAR Substation Property Interests
E-1	Sunshine Substation Interconnection General Arrangement
E-2	Sunshine Substation Interconnection One-Line Diagram
E-3	Sunshine Substation Interconnection Responsibility Table
E-4	Sunshine Substation Property Interests
F-1	WWTP Substation Interconnection General Arrangement
F-2	WWTP Substation Interconnection One-Line Diagram

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F-3	WWTP Substation Interconnection Responsibility Table
F-4	WWTP Substation Property Interests

ARTICLE 6 FUTURE AGREEMENTS

6.1 This Interconnection Agreement shall serve as the COM and Interconnection Agreement contemplated in the F&DED Agreement and shall supersede any conflicting provisions of the F&DED Agreement.

ARTICLE 7 OWNERSHIP, CONSTRUCTION, OPERATION AND MAINTENANCE

7.1 Summary Description. Attachments C-1 through C-6, which are attached hereto and made a part hereof, provide a description of Boulder's electrical facilities and PSCo's electrical facilities.

7.2 Boulder's Facilities. Boulder shall at Boulder's sole expense design, construct, operate, maintain and own in accordance with Applicable Law, rules and regulations, the Tariff, and Good Utility Practice, the Boulder facilities as described in Attachments C-1, C-2, and C-3. Furthermore, Boulder shall operate the Boulder facilities in a manner that protects PSCo's electric system and PSCo's electric facilities from transients, faults, and other operating conditions occurring at or caused by Boulder including any effects on PSCo's electric system arising from the presence of distributed energy resources on the Boulder System.

7.3 PSCo's Facilities. PSCo shall design, construct, operate, maintain, and own in accordance with Applicable Law, rules and regulations, the Tariff, Good Utility Practice and the Interconnection Guidelines, the PSCo facilities shown on Attachments C-1, C-2, and C-3, and shall operate such facilities in a manner that protects the Boulder System, including Boulder's facilities, from transients, faults, and other operating conditions occurring at or caused by PSCo including any effects on Boulder's electric system arising from the presence of distributed energy resources on the PSCo electric system.

7.4 Modifications to Facilities. Either Party may undertake modifications to its respective facilities which shall be designed, constructed and operated in accordance with this Interconnection Agreement and Good Utility Practice; provided however, if either Party proposes to make any change or modification to the configuration or operation of its facilities which may impact the facilities or system of the other, the Party proposing the change shall provide sufficient notice and information regarding such modification so that the other Party may evaluate the potential impact of such modification prior to the commencement of any work, and the Parties shall negotiate, in good faith, an amendment to this Interconnection Agreement as may be necessary to address the proposed change.

(a) Information provided under this Interconnection Agreement may be designated by a Party to be Confidential Information hereunder, including, but not be limited to, information concerning the timing of such modification and how such modifications are expected to impact the other Party's system. Unless a shorter period of time is appropriate for a Party to respond to

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an Emergency, or comply with Reliability Standards or Applicable Law, the Party desiring to perform such work shall provide the relevant drawings, plans and specifications to the other Party at least ~~ninety (90)~~ days in advance of the commencement of the work or such shorter period upon which the Parties may agree, which agreement shall not unreasonably be withheld, conditioned or delayed.

(b) In the event the Parties are unable to agree to appropriate amendments or modifications to this Interconnection Agreement pursuant to Section 22.74, PSCo will unilaterally file, on a timely basis, with FERC an amendment to this Interconnection Agreement.

(c) To the extent a Party modifies its facilities that Party shall be responsible for the costs of any additions, modifications or replacements that may be necessary to maintain or upgrade its facilities consistent with Applicable Law, rules and regulations, the Tariff, Good Utility Practice, and the Interconnection Guidelines. Each Party shall own any modifications to its facilities.

7.5 Ownership of Facilities. Ownership of facilities is set forth in Attachments C-1, through C-6.

7.6 Reliability Standards. Boulder shall be responsible for compliance with all Reliability Standards applicable to the Boulder System; and PSCo shall be responsible for compliance with all Reliability Standards applicable to PSCo's electrical system. Each Party shall be responsible for the costs of compliance with such Reliability Standards for their respective facilities and systems, including ~~(a)~~ costs associated with modifying their respective facilities or systems to comply with changes in such Reliability Standards; and ~~(b)~~ any financial penalties for non-compliance. The Parties agree to share data or documentation as may be required to demonstrate compliance with Reliability Standards where an individual Party has possession of data or documentation necessary for the other Party to demonstrate compliance.

7.7 Interconnection Guidelines. The Interconnection Guidelines provide additional and more detailed standards for designing, testing, studying, constructing, operating, maintaining and interconnecting at the point of interconnection. Transmission Provider shall develop or promulgate the Interconnection Guidelines, including any updates, changes or modifications thereto, in accordance with Good Utility Practice. The Interconnection Guidelines include, among other things, power factor requirements, supervisory control and data acquisition ("SCADA") equipment requirements, and metering requirements. Boulder will comply with the Interconnection Guidelines for the interconnections at Gunbarrel, Leggett, NCAR, Sunshine and WWTP. Boulder will also comply with the Interconnection Guidelines for the interconnection at Boulder Terminal to the extent the requirements in the Interconnection Guidelines apply.

In the event of a conflict between the Interconnection Guidelines and FERC rules, the Tariff or applicable Reliability Standards, the FERC rules, Tariff or Reliability Standards control.

7.8 Access. Appropriate representatives of each Party shall at all reasonable times; including weekends and nights, and with three (3) ~~Business Days~~ prior notice, have access to the other Party's facilities, to take readings and to perform all inspections, maintenance, service, and operational reviews as may be necessary to facilitate the performance of this Interconnection Agreement. While on the other Party's premises, each Party's representatives

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shall announce their presence and observe such safety precautions as may be required and shall conduct themselves in a manner that will not interfere with the other Party's operations.

7.9 Transfer of Control or Sale of Facilities. In any sale or transfer of control of either PSCo's or Boulder's facilities, the transferring Party shall as a condition of such sale or transfer require the acquiring party or transferee with respect to the transferred facilities either to assume the obligations of the transferring Party to this Interconnection Agreement -with respect to this Interconnection Agreement or to enter into an agreement with the non-transferring Party to this Interconnection Agreement imposing on the acquiring party or transferee the same obligations applicable to the transferring Party of this Interconnection Agreement pursuant to this Section 7.9.

ARTICLE 8 OUTAGES AND COORDINATION

8.1 DISCONNECTION.

(a) Except when there is an Emergency, Forced Outage, Force Majeure and/or to comply with Applicable Law, including Reliability Standards, the Parties shall reasonably consult each other prior to disconnecting facilities.

(b) If at any time, either Party observes any Protection System facilities which appear to have been changed, or failed, that Party shall have the right, if it determines that such change or failure may have a material adverse impact on the safety or reliability of its electric system consistent with Good Utility Practice, to disconnect the other Party's System from its System, provided it first provides commercially reasonable notice to the other Party.

8.2 Outages. In accordance with Good Utility Practice, each Party may, in close cooperation with the other, remove from service its system elements that may impact the other Party's system as necessary to perform maintenance or testing or to replace installed equipment. Absent the existence of an Emergency, the Party scheduling a removal of a system element from service will use good faith efforts to schedule such removal on a date mutually acceptable to both Parties, in accordance with Good Utility Practice.

In the event of a Forced Outage of a system element of Boulder's electric system adversely affecting PSCo's facilities or electric system, Boulder will use Good Utility Practice to promptly restore that system element to service. In the event of a Forced Outage of a system element of PSCo's electric system adversely affecting the Boulder System, PSCo will use Good Utility Practice to promptly restore that system element to service.

In the event of a Planned Outage of a system element of the Boulder System adversely affecting PSCo's facilities or electric system, Boulder will act in accordance with Good Utility Practice to promptly restore that system element to service in accordance with its schedule for the work that necessitated the Planned Outage. In the event of a Planned Outage of a system element of PSCo's electric system adversely affecting Boulder's System, PSCo will act in accordance with Good Utility Practice to promptly restore that system element to service in accordance with its schedule for the work that necessitated the Planned Outage.

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8.3 Outage Reporting. The Parties shall comply with all current Transmission Provider reporting requirements, as they may be revised from time to time, and as they apply to Boulder or Transmission Provider. When a Forced Outage occurs that affects Boulder's facilities or impacts the Boulder System such that there is an adverse impact to PSCo's facilities or electric system Boulder shall notify the PSCo Control Center of the existence, nature, and expected duration of the Forced Outage as soon as practical, but in no event later than one (1) hour after the Forced Outage occurs. Boulder shall immediately inform the PSCo Control Center of changes in the expected duration of the Forced Outage unless relieved of this obligation by the PSCo Control Center for the duration of each Forced Outage. When a Forced Outage occurs that affects PSCo's facilities or impacts PSCo's electric system such that there is an adverse impact to Boulder's facilities or the Boulder System, PSCo shall notify Boulder of the existence, nature, and expected duration of the Forced Outage as soon as practical.

8.4 Switching and Tagging Rules. The Parties shall abide by their respective switching and tagging rules for obtaining clearances for work or for switching operations on equipment. PSCo shall notify Boulder of PSCo's switching and tagging rules, and provide periodic updates of such rules as they may change from time to time. Boulder shall establish switching and tagging rules for the Boulder System, and shall provide such rules to PSCo.

8.5 Coordination of Operations. If a Party's facilities are subject to Public Service's functional control, the Parties will coordinate with the applicable functional directives from Public Service.

In all other circumstances:

(a) Electrical system operation shall be coordinated between Boulder and Transmission Provider, including the coordination of equipment outages, voltage levels, real and reactive power flow monitoring, and switching operations, which affect the PSCo electric system, as required by the Tariff and this Interconnection Agreement.

(b) If either Boulder or Transmission Provider operations are causing a condition on the interconnected electrical network where line loadings, equipment loadings, voltage levels or reactive flow significantly deviate from normal operating limits or can be expected to exceed emergency limits following a contingency, and reliability of the bulk power supply is threatened the Transmission Provider shall take immediate steps and make Reasonable Efforts to relieve, correct or control the condition. These steps include notifying other affected electric utility systems, as applicable, adjusting generation, changing schedules, initiating load relief measures, and taking such other reasonable action as may be required. Electrical equipment is to be operated within its normal rating established by the owning Party except for temporary conditions after a contingency has occurred.

(c) If either Boulder or Transmission Provider changes the normal operation of its system at the Point of Change in Ownership, the Parties shall consider any resulting benefits or adverse impacts to the reliability or transfer capability of the interconnected network for purposes of

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determining any applicable adjustments to the Parties' respective system usage rights and responsibilities.

(d) Each Party shall notify the Other as soon as practicable whenever:

- (1) Problems with a Parties' facilities are detected that could result in mis-operation of interconnection protection or other interconnection equipment;
- (2) The interconnection is opened by protective relay action;
- (3) Interconnection equipment problems occur and result in an outage to a portion of either Party's electric system;
- (4) A Party intends to initiate switching to close the interconnection; or,
- (5) A Party intends to initiate switching to open the interconnection.

8.6 Emergency. In the event of an Emergency, the Party becoming aware of the Emergency may, in accordance with Good Utility Practice and using its reasonable judgment, take such action as is reasonable and necessary to prevent, avoid, or mitigate injury, danger, and loss.

~~(a)~~ In the event Boulder has identified an Emergency involving the PSCo's facilities, Boulder shall obtain the consent of PSCo personnel prior to manually performing any switching operations unless immediate action is essential to protecting the safety of individuals or against extreme damage to property.

(b) PSCo may, consistent with Good Utility Practice, take whatever actions or inactions with regard to PSCo's facilities -PSCo deems necessary during an Emergency in order to: (1) preserve public health and safety; (2) preserve the reliability of the PSCo's electric system, including PSCo's facilities; (3) limit or prevent damage; and (4) expedite restoration of service. PSCo shall use Reasonable Efforts to minimize the effect of such actions or inactions on Boulder's facilities.

(c) Boulder may, consistent with Good Utility Practice, take whatever actions or inactions with regard to Boulder's facilities Boulder deems necessary during an Emergency in order to: (1) preserve public health and safety; (2) preserve the reliability of the Boulder facilities; (3) limit or prevent damage; and (4) expedite restoration of service. Boulder shall use Reasonable Efforts to minimize the effect of such actions or inactions on PSCo's electric system.

(d) PSCo shall provide Boulder with prompt oral or electronic notification under the circumstances of an Emergency that may reasonably be expected to affect Boulder's operations, to the extent PSCo is aware of the Emergency. Boulder shall provide PSCo with prompt oral or electronic notification under the circumstances of an Emergency which may reasonably be expected to affect PSCo's electric system, to the extent Boulder is aware of the Emergency. To the extent the Party becoming aware of an Emergency is aware of the facts of the Emergency, such oral or electronic notification shall describe the Emergency, the extent of

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the damage or deficiency, its anticipated duration, and the corrective action taken and/or to be taken.

(e) To the extent a system Emergency exists on PSCo's electric system, and PSCo or Reliability Coordinator determines it is necessary for PSCo and Boulder to shed load, the Parties shall shed load in accordance with the Tariff.

ARTICLE 9 SAFETY

9.1 Safety Standards. The Parties agree that all work performed under this Interconnection Agreement shall be performed in accordance with all Applicable Law, regulations, rules, standards, practices and procedures pertaining to the safety of persons or property and in accordance with Good Utility Practice. To the extent a Party performs work on the other Party's premises, the Party performing work shall also abide by the safety, or other access rules applicable to those premises.

9.2 Each Party shall be solely responsible for the safety and supervision of its own employees, agents, representatives, and contractors.

ARTICLE 10 ENVIRONMENTAL CONSIDERATIONS

10.1 Environmental Considerations. Each Party will remain responsible for compliance with any and all environmental laws applicable to its own respective property, facilities, and operations. Each Party shall promptly notify the other Party upon discovering any release of any hazardous substance by a Party on the property or facilities of the other Party, or which may migrate to, or adversely impact the property, facilities or operations of, the other Party and shall promptly furnish to the other Party copies of any reports filed with any governmental agencies addressing such events.

The Party responsible for the release of any hazardous substance on the property or facilities of the other Party, or for the release of any hazardous substances which may migrate to, or adversely impact the property, facilities or operations of, the other Party shall be responsible for the reasonable cost of performing any and all remediation or abatement activity and submitting all reports or filings required by environmental laws. Advance written notification (except in ~~e~~Emergency situations, in which verbal, followed by written notification, shall be provided as soon as practicable) shall be provided by any Party performing any remediation or abatement activity on the property or facilities of the other Party, or which may adversely impact the property, facilities, or operations of, the other Party. Except in an Emergency, such remediation or abatement activity shall be performed only with the consent of the Party owning the affected property or facilities which consent shall not be unreasonably withheld. The Parties agree to coordinate, to the extent necessary, the preparation of site plans, reports or filings required by law or regulation.

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ARTICLE 11 FORCE MAJEURE

11.1 Effect of Declaring Force Majeure. Neither Party shall be considered to be in default or breach of this Interconnection Agreement nor liable in damages or otherwise responsible to the other Party for any delay in or failure to carry out any of its obligations under this Interconnection Agreement if, and only to the extent that, the Party is unable to perform or is prevented from performing by an event of Force Majeure. Notwithstanding the foregoing sentence, neither Party may claim Force Majeure for any delay or failure to perform or carry out any provision of this Interconnection Agreement to the extent that such Party- has been negligent or engaged in intentional misconduct and such negligence or intentional misconduct substantially and directly caused that Party's delay or failure to perform or carry out its duties and obligations under this Interconnection Agreement

11.2 Procedures for Declaring Force Majeure. A Party claiming Force Majeure must:

- (a)** Give written notice to the other Party of the occurrence of a Force Majeure as soon as practicable;
- (b)** Use Reasonable Efforts to resume performance or the provision of service hereunder as soon as practicable;
- (c)** Take all commercially reasonable actions to correct or cure the Force Majeure;
- (d)** Exercise all Reasonable Efforts to mitigate or limit damages to the other Party; except that neither party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to its interest; and
- (e)** Provide written notice to the non-declaring Party, as soon as practicable, of the cessation of the adverse effect of the Force Majeure on its ability to perform its obligations under this Interconnection Agreement.

ARTICLE 12 BILLING AND PAYMENT

12.1 Estimate. Estimated costs include only the costs of new PSCo facilities or modifications to PSCo-owned facilities outlined in Article 2 above. The estimate does not include the fair market value, damages, or compensation owed for any PSCo facilities or property interests that might be transferred to Boulder as part of the separation and acquisition process. Such sums would be in addition to the estimate provided and nothing herein is a waiver or modification of PSCo's rights, remedies and protections regarding the same. All estimates are scoping level estimated. Actuals costs may be higher based on labor, equipment and material costs, etc. at

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the time construction occurs. The City is responsible for the actual costs as the time of the work. No estimates have been made for the cost of Boulder-owned facilities.

PSCo estimates the cost to perform the work for the PSCo-owned facilities under Article 2 above will be as follows:

Boulder Terminal	TBD
Gunbarrel	\$ 5,300,000
Leggett Substation:	\$15,655,200
NCAR	\$ 1,644,000
Sunshine Substation:	\$ 1,549,200
WWTP Substation:	\$ 5,538,000
Total	\$29,686,400+TBD

The cost estimate above is based on the Facilities Study and detailed design work as of May 1, 2020.

12.2 Advance Payment and Cost Reconciliation. Within 30 calendar days after this Interconnection Agreement is accepted by FERC, Boulder will advance \$29,686,400.00+TBD to PSCo. If the amount advanced under this Section is insufficient for PSCo to complete the work described in Article 2 above, PSCo will invoice Boulder for the additional necessary funds. Within 90 days after the Project is complete and energized, PSCo will reconcile its actual Project costs for the work described in Article 2 against the aggregate amount Boulder advanced under this Section, and if PSCo's actual costs are less than the amount Boulder advanced, PSCo will refund the difference to Boulder within 30 days. If the cost reconciliation reveals that Boulder owes a balance due, PSCo shall invoice Boulder for the remaining costs.

12.3 Billing Procedure. PSCo shall bill Boulder for the actual costs incurred under this Interconnection Agreement consistent with the procedures set forth in Section 7 of the Tariff. Payment of an invoice shall not relieve the paying Party from any responsibilities or obligations it has under this Interconnection Agreement, nor shall such payment constitute a waiver of any claims arising hereunder.

12.4 Interest on Unpaid Balances. Interest on any unpaid amounts that are past due (including amounts placed in escrow) shall be calculated in accordance with Article 12 of the Tariff.

12.5 Billing Disputes. If all or part of any bill is disputed by a Party, that Party shall promptly pay the amount that is not disputed, provide the other Party a reasonably detailed written explanation of the basis for the dispute, and request the commencement of dispute resolution pursuant to Article 20 of this Interconnection Agreement. When the amount in dispute is equal to or greater than one million dollars (\$1,000,000), the disputed amount shall be paid into an independent escrow account pending resolution of the dispute, at which time the prevailing Party shall be entitled to receive the disputed amount, as finally determined to be payable, along with interest accrued at the ~~interest rate~~ interest rate through the date on which payment is made, within ~~twenty (20) business days~~ of such resolution. If the amount in dispute is less than one

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million dollars (\$1,000,000), the disputing Party may withhold the disputed amount or pay the disputed amount into an independent escrow account pending resolution of the dispute, at which time the prevailing Party shall be entitled to receive the disputed amount, as finally determined to be payable, along with interest accrued at the ~~interest rate~~ interest rate through the date on which payment is made, within ~~twenty (20) Business Days~~ twenty (20) Business Days of such resolution. The Parties may elect, but are not required, to agree to ~~Alternative Dispute Resolution~~ Alternative Dispute Resolution, including arbitration. Neither Party shall be responsible for the other Party's cost of collecting amounts due under this Interconnection Agreement, including attorney's fees.

ARTICLE 13 NOTICES

13.1 Notices. Any notice, demand, request, or communication required or authorized by this Interconnection Agreement shall be hand delivered or mailed by certified mail, return receipt requested, with postage prepaid, to Parties as set forth in Article 19. In addition to the obligations set forth in the preceding sentence, a Party providing notice, demand, request or communication pursuant to this Section may also provide a courtesy copy of such notice, demand, request, or communication via electronic mail, or email. Any Party may update that portion of Article 19 that pertains to such Party's address by giving written notice to the other Party of such change at any time.

ARTICLE 14 REGULATION AND MODIFICATION OF RATES

14.1 Regulation. This Interconnection Agreement is subject to the jurisdiction of the FERC.

14.2 Modification. PSCo reserves its rights under Section 205 of the Federal Power Act to unilaterally make applications to FERC for modification of the rates, terms, conditions, classification of service, rule, or regulation for any service the PSCo provides under this Interconnection Agreement and the attachments hereto over which FERC has jurisdiction. Boulder reserves its rights under Section 206 of the Federal Power Act to unilaterally make application to FERC for modification of the rates, terms, conditions, classification of service, rule, or regulation for any service provided under this Interconnection Agreement and the attachments hereto over which FERC has jurisdiction.

ARTICLE 15 ASSIGNMENT

15.1 Successors and Assigns. This Interconnection Agreement shall be binding upon the respective Parties, their successors and permitted assigns, on and after the Effective Date hereof.

15.2 Assignment Restrictions. This Interconnection Agreement may be assigned by either Party only with the written consent of the other; provided, however, that either Party may assign this Interconnection Agreement without the consent of the other Party to any Affiliate of the assigning Party with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this Interconnection Agreement; and, provided further, that Boulder shall have the right to assign this Interconnection Agreement,

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without the consent of Transmission Provider, for collateral security purposes to aid in providing financing, provided that Boulder promptly notifies Transmission Provider of any such assignment. Any financing arrangement entered into by Boulder pursuant to this Article 15 will provide that prior to or upon the exercise of the secured party's, trustee's or mortgagee's assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify Transmission Provider of the date and particulars of any such exercise of assignment right(s). Any attempted assignment that violates this Article 15 is void and ineffective. Any assignment under this Interconnection Agreement shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. Where requested, consent to assignment will not be unreasonably withheld, conditioned or delayed.

ARTICLE 16 INSURANCE

16.01 Applicability. If the Interconnection Customer is a municipality, city, county, town, public authority or other political subdivision that qualifies for statutory limitations on liability under Applicable Law, the Interconnection Customer shall procure and maintain, at its own expense, insurance coverages in accordance with the requirements set forth in Appendix F as applicable to Colorado. In all other circumstances, the Interconnection Customer shall comply with the requirements set forth in Section 16.2.

16.24 Insurance. Each Party shall, at its own expense, maintain in force until this Interconnection Agreement is terminated and until released by the other Party, the following insurance coverages, with insurers authorized to do business in the state where the Point of Change of Ownership is located:

- (a) Employer's Liability and Workers' Compensation Insurance providing statutory benefits in accordance with the laws and regulations of the state in which the Point of Change of Ownership is located.
- (b) Commercial General Liability Insurance including premises and operations, personal injury, broad form property damage, broad form blanket contractual liability coverage (including coverage for the contractual indemnification) products and completed operations coverage, coverage for explosion, collapse and underground hazards, independent contractors coverage, coverage for pollution to the extent normally available and punitive damages to the extent normally available and a cross liability endorsement, with minimum limits of one million dollars (\$1,000,000) per occurrence/one million dollars (\$1,000,000) aggregate combined single limit for personal injury, bodily injury, including death and property damage.
- (c) Comprehensive Automobile Liability Insurance for coverage of owned and non-owned and hired vehicles, trailers or semi-trailers designed for travel on public roads, with a minimum, combined single limit of one million dollars (\$1,000,000) per occurrence for bodily injury, including death, and property damage.
- (d) Excess Public Liability Insurance over and above the Employers' Liability Commercial General Liability and Comprehensive Automobile Liability Insurance coverage, with a minimum

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combined single limit of ten million dollars (\$10,000,000) per occurrence/-ten million dollars (\$10,000,000) aggregate.

(e) The Commercial General Liability Insurance, Comprehensive Automobile Insurance and Excess Public Liability Insurance policies shall name the other Party, its parent, associated and Affiliate companies and their respective directors, officers, agents, servants and employees ("Other Party Group") as additional insured. All policies shall contain provisions whereby the insurers waive all rights of subrogation in accordance with the provisions of this Interconnection Agreement against the Other Party Group and provide ~~thirty~~ (30) calendar days advance written notice to the Other Party Group prior to the anniversary date of cancellation or any material change in coverage or condition.

(f) The Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance and Excess Public Liability Insurance policies shall contain provisions that specify that the policies shall apply to such extent without consideration for other policies separately carried. -Each Party shall be responsible for its respective deductibles or retentions.

(g) The Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance and Excess Public Liability Insurance policies, if written on a Claims First Made Basis, shall be maintained in full force and effect for two (2) years after termination of this Interconnection Agreement, which coverage may be in the form of tail coverage or extended reporting period coverage if agreed by the Parties.

(h) The requirements contained herein as to the types and limits of all insurance to be maintained by the Parties are not intended to and shall not in any manner, limit or qualify the liabilities and obligations assumed by the Parties under this Interconnection Agreement.

(i) Within ~~ten~~ (10) days following execution of this Interconnection Agreement, and as soon as practicable after the end of each fiscal year or at the renewal of the insurance policy and in any event within ~~ninety~~ (90) days thereafter, each Party shall provide certification of all insurance required in this Interconnection Agreement, executed by each insurer or by an authorized representative of each insurer.

(j) Notwithstanding the foregoing, each Party may self-insure to meet the minimum insurance requirements of subsections (a)-(h) of this Section 16.2 to the extent the Party maintains a self-insurance program; provided that, such Party's senior secured debt is rated at investment grade or better by Standard & Poor's and that its self-insurance program meets the minimum insurance requirements set forth in subsections (a)-(h) of this Section 16.2. For any period of time that a Party's senior secured debt is unrated by Standard and Poor's, such Party shall comply with the insurance requirements set forth in subsections (a)-(i) of this Section 16.2. In the event that a Party is permitted to self-insure pursuant to this Article ~~XIII~~, it shall notify the other Party that it meets the requirements to self-insure and that its self-insurance program

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meets the minimum insurance requirements in a manner consistent with that specified in this Section 16.2.

(k) The Parties agree to report to each other in writing as soon as practicable all accidents or occurrences resulting in injuries to any person, including death, and any property damage arising out of this Interconnection Agreement.

(l) In the event an ~~the~~ interconnection ~~customer~~ is a municipality or other governmental entity, the ~~the~~ interconnection ~~customer~~ will be subject to the insurance coverage obligations set forth in Appendix F as applicable in Colorado in lieu of the insurance obligations set forth in this Section 13.0216.2.

ARTICLE 17 CONSEQUENTIAL DAMAGES, INDEMNITY AND RISK OF LOSS

17.1 Waiver of Consequential Damages. In no event shall one Party, its governing board members, officers, employees or agents be liable to the other Party under this Interconnection Agreement from any cause howsoever arising in contract, tort or otherwise for any indirect, incidental, special, punitive, exemplary, or consequential damages, including but not limited to, loss of use, loss of revenue, loss of profit, and/or cost of replacement power, interest charges, cost of capital, claims of its customers to which service is made; provided however, that damages for which a Party may be liable to the other Party under another agreement will not be considered to be special, indirect, incidental, punitive, exemplary or consequential damages hereunder.

17.2 Indemnity. Each Party shall at all times indemnify, defend and hold harmless the other Party, its shareholders, members, partners, Affiliates, employees, consultants, representatives, agents, successors and permitted assigns ("Indemnified Party") from any and all liability, damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's ("Indemnifying Party") negligence, or action or inactions of its obligations under this Interconnection Agreement, except in cases of negligence, gross negligence or intentional wrongdoing by the Indemnified Party. Nothing in this Section 17.2 shall relieve PSCo or Boulder of any liability to the other for any breach of this Interconnection Agreement.

(a) If an Indemnified Party is entitled to indemnification under this Section 17.2 as a result of a claim by a third party, and the Indemnifying Party fails, after notice and reasonable opportunity to proceed, to assume the defense of such claim, the Indemnified Party may at the expense of the Indemnifying Party contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.

(b) If an Indemnifying Party is obligated to indemnify and hold any Indemnified Party harmless under this Section 17.2, the amount owing to the Indemnified Party shall be the amount of such Indemnified Party's loss net of any insurance or other recovery.

(c) Promptly after receipt by an Indemnified Party of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which

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the indemnity provided in this Section 17.2 may apply, the Indemnified Party shall notify the Indemnifying Party of such fact. Any failure of or delay in such notification shall not affect the Indemnifying Party's obligation to indemnify the Indemnified Party unless such failure or delay is materially prejudicial to the Indemnifying Party.

(d) In the event Indemnifying Party is a municipality or other governmental entity, Indemnifying Party will be subject to the indemnification obligations set forth in Appendix F in lieu of the indemnification obligations set forth in this Section 17.2.

17.3 Risk of Loss. Except under situations of negligence, gross negligence, or intentional wrong-doing by the other Party, each Party shall have the full risk of loss for its own property and material, and each Party shall (subject to Article ~~16XIII~~) obtain and maintain insurance coverage accordingly under its own insurance and risk management procedures. To the extent permitted by each Party's insurer, at no additional cost to that Party, each Party shall require its property insurer to waive the right of subrogation. Each Party shall have title and risk of loss for those materials or capital equipment purchased for its ownership by the other Party as an authorized agent under this Interconnection Agreement confirmed by written confirmation and approval of supplier, specifications, equipment warranty, delivery and installation arrangements (the principal being entitled to any sales tax exemptions). All such equipment and materials will be inspected by the purchasing agent Party upon delivery and damaged or nonconforming equipment or materials will be rejected and returned to the seller upon consultation and agreement with the Party for whom the equipment was purchased.

ARTICLE 18 DEFAULT AND TERMINATION

18.1 Default by Boulder.

(a) In the event Boulder fails, for any reason other than a billing dispute as described in Article 12, to make payment to PSCo on or before the due date as described herein, and such failure of payment is not cured within ~~thirty~~ (30) calendar days after PSCo notifies Boulder of such failure, a default by Boulder shall be deemed to exist.

In the event of an uncured default by Boulder for nonpayment, except when nonpayment is the subject of a billing dispute as provided in Section 12.5, PSCo may initiate a proceeding with the FERC to terminate service but shall not terminate service until the FERC so approves any such request. In the event of a billing dispute between PSCo and Boulder, PSCo will continue to provide service under this Interconnection Agreement as long as Boulder (1) continues to make all payments not in dispute, and (2) subsection to Section 12.5, pays into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If Boulder fails to meet these two requirements for continuation of service, then PSCo

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may provide notice to Boulder of its intention to suspend service in accordance with the Tariff or FERC policy.

(b) Boulder shall also be in default if it materially breaches any other provision of this Interconnection Agreement, and fails to cure any such breach within ~~thirty~~ (30) days after written notice by PSCo of the existence and nature of such alleged breach.

(c) If Boulder assigns its interests under this Interconnection Agreement to a bank, lender or other financial institution for purposes of obtaining financing ("Financing Party"), and Boulder notifies PSCo of this assignment and the information necessary for PSCo to contact Financing Party, then PSCo shall also notify Financing Party of any breach or default by Boulder under this Interconnection Agreement at the same time as it notifies Boulder of such breach or default. If Financing Party elects to cure the breach or default, by payment or otherwise, then PSCo agrees to accept such cure by Financing Party as if the same had been affected by Boulder.

18.2 Default by PSCo. PSCo shall be considered in default if it fails to make any payment due to Boulder hereunder, or fails to cure any material breach, within ~~thirty~~ (30) days after written notice of nonpayment or material breach from Boulder.

18.3 Termination for Default. Should a Party fail to cure a default within the applicable cure period, and the default is not contested pursuant to the dispute resolution process provided in ~~Section~~Article 20 or other legal processes, the non-defaulting Party shall have the right to terminate this Interconnection Agreement subject to FERC approval and other defenses by giving written notice to the Party in default, and be relieved of any further obligation hereunder, and whether or not the non-defaulting Party terminates this Interconnection Agreement, to recover from the defaulting Party all amounts due hereunder, plus all other damages and remedies to which the non-defaulting Party is entitled subject to the limitations set forth in Article ~~17~~XIV of this Interconnection Agreement. The provisions of this Article ~~XV~~18 shall survive termination of this Interconnection Agreement.

ARTICLE 19 CONTACTS

Contacts for this Interconnection Agreement are as follows:

Public Service

Contacts to be determined after the Proceed Date.

City of Boulder

Contacts to be determined after the Proceed Date.

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ARTICLE 20 DISPUTE RESOLUTION

20.1 Disputes will first be submitted to the Authorized Representatives for consideration. In the event that a dispute cannot be resolved by the Authorized Representatives, the dispute shall be submitted to the Parties' management. If the dispute cannot be resolved by the Parties' management, then the dispute may, if the Parties agree, be submitted to arbitration under ArticleSection 12.5 of this Interconnection Agreement. Alternatively, the dispute may be filed in the Denver District Court, or if that court does not have jurisdiction, such other court that does have jurisdiction.

20.2 In the event of arbitration, each Party shall select one arbitrator. The two selected arbitrators shall hear the arbitration. Arbitration must be commenced within six (6) months of when the disputed matter was submitted to arbitration. The arbitrators shall have discretion to establish discovery, hearing schedules, and arbitration procedures. The arbitrators may afford the Parties any or all of the discovery rights provided for in the Colorado Rules for Civil Procedure. Unless otherwise specified in this Interconnection Agreement, arbitration shall be governed under the rules and procedures of the American Arbitration Association. Arbitration shall be binding on the Parties. Arbitration shall be in Boulder or Denver, Colorado.

20.3 Disputed items that involve a claimed overpayment by Boulder which are resolved in Boulder's favor in arbitration, shall be paid back with interest at the prime rate charged by the Wells Fargo Bank West, National Association, or its successor, plus two percent (2%) applied to late payments on a daily basis, based on a 365 day year.

20.4 Costs for the Aarbitration procedure and payment to the arbitrators shall be divided equally by the Parties to the arbitration. Each Party shall be responsible for its own attorney costs, discovery costs, and other associated costs incurred as a result of arbitration.

ARTICLE 21 CONFIDENTIAL INFORMATION

21.1 Furnishing of Information. The Parties recognize that the successful operation of this Interconnection Agreement depends upon the cooperation by the Parties in the operation of their systems. As a part of such cooperation, subject to the limitations regarding disclosing eConfidential information provided in this Interconnection Agreement, each Party agrees that it will furnish to the other Party such data concerning its system as may be necessary to support the other Party's system reliability.

21.2 Confidential Information.

(a) "Confidential Information" means (1) any confidential, proprietary or trade secret information of a plan, specification, pattern, procedure, design, device, drawing, list, concept, customer information, policy or compilation relating to the present or planned business of a Party, which is designated as Confidential Information by the Party supplying the information, whether conveyed orally, electronically, in writing, through inspection, or otherwise; or (2) any Critical Energy Infrastructure Information. Confidential Information which includes, without limitation, all

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information relating to a Party's technology, research and development, business affairs, and pricing, and any information supplied by a Party to another Party on a confidential basis prior to the execution of this Interconnection Agreement.

(b) Confidential Information shall not include information that the receiving Party can demonstrate: (1) is generally available to the public other than as a result of a disclosure by the receiving Party; (2) was in the lawful possession of the receiving Party on a non-confidential basis before receiving it from the disclosing Party; (3) was supplied to the receiving Party without restriction by a third party, who, to the knowledge of the receiving Party, was under no obligation to the other Party to keep such information confidential; (4) was independently developed by the receiving Party without reference to Confidential Information of the disclosing Party; or (5) is, or becomes, publicly known, through no wrongful act or omission of the receiving Party or breach of this Interconnection Agreement.

Information designated as Confidential Information will no longer be deemed confidential if the Party that designated the information as Confidential Information notifies the other Parties that such information no longer is confidential.

(c) Information is Confidential Information only if it is clearly designated or marked in writing as confidential on the face of the document; or, if the information is conveyed orally or by inspection, the Party providing the information orally informs the receiving Party that the information is confidential. Each Party shall be responsible for clearly designating or marking information governed by FERC's Critical Energy Infrastructure Information rules and regulations.

21.3 Protection of Confidential Information.

(a) No Party shall disclose any Confidential Information of the other Party obtained pursuant to or in connection with the performance of this Interconnection Agreement to any third party without the express written consent of the providing Party; provided, however, that any Party may produce Confidential Information in response to a subpoena, discovery request or other compulsory process issued by a judicial body or Governmental Authority upon reasonable notice to the providing Party that ~~(a)~~1 a protective order from such jurisdictional judicial body or court has been issued relating to the Confidential Information; and ~~(b)~~2 a binding nondisclosure agreement is in effect with a proposed recipient of any Critical Energy Infrastructure Information.

(b) The Parties shall use at least the same standard of care to protect Confidential Information they receive as they use to protect their own Confidential Information from unauthorized disclosure, publication or dissemination.

(c) Any Party may use Confidential Information solely: (1) to fulfill its obligations to the other Party, under this Interconnection Agreement; (2) to fulfill its regulatory requirements except to the extent that such information constitutes or has been designated Critical Energy Infrastructure Information; (3) in any proceeding or in any administrative agency or court of competent jurisdiction addressing any dispute arising under this Interconnection Agreement, subject either to a written confidentiality agreement with all Parties (including, if applicable, an arbitrator(s)) or to a protective order; or (4) as required by Applicable Law. As it pertains to (3) and (4), notwithstanding the absence of a protective order or waiver, a Party may disclose such

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Confidential Information which, in the opinion of its counsel, the Party is legally compelled to disclose. In the event that the receiving Party is legally requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process, or in the opinion of its counsel, by federal or state securities or other statutes, regulations or laws) to disclose any Confidential Information, the receiving Party shall, to the extent permitted under Applicable Law, promptly notify the disclosing Party of such request or requirement prior to disclosure, so that the disclosing Party may seek an appropriate protective order and/or waive compliance with the terms of this Interconnection Agreement and shall request confidential treatment of any such disclosure.

(d) The Parties agree that monetary damages by themselves may be inadequate to compensate a Party for the other Party's breach of its obligations under this Article. Each Party accordingly agrees that the other Parties are entitled to equitable relief, by way of injunction or otherwise, if it breaches or threatens to breach its obligations under this Article.

21.4 Survival. The confidentiality obligations of this Article shall survive termination of this Interconnection Agreement for a period of two (2) years.

ARTICLE 22 MISCELLANEOUS

22.1 Third Party Contracts. The Parties recognize that each has entered into and may in the future enter into contractual commitments with various third parties regarding benefits, use and operation of network transmission facilities it owns within the interconnected regional transmission network. Each Party hereby covenants that its respective contracts with third parties shall not interfere with its obligations to the other Party made under this Interconnection Agreement.

22.2 No Residual Value. This Interconnection Agreement shall not be construed to provide any residual value to either Party or its successors or permitted assigns or any other party, for rights to, use of, or benefits from the other Party's system following expiration of this Interconnection Agreement.

22.3 No Third-Party Beneficiary. Unless otherwise specifically provided in this Interconnection Agreement, the Parties do not intend to create rights in or to grant remedies to any third Party as a beneficiary of this Interconnection Agreement or of any duty, covenant, obligation or undertaking established hereunder.

22.4 Headings. Article headings and titles are included for the convenience of Parties and shall not be used to construe the meaning of any provision of this Interconnection Agreement.

22.5 Governing Law. This Interconnection Agreement shall be interpreted and governed by the laws of the state of Colorado, or the laws of the United States of America, as applicable.

22.76 No Joint System. The Parties each own and operate separate interconnected electric systems, and no provision of the Interconnection Agreement shall be interpreted to mean or

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imply the Parties have established or intend to establish a jointly owned electric system, a joint venture, trust, a partnership, or any other type of association.

22.97 Amendment. Except as provided in Section 11.2, any amendment, alteration, variation, modification or waiver of the provisions of this Interconnection Agreement, other than revisions to the Attachments authorized by this Interconnection Agreement, shall be valid only after it has been reduced to writing and duly signed by both Parties, and if required, approved by the appropriate regulatory bodies.

22.840 Conflicts. In the event any term of this Interconnection Agreement conflicts with the Tariff, the terms of this Interconnection Agreement shall control.

22.944 Waiver. The failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this Interconnection Agreement, or to take advantage of any of its rights thereunder, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.

22.102 Counterparts. This Interconnection Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

22.113 Severability. If any governmental authority or court of competent jurisdiction holds that any provision of this Interconnection Agreement is invalid, or if, as a result of a change in any Federal or State law or constitutional provision, or any rule or regulation promulgated pursuant thereto, any provision of this Interconnection Agreement is rendered invalid or results in the impossibility of performance thereof, the remainder of this Interconnection Agreement not affected thereby shall continue in full force and effect. In such an event, the Parties shall promptly renegotiate in good faith new provisions to restore this Interconnection Agreement as nearly as possible to its original intent and effect.

IN WITNESS WHEREOF, the Parties hereto have caused this Leggett, Sunshine, and WWTP Substation Transmission to Load Interconnection Agreement to be duly executed the day and year first written above.

(Signature blocks on following page)

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CITY OF BOULDER,
a Colorado home rule city

City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney's Office ~~City of Boulder~~

Date _____

PUBLIC SERVICE COMPANY OF COLORADO
Ian R. Benson
Area Vice President, Transmission and Strategic Initiatives
Xcel Energy Services Inc.
As Agent for Public Service Company of Colorado

Date _____

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BOULDER TERMINAL, GUNBARREL, LEGGETT, NCAR, SUNSHINE, AND WASTEWATER TREATMENT PLANT SUBSTATIONS

LOAD INTERCONNECTION AGREEMENT

BETWEEN

PUBLIC SERVICE COMPANY OF COLORADO

AND

CITY OF BOULDER, COLORADO

Dated: _____, ____

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PREAMBLE

This Load Interconnection Agreement Providing for Load Interconnection between Public Service Company of Colorado and the City of Boulder ("Interconnection Agreement") is made and entered into this ____ day of _____, _____, by and between CITY OF BOULDER, a Colorado home rule city, hereinafter referred to as "City" or "Boulder," its successors and assigns, and PUBLIC SERVICE COMPANY OF COLORADO, a Colorado corporation, hereinafter referred to as "Public Service," "PSCo" or "Transmission Provider." Boulder and Public Service may be referred to individually as a "Party" or collectively as the "Parties".

EXPLANATORY RECITALS

WHEREAS, Boulder is a home rule city that plans to operate its own municipal electric distribution utility serving customers within the City and will be engaged in generating, purchasing, distributing and selling retail electric power, energy and electric service within the State of Colorado; and

WHEREAS, Public Service is engaged in, among other things, the business of generating, purchasing, transmitting, distributing, and selling at retail and wholesale, electric power, energy and electric service within the State of Colorado; and

WHEREAS, Boulder and Public Service have entered into various agreements which provide, upon occurrence of certain circumstances, that the existing distribution system serving customers in Boulder will be divided into two separate operating systems; one serving PSCo customers and the other serving Boulder customers ("Separation"); and

WHEREAS, Public Service and Boulder have entered into a Facilities Study and Detailed Design Agreement dated May 6, 2019, PSCo Service Agreement No. 522-PSCO ("F&DED Agreement"); and

WHEREAS, the studies performed under the F&DED Agreement did not evaluate the distribution wheeling interconnection at Boulder Terminal Substation; and

WHEREAS, Boulder has served PSCo with formal written notice that its Go/No Go Decision is to proceed with Municipalization (i.e. the Proceed Date has occurred); and

WHEREAS, the the terms and conditions for interconnection of Boulder's facilities with Public Service's electrical system and to define the continuing rights, responsibilities, and obligations of the Parties with respect to the use of certain of their own and the other Party's property, assets and facilities; and

WHEREAS, the Parties desire to provide for several points of delivery and for the design, engineering, procurement, construction, ownership, operation, and maintenance of the facilities at these points of delivery; and

WHEREAS, this Interconnection Agreement shall be the valid, binding obligation of each Party upon acceptance of the Federal Energy Regulatory Commission ("FERC"), subject to the

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satisfaction of the conditions precedent set forth in Section 3.1 of this Interconnection Agreement.

AGREEMENT

NOW, THEREFORE, the Parties incorporate the above Recitals into this Interconnection Agreement, and in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1 DEFINITIONS

- 1.1** "Affiliate" shall have the meaning set forth in Section 1.1 of the Tariff.
- 1.2** "Applicable Law" shall mean all duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority having jurisdiction over a Party or the Parties, as applicable, their respective facilities and/or the respective services they provide.
- 1.3** "Boulder System" shall mean the electric distribution system to be created, including existing facilities and new construction, which will serve Boulder customers within the Boulder city limits separate from the PSCo Distribution System Public Service will use to serve its customers after the Cut-Over Date.
- 1.4** "Business Day" shall mean Monday through Friday, excluding U.S. federal holidays that fall on those days.
- 1.5** "Cut-Over Date" shall mean the date when the separation of the Boulder System from the PSCo Distribution System is complete, so that (1) PSCo's Distribution System has equivalent or better safety, reliability and effectiveness as it did prior to the commencement of Separation activities, (2) the PSCo Distribution System and the Boulder System can each be operated separately from the other, and (3) Boulder is willing and able to begin serving all of its customers.
- 1.6** "EEE" shall mean the Electrical Equipment Enclosure on the substation property.
- 1.7** "Effective Date" shall have the meaning set forth in Section 3.1.
- 1.8** "Emergency" shall mean a condition or situation that in the reasonably good faith determination by the Party affected by such Emergency and based on Good Utility Practice, contributes to an existing or imminent physical threat of danger to life or a significant threat to health, property or the environment.
- 1.9** "FERC" or "Commission" shall mean the Federal Energy Regulatory Commission or its successor.
- 1.10** "Financing Party" shall have the meaning set forth in Section 18.1(c).
- 1.11** "Force Majeure" shall have the meaning set forth in Section 1.1 and Article 16 of the Tariff.
- 1.12** "Forced Outage" shall mean taking Boulder's System, PSCo's Distribution System or the transmission system, in whole or in part, out of service by reason of an Emergency or Network Security condition, unanticipated failure or other cause beyond the reasonable control of either Party, when such removal from service was not scheduled in accordance with Section 8.2.
- 1.13** "Go/No Go Decision" shall mean the pre-Separation decision by the City to move

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forward with Municipalization, and after the City otherwise has sufficient information, in its sole discretion, including cost information, to decide whether to move forward with Municipalization; and, if the City decides Municipalization should move forward, the term "Go/No Go Decision" also includes all necessary decisions by Boulder voters.

1.14 "Good Utility Practice" shall have the meaning set forth in Section 1.1 of the Tariff.

1.15 "Governmental Authority" shall mean any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over the Parties, their respective facilities, or the respective services that they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided, however, that such term does not include Transmission Provider or any Affiliate of Boulder or PSCo.

1.16 "Hazardous Materials" shall have the meaning set forth in Section 1.1 of the Tariff.

1.17 "Indemnified Party" shall have the meaning set forth in Section 17.2.

1.18 "Indemnifying Party" shall have the meaning set forth in Section 17.2.

1.19 "Interconnection Guidelines" shall mean Xcel Energy's Interconnection Guidelines For Transmission Interconnected Customer Loads, as they may be revised from time to time by Transmission Provider and posted on Transmission Provider's website (www.xcelenergy.com).

1.20 "Interconnection Service" shall mean the service Transmission Provider will provide to Boulder to interconnect Boulder's facilities to PSCo's electric system (such facilities being described more fully in attachments) and the ongoing operations and maintenance of such facilities.

1.21 "Municipalization" shall mean all activities required for Boulder to own and operate the Boulder System separately from the PSCo Distribution System.

1.22 "NERC" shall mean the North American Electric Reliability Corporation or its successor organization.

1.23 "Planned Outage" shall mean action by (1) Boulder to take its equipment, facilities or systems out of service, partially or completely, to perform work on specific components that is scheduled in advance and has a predetermined start date and duration pursuant to the procedures set forth in Section 8.2, or (2) Transmission Provider to take its equipment, facilities and systems out of service, partially or completely, to perform work on specific components that is scheduled in advance and has a predetermined start date and duration pursuant to the procedures set forth in Section 8.2.

1.24 "Point of Change of Ownership" shall mean the physical point or points at which Boulder's facilities interconnect with PSCo's facilities, as depicted in Attachments A-1, B-1, C-1, D-1, E-1 and F-1.

1.25 "Proceed Date" shall mean the date the City provides notice to PSCo that the City's Go/No-Go Decision is to proceed with Municipalization.

1.26 "Protection System" shall mean (1) for purposes of Reliability Standard Compliance Responsibility: (a) protective relays which respond to electrical quantities, (b) communications systems necessary for correct operation of protective functions, (c) voltage and current sensing devices providing inputs to protective relays, (d) station dc supply associated with protective functions (including station batteries, battery chargers, and non-battery-based dc supply), and (e) control circuitry associated with protective functions through the trip coil(s) of the circuit breakers or other interrupting devices, and (2) for purposes other than Reliability Standard Compliance Responsibility: (a) protective relays which respond to electrical quantities, and (b) communications systems necessary for correct operation of protective functions, where the term

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“Reliability Standard Compliance Responsibility” means the column titled “Reliability Standard Compliance Responsibility” set forth in the Ownership, Construction, Operating, and Cost Responsibility Table for each substation attached hereto as Attachments A-3, B-3, C-3, D-3, E-3 and F-3.

1.27 “PSCo Distribution System” shall mean the electric distribution system to be created, including existing facilities and new construction, that will serve PSCo customers, separate from the Boulder System.

1.28 “Reasonable Efforts” shall mean, with respect to an action required to be attempted or taken by a Party under the Interconnection Agreement, efforts that are timely and consistent with Good Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests.

1.29 “Reliability Standards” shall mean mandatory reliability standards adopted by NERC or WECC and approved by FERC, as amended from time to time, applicable to the facilities owned, and/or operated by Boulder and Transmission Provider, respectively.

1.30 “SCADA” shall have the meaning set forth in Section 7.7.

1.31 “Separation” shall mean the creation of the Boulder System and the PSCo Distribution System.

1.32 “Settlement Agreement” shall mean the Settlement Agreement between the Parties dated _____, 2020, which became effective by the decision of the voters of Boulder on November 3, 2020.

1.33 “Tariff” or “OATT” shall mean the Xcel Energy Operating Companies Open Access Transmission Tariff on file with FERC, as amended from time to time.

1.34 “Term” shall mean the period of time during which this Interconnection Agreement shall remain in force and effect.

ARTICLE 2

SCOPE AND OBLIGATIONS OF PARTIES

2.1 This Load Interconnection Agreement sets forth the terms and conditions of Interconnection Service provided by Transmission Provider to Boulder. Although the Transmission Provider intends this Interconnection Agreement to be a service agreement under the Tariff, the establishment of Interconnection Service under this Interconnection Agreement does not in itself entitle Boulder to receive any services under the Tariff other than the Interconnection Service, as provided for herein. Any other services that Boulder may require, such as transmission service, must be separately arranged under the Tariff in accordance with the terms and conditions of such tariff, and paid for by Boulder or other user of such services. Boulder is responsible for making arrangements for the power supply of its load requirements and delivery of capacity and energy to its system. The establishment of an interconnection under this Interconnection Agreement does not in itself entitle Boulder to obtain any services from the Transmission Provider that may be subject to the jurisdiction of FERC, or the State Regulatory Commission; Boulder must arrange for any such services in accordance with the applicable provider’s tariff or service requirements.

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2.2 The Parties have established conceptual designs for the separation of facilities, new facilities, equipment, and access easement locations within the Gunbarrel, NCAR, Leggett, Sunshine and Wastewater Treatment Plant substations for the respective facilities as depicted in the conceptual General Arrangements and Single Line diagrams attached to this Agreement as Attachments A-1, A-2, B-1, B-2, C-1, C-2, D-1, D-2, E-1, E-2, F-1 and F-2 and incorporated herein by this reference. The designs were completed based on the results of the System Impact and Facilities Studies and updates to the studies may require updates to the designs. To the extent the existing designs for PSCo-owned facilities require updates due to changes to the Separation as provided in the Settlement Agreement, PSCo will cover the costs of updating the existing designs. Detailed engineering design drawings for Boulder Terminal and Gunbarrel will be developed as described in the Settlement Agreement.

2.3 The Facilities Studies and System Impact Studies completed prior to execution of this Agreement may need to be updated as described in the Settlement Agreement.

2.4 The Parties will make Reasonable Efforts to coordinate activities performed in the execution of their respective responsibilities in order to provide for efficient and timely completion of the design.

2.5 Public Service shall provide Load Interconnection Service to the City as provided herein. The Interconnection Service will commence on the Cut-Over date, provided Boulder meets the obligations provided for in this Interconnection Agreement.

2.6 Ownership, Construction, Operation and Cost Responsibilities are as detailed in Attachments A-3, B-3, C-3, D-3, E-3 and F-3 attached to this Interconnection Agreement and incorporated herein by this reference.

2.7 Each Party shall have the right to have an authorized representative inspect the facilities of the other party at any time during construction. Appropriate advance notification of any inspection activities shall be provided.

2.8 The Parties will coordinate efforts in the execution of their respective responsibilities in order to provide for efficient and timely completion of the design, construction work, and obtaining required permits detailed in this Interconnection Agreement.

2.9 No Party will begin construction on its respective facilities at, or related to its respective facilities, until (1) the conditions set forth in Section 3.1 have been satisfied, (2) all necessary federal, state, and local permits and regulatory filings/approvals required to initiate construction have been secured, and (3) the Parties have agreed to a construction schedule. Permits or regulatory filings or approval necessary for project completion shall be secured or filed before the Cut-Over Date.

2.10 This Interconnection Agreement does not authorize the City to export power or constitute an agreement to purchase or wheel the City's capacity or energy. Such purchasing or wheeling services that the City may require from PSCo, or others, are provided under separate agreements.

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2.11 This Interconnection Agreement does not constitute a request for, or the provision of, any transmission service or any local distribution delivery service. Distribution delivery service is being provided for under the terms and conditions of the DWA. Transmission service on the PSCo transmission system shall be arranged pursuant to the OATT.

2.12 Boulder Terminal Substation

(a) PSCo will design and construct modifications to the Boulder Terminal Substation to provide for the interconnection of Boulder load to PSCo's electric system, as shown in the Boulder Terminal General Arrangement and One-line Diagram attached to this Interconnection Agreement as Attachments A-1 and A-2.

(b) It is anticipated that no permits will be required for the modifications; however, to the extent permits are required, Boulder shall be responsible for all permitting in compliance with all state and federal environmental laws and regulations.

(c) The Point of Change of Ownership will be as shown in Attachment A-1.

(d) The responsibilities for construction, ownership, operations, maintenance, and replacement of any facilities at Boulder Terminal Substation will be as described in the Ownership, Construction, Operating and Cost Responsibility Table attached to this Interconnection Agreement as Attachment A-3.

(e) There will be no change in property interests as a result of the work at Boulder Terminal Substation.

(f) Boulder and PSCo will enter into a Distribution Wheeling Agreement ("DWA") for distribution wheeling service to commence as of the Cut-Over Date, which sets forth the terms, rates, and conditions under which PSCo will make available firm point-to-point service on the Boulder Terminal distribution facilities for the purpose of providing wheeling service for energy delivered from the transmission facilities owned and operated by PSCo to the Boulder System at Boulder Terminal Substation.

2.13 Gunbarrel Substation

(a) PSCo will design and construct modifications to the Gunbarrel Substation as shown in the Gunbarrel General Arrangement and One-line Diagram attached to this Interconnection Agreement as Attachments B-1 and B-2. The modifications will include a new EEE which will allow for the relocation of PSCo's protection, control and SCADA equipment from the existing EEE to the new EEE.

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(b) PSCo shall coordinate with Tri-State Generation and Transmission Association ("Tri-State") to design modifications necessary to relocate any Tri-State protection and control system connections to PSCo's new EEE.

(c) Boulder shall be responsible for all permitting in compliance with all state and federal environmental laws and regulations. All other responsibilities shall be as provided for in Attachment B-3.

(d) The Point of Change of Ownership will be as shown in Attachment B-1.

(e) The property interests shall be as shown in Attachment B-4.

2.14 Leggett Substation

(a) The City will design, construct, operate and maintain a new Boulder Leggett Substation adjacent to the existing PSCo Leggett Substation. PSCo will design, construct, operate and maintain an expansion of the existing PSCo Leggett Substation on land owned by PSCo in order to interconnect the new Boulder Leggett Substation to PSCo's electric system as shown in the Leggett General Arrangement and One-line Diagram attached to this Interconnection Agreement as Attachments C-1 and C-2.

(b) For both the Boulder Leggett Substation (including the City's 13kV distribution feeders exiting the substation) and the expanded PSCo Leggett Substation, Boulder shall be responsible for all permitting in compliance with all state and federal environmental laws and regulations. Responsibilities for geotech, grading, drainage and constructing of common facilities shall be as provided in Attachment C-3. Each Party will be responsible for the siting of facilities at their respective substation sites.

(c) The new Boulder Leggett Substation will be constructed by the City on real property to be acquired by the City from PSCo adjacent to PSCo's expansion of the existing PSCo Leggett Substation. A common fence will be constructed inside or on the property line of the PSCo Leggett Substation to separate the Boulder Leggett Substation from the PSCo Leggett Substation. There will be a single ground grid for both the existing and new equipment in the PSCo Leggett Substation and the Boulder Leggett Substation. The Point of Change of Ownership will be as shown in Attachment C-1.

(d) The responsibilities for construction, ownership, operations, maintenance, and replacement of the expansion of the PSCo Leggett Substation and the Boulder Leggett Substation will be as described in the Ownership, Construction, Operating and Cost Responsibility Table attached to this Interconnection Agreement as Attachment C-3.

(e) The property interests shall be as shown in Attachment C-4.

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2.15 NCAR Substation

(a) The City will design and construct modifications to the existing NCAR Substation and operate and maintain the NCAR Substation once ownership is transferred pursuant to the Settlement Agreement. PSCo will design and construct modifications to the transmission facilities serving NCAR Substation and operate, maintain and own the transmission facilities serving NCAR Substation as shown in the NCAR General Arrangement and One-Line Diagram attached to this Interconnection Agreement as Attachments D-1 and D-2.

(b) For all the modifications to the NCAR Substation included in the scope of this Interconnection Agreement, Boulder shall be responsible for all permitting in compliance with all state and federal environmental laws and regulations. For the modifications to the NCAR Substation transmission facilities, Boulder shall be responsible for all permitting only for those modifications made as part of the Separation.

(c) As part of a purchase agreement, Boulder will own the real property for the NCAR Substation. PSCo will acquire an access and equipment easement from the City for PSCo's facilities. The Point of Change of Ownership will be as shown in Attachment D-1.

(d) The responsibilities for construction, ownership, operations, maintenance, and replacement of the NCAR Substation and any modifications to the NCAR Substation will be as described in the Ownership, Construction, Operating and Cost Responsibility Table attached to this Interconnection Agreement as Attachment D-3.

(e) The property interests shall be as shown in Attachment D-4.

2.16 Sunshine Substation

(a) The City will design, construct, operate and maintain a new Boulder Sunshine Substation adjacent to the existing PSCo Sunshine Substation. PSCo will design, construct, operate and maintain modifications to the existing PSCo Sunshine Substation in order to interconnect the new Boulder Sunshine Substation to PSCo's electric system as shown in the Sunshine General Arrangement and One-line Diagram attached to this Interconnection Agreement as Attachments E-1 and E-2.

(b) For both the Boulder Sunshine Substation (including the City's 13kV distribution feeders existing the substation) and, to the extent necessary, the PSCo Sunshine Substation, Boulder shall be responsible for all permitting in compliance with all state and federal environmental laws and regulations. Each Party will be responsible for the siting of facilities at their respective substation sites.

(c) The new Boulder Sunshine Substation will be constructed by the City on real property owned by the City. PSCo will continue to own the land for the existing PSCo Sunshine Substation. A portion of the existing PSCo Sunshine Substation fence will become a common fence between the two substations. PSCo will retain the existing PSCo Sunshine Substation and all facilities located therein, including the common fence. The ground grid between the two

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substations will be tied together. The two substations will be electrically tied by new bus work over the common fence. The Point of Change of Ownership will be as shown in Attachment E-1.

(d) The responsibilities for construction, ownership, operations, maintenance, and replacement of the new Boulder Sunshine Substation and any modifications to the existing PSCo Sunshine Substation will be as described in the Ownership, Construction, Operating and Cost Responsibility Table attached to this Interconnection Agreement as Attachment E-3.

(e) The property interests shall be as shown in Attachment E-4.

2.17 Wastewater Treatment Plant ("WWTP") Substation

(a) The City will design, construct, operate and maintain a new Boulder WWTP Substation at the City's Wastewater Treatment Plant Site on real property already owned by the City. PSCo will design, construct, operate and maintain a new 230kV PSCo WWTP Substation adjacent to the Boulder WWTP Substation and intercepting the Leggett to Niwot transmission line in order to interconnect the new Boulder WWTP Substation to PSCo's electric system as shown in the WWTP General Arrangement and One-line Diagram attached to this Interconnection Agreement as Attachments F-1 and F-2.

(b) For both the Boulder WWTP Substation (including the City's 13kV distribution feeders existing the substation) and PSCo WWTP Substation (including PSCo's transmission line drops), Boulder shall be responsible for all permitting and siting in compliance with all state and federal environmental laws and regulations, and the responsibilities for geotech, grading, drainage and constructing of common facilities shall be as provided for in Attachment F-3.

(c) The Boulder WWTP Substation will be physically separated from the PSCo WWTP Substation by a common fence. There will be a single ground grid for both the Boulder WWTP Substation and the PSCo WWTP Substation. The Point of Change of Ownership will be as shown in Attachment F-1.

(d) The responsibilities for construction, ownership, operations, maintenance, and replacement of the new Boulder WWTP Substation and the new PSCo WWTP Substation will be as described in the Ownership, Construction, Operating and Cost Responsibility Table attached to this Interconnection Agreement as Attachment F-3.

(e) The property interests shall be as shown in Attachment F-4.

ARTICLE 3 EFFECTIVE DATE AND TERM

3.1 Term and Filing. The Effective Date of this Interconnection Agreement shall be the effective date granted by FERC at the time that FERC accepts or approves this Interconnection Agreement. This Interconnection Agreement will be executed and filed after (1) the Proceed Date has occurred, and (2) Boulder requests Transmission Service and signs a Network Integrated Transmission Service Agreement and a Network Operating Agreement with PSCo for

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Transmission Service to the Boulder Terminal, Gunbarrel, Leggett, NCAR, Sunshine, and WWTP Substations. PSCo will request that FERC grant an effective date 60 days after filing.

Unless terminated earlier in accordance with Section 3.2 below, this Interconnection Agreement shall remain in effect for an initial period of 10 years from the Approved Date ("Initial Period"), and from year to year thereafter, but shall be subject to termination by either Party at the end of the Initial Period or on any anniversary date thereof by such Party giving written notice of its intention to terminate not less than 12 months prior to the end of the Initial Period and/or anniversary date.

In the event either Party provides notice of termination of this Interconnection Agreement under this Section 3.1, and Boulder still requires interconnection service to serve loads on the Boulder System, the Parties shall use commercially Reasonable Efforts to negotiate a replacement interconnection agreement. If Boulder no longer requires interconnection service, upon termination of this Interconnection Agreement, Transmission Provider may, at its sole discretion and at Boulder's expense, permanently disconnect or remove the PSCo facilities, provided such expense is just and reasonable and not unduly discriminatory.

3.2 Early Termination. Notwithstanding the term specified in Section 3.1, this Interconnection Agreement may be terminated early in the following circumstances: (1) by mutual agreement among the Parties; or (2) by either Party in the event of any material breach of this Interconnection Agreement by the other Party, provided, such termination shall be subject to FERC approval as set forth in Section 18.3 of this Interconnection Agreement.

The Parties shall use commercially Reasonable Efforts to mitigate the costs, damages and charges arising out of an early termination under this Section 3.2. In the event of a Dispute regarding the early termination fee, either Party may request dispute resolution pursuant to the procedures in Article 20.

3.3 Survival. Certain provisions of this Interconnection Agreement shall continue in effect after termination of this Interconnection Agreement to give full effect to its terms. Such provisions include, but are not necessarily limited to, those relating to early termination, Boulder's payment for installation, operation, and maintenance of PSCo's facilities, and, as applicable, to provide for disconnection of Boulder's facilities from PSCo's electric system, final billings and adjustments related to the period prior to termination, and a Party's right to terminate, indemnification, and payment of any money due and owing to either Party pursuant to this Interconnection Agreement.

ARTICLE 4 CONTROL & POSSESSION OF THE PARTIES' SYSTEMS

4.1 This Interconnection Agreement applies only to those facilities specifically described herein; each Party shall retain possession and control of its respective interconnected system and this Interconnection Agreement shall not be construed as providing any rights or controls beyond those specified and agreed to herein.

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4.2 The PSCo-owned substations covered by this Interconnection Agreement shall be operated by Public Service pursuant to its operating procedures. The Boulder-owned substations covered by this Interconnection Agreement shall be operated by Boulder pursuant to its operating procedures.

4.3 The 115kV or 230kV transmission line gang operated switches, bus and breakers will be Public Service's Network Facilities (as defined in the Tariff). Boulder's equipment will not be considered Public Service Network Facilities.

ARTICLE 5 ATTACHMENTS

5.1 The attachments referenced herein as summarized below, attached hereto and made a part hereof, represent the General Arrangements, Single Line Diagrams and Ownership, Construction, Operating and Cost Responsibility Tables from the Facilities Study that have been completed for the Gunbarrel, Leggett, NCAR, Sunshine and WWTP Substations and the Ownership, Construction, Operating and Cost Responsibility Table for Boulder Terminal. The attachments shall be in force and effect unless superseded by subsequent attachments approved by the Parties as provided herein.

A-1	Boulder Terminal Interconnection General Arrangement
A-2	Boulder Terminal Interconnection One-Line Diagram
A-3	Boulder Terminal Interconnection Responsibility Table
B-1	Gunbarrel Substation Interconnection General Arrangement
B-2	Gunbarrel Substation Interconnection One-Line Diagram
B-3	Gunbarrel Substation Interconnection Responsibility Table
B-4	Gunbarrel Substation Property Interests
C-1	Leggett Substation Interconnection General Arrangement
C-2	Leggett Substation Interconnection One-Line Diagram
C-3	Leggett Substation Interconnection Responsibility Table
C-4	Leggett Substation Property Interests
D-1	NCAR Substation Interconnection General Arrangement
D-2	NCAR Substation Interconnection One-Line Diagram
D-3	NCAR Substation Interconnection Responsibility Table
D-4	NCAR Substation Property Interests
E-1	Sunshine Substation Interconnection General Arrangement
E-2	Sunshine Substation Interconnection One-Line Diagram
E-3	Sunshine Substation Interconnection Responsibility Table
E-4	Sunshine Substation Property Interests
F-1	WWTP Substation Interconnection General Arrangement
F-2	WWTP Substation Interconnection One-Line Diagram
F-3	WWTP Substation Interconnection Responsibility Table

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F-4	WWTP Substation Property Interests
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ARTICLE 6 FUTURE AGREEMENTS

6.1 This Interconnection Agreement shall serve as the COM and Interconnection Agreement contemplated in the F&DED Agreement and shall supersede any conflicting provisions of the F&DED Agreement.

ARTICLE 7 OWNERSHIP, CONSTRUCTION, OPERATION AND MAINTENANCE

7.1 Summary Description. Attachments C-1 through C-6, which are attached hereto and made a part hereof, provide a description of Boulder's electrical facilities and PSCo's electrical facilities.

7.2 Boulder's Facilities. Boulder shall at Boulder's sole expense design, construct, operate, maintain and own in accordance with Applicable Law, rules and regulations, the Tariff, and Good Utility Practice, the Boulder facilities as described in Attachments C-1, C-2, and C-3. Furthermore, Boulder shall operate the Boulder facilities in a manner that protects PSCo's electric system and PSCo's electric facilities from transients, faults, and other operating conditions occurring at or caused by Boulder including any effects on PSCo's electric system arising from the presence of distributed energy resources on the Boulder System.

7.3 PSCo's Facilities. PSCo shall design, construct, operate, maintain, and own in accordance with Applicable Law, rules and regulations, the Tariff, Good Utility Practice and the Interconnection Guidelines, the PSCo facilities shown on Attachments C-1, C-2, and C-3, and shall operate such facilities in a manner that protects the Boulder System, including Boulder's facilities, from transients, faults, and other operating conditions occurring at or caused by PSCo including any effects on Boulder's electric system arising from the presence of distributed energy resources on the PSCo electric system.

7.4 Modifications to Facilities. Either Party may undertake modifications to its respective facilities which shall be designed, constructed and operated in accordance with this Interconnection Agreement and Good Utility Practice; provided however, if either Party proposes to make any change or modification to the configuration or operation of its facilities which may impact the facilities or system of the other, the Party proposing the change shall provide sufficient notice and information regarding such modification so that the other Party may evaluate the potential impact of such modification prior to the commencement of any work, and the Parties shall negotiate, in good faith, an amendment to this Interconnection Agreement as may be necessary to address the proposed change.

(a) Information provided under this Interconnection Agreement may be designated by a Party to be Confidential Information hereunder, including, but not be limited to, information concerning the timing of such modification and how such modifications are expected to impact the other Party's system. Unless a shorter period of time is appropriate for a Party to respond to an Emergency, or comply with Reliability Standards or Applicable Law, the Party desiring to

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perform such work shall provide the relevant drawings, plans and specifications to the other Party at least 90 days in advance of the commencement of the work or such shorter period upon which the Parties may agree, which agreement shall not unreasonably be withheld, conditioned or delayed.

(b) In the event the Parties are unable to agree to appropriate amendments or modifications to this Interconnection Agreement pursuant to Section 22.7, PSCo will unilaterally file, on a timely basis, with FERC an amendment to this Interconnection Agreement.

(c) To the extent a Party modifies its facilities that Party shall be responsible for the costs of any additions, modifications or replacements that may be necessary to maintain or upgrade its facilities consistent with Applicable Law, rules and regulations, the Tariff, Good Utility Practice, and the Interconnection Guidelines. Each Party shall own any modifications to its facilities.

7.5 Ownership of Facilities. Ownership of facilities is set forth in Attachments C-1, through C-6.

7.6 Reliability Standards. Boulder shall be responsible for compliance with all Reliability Standards applicable to the Boulder System; and PSCo shall be responsible for compliance with all Reliability Standards applicable to PSCo's electrical system. Each Party shall be responsible for the costs of compliance with such Reliability Standards for their respective facilities and systems, including (1) costs associated with modifying their respective facilities or systems to comply with changes in such Reliability Standards; and (2) any financial penalties for non-compliance. The Parties agree to share data or documentation as may be required to demonstrate compliance with Reliability Standards where an individual Party has possession of data or documentation necessary for the other Party to demonstrate compliance.

7.7 Interconnection Guidelines. The Interconnection Guidelines provide additional and more detailed standards for designing, testing, studying, constructing, operating, maintaining and interconnecting at the point of interconnection. Transmission Provider shall develop or promulgate the Interconnection Guidelines, including any updates, changes or modifications thereto, in accordance with Good Utility Practice. The Interconnection Guidelines include, among other things, power factor requirements, supervisory control and data acquisition ("SCADA") equipment requirements, and metering requirements. Boulder will comply with the Interconnection Guidelines for the interconnections at Gunbarrel, Leggett, NCAR, Sunshine and WWTP. Boulder will also comply with the Interconnection Guidelines for the interconnection at Boulder Terminal to the extent the requirements in the Interconnection Guidelines apply.

In the event of a conflict between the Interconnection Guidelines and FERC rules, the Tariff or applicable Reliability Standards, the FERC rules, Tariff or Reliability Standards control.

7.8 Access. Appropriate representatives of each Party shall at all reasonable times; including weekends and nights, and with three (3) business days prior notice, have access to the other Party's facilities, to take readings and to perform all inspections, maintenance, service, and operational reviews as may be necessary to facilitate the performance of this Interconnection Agreement. While on the other Party's premises, each Party's representatives

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shall announce their presence and observe such safety precautions as may be required and shall conduct themselves in a manner that will not interfere with the other Party's operations.

7.9 Transfer of Control or Sale of Facilities. In any sale or transfer of control of either PSCo's or Boulder's facilities, the transferring Party shall as a condition of such sale or transfer require the acquiring party or transferee with respect to the transferred facilities either to assume the obligations of the transferring Party to this Interconnection Agreement with respect to this Interconnection Agreement or to enter into an agreement with the non-transferring Party to this Interconnection Agreement imposing on the acquiring party or transferee the same obligations applicable to the transferring Party of this Interconnection Agreement pursuant to this Section 7.9.

ARTICLE 8 OUTAGES AND COORDINATION

8.1 DISCONNECTION.

(a) Except when there is an Emergency, Forced Outage, Force Majeure and/or to comply with Applicable Law, including Reliability Standards, the Parties shall reasonably consult each other prior to disconnecting facilities.

(b) If at any time, either Party observes any Protection System facilities which appear to have been changed, or failed, that Party shall have the right, if it determines that such change or failure may have a material adverse impact on the safety or reliability of its electric system consistent with Good Utility Practice, to disconnect the other Party's System from its System, provided it first provides commercially reasonable notice to the other Party.

8.2 Outages. In accordance with Good Utility Practice, each Party may, in close cooperation with the other, remove from service its system elements that may impact the other Party's system as necessary to perform maintenance or testing or to replace installed equipment. Absent the existence of an Emergency, the Party scheduling a removal of a system element from service will use good faith efforts to schedule such removal on a date mutually acceptable to both Parties, in accordance with Good Utility Practice.

In the event of a Forced Outage of a system element of Boulder's electric system adversely affecting PSCo's facilities or electric system, Boulder will use Good Utility Practice to promptly restore that system element to service. In the event of a Forced Outage of a system element of PSCo's electric system adversely affecting the Boulder System, PSCo will use Good Utility Practice to promptly restore that system element to service.

In the event of a Planned Outage of a system element of the Boulder System adversely affecting PSCo's facilities or electric system, Boulder will act in accordance with Good Utility Practice to promptly restore that system element to service in accordance with its schedule for the work that necessitated the Planned Outage. In the event of a Planned Outage of a system element of PSCo's electric system adversely affecting Boulder's System, PSCo will act in accordance with Good Utility Practice to promptly restore that system element to service in accordance with its schedule for the work that necessitated the Planned Outage.

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8.3 Outage Reporting. The Parties shall comply with all current Transmission Provider reporting requirements, as they may be revised from time to time, and as they apply to Boulder or Transmission Provider. When a Forced Outage occurs that affects Boulder's facilities or impacts the Boulder System such that there is an adverse impact to PSCo's facilities or electric system Boulder shall notify the PSCo Control Center of the existence, nature, and expected duration of the Forced Outage as soon as practical, but in no event later than one (1) hour after the Forced Outage occurs. Boulder shall immediately inform the PSCo Control Center of changes in the expected duration of the Forced Outage unless relieved of this obligation by the PSCo Control Center for the duration of each Forced Outage. When a Forced Outage occurs that affects PSCo's facilities or impacts PSCo's electric system such that there is an adverse impact to Boulder's facilities or the Boulder System, PSCo shall notify Boulder of the existence, nature, and expected duration of the Forced Outage as soon as practical.

8.4 Switching and Tagging Rules. The Parties shall abide by their respective switching and tagging rules for obtaining clearances for work or for switching operations on equipment. PSCo shall notify Boulder of PSCo's switching and tagging rules and provide periodic updates of such rules as they may change from time to time. Boulder shall establish switching and tagging rules for the Boulder System and shall provide such rules to PSCo.

8.5 Coordination of Operations. If a Party's facilities are subject to Public Service's functional control, the Parties will coordinate with the applicable functional directives from Public Service.

In all other circumstances:

(a) Electrical system operation shall be coordinated between Boulder and Transmission Provider, including the coordination of equipment outages, voltage levels, real and reactive power flow monitoring, and switching operations, which affect the PSCo electric system, as required by the Tariff and this Interconnection Agreement.

(b) If either Boulder or Transmission Provider operations are causing a condition on the interconnected electrical network where line loadings, equipment loadings, voltage levels or reactive flow significantly deviate from normal operating limits or can be expected to exceed emergency limits following a contingency, and reliability of the bulk power supply is threatened the Transmission Provider shall take immediate steps and make Reasonable Efforts to relieve, correct or control the condition. These steps include notifying other affected electric utility systems, as applicable, adjusting generation, changing schedules, initiating load relief measures, and taking such other reasonable action as may be required. Electrical equipment is to be operated within its normal rating established by the owning Party except for temporary conditions after a contingency has occurred.

(c) If either Boulder or Transmission Provider changes the normal operation of its system at the Point of Change in Ownership, the Parties shall consider any resulting benefits or adverse impacts to the reliability or transfer capability of the interconnected network for purposes of

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determining any applicable adjustments to the Parties' respective system usage rights and responsibilities.

(d) Each Party shall notify the other as soon as practicable whenever:

- (1) Problems with a Parties' facilities are detected that could result in mis-operation of interconnection protection or other interconnection equipment;
- (2) The interconnection is opened by protective relay action;
- (3) Interconnection equipment problems occur and result in an outage to a portion of either Party's electric system;
- (4) A Party intends to initiate switching to close the interconnection; or,
- (5) A Party intends to initiate switching to open the interconnection.

8.6 Emergency. In the event of an Emergency, the Party becoming aware of the Emergency may, in accordance with Good Utility Practice and using its reasonable judgment, take such action as is reasonable and necessary to prevent, avoid, or mitigate injury, danger, and loss.

(a) In the event Boulder has identified an Emergency involving the PSCo's facilities, Boulder shall obtain the consent of PSCo personnel prior to manually performing any switching operations unless immediate action is essential to protecting the safety of individuals or against extreme damage to property.

(b) PSCo may, consistent with Good Utility Practice, take whatever actions or inactions with regard to PSCo's facilities PSCo deems necessary during an Emergency in order to: (1) preserve public health and safety; (2) preserve the reliability of the PSCo's electric system, including PSCo's facilities; (3) limit or prevent damage; and (4) expedite restoration of service. PSCo shall use Reasonable Efforts to minimize the effect of such actions or inactions on Boulder's facilities.

(c) Boulder may, consistent with Good Utility Practice, take whatever actions or inactions with regard to Boulder's facilities Boulder deems necessary during an Emergency in order to: (1) preserve public health and safety; (2) preserve the reliability of the Boulder facilities; (3) limit or prevent damage; and (4) expedite restoration of service. Boulder shall use Reasonable Efforts to minimize the effect of such actions or inactions on PSCo's electric system.

(d) PSCo shall provide Boulder with prompt oral or electronic notification under the circumstances of an Emergency that may reasonably be expected to affect Boulder's operations, to the extent PSCo is aware of the Emergency. Boulder shall provide PSCo with prompt oral or electronic notification under the circumstances of an Emergency which may reasonably be expected to affect PSCo's electric system, to the extent Boulder is aware of the Emergency. To the extent the Party becoming aware of an Emergency is aware of the facts of the Emergency, such oral or electronic notification shall describe the Emergency, the extent of

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the damage or deficiency, its anticipated duration, and the corrective action taken and/or to be taken.

(e) To the extent a system Emergency exists on PSCo's electric system, and PSCo or Reliability Coordinator determines it is necessary for PSCo and Boulder to shed load, the Parties shall shed load in accordance with the Tariff.

ARTICLE 9 SAFETY

9.1 Safety Standards. The Parties agree that all work performed under this Interconnection Agreement shall be performed in accordance with all Applicable Law, regulations, rules, standards, practices and procedures pertaining to the safety of persons or property and in accordance with Good Utility Practice. To the extent a Party performs work on the other Party's premises, the Party performing work shall also abide by the safety, or other access rules applicable to those premises.

9.2 Each Party shall be solely responsible for the safety and supervision of its own employees, agents, representatives, and contractors.

ARTICLE 10 ENVIRONMENTAL CONSIDERATIONS

10.1 Environmental Considerations. Each Party will remain responsible for compliance with any and all environmental laws applicable to its own respective property, facilities, and operations. Each Party shall promptly notify the other Party upon discovering any release of any hazardous substance by a Party on the property or facilities of the other Party, or which may migrate to, or adversely impact the property, facilities or operations of, the other Party and shall promptly furnish to the other Party copies of any reports filed with any governmental agencies addressing such events.

The Party responsible for the release of any hazardous substance on the property or facilities of the other Party, or for the release of any hazardous substances which may migrate to, or adversely impact the property, facilities or operations of, the other Party shall be responsible for the reasonable cost of performing any and all remediation or abatement activity and submitting all reports or filings required by environmental laws. Advance written notification (except in Emergency situations, in which verbal, followed by written notification, shall be provided as soon as practicable) shall be provided by any Party performing any remediation or abatement activity on the property or facilities of the other Party, or which may adversely impact the property, facilities, or operations of, the other Party. Except in an Emergency, such remediation or abatement activity shall be performed only with the consent of the Party owning the affected property or facilities which consent shall not be unreasonably withheld. The Parties agree to coordinate, to the extent necessary, the preparation of site plans, reports or filings required by law or regulation.

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ARTICLE 11 FORCE MAJEURE

11.1 Effect of Declaring Force Majeure. Neither Party shall be considered to be in default or breach of this Interconnection Agreement nor liable in damages or otherwise responsible to the other Party for any delay in or failure to carry out any of its obligations under this Interconnection Agreement if, and only to the extent that, the Party is unable to perform or is prevented from performing by an event of Force Majeure. Notwithstanding the foregoing sentence, neither Party may claim Force Majeure for any delay or failure to perform or carry out any provision of this Interconnection Agreement to the extent that such Party has been negligent or engaged in intentional misconduct and such negligence or intentional misconduct substantially and directly caused that Party's delay or failure to perform or carry out its duties and obligations under this Interconnection Agreement

11.2 Procedures for Declaring Force Majeure. A Party claiming Force Majeure must:

- (a)** Give written notice to the other Party of the occurrence of a Force Majeure as soon as practicable;
- (b)** Use Reasonable Efforts to resume performance or the provision of service hereunder as soon as practicable;
- (c)** Take all commercially reasonable actions to correct or cure the Force Majeure;
- (d)** Exercise all Reasonable Efforts to mitigate or limit damages to the other Party; except that neither party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to its interest; and
- (e)** Provide written notice to the non-declaring Party, as soon as practicable, of the cessation of the adverse effect of the Force Majeure on its ability to perform its obligations under this Interconnection Agreement.

ARTICLE 12 BILLING AND PAYMENT

12.1 Estimate. Estimated costs include only the costs of new PSCo facilities or modifications to PSCo-owned facilities outlined in Article 2 above. The estimate does not include the fair market value, damages, or compensation owed for any PSCo facilities or property interests that might be transferred to Boulder as part of the separation and acquisition process. Such sums would be in addition to the estimate provided and nothing herein is a waiver or modification of PSCo's rights, remedies and protections regarding the same. All estimates are scoping level estimated. Actuals costs may be higher based on labor, equipment and material costs, etc. at

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the time construction occurs. The City is responsible for the actual costs as the time of the work. No estimates have been made for the cost of Boulder-owned facilities.

PSCo estimates the cost to perform the work for the PSCo-owned facilities under Article 2 above will be as follows:

Boulder Terminal	TBD
Gunbarrel	\$ 5,300,000
Leggett Substation	\$15,655,200
NCAR	\$ 1,644,000
Sunshine Substation	\$ 1,549,200
WWTP Substation	\$ 5,538,000
Total	\$29,686,400+TBD

The cost estimate above is based on the Facilities Study and detailed design work as of May 1, 2020.

12.2 Advance Payment and Cost Reconciliation. Within 30 calendar days after this Interconnection Agreement is accepted by FERC, Boulder will advance \$29,686,400.00+TBD to PSCo. If the amount advanced under this Section is insufficient for PSCo to complete the work described in Article 2 above, PSCo will invoice Boulder for the additional necessary funds. Within 90 days after the Project is complete and energized, PSCo will reconcile its actual Project costs for the work described in Article 2 against the aggregate amount Boulder advanced under this Section, and if PSCo's actual costs are less than the amount Boulder advanced, PSCo will refund the difference to Boulder within 30 days. If the cost reconciliation reveals that Boulder owes a balance due, PSCo shall invoice Boulder for the remaining costs.

12.3 Billing Procedure. PSCo shall bill Boulder for the actual costs incurred under this Interconnection Agreement consistent with the procedures set forth in Section 7 of the Tariff. Payment of an invoice shall not relieve the paying Party from any responsibilities or obligations it has under this Interconnection Agreement, nor shall such payment constitute a waiver of any claims arising hereunder.

12.4 Interest on Unpaid Balances. Interest on any unpaid amounts that are past due (including amounts placed in escrow) shall be calculated in accordance with Article 12 of the Tariff.

12.5 Billing Disputes. If all or part of any bill is disputed by a Party, that Party shall promptly pay the amount that is not disputed, provide the other Party a reasonably detailed written explanation of the basis for the dispute, and request the commencement of dispute resolution pursuant to Article 20 of this Interconnection Agreement. When the amount in dispute is equal to or greater than one million dollars (\$1,000,000), the disputed amount shall be paid into an independent escrow account pending resolution of the dispute, at which time the prevailing Party shall be entitled to receive the disputed amount, as finally determined to be payable, along with interest accrued at the interest rate through the date on which payment is made, within 20 business days of such resolution. If the amount in dispute is less than one million dollars

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(\$1,000,000), the disputing Party may withhold the disputed amount or pay the disputed amount into an independent escrow account pending resolution of the dispute, at which time the prevailing Party shall be entitled to receive the disputed amount, as finally determined to be payable, along with interest accrued at the interest rate through the date on which payment is made, within 20 business days of such resolution. The Parties may elect, but are not required, to agree to alternative dispute resolution, including arbitration. Neither Party shall be responsible for the other Party's cost of collecting amounts due under this Interconnection Agreement, including attorney's fees.

ARTICLE 13 NOTICES

13.1 Notices. Any notice, demand, request, or communication required or authorized by this Interconnection Agreement shall be hand delivered or mailed by certified mail, return receipt requested, with postage prepaid, to Parties as set forth in Article 19. In addition to the obligations set forth in the preceding sentence, a Party providing notice, demand, request or communication pursuant to this Section may also provide a courtesy copy of such notice, demand, request, or communication via electronic mail, or email. Any Party may update that portion of Article 19 that pertains to such Party's address by giving written notice to the other Party of such change at any time.

ARTICLE 14 REGULATION AND MODIFICATION OF RATES

14.1 Regulation. This Interconnection Agreement is subject to the jurisdiction of the FERC.

14.2 Modification. PSCo reserves its rights under Section 205 of the Federal Power Act to unilaterally make applications to FERC for modification of the rates, terms, conditions, classification of service, rule, or regulation for any service the PSCo provides under this Interconnection Agreement and the attachments hereto over which FERC has jurisdiction. Boulder reserves its rights under Section 206 of the Federal Power Act to unilaterally make application to FERC for modification of the rates, terms, conditions, classification of service, rule, or regulation for any service provided under this Interconnection Agreement and the attachments hereto over which FERC has jurisdiction.

ARTICLE 15 ASSIGNMENT

15.1 Successors and Assigns. This Interconnection Agreement shall be binding upon the respective Parties, their successors and permitted assigns, on and after the Effective Date hereof.

15.2 Assignment Restrictions. This Interconnection Agreement may be assigned by either Party only with the written consent of the other; provided however, that either Party may assign this Interconnection Agreement without the consent of the other Party to any Affiliate of the assigning Party with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this Interconnection Agreement; and, provided further, that Boulder shall have the right to assign this Interconnection Agreement,

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without the consent of Transmission Provider, for collateral security purposes to aid in providing financing, provided that Boulder promptly notifies Transmission Provider of any such assignment. Any financing arrangement entered into by Boulder pursuant to this Article 15 will provide that prior to or upon the exercise of the secured Party's, trustee's or mortgagee's assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify Transmission Provider of the date and particulars of any such exercise of assignment right(s). Any attempted assignment that violates this Article 15 is void and ineffective. Any assignment under this Interconnection Agreement shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. Where requested, consent to assignment will not be unreasonably withheld, conditioned or delayed.

ARTICLE 16 INSURANCE

16.1 Applicability. If the interconnection customer is a municipality, city, county, town, public authority or other political subdivision that qualifies for statutory limitations on liability under Applicable Law, the interconnection customer shall procure and maintain, at its own expense, insurance coverages in accordance with the requirements set forth in Appendix F as applicable to Colorado. In all other circumstances, the interconnection customer shall comply with the requirements set forth in Section 16.2.

16.2 Insurance. Each Party shall, at its own expense, maintain in force until this Interconnection Agreement is terminated and until released by the other Party, the following insurance coverages, with insurers authorized to do business in the state where the Point of Change of Ownership is located:

(a) Employer's Liability and Workers' Compensation Insurance providing statutory benefits in accordance with the laws and regulations of the state in which the Point of Change of Ownership is located.

(b) Commercial General Liability Insurance including premises and operations, personal injury, broad form property damage, broad form blanket contractual liability coverage (including coverage for the contractual indemnification) products and completed operations coverage, coverage for explosion, collapse and underground hazards, independent contractors coverage, coverage for pollution to the extent normally available and punitive damages to the extent normally available and a cross liability endorsement, with minimum limits of one million dollars (\$1,000,000) per occurrence/one million dollars (\$1,000,000) aggregate combined single limit for personal injury, bodily injury, including death and property damage.

(c) Comprehensive Automobile Liability Insurance for coverage of owned and non-owned and hired vehicles, trailers or semi-trailers designed for travel on public roads, with a minimum, combined single limit of one million dollars (\$1,000,000) per occurrence for bodily injury, including death, and property damage.

(d) Excess Public Liability Insurance over and above the Employers' Liability Commercial General Liability and Comprehensive Automobile Liability Insurance coverage, with a minimum

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combined single limit of ten million dollars (\$10,000,000) per occurrence/ten million dollars (\$10,000,000) aggregate.

(e) The Commercial General Liability Insurance, Comprehensive Automobile Insurance and Excess Public Liability Insurance policies shall name the other Party, its parent, associated and Affiliate companies and their respective directors, officers, agents, servants and employees ("Other Party Group") as additional insured. All policies shall contain provisions whereby the insurers waive all rights of subrogation in accordance with the provisions of this Interconnection Agreement against the Other Party Group and provide 30 calendar days advance written notice to the Other Party Group prior to the anniversary date of cancellation or any material change in coverage or condition.

(f) The Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance and Excess Public Liability Insurance policies shall contain provisions that specify that the policies shall apply to such extent without consideration for other policies separately carried. Each Party shall be responsible for its respective deductibles or retentions.

(g) The Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance and Excess Public Liability Insurance policies, if written on a Claims First Made Basis, shall be maintained in full force and effect for two (2) years after termination of this Interconnection Agreement, which coverage may be in the form of tail coverage or extended reporting period coverage if agreed by the Parties.

(h) The requirements contained herein as to the types and limits of all insurance to be maintained by the Parties are not intended to and shall not in any manner, limit or qualify the liabilities and obligations assumed by the Parties under this Interconnection Agreement.

(i) Within 10 days following execution of this Interconnection Agreement, and as soon as practicable after the end of each fiscal year or at the renewal of the insurance policy and in any event within 90 days thereafter, each Party shall provide certification of all insurance required in this Interconnection Agreement, executed by each insurer or by an authorized representative of each insurer.

(j) Notwithstanding the foregoing, each Party may self-insure to meet the minimum insurance requirements of subsections (a)-(h) of this Section 16.2 to the extent the Party maintains a self-insurance program; provided that, such Party's senior secured debt is rated at investment grade or better by Standard & Poor's and that its self-insurance program meets the minimum insurance requirements set forth in subsections (a)-(h) of this Section 16.2. For any period of time that a Party's senior secured debt is unrated by Standard and Poor's, such Party shall comply with the insurance requirements set forth in subsections (a)-(i) of this Section 16.2. In the event that a Party is permitted to self-insure pursuant to this Article, it shall notify the other party that it meets the requirements to self-insure and that its self-insurance program meets the minimum insurance requirements in a manner consistent with that specified in this Section 16.2.

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(k) The Parties agree to report to each other in writing as soon as practicable all accidents or occurrences resulting in injuries to any person, including death, and any property damage arising out of this Interconnection Agreement.

(l) In the event an interconnection customer is a municipality or other governmental entity, the interconnection customer will be subject to the insurance coverage obligations set forth in Appendix F as applicable in Colorado in lieu of the insurance obligations set forth in this Section 16.2.

ARTICLE 17

CONSEQUENTIAL DAMAGES, INDEMNITY AND RISK OF LOSS

17.1 Waiver of Consequential Damages. In no event shall one Party, its governing board members, officers, employees or agents be liable to the other Party under this Interconnection Agreement from any cause howsoever arising in contract, tort or otherwise for any indirect, incidental, special, punitive, exemplary, or consequential damages, including but not limited to, loss of use, loss of revenue, loss of profit, and/or cost of replacement power, interest charges, cost of capital, claims of its customers to which service is made; provided however, that damages for which a Party may be liable to the other Party under another agreement will not be considered to be special, indirect, incidental, punitive, exemplary or consequential damages hereunder.

17.2 Indemnity. Each Party shall at all times indemnify, defend and hold harmless the other Party, its shareholders, members, partners, Affiliates, employees, consultants, representatives, agents, successors and permitted assigns ("Indemnified Party") from any and all liability, damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's ("Indemnifying Party") negligence, or action or inactions of its obligations under this Interconnection Agreement, except in cases of negligence, gross negligence or intentional wrongdoing by the Indemnified Party. Nothing in this Section 17.2 shall relieve PSCo or Boulder of any liability to the other for any breach of this Interconnection Agreement.

(a) If an Indemnified Party is entitled to indemnification under this Section 17.2 as a result of a claim by a third party, and the Indemnifying Party fails, after notice and reasonable opportunity to proceed, to assume the defense of such claim, the Indemnified Party may at the expense of the Indemnifying Party contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.

(b) If an Indemnifying Party is obligated to indemnify and hold any Indemnified Party harmless under this Section 17.2, the amount owing to the Indemnified Party shall be the amount of such Indemnified Party's loss net of any insurance or other recovery.

(c) Promptly after receipt by an Indemnified Party of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided in this Section 17.2 may apply, the Indemnified Party shall notify the Indemnifying Party of such fact. Any failure of or delay in such notification shall not affect the

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Indemnifying Party's obligation to indemnify the Indemnified Party unless such failure or delay is materially prejudicial to the Indemnifying Party.

(d) In the event Indemnifying Party is a municipality or other governmental entity, Indemnifying Party will be subject to the indemnification obligations set forth in Appendix F in lieu of the indemnification obligations set forth in this Section 17.2.

17.3 Risk of Loss. Except under situations of negligence, gross negligence, or intentional wrong-doing by the other Party, each Party shall have the full risk of loss for its own property and material, and each Party shall (subject to Article 16) obtain and maintain insurance coverage accordingly under its own insurance and risk management procedures. To the extent permitted by each Party's insurer, at no additional cost to that Party, each Party shall require its property insurer to waive the right of subrogation. Each Party shall have title and risk of loss for those materials or capital equipment purchased for its ownership by the other Party as an authorized agent under this Interconnection Agreement confirmed by written confirmation and approval of supplier, specifications, equipment warranty, delivery and installation arrangements (the principal being entitled to any sales tax exemptions). All such equipment and materials will be inspected by the purchasing agent Party upon delivery and damaged or nonconforming equipment or materials will be rejected and returned to the seller upon consultation and agreement with the Party for whom the equipment was purchased.

ARTICLE 18 DEFAULT AND TERMINATION

18.1 Default by Boulder.

(a) In the event Boulder fails, for any reason other than a billing dispute as described in Article 12, to make payment to PSCo on or before the due date as described herein, and such failure of payment is not cured within 30 calendar days after PSCo notifies Boulder of such failure, a default by Boulder shall be deemed to exist.

In the event of an uncured default by Boulder for nonpayment, except when nonpayment is the subject of a billing dispute as provided in Section 12.5, PSCo may initiate a proceeding with the FERC to terminate service but shall not terminate service until the FERC so approves any such request. In the event of a billing dispute between PSCo and Boulder, PSCo will continue to provide service under this Interconnection Agreement as long as Boulder (1) continues to make all payments not in dispute, and (2) subsection to Section 12.5, pays into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If Boulder fails to meet these two requirements for continuation of service, then PSCo may provide notice to Boulder of its intention to suspend service in accordance with the Tariff or FERC policy.

(b) Boulder shall also be in default if it materially breaches any other provision of this Interconnection Agreement and fails to cure any such breach within 30 days after written notice by PSCo of the existence and nature of such alleged breach.

(c) If Boulder assigns its interests under this Interconnection Agreement to a bank, lender or other financial institution for purposes of obtaining financing ("Financing Party"), and Boulder

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notifies PSCo of this assignment and the information necessary for PSCo to contact Financing Party, then PSCo shall also notify Financing Party of any breach or default by Boulder under this Interconnection Agreement at the same time as it notifies Boulder of such breach or default. If Financing Party elects to cure the breach or default, by payment or otherwise, then PSCo agrees to accept such cure by Financing Party as if the same had been affected by Boulder.

18.2 Default by PSCo. PSCo shall be considered in default if it fails to make any payment due to Boulder hereunder, or fails to cure any material breach, within 30 days after written notice of nonpayment or material breach from Boulder.

18.3 Termination for Default. Should a Party fail to cure a default within the applicable cure period, and the default is not contested pursuant to the dispute resolution process provided in Article 20 or other legal processes, the non-defaulting Party shall have the right to terminate this Interconnection Agreement subject to FERC approval and other defenses by giving written notice to the Party in default, and be relieved of any further obligation hereunder, and whether or not the non-defaulting Party terminates this Interconnection Agreement, to recover from the defaulting Party all amounts due hereunder, plus all other damages and remedies to which the non-defaulting Party is entitled subject to the limitations set forth in Article 17 of this Interconnection Agreement. The provisions of this Article 18 shall survive termination of this Interconnection Agreement.

ARTICLE 19 CONTACTS

Contacts for this Interconnection Agreement are as follows:

Public Service

Contacts to be determined after the Proceed Date.

City of Boulder

Contacts to be determined after the Proceed Date.

ARTICLE 20 DISPUTE RESOLUTION

20.1 Disputes will first be submitted to the Authorized Representatives for consideration. In the event that a dispute cannot be resolved by the Authorized Representatives, the dispute shall be submitted to the Parties' management. If the dispute cannot be resolved by the Parties' management, then the dispute may, if the Parties agree, be submitted to arbitration under Section 12.5 of this Interconnection Agreement. Alternatively, the dispute may be filed in the Denver District Court, or if that court does not have jurisdiction, such other court that does have jurisdiction.

20.2 In the event of arbitration, each Party shall select one arbitrator. The two selected arbitrators shall hear the arbitration. Arbitration must be commenced within six (6) months of

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when the disputed matter was submitted to arbitration. The arbitrators shall have discretion to establish discovery, hearing schedules, and arbitration procedures. The arbitrators may afford the Parties any or all of the discovery rights provided for in the Colorado Rules for Civil Procedure. Unless otherwise specified in this Interconnection Agreement, arbitration shall be governed under the rules and procedures of the American Arbitration Association. Arbitration shall be binding on the Parties. Arbitration shall be in Boulder or Denver, Colorado.

20.3 Disputed items that involve a claimed overpayment by Boulder which are resolved in Boulder's favor in arbitration, shall be paid back with interest at the prime rate charged by the Wells Fargo Bank West, National Association, or its successor, plus two percent (2%) applied to late payments on a daily basis, based on a 365 day year.

20.4 Costs for the arbitration procedure and payment to the arbitrators shall be divided equally by the Parties to the arbitration. Each Party shall be responsible for its own attorney costs, discovery costs, and other associated costs incurred as a result of arbitration.

ARTICLE 21 CONFIDENTIAL INFORMATION

21.1 Furnishing of Information. The Parties recognize that the successful operation of this Interconnection Agreement depends upon the cooperation by the Parties in the operation of their systems. As a part of such cooperation, subject to the limitations regarding disclosing Confidential Information provided in this Interconnection Agreement, each Party agrees that it will furnish to the other Party such data concerning its system as may be necessary to support the other Party's system reliability.

21.2 Confidential Information.

(a) "Confidential Information" means (1) any confidential, proprietary or trade secret information of a plan, specification, pattern, procedure, design, device, drawing, list, concept, customer information, policy or compilation relating to the present or planned business of a Party, which is designated as Confidential Information by the Party supplying the information, whether conveyed orally, electronically, in writing, through inspection, or otherwise; or (2) any Critical Energy Infrastructure Information. Confidential Information which includes, without limitation, all information relating to a Party's technology, research and development, business affairs, and pricing, and any information supplied by a Party to another Party on a confidential basis prior to the execution of this Interconnection Agreement.

(b) Confidential Information shall not include information that the receiving Party can demonstrate: (1) is generally available to the public other than as a result of a disclosure by the receiving Party; (2) was in the lawful possession of the receiving Party on a non-confidential basis before receiving it from the disclosing Party; (3) was supplied to the receiving Party without restriction by a third party, who, to the knowledge of the receiving Party, was under no obligation to the other Party to keep such information confidential; (4) was independently developed by the receiving Party without reference to Confidential Information of the disclosing Party; or (5) is, or becomes, publicly known, through no wrongful act or omission of the receiving Party or breach of this Interconnection Agreement.

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Information designated as Confidential Information will no longer be deemed confidential if the Party that designated the information as Confidential Information notifies the other Parties that such information no longer is confidential.

(c) Information is Confidential Information only if it is clearly designated or marked in writing as confidential on the face of the document; or, if the information is conveyed orally or by inspection, the Party providing the information orally informs the receiving Party that the information is confidential. Each Party shall be responsible for clearly designating or marking information governed by FERC's Critical Energy Infrastructure Information rules and regulations.

21.3 Protection of Confidential Information.

(a) No Party shall disclose any Confidential Information of the other Party obtained pursuant to or in connection with the performance of this Interconnection Agreement to any third party without the express written consent of the providing Party; provided however, that any Party may produce Confidential Information in response to a subpoena, discovery request or other compulsory process issued by a judicial body or Governmental Authority upon reasonable notice to the providing Party that (1) a protective order from such jurisdictional judicial body or court has been issued relating to the Confidential Information; and (2) a binding nondisclosure agreement is in effect with a proposed recipient of any Critical Energy Infrastructure Information.

(b) The Parties shall use at least the same standard of care to protect Confidential Information they receive as they use to protect their own Confidential Information from unauthorized disclosure, publication or dissemination.

(c) Any Party may use Confidential Information solely: (1) to fulfill its obligations to the other Party, under this Interconnection Agreement; (2) to fulfill its regulatory requirements except to the extent that such information constitutes or has been designated Critical Energy Infrastructure Information; (3) in any proceeding or in any administrative agency or court of competent jurisdiction addressing any dispute arising under this Interconnection Agreement, subject either to a written confidentiality agreement with all Parties (including, if applicable, an arbitrator(s)) or to a protective order; or (4) as required by Applicable Law. As it pertains to (3) and (4), notwithstanding the absence of a protective order or waiver, a Party may disclose such Confidential Information which, in the opinion of its counsel, the Party is legally compelled to disclose. In the event that the receiving Party is legally requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process, or in the opinion of its counsel, by federal or state securities or other statutes, regulations or laws) to disclose any Confidential Information, the receiving Party shall, to the extent permitted under Applicable Law, promptly notify the disclosing Party of such request or requirement prior to disclosure, so that the disclosing Party may seek an appropriate protective order and/or waive compliance with the terms of this Interconnection Agreement and shall request confidential treatment of any such disclosure.

(d) The Parties agree that monetary damages by themselves may be inadequate to compensate a Party for the other Party's breach of its obligations under this Article. Each Party

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accordingly agrees that the other Parties are entitled to equitable relief, by way of injunction or otherwise, if it breaches or threatens to breach its obligations under this Article.

21.4 Survival. The confidentiality obligations of this Article shall survive termination of this Interconnection Agreement for a period of two (2) years.

ARTICLE 22 MISCELLANEOUS

22.1 Third Party Contracts. The Parties recognize that each has entered into and may in the future enter into contractual commitments with various third parties regarding benefits, use and operation of network transmission facilities it owns within the interconnected regional transmission network. Each Party hereby covenants that its respective contracts with third parties shall not interfere with its obligations to the other Party made under this Interconnection Agreement.

22.2 No Residual Value. This Interconnection Agreement shall not be construed to provide any residual value to either Party or its successors or permitted assigns or any other party, for rights to, use of, or benefits from the other Party's system following expiration of this Interconnection Agreement.

22.3 No Third-Party Beneficiary. Unless otherwise specifically provided in this Interconnection Agreement, the Parties do not intend to create rights in or to grant remedies to any third Party as a beneficiary of this Interconnection Agreement or of any duty, covenant, obligation or undertaking established hereunder.

22.4 Headings. Article headings and titles are included for the convenience of Parties and shall not be used to construe the meaning of any provision of this Interconnection Agreement.

22.5 Governing Law. This Interconnection Agreement shall be interpreted and governed by the laws of the state of Colorado, or the laws of the United States of America, as applicable.

22.6 No Joint System. The Parties each own and operate separate interconnected electric systems, and no provision of the Interconnection Agreement shall be interpreted to mean or imply the Parties have established or intend to establish a jointly owned electric system, a joint venture, trust, a partnership, or any other type of association.

22.7 Amendment. Except as provided in Section 11.2, any amendment, alteration, variation, modification or waiver of the provisions of this Interconnection Agreement, other than revisions to the attachments authorized by this Interconnection Agreement, shall be valid only after it has been reduced to writing and duly signed by both Parties, and if required, approved by the appropriate regulatory bodies.

22.8 Conflicts. In the event any term of this Interconnection Agreement conflicts with the Tariff, the terms of this Interconnection Agreement shall control.

22.9 Waiver. The failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this Interconnection Agreement, or to take

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advantage of any of its rights thereunder, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.

22.10 Counterparts. This Interconnection Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

22.11 Severability. If any governmental authority or court of competent jurisdiction holds that any provision of this Interconnection Agreement is invalid, or if, as a result of a change in any Federal or State law or constitutional provision, or any rule or regulation promulgated pursuant thereto, any provision of this Interconnection Agreement is rendered invalid or results in the impossibility of performance thereof, the remainder of this Interconnection Agreement not affected thereby shall continue in full force and effect. In such an event, the Parties shall promptly renegotiate in good faith new provisions to restore this Interconnection Agreement as nearly as possible to its original intent and effect.

IN WITNESS WHEREOF, the Parties hereto have caused this Leggett, Sunshine, and WWTP Substation Transmission to Load Interconnection Agreement to be duly executed the day and year first written above.

(Signature blocks on following page)

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CITY OF BOULDER,
a Colorado home rule city

City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney's Office

Date _____

PUBLIC SERVICE COMPANY OF COLORADO
Ian R. Benson
Area Vice President, Transmission and Strategic Initiatives
Xcel Energy Services Inc.
As Agent for Public Service Company of Colorado

Date _____