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RES

Jefferson County, Colorado

RESOLUTION NO. 1804

**A RESOLUTION OF THE GOLDEN CITY COUNCIL
AUTHORIZING THE EXECUTION OF AN ANNEXATION
AGREEMENT WITH PUBLIC SERVICE COMPANY OF
COLORADO**

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WHEREAS, Jefferson County and Public Service Company of Colorado (Annexors) have jointly filed a petition to annex certain properties to the City of Golden, Colorado; and

WHEREAS, the City of Golden, Colorado, is in the process of determining whether the annexation is appropriate, and if so, the separate zoning that should apply to the properties; and

WHEREAS, the City and Annexors wish to separately agree as to certain conditions and provisions under which the properties may be annexed in the event that the City determines annexation is appropriate.

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GOLDEN, COLORADO:

The Mayor is authorized to execute on behalf of the City of Golden, an Annexation Agreement with Public Service Company of Colorado, the substance of said annexation agreement substantially complying with the agreement attached hereto as Exhibit 1.

Adopted this 25th day of October, 2007.



Charles J Baroch
Charles J Baroch
Mayor

ATTEST:

Andrea L. Banks, Deputy
Susan M. Brooks, MMC
City Clerk

APPROVED AS TO FORM:

James A. Windholz

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James A. Windholz
City Attorney

Resolution No. 1804
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I, Andrea L. Banks, Deputy City Clerk of the City of Golden, Colorado, do hereby certify that the foregoing is a true copy of a certain Resolution adopted by the City Council of the City of Golden, Colorado at a rescheduled regular meeting thereof held on the 25th day of October, A.D., 2007.

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ATTEST: Andrea L. Banks
Andrea L. Banks, Deputy City Clerk of the
City of Golden, Colorado

ANNEXATION AGREEMENT

This Agreement is effective the 25th day of October, 2007, by and between **Public Service Company of Colorado**, a Colorado corporation, successor by merger to Colorado Central Power Company ("Annexor") and the **City of Golden**, a Colorado home rule municipal corporation ("City").

WHEREAS, the Annexor holds fee title to one hundred percent of the property described in Exhibit A, attached hereto, (hereinafter the "Annexation Property"); and

WHEREAS, the Annexor desires that the Annexation Property described be annexed to and be subject to the jurisdiction of the City, upon and subject to the terms and conditions set forth herein, all of which conditions are agreeable to the Annexor; and

WHEREAS, Annexor has filed or intends to file a Petition to Annex the Annexation Property to the City; and

WHEREAS, the parties desire to include in this Agreement certain provisions, understandings and agreements regarding the Annexation Property and its annexation.

THEREFORE, in consideration of the recitals, premises, mutual covenants and agreements herein contained, the parties agree as follows:

1. Annexation. The annexation of the Annexation Property shall be in accordance with the Colorado Municipal Annexation Act of 1965, C.R.S. §31-12-101 *et seq.*, as amended, the Golden Municipal Code and all applicable laws.

2. Zoning. Annexor has requested that the Annexation Property be zoned Conservation (CO) as described in the Golden Municipal Code. Initial zoning of the Annexation Property shall be considered simultaneously with the Petition for Annexation by the City as allowed by the Colorado Municipal Annexation Act of 1965. If for any reason the City fails or is unable to approve and implement the above zoning designation, Annexor shall have the unequivocal right to commence proceedings to de-annex or disconnect the Annexation Property, or so much of it as may then be owned by, or subject to easements in favor of, Annexor, from the City and the City agrees to cooperate with and exercise its best efforts to effectuate such de-annexation or disconnection. "Finally approve and implement" means there are no challenges to or appeals of the zoning approval pending in any court of competent jurisdiction, that no referendum or associated type of procedure is pending that could derogate the zoning, and that all periods for the initiation of any challenge, appeal or referendum have expired.

3. Application of City Laws; City Services. Except as expressly provided herein, all city ordinances, regulations, codes, policies and procedures in existence and as the same may change from time to time, shall be applicable to the use and development of the Annexation Property, upon annexation. Upon annexation, the City shall provide all customary municipal services to the Annexation Property, to the same extent and upon the same terms and conditions as such services are

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provided to other properties throughout the City.

4. Fees and Costs. The City shall pay the application and document preparation fees for annexation and zoning of the Annexation Property.

5. City Utilities. If requested by Annexor, the City shall provide water and wastewater services to the Annexation Property, upon the effective date of the annexation ordinance for such property. Water and wastewater services will be provided for properties annexed to the City, upon satisfaction of all of the requirements of Chapter 13 of the Municipal Code including the requirement that the property owner construct all necessary improvements which shall comply with the Golden Water and Wastewater Specifications, pay all applicable fees, and provide water rights as necessary to serve the property, or a cash fee in lieu of water rights, to the City. IX

6. School Land Dedication. No school land dedications will be assessed in conjunction with the annexation of the Annexation Property or the zoning of the Annexation Property to Conservation (CO) zone district.

7. Open Space Dedication. No open space or parkland dedication requirements, or fees in lieu thereof, will be assessed to Annexor in conjunction with the annexation or zoning of the Annexation Property to Conservation (CO) zone district.

8. Public Improvements. Annexor shall have no obligation with respect to the development of public improvements on, or in connection with, the annexation or zoning of the Annexation Property to Conservation (CO) zone district.

9. Special Districts. Upon annexation, the City may, at its option, initiate actions necessary to assure exclusion of the Annexation Property from any and all special districts that provide municipal services to the Annexation Property of a type that the City provides to its citizens. The City shall bear the related costs and legal fees for said exclusion, including any amounts as may be required to pay to any special district to effectuate exclusion if the exclusion proceedings are initiated within 12 months of the effective date of the annexation.

10. Assignment. The rights, duties and obligations of the Annexor hereunder may be assigned to another person or entity only with the consent of the City. In such event, the assignee shall assume all of the rights, duties and obligations of the Annexor hereunder and the Annexor shall be correspondingly relieved from all such liabilities, duties and obligations.

11. Notices. All notices, demands or other documents required or desired to be given to either party under this Agreement shall be made in writing and shall be deemed effective upon receipt and shall be personally delivered or mailed by certified mail as follows:

City: City Manager
City of Golden
911 - 10th Street
Golden, CO 80401

Annexor: Public Service Company of Colorado
550 15th Street, Suite 700
Denver, CO 80202
Attn: Manager Siting and Land Rights

with a copy to:

Faegre & Benson, LLP
3200 Wells Fargo Center
1700 Lincoln Street
Denver, CO 80203
Attn: Diane Davies, Esq.

12. Severability. If any covenant, stipulation or obligation of this Agreement is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of the Agreement. The parties hereby declare that they would have entered into this Agreement and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

13. Binding Effect of Agreement. This Agreement shall inure to the benefit of and be binding upon the successors and the assigns of the respective parties and, unless otherwise provided herein, shall run with the land. This Agreement shall be recorded in the records of the Clerk and Recorder of Jefferson County, State of Colorado, at the City's expense. The parties covenant and agree that they will cooperate with each other in accomplishing the terms, conditions and provisions of the Agreement, and will execute such additional documents as necessary to effectuate the same.

14. Third Parties. The covenants, stipulations and agreements contained in this Agreement are and shall be for the sole and exclusive benefit of the parties hereto and their respective successors and assigns, and nothing in this Agreement, express or implied, is intended nor shall be construed of confer upon or give any other person any rights, remedy or claim under or by reason of the Agreement.

15. Police Power. Nothing contained in the Agreement shall constitute or be interpreted as a repeal of existing codes or ordinances or as a waiver or release of the City's legislative, governmental or police powers to promote and protect, the health, safety, morals or general welfare of the municipality or its inhabitants. This Agreement shall not prohibit the enactment by the City of any fee, ordinance, resolution, rule or regulation which is of uniform and general application.

16. Remedies. It is understood and agreed by the parties that they shall have all available remedies for breach of this Agreement in law or in equity, including but not limited to specific

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performance and damages. In the event of litigation related to this Agreement, the prevailing party shall be awarded its costs, expert fees and legal fees.

17. Disconnection. In the event the Annexation Property or any portion thereof is disconnected from the City at the Annexor's request, the City shall have no obligation to serve the disconnected Annexation Property. 4

18. Referendum. If the annexation of the Annexation Property or any portion thereof is challenged by a referendum, all provisions of this Agreement, together with the duties and obligations of each party, shall be suspended pending the outcome of the referendum election. If the referendum challenge to the annexation results in disconnection of the Annexation Property from the City, then this Annexation Agreement shall be null and void and of no further effect. If the referendum challenge fails, then the Annexor and the City shall continue to be bound by the annexation of the Annexation Property.

19. Court Order. In the event that the annexation of the Annexation Property, or any portion thereof, is voided by Final Action ("Final Action" means that no appeal can be made or the time to appeal has expired) of a court of proper jurisdiction (such Final Action not being associated with referendum or initiative matters), the City and the Annexor shall cooperate to cure the legal defect which resulted in disconnection of the Annexation Property, and upon such cure the Annexation Agreement shall be deemed to be an agreement to annex the Property to the City pursuant to the Colorado Municipal Annexation Act of 1965. The Annexor shall reapply for annexation when the initial Annexation Property becomes eligible for annexation as determined by the City.

20. Entire Agreement. This Agreement contains the entire agreement between the parties and shall not be amended except by written agreement executed with the same formality of this Agreement.

21. Choice of Law; Venue. This Agreement shall be governed by the laws of the State of Colorado with venue in the County of Jefferson.

(signature page follows)

ANNEXOR:

Public Service Company of Colorado,
a Colorado corporation

By: *Peter West*

Name: Peter West

Its: Managing Director, Local Affairs

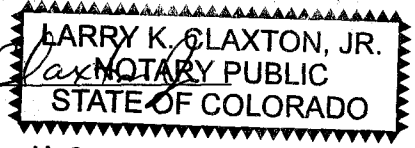
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STATE OF COLORADO)
)ss.
COUNTY OF Denver)

The foregoing Annexation Agreement was signed and sworn to before me by
Peter West this 23rd day of January, 2007.

Witness my hand and official seal.

Notary Public: *Larry K. Claxton, Jr.*
My Commission Expires.



My Commission Expires 02/25/2007

CITY OF GOLDEN:

By: *C. J. Baroch*
Charles J. Baroch
Mayor



WITNESSED:
Andrew L. Banks, Deputy
Susan M. Brooks, MMC
City Clerk

Exhibit A

Legal Description

Those parcels of property located in the County of Jefferson, State of Colorado, as described in Book 2146 Pages 352-358, Book 1751 Pages 765-766, and Book 1281 Pages 553-554 of the records of the Jefferson County Clerk and Recorder.

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