

XLE04PLA

TYPE OF RECORD:	NON-PERMANENT
CATEGORY OF RECORD:	CONTRACT
NAME OF CONTRACTOR:	PUBLIC SERVICE COMPANY D/B/A XCEL ENERGY
SUBJECT/PROJECT:	POLE LICENSE AGREEMENT, LICENSING CERTAIN PROPERTY INTERESTS AS DESIGNATED IN THE APPENDED POLE PERMIT APPLICATION ("PPA") LOCATED WITHIN THE CITY LIMITS
CITY DEPARTMENT:	UTILITIES AND STREETS
YEAR:	2004
EXPIRATION DATE:	ANNUAL RENEWAL UNTIL SUPERSEDED
DESTRUCTION DATE:	TO BE DETERMINED

POLE LICENSE AGREEMENT

THIS POLE LICENSE AGREEMENT ("Agreement") is entered into as of the 10th day of November 2004 by and between Public Service Company of Colorado d/b/a Xcel Energy ("Xcel Energy") and The City of Grand Junction ("City"), for the licensing of certain property interests as designated in the appended Pole Permit Application ("PPA") to this Pole License Agreement pursuant to the following terms:

RECITALS

WHEREAS, Xcel Energy owns poles ("Poles") for providing electrical services to Xcel Energy's customers within the City of Grand Junction;

WHEREAS, City wishes to lease from Xcel Energy on a non-exclusive basis certain portions of Xcel Energy's Poles for the purpose of attaching certain communications equipment ("Equipment") to said Poles within the City of Grand Junction to provide emergency services for City.

WHEREAS, Xcel Energy is willing to permit the location of said Equipment on the Poles for the purpose of providing emergency communications services throughout the City of Grand Junction;

NOW THEREFORE, in consideration of the mutual covenants contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. USE.

- 1.1 Use of Poles. The use of Xcel Energy's Poles which, upon application, may be given to City under this license, is for the attachment of City's Equipment within the communication space on such Poles, to allow for the provision of emergency services for the City and for no other purpose.
- 1.2 Pole Permit Application (PPA). City shall prepare a PPA on the form marked Exhibit A, attached hereto, and made a part hereof, when applying for permission to make Equipment attachments to any Pole owned by Xcel Energy. A PPA is intended to provide Xcel Energy with information necessary for a technical review of the Pole prior to permitting City to attach to that Pole. A PPA shall include the specifications for the Equipment the City is requesting to attach, a map showing the location of the Poles the City desires to attach to, and the pole number of each Pole. The PPA shall also include any additional information that Xcel Energy may reasonably require. City shall reimburse Xcel Energy for all costs and expenses associated with the field review of the PPA and any make-ready costs that may be necessary to allow for the attachment of City Equipment. City shall not attach any Equipment to any Pole without the prior written approval of Xcel Energy.

- 1.3 Installation, Construction, Improvements, Maintenance, and Repairs. Upon written receipt of an approved PPA, the City may attach its Equipment to the Poles as described in the PPA. City's Equipment, in each and every location shall be erected, installed, maintained and removed in accordance with the requirements and specifications of Xcel Energy, the National Electric Safety Code, Current Edition, or any revisions thereof, and other generally applicable engineering standards and in compliance with any applicable rules, regulations or orders now in effect or hereafter issued by any federal or state commission or any other public authority having jurisdiction. Exhibit B, "Communications Attachments to Xcel Energy Distribution Facilities", covers construction and operating practices to be observed by City. Said practices may be revised from time to time as changes in operating conditions and experience warrant.
- 1.4 Operation. City must, at City's sole expense, comply with all laws, orders, ordinances, regulations and directives of applicable federal, state, county, and municipal authorities or regulatory agencies, including, but not limited to, the Federal Communications Commission ("FCC"), the Federal Energy Regulatory Commission ("FERC"), the Occupational Safety and Health Administration ("OSHA"), the National Electric Safety Code ("NESC") and the National Electrical Code ("NEC"), as they relate to the operation of City's Equipment and the use of Xcel Energy's Poles.
- 1.5 No Modification. City shall not modify or change the position of its Equipment attachments or place any additional facilities on the attachment or the strand that is supported by the attachment, except with the express written consent of Xcel Energy.
- 1.6 Removal. City may at any time remove its Equipment from any Pole or Poles for which it has an approved PPA. City shall first remove all of its Equipment from said Pole or Poles and then notify Xcel Energy of such removal by submitting an appropriately completed PPA indicating the Pole or Poles that are affected by the removal.
- 1.7 Subordination. Nothing in this Agreement shall be construed to in any way deny, prohibit or interfere with Xcel Energy's rights and ability to utilize its Poles for the furnishing of services to its customers. All rights of City hereunder are subject and subordinate to Xcel Energy's rights to utilize its Poles. If at any time Xcel Energy determines that a Pole or space on a Pole occupied by City Equipment is required for the sole use of Xcel Energy or is no longer suitable for attachment of the City's Equipment because of safety or other considerations, City must, at City expense, comply with orders from Xcel Energy to rearrange, remove, or transfer its Equipment at City's sole expense. Failure to comply within 30 days may result in either rearrangement, removal, or transferring of City's Equipment by Xcel Energy at City's sole expense.
- 1.8 Identification Tags. City must attach to its Equipment, at each and every attachment, an identification tag meeting specifications determined by Xcel Energy. The identification tag must conform to an alphanumeric code which will be provided by Xcel Energy to City.

2. **LAND RIGHTS.** Xcel Energy does not warrant or extend to the City any right of way privileges or easements in either the public highway or the private property of third parties. Any required land rights or permits shall be the responsibility of the City. Xcel Energy agrees to reasonably cooperate with City, at City's expense, in executing such documents or applications required in order for City to obtain such licenses, permits or other governmental approvals needed for City's permitted use of the Poles.

3. **TERM.** The initial term of this Pole License Agreement and all PPAs made a part thereof shall be for one year commencing on the date of this Agreement and shall be automatically renewed for one (1) year terms thereafter unless either party provides the other with written notice of non-renewal not less than ninety (90) days prior to the expiration of the initial term or any renewal term thereafter, unless otherwise terminated in accordance with this Agreement.

4. **TERMINATION.** Xcel Energy has the right to terminate all of City's rights to the Poles licensed upon sixty (60) days prior written notice to City if Xcel Energy is prohibited by any governmental entity from continued use of the Pole during the term of this Pole License Agreement, if Xcel Energy's right to occupy the Pole is terminated, if Xcel Energy determines to abandon or underground the Pole, or if any Equipment placed on the Pole by City unreasonably interferes with Xcel Energy's ability to improve, modify or reconfigure its electric transmission or distribution system and City fails to resolve such interference within a reasonable time after receiving written notice. Notwithstanding the above, nothing herein contained shall be construed to compel Xcel Energy to maintain any of its Poles for a period longer than demanded by its own service requirements. In addition to the termination rights listed above, Xcel Energy may also terminate all of City's attachments to the Poles if City fails to pay any Fee or other sums payable by City within thirty (30) business days of City's receipt of written request for payment; or if City's Equipment are maintained or used in violation of any law, regulation, ordinance, safety or engineering standard or other legal requirement, and, if City fails to bring its Equipment into compliance with such law, regulation, ordinance, safety or engineering standard or other legal requirement within 30 days of receipt of actual notice of violation.

5. **FEES.** There will be no rental fee for the use of the Poles described in the appended Pole Permit Application(s).

6. **INSURANCE.** City shall maintain commercial general liability insurance insuring City against liability for personal injury, death or damage to personal property arising out of use of the Pole by City or its employees, its agents or Licenses, with combined single limits of not less than Two Million Dollars (\$2,000,000). City shall also maintain fire and extended coverage insurance insuring City's personal property for its full insurable value (subject to reasonable deductibles). City shall provide Licensor a certificate of insurance of such policy or policies at the time of execution of this Agreement and shall continue to provide renewal certificates as they occur.

7. **INDEMNIFICATION.** City shall indemnify Xcel Energy and save it harmless from and against any and all costs, (including reasonable attorney's fees and expenses), claims, actions, damages, liability and expense in connection with the loss of life, personal injury, and/or damage to property arising from or out of any occurrence in, upon or at the Pole caused by the fault, including negligence, of City or City's employees or agents, except to the extent caused by the negligence or willful misconduct of Xcel Energy, Xcel Energy's agents, or employees. Xcel Energy reserves the right to maintain any Pole it owns and to operate its facilities on said Poles in such manner as will best enable Xcel Energy to fulfill its service requirements. Xcel Energy shall not be liable to City for any interference with the operation of City's Equipment arising in any manner out of the use of such Poles hereunder, except for Xcel Energy's negligence or willful misconduct. Xcel Energy intends to exercise reasonable care to avoid causing damage to City's Equipment and, in the event of such damage, Xcel Energy shall immediately report its occurrence to City.
8. **ASSIGNMENT.** City has no right to assign, sublet, or otherwise transfer this Agreement, either in whole or in part, to any entity without the prior written consent of Xcel Energy.
9. **ENVIRONMENTAL MATTERS.** City will not bring to, transport across or dispose of any Environmental Hazards on any particular Pole without Xcel Energy's prior written approval except City may keep on the Poles substances used in back up power units (such as batteries and diesel generators) commonly used in PCS. City's use of any approved substances constituting Environmental Hazards must comply with all applicable laws, ordinances, and regulations governing such use.
10. **AGREEMENT.** This Agreement and each PPA constitutes the entire agreement and understanding between the parties, and supersedes all offers, negotiations and other agreements concerning the subject matter contained in this Agreement. There are no representations or understandings of any kind not set forth in this Agreement. Any amendments to this Agreement or any PPA must be in writing and executed by both parties.
11. **CAPTIONS.** The captions of this Agreement are inserted for convenience only and are not to be construed as part of this Agreement or the applicable PPA or in any way limiting the scope or intent of its provision.
12. **NOTICE.** Any notice or demand required to be given in this Agreement shall be made by certified or registered mail, return receipt requested or reliable overnight courier to the address of other parties set forth below:

Xcel Energy: Public Service Company of Colorado d/b/a Xcel Energy
 Lisa Miller, Facilities Attachment Administrator
 1123 West 3rd Avenue
 Denver, CO 80223

cc: Public Service Company of Colorado d/b/a Xcel Energy
Bruce Colt, Assistant General Counsel
800 Nicollet Mall, 29th Floor
Minneapolis, MN 55401

City: _____

cc: _____

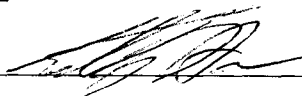
Any such notice is deemed received one (1) business day following deposit with a reliable overnight courier or five (5) business days following deposit in the United States mails addressed as required above. Xcel Energy or City may from time to time designate any other address for this purpose notice to the other party.

13. **GOVERNING LAW.** This Agreement and each PPA is governed by the laws of the State of Colorado.

14. **NOT A JOINT VENTURE.** Neither this Agreement nor any PPA establishes and shall not be construed to establish or create a partnership, joint venture, or other form of business association between City and Xcel Energy.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.


CITY

By: 

Name: Kelly Arnold

Title: City Manager

XCEL ENERGY

By: 

Name: Michael L. Swenson
President
Northern States Power Co. (WI) as
Authorized agent for Public Service Company of Colorado _____

Title: _____