**CITY OF CENTENNIAL, COLORADO**

**ORDINANCE NO. 2021-O-05**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CENTENNIAL, COLORADO, AMENDING THE GAS AND ELECTRIC FRANCHISE GRANTED BY THE CITY OF CENTENNIAL TO PUBLIC SERVICE COMPANY OF COLORADO AND AMENDING ARTICLE 5 OF CHAPTER 5 OF THE CENTENNIAL MUNICIPAL CODE ENTITLED "GAS FRANCHISE"**

WHEREAS, pursuant to Ordinance No. 2002-24, the Centennial City Council granted a Gas and Electric Franchise Agreement ("Franchise Agreement") to Public Service Company of Colorado ("PSCo") and the Franchise Agreement was codified as Article 5 of Chapter 5 of the Centennial Municipal Code; and

WHEREAS, the Franchise Agreement will expire on May 31, 2022, unless extended by mutual agreement of the City and PSCo (collectively, the "Parties"); and

WHEREAS, the Parties are in the process of negotiating the terms of a new or renewal franchise agreement but have not concluded those negotiations; and

WHEREAS, the Parties agree to amend the Franchise Agreement ("Franchise Amendment") to remove certain requirements on the timing of negotiations and to extend the expiration date of the Franchise Agreement to December 31, 2022 to allow adequate time in which to conclude franchise negotiations and adopt a new or renewal franchise; and

WHEREAS, the City Council finds that the extension of the Franchise Agreement as set forth in the Franchise Amendment, attached to this Ordinance as **Exhibit 1**, is appropriate for the successful negotiation, review, consideration and adoption of a new or renewal franchise by City Council and approval by the Colorado Public Utilities Commission; and

WHEREAS, the City Council desires to approve the Franchise Amendment; and

WHEREAS, the City Council additionally finds and determines that Article 5 of Chapter 5 of Municipal Code shall be updated to reflect the Franchise Amendment.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CENTENNIAL, COLORADO, ORDAINS:**

**Section 1**. **Franchise Amendment Approval.** The City Council: (a) approves the Franchise Amendment between the City and PSCo in substantially the form attached hereto as **Exhibit 1**, (b) authorizes the City Manager and the City Attorney, in consultation with the Mayor, to make such changes as may be needed to correct any nonmaterial errors or language

that do not increase the obligations of the City, and (c) authorizes the Mayor to execute the Franchise Amendment on behalf of the City.

**Section 2. Amendment of Article 5 of Chapter 5 of the Centennial Municipal Code.** Article 5 of Chapter 5 of the Centennial Municipal Code, entitled *Gas Franchise*, shall be amended by the deletion in its entirety of Section 5-5-40, *Extension or renewal of Franchise*, and Section 5-5-40 shall be relabeled as "Reserved."

**Section 3. Severability.** If any provision of this Ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this Ordinance that can be given effect without the invalid portion, provided that such remaining portions or applications of this Ordinance are not determined by the court to be inoperable. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, despite the fact that any one or more section, subsection, sentence, clause, phrase, or portion would be declared invalid or unconstitutional.

**Section 4. Codification Amendments.** The codifier of the City's Municipal Code, Colorado Code Publishing, is hereby authorized to make such numerical and formatting changes as may be necessary to incorporate the provisions of this Ordinance within the Centennial Municipal Code.

**Section 5. Effective Date.** This Ordinance shall take effect thirty (30) days after publication following final passage.

INTRODUCED, READ, AND ORDERED PUBLISHED BY THE CITY COUNCIL OF THE CITY OF CENTENNIAL, COLORADO, UPON A MOTION DULY MADE, SECONDED AND PASSED AT ITS REGULAR MEETING HELD ON THE ___ DAY OF _____, 2021.

CITY OF CENTENNIAL

_____
By: Stephanie Piko, Mayor

Approved as to Form:

_____
For City Attorney's Office

I hereby certify that the above Ordinance was introduced to the City Council of the City of Centennial at its meeting of _____, 2021 and ordered published one time by title only in *The Centennial Citizen* newspaper on _____, 2021, and in full on the City web site in accordance with Section 2-1-110 of the Municipal Code.

ATTEST:

SEAL

By: _____
City Clerk or Deputy City Clerk

FINALLY ADOPTED, PASSED, APPROVED WITH AMENDMENTS, IF ANY, AND ORDERED PUBLISHED BY TITLE ONLY, IN *THE CENTENNIAL CITIZEN* NEWSPAPER AND IN FULL ON THE CITY WEB SITE IN ACCORDANCE WITH SECTION 2-1-110 OF THE MUNICIPAL CODE BY THE CITY COUNCIL OF THE CITY OF CENTENNIAL, COLORADO, UPON A MOTION DULY MADE, SECONDED AND PASSED AT ITS MEETING HELD ON THE ____ DAY OF _____, 2021, BY A VOTE OF _____ IN FAVOR AND _____ AGAINST.

CITY OF CENTENNIAL

By: _____
Stephanie Piko, Mayor

I hereby certify that the above Ordinance was finally adopted by the City Council of the City of Centennial at its meeting of _____, 2021, and ordered published by title only, one time by *The Centennial Citizen* newspaper on _____, 2021, and in full on the City web site in accordance with Section 2-1-110 of the Municipal Code.

ATTEST:

SEAL

By: _____
City Clerk or Deputy City Clerk

# EXHIBIT 1 – FRANCHISE AMENDMENT

**FIRST AMENDMENT TO FRANCHISE AGREEMENT**
**(CITY OF CENTENNIAL)**

This FIRST AMENDMENT TO FRANCHISE AGREEMENT ("First Amendment") is made as of May ____, 2021 by and between the City of Centennial ("City"), a Colorado home rule municipal corporation, and Public Service Company of Colorado, an Xcel Energy company, a Colorado corporation ("PSCo"). The City and PSCo are each a "Party" and collectively the "Parties."

WHEREAS, the City and PSCo are parties to that certain Franchise Agreement dated effective as of May 30, 2002 and adopted by the City by Ordinance No. 2002-24; and

WHEREAS, pursuant to the terms thereof, the Franchise Agreement will expire on May 31, 2022, unless extended by mutual agreement of the Parties; and

WHEREAS, the Parties are engaged in negotiations of a new or renewal franchise agreement, to take effect upon expiration of the Franchise Agreement, and have determined that additional time is required to complete those negotiations; and

WHEREAS, Section 2.3 of the Franchise Agreement requires that "[a] decision to renew or extend [the Franchise Agreement] shall be made by the Parties no later than 365 days before [the Franchise Agreement] is set to expire;" and

WHEREAS, the Parties have determined that additional time is required for negotiation, adoption and approval by the Colorado Public Utilities Commission of a renewal franchise agreement; and

WHEREAS, in accordance with Section 14.1 of the Franchise Agreement, the Parties desire to amend the term of the Franchise Agreement.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties hereby amend the Franchise Agreement, in accordance with Section 14.1 thereof, and agree as follows:

1. Section 2.3 of the Franchise Agreement is hereby deleted in its entirety.

2. The expiration date of the Franchise Agreement is hereby amended and extended to December 31, 2022.

3. The City shall complete such notices and take such action as is required by its Charter to adopt an ordinance extending the term of the Franchise Agreement in accordance with Section 14.1 thereof (the "Adopting Ordinance").

4. In all other respects, the Franchise Agreement is affirmed and ratified, and except as specifically modified herein, the Franchise Agreement and its terms and conditions shall remain unchanged and in full force and effect.

5. This First Amendment may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

[signature page follows]

IN WITNESS WHEREOF, the Parties have executed this First Amendment as of the date first stated above, to be effective upon adoption of the Adopting Ordinance.

**CITY OF CENTENNIAL**

_____
Stephanie Piko, Mayor, City of Centennial

ATTEST:

_____
City Clerk, City of Centennial

Approved as to Form:

_____
City Attorney, City of Centennial

**PUBLIC SERVICE COMPANY OF COLORADO**

_____
Hollie Velasquez Horvath
Senior Director
State Affairs and Community Relations