CITY COUNCIL COMMUNICATION
AGENDA ITEM 7H

City of Louisville
COLORADO ▪ SINCE 1878

SUBJECT: **RESOLUTION NO. 103, SERIES 2025 – A RESOLUTION APPROVING A SETTLEMENT AGREEMENT AND GENERAL RELEASE REGARDING THE MARSHALL FIRE LITIGATION**

DATE: **DECEMBER 16, 2025**

PREPARED BY: **KATHLEEN KELLY, CITY ATTORNEY**

PRESENTED BY: **KATHLEEN KELLY, CITY ATTORNEY**

SUMMARY:
The attached Settlement Agreement and General Release settles the City's lawsuit against Xcel for damages incurred by the City as a result of the Marshall Fire.

BACKGROUND / PRIOR DISCUSSIONS:
On November 6, 2023, the City Council retained the law firms of Baron & Budd, P.C. and Diab Chambers LLP (the "Litigation Attorneys") to represent the City in a lawsuit against Public Service Company of Colorado d/b/a Xcel Energy to recover damages incurred by the City as a result of the Marshall Fire. The lawsuit was filed by the City, Boulder County, Town of Superior, Boulder County Public Health, Boulder Valley School District, and Superior Metropolitan District No. 1 against Xcel. A separate lawsuit filed by the Colorado School Districts Self Insurance Pool was consolidated with the lawsuit filed by the City and the other local government plaintiffs (the "Public Entities").

A settlement of the lawsuit has been reached, with Xcel agreeing to pay three million dollars ($3,000,000.00) to the Public Entities in exchange for a full and final release. After payment of costs and attorney fees, the settlement funds will be distributed among the Public Entities in accordance with an allocation based on total damages incurred by each.

The City was a recipient of public assistance ("PA") funds from the Federal Emergency Management Agency ("FEMA") for damages incurred by the City due to the Marshall Fire. As a PA funds recipient, the City is obligated to take commercially reasonable measures to recoup these PA funds from third parties who may be potentially liable for the City's damages. Therefore, from these settlement funds, the City will be required to repay some amounts received from the Colorado Division of Homeland Security & Emergency Management ("CDHSEM") and the Federal Emergency Management Agency ("FEMA").

Final numbers are not yet available, but it is anticipated the City will retain approximately $222,000 to $230,000 from the settlement funds.

ANALYSIS:
Due to the complexities of proving the cause of the fire and damages from the spread of the fire, and the inherent risk of any litigation, the Litigation Attorneys have recommended the City Council approve the Settlement Agreement.

The resolution approving the settlement agreement contains a condition that both CDHSEM and FEMA approve the amounts to be recovered and paid over to them as satisfying the City's obligation to use commercially reasonable efforts to recover amounts received from CDHSEM and FEMA from potentially liable third parties. The resolution also authorizes the City Manager to approve and execute the final settlement statement on behalf of the City, which will be available after the Settlement Agreement has been executed by all Public Entities and final allocations and costs have been calculated.

2025 COUNCIL WORK PLAN:
Not on 2025 Council Work Plan.

FISCAL IMPACT:
Budgeted?: **Not Applicable**

ALTERNATIVE(S):
The City Council could choose not to approve the Settlement Agreement and proceed with the litigation. As of the date of writing of this Council Communication, all Public Entity plaintiffs except Louisville and Boulder County Public Health have approved the Settlement Agreement, and Boulder County Public Health is scheduled to act on the Settlement Agreement the day before the Louisville City Council meeting. If the City proceeds in the litigation, it will need to bear all of the costs of the litigation, which will be significant, on its own and future recovery, through another future settlement with Xcel or by prevailing at trial, is uncertain.

RECOMMENDATION:
The Litigation Attorneys and staff recommend the City Council approve Resolution No. 103, Series 2025, which will approve the Settlement Agreement

ATTACHMENT(S):
1. Resolution No. 103, Series 2025
2. Settlement Agreement and General Release

RESOLUTION NO. 103
SERIES 2025

A RESOLUTION APPROVING A SETTLEMENT AGREEMENT AND GENERAL RELEASE REGARDING THE MARSHALL FIRE LITIGATION

WHEREAS, on November 6, 2023, the City retained the services of Baron & Bud, P.C. and Diab Chambers LLC to represent it, along with other affected local governments entities (collectively, the “Public Entities”), in litigation against Public Service Company of Colorado d/b/a Xcel Energy (“Xcel”) to recover damages incurred by the City as a result of the Marshall Fire; and

WHEREAS, a proposed settlement has been reached between the Public Entities and Xcel, as set forth in that Settlement Agreement and General Release (the “Settlement Agreement”) that accompanies this resolution; and

WHEREAS, as a recipient of benefits obligated, paid or given by the Colorado Division of Homeland Security & Emergency Management (“CDHSEM”) and the Federal Emergency Management Agency (“FEMA”) relating to or arising out of the Marshall Fire, the City is obligated to use commercially reasonable efforts to recover from XCEL for costs, or anticipated costs, associated with projects funded by CDHSEM and FEMA; and

WHEREAS, the City Council desires to approve the Settlement Agreement, subject to approval by CDHSEM and FEMA of amounts recovered from Xcel on their behalf.

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

Section 1. The City Council hereby approves the Settlement Agreement and General Release (the “Settlement Agreement”) in substantially the same form as the copy of such Settlement Agreement accompanying this Resolution, conditioned upon both CDHSEM and FEMA approving the amounts recovered and to be paid over to them as satisfying the City’s obligation to use commercially reasonable efforts to recover costs from potentially liable third parties.

Section 2. The Mayor is hereby authorized to execute the Settlement Agreement on behalf of the City, and the Mayor is hereby further authorized to negotiate and approve such revisions to the Settlement Agreement as the Mayor determines are necessary or desirable for the protection of the City, so long as the essential terms and conditions of the Settlement Agreement are not altered.

Section 3. The City Manager is hereby authorized to approve and execute a settlement statement on behalf of the City documenting the City’s portion of the settlement funds received by the Public Entities pursuant to the Settlement Agreement, and the City Manager, Finance Director, and other necessary City staff are authorized to sign such other documents as may be necessary to receive the settlement funds and pay over such portions of the settlement funds as are due to CDHSEM and FEMA.

PASSED AND ADOPTED this 16th day of December, 2025.

____
Christopher M. Leh, Mayor

ATTEST:

____
Genny Kline, City Clerk

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release (the "Agreement") dated as of November 6, 2025 (the "Effective Date") is made by and between BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF BOULDER, TOWN OF SUPERIOR, CITY OF LOUISVILLE, BOULDER COUNTY PUBLIC HEALTH, SUPERIOR METROPOLITAN DISTRICT NO. 1, BOULDER VALLEY SCHOOL DISTRICT, and COLORADO SCHOOL DISTRICTS SELF INSURANCE POOL (collectively, the "Public Entities" and each a "Public Entity"), on the one hand, and Public Service Company of Colorado d/b/a Xcel Energy ("Xcel"), Teleport Communications America, LLC ("Teleport") and Qwest Corporation d/b/a CenturyLink QC ("Qwest") (together with Xcel and Teleport, the "Settling Defendants" and each a "Settling Defendant"), on the other hand. The Public Entities and Settling Defendants shall be referred to collectively as the "Parties," and each as a "Party." This Agreement is made with reference to the following facts.

This Agreement is entered to formally resolve any and all claims that the Public Entities have asserted or may assert relating to or arising from the Marshall Fire (defined below) against the Settling Defendants (collectively, the "Claims").

I. RECITALS

A. The Public Entities have made a demand upon the Settling Defendants with respect to damages (the "Demand") that allegedly resulted from the wildfire that ignited in Boulder, Colorado on December 30, 2021, and is commonly referred to as the "Marshall Fire."

B. BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF BOULDER, TOWN OF SUPERIOR, CITY OF LOUISVILLE, BOULDER COUNTY PUBLIC HEALTH, SUPERIOR METROPOLITAN DISTRICT NO. 1, BOULDER VALLEY SCHOOL DISTRICT, filed an Amended Complaint titled *Board of County Commissioners of the County of Boulder v. Public Service Company of Colorado*, Case No. 2023CV000138 in Boulder County, Colorado (the "Public Entity Complaint"), which has been consolidated in the *In re Marshall Fire Litigation*. COLORADO SCHOOL DISTRICTS SELF INSURANCE POOL filed a Complaint titled *Colorado School Districts Self Insurance Pool v. Public Service Company of Colorado*, Case No. 2023CV31092 in Boulder County, Colorado (the "CSDSIP Complaint") which has been consolidated in the *In re Marshall Fire Litigation*. The Public Entity Complaint and the CSDSIP Complaint are collectively referred to herein as "the Complaints".

C. The Settling Defendants have denied, and continue to deny, all material allegations made by the Public Entities and other plaintiffs in the *In re Marshall Fire Litigation*.

D. This Agreement is entered into solely for purposes of compromising the Claims under Colorado Rule of Evidence § 408. The Parties expressly agree and acknowledge that neither this Agreement nor any act, conduct or statement made or performed hereunder is, or may be deemed, an admission or evidence of the validity or invalidity of any allegations or Claims of the Public Entities and the Settling Defendants, nor is this Agreement or any act, conduct or statement made or performed hereunder to be construed as an admission or evidence of any wrongdoing, fault, omission, or liability. This is a settlement of a disputed matter, and the Settling Defendants specifically and expressly deny any fault or liability to the Public Entities or with respect to the Marshall Fire, but desire to resolve all Claims and issues asserted by the Public Entities relating to the Marshall Fire to avoid continuing involvement in the dispute and the significant costs associated with that continuing involvement. The Settling Defendants expressly deny violating any applicable statute, ordinance, rule, regulation, policy, order, or other law.

E. The Parties intend that this Agreement resolve any and all known or unknown Claims and disputes relating to or arising out of the Marshall Fire that are held by, or will be held by, the Public Entities in the future, between the Public Entities, on the one hand, and the Settling Defendants, on the other hand, and provide for consideration in full settlement, release, and discharge of all disputes, rights, claims, and causes of action which are, or might have been, the subject matter of the Public Entities' Claims or relate to the Marshall Fire.

F. The Public Entities' claims included monies and benefits obligated, paid or given, or sought to be obligated, paid or given, to the Public Entities from the Colorado Division of Homeland Security & Emergency Management ("CDHSEM") and the Federal Emergency Management Agency ("FEMA") relating to or arising out of the Marshall Fire, including, but not limited to, those sought under the FEMA Public Assistance (PA) grant program for Major Disaster Declaration DR-4634 ("DR-4634"). A known and current list of those projects is included in Exhibit A, attached hereto, which is subject to ongoing developments and updates as the Public Entities continue their work with FEMA and CDHSEM. In coordination with FEMA and CDHSEM, and as part of the Parties' settlement negotiations, the Public Entities sought recovery from Settling Defendants for the costs, or anticipated costs, associated with the projects included in Exhibit A. As set forth in Paragraph II.D below, it is the intention of the Parties that this settlement also satisfy all FEMA and CDHSEM's interests in those Exhibit A project costs, as to all Parties and Released Parties herein.

G. By entering into this Agreement, the Public Entities and Settling Defendants agree that the Parties' resolution of the issues raised in the Claim and Complaints, which resolution is set forth in this Agreement, is reasonable, fair, just, and in the best interests of the Public Entities, Settling Defendants and the public.

H. In an attempt to reach resolution, the Parties elected to pursue mediation before the Honorable Peter Lichtman. The Parties subsequently reached agreement, as provided herein. The foregoing recitals are an essential part of this Agreement.

II. <u>SETTLEMENT TERMS</u>

A. <u>Payment to the Public Entities by Settling Defendants</u>

In consideration for the release set forth herein, and in consideration of the rights and obligations created by this Agreement, the Parties agree to resolve all claims the Public Entities have asserted, could assert and might assert against the Settling Defendants arising out of the Marshall Fire in return for a total payment of $3,000,000 (the "Settlement Sum") on the terms set forth herein. Each Settling Defendant represents and warrants that the Settling Defendants have separately agreed to funding contributions for the Settlement Sum from Qwest, Teleport and Xcel that totals to $3 million (the "Defendant Contribution Breakdown"). If the Settling Defendants fail to pay the full Settlement Amount within thirty (30) days of the Effective Date (a "Payment Default"), each Settling Defendant is permitted and obligated to provide to Settling Plaintiffs, within one business day, the Defendant Contribution Breakdown, notwithstanding any other provision of this

Agreement or any other agreement between the parties. In the event of a Payment Default, each Settling Defendant shall be liable to Settling Plaintiffs only for the amount that such Settling Defendant agreed to contribute toward the Settlement Amount, as set forth in the Defendant Contribution Breakdown. Payment of the Settlement Sum shall be made as follows:

Payment of the Settlement Sum shall be paid to Baron & Budd PC-BB Escrow within thirty (30) days of the Effective Date. Payment shall be made by wire transfer, and such information shall be provided by Public Entities, by and through their attorneys Baron & Budd P.C. under separate cover within ten (10) days of the Effective Date. Baron & Budd P.C. and the Public Entities shall have the sole responsibility to ensure that the Settlement Sum is allocated between the Public Entities in whatever manner the Public Entities have agreed to between themselves (the "Allocation"). The Parties agree that the Settling Defendants shall have no responsibility or liability whatsoever for the allocation of the Settlement Sum between and among the Public Entities, including but not limited to the allocation of settlement payments, Public Entities' shares, and attorney's fees.

B. <u>Dismissal with Prejudice</u>

The Public Entities hereby irrevocably authorize its attorneys, Baron & Budd P.C., to execute a Request for Dismissal of Complaint dismissing the Complaints with prejudice (the "Request for Dismissals"). Counsel for the Public Entities will sign the Request for Dismissal and deliver the executed Request for Dismissal to counsel for Settling Defendants within five (5) days of the Effective Date. Settling Defendants are authorized to file the Request for Dismissal after Settling Defendants have paid the Settlement Sum as set forth in Paragraph II.A. above.

C. Released Claims

In consideration of and in return for the promises and covenants set out herein, and for other good and valuable consideration, the Public Entities, on their own behalf, and on behalf of any of their agents, representatives, employees, contractors, insurers, sureties, attorneys, administrators, predecessors, successors and assigns (collectively, the "Public Entity Releasors"), fully and forever release, acquit, and discharge Settling Defendants, their respective agents, parents, subsidiaries and affiliates, and each of their past/and or present representatives, directors, officers, shareholders, partners, managers, employees, contractors, partnerships, companies, agents, insurers,[1] sureties, attorneys, executors, heirs, administrators, trustees, members, principals, beneficiaries, predecessors, and successors to each of the foregoing (collectively, the "Settling Defendant Releasees"), and all other persons or entities who may have caused or contributed to the damages that Public Entities allegedly suffered, directly or indirectly, as a result of the Marshall Fire or are related to the Claims (collectively with the Settling Defendant Releasees, the "Released Parties"), from any and all claims, demands, contracts, losses, damages, actions, causes of action, suits, debts, promises, liabilities, obligations, costs, expenses, attorneys' fees, indemnities or duties, whether known or unknown, fixed or contingent, accrued or not yet accrued, matured or not yet matured, anticipated or unanticipated, of any kind whatsoever that arise out of or relate to, directly or indirectly,

[1] Settling Defendants' "insurers" include, without limitation: Allianz Global Risks US Insurance Company, National Casualty Company, Navigators Insurance Company, Great American Spirit Ins. Company, General Security Indemnity Company of Arizona, Endurance Specialty Insurance Ltd., Gemini Insurance Company, and Markel American Insurance Company.

the Marshall Fire, except for any rights described herein to enforce this Settlement Agreement.

In consideration of and in return for the promises and covenants set out herein, and for other good and valuable consideration, the Settling Defendants, on each of their own behalf, and on behalf of any of their agents, insurers, attorneys, and assigns (collectively, the "Settling Defendants' Releasors"), fully and forever release, acquit, and discharge the Public Entities and their officials, officers, agents, representatives, departments, agencies, employees, contractors, insurers, and attorneys (collectively, the "Plaintiff Releasees") from any and all claims, demands, contracts, losses, damages, actions, causes of action, suits, debts, promises, liabilities, obligations, costs, expenses, attorneys' fees, indemnities or duties, whether known or unknown, fixed or contingent, accrued or not yet accrued, matured or not yet matured, anticipated or unanticipated, of any kind whatsoever that arise out of or relate to, directly or indirectly, to the Marshall Fire.

Notwithstanding any other provision in this Agreement, nothing herein releases or discharges any of the Parties' obligations, commitments, indemnities, representations or warranties made in this Agreement or prevents the enforcement of obligations, commitments, representations or warranties made in this Agreement.

D. CDHSEM/FEMA Subrogation and Insurance Subrogation

This Agreement encompasses and includes known claims for the FEMA eligible work and financial assistance to the Public Entities provided by CDHSEM and FEMA under at least DR-4634. After the Public Entities coordinated with FEMA and CDHSEM, it is the Parties' intention that the Allocation of the Settlement Sum referenced in Paragraph II.A to the Public Entities shall also satisfy all FEMA interests and CDHSEM interests, respectively, in the potential liability of Settling Defendants and Released Parties for costs of FEMA reimbursements and CDHSEM financial assistance to Public Entities under DR-4634 and leaves no basis for FEMA or CDHSEM to directly pursue from Settling Defendants and Released Parties these or any other costs related to the Public Entities' claims as set forth in Exhibit A against Settling Defendants and Released Parties. The Public Entities and Settling Defendants agree that this Agreement and the Settlement Sum represent a fair, reasonable, and just amount of compensation for the claimed, disputed damages, and that the Public Entities made commercially reasonable efforts to pursue claims to recover the monies and benefits obligated, paid or given or sought to be obligated, paid or given, to or by the Public Entities by FEMA and/or CDHSEM. The Public Entities and Settling Defendants agree that the Public Entities made commercially reasonable efforts to secure the Settlement Sum through litigation, which includes those monies and benefits obligated, paid or given, or sought to be obligated, paid or given, by CDHSEM and FEMA. The letters from the Public Entities, FEMA, and CDHSEM attached and incorporated to this Agreement as Exhibits B, C, and D, respectively, reflect the procedures agreed to by FEMA and CDHSEM with the Parties.

a. Other Subrogation and Insurance

The Public Entities hereby represent that they have not subrogated or assigned, and shall not subrogate or assign, any claims or rights to anyone relating to or arising out of the Marshall Fire.[2] Moreover, the Public Entities and Settling Defendants acknowledge and agree that the Public Entities did not demand or request, nor did Settling Defendants agree to pay, any monies to settle any claims relating to any funds that the

[2] CSDSIP filed a complaint in subrogation against the Settling Defendants in this matter.

Public Entities have received or claimed as of the date of this Agreement from any insurance companies or carriers, any pooled risk insurance programs, any joint power insurance authority, or any other insurance program.

E. Compensation for Economic Loss

The Parties stipulate and agree that the Settlement Sum is compensation solely for economic loss suffered by the Public Entities as a result of the Marshall Fire.

F. Unknown Facts; Covenant Not to Sue

The Parties acknowledge that they may later discover facts different from or in addition to those which they or their attorneys now know or believe to be true. It is the intention of the Parties to fully, finally and forever settle and release all claims included in the releases set forth in Paragraph II.C hereof arising out of the allegations set forth in the Claim, the Complaint and/or the Marshall Fire. **The releases provided in this Agreement shall remain in effect notwithstanding the discovery or existence of any additional or different facts related to the Marshall Fire**.

The Public Entities irrevocably warrant and covenant that they will refrain from, either directly or indirectly, asserting any claim or demand, or commencing, instituting or causing to be commenced any proceeding of any kind, against the Released Parties, or any of them, arising out of the Marshall Fire.

G. Composition of Settlement Sum

The Settlement Sum was determined by the Parties solely in relation to the actual damage and losses suffered by the Public Entities allegedly as a result of the Marshall Fire (such as pavement fatigue, staff labor, revenue losses, lost municipal services and hazardous trees). No portion of the Settlement Sum was agreed to and paid in respect of fines, penalties, double or treble damages, exemplary damages, investigation costs, attorneys' fees, experts' costs or other litigation costs.

H. Further Assurances

The Parties shall perform any further acts, and execute and deliver any documents, which may be reasonably necessary to carry out the intent of this Agreement.

I. Costs and Expenses

The Parties agree to pay their own costs and expenses, including attorneys' fees, experts' fees and other litigation costs, incurred in connection with the prosecution, defense, and settlement of the Claim and Complaint which are the subject of this Agreement. The Parties hereby expressly waive any right to recover attorneys' fees, experts' fees or other litigation costs that may otherwise exist in their favor with respect to the claims included in the releases set forth in Paragraph II.C. hereof, expressly including any claimed right to shift the burden of such costs and fees to the opposing party through any state or federal cost or fee shifting statutes or rules. This paragraph does not alter the allocation of such costs and fees between the Public Entities as previously agreed between the Public Entities in their allocation agreement.

J. Integration

This Agreement constitutes the final, complete, and exclusive agreement and understanding between the Public Entities and Settling Defendants and supersedes all prior or contemporaneous written or oral agreements. The Public Entities and Settling Defendants expressly acknowledge that they have not relied on any representations, warranties, agreements, arrangements, or understandings not expressly contained in this Agreement to define the terms of or to interpret this Agreement.

K. <u>Mediation Communications Privilege and Confidentiality</u>

Consistent with C.R.S. § 13-22-307, any and all privileged communications, information, and documents obtained by one Party from another, related and leading up to, including during any and all parts of a mediation and settlement negotiation process, including the preparation of this Agreement, are confidential, and will not be disclosed to any third party without the prior written consent of the Parties, except (a) to enforce any term of this Agreement; (b) to the extent required to be disclosed in mandatory filings with the U.S. Securities and Exchange Commission; (c) to the extent required or necessary to receive legal, tax, or accounting advice or to energy regulators or auditors where it is reasonably determined by the Party that disclosure is necessary to fulfill a legal obligation or regulatory requirement; (d) as otherwise required by law including, but not limited to, the Colorado Open Records Act; (e) to the extent required to be disclosed in mandatory filings with the U.S. Internal Revenue Service or otherwise requested by the U.S. Internal Revenue Service; (f) to the extent such terms have already been publicly disclosed as permitted by this paragraph; (g) to the extent any such communications, information, and/or documents were or are independently obtained, rather than obtained solely through the mediation and settlement negotiation process; and (h) as required to effectuate the covenants of the Parties herein. In the event that a Party receives a subpoena, document request or other request under color of law to disclose the substance of any settlement discussions or negotiations pertaining to this Agreement, the Party receiving the request will, to the extent permitted by law, promptly notify (in a manner consistent with the notice provision below) all other Parties of the request so as to give them an opportunity to attempt to oppose the request. Notwithstanding any other provision of this Agreement, unless required by law (including but not limited to required disclosures relating to publicly traded securities, or under the Colorado Open Records Act or Open Meetings Law) or by a court or administrative agency of competent jurisdiction, no Party may disclose information that would permit any non-party to know, infer, or otherwise deduce the specific amount (or proportion) of the Settlement Sum being contributed by any individual Settling Defendant.

Prior to any Party's initial press release, that Party shall permit the other Parties to review a draft of such press release and shall in good faith consider any edits proposed by the other Parties. Breach by one Public Entity of this provision shall not constitute a breach by any other Public Entity.

L. Ambiguities Not Construed Against Drafter

The Parties acknowledge that the normal rule of construction that any ambiguities are to be construed against the drafting party shall not apply to this Agreement.

M. Severability

If a provision of this Agreement is held to be illegal or invalid by a court of competent jurisdiction, such provision shall be deemed severed and deleted. Such severance and deletion shall not affect the validity of the remaining provisions of the Agreement, provided, however, that the release, waiver, and payment provisions set forth in Paragraphs A, B, C, D, and F of this Section shall not be severable. The Parties acknowledge and agree that the provisions of Paragraphs A, B, C, D, and F of this Section are of the essence of this Agreement, and, if they are held unenforceable for any reason, at any time, this Agreement shall be deemed null and void. In such event, the Parties shall execute a new Settlement Agreement within 30 calendar days (the "Agreement Period") with the intention to effectuate the terms and conditions herein, including the purpose and intention of Paragraphs A, B, C, D, and F of this Section. Should the Parties be unable to execute a new Settlement Agreement during the Agreement Period, the Parties agree that any amounts paid to the Public Entities by Settling Defendants pursuant to the terms hereof shall be repaid to the respective Settling Defendant within 30 days of the expiration of the Agreement Period, or upon other terms agreed upon by the Parties at that time, and no releases or waivers shall have effect, and any court dismissals, with or without prejudice, and any statute of limitations, whether or not expired, shall have no effect on the Parties' ability to reinstitute and pursue litigation in a court of law provided that the Parties initiate litigation within 60 days following the expiration of the Agreement Period. None of the Parties shall cause, or support any efforts to cause, any language or section in the Agreement to be held illegal or invalid by any court.

N. Waiver or Modification

No waiver shall be binding unless executed in writing by the Party making the waiver. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.

No supplement, modification or amendment to this Agreement shall be binding unless in writing and executed by all the Parties. This Agreement cannot be modified by oral or implied promises or representations.

O. No Admission

This Agreement does not constitute, and shall not be deemed to constitute or imply, an admission or concession of any fact in issue in any pending or threatened civil litigation, or any liability or obligation whatsoever.

P. Compromise

This Agreement constitutes a compromise of the Claims and Complaint that are in dispute between the Parties. Neither the execution of this Agreement nor any acts undertaken pursuant to this Agreement shall be construed as an admission or evidence of any liability or wrongdoing whatsoever on the part of any party, which liability or wrongdoing is hereby expressly denied and disclaimed by that respective Party. Neither this Agreement, nor the fact of its execution, nor any of its provisions, shall be offered or received in evidence in any action or proceeding of any nature or otherwise referred to or used in any manner in any court or other tribunal, except in a proceeding to enforce the terms of the Agreement.

Q. Successors

The provisions of this Agreement shall be deemed to extend to and inure to the benefit of the Parties' respective successors-in-interest, assigns, transferees, grantees, administrators and representatives, and to extend to and obligate the Parties' respective successors-in-interest, assigns, transferees, grantees, administrators and representatives.

R. Colorado Law

This Agreement in all respects shall be interpreted, enforced and governed by and under the laws of Colorado.

S. Mediation

Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be mediated by the Honorable Peter Lichtman or another mutually agreeable mediator.

T. Attorneys' Fees

In the event arbitration and/or litigation is commenced to enforce any of the provisions hereof or to obtain declaratory relief in connection with any of the provisions hereof, each party shall bear its own attorneys' fees, costs and expenses.

U. Non-Assignment

The Parties represent and warrant that the Parties have not assigned or transferred or purported to assign or transfer to any person, firm, entity, or corporation any claim, demand, right, damages, liability, account, action, cause of action, or any other matter released.

V. Third-Party Rights

The Released Parties are expressly intended third-party beneficiaries of this Agreement and shall be entitled to enforce the terms of the release herein to the same extent as if they were parties hereto. Except for as provided in the preceding sentence, this Agreement is made for the benefit of the Parties and their successors and permitted assigns only, and neither this Agreement nor any provision hereof shall be construed or deemed to give rise to rights or obligations in any other person or entity.

W. Execution in Counterparts and Fax Signatures

This Agreement may be executed in duplicate originals and/or in counterparts, but it is agreed that there is only one Agreement. The Parties agree that all genuine copies of this Agreement, such as photocopies, may be used as though originals in the absence of a bona fide challenge to the authenticity of the copy. The Parties agree that facsimile, scanned, or electronic signatures shall suffice and be binding on them with respect to the execution of this Agreement.

X. Notices.

Any notices required to be provided under this Agreement to the Public Entities will be provided via email to Torri Sherlin (tsherlin@baronbudd.com) and to Robert Chambers (rob@dcfirm.com). Any notices required to be provided under this Agreement to a Settling Defendant will be provided via email as follows: to Xcel, Kevin Orsini (korsini@cravath.com); to Teleport, Bethany Kristovich (Bethany.Kristovich@mto.com); and to Qwest, David Bona (DBona@donahue.com).

Y. No Other Claims

With the exception of any claim already asserted, the Public Entities represent and warrant that they are aware of no other departments, offices, districts, agencies or other entities, for which the Public Entities' legislative or governing bodies control or serve as the legislative or governing body, that may have claims or potential claims for damages allegedly caused by the Marshall Fire or as alleged in the Complaints, including claims that have not already been made.

Z. Opportunity to Consult Counsel

The Parties acknowledge that each has read this Agreement, that each fully understands its rights, privileges and duties under the Agreement, and that each enters this Agreement fully and voluntarily. The Parties further acknowledge that they have had an opportunity to consult with attorneys and relevant subject-matter experts of their own choice to explain the terms of this Agreement and the consequences of signing it.

AA. Voluntary and Knowing Release

The Public Entities, on the one hand, and Settling Defendants, on the other hand, hereby represent to each other:

1. that they have discussed their claims and the advisability of signing this Agreement with counsel of their choosing and that counsel has reviewed this Agreement;
2. that they have made such investigation of the facts pertaining to the claims and the settlement of those claims as they deem necessary;
3. that they have carefully read all of the provisions of this Agreement; and
4. that they voluntarily enter into this Agreement.

BB. This Agreement shall be binding and enforceable.

CC. All parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.

DD. Signatory Authority

Each person signing this agreement represents and warrants that he/she has the authority to bind the Party or Parties on behalf of which he/she signs to the provisions of this Agreement.

I HAVE READ THE FOREGOING SETTLEMENT AGREEMENT AND RELEASE AND I ACCEPT AND AGREE TO THE PROVISIONS CONTAINED THEREIN AND HEREBY EXECUTE IT VOLUNTARILY AND WITH FULL UNDERSTANDING OF ITS CONSEQUENCES.

Signatures on the following pages.

DATED: December _, 2025

BOULDER COUNTY

By ____________________________________
Name
Title

DATED: December _, 2025

CITY OF LOUISVILLE

By ___________________________________
Name
Title

DATED: December _, 2025

TOWN OF SUPERIOR

By __________________________________

Name

Title

DATED: December ___, 2025

SUPERIOR METROPOLITAN DISTRICT NO. 1

By ______________________________

Name

Title

DATED: December _, 2025

BOULDER COUNTY PUBLIC HEALTH

By ___________________________________
Name
Title

DATED: December _, 2025

BOULDER VALLEY SCHOOL DISTRICT

By ____________________________________

Name

Title

DATED: December ____, 2025

COLORADO SCHOOL DISTRICTS SELF INSURANCE POOL

By ___________________________________
Name
Title

APPROVED AS TO FORM:

DATED: December _, 2025

BARON & BUDD, P.C.

By ________________________________

Victoria Sherlin
Jason Julius
Attorney for Public Entity Plaintiffs

DATED: December _, 2025

DIAB CHAMBER LLP

By ________________________________

Robert Chambers
Ed Diab
Attorney for Public Entity Plaintiffs

Xcel's Signature Page

ACCEPTED AND AGREED:

DATED:

On behalf of Public Service Company of Colorado d/b/a Xcel Energy

By:__________________________

Name:________________________

Title:_________________________

APPROVED AS TO FORM:

DATED:

On behalf of Counsel for Public Service Company of Colorado d/b/a Xcel Energy

By:__________________________

Name:________________________

Title:_________________________

Teleport's Signature Page

ACCEPTED AND AGREED:

DATED:

On behalf of Teleport Communications America, LLC

By:___________________________

Name:________________________

Title:_________________________

APPROVED AS TO FORM:

DATED:

On behalf of Counsel for Teleport Communications America, LLC

By:___________________________

Name:________________________

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Qwest's Signature Page

ACCEPTED AND AGREED:

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By:___________________________

Name:_________________________

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Title:_________________________